

# **The Labor-Management Dispute Settlement System and Labor-Management Relations in Korea**

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## **I. Introduction**

In Korea, the four pillars of its labor laws, namely, the Labor Standards Law, Labor Union Law, Labor Dispute Adjustment Law, and Labor Relations Commission Law, were enacted in 1953. However, since the time these laws were enacted there were a lot of political changes leading to the Korean War, such as the Japanese colonial period and US military administration, thus draft bills were made based on old Japanese labor laws without fully discussing or studying the contents of the labor bills. As a result, Korean labor laws are very similar to those of the Japanese in terms of their systems and contents. This also applies to the labor-management dispute settlement system. For example, in Korea, as in Japan, the following systems have been established: the labor inspection system for investigating and correcting acts violating the Labor Standards Law, the trial system as a final and formal labor dispute settlement organization, and the labor relations commission for settling mass labor disputes and addressing unfair labor practices.

Among these laws and systems, some have gradually changed their functions in accordance with the cultural climate of Korea. For example, the labor relations commission fulfilled almost the same function as the Japanese labor relations commission when it was introduced, but later it was revised so that it could deal with even unfair dismissal cases which are individual disputes. As a result, while settling mass disputes such as unfair labor practices should be the central task of the labor relations commission, a reverse phenomenon has occurred today in that the labor relations commission is placing greater emphasis on the settlement of individual disputes such as unfair dismissal cases. Historically, however, the labor relations commission was established to settle mass disputes, so it has its own limits in settling individual disputes such as an unfair dismissal case. Moreover, currently, there is an energetic public discussion on the rearrangement of the labor-management dispute settlement system, for example, regarding the rearrangement of the labor

relations commission and the introduction of a labor trial system as an integral part of judicial reform.

At this time, I will introduce and analyze the entire picture of the present labor-management dispute settlement system, its realities and problems, and will also summarize current trends concerning the review of the labor-management dispute settlement system.

## **II. Outline of Labor-Management Dispute Settlement Organizations**

### **1. Labor Relations Commission**

The Labor Relations Commission consists of committee members of the same number representing government, labor and management, and is an independent administrative institution which mainly carries out the service of adjusting labor disputes and judging unfair labor practices and unfair dismissals. The primary task of the Labor Relations Commission was originally to remedy unfair labor practices and adjust labor disputes, but when the Labor Standards Law was revised in 1989, the Labor Relations Commission was enabled to deal with individual dismissal disputes. The Labor Relations Commission consists of three kinds of commissions: the Central Labor Relations Commission (hereinafter referred to as “CLRC”), Prefectural Labor Relations Commission (hereinafter referred to as “PLRC”), and Special Labor Relations Commission. The CLRC (in Seoul) and PLRC (in 12 prefectures) are under the control of the Minister of the Department of Labor, and the Special Labor Relations Commission, the Labor Relations Commission for Seafarers (in 11 prefectures), is under the control of the Minister of the Department of Labor. Unlike a court, the Labor Relations Commission permits shortening<sup>1</sup> the period for bringing an action in order to settle a labor dispute promptly and inexpensively and the

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<sup>1</sup> Bringing an action to the Prefectural Labor Relations Commission must be implemented within three months of the day on which an illegal act occurs. If someone objects to the decision or order of the Prefectural Labor Relations Commission, he or she must apply to the Central Labor Relations Commission for a re-examination within ten days of the day on which the decision or order is delivered. A lawsuit seeking revocation of the decision or order of the Central Labor Relations Commission must be instituted to the Administrative Court (for the first instance) within fifteen days of the day on which the decision or order is delivered.

representation of a certified labor consultant,<sup>2</sup> who is comparatively inexpensive, in place of a lawyer.

The Labor Relations Commission's procedure for dealing with a labor dispute normally begins with both parties' (i.e. labor and management) applying to a PLRC for its remedy or adjustment. If either of the parties concerned object to the decision or judgement of a PLRC, they can ask the CLRC for a re-examination of the labor dispute. If either of the parties concerned object to the decision or judgement of the CLRC, they can further institute a lawsuit for withdrawing administrative punishment to an administrative court. When, as the result of the re-examination, the Labor Relations Commission judges that there is a sound reason(s) explaining part or all of the fact(s) alleged, the Labor Relations Commission issues a remedial order for part or all of the fact(s) alleged, but if it judges that there is no sound reason therein, it issues a rejecting order.

