Labor Tribunal System: Prospects of Japan's New Approach Towards the Efficient Settlement of Individual Labor Disputes

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Executive Summary

This study examines the current development approach in Japan's individual labor dispute resolution system with particular reference to the reported efficiency of its newly-established Labor Tribunal System (LTS). It will trace the history of LTS, its related legislations, practices and how the tripartite sectors are gearing up for its implementation. At the end of the study, it will identify the challenges, issues, and prospects of LTS and how the tripartite sectors could build on them.

Methodology

Most of the data in this paper were culled from JILPT official publications and other reference materials from its library. These were supported using the primary data gathered from personal interviews with officials of Japan Business Federation, Japan Trade Union Confederation, the Ministry of Health, Labor, and Welfare, and one academic personality in the person of Dr. Ryuichi Yamakawa of Keio University Law School, who was also instrumental in drafting the LTS law.

From Cultural to Statutory Duty to Compromise

It is always a tempting analogy to describe the Labor Tribunal System *(the name was first used by Japan Times)* as a form of national commandment that gives a viable option to both labor and management to negotiate as long-time friends, if not mutually-beneficial partners before they go into an actual, expensive, and prolonged court battle.

Such "commandment" would fit neatly with the "obligation" of each party to enter into a compromise with one another as a reflection of the true character of the Japanese *ie,* the traditional "household" where family members live together in almost perfect harmony.

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Indeed, one should examine the extent of this "commandment" within the context of *ie* as a cultural approach to solving, in an efficient and effective manner the increasing number of individual labor disputes in Japan. But all of these can only be done if the tripartite sectors (the government, labor, and management) are more than willing to agree doing it in the spirit of compromise or based on a "give and take" approach.

It is in this context that we analyze the LTS and other related legislations on individual labor dispute settlement.

When the bill was passed in the Diet on April 28, 2004 and subsequently promulgated on May 12, 2004 *(Takamura, May 11, 2004, Yamakawa, May 18, 2004),* there appears to be no heated debate at all among the tripartite sectors, except for some intellectual discussions that helped a lot in the passage of this popular bill.

The tripartite sectors appear to be doing it in the right direction. Why not? When we talk of conflict, we can almost imagine that it is not expected to happen in a traditional Japanese society. Even if dissatisfaction is expressed openly and conflict ensues, the parties usually try to make concessions to each other in an attempt to resolve the issue in such a way that both parties are satisfied and would result to the resumption of their harmonious relationship.

Conventionally, the Japanese way of dispute settlement is very well expressed by the idiom *arasoi o mizu ni nagasu* (literally speaking, let the dispute flow to the water). This means, in effect, telling the parties to forget a dispute and be friendly again. Related Japanese sayings such as *kenka ryoo-seibai* (both disputants are penalized equally) or *arasoi o maruku osameru* (to settle the dispute in circle) also express traditional approaches to dispute settlement.

Sometimes, when both parties find it almost impossible to reach an amicable settlement by themselves then they may soon decide to do an *arasoi o azukeru* or allowing a third party to decide on the matter and to accept his suggestion without any further argument. The third party then tries to conciliate the dispute by appealing to the antagonists' goodwill and to the friendly sentiments which form the basis of traditional personal relationships *(Hanami 203:1979).*

The LTS and its antecedent government regulation – Law on Promoting the Resolution of Individual Labour Disputes (Law No.112, July 11, 2001) are the contemporary equivalent of *arasoi o azukeru* (to leave the dispute to someone else) only that this becomes now a statutory duty for every one to obey*.* But only this time, the government plays an active and dominant role in labor dispute settlement, just like when it established a similarly-situated law like the age-old Labour Relations Adjustment Law (No.25, September 27, 1946), among others.

The participation of the government in promoting and establishing LTS and all other legislations is an important factor toward its successful implementation. Clearly, in any society, respect for government authority is an imperative proposition, and Japan is not an exception. It is a must for the conflicting parties to seek settlement from such government authority as it is difficult to find any other entity that could command considerable power and prestige to be respected by equally antagonistic parties.

