Part 2. Outline of Discussions at the General Assembly of National Labour Relations Commissions Liaison Council to Commemorate the 60th Anniversary of Establishing the Labour Relations Commission System

The Labour Relations Commission System started operations in March 1946, with the Central Labour Relations Commission (CLRC) set up at central government level, and local labour relations commissions (currently, prefectural labour relations commissions) established at prefectural level. The CLRC and prefectural LRCs set up the National Labour Relations Commissions Liaison Council (NLRCLC) to maintain routine links among LRCs and coordinate their tasks as necessary. NLRCLC holds its general assembly in November every year. As the LRC scheme celebrated its 60th anniversary in March 2006, NLRCLC held the general assembly last November as the "60th Anniversary Memorial Event of the Labour Relations Commission System." Part 2 describes its schedule and outlines the discussions at the general assembly.

I Program of the 60th NLRCLC General Assembly to Commemorate the 60th Anniversary of the Labour Relations Commission System

[November 10 (Thursday) and 11 (Friday), 2005 at Nakano Sun Plaza]

Thursday, November 10, 2005

1. Opening
2. Chairman's speech
3. Speech of the Honorable Kiyoshi Nakano, Senior Vice Minister of Health, Labour and Welfare
4. Reports from the Chairman of the Steering Committee
5. Commemorative Speech by Dr. Tadashi Hanami, former chairman of the CLRC, and Professor Emeritus of Sophia University
6. Discussion
   1) Panel discussion: "Future Outlook of Labour Relations Commissions"

Friday, November 11, 2005

7. Discussion
   2) Issues in Amendment to Trade Union Law
   (the topic proposed by members of the Kyoto and Kanagawa Prefectural Labour Relations Commissions)
8. Closing remarks by the Chairman
9. Closing

II Commemorative Speech: "Labour Relations Commission System and Japan's Labour-Management Relations"

(Dr. Tadashi Hanami, former chairman of the CLRC, and professor emeritus of Sophia University)

1. Labour Relations Commission and myself

While I was an undergraduate student at Tokyo University in the 1950's, my mentor, Professor Kichiemon Ishikawa (my predecessor as chairman of the CLRC), taught me that the labour relations commission system provides a "simpler, quicker and less expensive dispute solution procedure" in comparison with the civil law procedure available at the court.

From my own experience serving as a public commissioner for the Tokyo Labour Relations Commission from 1968 to 1977, I felt that the reality of the system was much different from a "simpler, quicker and less expensive procedure." Complainants often submitted such an enormous volume of documentary evidence that a cart was required to take them to hearing sessions and reading them through posed for us, part-time commissioners, too heavy a burden. At the beginning of my time at the Tokyo LRC, it took about 300 days on average to finish an unfair labour practice case. Around the time I left the Tokyo LRC, it took more than 500 days on average.

Later, I again served as a public commissioner for the CLRC from 1992 and as the chairman from 1998 until 2000. During that time, the most important issue for us was the series of unfair labour practice cases of Japan Railway (JR). In that case we delivered our first order requiring JR to hire former Japan National Railway (JNR) workers whom JR unfairly refused to employ (as a successor of JNR after the reform of the National Railway in 1987). JR subsequently filed a lawsuit to revoke our order decision. As the judicial branch revoked so many LRC orders at that time, we clearly saw an opinion gap between LRCs and the judicial branch.

2. Functions of LRCs have been changing

When it comes to the functions of LRCs in labour dispute settlement, LRCs in total adjusted some 2,200 cases in Japan in 1974, reaching its peak level in the postwar period. Following this peak, the number of adjustment cases has been gradually declining, and now stands at approximately 600 cases, around a quarter of the peak level. As a matter of fact, LRC's adjustment capacities started scaling down around 1975 and ever since, have continued to decline. In a sense, LRC has played a less important role in adjusting labour disputes after the mid-70's. The strike held in relation to the right-to-strike carried out by the National Railway Union (NRU) in 1975 represented a turning point in the postwar history of the trade union movement in Japan (As Japan National Railways (JNR) was one of the government enterprises at that time, JNR workers were public servants and were denied the right to strike. In the nationwide strike to seek the right-to-strike in the public sector, the NRU stopped railways for a week, caused serious inconvenience for the general public and hence

created anti-union sentiment in the public opinion). The total number of strikes in Japan has since begun to decrease sharply. Collective labour disputes as a whole have been decreasing. As a result, the dispute settlement function of the LRC today looks like almost a thing of the past.

