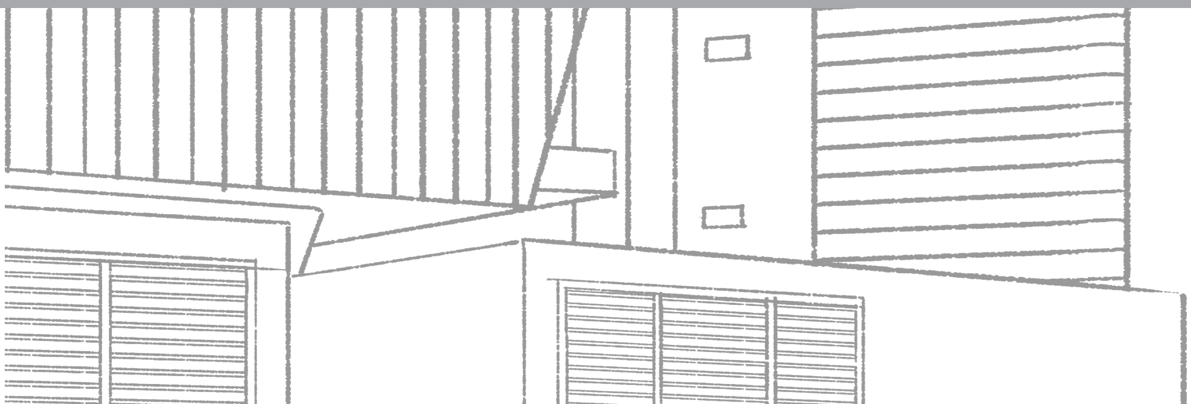
# Labor Relations Commission

## in Korea

National Labor
Relations Commission



# Message from the Chairman of the NLRC

The Labor Relations Commission (LRC) is an administrative organization pursuing peaceful and harmonious labor relations. When disputes arise between labor and management, the LRC resolves them with its quasi-judicial administrative actions including 'mediation' or 'adjudication'.

Korea introduced the Labor Relations Commission Act in 1953 for the first time before the Korean War ended, along with other labor laws such as the Trade Union Act, the Labor Dispute Adjustment Act and the Labor Standards Act. There had been no modern labor laws and systems before that time. With the legislation of the LRC Act, the Labor Relations Commission came to have its legal grounds for its establishment and roles.

Since then, 65 years have passed. While Korea has gone through dynamic changes during that period achieving industrialization and democratization, the grass-roots labor relations have also experienced dramatic changes and continuous development. In each moment of growth and development, the LRC has always kept pace with the changes in society.

As the roles of the LRC have continued to expand, 13 Regional Labor Relations Commissions have been created consecutively in addition to the National Labor Relations Commission. There have been significant improvements in the reputation, the numbers of the LRC members and their expertise, as well as the structure and functions of the secretariat and administrative bureaus of the LRC.

In early years, the role of the LRC was mostly confined to adjustment of industrial actions. In 1963, the application of a legal remedy for unfair labor practices was added to its responsibilities and in 1989, legal remedy for unfair dismissal was included as well. The Chairperson of the NLRC

was elevated to a Ministerial level in 1997. Various roles and responsibilities have been consistently added: in 2007, discrimination redress for fixed-term workers and dispatched workers; in 2008, decision of the maintenance and operation levels of the essential minimum services; in 2011, administrative dispositions on union pluralism issues, and so on.

While its roles and responsibilities have been expanding, 1,800 members representing labor, management and public interest and 370 employees have strived continuously to make the LRC a better organization in terms of quantity and quality. Now, the LRC handles around 14,000 complaints every year and it is developing into an organization gaining trust of both labor and management.

In the case of mediation complaints, despite its relatively short handling period, the mediation success rate reaches about 60% as the LRC has accumulated expertise and provided proactive services such as preliminary meetings.

More than 95% of all the complaints filed to the RLRCs, including remedy requests for unfair dismissal and unfair labor practices, discrimination redress, or union pluralism related cases, are concluded at the phase of the RLRCs and the NLRC by means of adjudication, mediation, conciliation, and withdrawal. Only less than 5% has proceeded to the court arguing against the NLRC review on the RLRC adjudications. Even in this case, about 80% sustains the adjudications of the NLRC. As a result, 99% of the cases filed to the RLRCs were either resolved at the LRC phase or closed at the court as adjudicated by the LRC.

These indicators prove the expertise and impartiality of the LRC in its dispute adjustment and adjudication services, and are clear evidence showing the LRC has contributed a lot to making labor relations stabilized and harmonious.

The publication of this book aims to review the development history of the LRC as well as its structure, roles and responsibilities, evaluate major outcomes and achievements, and compare it with similar systems in other countries. In this way, I hope that more people will have a chance to learn about the Korean LRC system and for our part, we can evaluate what we have achieved and take time for introspection to open up a new future for the LRC.

Many people have participated in publishing this book. The LRC staff collected data and prepared the frame of the book, and professors in different areas of labor relations wrote the draft, which was finalized by senior officials of the LRC as they put the final touch on the manuscript. I express my sincere gratitude to all of those who have been involved in the publication of this book.

In particular, I would like to express my special appreciation to Ex-Secretary General Moon Ki-seop, Secretary General Lee Soo-young, Director General of Meditation & Adjudication Bureau Chang Keun-sop, Ex-Director of Judicial Support Division Kim Beom-seok who prepared the basic frame of this book, and Director of Judicial Support Division Jang Hyun-suk who has been responsible for the correction and editing of the manuscript for their commitment and effort.

I hope once again this book will be helpful for understanding the roles and responsibilities of the Korean LRC and will serve as a catalyst to produce more opinions and studies for the reform and development of the LRC.

July, 2018

Park Joon-sung

Chairman of the National Labor Relations Commission

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# Acronyms

| | |
|---|---|
| AC | Adjudication Committee |
| AC/DRC | Adjudication Committee/Discrimination Redress Committee |
| CBA | Collective Bargaining Agreement |
| CPA | Civil Procedure Act |
| DRC | Discrimination Redress Committee |
| EMSA | Essential Minimum Service Agreement |
| FPWPA | Act on the Protection, etc. of Fixed-Term and Part-Time Workers |
| LDAA | Labor Disputes Adjustment Act |
| LMC | Labor Mediation Commission |
| LRC | Labor Relations Commission |
| LRCA | Labor Relations Commission Act |
| LSA | Labor Standards Act |
| MPLMC | Municipal and the Provincial Labor Mediation Commission |
| NLMC | National Labor Mediation Commission |
| NLRC | National Labor Relations Commission |
| PLMC | Provincial Labor Mediation Commission |
| POLRAC | Public Official's Labor Relations Adjustment Committee |
| POTUA | Act on the Establishment, Operation, etc., of Public Officials' Trade Union |
| RLRC | Regional Labor Relations Commission |
| SLRC | Special Labor Relations Commission |
| SMC | Special Mediation Committee |
| TAWPA | Act on the Protection, etc. of Temporary Agency Workers |
| TLRAC | Teacher's Labor Relations Adjustment Committee |
| TTUA | Act on the Establishment, Operation, etc., of Trade Unions for Teachers |
| TULRAA | Trade Union and Labor Relations Adjustment Act |
| WPCA | Act on the Promotion of Workers' Participation and Cooperation |

# Chapter 1

## Introduction of the Labor Relations Commission

Section 1: Structure and Jurisdictions

Section 2: Committees and Functions

Section 3: Activities of the LRC

Section 4: Website and Online DB system

Labor Relations Commission in Korea

# Chapter 1
# Introduction of the Labor Relations Commission

Relations between workers and employers in a workplace setting should be inseparably close, cooperative, and mutually beneficial. However, they cannot always be cooperative. Sometimes, worker-employer relations contain the possibility for disputes, as workers and employers may differ in their opinions in demanding more from each other and claiming their justifiable rights.

The Labor Relations Commission (“LRC”) is an organization that aims to contribute to harmonizing industrial relations and enhancing its stability, by resolving disputes between the labor and management through administrative actions such as *mediation* and *adjudication* when such disputes occur.

To this end, the LRC is composed of members of three parties representing workers (workers’ members), employers (employers’ members), and public interest (public interest members).

The LRC, which is dedicated to resolving labor disputes, is an independent quasi-judicial body, which functions, within its mandate, with expertise and expedition. Therefore, the proceedings of the LRC are different from those of the ordinary judicial system.

More specifically, the LRC mediates labor disputes and adjudicates on requests to remedy unfair labor practice cases according to the *Trade Union and Labor Relations Adjustment Act* (“TULRAA”), makes rulings on cases of unfair dismissal and cases involving discriminations against employees based on the *Labor Standards Act* (“LSA”), the *Act on the Protection, etc. of Fixed-term and Part-time Employees* (“FPWPA”) or the *Act On the*

*Protection, etc. of Temporary Agency Workers* ("TAWPA"), and carries out various other missions that are stipulated by the related laws.

## Section 1: Structure and Jurisdictions

### 1. Structure of the LRC

The LRC is composed of the National Labor Relations Commission ("NLRC"), 13 Regional Labor Relations Commissions ("RLRCs"), and the Special Labor Relations Commission ("SLRC"). The NLRC and the RLRCs are established under the control of the Minister of Employment and Labor (*Labor Relations Commission Act* ("LRCA"), Article 2, Para. 2 and 3), and the SLRC is set up under the control of the head of the central administrative agency which has jurisdiction over specific issues[1]. However, the Jeju Provincial Labor Relations Commission among the RLRCs came to belong to the Jeju Special Self-Governing Province instead of the Ministry of Employment and Labor as of July 1, 2006. Currently, as an SLRC, Seafarers' Labor Relations Commission is established under the control of the Minister of Oceans and Fisheries (*Seafarers' Act*, Article 4).

The NLRC may give necessary instructions concerning the basic policies on the performance of the functions of the RLRCs and the SLRC as well as interpretations of the relevant laws (instruction authority of the NLRC, LRCA, Article 24).

In addition, the NLRC may make rules pertaining to the operation of the NLRC, the RLRCs, or the SLRC, how to deal with the cases filed to the

---

1) Though being affiliated to a relevant administrative agency for its organizational structure, the LRC is an independent organization in conducting its missions without being controlled or guided by the agency (LRCA, Article 4, Para. 4).

sectoral committees and those reviewed by investigation officers and other matters necessary for the operation of the LRCs (rule-making authority of the NLRC, LRCA, Article 25).

The NLRC, if requested by a concerned party, may review, verify, cancel, or modify any disposition taken by an RLRC or an SLRC (review authority of the NLRC, LRCA, Article 26, Para. 1). A lawsuit regarding any disposition taken by the NLRC can be filed against the chairperson of the NLRC within fifteen days after the notification of the disposition. The jurisdiction of the NLRC is over mediation cases of labor disputes that at least two RLRCs have concurrent jurisdiction over, and cases that fall under its jurisdiction by other laws (LRCA, Article 3, Para. 1).

The RLRCs have jurisdiction over cases - excluding mediation cases - which occur within its area, but cases which are under concurrent jurisdictions of at least two RLRCs should be resolved by the RLRC which has jurisdiction over the location of the main workplace (LRCA, Article 3, Para. 2). Regarding any disposition taken by an RLRC or an SLRC, a review may be requested within ten days from the date the relevant disposition taken by the RLRC or the SLRC is served on the concerned party (LRCA, Article 26, Para. 2).

The LRC can request cooperation to relevant administrative agencies if such cooperation is deemed to be necessary, and the agencies that are requested by the LRC must cooperate with them unless there is any special reason not to. Also, the LRC may recommend relevant administrative agencies to take necessary measures to improve working conditions (LRCA, Article 22).

If deemed necessary for performing its duties, such as verification of the facts of a case under its jurisdiction, the LRC may request workers, labor unions, employers, employers' associations, and other relevant persons to attend and report to the LRC, make a statement, or submit necessary documents.

Also, the LRC may have the LRC members or investigation officers who are designated by the chairperson of the said LRC or the chairperson of a sectoral committee investigate conditions of the business or place of the business, documents, and other articles of the business or workplace (LRCA, Article 23, Para. 1).

[Table 1-1] Names, locations and jurisdictions of the RLRCs

| Classification | Location | Jurisdiction |
|---|---|---|
| Seoul RLRC | Seoul | Seoul |
| Busan RLRC | Busan | Busan |
| Gyeonggi RLRC | Gyeonggi-do | Gyeonggi-do |
| Chungnam RLRC | Daejeon | Daejeon·Chungcheongnam-do·Sejong |
| Jeonnam RLRC | Gwangju | Gwangju·Jeollanam-do |
| Gyeongbuk RLRC | Daegu | Daegu·Gyeongsangbuk-do |
| Gyeongnam RLRC | Gyeongsangnam-do | Gyeongsangnam-do |
| Incheon RLRC | Incheon | Incheon |
| Ulsan RLRC | Ulsan | Ulsan |
| Gangwon RLRC | Gangwon-do | Gangwon-do |
| Chungbuk RLRC | Chungcheongbuk-do | Chungcheongbuk-do |
| Jeonbuk RLRC | Jeollabuk-do | Jeollabuk-do |
| Jeju RLRC | Jeju-do | Jeju-do |

## 2. LRC Members

The LRC is composed of workers' members, employers' members and public interest members (LRCA, Article 6, Para. 1).

The number of the LRC members is determined by a Presidential decree, taking account of the workload. The numbers of workers' members and employ-

ers' members are between 10 and 50, respectively, and those of public interest members are between 10 and 70. Workers' members and employers' members should be equal in number (LRCA, Article 6, Para. 2).

[Table 1-2] Alloted number of the LRC members

(As of Dec. 31, 2017, persons)

| Classification | Total | Workers' members | Employers' members | Public interest members | | | |
|---|---|---|---|---|---|---|---|
| | | | | Subtotal | In charge of adjudication | In charge of mediation | In charge of discrimination redress |
| Total | 1,805 | 535 | 535 | 735 | 347 | 209 | 179 |
| NLRC | 170 | 50 | 50 | 70 | 33 | 20 | 17 |
| RLRCs | 1,635 | 485 | 485 | 665 | 314 | 189 | 162 |

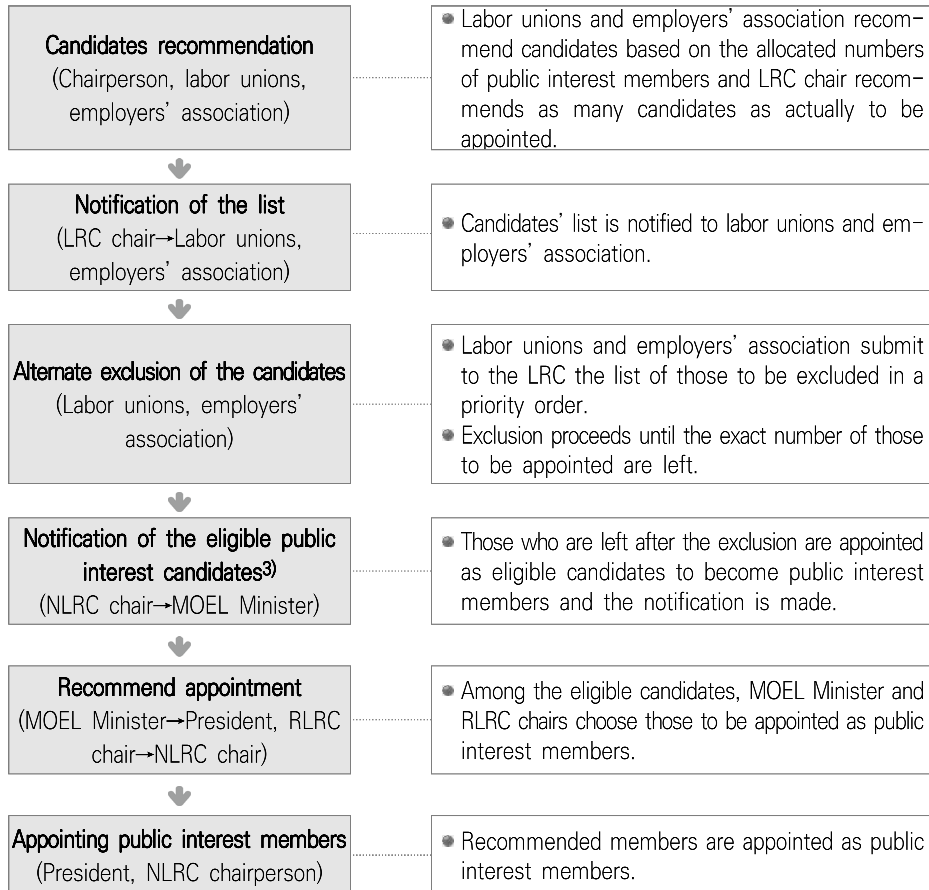
* The NLRC has additional seven public interest members for the mediation of public officials' labor relations.

Workers' members and employers' members are appointed from among those who are recommended by labor unions and the employers' association, respectively. For the NLRC, they are appointed by the President upon the recommendation of the Minister of Employment and Labor, and for the RLRCs, they are appointed by the chairperson of the NLRC upon the recommendation of the chairperson of the relevant RLRC (LRCA, Article 6, Para. 3).

In the case of public interest members, labor unions and the employers' association as well as the chairperson of the relevant LRC recommend candidates, and labor unions and the employers' association take turns in excluding candidates who they don't see fit. The candidates remaining after the exclusion process become those who are eligible for public interest members. Out of those members, in the case of the NLRC, public interest members are appointed by the President upon the recommendation of the Minister of Employment

and Labor, and in the case of the RLRCs, they are appointed by the chairperson of the NLRC upon the recommendation of the chairperson of the relevant RLRC (LRCA, Article 6, Para. 4)[2].

