

Panelists: Kozo Fujita, public member, Tokyo Labour Relations Commission (moderator);
Kazuo Sugeno, public member, CLRC;
Koichi Sato, worker member, Hokkaido Labour Relations Commission;
Koichi Sugiyama, employer member, CLRC;
Katsutoshi Kezuka, Japan Labour Law Association, and professor of Chuo University;
Kunio Miyazato, lawyer, Labour Lawyers Association of Japan; and
Shigeo Nakayama, lawyer, Management Lawyers Council.

1. Current status evaluation and necessary reforms for LRCs

(Sugeno)

When we look at whether or not LRCs are properly exercising the powers or carrying out the missions under the current legislations, LRCs provide simple and quick solutions in reconciling labour disputes or individual labour disputes, and are working effectively through their tripartite structure. However, when it comes to handling unfair labour practice cases, they are far from providing simple or quick solutions. CLRC has faced the following problems: CLRC failed to handle a vast amount of JR-related cases efficiently; LRCs attach importance to settlements and prioritize settlement over adequate examination process because LRCs give a greater importance to adjustment or settlement; and the judicial branch has revoked a higher percentage of LRC's orders in the judicial review process.

Almost one year has passed since the amended Trade Union Law became effective in January 2006. At the CLRC, the chairman, commission members and secretariat staff work closely together and bring about impressive achievements. As public members' meetings now consist of three panel, each panel issues at least one order every time they hold their fortnightly meeting. The secretariat also supports this task in a more adequate manner. In addition, we also set a target period for completing the ULP procedure. We strive to halve our examination period by completing it within three years. I think we should achieve this goal within three years after the amended Trade Union Law become effective and if we fail to achieve our target, we will not see better LRCs in future.

(Sato)

The amended Trade Union Law provides serious impacts because they no longer pay travel expenses for contesting parties. On the other hand, as they have to prepare a detailed schedule for hearing, including a schedule for the submission of evidence, in the investigation phase, more and more contesting parties are employing lawyers to represent them at the hearing. These factors pose heavy burdens on the trade unions of small- and medium-sized enterprises. In addition, since the administrative appeal procedure takes place in Tokyo, some trade unions have no choice but to accept settlement. At the very least, I would be grateful if the administrative appeal procedure

could be conducted at CLRC regional offices.

As for necessary improvements for LRCs, I am concerned about a significant gap in workload among local LRCs. If the prefectural LRC handles way too many complaints, it will lead to a delay in the process. On the other hand, if the prefectural LRC receives only few complaints, the LRC scheme will lose substance. I think we will face a serious problem if all LRCs fall within these two categories.

(Sugiyama)

As for the amended Trade Union Law, the good news is that CLRC has three panels in charge of the ULP procedure and some public members now serve as full-time members. CLEC employs additional staff and enhances training sessions for secretariat staff. All of factors have positive impacts.

However, the Diet amended the Trade Union Law, aiming for a speedy and more adequate ULP procedure at LRCs receiving many complaints filed by workers. The amended law provides no action for prefectural LRCs that have fewer cases. For example, it is an idea to set up some regional LRC blocs combining several prefectural LRCs. As for a decrease in total cases, the secretariat's improved coordination, removal of barriers between the ULP and adjustment sections, and integration of prefectural LRCs with the local adjustment members of CLRC, or possibly with the seafarers' labour relations commission, would yield a streamlined LRC's structure without compromising its capabilities.

(Kezuka)

When it comes to an amendment to the Trade Union Law, there are two purposes: LRCs would deliver orders more satisfactorily to the judicial branch, keeping the judicial review in mind; and LRCs would correctly find facts. By doing so, they intended to improve reliability in the dispute resolution process, I guess. Under this new framework, we should firmly establish legal doctrines that would reflect the intentions of the persons who have served as LRC members to date.

LRCs have primary missions to eliminate the root causes of unfair labour practices and strive to stabilize labour-management relations. I think LRC members should also strive to carry out these missions in more easily understandable and accessible manners to the general public.

(Miyazato)

As a lawyer representing workers, I think that LRCs have played significant roles in repairing damaged labour-management relations.

I also have some requests. The amendment to the Trade Union Law this time would lead to a speedy ULP procedure, but further amendment to applicable law does not naturally bring about a speedy ULP procedure. A speedy process would require cooperation from public members, highly skillful and experienced secretariat staff as well as a more cooperative attitudes from lawyers acting for employers and employees.

Secondly, we should avoid over-prioritizing the speedy process itself. I think that the concept of a speedy process will also mean a better ULP procedure. It naturally takes a longer time to settle a case that involves complex circumstances and multiple trade

unions. It is necessary to identify or evaluate whether we are able to settle the cases quite easily or not.

Finally, I don't think LRC's procedure should become similar to a civil procedure. As the settlement of labour disputes would involve different patterns from the judicial process, LRCs should employ an adequate approach, such as making the most of its tripartite structure.

(Nakayama)

As a lawyer representing employers, I highly evaluate LRCs as a dispute resolution organ because LRCs have amicably settled 60-70% of their pending cases and also successfully reconciled a high percentage of adjustment cases, despite facing serious and complex cases, like JR-related cases, and those involving multiple trade unions. However, when it comes to unfair labour practice cases, LRCs have some problems in their ULP procedure, and the quality of orders they deliver. Firstly, the ULP procedure takes a longer time, in particular in CLRC and prefectural LRCs in urban areas. Secondly, LRCs do not clearly specify when to deliver their orders. An additional problem is that the judicial branch revokes many orders delivered by LRCs.