The LTS is seen as one notable development in the landscape of Japan's labor relations. It has been bruited as one effective approach to arrest the rapid increase in individual labor disputes between employers and their workers, such as those involving sudden dismissals and reduction of pay. In fact, it is seen as a "system (that) will provide workers with a more effective means of resolving disputes with employers" *(Japan Times, 01-09-2004)* as much as it would benefit the latter *(Watanabe).*

It is a welcome sign for a constantly changing Japan, trying to develop and implement what could be the best remedy under the circumstances. Not only a welcome development, but a ground-breaking approach to dramatically improve the handling of individual dispute settlement in the country.

It must be noted that, unlike other countries, Japan has no courts specially designated for labor litigation. All labor and employment related lawsuits must be filed with the ordinary courts manned by sitting judges as professional jurists. Also, there are no lay judges who take the helm in settling individual labor disputes in European labor courts such as the *Arbeitsgerichte* or employment tribunals like *conseil des prud'hommes (Araki 11:2002).*

This is the apparent vacuum that the LTS is trying to fill which cannot be handled alone by Law No. 112.

Coverage and Definition

The ideal situation is not to have any labor disputes at all. That is utopia in the corporate world. Unfortunately, disputes cannot be avoided and to some extent must occur to pave the way for a new and lasting relationship. This is the law of nature. And there is nothing that people can do about it, except to take it with a grain of salt and the tripartite holders would hope for the best.

To best describe this law of nature is to take note of an applicable Japanese proverb – *"Ame futte ji katamaru"* (after the rain, comes a fair weather) which is often quoted by both labor and management once a dispute has been settled. The rain in this case is a labor dispute.

In strict legal sense, "a labor dispute" (roodoo soogi) is different in meaning from "an act of dispute" (soogi kooi), the former being a disagreement of claims between labor and management with or without an act of dispute (or mass action done by union members and their sympathizers), and the latter is best manifested through a mass action like a strike, slowdown, lockout, or other acts and counteracts that hamper the normal course of work *(Inohara 136:1990).*

In our context, we use the term "labor dispute" when it is initiated, filed, and pursued by an "individual employee." It must be distinguished from a "collective" action normally done by trade unions when they try to amplify their disagreement or press their demands with management.

While it is true that sometimes a suit is filed by a labor union to protect its own interest and its members, however, most of the labor cases involve "individual" employment cases or issues in that they are based on the legal rights of the individual employee. Since the employment status and wages inherently belong to each employee, such cases may be litigated solely by the employee. However, it is of course possible that the employee's complaint may be supported by a labor union. *(Nakakubo 5:1996).*

It is in this light that we analyze the "individual labor dispute" within the purview of Article 1 of Law No.112, arguably, as the pioneering legislation on the matter. Under the said law, "individual labor dispute" refers to "disputes between individual workers and business owners (including disputes between individual job applicants and employers with respect to matters concerning the recruitment and employment of workers)…with respect to working conditions and other matters concerning labor relations."

Excluded from the said law and this study is any labor dispute that falls within the purview of any "disagreement over claims regarding labor relations arising between the parties concerned with labour relations resulting in either the occurrence of acts of dispute or the danger of such occurrence" *(Art. 6, Labor Relations Adjustment Law).*

Further, also excluded from this study is the individual complaint by a union member to which Prof. Tadashi Hanami has defined as "a one-person strike," also known as "nominated" strike, primarily intended to disturb work on a large scale at little cost to the union *(Hanami 165:1979).* On the other hand, "industrial conflicts" refer to "group conflicts" as defined under Article 6 of the Labour Relations Adjustment Law *(Shirai 103:2000).*

Also, one important dimension in studying a labor dispute settlement in any context is by means of making a clear distinction between the "disputes of right" and "disputes of interest." Under the Western European practice of industrial relations, industrial conflicts are divided into two types: the dispute of right (Rechtstreit) and the dispute of interest (Interessentreit), with methods for

handling these different kinds of dispute. *(Shirai 106:2000).* Fortunately or unfortunately, "disputes of right and disputes of interest are not perceived as distinctly different" in Japan. This is primarily because industrial relations in Japan are different from contractual relationships in the Western European nations; they are not based on clear relationships of rights and responsibilities *Shirai 107:2000).*

Environmental and Historical Context

With more non-regular workers in the workforce, wider adoption of individualized and merit-based performance appraisal system, and less union organizing, collective labor disputes have declined proportionately, but individual labor disputes have become indisputably on the rise.