[Figure 1-1] Flowchart for appointing public interest members




2) When labor unions or the employers' association rejects procedures for recommending public interest members or eliminating the recommended public interest members, the chairperson of the relevant LRC may select public interest candidates eligible for the appointment (LRCA, Article 6, Para. 5).

3) The NLRC public interest members are appointed by the President upon recommendation of the MOEL Minister. Therefore, the NLRC chairperson notifies the list of the eligible candidates to the MOEL Minister, which is not the case in the appointment of the RLRC public interest members.

When public interest members are appointed, they are classified into three groups: those in charge of adjudication, discrimination redress, and mediation (LRCA, Article 6, Para. 6).

The qualifications for public interest members are slightly different according to which LRC they are going to belong to and which area they are going to be in charge of. However, the law stipulates that they should be chosen from among professors, judges, prosecutors, lawyers, certified labor affairs consultants, high ranking government officials in labor-related areas, and those involved in labor relations areas with abundant expertise and experiences (LRCA, Article 8, Para. 1, 2).

[Table 1-3] Qualifications for LRC public interest members

| Classification | | Qualifications for public interest members |
|---|---|---|
| NLRC | Adjudication · Discrimination redress | (a) A person who majored in labor-related studies and has been or used to be in office as an associate professor or higher at a school.<br>(b) A person who has been or used to be in office as a judge, public prosecutor, military judicial officer, attorney-at-law, or certified labor affairs consultant for at least seven years.<br>(c) A person who has at least seven years of work experience in labor relations affairs and was or has been in office as a public official of Grade 2 or higher, or the equivalent thereof or higher, or a member of the Senior Civil Service.<br>(d) Any other person who has experience in labor relations affairs for at least 15 years and is deemed suitable for a public interest member in charge of adjudication or redress of discrimination. |
| | Mediation | (a) A person who was or has been in office as an associate professor or higher at a school.<br>(b) A person who has been or used to be in office as a judge, public prosecutor, military judicial officer, attorney-at-law, or certified labor affairs consultant for at least seven years.<br>(c) A person who has at least seven years' work experience in labor relations affairs and has been or used to be in office as a public official of Grade 2, or the equivalent thereof or higher, or a public official belonging to the Senior Civil Service. |

| Classification | | Qualifications for public interest members |
|---|---|---|
| | | (d) Any other person who is deemed suitable for a public interest member in charge of mediation among those who have at least 15 years' work experience in labor relations affairs or those who are deemed to have excellent morals. |
| RLRC | Adjudication · Discrimination redress | (a) A person who majored in labor-related studies and was or is in office as an assistant professor or higher at a school.<br>(b) A person who has been or used to be in office as a judge, public prosecutor, military judicial officer, attorney-at-law, or certified labor affairs consultant for at least three years.<br>(c) A person who has at least three years' work experience in labor relations affairs and has been or used to be in office as a public official of Grade 3 or of a grade equivalent thereof or higher, or a public official belonging to the Senior Civil Service.<br>(d) A person who has at least ten years' work experience in labor relations affairs and has been or used to be in office as a public official of Grade 4 or of a grade equivalent thereto or higher.<br>(e) Any other person who has at least ten years' work experience in labor relations affairs and is deemed suitable for a public interest member in charge of adjudication or redress of discrimination. |
| | Mediation | (a) A person who has been or used to be in office as an assistant professor or higher at a school.<br>(b) A person who has been or used to be in office as a judge, public prosecutor, military judicial officer, attorney-at-law, or certified labor affairs consultant for at least three years.<br>(c) A person who has at least three years' work experience in labor relations affairs and has been or used to be in office as a public official of Grade 3 or of a grade equivalent thereto or higher, or a public official belonging to the Senior Civil Service.<br>(d) A person who has at least ten years' work experience in labor relations affairs and was or has been in office as a public official of Grade 4 or of a grade equivalent thereto or higher.<br>(e) Any other person who is deemed suitable for a public interest member in charge of mediation among those who have at least ten years' work experience in labor relations affairs or those who are deemed to have excellent morals. |

The term for the members of the LRC is three years with the option of renewability. In case of the vacancy of an LRC member, the term for a member elected to fill the vacancy is the remainder of the term of his/her predecessor. However, if a successor has been appointed due to the vacancy of the chairperson or a standing member of an LRC, the term of office of the successor starts anew. An LRC member whose term of office has expired should continue to perform his/her duties until his/her successor is designated (LRCA, Article 7, Para. 1, 2, 3).

## 3. Chairperson

The chairperson of the NLRC is appointed by the President according to the proposal of the Minister of Employment and Labor from among persons eligible for public interest member of the NLRC, and the chairperson of an RLRC is appointed by the President upon the recommendation of the chairperson of the NLRC and according to the proposal of the Minister of Employment and Labor, from among persons eligible for public interest members of the RLRC (LRCA, Article 9, Para. 2).

The chairperson of an LRC becomes a public interest member of the LRC, and may take charge of the cases of adjudication, discrimination redress, and mediation (LRCA, Article 9, Para. 4).

The chairperson of the NLRC is, by its position, a public official in political service (LRCA, Article 9, Para. 3), and exercises general control over budgets, personnel affairs, education and training, and other administrative matters of the NLRC and the RLRCs, and directs and supervises the public officials falling under his/her jurisdiction (LRCA, Article 4, Para. 2).

In addition, the NLRC chairperson has the right to recommend the chair-

persons and standing members of RLRCs (LRCA, Article 9, Para. 2 / Article 11, Para. 1), and the right to appoint the RLRC members (LRCA, Article 6, Para. 3, 4).

## 4. Standing members

Each LRC has standing members of which the minimum and maximum numbers are prescribed by a presidential decree. They are appointed by the President upon the recommendation of the chairperson of the NLRC and according to the proposal of the Minister of Employment and Labor, from among those eligible for public interest membership of the concerned LRC. (LRCA, Article 11, Para. 1, 3). The standing members become public interest members, and may take charge of adjudication, discrimination redress, and mediation (LRCA, Article 11, Para. 2).

Currently, there are two standing members in the NLRC, three in the Seoul RLRC, one in the Busan RLRC, and two in the Gyeonggi RLRC.

## 5. Secretariat Department and administrative bureau

The NLRC has a secretariat department and the RLRCs have an administrative bureau (LRCA, Article 14, Para. 1). The NLRC has one secretary general and one of the standing members of the NLRC concurrently holds the position of the secretary general (LRCA, Article 14-2, Para. 1, 2). The secretary general is in charge of the operation of the secretariat under the direction of the chairperson, and manages and supervises the secretariat staff (LRCA, Article 14-2, Para. 3).

Currently, in the case of the NLRC, there are the Planning & Management Division and the Mediation & Adjudication Bureau. The Mediation & Adjudication Bureau is composed of five divisions (Mediation, Bargaining Representative Determination, Adjudication I, Adjudication II, and Judicial Support), carrying out and supporting the work of the NLRC.

In the case of the RLRCs, there is an administrative bureau. Under the administrative bureau, Seoul RLRC has four divisions (Mediation, Bargaining Representative Determination, Adjudication I, Adjudication II), Gyeonggi RLRC has three divisions (Mediation, Adjudication I, Adjudication II), the RLRCs in Busan, Chungnam, Jeonnam, Gyeongbuk and Gyeongnam have two divisions (Mediation, Adjudication), and the RLRCs in Incheon, Ulsan, Gangwon, Chungbuk, Jeonbuk, and Jeju only have the administrative bureau with no divisions.

Including the chairperson and standing members, all together a total of 374 people are working in the LRC as 92 are working in the NLRC and 282 in the RLRCs (representing the workload of the LRC).

## 6. Investigation officer

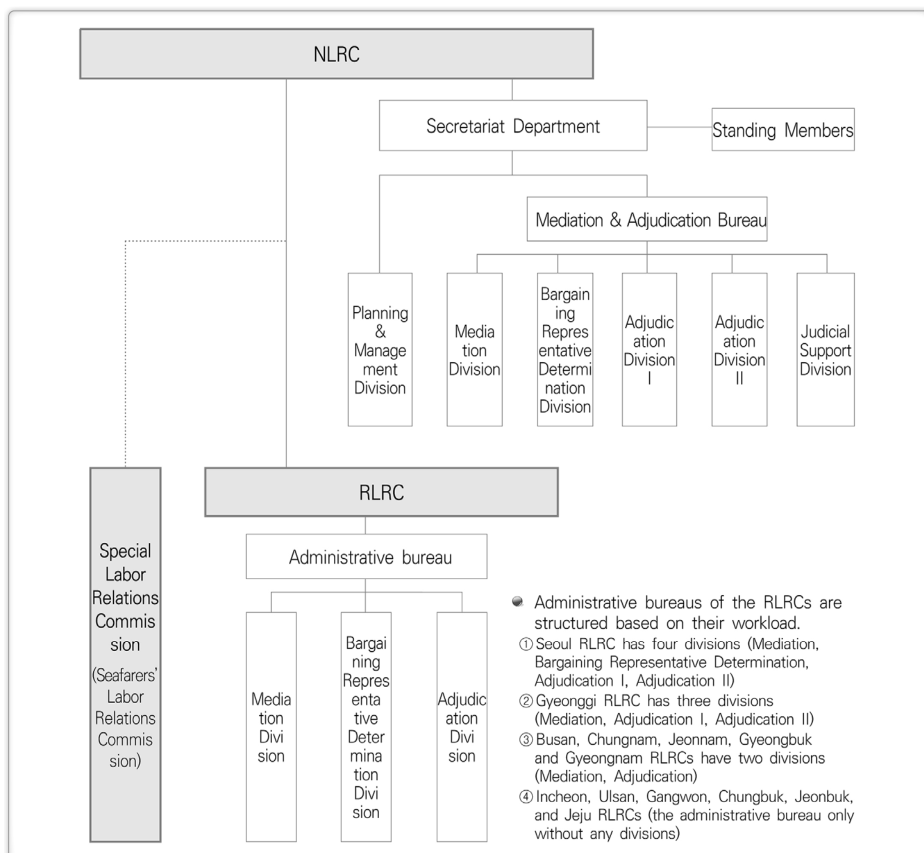
In the secretariat of the NLRC and the administrative bureaus of RLRCs, there are investigation officers who are responsible for the cases of adjudication, discrimination redress, mediation, etc. The investigation officers are appointed by the chairperson of the NLRC, from among the public officials belonging to the LRC (LRCA, Article 14-3, Para. 1, 2).

An investigation officer is appointed from among the public officials of Grades 3 through 7 in the case of the NLRC, and of Grades 4 through 7 in the case of an RLRC. Investigation officers have responsibilities relevant to adjudication, decision, resolution, approval, recognition, discrimination re-dress, etc. under TULRAA, the LSA, the *Act on the Promotion of Workers' Participation and Cooperation* (“WPCA”), the *Act on the Establishment and Operation, and etc., of Trade Unions for Teachers* (“TTUA”), the *Act on the Establishment, Operation, etc., of Public Officials' Trade Union* (“POTUA”), the FPWPA, and the TAWPA; They also deal with matters relevant to the

mediation and arbitration of labor disputes under TULRAA, TTUA, and POTUA and matters relevant to the support for the autonomous settlement of labor disputes by the concerned parties (LRCA Enforcement Decree, Article 9, Para. 2).

An investigation officer, under the directions of the chairperson of the LRC, the chairperson of a sectoral committee, or the chief member of the relevant case, should conduct an investigation necessary for performing his/her work under the jurisdiction of the relevant LRC and may attend a sectoral committee to present his/her opinion (LRCA, Article 14-3, Para. 3).

**[Figure 1-2] Secretariat department (administrative bureau) of the LRC**



[Table 1-4] Alloted number of public officials in the secretariat (administrative bureau) of the LRC

(As of Dec. 31, 2017, persons)

| Classification | Total | Chair-person | Standing member | Member of Senior Civil Service | Grade 3 or 4 | Grade 4 | Grade 4 or 5 | Grade 5 and below | Record & dossier | Operation & management |
|---|---|---|---|---|---|---|---|---|---|---|
| Total | 374 | 14 | 8 | 1 | 1 | 11 | 3 | 306 | 1 | 29 |
| NLRC | 92 | 1 | 2 | 1 | - | 5 | 3 | 75 | 1 | 4 |
| RLRC | 282 | 13 | 6 | - | 1 | 6 | - | 231 | - | 25 |

* Including one chairperson of Jeju RLRC and 9 officials of Grade 5 and below

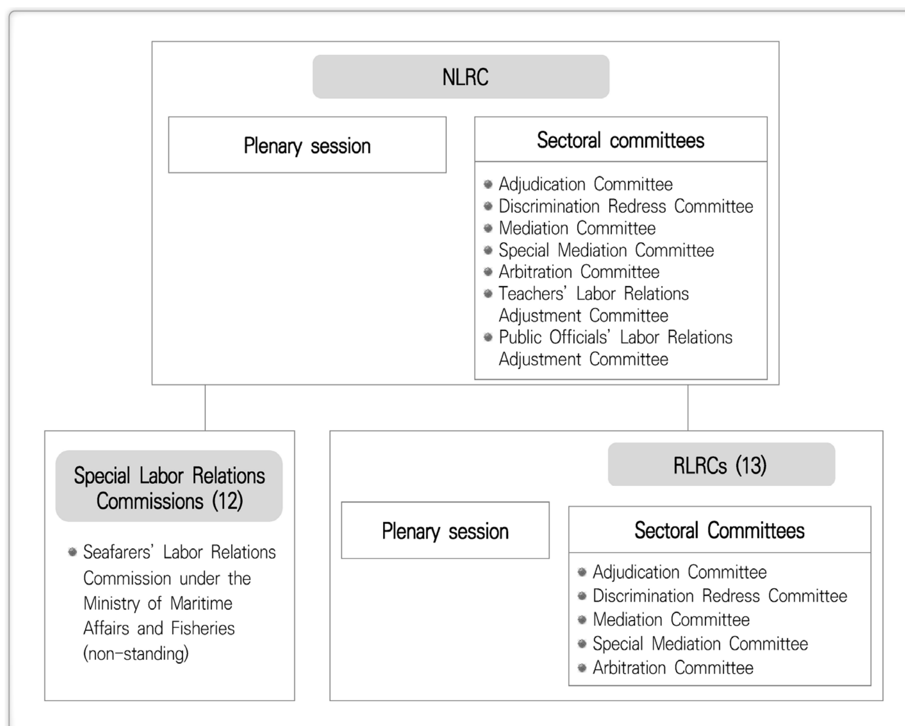
## Section 2: Committees and Functions

### 1. Committees

The LRC is involved in mediation, adjudication, recognition, determination, approval, and so on, according to TULRAA, the LSA, the FPWPA, the TAWPA, the POTUA, and the TTUA. To perform such judicial functions, the LRC has the plenary session and various sectoral committees (LRCA, Article 15, Para. 1).

Both the NLRC and the RLRCs have a plenary session and five sectoral committees such as the Adjudication Committee ("AC"), the Discrimination Redress Committee, the Mediation Committee, the Special Mediation Committee, and the Arbitration Committee. In addition to these committees, the NLRC has the Public Officials' Labor Relations Adjustment Committee, and the Teachers' Labor Relations Adjustment Committee.

[Figure 1-3] Plenary session and sectoral committees




## (1) Plenary Session

The plenary session is comprised of all members of the LRC. It deals with decisions on general matters such as the operation of the LRC and matters in relation to recommending relevant administrative agencies to improve working conditions (LRCA, Article 15, Para. 2). As well as, in the plenary session of the NLRC, rules on the LRC may be made, instructions on how to deal with the operation of the RLRCs and the SLRC may be given and guidance on how to interpret the laws may be provided (LRCA, Article 15, Para. 2).

A plenary session is convened by the chairperson of the relevant LRC (LRCA, Article 16, Para. 2)[4] and needs a majority of the total members of the relevant LRC to constitute a quorum. Any resolution of the plenary session requires the concurrent votes of at least a majority of the members present (LRCA, Article 17, Para. 1). The members who attend the plenary session should sign their names or put their seal on the resolution (LRCA, Article 17, Para. 4).

## (2) Sectoral Committees

The LRC, unless it is stipulated differently by other laws, has sectoral committees as detailed below to deal with matters under the jurisdiction of the LRC in their respective sectors.

The chairperson of a sectoral committee is elected among and by its constituent members, unless it is stipulated differently by other laws (LRCA, Article 16, Para. 1). A sectoral committee is convened and presided over by the chairperson of the concerned sectoral committee[5]. However, if deemed necessary, the chairperson of an LRC may convene a sectoral committee. If the chairperson of a sectoral committee deems necessary for smooth operation of the committee, he/she may designate a chief member and have him/her preside over the case (LRCA, Article 16-2).

### 1) Adjudication Committee

The Adjudication Committee is comprised of three persons nominated by the chairperson of the concerned LRC, from among the public interest members

4) When a majority of the constituent members of the plenary session request the convocation of a meeting, the chairperson should comply with the request (LRCA, Article 16, Para. 3).

