JAPAN'S LABOUR RELATIONS COMMISSION SYSTEM

Part 3. Japan's Labour Relations Commission System

I Roles of Labour Relations Commissions

1. Outline of labour relations commissions

The Constitution of Japan guarantees workers the right to organize, to bargain collectively, and to act collectively. To protect these rights and properly adjust labour-management relations, Japan has Trade Union Law and Labour Relations Adjustment Law. Based on these statutes, Labour Relations Commissions (LRCs) were established in order to resolve labour-management collective disputes in a simple, swift and correct manner. As organs in charge of general workers, Japan has two types of LRCs as follows:

i) Central Labour Relations Commission (CLRC) (national government's organ; in Tokyo); and

ii) Prefectural labour relations commissions (prefectural-level organs; total 47 commissions).

Prefectural LRCs handle labour disputes at their responsible prefectural levels, while the CLRC handles nationwide or important disputes, and reviews the decisions of prefectural LRCs. Both types of LRCs are independent administrative agencies, free from the control of the prefectural governor or the Minister of Health, Labour and Welfare.

Each LRC distributes an equal number of its seats to members representing employers, workers and public interests. CLRC members are appointed by the Prime Minister, while prefectural LCR members are appointed by the prefectural governor.

The General Assembly of the Central Labour Relations Commission

2. Functions of LRCs

Roughly speaking, LRCs have the following two major functions:

i) Taking administrative actions, such as deciding unfair labour practices in accordance with Trade Union Law or other legislations; and

ii) Adjusting labour relations for the purpose of the Labour Relations Adjustment Law or some other legislation.

When LRCs take administrative actions, such as issuing an order regarding unfair labour practices against workers or trade unions, only LRC members who are neutral and represent public interests may participate in deciding and issuing an order, in almost the same manner as judicial procedures. However, LRC members representing employers or employees also strive to settle the cases in a proper manner by expressing their opinions as labour affairs experts, persuading contesting parties, or delivering their remarks before a group deliberation meeting (i.e. a meeting held before public interests members to determine facts and law). In fact, contesting parties arrive at settlements in more than 70% of cases.

When adjusting labour disputes, LRCs may settle the case flexibly by taking the following actions: Conciliation, which encourages spontaneous settlement as much as possible in a swift and simple manner; mediation, in which LRC members representing public interests, employers and employees makes mediation proposals and recommend parties to accept them; and arbitration, which allows only public interests members to examine the case and deliver legally binding rulings.

II Administrative Procedures in Unfair Labour Practice (ULP) Cases

1. Unfair labour practice system

The Trade Union Law stipulates administrative remedies for unfair labour practices in order to maintain the effectiveness of the right to organize, as set forth in the constitution. Article 7 of the Trade Union Law specifies "unfair labour practices" and prohibits employers from subjecting trade unions or employees to any of the following types of conduct:

[Conduct prohibited as "unfair labour practices"]

(1) Discharging or otherwise treating a worker in a disadvantageous manner due to his/her trade union membership (Item 1)

1) Discharging or otherwise treating a worker in a disadvantageous manner because such worker:

- is a member of a trade union;
- has tried to join a trade union;
- has tried to organize a trade union: or
- has performed proper acts of a trade union.

2) Making it a condition of employment that the worker must not join or must withdraw from a trade union (so-called "yellow-dog contract").

(2) Refusing to bargain collectively with the worker's representative without proper reasons (Item 2)

Employer's refusal to bargain collectively with the representative of the workers employed by the employer without proper reasons

* This also includes employer's unfaithful negotiation behavior, even if the employer nominally accepts collective bargaining. (Such employer's behavior is called "unfaithful collective bargaining.")

(3) Controlling or interfering with the formation or management of a trade union, or giving financial support for the trade union's operational expenditures (Item 3)

1) Controlling or interfering with the formation or management of a trade union; or

2) Giving financial support in defraying the trade union's operational expenditures

(4) Treating a worker in a disadvantageous manner because the worker has filed a complaint with the Labour Relations Commission (Item 4)

Discharging or otherwise treating a worker in a disadvantageous manner because such worker has filed a complaint with the Labour Relations Commission regarding unfair labour practices, because such worker has requested CLRC to review the case, or because such worker has presented evidence or spoken at an investigation (pre-hearing session) or hearing conducted by the LRC.