In 1994, the courts received almost 3,400 civil labor cases, more than twice the figure for 1990. Although the figure rose as well in the economically troubled 1970s and 1980s, the current situation is remarkable insofar as surge of "regular procedure cases" are concerned. Traditionally, labor litigation centered on the preliminary injunction procedure, where the court renders a provisional decision in an expedited manner. In reality such a decision often determines the final outcome of the dispute because the losing party must necessarily comply with it. Today, however, parties are more inclined to push their case fully and squarely through the regular procedure, resulting to the increase in the number of cases to intensify the number of pending cases for litigation. *(Nakakubo 5:1996).*

Largely due to the prolonged economic recession and subsequent wave of "risutora" (corporate restructuring), the number of individual disputes against dismissal, forced retirement, reduced employee pay and benefit package, and so on has been increasing *(Japan Labor Bulletin, October 2000).* On the other hand, and over the same period of time, the number of collective disputes has been declining. This is because of a shift to personnel administration on an individual worker basis and changing employment patterns, resulting in more individual workers bringing suit directly without going through a labor union *(Japan Business Federation, 2003).*

In year 2000, the number of civil suits involving labor relations brought to district courts across Japan exceeded 2,000 for the first time, with 2,063 such disputes being recorded in preliminary statistics. This figure has increased by more than three times over the past ten years *(JIL Public Policy, 06-01-2001).*

While there has been an increased number of employees' suing their employers, such approach is obviously not the ideal means to obtain justice. It is not easy for the employees and the companies because judicial procedures are painfully slow *(Nakakubo 6:1996).* Hearings are held in a sporadic manner, as infrequently as less than once a month in each case. In 1994, it took an average of 15 months for a district court to dispose of a regular case, including withdrawals and settlements, and cases pending at the end of the year were 18.5 months old. The situation has improved considerably since 1990, when the figures were 25.2 months and 26.9 months respectively. Nevertheless, simple cases aside, two years before a district court is hardly surprising. If an appeal is taken eventually to the Supreme Court, the litigation time would amount to five to ten years. Petitions for preliminary injunction are processed quickly than other cases, but there is a need to for more than one year settle complicated cases.

There are other factors why the regular courts are not attractive to the eyes of individual employees. Japanese cultural norms do not encourage people in general to bring a legal action in order to resolve a dispute, much less against

their employer. Further, lawyers are scarce and hard to find. The approximate number of practicing lawyers is only around 15,000 and they are prohibited from advertising their services. There is neither a specialized labor court nor any special procedure for labor-related cases. Professional judges of the ordinary court decide a labor case the same way as in any other civil case. *(Nakakubo 6:1996).*

Since the enforcement of Law No.112 in late 2001, some 300 Comprehensive Labour-related Counseling Desks were set up across the country. At the same time, two systems were established: a system of advice and guidance by the directors of Prefectural Labour Bureaus, and a system whereby a Dispute Adjustment Committee of scholars and experts provide aid to resolve the disputes.

In fiscal year 2002, directors of Prefectural Labour Bureaus received 2,332 applications for advice and guidance (an increase of 63 percent over fiscal year 2001). The requests for conciliation by Dispute Adjustment Committees numbered 3,036 (or an increase of 98 percent). The substantial increase in the numbers reflects the current economic stagnation and company measures aimed at reducing the number of corporate workforce.

Workers accounted for the vast majority, 97.9 percent, of applicants calling for conciliation; of these, part-time, *arubaito* (temporary work), dispatched, fixed-term contract, and other non-regular workers accounted for more than 22 percent. At the same time, 55.7 percent of these applicants were not unionized.