5) If a majority of the constituent members of the sectoral committee request the convocation of a meeting, the chairperson of the sectoral committee should comply with the request (LRCA, Article 16, Para. 3).

in charge of adjudication, and deals with matters related to the decisions, resolutions, approval, recognition, etc. under TULRAA, the LSA, the WPCA, or any other law (LRCA, Article 15, Para. 3). Those that fall into this category are: adjudication on the remedy request for unfair labor practices, procedures on establishing a single bargaining channel and determinations on the request for redress as well as objections raised, separation of bargaining units, orders to redress violation of fair representation duty of the representative bargaining union, proposing opinions on how to interpret and implement the collective bargaining agreement, adjudication on a remedy request for unfair dismissal, leave of absence, suspension from work, job transfer, wage cut and other disciplinary actions (hereinafter referred as "unfair dismissal, etc.") by an employer, deciding to impose an enforcement levy when the concerned party does not comply with the remedy order in an unfair dismissal case, and so on (LRC Rules, Article 16).

In addition to these, the Adjudication Committee may recommend a conciliation between the concerned parties, present a proposal of conciliation, or draw up a conciliation statement, if cases involving violation of the duty of fair representation and remedy request concerning unfair labor practices and unfair dismissal are brought to the Committee (LRCA, Article 16-3).

#### 2) Discrimination Redress Committee

This sectoral committee was newly established due to the legislation of the FPWPA and the revision of the TAWPA on December 21, 2006. The Discrimination Redress Committee ("DRC") is comprised of three persons nominated by the chairperson of the relevant LRC, from among the public interest members in charge of discrimination redress, and deals with matters related to the discrimination redress under the FPWPA or the TAWPA (LRCA,

Article 15, Para. 4). In greater detail, when the parties concerned directly apply for, or when the Minister of Employment and Labor notifies, the Committee deals with cases on discrimination redress, mediation and arbitration for fixed-term, part-time and agency workers (LRC Rules, Article 17).

#### 3) Mediation Committee

A Mediation Committee is installed in the LRC for the mediation of labor disputes (TULRAA, Article 55, Para. 1). The Mediation Committee members are nominated by the chairperson of the LRC from among the members of the relevant LRC so that each member may represent employers, workers, and the public interest. The member representing workers should be recommended by the employers' association, and the member representing the employer should be recommended by labor unions. However, when either workers or employers fail to present a list of members three days prior to the opening of the Mediation Committee, the chairperson of the LRC may nominate the members (TULRAA, Article 55, Para. 3).

The public interest member is nominated from among the public interest members in charge of mediation (LRCA, Article 15, Para. 5), and the public interest member becomes the chairperson of the Mediation Committee (LRCA, Article 56). The Mediation Committee mediates labor disputes of a general business and deals with issues regarding how to interpret or implement mediation proposals (LRC Rules, Article 18, Para. 1).

#### 4) Special Mediation Committee

The Special Mediation Committee ("SMC") is established within the LRC for the mediation of labor disputes in public services (TULRAA, Article 72, Para. 1). The SMC members are comprised of three public interest members,

who are nominated by the chairperson of the LRC. Prior to this process, the labor union and the employer choose four to six eligible candidates by taking turns in selecting them among the public interest members in charge of mediation. However, if labor and management recommend those who are not the members of the LRC by agreement, the chairperson of the LRC should nominate the recommended ones as the members of the SMC (TULRAA, Article 72).

The chairperson of the SMC is elected from among the members of the SMC, who are public interest members of the LRC (TULRAA, Article 73). The SMC mediates labor disputes in public services, suggests opinions on how to interpret or implement mediation proposals, determines on which level the essential services should be maintained and operated, and deals with matters on how to interpret or implement the decision on the operation of the essential minimum services (LRC Rules, Article 18, Para. 2).

#### 5) Arbitration Committee

The LRC has an Arbitration Committee, which is composed of three members, for arbitration or review of labor disputes (TULRAA, Article 64, Para. 1, 2). Members of the Arbitration Committee are chosen by agreement between the parties concerned from among public interest members in charge of mediation, and appointed by the chairperson of the LRC. However, if the parties concerned fail to reach an agreement, the chairperson of the LRC nominates the Arbitration Committee members from among the public interest members in charge of mediation (TULRAA, Article 64, Para. 3).

The chairperson of the Arbitration Committee is elected from among its members (TULRAA Article 65). The Arbitration Committee arbitrates labor disputes and deals with issues on how to interpret arbitration decisions or their execution (LRC Rules, Article 18, Para. 3).

#### 6) Teachers' Labor Relations Adjustment Committee

Teacher's Labor Relations Adjustment Commission ("TLRAC") is established under the NLRC as is stipulated by the TTUA. The TLRAC consists of three public interest members in charge of mediation, who are nominated by the chairperson of the NLRC. However, if the parties concerned recommend by agreement, who are not the ones chosen from the NLRC public interest members, they should be nominated. The chairperson of the TLRAC is elected from among members of the TLRAC (TTUA, Article 11). The TLRAC mediates and arbitrates labor disputes of teachers, deals with matters on how to interpret mediation or arbitration proposals, and proposes opinions on how to implement them (LRCA, Article 15, Para. 8 / LRC Rules, Article 18, Para. 4).

#### 7) Public Officials' Labor Relations Adjustment Committee

Public Official's Labor Relations Adjustment Committee ("POLRAC") is established under the NLRC as is stipulated by the POTUA, and consists of a maximum of seven members who are dedicated to mediation and arbitration of the public officials' labor relations (POTUA, Article 14, Para. 1, 2). The POLRAC mediates and arbitrates labor disputes of public officials, deals with issues on how to interpret mediation or arbitration proposals and proposes opinions on how to implement them (LRCA, Article 15, Para. 9 / LRC Rules, Article 18, Para. 5).

[Table 1-5] Committees and their jurisdictions

| Classification | | Jurisdictions |
|---|---|---|
| LRC (all levels) | Plenary session | • Decides general matters such as operation of the LRC (all levels).<br>• Recommends the improvement of labor conditions to relevant administrative agencies (all levels).<br>• Makes LRC rules and give instructions on the performance of functions and duties of the RLRC and the SLRC (NLRC). |

| Classification | | Jurisdictions |
| --- | --- | --- |
| | Adjudication Committee | • Reviews damages claims due to the violation of the working conditions rules written in the labor contract.<br>• Adjudicates on unfair dismissal.<br>• Imposes an enforcement levy to those who do not comply with. remedy order.<br>• Approves granting business suspension allowances that fall short of the standard amount.<br>• Recognizes exceptions to compensations for business suspension and disability.<br>• Reappraises and arbitrates on the request of the Minister of Employment and Labor for accident compensation reappraisal and arbitration (applies only to RLRCs)<br>• Files an accusation against those who do not comply with the awarded remedy order.<br>• Resolves to designate the one authorized to convene an extraordinary general meeting or an extraordinary council of delegates of labor union (applies only to RLRCs)<br>• Resolves to order redress of labor union constitution (applies only to RLRCs)<br>• Resolves on resolutions and dispositions of a labor union that has violated labor relations laws and labor union constitution (applies only to RLRCs)<br>• Resolves on dissolution of a dormant labor union (applies only to RLRCs)<br>• Determines on the request for bargaining.<br>• Determines on the request to redress the notification of confirmation on a labor union which requested bargaining.<br>• Determines on the objection raised to the decision on the majority union.<br>• Determines on making a joint bargaining delegation.<br>• Determines on the objection raised to making a joint bargaining delegation.<br>• Determines on the separation of bargaining units.<br>• Adjudicates on the request to redress the violation of the duty of fair representation.<br>• Resolves to redress a CBA that violates the laws (applies only to RLRCs).<br>• Proposes opinions on how to interpret or implement a CBA.<br>• Resolves on the extent of regional binding force of a CBA (applies only to RLRCs) |

| Classification | | Jurisdictions |
|---|---|---|
| | | • Determines in advance to notify stopping of industrial actions to stop, close, or interrupt the normal maintenance and operation of facilities installed to protect safety of workplaces or to approve ex post facto (applies only to RLRCs).<br>• Adjudicates on unfair labor practices.<br>• Files for an urgent implementation order to the court (only NLRC).<br>• Arbitrates cases related to Labor Management Council as stipulated by the Article 25, Paragraph 1 of the Workers' Participation and Cooperation Promotion Act.<br>• Recommends a conciliation, present a conciliation proposal and draw up a conciliation statement in cases involving the violation of the duty on fair representation and remedy for unfair labor practices and unfair dismissal. |
| | Discrimination Redress Committee | • Adjudicates on discrimination against fixed-term workers<br>• Adjudicates on discrimination against part-time workers<br>• Adjudicates on discrimination against agency workers<br>• Adjudicates on discrimination against above-mentioned workers on the request by the Minister of Employment and Labor<br>• Mediates and arbitrate cases filed and notified for discrimination redress. |
| | Mediation Committee | • Mediates labor disputes of a general business.<br>• Interprets mediation statement and propose opinions on how to implement them. |
| | Special Mediation Committee | • Mediates labor disputes in public services.<br>• Interprets mediation statement and propose opinions on how to implement them for public services.<br>• Proposes opinions to the Minister of Employment and Labor in case of emergency adjustment.<br>• Determines on which level the essential services should be maintained and operated.<br>• Interprets the determination on which level the essential services should be maintained and operated and interpret how to implement them. |
| | Arbitration Committee | • Arbitrates labor disputes.<br>• Interprets the arbitration award and how to implement it. |
| NLRC | Teachers' Labor Relations Adjustment Committee | • Mediates and arbitrates teachers' labor disputes.<br>• Interprets mediation and arbitration statement and proposes opinions on how to implement them. |
| | Public Officials' Labor Relations Adjustment Committee | • Mediate and arbitrate labor disputes of public officials.<br>• Interpret mediation and arbitration proposals and propose opinions on how to implement them. |

## 2. Functions of the LRC

The LRC is an independent administrative agency with quasi-judicial functions such as adjudicating disputes between the labor and management and redressing discriminations with expertise. The decision of the LRC is made based on consensus. The LRC holds quasi-judicial authorities on rights disputes, mediative authorities on interests disputes, and rule-making authorities for the performance and operation of the commission. In more detail, the LRC performs various functions such as investigation, hearing, adjudication, conciliation (mediation & arbitration), determination, resolution, approval, adjustment, and filing a lawsuit.

### (1) Investigation

If deemed necessary for performing its functions, such as verification of facts under its jurisdiction, the LRC may require workers, labor unions, employers, employers' associations, and other relevant persons to attend and report to the LRC, make a statement, or submit necessary documents. Also, the LRC may have the LRC member or investigation officer who are designated by the chairperson of the concerned LRC or the chairperson of a sectoral committee investigate business conditions, documents, and other articles of the business or workplace. The LRC member or investigation officer who conducts an investigation should present a certificate verifying his/her authority to the related parties. An investigation officer, under the direction of the chairperson of the LRC, the chairperson of a sectoral committee, or the chief member, may conduct an investigation necessary for performing the functions of the LRC under its jurisdiction and may attend a sectoral committee to present his/her opinion. In the case of adjudication and discrimination redress,

the LRC chairperson designates an investigation officer without delay after the remedy (redress) request is filed, and informs the parties concerned of how to submit a written request and answer, how to exclude and avoid a certain LRC member, and information on how adjudication or discrimination redress cases proceed including single-member adjudication and conciliation (mediation & arbitration) procedures.

An investigation officer provides the other party with the remedy request and the written request that the applicant party has submitted, requires an written answer to the request and serves the applicant party a copy of the written answer without delay. When completing fact-finding, the investigation officer draws up an investigation report, which focuses on matters such as facts and arguments made by the concerned parties issue by issue in an objective and fair manner.

In the case of mediation, the Mediation Committee, upon its recognition of the necessity of the investigation, may have the relevant investigation officer check detailed facts and investigate parts that are necessary for the mediation of the case.

### (2) Hearing

In the case of adjudication and discrimination redress, the LRC holds a hearing within 60 days upon the receiving of the case, and after setting a date, sends to the concerned parties the hearing schedule notice which details the title of the case, the corresponding Adjudication Committee/the Discrimination Redress Committee ("AC/DRC") which has jurisdiction over, the names of the concerned parties, and the date and place of the hearing. The notice should be sent at least seven days beforehand. However, if any

concerned party that satisfies a certain conditions requests delay of the hearing or both parties request it by agreement, or if an hearing needs a significant amount of time as it involves many people, the duration of the hearing can be extended with the approval of the chairperson of the LRC or the AC/DRC.

When the parties concerned are notified of the hearing date, they should submit the list of the participants before the hearing is held. The investigation officer delivers the investigation report and relevant records to the members of the AC/DRC, seven days before the actual hearing date. Although in principle the hearing should be held while both parties are present, if either party concerned fails to be present without a justifiable reason, the hearing can be proceeded in absence of the concerned party.

The chairperson of the LRC, except the case of single-member adjudication, should allow one workers' member and one employers' member to attend the hearing. The chairperson of the AC/DRC presides over the hearing and workers' and employers' members participating in the hearing can ask questions to the parties concerned and the witnesses. An investigation officer, upon the instructions made by the chairperson of the AC/DRC, reports investigation results and make a statement with approval of the chairperson when it is necessary. The parties concerned need to answer the questions made by the members of the Committee in a faithful manner, and if they want to make other statements than those that are asked, they need to be approved by the Committee chairperson in advance.

When the chairperson of the AC/DRC wants to close the hearing, he/she should give the concerned parties an opportunity to make a final statement. The concerned party can request a witness to back up his/her argument in a hearing, and the chairperson of the LRC determines whether to accept the request and notifies the result to the party concerned. The chairperson

of the AC/DRC may designate a witness ex officio and allow him/her to attend the hearing when it is necessary. When a request for witness is accepted, the concerned party should attend the hearing with the witness and the chairperson of the AC/DRC should give examination or cross examination opportunities to the concerned party.

### (3) Adjudication

The term 'adjudication' indicates making a legal judgement on a remedy request based on the results of investigation and the hearing. The Committee decides in favor of the complaint or the respondent, as well as determine the validity of the case. The Adjudication Committee / the Discrimination Redress Committee can adjudicate within the parameters the remedy is requested for.

When the AC/DRC completes its hearing, it holds an adjudication meeting. Prior to the adjudication meeting, the chairperson of the AC/DRC should give the workers' member and employers' member who attended the hearing an opportunity to make a statement. When a new claim is made during the hearing that needs verification, if evidence needs to be supplemented or an additional fact-finding hearing is needed for the meeting to proceed focusing on only conciliation, the AC/DRC may re-open a hearing or an adjudication meeting.

When the committee acknowledges the whole or part of a remedy (redress) request is appropriate, it mandates a remedy order, and if it finds the request inappropriate, it mandates a dismissal order. Also, the remedy request may be rejected in following cases: the application period is over; the concerned party fails to meet the committee's request to provide supplementary information for the remedy request more than two times; the concerned party

fails to satisfy a certain conditions, for example, not having the eligibility requirements or no merit of remedy (redress) is expected in the case.

The investigation officer takes the minutes which record whether to open the meeting to the public, gists of opinions and discussions of workers' member and employers' member, resolutions, etc. The public interest members sign and seal the minutes of the resolutions and the chief member writes up an adjudication summary for the case filed. However, if a chief member is not designated or there are special reasons, another member can write up the summary.

The investigation officer reports to the chairperson of the LRC the minutes with which an adjudication summary is attached. The AC/DRC needs to produce a written adjudication that records the title of the case, the complainant, the adjudication date, the text of the judicial decision, application purpose, reasons (the complainant, details of the remedy request, the argument summaries made by both parties, acknowledged facts, decision on the arguments, and conclusion), the name of the committee and details on adjudication members. The LRC sends the original copy of the written adjudication to the complainant.

### (4) Determination

The LRC decides: imposing an enforcement levy in case the remedy order is not complied with, how to compose a joint bargaining delegation, how to deal with the objections raised regarding the bargaining request and the union membership in deciding the representative bargaining union, separation of bargaining units, and on which level the essential services should be maintained and operated. Those that are subject to a review of the NLRC are *dispositions* made by the RLRC, in other words, only adjudications and determi-

nations of the RLRC. *Recognizing* exceptions to compensations for business suspension or disability and *approval* of granting business suspension allowance that falls short of the standard amount bring about the legal effect which is virtually the same as *determination* and is treated equally. Therefore, they are subject to a review of the NLRC. However, evaluation and arbitration *determinations* on objections such as those that are raised in recognizing industrial accidents are not legally binding and are considered as recommendations only. Therefore, these determinations are not subject to the NLRC review.

### (5) Recognition

Recognition is a decision based on public authority that judges a certain question, which has been raised for a specific fact or legal relations, appropriate or inappropriate, or right or wrong. According to Article 81 of the LSA, if a worker suffers from an occupational injury or disease due to his/her own gross negligence and it is recognized by the concerned LRC, the employer may not be required to provide a compensation for suspension of work or a compensation for disability to the worker. Accordingly, the LRC decides ‘if there was any gross negligence on behalf of the worker’.

The recognition of the LRC brings about the legal effect that is virtually the same as the *determination* mentioned above and is treated equally. Therefore, the recognition is sent to the concerned party in the form of a *written determination* and an employer who protests against the LRC’s recognition of the exceptions regarding business suspension compensation or disability compensation may file a review to the NLRC.

### (6) Approval

The LRC gives an ex post facto approval for the notification to stop industrial actions which suspend, abrogate or obstruct the normal maintenance and operation of safety and protection facilities at workplace, or gives an approval for granting business suspension allowance that falls short of the standard amount. Like the latter, related to granting business suspension allowance according to the LSA Article 46, an *approval* that brings about the legal effect that is virtually the same as *determination* is treated equally with it and therefore, an employer who is disobedient to the non-approval order of the RLRC may file a review to the NLRC.