When Professor Ishikawa gave the 50th anniversary commemorative speech for the LRC system 10 years ago, he pointed out one of the important factors: "Adjustment activity is very important because it provides preventive roles. We have local labour relations commissions that provide a forum for employers, employees and public interest members to have discussions. In other words, it is important to prevent a problem in advance."

Now, I am working as a practicing lawyer. When I go to local areas, I feel that a company's internal dispute resolution process does not provide an effective solution to labour force reduction arising from economic reasons. Because stakeholders in labour relations become diversified as is the case in the international context, they solve labour disputes in many cases by involving not only employers and employees, but also NPOs, community leaders, local politicians, and local industrial leaders. In summary, when a factory in a small town is about to shut down, an industrial relations framework consisting only of an employer, employees and unions does not provide an effective answer to the questions: "How can we keep our jobs?" or "How should we create job opportunities?" In this context, I think that LRCs play important roles because local LRCs go beyond the intra-company framework, provide a regular meeting place for members representing the public interests, employers and labour to form good personal relationships. However, this is not enough without involving other stakeholders who are capable of creating job opportunities in the local communities.

Next, the number of LRC examination cases of unfair labour practices has been decreasing sharply as well following a similar pattern to dispute settlement cases 10 years earlier. The number of pending cases of unfair labour practices reached its peak at a little more than 3,000 around 1970, but currently stands at around 1,000. More important than such decrease in number is that more and more cases stay pending for a longer time. This trend is obvious when we look at the average time it takes for local LRCs to complete their first trial's examination process. Until the 1960s, it took some 100 days for LRCs to complete the process. However, they needed more than 500 days in 1971. The figure reached its peak of 1,877 days in 1998. In other words, LRCs needed 5 years to complete the examination procedure. Fortunately, the process has shortened to some 1,000 days since then although it is still very slow.

3. LRCs are playing less important roles

Procedures at the LRCs are getting shorter in recent years, but they still take longer than civil law court procedures. It looks like an "inverse phenomenon" between LRCs and the judicial branch. On the one hand, civil labour lawsuits in Japan have been increasing sharply. The number of labour lawsuits in Japan has long stayed around 1,000, but has gradually increased and reached a level of approximately 3,000 in 1992.

On the other hand, the number of cases handled by LRCs has decreased to a quarter of the peak level, but the judicial branch now handles three times as many labour law cases as in the past. More importantly, the judicial branch provides speedier proceedings in civil labour lawsuits, and now handles those lawsuits in a shorter period than LRCs. On average, it takes approximately 300 days to complete a judicial proceeding, three or four times quicker than LRCs.

In Japan, people file labour-related or lawsuits in general to the judicial branch less frequently than in most other industrialized countries because judicial proceedings are less accessible and more time-consuming. On the other hand, LRCs are supposed to provide simpler, quicker and less expensive dispute resolution procedures than civil trials. However, the LRCs became less cost-effective over the years. In addition, judicial proceedings are much quicker than LRCs. This suggests that people are questioning raison d'etre of LRCs.

In his commemorative speech for LRC's 50th anniversary, Professor Ishikawa also expressed a sense of crisis in this regard. In my opinion, the LRC's presence started to decline in the 1980s. I guess the morale of LRC commissioners and also office workers is weakening because of fewer applications, longer proceedings, and permanent delays. Since then, LRC stakeholders have repeatedly held meetings to discuss delays in the examination process, but LRCs still have an increasing backlog of pending cases that have not been settled for many years.

In fact, LRCs alone are not responsible for the "downward spiral" of their status. As labour movements have weakened, the number of collective labour disputes has been decreasing. This is a global trend although this trend is stronger in the United States and in Japan. This is ironic enough in both the US and Japan where rather extensive legal protection for unions including remedies against unfair labour practices exists. As a matter of fact, trade unions in these two nations are suffering from a more significant drop than other nations in terms of union density, political/societal influences, prestige and raison d'etre of the unions. This is a very important point.

Some LRC related people pay due attention to LRC's delayed proceedings and seriously consider how to improve the situation. However, as long as it is basically a collective dispute, I guess that not so many of them are really interested in speeding up the proceedings. Rather, some of them were not so seriously concerned with obtaining a speedy solution since unions bring the case and try to keep it pending as long as possible as a part of the labour movement. They are not necessarily interested in settling the case in a short period. In other words, they are more concerned with the collective interests than that of victimized individual workers. On the other hand, the judicial branch has successfully provided much speedier proceedings over the last 10 years probably because the judicial stakeholders (including lawyers acting for employers and labour) had a much stronger sense of crisis than those related to the LRC.