A glance at how much the Labor Relations Commission dealt with labor disputes in the past reveals that the number of judgement and adjustment cases both reached their peak in 1988 and 1989 and then gradually decreased since that time. The reason labor disputes increased sharply in this period is because large-scale labor disputes occurred<sup>3</sup> under the influence of political democratization. After that, the number of labor disputes (reconciliation cases) sharply decreased in line with the improvement of labor-management relations. However, after the financial crisis in the latter half of the 1990s, restructuring dismissal cases following employment adjustment increased sharply, and today, dismissal cases occupy about 70% to 80% of the total cases brought to the Labor

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<sup>2</sup> A certified labor consultant is a labor-issue specialist equivalent to Japan's "social insurance labor consultant," and his or her main job is to submit documents to various administrative organizations, act as a proxy lawyer, and provide labor consultation. The number of certified labor consultants registered as of October 2005 is 639, and 372 consultants out of these 639 are actually carrying out such services.

<sup>3</sup> An extraordinarily large number of labor disputes, such as no one had experienced before in Korea, occurred in the period from 1987 through 1988. The cause of this is known as the "declaration of democratization" of 1987. This declaration was literally a mere declaration of political democratization, but its ripple effect was so large that not only the political world but also the economic, social and labor sectors were greatly affected by it. Regarding the labor sector alone, it was an opportunity for the revocation of restrictions placed on labor unions, which had been desired by labor unions for a long time, and thus labor union activities became animated.

Relations Commission<sup>4</sup>. The Labor Relations Commission has been promoting the amicable settlement of labor disputes, so that half of all trials have been terminated by way of amicable settlement. Additionally, the period of time which the Labor Relations Commission spends to settle labor disputes is 70 days on average, the rate of asking the CLRC for a re-examination is 55.9%, and the rate of instituting an administrative suit is 39.2% (based on 2000 statistics).

## 2. Courts<sup>5</sup>

Like Japan, a special court having exclusive jurisdiction over labor disputes does not exist in Korea, and any labor disputes, including dismissal and general civil cases, are settled through legal procedure. The legal procedure is a “three-instance system”, as in Japan, and any other procedures – such as provisional disposition, civil conciliation, trial, contents of remedy, and the like – differ only slightly from those of Japan.

When someone institutes an administrative lawsuit for revoking the decision or judgement of the CLRC, an Administrative Court is the first instance, which differs from Japan. The hearing of the intermediate appeal of the Administrative Court is conducted in a High Court, and its appellate trial is conducted in the Supreme Court. Therefore, the Labor Relations Commission’s procedure for dealing with labor disputes is a “five-instance system” as demonstrated in the process of PLRC → CLRC → Administrative Court → High Court → Supreme Court.

A court is divided into three departments: a “small claims trial department” which is in charge of cases in which the value of an article sued for is 20,000,000 won or less, an “individual trial department” which is in charge of minor or simple cases, and an “agreement trial department” which is in charge of cases in which an issue of law is comparatively complicated. Concerning the number

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<sup>4</sup> The number of petitions asking the Labor Relations Commission for a remedy:

<b>Classification</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Total</b>	8,024	6,799	7,606
<b>Unfair labor practices</b>	1,787	1,332	1,262
<b>Unfair dismissal</b>	5,348	5,246	6,163
<b>Others</b>	889	221	181

Source: The Central Labor Relations Commission

<sup>5</sup> All courts other than the Constitutional Court are called “Houin” (house of judicature) in Korea.

of suits filed with regard to labor-related cases in civil-trial proceedings, wage-related suits comprise the largest number, i.e. 14,676; loss compensation-related suits comprise the second largest number, i.e. 1,859; retirement payment-related suits comprise the third largest, i.e. 844; and dismissal-related suits comprise the fourth largest, i.e. 202<sup>6</sup>. On the other hand, the number of suits filed with regard to labor-related cases in administrative trial proceedings was only 400 in 2000, but exceeded 500 in 2001, increasing year by year since then.

Korea also differs from Japan in that in addition to the above-mentioned legal proceedings, there exists the Constitutional Court. The Constitutional Court is a special court which was established in 1988 with the aim of judging the (un)constitutionality of laws, impeachment, dissolution of political parties, disputes on authority between governmental organizations and local autonomous bodies, constitutional petition, and the like (Article 2 of the Constitutional Court Law). The Constitutional Court has ruled unconstitutional a large number of laws and regulations since it made its first ruling on January 25, 1989, and said rulings include quite a number of decisions concerning labor-related laws and regulations.