However, the former, according to Article 42 of TULRAA, is just approving with authoritative power the notification of an administrative agency to stop industrial actions, not setting up new legal relations, therefore, is not subject to a review request.

### (7) Resolution

The LRC makes resolutions for the cases requested by an administrative agency in relation to the collective bargaining agreement (“CBA”), union constitution and labor union operation. Administrative agencies must request the LRC’s resolution on the cases which necessitate an LRC’s resolution according to TULRAA, and must observe the resolution made by the LRC. The Adjudication Committee, to which a request for the resolution is brought, is composed of 3 public interest members in charge of adjudication who are nominated by the chairperson of the LRC, and should hold a hearing in principle. However, when a labor union or employers who have a stake wants to be present in the hearing, the LRC may give them an opportunity to make a statement as a person for reference.

The LRC's resolution on the cases that are requested for a LRC's resolution is not an administrative disposition according to Article 3, Paragraph 1 of the LRCA, but only an internal decision process that an administrative agency needs to go through for a disposition. Therefore, a review on the resolutions made by an RLRC cannot be requested. However, regarding the disposition taken by an administrative agency according to the resolution of the LRC, administrative appeals or administrative lawsuits can be filed against the agency.

The resolutions made by the LRC are such as: request for designation of the person who has the authority to convene a labor union convention, request for revision of the union constitution, request for correction of labor union resolutions and dispositions, request for dissolution of a labor union, request for the revision of CBA, request for deciding the extent of regional binding force of CBA, and request for in-advance determination regarding the notification to stop industrial actions suspending, abrogating or obstructing the normal maintenance and operation of the facilities installed to protect the safety at workplaces.

### (8) Conciliation

Until an adjudication, order or decision is handed down concerning a request to redress the violation of the duty of fair representation or request for remedy concerning unfair labor practices or unfair dismissal, the LRC may recommend conciliation ex officio on the request by the concerned parties or present a conciliation proposal after taking the opinions of both parties sufficiently. The Adjudication Committee or a single adjudication member[6] should make

6) When both parties concerned apply for single-member adjudication or agree to deal with the case in single-member adjudication process, the chairperson of the LRC may designate a public interest member among those in charge of adjudication or discrimination redress to deal with the case.

a conciliation proposal after sufficiently reviewing conciliation conditions of the concerned parties, and should explain the purpose and content to both of them sufficiently. When deemed necessary, the Adjudication Committee or single adjudication member can hold a separate meeting for conciliation.

When the concerned parties accept the conciliation proposal, a conciliation statement should be made which the concerned parties and all committee members involved in the conciliation process should write their signature or press their seal on it. The conciliation statement has an effect equivalent to judicial conciliation according to the *Civil Procedure Act* (“CPA”). Once the conciliation is established, the parties concerned cannot reverse it.

The chairperson of the LRC should serve the original copy of the conciliation statement to the concerned parties by certified mail within five days after the conciliation is established, and issue the conciliation statement delivery certificate upon the request of it by either concerned party.

### (9) Mediation and arbitration in discrimination redress

The Discrimination Redress Committee (“DRC”) can start mediation procedures on request by both parties concerned or either party, in which case, the concerned party should submit an application for mediation. Mediation application should be made within 14 days after discrimination redress is applied for. However, it can be made after 14 days with the permission of the LRC.

The DRC may recommend or begin mediation ex officio when it finds in the process of investigation that mediation is appropriate for the resolution of the case. The DRC makes a mediation proposal after reviewing the mediation application or the arguments of both sides sufficiently, and should explain

the purpose and content in full to both parties.

The DRC should make a mediation proposal within 60 days after the mediation process has begun, unless there are other reasons. When both parties accept the proposal, the DRC writes a mediation statement, which is signed and sealed by both parties concerned and all members involved in the mediation.

The DRC may start arbitration procedures when both parties in agreement apply for arbitration of the LRC in advance. In this case, both parties should submit an application for arbitration. The arbitration application should be made within 14 days after discrimination redress is applied for. However, it can be made after 14 days with the permission of the LRC.

The DRC should award an arbitration adjudication within 60 days after the arbitration is applied for, unless there are other reasons. However, if both parties concerned resolve their disputes by themselves before the adjudication is made, then the DRC may not need to award it. In this case, both parties need to submit evidence that can support their dispute resolution. The DRC, when it awards an arbitration adjudication, should make an arbitration statement, which should be signed and sealed by all members involved in the arbitration.

In the case of mediation, the chairperson of the LRC should notify the concerned parties the mediation statement in certified mail within five days after the mediation is established. In the case of arbitration, the LRC chairperson should serve the original copy of the arbitration adjudication without delay, also by certified mail. When the concerned party who has received a mediation statement or a written arbitration adjudication applies for the certificate of serving the result of the resolution, the chairperson of the LRC should issue it.

### (10) Adjustment

The LRC, by resolving labor disputes in a rapid and fair manner, has an adjustment function in order to prevent the losses of both parties in labor relations due to industrial actions and contribute to enhancing the stability of the national economy and its development. Adjustment is a procedure to seek a dispute resolution in which a third party adjusts the disputes of both parties concerned.

Labor dispute adjustment encompasses mediation, which is a kind of a service; arbitration, which imposes a duty for implementation of the decision made to the parties concerned; and emergency adjustment, which is carried out quite exceptionally when there is a risk that can harm the national economy or the ordinary lives of the Korean people.

#### 1) Mediation

Mediation is a function in which the LRC makes a mediation proposal in a fair manner and recommends it to both parties in the labor relations in case labor disputes occur between the two parties. Any party in labor relations who wants to apply for mediation should submit *a mediation application for labor disputes* to the LRC which has jurisdiction over them. The application should contain: (1) workplace outline, (2) collective bargaining developments, (3) disagreed issues between the two parties and the arguments of both sides on the issues, and (4) documents attached recording other references.

When labor disputes mediation is applied for, the LRC commences a mediation process immediately, after composing a mediation committee which consists of a workers' member, an employers' member, and a public interest

member (three in total) in the case of a general business, and a special mediation committee that comprises three public interest members in the case of public services. In principle, the mediation process should be completed within ten days for a general business and 15 days for public services after the mediation is applied for. However, when the concerned parties agree, it can be extended for another ten days for a general business and another 15 days for public services. When both parties accept the mediation proposal, the LRC should make a mediation statement (three copies), which is signed on and given their seal by all members of the Mediation Committee as well as both parties concerned. The mediation statement accepted by the parties concerned has the same effect as a CBA.

**2) Arbitration**

Arbitration is a function of the LRC in which both parties or either party in labor disputes file for arbitration to the LRC according to CBA and resolve the disputes complying with the disposition (arbitration adjudication) made by the LRC. When a labor dispute case is filed to the LRC for arbitration, industrial actions are prohibited for 15 days from the date the case is filed.

Not like mediation, arbitration is a disposition which is legally binding for the parties concerned. Since whether to accept the arbitration decision is not up to the parties concerned, they must follow the decision. The arbitration process begins when both parties or either party in labor disputes file for it according to a CBA. The arbitration adjudication is finalized in a written document and the date for effect commencement should be clarified in the document.

The written arbitration adjudication by the LRC has the same effect as a CBA. When either party finds the arbitration adjudication made by the

RLRC (or the SLRC) violating the laws or abusing rights, either party concerned can file for a review by the NLRC within ten days after the written adjudication is delivered to them. Therefore, the NLRC reviews only whether there has been any law violation or rights abuse, not whether the adjudication was appropriate or not.

### (11) Litigation

The LRCA Article 27 stipulates that an administrative litigation can be filed against measures taken by the NLRC. A lawsuit regarding any disposition taken by the NLRC should be instituted against the chairperson of the NLRC within 15 days from the date the notification of the disposition is served. The NLRC has the Judicial Support Division to deal with administrative lawsuits filed against the NLRC.

### (12) Others

The LRC also has functions of reviewing or adjudicating objections raised to the industrial accident recognition decision, which is only a recommendation, and accusing those who do not comply with awarded remedy order according to the LSA Article 112.

[Table 1-6] Functions of the LRC

| Classification | Acts | Articles | Content |
|---|---|---|---|
| Investigation | LRCA | Art. 22~23 | Investigation function of the LRC |
| hearing | LRC Rules | Art. 51~57 | hearing function of the LRC |
| Adjudication | TULRAA | Art. 81~86 | Adjudicate on whether there has been unfair labor practices (remedy order). |
| | LSA | Art. 28~33 | Adjudicate on whether there has been unfair dismissal (remedy order). |

| Classification | Acts | Articles | Content |
|---|---|---|---|
| | FPWPA | Art. 12 | Adjudicate on whether there has been a discriminatory treatment. |
| | TAWPA | Art. 21 | Adjudicate on whether there has been a discriminatory treatment. |
| Recognition | LSA | Art. 81 | Recognize exceptions on business suspension compensation and disability compensation. |
| Determination | TULRAA | Art. 29-2 | Determine on the composition of the joint bargaining delegation. |
| | | Art. 29-2 | Determine on the objections regarding bargaining request and membership in choosing the representative bargaining union. |
| | | Art. 29-3 | Determine on the separation of the bargaining units. |
| | | Art. 42-4 | Determine on which level the essential services should be maintained and operated. |
| | LSA | Art. 33 | Determine to impose an enforcement levy for not complying with the remedy order. |
| Resolution | TULRAA | Art. 18 | Resolve to designate the one authorized to convene a labor union convention. |
| | | Art. 21 | Resolve to order revision of the union constitution. |
| | | Art. 21 | Resolve to order correcting of the resolution or disposition of the union. |
| | | Art. 28 | Resolve union dissolution. |
| | | Art. 31 | Resolve to order revision of a CBA. |
| | | Art. 36 | Resolve the extent of regional binding force of a CBA. |
| Approval | TULRAA | Art. 42 | Approve ex post facto the notification to stop industrial actions that suspend, abrogate or obstruct the ordinary maintenance and operation of the safety and protection facilities at workplace. |
| | LSA | Art. 46 | Approve granting business suspension allowance that falls short of the standard amount. |

| Classification | Acts | Articles | Content |
|---|---|---|---|
| Conciliation | LRCA | Art. 16-3 | Conciliation function |
| Mediation & arbitration in discrimination redress | FPWPA | Art. 11 | Mediate and arbitrate cases in discrimination redress. |
| | TAWPA | Art. 21 | Mediate and arbitrate cases in discrimination redress. |
| Adjustment | TULRAA | Art. 5, Para. 2 | Mediate labor disputes. |
| | TULRAA | Art. 5, Para. 3 | Arbitrate labor disputes. |
| Litigation | LRCA | Art. 27 | Deal with a lawsuit against measures taken by the NLRC. |
| Others | LSA | Art. 89 | Recommendation (review or arbitrate objections raised to industrial accident recognition.) |
| | | Art. 112 | Accusation (accuse those who do not comply with the awarded remedy order.) |

## Section 3: Activities of the LRC

### 1. Case handling

#### (1) Overview

As a labor dispute resolution agency, the LRC deals with cases by composing sectoral committees which are specialized in the relevant areas. Cases dealt with in each sectoral committee are classified into mostly three types: *mediation* of labor disputes between the labor and management, *adjudication* on unfair labor practices and unfair dismissal committed by employers as well as discrimination against non-regular workers, and *resolution* of disputes that may occur in the operation of the system for *union pluralism*.

The LRC deals with 13,000 labor-related dispute cases on the field regarding mediation, adjudication, and union pluralism system. In 2017, as shown in [Table 1-7], 14,483 cases were filed including those that had been passed from the previous year and 12,797 cases out of them were handled. In more detail, adjudication cases (including discrimination redress) comprised about 87%, and mediation and plural union system cases, about 13%. In particular, unfair disciplinary actions including unfair dismissal took up the largest share of the cases over three quarters (76%).

[Table 1-7] Cases handled by the LRC

(cases)

| Classification | | Total | Adjustment | | | | Adjudication | | | | Discrimination redress | Union pluralism |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Sub-total | Mediation | Arbitration | Essential services | Sub-total | Unfair dismissal, etc. | Unfair labor practices | Others | | |
| 2015 | Filed | 15,898 | 956 | 877 | 4 | 75 | 14,026 | 12,572 | 1,276 | 178 | 175 | 741 |
| | Handled | 14,075 | 933 | 858 | 3 | 72 | 12,320 | 11,131 | 1,024 | 165 | 138 | 684 |
| 2016 | Filed | 14,309 | 846 | 822 | 9 | 15 | 12,828 | 11,224 | 1,305 | 299 | 137 | 498 |
| | Handled | 12,619 | 816 | 796 | 9 | 11 | 11,247 | 9,932 | 1,129 | 186 | 115 | 441 |
| 2017 | Filed | 14,483 | 880 | 863 | 3 | 14 | 12,558 | 11,134 | 1,090 | 334 | 182 | 863 |
| | Handled | 12,797 | 853 | 839 | 3 | 11 | 10,995 | 9,783 | 928 | 284 | 155 | 794 |

* Cases filed include those that had been passed from the previous year. The number of Arbitration includes arbitration adjudication reviews. Others in Adjudication include other adjudication cases such as CBA interpretation and industrial accident compensation examination.

The LRC is an administrative commission with expertise and expedition. When either party in labor disputes apply for mediation, the mediation process should be basically completed within ten days for a general business and 15 days for public services. In the case of adjudication (discrimination redress), a hearing should be held within 60 days after the case is filed.

In adjudication cases (including discrimination redress cases) such as unfair dismissal and unfair labor practices, which account for the largest share, the days taken for dealing with a case on average (from receiving to completing a case) 48.4 days in 2017 for the RLRCs, shortened by 1.6 days compared with 50.0 days in 2016. Out of them, the average days taken for the cases that proceeded to adjudication award was 83.9 days and those for the cases that were withdrawn or conciliated was 32.6 days on average.

In the case of the NLRC, the average days taken for dealing with a case was 88.8 days in 2017, reduced by 9.1 days compared with 97.9 days in 2016. Out of them, those that proceeded to adjudication award were 98.8 days on average and those that were dropped or conciliated were 58.6 days on average. The reason why the NLRC takes more days than other LRCs is that in the case of the NLRC, more cases proceed to adjudication award, rather than being dropped or conciliated.

Meanwhile, for a review case filed to the NLRC, the overall days taken from application to an RLRC to completion is about 184 days as of 2017. Compared with the administrative litigation filed against the NLRC for its review, which takes about 550 days until the judicial court awards a final ruling, the LRC's dealing with a case is much faster.

**[Table 1-8] Average days taken for adjudication / discrimination redress cases**

(days)

| Classification | RLRC | | | NLRC | | |
|---|---|---|---|---|---|---|
| | On average | Adjudication | Dropped or Conciliated | On average | Adjudication | Dropped or Conciliated |
| 2015 | 45.0 | 79.7 | 30.1 | 92.7 | 105.8 | 59.1 |
| 2016 | 50.0 | 82.8 | 33.2 | 97.9 | 113.5 | 63.6 |
| 2017 | 48.4 | 83.9 | 32.6 | 88.8 | 98.8 | 58.6 |

### (2) Adjustment cases

Adjustment, which include both mediation and arbitration, is one of the most intrinsic functions of the LRC that have been conducted since the introduction of the Labor Relations Commission system in 1953.

The number of the cases that haven been handled including both adjustment and those on the essential minimum services, which were introduced in 2008, shows that 880 were filed in 2017 and 853 cases were handled as shown in [Table 1-7].

In the case of mediation that takes the largest part especially, in the beginning when the system was just introduced, cases handled were not many as 11 cases were handled in 1954 and only 7 cases were handled in 1959, some five years later. During the 1970s, the mediation function of the LRC was virtually stopped.[7] Labor disputes increased significantly in 1980 and 1981 and mediation cases by the LRC also soared rapidly. However, from 1982, the number of the cases dropped remarkably. In 1989, it erupted again with people's desire for democratization but since the beginning of the 2000s, the number of mediation cases has been stabilized mostly below 1,000 in most years.

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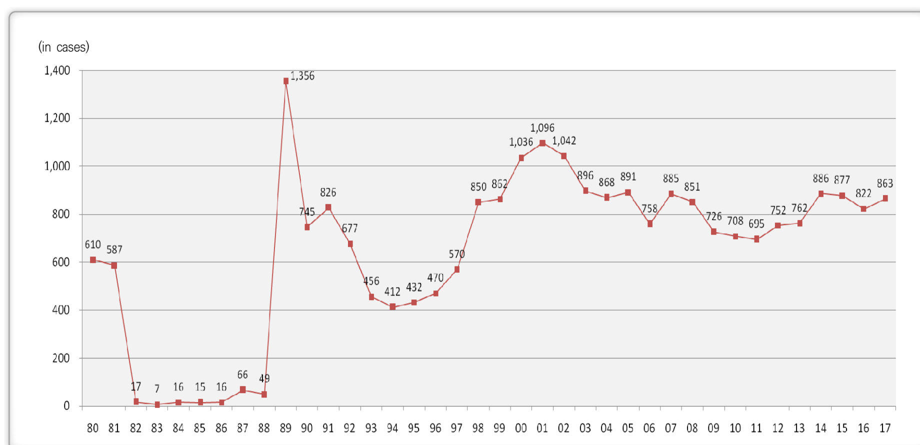
7) As the *Act on Special Measures for the Protection and Defense of the Nation* was legislated in December 1971, an ordinary administrative agency, not the LRC, assumed the mediation function until early 1980s, when the 5th Republic was established (『The 50-year History of the LRC』, the National Labor Relations Commission, 2003).