4. LRCs from the viewpoint of a labour dispute resolution system theory

As mentioned earlier, there is an inverse phenomenon between the roles of LRCs and those of the judicial branch because of two factors: the declining role of unions and collective labour relations in general, and changes in attitudes among labour-related lawsuit stakeholders. I would like to explain some more basic reasons, from the viewpoint of a dispute resolution system theory.

While teaching at law schools in the United States, I was involved in a series of comparative research projects on the dispute resolution processes in the U.S. and in Japan during the 1980s. At that time, the U.S. saw a so-called "litigation explosion," which meant a lawyer's paradise where many people filed lawsuits even for trivial reasons. As they faced way too many lawsuits, many experts researched and discussed the possibility of informal dispute settlement or extra-judicial conflict resolution, which is called "alternative dispute resolution" (ADR) today.

Among the discussions, there was an interesting hypothesis among US scholars that people tend to file lawsuits if plaintiffs and defendants do not have interpersonal relationships. For example, there are many lawsuits on pollution, product liability, or racial discrimination. On the other hand, people tend to avoid litigation if they have inter-personal relations, such as long-term, stable business relationships. Even in the United States in these situations, they tend to avoid lawsuits as much as possible, and litigation is regarded as the last resort after they attempt to solve the problem through other various means. At that time, experts of sociology of law and anthropology of law were working on research activities in regards to dispute resolution processes of underdeveloped tribes in developing nations. According to their study results, the informal dispute resolution processes that they found in underdeveloped areas were very similar to Japanese-style dispute resolution.

Learning from discussions with American lawyers, I have developed my own interpretation of dispute resolution processes which could be summarized as follows: Every human society has the two extremes (formal and informal dispute resolution processes) as well as various dispute resolution processes between these two extremes. For example, a meddlesome neighbor mediates between contesting parties and successfully solves the problem within a local community. Even a small tenement house in a downtown neighborhood has its own unique process of dispute resolution which is regarded as the most informal type of dispute settlement.

On the other hand, the most typical example of formal dispute settlement mechanism is the judicial branch, which lies at the complete opposite to such informal dispute resolution process in small societies. The judicial branch has three major characteristics that differentiate it from informal procedures. First, the judicial process carries out a distinct judgment based on a "black" or "white" evaluation applying clear-cut criteria, while informal processes take a more flexible approach and provide judgment based on non-clear-cut gradual evaluation avoiding decisive "black" or "white" decision-making. Second, they employ different norms. The formal process aims to solve problems based on universal and objective norms called legal norms, while informal processes might

employ norms that are very flexible and could be sometimes vague. These norms are not universal norms that are applicable to all persons. Informal processes might employ different norms, depending on social status or position and the mutual relationship of contesting parties. Third, the judicial process solves problems by identifying the past facts and applying existing statutes or judicial precedents established in the past. On the other hand, informal processes also take into consideration the past facts, but they handle disputes, paying attention to possible inter-human relationships to be developed in the future. Namely, the formal one is past-oriented while the informal one is future oriented.

From this point of view, one may easily understand that an informal way of dispute settlement is more suitable for dispute settlement in the field of labour because labour relations are relationships in which human factors and personal elements of the parties play an important role and often are continued in the future. In this sense they are of a different nature from the ordinary type of business contract, particularly such as a contract of trade and exchange.

When considering Japan's labour relations up until the 1980s in this way, the Japanese-style labour-management informal negotiation system, was working quite effectively as an informal intra-company dispute solution approach especially in larger companies. This is largely because employers and enterprise unions were successful in developing long-term human relationships based on stable and long-term employment practices, such as lifelong employment. Unlike dispute resolution through judicial proceedings, LRC's procedures used to provide more flexible solutions, while paying due attention to bringing about proper or stable labour relations with an eye for the future. In this sense, LRCs were successful in providing an informal dispute resolution approach in the past.

5. Future outlook for LRCs

As described above, the LRC has a totally different dispute resolution approach from that of judicial proceedings. Hence, it is very natural that these two approaches would yield different perspectives. The judicial branch tends to revoke LRC's orders on JR-related and other cases. This is because the judicial branch employs totally different criteria from LRCs. LRCs are playing important roles to some extent. A speedy solution might not be absolutely necessary. In some cases, even delayed justice has provided effective solutions to some extent.

However, after the collapse of the bubble economy, Japanese-style employment relationships have been gradually declining. With the decline of life-long employment practice and an increasing non-regular workforce, the intra-company informal dispute resolution system has gradually lost its coverage and effectiveness as well. LRCs handle collective labour disputes, but many of them fall under personal labour disputes in real terms. Today, many of the unfair labour practice cases brought to the LRCs are in fact rather individual disputes in substance although disguised in the form of collective disputes.