### 3. Others

As an administrative organization for dealing with labor disputes, there is a labor inspector in addition to the Labor Relations Commission. The labor inspector is basically an inspection organ that investigates acts violating labor-related laws and regulations, including the Labor Standards Law, but in fact, it fulfills a function of dealing with labor disputes. The labor inspector is able to order

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<sup>6</sup> The number of suits received with regard to labor-related cases in civil-trial proceedings is as follows (in 2003):

<b>Classification</b>	<b>Dismissal</b>	<b>Wage</b>	<b>Retirement payment</b>	<b>Compensation of damages</b>	<b>Total</b>
<b>Individual trial department</b>	16	1,284	107	1,603	3,010
<b>Agreement trial department</b>	159	234	40	37	470
<b>Small-amount trial department</b>	27	13,158	701	219	14,105
<b>Total</b>	202	14,676	848	1,859	17,589

Source: The Court Administrative Office

any person violating the Labor Standards Law, etc. to correct the violation within 25 days of the order given, and if necessary, to exercise his or her authority as a judicial police officer within a specific range specified in the Labor Standards Law (Article 104, Paragraph 5 of the Labor Standards Law)<sup>7</sup>.

As to the structure of the labor inspection organization, first, there is the Prefectural Labor Agency (in 6 prefectures) under the control of the Minister of the Department of Labor, and then the Local Labor Office (in 35 districts) under the control of the Prefectural Labor Agency. The number of labor inspectors performing labor-inspection services in the Local Labor Offices was 616 as of 1990.

However, the labor inspection organization is an organ that exposes and corrects acts violating the Labor Standards Law, etc. based only on the complaints of laborers. Therefore, labor inspection cannot be considered a dispute settling organ in which both labor and management (particularly, management) take the initiative in amicably settling a labor dispute. In addition, there is some doubt about whether, apart from acts which obviously violate the Labor Standards Law, etc., the labor inspector can judge more complex cases requiring a precise judgement such as dismissal due to economic conditions. Of course, an able labor inspector having expert knowledge might be able to deal with such dismissal cases, but practically, actual labor inspectors do not necessarily have such abilities because of the short-term substitution system, lack of professional education, etc. Furthermore, since labor inspectors are limited in terms of their number, it is practically impossible for them to cope with a large number of cases ranging from individual labor-related matters to collective labor-management-related matters.

In addition to the above-mentioned organizations, there are the “Equal Employment Opportunity Commission”, which implements the Equal Employment Opportunity Law for Men and Women and adjusts labor disputes thereof, under the control of the Prefectural Labor Agency

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<sup>7</sup> Unlike Japan, unfair dismissal and unfair labor practices are prohibited with punitive provisions in Korea. If an employer violates the unfair dismissal prohibition regulations, he is sentenced to five years' or less imprisonment with forced labor or is punished with a fine of 30,000,000 won or less. If an employer violates the unfair labor practice prohibition regulations, he is sentenced to two years' or less imprisonment with forced labor or is punished with a fine of 20,000,000 won or less.

(Articles 27 to 29 of the Equal Employment Opportunity Law for Men and Women), and the “Sex Discrimination Improvement Commission”, which investigates and gives advice to correct sex discrimination-related matters, under the control of the Minister of the Women’s Department (Articles 9 to 20 of the Law Concerning Prohibition and Remedy of Sex Discrimination). However, the main purpose of these organizations is basically to expose and correct acts violating labor-related laws and regulations, as is the case with the labor inspector, and so they play only a limited role as labor-management dispute settling organizations.