After one year from the passage of the October 2001 law, the MHLW announced that it "has been launched successfully" resulting to about 90,000 consultations on individual labor disputes throughout Japan during the same period. In addition, there were about 4,000 cases that resulted with the Ministry giving advice, guidance, and mediation services to both the Japanese labor and management, "showing that the system is being used as actively as the courts" *(JIL website, Status of the Law for Promoting the Resolution of Individual Labor Disputes).*

As for the time required for conciliation, 96.5 percent of the cases were settled within three months, and 61 percent within one month, indicating that most labor disputes were handled promptly and in accordance with the law. To strengthen its ability to resolve the increasing number of individual labor disputes, the MHLW gave extra allocations in April 2003 to increase the number of Dispute Adjustment Committee members from 174 to 300 *(Japan Labour Bulletin 07-01-2003).*

Moreover, as union density declines and the number of workers employed through individual labor contract increases, there has become an urgent need for establishing mechanisms to resolve individual labor disputes *(Koshiro 200:2000).*

Truly, the spotlight in Japan's labor relations system will focus on problems concerning the treatment of individual employees, rather than on collective labor relations problems involving corporations and labor unions. For the very reason that employees are more interested in apportioning personnel costs to correspond with performance than they are in acquiring better working conditions, we will need to establish appropriate corporate mechanisms to settle individual disputes *(Fukuoka 2004).*

The need to establish a new dispute mechanism that is more efficient than the existing set-up was generally recognized by the tripartite sectors. Since the late 1990s, various reform plans have been proposed. The Japanese Trade Union Confederation (Rengo) for one, in its 1998 position paper entitled *Atarashii Roshi Funso Kaiketsu Shisuutemu no Kenkyu* (Study on the New System for Labor Dispute Resolution) advocated the reorganization and strengthening of the

Labor Relations Commission giving it the full authority to deal with individual labor disputes.

On the other hand, the then Nikkeiren, in the same year (1998) proposed in its white paper called *Rodo Iinkai Seido no Arikata ni Tsuite* (On the System of the Labor Relations Commission) the utilization of civil mediation procedures at ordinary courts rather than through the Labor Relations Commissions *(see note below.*)

After consulting Rengo and Nikkeiren, the then Ministry of Labor chose to expand the function of the Prefectural Labor Bureaus to include labor dispute resolution. Consequently, Law No.112 was enacted in July 2001 and put into effect on October 1, 2001 *(Arai 14:2002).* This offers four separate solutions for handling disputes. It allows the Prefectural Labour Bureaus to offer "assistance," "guidance," or an "opportunity to set up a dispute conciliation committee." In a last minute amendment by both the government and the opposition, the law allowed the Prefectural Labor Relations Commission whenever authorized by the Prefectural Governor to help conciliate disputes. This last solution which is a concession to Rengo is considered a big step forward because it allows labor representatives in addition to Prefectural Labor Bureaus a chance to mediate disputes *(JIL website, Individual Labor Dispute Law Passed).*

The promulgation of Law No.112 in October 2001 and the birth of Labor Tribunal System in May 2004 come at the right time when the "individualistic value system" of Japanese young generation has become apparent, particularly these days when "freeters," become the new working class of Japan" *(Danke 6:2003).* This has become true as younger generation tends to prefer "equitable differentiation" of remuneration by performance rather than "solidarity-prone" non-discriminatory pay systems *(Koshiro 199:2000).*

The Anatomy of LTS

The central questions remain the same. How do we distinguish LTS from Law No.112? What makes LTS appear to be popular than Law No.112? Or is it? Further, it is also necessary to have a clear answer to the even more difficult question of what basic advantages that LTS can offer which are not found in Law No.112?

The LTS and Law No.112 complement each other and there is no question about the popularity of one over the other. "Both laws have built their relative strength from judicial and administrative mechanisms provided by the Supreme

*****JIL's interpretation of Nikkeiren position refers to "priority should be for the disputes to be settled within the company concerned, and that only a case which fails to be settled within the firm should be submitted to court. See also Japan Labor Bulletin, October 2000.***

Supreme Court and MLHW, respectively" *(Takamura and Yamakawa).*

In the first place, both laws have the same objectives: to find a prompt, proper and effective solution for individual labor dispute settlement. This is in answer to the prevailing "painfully slow" justice system before the LTS law was enacted when even ordinary cases dragged on for "13 months" *(Hasegawa)* and in some cases, an average of 15 months for the year 1994 alone with cases pending at the end of the year were 18.5 months old" *(Nakakubo 6:1996).*

Under the LTS, a panel of arbiters composed of one professional judge, one trade union representative, and one employer representative who have expert knowledge of, and experience in, handling labor-management problems must conduct a maximum of three sessions of hearings into a labor dispute and attempt

to mediate when there is a prospect for settling such dispute. In each case, the panel proposes a means of settling the dispute through consultations (labor dispute arbitration), link the proceedings to litigation, and attempt to find a solution that suits the substance based on the litigation, and attempt to find a solution that suits its substance based on the majority decision of the panelists. *(Labor Dispute Arbitration System in Outline Form and Yamakawa).*