● Remedies on unfair labour practices

If aggrieved by any unfair labour practice imposed by an employer, a trade union or employee may file a complaint with LRC to seek remedies. If LRC finds the unfair labour practice at issue, LRC will protect the trade union or worker by ordering the employer to reinstate the employee to his/her original position, to pay the difference from the original wage (including backpay), to accept collective bargaining, or to stop intervening in the operation of the trade union etc.

A hearing session in the Central Labour Relations Commission

2. Outline of the ULP procedure

Trade Union Law outlines the administrative procedures on unfair labour practices, but CLRC's "Labour Relations Commission Regulations" stipulates the process in detail. (See "3. Flow of the ULP procedure" below.)

3. Flow of the ULP procedure

(1) Procedures at prefectural LRC

1) Filing an application for remedies

If an employer commits an unfair labour practice, a trade union or employee may file a complaint for remedies.

The applicant must file the complaint within one year of (the employer engaging in) such unfair labour practice.

↓

2) Investigation LRC listens to the arguments of the contesting parties and sorts out the issues as well as the evidence necessary for hearing sessions.

↓

3) Hearings

The hearing sessions must be open to the public and examine witnesses.

↓

4) Group deliberation meeting (public interests member meeting)

LRC members representing public interests assemble to find the facts concerned, then determine whether unfair labour practices have been committed, and issue orders to contesting parties.

○ Relief order: An order that provides full or partial relief, based on the complaint

○ Rejection order: An order that rejects the applicant's complaint

* If an applicant disagrees with an order issued by a prefectural LRC, the applicant may file an application for appeal with the CLRC to review such order, or may file a suit for judicial review with a district court to seek revocation of such order.

(2) Procedures at CLRC

1) Filing an application for administrative appeal

Either the employer or employee may file an application for administrative appeal within 15 days of the prefectural LRC issuing its order.

↓

2) Investigation (pre-hearing session)

↓

3) Hearings

↓

4) Group deliberation meeting (Panel or public interests member meeting will take the following actions):

○ Rejecting the application for administrative appeal: If the application for

administrative appeal has no justifiable merit

○ Modifying the order in the first instance: If the application for administrative appeal is fully or partially warranted

* CLRC has 15 members representing public interests, divided into three panels. Each panel consists of 5 public interest members. It is these panels that usually examine the application for administrative appeal.

** If either of the contesting parties disagrees with CLRC's order, such disagreeing party may file a suit for judicial review with the Tokyo District Court to seek revocation of such order.

(3) Judicial Review

The employer and employee may file a suit for judicial review within 30 days and 6 months, respectively, after the order in question is issued.

* Settlement

The ULP procedure progresses as mentioned above. However, if the employer and employee feel inclined to settle the dispute during the investigation or hearing phase, LRCs recommend settlement. With the cooperation of participant members representing the employers or employees, LRCs adjust the arguments of the contesting parties or encourages their negotiations. If the contesting parties reach a consensus, they enter into a settlement agreement, whereupon the dispute is resolved.

III Adjusting Labour Disputes between Labour Unions and Employers

1. Labour disputes adjustment program

This program is intended for LRCs to encourage the voluntary resolution of labour disputes between parties in collective labour relations, aiming at avoiding or terminating labour dispute actions (*). In this context, "parties in collective labour relations" shall mean a trade union or workers' group (e.g. strikers) on the side of employees, while it also refers to employers or their groups on the management side.

* "labour dispute action" means strike, sabotage, lockout, or any other actions or related countermeasures that contesting parties have taken in order to gain their point by inhibiting normal business operations.

2. Measures for adjusting labour disputes

In principle, labour disputes should be spontaneously settled between contesting parties, but LRCs may adjust such labour disputes by taking the following actions: "conciliation," "mediation" and "arbitration."

(1) Conciliation

1) Contents

The LRC chairman appoints conciliators who serve as intermediaries and identify the points argued by employee or employers, in order to encourage their

spontaneous negotiation and settlement of labour disputes or conflicts. This is a simple and frequently used approach.

In principle, conciliation efforts will start when the LRC receives a request from an employer or union. However, the LRC chairman may start the process ex officio ("Ex officio conciliation").