To overcome these problems, the amended Trade Union Law would yield positive impacts. From practical perspectives, it is important to clearly designate the deadline for issuing LRC orders and prepare an examination plan by sorting out disputed issues. LRC's ULP procedure attaches a higher priority to settlement, in other words, its adjusting function. However, LRCs decide on unfair labour practices, which mean dishonorable behavior for employers. In this sense, from the employers' perspectives, I think LRCs should put a higher priority on the adjudicating function. If LRC's ULP procedure could quickly identify whether or not unfair labour practice existed, it would encourage quicker settlement, I guess.

I also see some criteria gaps in determining unfair labour practices among prefectural LRCs as well as between CLRC and prefectural LRCs. In this regard, I would like LRCs to eliminate such gaps.

2. Desirable LRCs for the future

(Nakayama)

I think that prefectural labour bureaus and employment tribunals should be in charge of individual labour disputes, while LRCs should concentrate on collective labour disputes. We should also consider closing down some LRCs that carry fewer cases, while Tokyo, Osaka and some other LRCs that handle many cases should introduce panel system or full-time membership like the CLRC.

(Miyazato)

LRC's ULP procedure has both adjudicating and adjusting functions. However, as LRCs have the mission to settle labour disputes quickly, I strongly think they should attach a higher value to the adjusting function. As trade unions organize workers, employers remain uncomfortable about trade unions, which sometimes leads to unfair labour practices, I guess. So, I think LRC's adjusting function and labour education

function will become more important in future.

As for a decrease in LRC cases, if trade unions come to know that LRCs meaningfully overcome their problems over a short period of time, more and more trade unions will naturally access LRCs, I think.

(Kezuka)

If LRCs have a passive attitude such as "We will help you if you file a complaint," LRCs are not working effectively as labour dispute resolution organs. As a comprehensive organ to handle collective labour disputes, LRCs should have awareness "We will send our staff members to care about your collective labour disputes" and should make themselves more attractive for settling disputes. I would like LRCs to engage in meaningful discussions in that way.

(Sugiyama)

I feel the current legislations only provide a vague status for commission members who represent employers and employees. I would like LRCs to discuss what they should be, and revise the present legislations/regulations as necessary, in order to grant us a clearer legal status.

(Sato)

Somebody talked about LRCs carrying fewer labour disputes, but they also make full efforts with limited human resources. I really would like you to understand that.

In my opinion, the number of collective labour disputes will not decrease so much for the following reasons: some local civil servants will serve for local independent administrative institutions; workers of Japan Post will lose their status as national civil servants because Japan Post will be privatized; and the number of "asylum" appeals to joint trade unions will not decrease.

In addition, LRCs should attach a high value to its adjusting function. Some people call for stricter ULP procedures, but I really oppose it because stricter ULP procedures will surely damage its user-friendliness.

(Sugeno)

I also attach a high value to the adjusting function, in other words, a process leading to settlement. The current amendment to the Trade Union Law is also intended to enhance the adjusting function. LRCs should seek for settlement if it is necessary to do so.

After the employment tribunal program starts, the employment tribunals will be mainly in charge of individual labour disputes, while LRCs will be responsible for collective labour disputes. However, there would be some overlap between these two, I guess. However, I don't think they would bring their cases to the employment tribunals, if these cases are difficult, large-scale, or reflect longstanding antagonism between employers and employees. It is also difficult to settle these cases through civil procedures, based on legal rights and duties. In these cases, LRCs members, representing employees and employers, should act as go-betweens and settle the cases. In addition, it is an idea that LRCs settle disputes (including individual labour disputes) in a more user-friendly manner than other organs.

3. Conclusion

(Nakayama)

For employers, who are the contesting party, a speedy dispute resolution process is highly attractive. I would like LRCs to engage in meaningful discussions so that they can provide speedier conclusions.

(Miyazato)

As analysts will surely compare LRCs and the newly-established employment tribunal program, a very important factor is whether or not LRCs will provide better services in a tangible manner because of the current amendment to the Trade Union Law.

(Kezuka)

The amended Trade Union Law reflects a wide variety of debates among stakeholders. I hope that it would bring about positive impact in a visible manner.

(Sugiyama)

From my own experiences to serve for LRC, I really feel the positive aspects in the LRC system. I hope that LRCs will take advantage of these positive aspects, improve the framework and operate it in a more adequate manner.

(Sato)

LRCs are facing the challenge of coping with the vast majority of workers who do not join trade unions.

(Sugeno)

As the employment tribunal's panel members (lay members) should be neutral, they should have neutrality, morality and powers as court judges. The story is totally different for LRC's participant members representing employers or employees, however. They play useful roles because they carefully listen to and try to persuade the contesting parties. Their opinions include viewpoints of public interests and also reflect their own longstanding valuable experiences. This is the positive aspect of the LRC scheme.

After the amended Trade Union Law takes root, an overhaul might be necessary for the LRC scheme someday. We should consider a adequate framework or functions for intra-company labour disputes as well as LRC's proper involvement.

(Fujita)

Panelists have generally expressed positive opinions on LRCs because they contribute to restoring labour-management relations. On the other hand, LRCs face problems of their slow process. Further efforts are necessary for a speedy process and improved credibility is also necessary. LRCs naturally have a different attitude from the judiciary because the former creates better labour-management relations for the future, while the latter identifies applicable rights and duties. However, an excessive gaps between these two processes will pose negative impacts on the credibility of the LRC system.

As for future visions, some panelists argue that LRC should concentrate on collective labour disputes, while others called for more commitment to individual labour disputes. In addition, some panelists put a higher value to the adjusting function, while others, while not denying the importance of settlement, argued that the adjudicating function