### **Types and Functions of Labor-Management Dispute Settling Organizations**

<b>Type of Organization</b>		<b>Function</b>
<b>Administrative authority</b>	Labor Relations Commission	Judgement (unfair labor practices and unfair dismissal) Adjustment (mediation and arbitration of labor disputes)
	Labor Inspector	Exposure and correction of acts violating the Labor Standards Law, etc.
	Equal Employment Opportunity Commission	Implementation of the Equal Employment Opportunity Law for Men and Women and adjustment of labor disputes thereof
<b>Legal authority</b>	General Court	Civil-trial proceedings, provisional disposition, civil conciliation
	Administrative Court	Suit (first instance) for revoking an administrative punishment
	Constitutional Court	Examination of (un)constitutionality of laws and ordinances

### **III. Problems and Review of the Labor-Management Dispute Settlement System**

#### **1. Labor Relations Commission System**

The Labor Relations Commission, as the center of the labor-management dispute settlement system, has not only carried out the adjustment of labor disputes and the remedy of unfair labor practices, but has also settled labor-management disputes, including individual dismissal disputes, thus undoubtedly contributing significantly to the harmony between labor and management. However, since the Labor Relations Commission was originally introduced to settle collective labor-management disputes, many problems occur<sup>8</sup> when the Labor Relations Commission deals

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<sup>8</sup> For details concerning the status quo and problems of the Labor Relations Commission in Korea,

with individual rights-related disputes such as dismissals. For example, in Korea, all the Labor Relations Commissions are under the control of the central Government (Department of Labor), and some of the current regulations leave room for the intervention of the government or any governmental organizations<sup>9</sup>. Moreover, some have pointed out as a problem the fact that there are not enough labor dispute experts who exclusively settle labor-management disputes. In particular, individual labor disputes such as unfair dismissal cases have increased recently, but the number of examiners has remained the same, meaning the number of cases with which one examiner deals exceeds 115 a year<sup>10</sup>, thereby causing the processing of cases to be delayed.

As a result, the Labor-Management System Commission for Advancing Research<sup>11</sup> presented various concrete reform measures including the securing of the aforesaid experts in a 2003 report entitled “Bill for Advancing Labor-Management Relations Laws and Systems” so that the reform measures can be reflected in future reforms of the Labor Relations Commission.

## 2. Trial System

No matter how different the starting point and route of a labor-management dispute may be, the terminal station is always a court. For example, a dispute regarding work-related accident compensation proceeds in the following order: Laborer Welfare Corporation → Workmen’s Accident Compensation Insurance Examination Commission → (disagreement) → Administrative Court →

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refer to: Lee, John (2002) *Legal Principles for Dismissal Dispute Settlement*, Shinzannsha, p. 294.

<sup>9</sup> For example, according to Article 8 of the Labor Relations Commission Law, any person who has 10-15 years or more of experience in labor-related organizations can become a public judgment member or a public adjustment member of the Central Labor Relations Commission or Prefectural Labor Relations Commissions, under specific conditions, and in fact, many full-time members of the Labor Relations Commissions are such persons.