One important feature of the LTS is the combination of mediation, conciliation and adjudication in the process of settling the individual labor dispute on hand *(Yamakawa).* Regardless of the objection of one party to mediation, the proceedings will proceed. In case when mediation fails to settle the dispute, then the panel may proceed to decide the case based on the merits of the case *(Labor Dispute Arbitration System in Outline Form).*

Another remarkable feature of the LTS which cannot be found under Law No.112 is the application of the Principle of Three Sessions. All in all, the proceedings should be completed by holding not more than three sessions of hearings, to include the clarification and definition of issues, cross-examination of the parties, and the recommendation of the panel which contain the solution for acceptance by the parties *(Yamakawa).* The judgment will be arrived at "on the basis of a majority decision of the aforementioned three arbiters," only after conducting three sessions with the parties *(Labor Dispute Arbitration System in Outline Form).* While this appears to be difficult at first glance, it is a must that the concerned court officials endeavor to "have a different mindset" in order to make the LTS successful *(Yamakawa 05-18-2004).*

"Any party to a labor dispute may ask a district court to start proceedings for arbitration of a labor dispute by submitting an application that mentions the purpose of and reasons for the application. The application form shall permit a simple, clear presentation" *(Labor Dispute Arbitration System in Outline Form).* .

The Stakeholders

No doubt about it. The tripartite sectors, or rather the stakeholders have all agreed that there is really an urgent need to establish a permanent solution to the increasing number of individual labor disputes. On the side of the then Japan Federation of Employers' Associations (Nikkeiren), now known as Japan Business Federation (Nippon Keidanren) after its May 2002 merger with Japan Federation of Economic Organizations (Keidanren), proposed that in solving the increasing number of individual labor disputes, "priority should be for the dispute to be settled within the company concerned, and that only a case which fails to be settled within the firm should be submitted to court (for civil mediation, in particular)" *(Japan Labor Bulletin, October 2000).*

Nippon Keidanren supports the LTS in a way as it believes that it is a cost-effective method of settling individual disputes, "particularly among the smaller companies that cannot afford a costly and time-consuming legal battle" *(Watanabe and Takamura).* The MHLW accepts this position when it said that the "tendency of seeking outside mediation is particularly strong among small-and-medium-size companies" *(Japan Times, 11-30-2000).*

On the other hand, Japan's largest labor federation, the 7.44 million-strong Japanese Trade Union Confederation, popularly known as Rengo (Japan Times, 04-30-2004) also known as the major national center of labor "argued that the Labor Relations Commissions should be reorganized so that they can deal with individual labor disputes" *(Japan Labor Bulletin, October 2000).* Rengo felt at the time that a "European model" should be implemented to settle it

once and for all *(Hasegawa).*

The positions of Nikkeiren and Rengo "seem to be directly opposed" but that did not stand much in the way when in April 2000, the then Ministry of Labor set up the prefectural labor bureaus across the country with the intention of having htem handle individual labor disputes "*(Japan Labor Bulletin, October 2000).*

The disagreement of Nippon Keidanren and Rengo on the issue became moot and academic when the Diet passed the LTS as a concession to both as they all agree that "it will help a lot of workers, as it is made to protect the rights of the workers" *(Hasegawa 05-12-2004).*

The Obsolescence of Grievance System?

The labor contract governs the day-to-day employment relationships. It is a living document for both labor and management. In case of any differences in the interpretation of such employment contract, then the best option is to resolve the same through the Grievance Machinery System (GMS). It is a mechanism for employees to voice their disagreement with the way the contract is administered. Hence it must be a key part of the employment contract *(Milkovich 669:1988).*

Most enterprise unions have set up grievance procedures under collective bargaining agreements. Unfortunately, these procedures have remained largely ineffective because the sense of individual rights is still weak in Japan. Only a small number of dis-satisfied workers have dared to appeal through these procedures because the complainants are normally treated as trouble makers not only by management, but also by their fellow workers *(Koshiro 200:2000).*

That explains the reluctance of individual employees to use the GMS to air their complaints against management. This view is supported by the 1999 Survey on Labor-Management Communication which was released by the then Ministry of Labour in June 2000. It was discovered that 25.2 percent of the 4,000 establishments with 30 or more regular employees who responded (70.9 percent response rate) showed that they had an "internal grievance system involving representatives of labor and management" dealing with complaints from individual employees on the issues of labor conditions and other related concerns.