[Figure 1-4] Mediation cases since 1980




* Until 1997, the numbers indicate cases handled and since 1998, the numbers indicate cases filed.

In 2017, as shown in [Table 1-8], 863 mediation cases were filed and 839 cases were resolved. Out of 839, 67 cases were withdrawn and 443 cases were successfully mediated, showing that the mediation success rate was 58.6%.

[Table 1-9] Mediation cases filed and handled

(cases, %)

| Classification | Cases filed | Cases handled | Mediation | | Administrative guidance | Withdrawn | Mediation success rate |
|---|---|---|---|---|---|---|---|
| | | | Successful | Unsuccessful | | | |
| 2015 | 877<br>(119) | 858<br>(116) | 382<br>(41) | 328<br>(53) | 42<br>(5) | 106<br>(17) | 53.8<br>(43.6) |
| 2016 | 822<br>(110) | 796<br>(110) | 410<br>(35) | 293<br>(67) | 14<br>(3) | 79<br>(5) | 58.3<br>(34.3) |
| 2017 | 863<br>(98) | 839<br>(97) | 443<br>(40) | 313<br>(47) | 16<br>(3) | 67<br>(7) | 58.6<br>(46.0) |

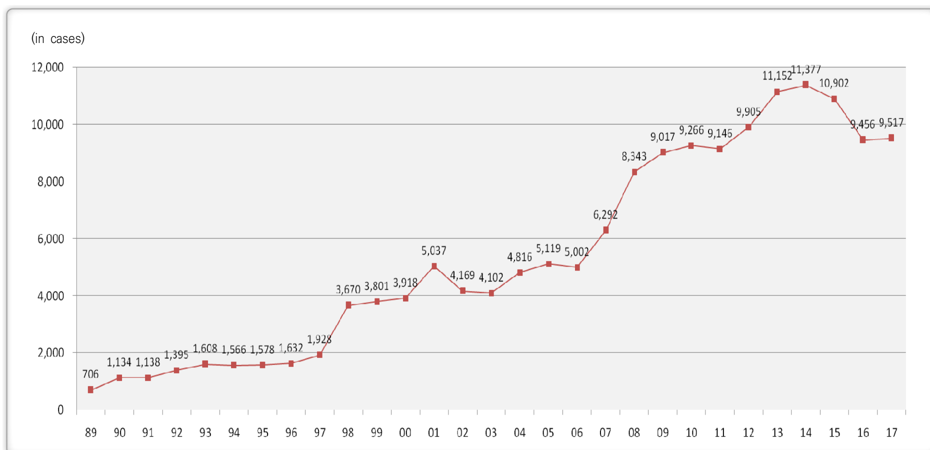
* Cases filed include those that have been passed down from the previous year. The cases handled by the NLRC are given in parentheses.
* Mediation success rate = Number of successful mediation cases/(successful mediation cases+unsuccessful mediation cases)×100

## (3) Adjudication Cases

### 1) Unfair dismissal, etc. cases

The remedy process of the LRC for *unfair dismissal, etc. cases* which encompasses unfair dismissal and unfair discipline, was first introduced in 1989. Unlike labor dispute mediation cases, remedy for these cases can be subject to a review of the NLRC, only after they are adjudicated by an RLRC first. As of cases filed to the RLRCs, 706 were filed in 1989, when remedy for unfair dismissal, etc. was first introduced and since then, remedy requests have continued to increase. Now, these cases are the ones that the LRC deals with the most. As of 2014, the number of the cases peaked at 11,377, and since then, the cases have been on a slight decline.

[Figure 1-5] Remedy requests for unfair dismissal, etc. since 1989 (based on the cases filed to the RLRCs)




As shown in [Table 1-10], a total of 11,134 cases were filed in 2017 and 9, 783 cases were handled. Breaking them down, the NLRC received

1,617 cases and handled 1,355 and the RLRCs received 9,517 and handled 8,428.

At the RLRCs, three out of ten proceeded to adjudication award (28.2%), and seven were either withdrawn or conciliated (71.8%). At the NLRC, about seven out of ten cases proceeded to adjudication decision (74.3%), about three cases were either withdrawn or conciliated (25.7%).

**[Table 1-10] Cases filed and handled for remedy requests for unfair dismissal, etc.**

(cases)

| Classification | Filed | Handled | Adjudication | Withdrawal | Conciliation |
|---|---|---|---|---|---|
| 2015 | 12,572 (1,670) | 11,131 (1,305) | 3,563 (925) | 4,526 (300) | 3,042 (80) |
| 2016 | 11,224 (1,768) | 9,932 (1,429) | 3,605 (978) | 3,746 (323) | 2,581 (128) |
| 2017 | 11,134 (1,617) | 9,783 (1,355) | 3,383 (1,007) | 3,428 (230) | 2,972 (118) |

* Cases filed include those that have been passed down from the previous year. The cases handled by the NLRC are given in parentheses.

Also, eight out of ten cases and more, which were proceeded by the RLRCs, were completed in the RLRC phase as they were adjudicated or either withdrawn or conciliated (in 2017, the case completion in the first instance was 84.8%). The cases that were filed for a review of the NLRC as either party concerned did not accept the adjudication awarded by the RLRCs were about five out of ten (the rate of review request was 53.8% in 2017).

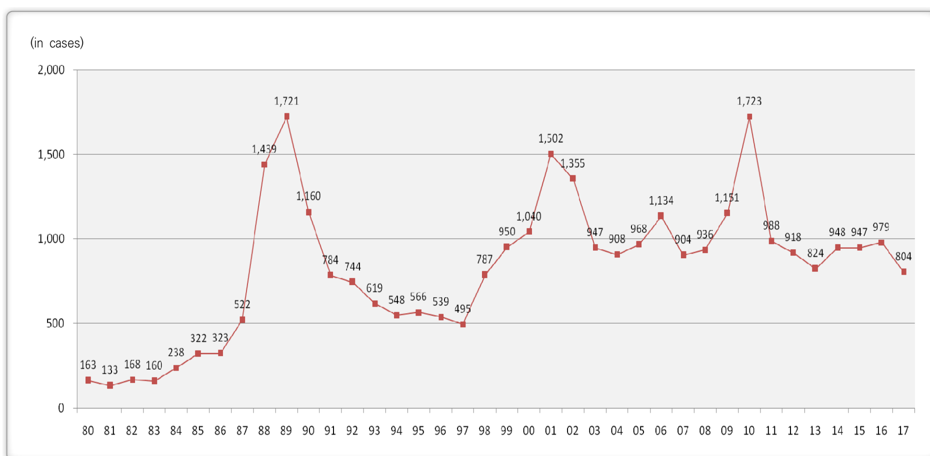
Regarding the review cases by the NLRC, about seven out of ten were completed as the cases were adjudicated, or withdrawn or conciliated (the case completion rate in the NLRC phase was 71.9% in 2017). For those that proceeded to adjudication by the NLRC, eight out of ten cases maintained

the first adjudication by the RLRCs (keeping the first adjudication in the second instance was 86.3% in 2017).

### 2) Unfair labor practice cases

Remedy procedures for unfair labor practices committed by the employer were first introduced in 1963. When broken down based on the cases filed to the RLRCs, 141 cases were filed in 1964, when the remedy for unfair dismissal, etc. was still in early stage. The numbers were quite stagnant for some time as 112 cases were filed in 1969, five years later. However, from early 1980s, the case numbers started increasing and after mid-1980s, the numbers skyrocketed, peaking at 1,712 cases in 1989. Since the 2000s, the case numbers had been kept at around 1,000 with slight increases and decreases. In 2010, the cases soared remarkably and have been on the decline since then.

[Figure 1-6] Remedy requests for unfair labor practices since 1980 (based on the cases filed to the RLRCs)



In 2017, 1,090 cases related to unfair labor practices were filed and 928 out of them were handled. Out of these numbers, the NLRC received 286 cases and handled 238, and the RLRC received 804 cases and handled 690.

For the cases that were filed to the RLRCs, those that proceeded to adjudication took up 52.2% and those that were withdrawn or conciliated accounted for 47.8%. For those that were filed to the NLRC, those that proceeded to adjudication recorded 77.7% and those that were withdrawn or conciliated were 22.3%.

[Table 1-11] Cases filed and handled for remedy requests for unfair labor practices

(cases)

| Classification | Filed | Handled | | | |
|---|---|---|---|---|---|
| | | | Adjudication | Withdrawal | Conciliation |
| 2015 | 1,276<br>(329) | 1,024<br>(257) | 645<br>(198) | 288<br>(47) | 91<br>(12) |
| 2016 | 1,305<br>(326) | 1,129<br>(264) | 675<br>(182) | 358<br>(75) | 96<br>(7) |
| 2017 | 1,090<br>(286) | 928<br>(238) | 545<br>(185) | 303<br>(39) | 80<br>(14) |

* Cases filed include those that have been passed down from the previous year. The cases handled by the NLRC are given in parentheses.

### 3) Discrimination redress cases

The LRC first established remedy procedures for discrimination against non-regular workers (fixed-term, part-time, and agency workers) in 2007. In 2007, the first year of the operation of the service, 786 cases were filed and 145 out of them were handled, and in 2008, 1,966 were filed (including 641 cases that had been passed from the previous year) and 1,948 were handled, which indicates strong attention to the system. However, in 2009, the numbers dropped significantly as 100 cases were filed and 95 were handled.

Since then, discrimination redress cases have been regularly between 100 and 200. In 2017, 182 cases were filed and 155 were handled.

Regarding the cases that were filed to the RLRC, those that proceeded to adjudication award were 48.3% and those that were mediated, arbitrated, or withdrawn took up 51.7%. For the NLRC, the cases that proceeded to adjudication award were 91.9% and those that were mediated, arbitrated, or withdrawn took up 8.1%.

[Table 1-12] Cases filed and handled for discrimination redress requests

(cases)

| Classification | Filed | Handled | | | | |
|---|---|---|---|---|---|---|
| | | | Adjudication | Mediation | Arbitration | Withdrawal |
| 2015 | 175<br>(49) | 138<br>(33) | 66<br>(18) | 18<br>(8) | 0<br>(0) | 54<br>(7) |
| 2016 | 137<br>(39) | 115<br>(32) | 62<br>(27) | 12<br>(1) | 0<br>(0) | 41<br>(4) |
| 2017 | 182<br>(48) | 155<br>(37) | 91<br>(34) | 18<br>(2) | 0<br>(0) | 46<br>(1) |

* Cases filed include those that have been passed down from the previous year. The cases handled by the NLRC are given in parentheses.

### (4) Union pluralism related cases

The procedures to resolve disputes related to union pluralism was introduced in 2011. In 2017, 863 cases were filed, increasing remarkably compared with 498 in the previous year, and out of them, 794 cases were handled. When broken into in more detailed manner, cases on the notification of bargaining request took up the largest proportion in 2017, while bargaining representative determination cases hiked significantly and bargaining unit separation cases were on the decline.

[Table 1-13] Cases filed and handled concerning union pluralism

(cases)

| Classification | Filed | Handled | Bargaining request notification | | Bargaining representation determination | | Bargaining unit separation | | Fair representation duty | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Filed | Handled | Filed | Handled | Filed | Handled | Filed | Handled |
| 2015 | 741<br>(149) | 684<br>(131) | 270<br>(18) | 265<br>(15) | 73<br>(17) | 66<br>(17) | 194<br>(33) | 184<br>(33) | 204<br>(81) | 169<br>(66) |
| 2016 | 498<br>(120) | 441<br>(97) | 144<br>(24) | 126<br>(22) | 57<br>(9) | 54<br>(8) | 135<br>(30) | 127<br>(25) | 162<br>(57) | 134<br>(42) |
| 2017 | 863<br>(104) | 794<br>(71) | 363<br>(19) | 352<br>(12) | 253<br>(22) | 244<br>(17) | 99<br>(14) | 89<br>(11) | 148<br>(49) | 109<br>(31) |

* Cases filed include those that have been passed down from the previous year. The cases handled by the NLRC are given in parentheses.

As of 2017, the average duration needed for the award of determination after a case has been filed (except fair representation duty cases, which are subject to adjudication) is 28 days in the first instance, and that of the second instance is 42 days. The total duration needed for a case after filed in the first instance until completed in the second instance is 83 days. When compared with the court rulings that take an average of 400 days after a case is filed, the LRC's proceedings are much faster than the court.

### (5) Litigation cases

The review adjudication, arbitration adjudication, and bargaining representative determination awarded by the NLRC may be subject to administrative litigation in the court, which can be filed against the chairperson of the NLRC.

As shown in [Table 1-14], in 2017, out of 1,417 cases that are subject to litigation, those that were actually litigated were 449, showing 31.7%

in the litigation rate. Out of the cases that were filed for litigation, those that were filed by workers were 201 and those by employers were 248.

The number of the litigations closed in 2017 was 466 and the cases won by the NLRC were 297, showing a success rate of 74.3%. The sustainment rate of review award, which includes litigations won and withdrawn, had been around 85% on average, but dropped in 2017 to 77.9%.

**[Table 1-14] Administrative litigations**

(cases, %)

| Classification | Cases subject to Litigation | Litigation raised | | | Litigation rate | Litigation closed | | | | Success rate | Sustain-ment rate of review award |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | Filed by workers | Filed by employers | | Total | Won | Lost | Withdrawn | | |
| 2015 | 1,389 | 415 | 186 | 229 | 29.9 | 423 | 285 | 66 | 72 | 81.2 | 84.4 |
| 2016 | 1,423 | 457 | 183 | 274 | 32.1 | 387 | 241 | 62 | 84 | 79.5 | 84.0 |
| 2017 | 1,417 | 449 | 201 | 248 | 31.7 | 466 | 297 | 103 | 66 | 74.3 | 77.9 |

* Success rate: litigations won/(litigations closed - litigations withdrawn) (litigations partly won included)
* Sustainment rate of review award: (litigations won + litigations withdrawn) / litigations closed (litigations partly won are included in this rate. This rate is calculated based not on all of the review adjudications that the NLRC made, but on the litigations that have been filed to the judicial court.)

### (6) Evaluation

Since 1953, when the Labor Relations System was introduced, the functions and roles of the LRC have expanded consistently. In the beginning, the re-sponsibilities of the LRC have mostly been focused on dispute mediation between the labor and management. However, as time went by, adjudication functions such as remedy for unfair labor practices, remedy for unfair dismissal, and discrimination redress have been added as well as matters on essential service maintenance and union pluralism.

Along with the functional expansion, dispute cases filed to the LRC have also increased rapidly. In 2017, 14,483 dispute cases were filed and 12,797 were handled, showing a significant achievement as a labor dispute resolution agency.

In particular, despite its relatively short history, the mediation success rate is reaching 60% by accumulating expertise and providing professional and proactive services such as holding a preliminary mediation meeting.

For adjudication cases and union pluralism related cases, about 16% of the cases received by the RLRC (except those that were passed over from the previous year), which were 1,636 out of the 10,307 cases in 2017, proceeded to the NLRC. Also, those that proceeded to the judicial court after the adjudication by the NLRC accounted for 27%, which were 449 out of 1,636. Therefore, less than 5% of the cases received by the RLRC proceeded to the judicial court for litigation (in 2017, 449 out of 10,307). It means that more than 95% of the labor disputes filed to the LRC are resolved at the LRC phase.

Moreover, more than 95% of cases are completed within 180 days after they are filed. Compared with litigations that take 550 days until they are closed, the dispute resolution by the LRC is quite rapid. Also, only one out of four cases filed for a lawsuit against NLRC's adjudication has been revoked by the court. As a result, 99% of the cases filed to the RLRCs were either resolved at the LRC phase or closed at the court as adjudicated by the LRC.

This shows that the LRC is contributing to bringing harmony and stability to the labor-management relations, with its expertise and fairness.

## 2. Other activities

### (1) International cooperation activities

The NLRC carries out various activities to share systems and experiences on labor dispute resolution with other countries and to strengthen international cooperation with them. Members and staff of the NLRC attend international conferences or academic meetings, or visit labor dispute mediation organizations in other countries, taking an in-person look at how their systems are operated and exchanging opinions with their counterparts.

At the same time, labor related agencies in other countries visit our LRCs to share opinions on labor dispute resolution system. In 2016, as an attempt to expand economic cooperation and human resource exchange, delegations from China, the Philippines, Mongolia, and Vietnam visited the NLRC. In 2017, the Labor Ministries in Cambodia and Laos visited the NLRC, exchanging opinions on issues related to the vulnerable status of migrant workers from both countries and labor dispute mediation systems. Likewise, the NLRC is carrying out exchange and cooperation activities with labor related agencies in these and other Asian countries.