2) Appointing conciliators

The LRC chairman appoints conciliators from the "conciliator candidate list," which is prepared beforehand. The list includes LRC members as well as former LRC members, secretariat staff and academic experts on labour-management relations.

(2) Mediation

1) Contents

The LRC chairman appoints a tripartite mediation committee consisting of LRC members representing public interests, employees and employers. The mediation committee members listen to the arguments of the contesting parties, and offer them a fair and appropriate "mediation proposal," to recommend these parties to accept it and settle labour disputes or conflicts.

Mediation is a more active approach than conciliation because it offers a "mediation proposal." On the other hand, mediation is less active than "arbitration" because a mediation plan does not legally bind the two parties unlike "arbitration."

2) Starting mediation

The mediation process will start when LRC receives a request from both the employer and union, or from either of them in accordance with their collective labour agreement. However, the following exceptions will be applicable in the case of public utilities (*):

a. If LRC receives a request from employer or employees; or

b. If LRC finds it necessary to start the mediation process ex officio.

* "Public utilities" mean the following services that are "essential for the daily lives of the general public."

1) Transport;

2) Postal or communications services;

3) Water supply, electricity or gas supply services; or

4) Medical or public health services.

(3) Arbitration

1) Contents

The LRC chairman appoints an arbitration committee consisting of LRC members representing public interests. The arbitration committee listens to the arguments of the contesting parties, and renders an "arbitration award," intending to resolve labour disputes or conflicts. The arbitration award has the same effect as the collective labour agreement, and legally binds the contesting parties.

In this process, the contesting parties may appoint LRC members who represent employers and employees. These LRC members may express their opinions with the approval of the arbitration committee.

2) Starting arbitration

The arbitration process will start only if LRC receives a request from both employers and employees, or from either of them in accordance with their collective labour agreement.

(4) Emergency adjustment

If the government recognizes that the case is related to any public utility, is large in scale, or involves a labour dispute action that (is likely to) hinder the Japanese economy or endanger the daily life of Japanese citizens, the government may instruct CLRC to start an emergency adjustment process.

This process involves the following steps:

1) The Prime Minister shall hear the opinions of CLRC before making his decision on the emergency adjustment;
2) The Prime Minister shall, after making a decision on emergency adjustment, publicly announce the decision and its reasons;
3) The Prime Minister shall give notice to CLRC and other stakeholders in the same manner as stated in 2) above; and
4) CLRC shall strive to settle the case by conducting a fact-finding survey, conciliation, mediation or arbitration process, or by offering a recommendation to the contesting parties.

The contesting parties may not engage in any labour dispute action for 50 days after the emergency adjustment is publicly announced.

3. Adjusting labour disputes on specified independent administrative institutions

If workers serve for specified independent administrative institutions (such as national hospitals, national forest services or Japan Post), these workers have the right to organize, the right to enter into a collective labour agreement, and the right to bargain collectively. However, since they have status as civil servants, they may not commit to labour dispute actions, such as strikes.

Like private corporations as stated above, LRCs may, in principle, take actions such as the conciliation, mediation or arbitration process on request from the contesting parties if a labour conflict occurs for specified independent administrative institutions. However, they are prohibited from committing to labour dispute actions, CLRC treats these workers in a different manner in some aspects. It should be noted that CLRC, rather than the prefectural LRCs, is exclusively in charge of handling these labour disputes.

IV Adjusting Individual Labour Disputes

If individual employees have a dispute with their employers over working conditions or any other labour relation, 44 prefectural LRCs currently provide conciliation or some other types of services in accordance with the "Law on Encouraging Resolution of Individual Labour Disputes" enacted in 2001. CLRC does not have jurisdiction over these individual labour disputes, but it provides support to prefectural LRCs in a similar manner to adjusting collective labour disputes.

The said legislation also stipulates conciliation and some other services provided by prefectural labour bureaus (regional chapters of the Ministry of Health, Labour and Welfare).

- Scope of applicable conflicts:
  1) Disputes on working conditions, including dismissal, refusal to renew short-term employment contract, personnel relocation, secondment, promotion, discriminative treatment on working conditions, and modification of working conditions in a disadvantageous manner;
  2) Disputes on employment environments, such as sexual harassment and bullying; and
  3) Conflicts on employment contract, such as renewal of employment contract or non-competition agreement.

Photograph:Labour Relations Commission Hall(Minato-ku,Tokyo)