The remaining 74.7 percent did not have any GMS at all. The smaller establishment, the less likely it was to have such a system in place. And the fact remains that more than 80 percent of the firms with less than 300 employees (and some 88% of firms with less than 50 employees) did not have such a system.

Among those firms with a GMS in place, 65.3 percent answered that employees often withdrew their complaints when they were given an explanation; another 20.3 percent replied that workers had been helped by the system with some kind of settlement. This suggests that such systems like the grievance machinery can play a certain role in the settlement of complaints *(Japan Labor Bulletin, October 1, 2000).*

The under-utilization of the GMS is proven in yet another survey conducted by the then Ministry of Labor in 2000. Its findings show that most "Japanese firms lack formal channels to handle employee complaints" *(Japan Times, 11-30-2000).*

While a GMS proves to be helpful in resolving employee complaints, it is puzzling to note that the Japanese labor and management are disregarding, if not under-utilizing it in favor of external interventions like arbitration, conciliation,

mediation and litigation services provided by government agencies *(Elbo).*

While it may be true that the GMS may not be functioning well, we must also consider the fact that "it all depends on the nature of the complaint, particularly when an employee finds it futile to use it, then they go out of the organization to seek help from MHLW or other government agencies. Rengo even provides counseling and giving of labor advice even to non-members" *(Hasegawa 05-12-2004).*

Outlook

At the end of World War II and throughout the 1960s, Japan experienced turbulent labor-management relations. There were many labor confrontations at the time. In contrast, industrial relations have been very stable in years after that, with only few labor disputes. One of the reasons for this trend is the spread of the joint Labor-Management Consultation (LMC) as a complimentary tool for collective bargaining. That is, most issues are settled during the LMC process before the parties enter into the collective bargaining stage *(Araki 182:2002).*

In a government survey done in 1997, the following reasons were cited why the labor and management stakeholders have resorted to LMC: First is the prospects for a settlement by mutual negotiation (61.1%); Second is mutual obligations or expectations to strive for peaceful settlement (53.1%); Third, consideration of the social effects and criticism for engaging in disputable acts (23.2%); Fourth, the awareness that disputable acts would not help achieve the expected results (20.4%); and Fifth, the possibility of the company's decrease in profits (14.5%) *(Ministry of Labor, 1997).*

Clearly, the LMC is useful in promoting discussions between labor and management, regardless of whether the enterprise in question has a labor union or not. This system enables the two sides to share awareness of management issues and reach a consensus concerning quick reforms. Companies without labor unions should build channels for joint consultation together with workers in order to smooth the way for face to face talks. Showing a willingness to hold talks on an ongoing basis can avoid sparking individual labor disputes *(Japan Business Federation 38:2004).*

The employer-employee relationship is, in any language, whether Asian or Western is the one of domination and subordination. Japan is not an exception. The employer commands and the employee is expected to obey. A willful refusal to accommodate the employer's wishes is insubordination. Against this backdrop, the employee who manifests dissatisfaction with the employer's proffered employment terms and conditions will necessarily court the employer's displeasure. In this context, not every Japanese employer will understand or appreciate every issue that would be raised by an employee.

The threshold question is whether there is any justification at all or common sense for both Japanese labor and management to wash their "dirty linen" in public and seek external interventions through arbitration, mediation, conciliation, or if not, go into full court litigation? This comes to mind when we talk about sensitive issues like *sekuhara* (sexual harassment), *rosai* (power harassment), and even *karoshi* (death by overwork).