[Table 1-15] Visits to the NLRC by foreign delegations

| Classification | Countries | Visitors | Activities |
|---|---|---|---|
| May 2014 | Vietnam | Ho Chi Minh Municipal Delegation | Presented Korea's mediation procedures for labor disputes and adjudication systems on dismissal and discrimination, and exchange opinions. |
| Mar. 2015 | Japan | Japan ILO Council | Introduced the roles of the LRC, and had a Q & A session. |
| Mar. 2016 | Japan | Lawyers Study Group in Sapporo | Introduced the LRC system and attend a hearing meeting. |

| Classification | Countries | Visitors | Activities |
|---|---|---|---|
| Apr. 2016 | the Philippines | Tripartite Delegation | Introduce the roles of the LRC and case resolutions such as unfair dismissal. |
| June 2016 | 11 Asian countries | KOICA Global Fellowship Program | Exchanged case studies and opinions on mediation and arbitration for labor disputes. |
| Oct. 2016 | China | Labor Relations Academy Delegation | Introduce Korea's mediation systems for individual and collective labor disputes and exchange opinions. |
| Nov. 2017 | Cambodia, Laos | MLVT of Cambodia, MLSW of Laos | Introduced Korea's labor dispute mediation systems and remedy procedures for unfair dismissal and exchange opinions. |

**[Table 1-16] Visits to foreign labor-related agencies by the LRC**

| Classification | Countries / Agencies | Activities |
|---|---|---|
| Nov. 2013 | UK Employment Tribunal | Exchange opinions on issues that need to be considered in calculating compensation amount under the monetary compensation system, such as the compensation extent other than wage-equivalent remuneration and qualifications needed for the concerned party. |
| Nov. 2014 | Germany Labor Court, Federal Ministry of Labour and Social Affairs | Discuss mediation techniques for a rapid and efficient resolution and measures to secure reliability for fair adjudication through a system. |
| June 2015 | Japan LRC US NLRB | Discuss remedy measures for different types of unfair labor practices and investigation techniques for mass observation. |
| Oct. 2016 | UK Employment Tribunal, ACAS | Discuss adjudication criteria for unfair dismissal related to rejecting contract period for fixed-term workers. |
| Nov. 2017 | Australia Fair Work Commission, Fair Work Ombudsman | • Learn how to counsel and support those who have been discriminated in the company and how to remedy in-company harassing; • Be briefed on case resolution statistics; and, • Discuss measures to secure fairness and reliability for the LRC. |

### (2) Publication of manuals and various materials

The LRC uses manuals to maintain consistency in the mediation and adjudication decisions handled by the LRC members and investigation officers, also by the NLRC and the RLRC. Manuals are published and referred to for different service areas of the LRC such as mediation & essential services, union pluralism, adjudication, discrimination redress, and litigation against the NLRC. Whenever the systems changed or have been modified in operation, the manuals have been updated.

In addition, the LRC publishes a variety of materials to support its role, based on its expertise accumulated while having conducted mediation and adjudication functions so far. Such materials including *Labor Dispute Mediation Cases* and *Analysis on Labor Relations Precedents* are used by the LRC members and investigation officers and also, are distributed so that relevant agencies as well as various groups and normal citizens who are interested in them can use them.

Since August 2014, newsletters dedicated to the LRC news, major adjudication and mediation cases, and precedents have been sent to the LRC members and investigation officers as well as subscribers two to three times a month. The newsletters are posted on the website of the NLRC also. In June 2017, the NLRC started social media newsletter services and since then, it has provided information related to the LRC in a more timely and convenient way.

[Table 1-17] LRC manuals and publications

| Classification | | Book titles | Date of latest publication |
|---|---|---|---|
| Manuals | Mediation | Field Manual for Mediation | Nov. 2013 |
| | | Manual for Mediation and Essential Services Work | Jan. 2018 |
| | | Mediation Technique for Labor Disputes | Mar. 2018 |
| | Union pluralism | Manual for Union Pluralism Related Work | Apr. 2013 |
| | Adjudication | Manual for Adjudication Cases | Mar. 2016 |
| | | Guides to Investigations of Adjudication Cases in Different Types | Aug. 2017 |
| | | Checkpoints of the Collective Labor Dispute Adjudications by Issue | Mar. 2018 |
| | | An Easy Way of Writing an Adjudication | May 2018 |
| | Discrimination | Manual for discrimination redress Work | Mar. 2017 |
| | Legal affairs | Manual for How to Conduct a Litigation Against the NLRC | Nov. 2014 |
| | Others | Manual for Collecting a Levy to Enforce Remedy Compliance | Nov. 2017 |
| Materials | Mediation | Labor Dispute Mediation Cases | Jan. 2015 |
| | | Mediation Model Cases | Jan. 2017 |
| | Union pluralism | Understanding Union Pluralism Based on Precedents and Adjudication Cases | Sept. 2017 |
| | Adjudication | Analysis on the Adjudications by the Japan Labor Relations Commission | Apr. 2016 |
| | Discrimination redress | Analysis on Adjudications, Rulings and Precedents on Discrimination Redress | Feb. 2016 |
| | Legal affairs | Quarterly Major Labor Relations Precedents | Mar. 2017 |
| | | Analysis on Precedents by Theme: Individual Labor Relations | Oct. 2017 |

### (3) Studies

As a quasi-judicial body specialized in the mediation and adjudication of labor disputes, the LRC conducts several yearly studies through academic and research organizations. The purpose of these studies is to improve the specialty and accumulate the case resolution capacity of the LRC members as well as investigation officers.

As shown in the titles of the studies such as *A Study on the Issues of Fair Representation Duty Violation Cases* (2013) and *A Study on Employment Discrimination Redress Systems* (2016), the study themes are largely about judicial issues that arise anew due to a revision of the laws or about foreign systems.

In addition, the LRC Policy Study Forum composed of labor relations experts was launched in 2017 to discuss how to improve various systems of the LRC.

**[Table 1-18] Major study activities by the LRC**

| Classification | Study titles | Entrusted organizations |
|---|---|---|
| 2013 | A Study on Major Issues Including Limitation Period and Subjects of Remedy Requests to the LRC | Joongang University Law School |
| | A Comparative Analysis on the Eligibility of the Defendant for a Review Adjudication | Korea University Research and Business Foundation |
| | A Study on Issues Regarding the Establishment of the Labor Court | Pusan National University Institute for Research & Industry Cooperation |
| | A Study on the Issues Regarding the Violation of the Duty of the Fair Representation | International Labor Law Institute |
| | A Comparative Study on Foreign Cases and Similar Systems Regarding the Sustainment Rate of Review Award | Society of Labor Law Theory and Profession |

| Classification | Study titles | Entrusted organizations |
| --- | --- | --- |
| 2014 | 60 Years History of the Labor Relations Commission: Evaluation and Improvement Measures for the Future | Korea Labor & Society Institute |
| | A Study on the Improvement of Discrimination Redress System with the Introduction of the Punitive Monetary Damages | Kyonggi University Industry and Academic Cooperation Foundation |
| 2015 | A Study on the Improvement of the Calculation of the Monetary Damages and Payment Order for the Monetary Compensation | University of Seoul Industry and Academic Cooperation Foundation |
| | Analysis on Issues Regarding the Dismissal of Migrant Workers Under the Employment Permit System | Chosun University Industry and Academic Cooperation Foundation |
| | Employment Succession in Case of Business Management Method Change in Apartments (Direct Management↔ Outsourced Management) | Korea Society of Labor Law |
| | A Comparative Case Study on the Remedies for Unfair Labor Practices in the US and Japan | International Labor Law Institute |
| | Analysis on the Adjudications of the Japan Labor Relations Commission | Haemil Labor Law Research Institute |
| 2016 | A Study on Ex Officio Investigations of Unfair Labor Practices and a Burden of Proof in Other Countries | International Labor Law Institute |
| | A Study on Jurisprudence of Fixed-term Labor Contract that Have Been Repeated or Renewed | University of Seoul Industry and Academic Cooperation Foundation |
| | A Study on Employment Discrimination Redress | International Labor Law Institute |
| 2017 | The Labor Relations Commission Policy Study Forum | International Labor Law Institute |
| | A Study on Achievements and Challenges of the Discrimination Redress System Under the Employment-Related Laws | Korea Business Structure Research Institute |

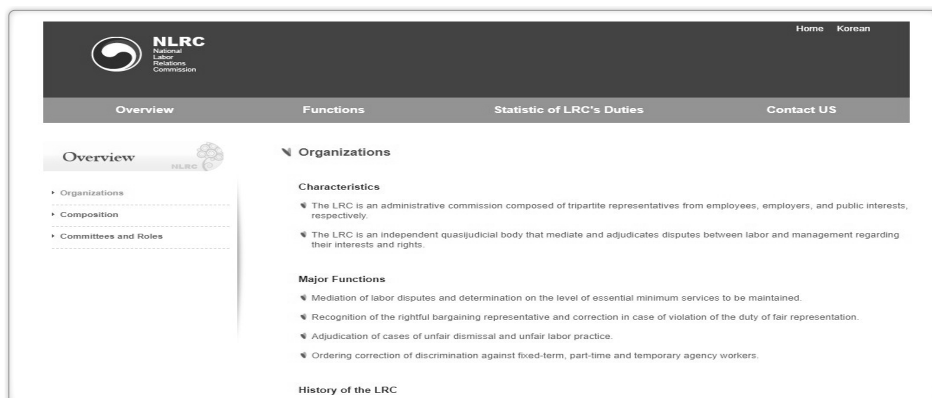
## Section 4: Website and Online DB system

### 1. Website

The LRC provides information regarding the LRC and online remedy request services through its website (www.nlrc.go.kr) to the general public. Anyone who has access to its website can find the LRC information such as major responsibilities and roles and structure, as well as LRC news, schedules for meetings and committees, policy materials, relevant laws and rules, statistics, and so on. Major adjudication or mediation cases can also be searched by theme on the website.

The LRC website also provides online services through which people can submit requests and documents for labor dispute mediation, remedy for unfair dismissal, etc., as well as access to Q&A (connecting to a comprehensive government portal for civil complaints). Also, the applicants can check how their case is proceeding by referring to *My Case* menu on the website. The website is to make up for the geographical restraint of the RLRCs, which are mostly located in large cities, so that workers in the country side or distant areas can conveniently access the services of the LRC to save time and costs.

[Figure 1-7] LRC website



## 2. "Nosa Maru" System

By using the LRC's computerized system including the mediation & adjudication DB system, mediation and adjudication records are electronically managed: relevant case records such as meeting agenda can be sent online; schedules for meetings and committees are managed; online approval for documents are used; and statistics and LRC members' meeting honorariums are also managed and calculated online. This computerized system is called "Nosa Maru System".

Investigation officers of the LRC, in dealing with cases involved in mediation, adjudication, discrimination redress, union pluralism, etc., use this system in all phases of a case resolution including the very first phase of a case being filed. The secretariat and administrative bureaus of the LRC make the use of this system as well when they arrange and run meetings, appoint and manage LRC members, and compile statistics.

In addition, there is a separate system for LRC members (Nosa Maru for Members). Using this system, the secretariat and administrative bureaus can easily provide records on cases online and LRC members can refer to data related to their cases anytime conveniently. Nosa Maru for Members provides menus such as *My Work*, *Notice*, and *Information Square*, and *My Work*, and in particular enables LRC members to do their work online such as reading documents on their cases, checking meeting schedules, reviewing written adjudications, and confirming closed cases. Nosa Maru for Members is evaluated as having not only made the procedures of dealing with a case more rapid and convenient, but has also saved costs that used to be spent for offline use such as mailings and printing materials.

# Chapter 2

## History of the Labor Relations Commission

Section 1: History of the Labor Relations Commission

Section 2: Changes in Responsibilities, Composition and Operation of the Labor Relations Commission (LRC)

# Chapter 2
# History of the Labor Relations Commission

A foundation for the establishment of the Labor Relations Commission (LRC) was laid down in 1953 when a modern labor legislation - four labor acts - was formulated and enforced for the first time in the history of the Republic of Korea: the *Trade Union and Labor Relations Adjustment Act* (TULRAA), the *Labor Disputes Adjustment Act* (LDAA), the *Labor Relations Commission Act* (LRCA), and the *Labor Standards Act* (LSA). Thereafter, about 65 years have passed.

The LRC in its naissance was incomparably limited in responsibilities, let alone the small size of its organization and legally vulnerable status. However, the LRC has continued to grow in the midst of dynamic changes and development in both workplaces and industrial relations since the formation of legal grounds.

Besides the National Labor Relations Commission (NLRC), the Regional Labor Relations Commissions (RLRCs) continued to add up and the status of the Chairperson, the composition of the LRC, qualification of the LRC members, and a secretariat organization (administrative bureau) came to be in the present form after continuous changes and development.

There have been many developments in responsibilities of the LRC. At the time of its introduction in 1953, they were mainly limited to mediation of labor disputes. Thereafter, a variety of functions were added in order to enhance the organization and the status of the LRC to a level commensurate with multiple functions: remedy for unfair labor practices in 1963, remedy

for unfair dismissal, leave of absence, suspension from work, job transfer, wage cut and other disciplinary actions (hereinafter referred as "unfair dismissal, etc.") by an employer in 1989, discrimination redress for non-regular workers in 2007, decision of maintenance and operation of essential public services in 2008, the matters related to union pluralism in 2011 and so forth.

## Section 1: History of the Labor Relations Commission

### 1. Naissance of the Labor Relations Commission

#### (1) Labor Mediation Commission under the US Army Military Government

The US Army Military Government in Korea (USAMGIK) legislated the Act No. 19 (protection of labor, registration of the press and publication, etc.) on October 30, 1945 and saw to it that a labor dispute be solved by means of a decision of the 'Labor Mediation Commission (LMC).' Consequently, the Act No. 34 (establishment of the LMC) was legislated and the LMC was set up on December 8, 1945.

The LMC under the USAMGIK made it as its main task to mediate labor disputes in order to prevent disruption or reduction of factory production. It was able to issue an order of attendance and evidence submission and warrants for their implementation.

The LMC under the USAMGIK established the National Labor Mediation Commission (NLMC) at the national level and the Provincial Labor Mediation Commission (PLMC) in each province. The NLMC oversaw the mediation of labor disputes straddling more than two provinces, and the PLMCs handled

the mediation of those within their jurisdiction. The LMC under the USAMGIK, being the very first body for resolution of labor disputes, can be regarded as the beginning of the current system of the Labor Relations Commission.

### (2) Labor Mediation Commission after the establishment of the government of the Republic of Korea

After the establishment of the government of the Republic of Korea in 1948, the government issued an administrative law on the organization of the NLMC[8] and set up the NLMC and the Municipal and the Provincial Labor Mediation Commission (MPLMC) on June 6, 1949. The NLMC belonged to the Ministry of Social Affairs and was responsible for mediation of labor disputes between a municipality and province or those straddling two or more provinces. It also mediated labor disputes deemed grave in terms of public interest and administered a petition for review concerning the adjudication by the MPLMCs. The MPLMCs were in charge of deliberation and mediation of labor disputes within the jurisdiction of their municipalities and provinces.

The NLMC and the MPLMCs were composed of one Chairperson and seven members or fewer, and the members were appointed by the President with the recommendation of the Minister of Social Affairs among those who had knowledge and experience in labor matters or senior government officials. The LMC, which was created after the establishment of the government, is considered as the forerunner of the current LRC.

8) The issue (Presidential Decree No. 126) took a form of a decree, not an act, but its contents included the responsibilities, role and composition of the Labor Mediation Commission (LMC), etc.

## 2. Launch of the Labor Relations Commission

After the *Labor Relations Commission Act* (LRCA) was enacted and promulgated as the Act No. 281 on March 8, 1953, Seoul Regional Labor Relations Commission was established on October 15, 1953, and the National Labor Relations Commission (NLRC) on February 20, 1954.[9]

The NLRC was set up in the Ministry of Social Affairs, and the RLRCs in Seoul and provinces. The NLRC and the Special Labor Relations Commission (SLRC) were delegated to the Social Affairs Minister for management, and the RLRCs to the mayor of Seoul and the provincial governors.[10] The NLRC was responsible for cases involving more than two provinces including Seoul or those deemed important nationally, and the RLCRs took care of cases occurring within each province.

The LRC consisted of nine members, three members each from the labor, management and public interest. The NLRC administered mediation and arbitration of labor disputes and a review for adjudication, etc. by the RLRCs, and the RLRCs administered mediation, arbitration, etc. of labor disputes occurring within their jurisdiction of each province. The term of the members was one year but they could be reappointed. One Chairperson and one Vice Chairperson were elected among the public interest members.

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9) In accordance with the enactment of the Enforcement Decree of the *Labor Relations Commission Act* (Presidential Decree No. 784) on April 20, 1953, the grounds for appointment procedures of the LRC members, etc. were laid down and, at the same time, the administrative law on the organization of the LMC (Presidential Decree No. 126) was repealed. Cases which were not processed by the then-existing LMC were transferred to the LRC according to their nature.

10) Under the LRCA, the NLRC was administered by the Ministry of Social Affairs, and the RLRCs by the mayors and the provincial governors. However, the *power to appoint* the members of the LRCs was left to the competent Minister (Minister of Social Affairs). Only after the LRCA was amended in April 1963, the mayors and the provincial governors came to have *power to appoint* the members of the RLRCs.

## 3. Labor Relations Commission in 1960s and 1970s

With the amendment of the LRCA on April 17, 1963, the NLRC was established in the Ministry of Health and Social Affairs, and the RLRCs in Seoul Metropolitan City and the city of Busan. The NLRC was authorized to give guidance to the RLRCs and the SLRC regarding administrative affairs and legal interpretation.

The number of workers' members and employers' members were unchanged as three respectively as before, so as to strengthen the neutrality of the LRC, while the number of public interest members was made to vary from three to five with the amendment.[11] A standing member system was newly introduced so that two public interest members could serve as standing members. The term of the LRC members was one year and they could serve consecutive terms.