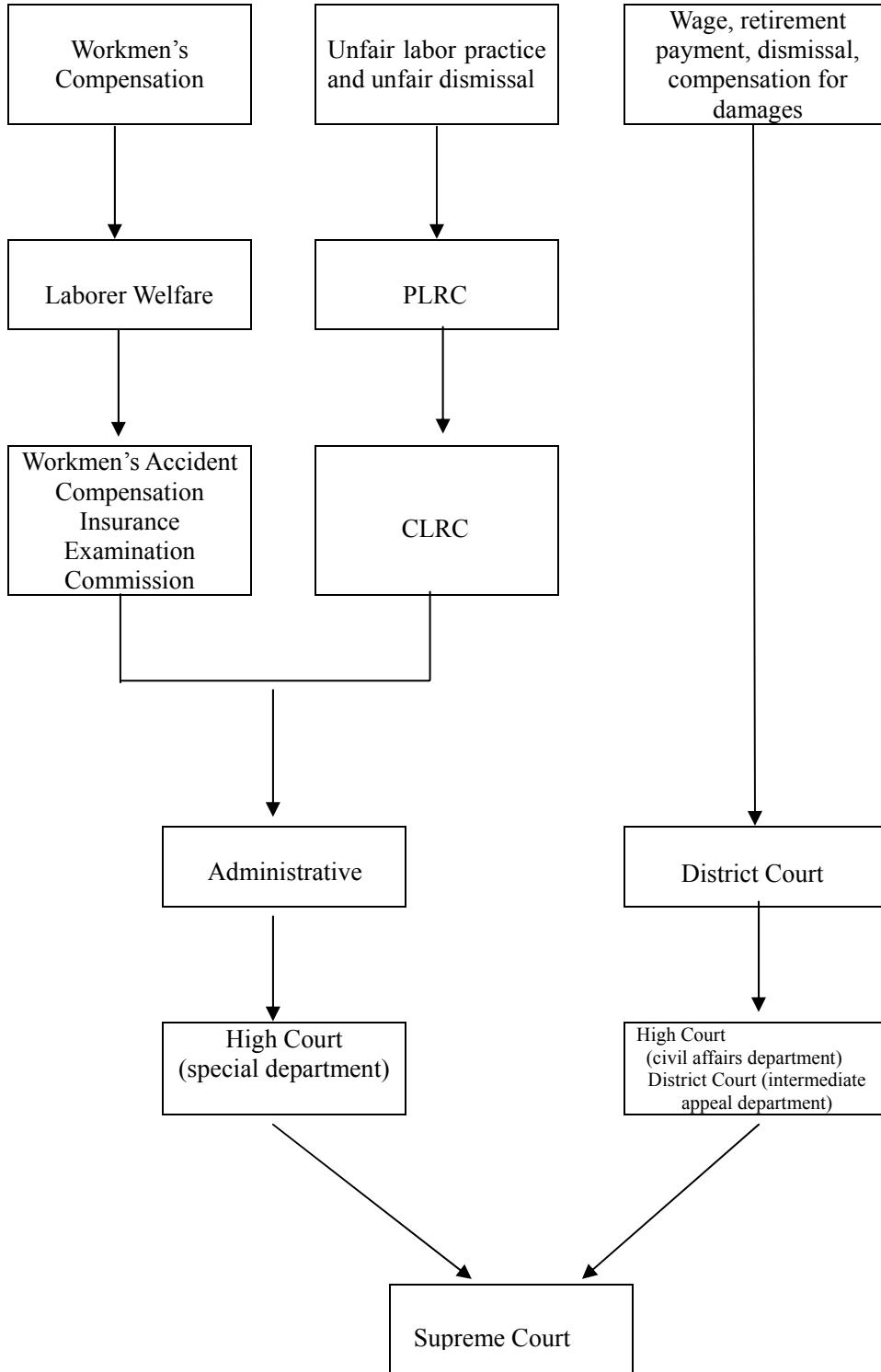
<sup>10</sup> In the case of the Central Labor Relations Commission, ten examiners deal with 1,714 cases, meaning one examiner deals with 170 or more cases (according to 2004 statistics).

<sup>11</sup> The “Labor-Management System Commission for Advancing Research” is a research organization established by the present Government in May 2003 in order to implement the advancement of labor-management relations, which was one of its public commitments. This research organization, consisting of 15 scholars/experts in labor issues, studied how labor-management relations could be improved within a short period of three months, and worked out necessary reform measures for the whole range of labor laws in a report entitled “Bill for Advancing Labor-Management Relations Laws and Systems.” The present Government intends to enact the recommended reforms after hearing opinions concerning said report from representatives of labor and management and various other stakeholders.



High Court (special department) → Supreme Court. Unfair labor practice and unfair dismissal cases proceed in the following order: PLRC → CLRC → (disagreement) → Administrative Court → High Court (special department) → Supreme Court. Other disputes (such as wage, dismissal and compensation for damages) proceed in the following order: District Court → High Court (civil affairs department) → Supreme Court.

### Flow of Labor-Management Dispute Settlement



In cases involving work-related accidents, unfair labor practices, and unfair dismissals, the procedure for dealing with such labor disputes is a “five-instance system” as described above. In the case of an unfair dismissal, any person concerned can resort to requesting a trial for a remedy thereof through the Labor Relations Commission or a civil trial procedure at a District Court. As a result, in the case of many labor-related cases (dismissal cases in particular), the relationship between rights and duties is not established until the case reaches the 5th stage, which causes the management-employee relationship to become unstable in the meantime. In addition to this problem, there is the issue of to which judgment priority should be given when the judgments of the Court and the Labor Relations Commission differ, since labor-related cases are dealt with concurrently by both a court and a Labor Relations Commission. Furthermore, some have pointed out that as civil trial procedure is basically premised upon settling general civil affairs cases, it cannot adequately cope with complicated cases which reflect the particularity of labor relations.