Typically, when parties are faced in a deadlock, then they are free to seek outside help in the spirit of *arasoi o azukeru.* This has become apparent, not only with government agencies using the mantle of LTS and Law No. 112, but also with the emergence of private consulting firms and the creation of new form of trade unions. Of late, there is already at least one private consulting firm that is

cashing in on this increasing problem by both labor and management. For one, a certain Yasuko Okada has become a popular hit among victims of abusive bosses or power harassers who secure her counseling service, among other things *(Schaeffer, 01-03-2003).* Aside from this comes a cyberspace labor union that caters to settling labor disputes via the internet, even without the benefit of a face-to-face negotiation which is "expected to play a major role in the future as working conditions continue to diversify" *(Japan Times, 04-11-2001).*

"In order to win the survival race in the global competition while renovating its own operation, it is indispensable for business firms to maintain their good labor-management relations and further develop it based on the in-house labor-management relations. It is important that the labor union and management closely consult with each other to respond to the ever-changing business environment without delay.

Such labor-management relations will be required that both parties mutually discuss or consult on a daily basis the changes in business environment and the management issues such as wage, working hour, employment problems, diversified working methods, development of the career of each employee, development of employee's ability and skills, mental health care and corporate ethics" *(Miyahara 2004).*

The discussion must not be limited to the LMC and the GMS. There are other related composite communication forms such as workplace meetings, small group activities, and employee suggestion systems that could well provide many options for the employees aside from labor unions, so that they too can voice their opinion *(JIL 46:2002).*

To my mind, the resolution of individual labor disputes must necessarily be done at the organizational level rather than outside of it. The then Nikkeiren supports this view as it gives "first priority" to it *(Japan Labor Bulletin October 2000).*

There are several approaches that could be maximized within the organization. Labor and management must either choose between the LMC and the GMS or any other way as long as it will help exhaust all remedies to achieve its benefits and enjoy its full potential *(Takamura, Yamakawa, and Hasegawa).* If there are problems, adjustments must be done by both parties to make it work and adjust to their ways. If this cannot be done by labor and management within the four walls of its organization, and both parties are satisfied that they have done everything within their prerogative, then may be that could only pave the way for the application of LTS and Law No.112.

In a nutshell, I believe that labor and management cannot simply look "outside of the window" and be trigger-happy to seek external or third party interventions at the first sign of trouble. The LTS and other pertinent laws are established as the next step prior to the last resort of actual court litigation. The labor and management stakeholders cannot be lulled into submission that the LTS is the ultimate solution, when it is not.

Employers and its management may well to do what is necessary – by answering the question: What is it, then, that is deterring Japanese labor and management from exhausting all efforts under the LMC and GMS? The answer could be found in two basic norms that can be found inside the organization. The first norm concerns the form, i.e., an internal, amicable settlement that must be secured at the beginning of a dispute. The second norm concerns the nature, i.e., a settlement is made with a long-term perspective. Since both parties directly involved have to work together in the same workplace, a settlement should never be short-sighted. The long-term motivational and economic implications have to

be taken into account *(Inohara 138:1990).*

Besides, the implementation of LTS is not necessarily easy….(expound)

This will surely hit the point. Does a third-party arbiter, mediator, or conciliator must necessarily come from outside the organization? Obviously, the answer is in the negative. Inside many organizations, there is usually a sort of go-between on each side of the labor and management fence. They are absolutely needed to maintain the expectedly long-lasting labor relations in the company. When negotiations reach a deadlock in the formal phase, these go-betweens (like the personnel manager or a union steward) can play the role of internal interveners who must take charge so that a settlement would be reached *(Inohara 139:1990).*

The possibility is endless. If one charts the labor-management relationship where it is successful, more often than not, it is characterized by one common ingredient: objective, sincere, and honest two-way communication. With the experience of Japan in industrial relations, this is not difficult to accomplish.

Reference Materials and Personal Interviews Cited

Araki, Takashi, "Labor and Employment Law in Japan," The Japan Institute of Labor, Tokyo, Japan, 2002.

Danke, Shun, "Freeters: Japan's New Working Class," Japan Close-Up, Tokyo, Japan, December 2003.

Elbo, Reylito A.H., "Grievance as a Manager's Necessary Evil," Labor-Management, Business World Publishing Inc., Manila, May 21, 2004.

Hanami, Tadashi, "Labor Relations in Japan Today," Kodansha Intl., Ltd., Tokyo, Japan, 1979.