With the amendment of the LRCA on December 7, 1963, the Labor Administration was newly established. As a result, the government authority in charge of the management of the NLRC was changed from the Ministry of Health and Social Affairs to the Labor Administration Agency. The RLRCs remained under the jurisdiction of the mayors of Seoul and Busan or the provincial governors. In addition, the Chairperson was made to be elected among the public interest members by the LRC members, and the Vice Chairperson among the public interest members who were standing members.

The provisions on the standing members were also specified so that the NLRC could have two standing members and the RLRCs two or fewer. They were appointed by the President with the recommendation of the Minister

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11) The number of public interest members per an LRC was decided as five for each of the ten RLRCs including the NLRC and Seoul Regional Labor Relations Commission, and four for the Jeju Provincial Labor Relations Commission.

of Health and Social Affairs. It was also stipulated that the standing members cannot subscribe to a political party or intervene in political affairs, and their qualification was also laid down when the LRCA was amended. The term of the workers' and employers' members was one year, and that of non-standing public interest members was two years. They were allowed to serve consecutive terms. As for the standing members, their term was not written down, which was interpreted as they had a lifetime tenure.

With the amendment of the LRCA on March 13, 1973, the Chairperson came to be appointed among the standing members for the purpose of specialization and efficiency of the LRC operation (change from an elective office to a nominative one).

Specifically, the Chairperson of the NLRC was to be appointed among the standing members of the NLRC by the President with the request from the Health and Social Affairs Minister and the recommendation of the head of the Labor Administration Agency.

The Chairperson of the SLRC was appointed by the relevant Minister, and the Chairperson of the RLRCs by the Minister of Health and Social Affairs among the standing members of the LRC with the recommendation of the mayor of Seoul, Busan or the governor of the relevant province.

Though it was stipulated that the Vice Chairperson be elected by the LRC out of its members, one of the two standing members, in fact, was appointed as the Chairperson. Consequently the other almost automatically became the Vice Chairperson. So, the Vice Chairperson was not deemed as an elective office. In addition, the term of office of the LRC members including standing members was decided to be three years and their consecutive appointment was permitted.

[Table 2-1] Term of the LRC members

| Classification | By member | | | | Supplementary member | Note |
|---|---|---|---|---|---|---|
| | Workers' member | Employers' member | Public Interest member | Standing member | | |
| Mar. 8, 1953 | One year | One year | One year | - | Remaining term of the predecessor | Reappointment |
| Apr. 17, 1963 | One year | One year | One year | One year | Remaining term of the predecessor | Consecutive appointment |
| Dec. 7, 1963 | One year | One year | Two years | No limit | Remaining term of the predecessor | Consecutive appointment |
| Mar. 13, 1973 | Three years | Three years | Three years | Three years | Remaining term of the predecessor | Consecutive appointment |
| Jan. 26, 2007 | Three years | Three years | Three years | Three years | Remaining term of the predecessor (But, successors of the Chairperson and standing members started a new term.) | Consecutive appointment |

## 4. Labor Relations Commission in 1980s

As disputes between the labor and management became more complex and diversified and the incidence increased, the LRCA was amended on December 31, 1980 in order to unify the administration system of the LRC, to support autonomous resolution of labor disputes between the labor and management and to enhance the credibility of the LRC.

Before the amendment, the RLRCs were supposed to be managed by the mayors of Seoul Metropolitan City and the city of Busan or the provincial governors, but the administration system of the LRC was simplified by the amendment so that the head of the Labor Administration Agency could control the management of all the RLRCs.

In addition, the LRC consisted of nine to eleven members, three members each from the labor and management and three to five public interest members, and it was run in a format of the single-body meeting of the members. However, the number of members of each Commission was largely increased to be 30, ten members each from the labor, management and public interest, and its operation was also streamlined. It was considered desirable to allow the parties concerned to choose the members who would participate in the mediation or adjudication so as to facilitate smooth mediation and adjudication of labor disputes.

Qualifications of the standing members were more strictly defined, adding conditions such as "those who have been engaged in labor affairs for more than 15 years" for the NLRC and "those who have been engaged in labor affairs for more than ten years" for the RLRCs.

The Labor Administration Agency was promoted to the Ministry of Labor on April 8, 1981, and the LRC came under the supervision of the Labor Minister.

With the amendment of the LRC on December 31, 1984, the number of the LRC's standing members was revised from "two" to "two or fewer", and as a result it became possible to reasonably adjust the number of the LRC members according to workload. In addition, improvement of the working conditions which was approved by the LRC for protection of workers was to be immediately notified to the relevant administrative agencies so that appropriate measures could be taken. As for the resolution by the LRC, a damage claim filed by workers due to their employer's violation of working conditions was added to the list of cases which only the public interest members can take part in.

## 5. Labor Relations Commission in 1990s

The former LRCA was abolished, and a new LRCA was enacted and enforced on March 13, 1997.

The purpose of enacting and enforcing the new LRCA was to provide institutional basis for the independence, expertise, promptness and fairness of the LRC. The LRCA enacted in 1997 stipulated the following:

1) The Chairperson of the NLRC shall exercise general control over the budget, personnel affairs, education and training, and other administrative matters of the NLRC and RLRCs, and shall direct and supervise the public officials affiliated to them.
2) The number of the LRC members shall be determined by a Presidential Decree within the range of 7 to 20 for the workers', employers' and public interest members respectively so that it can flexibly respond to workload.
3) The power of the Chairperson of the NLRC was strengthened: the members of the RLRCs were appointed by the Chairperson of the NLRC and the Chairperson and the standing members of the RLRCs were appointed by the President[12] with the request of the Labor Minister after the recommendation of the NLRC Chairperson.
4) To secure fairness of the LRC, pubic interest members were appointed out of those who were elected by the workers' and employers' members, among those recommended by the Chairperson of the relevant LRC, labor unions and employers' organization.

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12) The post of Vice Chairperson of the LRC was abolished and the right to appoint members of the NRLC, the Chairperson of the RLRCs and the standing members was unified into the authority of the President. The LRCA enacted in 1997 stated that the standing members shall be appointed among those who have qualifications as a public interest member, thus the qualifications of the standing member were made equal to those of the public interest member.

5) Public interest members of the LRC were appointed in two categories to strengthen their expertise: adjudication and mediation. In addition, a dedicated department was set up in the LRC secretariat by the field of mediation and adjudication: General Affairs Division, Mediation Division, and Adjudication Division were set up in the NLRC secretariat, and Mediation Division and Adjudication Division in the administrative bureaus of the RLRCs of Seoul, Busan, Gyeonggi, Chungnam, Jeonnam, Gyeongbuk, and Gyeongnam respectively.

6) The Chairperson of the NLRC was appointed by the President with the recommendation of the Labor Minister among those who were qualified as an NLRC public interest member and were an official in political service (cabinet minister level).

**[Table 2-2] Authorities in charge of management of the LRC and those who have appointive powers**

| Classification | Authority in charge of management | Those who appoint members | Appointment of Chairperson |
| --- | --- | --- | --- |
| Mar. 8, 1953 | • NLRC: Social Affairs Minister<br>• RLRC: Mayors and provincial governors | • NLRC: President<br>• RLRC: Social Affairs Minister | Elected among public interest members |
| Apr. 17, 1963 | • NLRC: Social Affairs Minister<br>• RLRC: Mayors and provincial governors | • NLRC: Head of Cabinet<br>• RLRC: Mayors and provincial governors | Elected among public interest members |
| Dec. 7, 1963 | • NLRC: Head of Labor Administration Agency<br>• RLRC: Mayors and provincial governors | • NLRC: Head of Cabinet<br>• RLRC: Mayors and provincial governors | Elected among public interest members |

| Classification | Authority in charge of management | Those who appoint members | Appointment of Chairperson |
|---|---|---|---|
| Mar. 13, 1973 | • NLRC: Head of Labor Administration Agency<br>• RLRC: Mayors and provincial governors | • NLRC: President<br>• RLRC: Mayors and provincial governors | • NLRC: Appointed by President among standing members with recommendation of Labor Minister and request of Health and Social Affairs Minister<br>• RLRC: Appointed by Health and Social Affairs Minister among standing members with request of mayors and provincial governors |
| Dec. 31, 1980 | NLRC·RLRC: Head of Labor Administration Agency (managing authorities consolidated) | • NLRC: President<br>• RLRC: Head of Labor Administration Agency | • NRLC: Appointed by President among standing members with recommendation of Labor Minister and request of Health and Social Affairs Minister<br>• RLRC: Appointed by Head of the Labor Administration Agency among standing members |
| Apr. 8, 1981 | NLRC·RLRC: Labor Minister (promoted to Ministry of Labor) | • NLRC: President<br>• RLRC: Labor Minister | • NRLC: Appointed by President among standing members with recommendation of Labor Minister<br>• RLRC: Appointed by Labor Minister among standing members |
| Mar. 13, 1997 | | • NLRC: President<br>• RLRC: Chairperson of NLRC | • NRLC: Appointed by President among public interest members with recommendation of Labor Minister<br>• RLRC: Appointed by President among standing members with request of Labor Minister and recommendation of NLRC Chairperson |

On February 28, 1998, Daegu Regional Labor Relations Commission was abolished and integrated into Gyeongbuk Regional Labor Relations Commission in the wake of an economic crisis (13 RLRCs → 12 RLRCs).

With the amendment of the LRCA on April 15, 1999, the core labor rights of teachers which had been limited came to be granted, and thus it was decided that the Teacher's Labor Relations Adjustment Committee would be established in the NLRC to mediate labor relations of teachers.

The number of the LRC members for each group - worker, employer and public interest members - was within the range of 7 to 20, but it was expanded to 10 to 30 in order to promote expedited and fair handling of cases.

**[Table 2-3] Trends of alloted number of the LRC members**

| Classification | Total | Workers' members | Employers' members | Public interest member | | | | Public interest members for public official's labor relations |
|---|---|---|---|---|---|---|---|---|
| | | | | Subtotal | In charge of mediation | In charge of adjudication | In charge of discrimination redress | |
| Three members from the labor, management and public interest respectively (Mar. 8, 1953) | 108 (9) | 36 (3) | 36 (3) | 36 (3) | – | – | – | – |
| Three members from the labor and management respectively, 3~5 public interest members (Apr. 7, 1963) | 131 (11) | 36 (3) | 36 (3) | 59 (5) | – | – | – | – |
| Ten members from the labor, management and public interest respectively (Dec. 31, 1980) | 360 (30) | 120 (10) | 120 (10) | 120 (10) | – | – | – | – |
| 7 to 20 members from the labor, management and public interest respectively (Act: Mar. 13, 1997, Enforcement Decree: Mar. 27, 1997) | 720 (60) | 240 (20) | 240 (20) | 240 (20) | 99 (8) | 141 (12) | – | – |
| 10 to 30 members from the labor, management and public interest respectively (Act: Apr. 15, 1999, Enforcement Decree: June 30, 1999) | 891 (90) | 297 (30) | 297 (30) | 297 (30) | 114 (12) | 183 (18) | – | – |
| 10 to 30 members from the labor and management respectively, 10 to 50 public interest members (Act: Dec. 21, 2006, Enforcement Decree: March 27, 2007) | 898 (97) | 297 (30) | 297 (30) | 297 (30) | 114 (12) | 183 (18) | – | 7 (7) |
| 10 to 50 members from the labor and management respectively, 10 to 70 public interest members (Act: Jan. 26, 2007, Enforcement Decree: Mar. 27, 2007) | 1,747 (177) | 515 (50) | 515 (50) | 710 (70) | 202 (20) | 335 (33) | 173 (17) | 7 (7) |
| 10 to 50 members from the labor and management respectively, 10 to 70 public interest members (Act: Jan. 27, 2016, Enforcement Decree: Feb. 28, 2017) | 1,812 (177) | 535 (50) | 535 (50) | 735 (70) | 205 (20) | 347 (33) | 183 (17) | 7 (7) |

* The number of the NRLC is given in parentheses.
* The number of public interest members who are responsible for mediation of public officials' labor relations is seven and they are separated from the alloted number of public interest members under the LRCA.

## 6. Labor Relations Commission in 2000s

As the *Act on the Establishment, Operation, etc., of Public Officials' Trade Union* (POTUA) was enacted on January 27, 2005 and enforced on January 28, 2006, it was required to establish the Public Official's Labor Relations Mediation Committee in the NLRC.

As some special local administrative agencies in Jeju were transferred to Jeju Special Self-Governing Province with the enforcement of the *Special Act on the Establishment of Jeju Special Self-governing Province and the Development of Free International City* (Act No. 7849) on July 1, 2006, Jeju Regional Labor Relations Commission and its alloted number of employees of the administrative bureau were transferred to Jeju Special Self-Governing Province.

With the enactment of the *Act on the Protection, etc. of Fixed-term and Part-time Workers* (FPWPA) on December 21, 2006, which was effective on July 1, 2007 and with the amendment of the *Act on the Protection, etc. of Temporary Agency Workers* (TAWPA), it became possible to petition to the LRC for redress of discrimination without reasonable grounds against fixed-term workers, part-time workers and temporary agency workers. As a result, the LRCA was amended and the Discrimination Redress Committee was newly established in the LRC as a sectoral committee. The public interest members responsible for the discrimination redress were appointed.

It was stipulated that the Discrimination Redress Committee be composed of three members appointed by the Chairperson among the public interest members responsible for the discrimination redress (including the Chairperson and standing members). The Committee was authorized to deal with issues related to discrimination redress in accordance with the FPWPA and the

TAWPA. However, if there was an unavoidable reason, the Chairperson could appoint members for the Discrimination Redress Committee among the public interest members who were responsible for adjudication.

The LRCA was revised on January 26, 2007 (enforced on April 1, 2007) in order to enhance the reliability and expedite the LRC's case handling[13) and to improve neutrality and fairness of the public interest members[14) by reorganizing the LRC's case handling system into one in which standing members take a central role.

In relation to the establishment of a standing member-centered case management system, it was institutionally established that the Chairperson or one standing member had to participate in the composition of the Adjudication Committee and the Discrimination Redress Committee among sectoral committees, and the chairpersons of sectoral committees shall designate a chief member at the time of their composition so that he/she could preside over the handling of cases.

In order to strengthen the neutrality and fairness of the method of selecting the LRC's public interest members, public interest members were selected to be appointed among those who remained intact after the labor unions and employer organizations crossed out the names in order from the list of ones recommended by the LRC Chairperson, labor unions and employer organizations.

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13) Despite an increase in adjudication cases, etc. there was still a problem that in-depth deliberation was not possible and case handling was delayed, because a large number of cases were handled by non-standing members due to the lack of standing members.

14) The public interest members of the LRC were elected by votes of workers' and employers' members among those recommended by the LRC Chairperson, labor unions and the employer organization. However, there has been controversies about the neutrality and fairness regarding the process of electing the public interest members due to voting by prior consultation among the members and public interest members' representing of the interest of organizations which recommended them.

In order to strengthen the neutrality and fairness in conducting the business of the LRC, a code of conduct, which the LRC members must observe to carry out their duties fairly and faithfully, was resolved by the plenary session of the LRC.

In addition, a provision was newly inserted to prohibit the members or LRC employees, who were involved in the proceedings of a case, or the lawyers or certified labor affairs consultants, who were members or employees of the LRC, from performing their work for the purpose of profit regarding the corresponding case. This was a legislation to reflect that it could be problematic in terms of fairness and neutrality that the members or LRC employees, who were involved in the proceedings of the LRC such as an adjudication case, accept the case for the purpose of profit.

With the amendment of the LRCA on May 17, 2007 (enforced on January 1, 2008), a new policy was adopted that the LRC could support the socially vulnerable groups meeting a certain set of criteria: lawyers and certified labor affairs consultants could represent them for remedy of right in the cases filed with the LRC involving its ruling, decision, approval, recognition or discrimination redress, etc.

In accordance with the establishment of the discrimination redress system, etc., the personnel was increased by 35 including six standing members (two for the NLRC and four for the RLRCs) and 29 staff members on August 16, 2007. In addition, the then-existing Executive Office was reorganized to the Mediation & Adjudication Bureau and the Secretariat was installed in the NLRC.

One of the standing members served as the secretary-general of the Secretariat, and Planning and Management Division and Mediation & Adjudication Bureau were set up in the Secretariat. Mediation Division,

Adjudication Division I, Adjudication Division II, and Judicial Support Division were established in the Mediation & Adjudication Bureau. In addition, Adjudication Division II was set up in the Executive Office of Seoul Regional Labor Relations Commission. Two standing members were added to Seoul Regional Labor Relations Commission, and one to Gyeonggi and Gyeongbuk Labor Relations Commissions respectively.

## 7. Labor Relations Commission after 2010

With the plural unionism being permitted at the enterprise level in 2011, matters with respect to establishment of a single bargaining channel and duty of fair representation were added to the LRC pursuant to the Article 29 of TULRAA.

Accordingly, in the amended "*Enforcement Decree on the Organization of the Ministry of Employment and Labor and its Affiliated Agencies*" enforced on March 2, 2011, fifteen working-level personnel (one of Grade 5, seven of Grade 6, seven of Grade 7) for expanded responsibilities of the LRC and three personnel (one of Grade 6, two of Grade 7) were reinforced for strengthening of information protection and the Bargaining Representative Determination Division was newly established in the NLRC and Seoul, Busan, Gyeonggi and Gyeongbuk Regional Labor Commissions. However, the Bargaining Representative Determination Division of Busan, Gyeonggi and Gyeongbuk Regional Labor Commissions were abolished again from March 23, 2013, and only those in the NLRC and Seoul Regional Labor Relations Commission are still in operation up to date.