Thus, in December 2004, the Judicial Reform Commission proposed the establishment of a specialist court or specialist trial department for settling labor-related cases efficiently and exclusively in the long-term, considering the particularity of labor-related cases.<sup>12</sup> After this proposal was accepted, the Labor Dispute Settlement System Commission was established under the Judicial Reform Commission and has since been reviewing the entire labor-management dispute settlement system, including the introduction of a Labor Court and the reform of the Labor Relations Commission system. However, since labor and management bodies, the Government, Department of Labor, Labor Relations Commissions, and courts all have interests in these systems, a consensus on this subject cannot be easily obtained at the present time<sup>13</sup>.

Under these circumstances, the Central and District Courts in Seoul introduced a Labor-related Case Arbitration Specialist Commission and began to try to settle labor-related cases by arbitration as of September 1, 2005. This Commission, which consists of 33 scholars and lawyers well-versed in

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<sup>12</sup> Judicial Reform Commission (December 31, 2004) *Proposition for Judicial Reform*, p. 11.

<sup>13</sup> A glance at the viewpoints of various stakeholders on the introduction of a Labor Court reveals that the Labor Relations Commission objects to the introduction of such court if it is to replace its own organization and management bodies also basically object to its introduction. On the contrary, labor unions welcome the introduction of a Labor Court.

labor issues, will be operated on an experimental basis in the Central Court in Seoul this year, and if successful, will be expanded nationwide starting next year.

### **3. Labor Inspection System**

The current labor laws stipulate criminal penalties for non-payment of wages, unfair dismissal and unfair labor practices. Therefore, laborers who experience such violations in the workplace can report their employers to labor inspectors and ask to have their employers correct said violations. A glance at the settlement of labor disputes in local labor inspection offices reveals that the total number of labor disputes accepted by labor inspection offices nationwide was 214,564 in 2004. Out of that total, the number of labor disputes to which administrative settlement was applied was 107,755; the number of labor disputes to which judicial settlement was applied was 92,178; and the number of labor disputes to which neither administrative nor judicial settlement was applied was 7,462. As to the types of offences, money/goods settlement cases related to wages comprised 96.7% of all cases, whereas the number of unfair dismissal cases was 1,923, and that of unfair labor practice cases was 1,165.

The majority of cases with which labor inspectors deal are money/goods settlement cases related to wages, as described above; and in fact, the number of such cases has been increasing recently under the influence of an economic recession and employment adjustment. Consequently, the number of cases with which one labor inspector deals a year has reached 290; this excessive workload and resulting delays in processing cases (the average number of days for processing a case is 51) have caused serious problems. In order to enable labor inspectors to fulfil their original function, the key challenge is securing enough qualified labor inspectors who have expert knowledge and experience in labor issues.

### **IV. Conclusion**

Half a century has already passed since the current labor dispute settlement system was established. The Labor Relations Commissions, courts and labor inspectors have played their own roles during that period and are thus recognized as the “three key players” in the settlement of labor

disputes. In recent years, however, while the globalization of industrial enterprises, diversification of employment, and decline in unionization rates have been under way, the circumstances surrounding labor disputes have been changing. For example, in the past there were many disputes related to dismissals, wages or unfair labor practices, but nowadays, there are a large variety of disputes involving problems faced by non-regular employees, sexual harassment and changes in working conditions, among others. Naturally, these changes could not have been predicted when the current labor-management dispute settlement system was established, hence the current gap between this system and the actual settlement of labor disputes. A heated argument has thus developed regarding the rearrangement of the Labor Relations Commission and the introduction of a Labor Court; consequently, labor, management and other concerned bodies have not yet agreed on the introduction of the Labor Court and many problems remain unsettled<sup>14</sup>. For example, even if the Labor Court is introduced, there are issues of what its instance level should be (i.e., whether it should be set at the level of a district court dealing with the first instance or at the level of a high court dealing with the second instance), what the scope of its jurisdiction should be regarding matters it will deal with, what type of relationship it will have with the Labor Relations Commission, etc. Moreover, in order to enable the Labor Court to fulfill its function, it is necessary to secure judges who are well-versed and specialize in labor issues; how these judges will be secured is a significant human resources challenge. In summary, since the above-mentioned review of the labor-management dispute settlement system is closely related to the judicial reform that is currently under way, we must now watch the development of these issues.

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<sup>14</sup> For analysis of the problems arising from the introduction of a Labor Court, refer to: Lee, John (2005) *Issues of Law and Problems in the Introduction of a Labor Court*. Korea Labor Research Institute.