Fukuoka, Michio, "The Current State of Labor Relations and Employment Practices in Japan, and Future Problems," JIL website, downloaded on April 26, 2004 from http://www.jil.go.jp/english/laborinfo/library/2_02.htm

Hasegawa, Yuko, Rengo's Director for Employment and Labor Legislation, personal interview conducted on May 12, 2004 at her office.

Japan Business Federation, "The Current Labor Economy in Japan," International Labour Policy Bureau, Tokyo, Japan, 2003.

Japan Business Federation, "Creating Higher Added Value, Utilizing Diverse Human Resources," Position Paper 2004, Tokyo, Japan, 2004.

Japan Institute of Labour, JIL Home, "Individual Labor Dispute Law Passed," downloaded from http://www.jil.go.jp/emm/vol.1/disputelaw.htm on May 5, 2004.

Japan Institute of Labour, Japan Labor Bulletin, Vol. 39, No.10, October 2000, Tokyo, Japan, 2000.

Japan Institute of Labour, Japan Labor Bulletin, July 1, 2003 Tokyo, Japan, 2003.

Japan Institute of Labour, Public Policy, Vol.40, No.6, June 1, 2001, downloaded on May 7, 2004 from http://www.jil.go.jp/bulletin/year/2001/vol40-06/03.htm

Japan Institute of Labour, "Status of the Law for Promoting the Resolution of Individual Labor Disputes, one year after its enactment," downloaded on May 5, 2004 from http://www.jil.go.jp/emm/vol.31/law/htm

Japan Institute of Labour, “The Labor Situation in Japan 2002/2003,” Tokyo, Japan, 2002.
Japan Times, “Nine Out of 10 Employees Have Grievances: Government Survey,” November 30, 2000, downloaded on April 30, 2004 from http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20001130b1.htm
Japan Times, “Settling Labor Disputes Efficiently,” Editorial, January 9, 2004, downloaded on April 30, 2004 from http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?ed20040109a1.htm
Japan Times, “Net-based Labor Union Resolves Disputes Online,” downloaded from http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20010411b8.htm on April 30, 2004.
Koshiro, Kazutoshi, “A Fifty Year History of Industry and Labor in Postwar Japan,” Japanese Economy and Labor Series No.6, Japan Institute of Labour, Tokyo, Japan, 2000.
Labor Dispute Arbitration System in Outline (Draft), Material 213, original materials is in Japanese, distributed at the 31st Meeting of the Consultation Group on Labor, Office for Promotion of Justice System Reform, provisional translation by JILPT.
Labour Relations Adjustment Law, No.25, September 27, 1946, tentative translation by s specialist from JIL.
Law on Promoting the Resolution of Individual Labor Disputes, Law No.112 of July 11, 2001, provisional translation by The Japan Institute of Labour, Tokyo, Japan.
Inohara, Hideo, “Human Resource Development in Japanese Companies,” Asian Productivity Organization, Tokyo, Japan, 1990.
Milkovich, George T. and John Boudreau, “Personnel/Human Resource Management: A Diagnostic Approach,” Business Publications Inc., Plano, Texas, 1988.
Miyahara, Masao, “In-House Labor-Management Relations in a Globalized Economy,” paper presented in a symposium on “Industrial Relations in Enterprises in the Age of the Globalization of Economy,” Manila, The ILO Association of Japan, March 1, 2004.
Nakakubo, Hiroya, “Procedures for Resolving Individual Employment Disputes,” Japan Labor Bulletin, June 1, 1996, JIL, Tokyo, Japan.
Schaeffer, Gary, “Japanese Workers Fear Job Bullies,” The Detroit News, downloaded on May 4, 2004 from the website http://www.detnews.com/2003/business/0307/04c03-208906.htm
Shirai, Taishiro, Japanese Industrial Relations, Japanese Economy and Labor Series, No.5, Japan Institute of Labor, Tokyo, Japan, 2000.
Takamura, Hitoshi, Assistant Director, Labor Dispute Settlement Office, Regional Division, Ministry Secretariat, MHLW, personal interview conducted at his office on May 11, 2004.
Watanabe, Yoshihiro, JBF’s Manager for Labor Legislation Group, personal interview conducted on May 10, 2004 at his office.
Yamakawa, Ryuichi, Law Professor and LTS Expert on who helped draft the bill, personal interview conducted on May 18, 2004 at Keio University Law School, Tokyo, Japan.

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