As the Government Complex moved to Sejong City in 2013, the NLRC also moved its office from Seoul to Sejong city.

With the amendment of the Enforcement Decree of the LRCA on February

28, 2017 (effective on February 28, 2017), Ulsan Regional Labor Relations Commission was created.

[Figure 2-1] Government Complex Sejong in the present (since December 2013)

## Section 2: Changes in Responsibilities, Composition and Operation of the Labor Relations Commission (LRC)

### 1. Early stage of the LRC (1950s)

The LRCA enacted on March 8, 1953 set forth the matters under the LRC's jurisdiction as the following: mediation and arbitration of labor disputes specified by the former LDAA and review and resolution of matters specified by the former TULRAA, the LSA and other laws.

When the LRCA was enacted on March 8, 1953, there were only nine LRC members and the LRC operated as a single-body meeting in which all of them participated. However, it was also possible that only public interest members could participate in the disposition related to a certain matter when a resolution was passed by affirmative votes of more than two-thirds of the members present with more than two-thirds of the prescribed LRC members attending the meeting.

In addition, with the enactment of the Enforcement Decree of the former LDAA on April 20, 1953, it became possible to establish the Mediation Committee which was supposed to be composed of one member each from the labor, management and public interest in accordance with the resolution of the LRC. In mediation process, a subcommittee could be formed by the resolution of the plenary session of the LRC for a fact-finding investigation.

### (1) Mediation of labor disputes

The labor dispute mediation system under the former LDAA enacted on March 8, 1953 consisted of three steps: conciliation by administrative agencies, mediation by the RLRC and mediation by the NLRC by the order of handling.

Administrative agencies provided service of conciliation for one week in the case of a general business and for two weeks in the case of public services. If a conciliation was not constituted, they transferred the case to the LRC. When a labor dispute case was transferred to the LRC from administrative agencies, the LRC immediately formed the Mediation Committee to commence mediation. The mediation period was two weeks for a general business and four weeks for public services.

The NLRC was able to initiate mediation either by the application of one or both parties concerned or by the request of the administrative agencies,

or ex officio when the mediation by the RLRC was not constituted. Once a conciliation or mediation was constituted, it would have the same effect as a final judgment.

### (2) Arbitration of labor disputes

According to the former LDAA enacted on March 8, 1953, the LRC was able to refer a labor dispute to arbitration by the application of both parties concerned, or one or both parties according to their collective agreement, and in the case of public services, with the request by administrative agencies or ex officio.

When a labor dispute was referred to arbitration, the LRC formed an arbitration committee to initiate arbitration. If there was dissatisfaction about the arbitration award of the LRC, an applicant could file a review petition with the NLRC within ten days in the case of an arbitration award of the RLRCs or SLRC. In the case of an arbitration award of the NLRC, an applicant could file an administrative litigation to the court within fifteen days. If an applicant did not file a review petition or an administrative litigation within the period, the award would have the same effect as a final judgment.

### (3) Resolution for cancellation and amendment of labor union constitutions or resolutions

In the former TULRAA enacted on March 8, 1953, administrative agencies could order cancellation or amendment of a labor union's constitution or resolution when they violated laws or jeopardized public interest, after obtaining a resolution from the LRC.

### (4) Decision on regional binding force of collective agreement

In the former TULRAA enacted on March 8, 1953, it was stated that when more than two-thirds of workers of the same type who worked in an area were covered by a collective agreement, administrative agencies could make the decision, either by the application of one or both parties concerned or ex officio, to apply the collective agreement to other similar workers who worked in the area and their employers, after obtaining a LRC's resolution.

### (5) Resolution for dissolution of labor union

The former TULRAA enacted on March 8, 1953 allowed administrative agencies to order the dissolution of a labor union after obtaining a LRC's resolution when they violated laws or jeopardized public interest.

### (6) Resolution of an order to stop industrial actions against facilities for safety

The former TULRAA enacted on March 8, 1953 stated that administrative agencies could order discontinuance of an industrial action stopping or obstructing normal maintenance and operation of facilities to protect safety, after obtaining an LRC's resolution.

### (7) Recognition of an exception to in-advance notice of dismissal due to reasons imputable to the worker

The LSA enacted on May 10, 1953 required dismissal allowances to be paid when dismissing workers. However, in the case of a dismissal for reasons imputable to the worker, it was possible not to pay them after obtaining an approval from the LRC.

### (8) Recognition of an exception to compensation for suspension of work and disability compensation

The LSA enacted on May 10, 1953 allowed employers not to pay compensation for suspension of work or disability compensation when the worker was injured or ill due to the worker's gross negligence, after obtaining an LRC recognition.

### (9) Examination and arbitration of accident compensation

The LSA enacted on May 10, 1953 stipulated that anyone who had objection to accident compensation could file an examination or arbitration. Anyone who had objection regarding recognition of occupational injury, illness and death, method of recuperation, determination of the amount of compensation, and other matters related to implementation of compensation had the right to petition for reappraisal or arbitration of the case to the Ministry of Social Affairs.

If the Ministry of Social Affairs did not reappraise or arbitrate the case in a month and when there was objection to the result of the reappraisal and arbitration, it was possible to petition for review or arbitration to the LRC. When a petition was filed, the LRC was obliged to review or arbitrate the case within one month.

In order to file a civil suit on the matters of accident compensation, it was necessary to go through the LRC's review or arbitration.

### (10) Damages claim for violation of working conditions

The LSA enacted on May 10, 1953 allowed workers to file a damage claim with the LRC for breach of working conditions, when those specified by the employer were different from the actual working conditions.

### (11) Consent to decision of the minimum wage

The LSA enacted on May 10, 1953 made the Ministry of Social Affairs set the minimum wage; when setting the minimum wage, it had to obtain the consent of the LRC. However, this was deleted on December 31, 1986 when the Minimum Wage Act was enacted.

## 2. 1960s and 1970s

With the full-fledged amendment of the former TULRAA and the former LDAA on April 17, 1963, an emergency adjustment system for industrial actions and a remedy system for unfair labor practices through the LRC were introduced. In addition, tasks of conciliation and mediation of labor disputes was unified into the LRC, and new systems were further introduced: the LRC could nominate a person who was able to convene an extraordinary general meeting of the labor union. It also could present an opinion concerning interpretation and an implementation method of a mediated settlement.

With the amendment of the former LDAA on April 17, 1963, it was stipulated directly in the Act, not the Enforcement Decree that the Mediation Committee be established (one member each from the labor, management and public interest) and composed of three public interest members for arbitration of labor disputes.

The members of the Mediation Committee were supposed to be appointed ex officio by the LRC Chairperson. With the amendment of the former LDAA on December 13, 1974, the method of their appointment was changed: the Chairperson was able to appoint those members ex officio, only within the limitation that he/she appointed a workers' member among those recommended by labor unions and an employers' member among those recommended by employer organizations.

The members of the Arbitration Committee were appointed by the LRC Chairperson among public interest members.

In addition, the NLRC legislated the *Labor Relations Commission Rules* (No. 3) on May 26, 1966, with which it was able to set up a public interest committee consisting of only public interest members. The public interest committee under the LRC rules (No. 3) was not a three-member meeting but composed of all the public interest members.

### (1) Unification and re-separation of conciliation and mediation functions

With the amendment of the former LDAA on April 17, 1963, the functions of conciliation and mediation were consolidated to the LRC and related procedures were simplified.

When a labor dispute in a general business was reported, the LRC could immediately appoint conciliation members and proceed with conciliation with the request of one or both parties concerned. In case a conciliation was not established in a general business or in the case of a labor dispute in public services, the LRC formed the Mediation Committee by the application of one or both parties concerned or ex officio to start mediation (conciliation and mediation for a general business, mediation for public services).

The period of mediation by the LRC, including conciliation, was shortened to 20 days for a general business and 30 days for public services. When a conciliation or mediation were constituted, the same effect as a collective agreement was given to both of them.

A new system was established in order to solve disputes occurring in the course of implementing a mediation statement after the resolution of the labor dispute with acceptance of the LRC's mediated settlement. In the

event of any disagreement between the parties regarding the interpretation or implementation method after the acceptance of the mediation proposal, the corresponding Mediation Committee was requested to provide a clear view on its interpretation or implementation method. In this case, the Mediation Committee had to present an opinion within fifteen days from the date of receipt of the request, and the view on the interpretation or implementation method proposed by the Mediation Committee had the same effect as an arbitration award.

With the amendment of the former LDAA on March 13, 1973, conciliation function was transferred back from the LRC to administrative agencies. It was separation of conciliation and mediation functions which were once unified to the LRC and was similar to the mediation process in the former LDAA enacted on March 8, 1953. The conciliation period of administrative agencies and the mediation period of the LRC were ten days for a general business and fifteen days for public services, respectively.

### (2) Dissatisfaction for an arbitration award and effect of the arbitration award

With the amendment of the former LDAA on April 17, 1963, an industrial action was prohibited for 20 days when a labor dispute was submitted to the arbitration of the LRC. As a result, the arbitration period of the LRC was in fact 20 days.

As for the arbitration award of the LRC, reasons for dissatisfaction were limited: a review or administrative litigation could be petitioned only for the cases of illegality and arrogation. The confirmed arbitration award had the same effect as a collective agreement.

### (3) Introduction of the emergency adjustment

With the amendment of the former LDAA on April 17, 1963, an emergency adjustment system was introduced. If an industrial action was 1) related to public services, 2) was large in scale, 3) was of special nature, and there was a risk that it would impair the national economy or jeopardize peoples' daily lives, the Minister of Health and Social Affairs could decide an emergency adjustment after consultation with the Chairperson of the NLRC.

When the NLRC was informed of the decision of emergency adjustment, it had to promptly compose the Mediation Committee to start mediation (mediation period was ten days). If there was no possibility that a mediation would be constituted, it had to decide whether or not to submit the case to arbitration within ten days from the date of the decision of emergency adjustment. In addition to such NRLC's decision to refer the case to arbitration, it could be submitted to arbitration by the application of one or both parties concerned (arbitration period was 20 days).

### (4) Introduction of the remedy system for unfair labor practices

With the all-inclusive amendment of TULRAA on April 17, 1963, a system of remedy through the LRC for unfair labor practices was introduced. A worker or labor union whose rights had been infringed by unfair labor practices of the employer could file a request for remedy with the LRC within six months from the date when such unfair labor practices occurred – from the end date in the case of a continued action.

The LRC would issue a remedy order to the employer when it determined that an unfair labor practice was established. It decided to dismiss the application when it was decided that an unfair labor practice was not established.

A party contesting the decision of the RLRCs or SLRC may file a review with the NLRC within ten days from the date of service of the decision letter, etc., and a party contesting the review award of the NLRC can file an administrative litigation within fifteen days from the date of service of the award letter, etc. Failure to file a review request or an administrative litigation within the corresponding period equalled confirmation of the remedy order, decision of dismissal or adjudication on the review. The period was shortened from six months to three months when TULRAA was amended on December 7, 1963.

### (5) Nomination of the person who can call an extraordinary general meeting

With the amendment of the former TULRAA on April 17, 1963, in the event that a labor union representative deliberately avoided or delayed calling of an extraordinary general meeting or an extraordinary convention of delegates, the LRC could authorize the designation of a person who could do so as per the request from administrative agencies.

### (6) Recognition of an exception to payment of business suspension allowance

According to the amendment of the LSA on December 4, 1961, in the case of business suspension due to the reasons imputable to the employer, it was obligated for the employer to pay the worker an allowance of more than 60 percent of his/her average wage during the suspension period. An exception was allowed when the LRC approved it as continuing the business was not possible due to unavoidable reasons.

### (7) Ex post facto approval of an order to stop the industrial action against facilities for safety

In the former LDAA amended on December 7, 1963, it was stipulated that when the situation was so urgent that there was not enough time for administrative agencies to get a resolution of the LRC, they shall immediately notify the party concerned to stop the action before getting one and then earn a post facto approval of the LRC without delay.

### (8) Examination on legality of the industrial action

In the former LDAA amended on December 7, 1963, it was stated that when a labor dispute was reported, the LRC would examine its legality within five days and dismiss it when deemed unlawful. Examination on the legality of the labor dispute had to be conducted with respect to the purpose of the labor dispute, eligibility requirements for the parties concerned and procedures for filing the dispute.

Subsequently, the examination on the legality of the industrial action was transferred to administrative agencies with the amendment of the former LDAA on March 13, 1973, but abolished when the former LDAA was amended on November 28, 1987.

## 3. 1980s

The amendment of the former TULRAA on November 28, 1987 abolished dissolution of a labor union deemed as violating labor-related laws and impairing public interest by the LRC's resolution, and newly established a resolution system to dissolve a dormant labor union. In addition, the mediation process was integrated to the LRC again and the mediation period was shortened.

With the amendment of the LSA on March 29, 1989, a remedy process through the LRC was established for an unfair dismissal, etc.

In the 1980s, there was also a considerable change in the organization and operation of the committees. The most noticeable change was the revision of the LRCA on December 31, 1980, which resulted in a major shift in how the system operates, from a plenary-meeting centered operation to a three-party committee-centered one. Before the revision, the LRC was operated as a single-body committee composed of nine to eleven members, three members each from the labor and management and three to five public interest members. After the revision, the committee of the LRC was composed of three members, one member each from the labor, management and public interest group for smooth mediation and adjudication of labor disputes, unless otherwise stipulated.

The purpose of new establishment of the three-party committee was to shift how the LRC operates, focusing on the three-party committee, for it was considered inefficient to hold a plenary session with all the members participating. The members of the third-party committee were appointed by the LRC Chairperson who was also the Chairperson of the three-party Committee. The three-party committee was responsible for dealing with matters other than those of other committees such as the plenary session, the Public Interest Committee, the Mediation Committee, the Arbitration Committee, and so forth.

**Matters handled by the Three-Party committee**

- Resolution of modification or cancellation of the collective agreement which is unfair and violating laws
- Decision of regional binding force of the collective agreement
- Order to stop an industrial action and resolution of an ex post facto approval
- Opinion on the decision of an emergency adjustment by the Labor Minister
- Resolution on the decision of businesses equalling public services
- Damage claim for violation of working conditions (handled by the Public Interest Committee since Dec. 31, 1984)
- Approval of an exception to the dismissal on the reasons imputable to the worker
- Approval of an exception to payment of business suspension allowance
- Approval of an exception to compensation for business suspension and disability compensation

As the focus of the organization and operation of the meeting was changed from the plenary session to the Three-Party Committee, the plenary session became responsible only for general matters such as the operation of the LRC, and the Three-Party committee and Public Interest Committee were responsible for adjudication and resolutions in accordance with related laws.

**Matters decided by resolution of the plenary session after the amendment of LRCA on Dec. 31, 1980**

**Matters to be decided by the plenary session under the LRCA**

- Decision of general matters such as operation of the LRC, etc.

**Matters to be decided by the plenary session under the LRC Rules**

- Basic guidelines for management of the affairs of the LRC
- Legislation of the LRC Rules
- Consultation on legislation of the regulations for nurturing of skilled laborers
- Recommendation to administrative agencies on the improvement of working conditions
- Consent of decision of the minimum wage

The LRCA amended on December 31, 1980 allowed the Public Interest Committee to be set up and be composed of three public interest members in order to deal with adjudication, order, resolution, etc. under relevant laws such as the LSA. The members of the Public Interest Committee were appointed by the Chairperson of the LRC among the public interest members, and the Chairperson of the LRC became the Chairperson of the Public Interest Committee.

**Matters handled by the Public Interest Committee**

- Examination and arbitration for accident compensation
- Damage claim for breach of working conditions (handled by the Public Interest Committee since Dec. 31, 1984)
- Resolution for modification or cancellation of a labor union constitution which is unfair and unlawful
- Resolution for modification or cancellation of a labor union resolution which is unfair and unlawful
- Resolution for designation of a person who is able to convene an extraordinary general meeting of the labor union
- Resolution for the dissolution of a labor union violating laws or being deemed to impair the public interest (abolished on May 28, 1987)
- Remedy for the unfair dismissal (newly established on March 29, 1989) and unfair labor practices
- Matters concerning statute interpretation in relation to the management of the LRC affairs in accordance with the LRCA

There had been a change in the Mediation Committee and the Arbitration Committee. Firstly, with the amendment of the former LDAA on December 31, 1980, the workers' member of the Mediation Committee was appointed by the LRC Chairperson among those favored by the employer organizations

and the employers' member was appointed by the LRC Chairperson among those favored by the labor unions (method of cross-nomination).

In addition, as a result of the amendment of the former LDAA on November 28, 1987, those among the public interest members who were agreed upon between parties concerned were appointed by the LRC Chairperson as the members of the Arbitration Committee. When there was no agreement reached, they were appointed among the members who represented the public interest in the LRC.

### (1) Unification of the mediation process and shortening of mediation period

The former LDAA was amended on November 28, 1987 to integrate the mediation process to the LRC, and the period of mediation was significantly shortened.

When a conciliation had not established, the LRC should form the Mediation Committee and initiate the mediation. However, when the cooling-off period (ten days for a general business and fifteen days for public services) lapsed, it became possible to wage an industrial action. As a matter of fact, the mediation of the LRC had weakened.

### (2) Expansion and curtailment of matters subject to ex officio arbitration

The amendment of the former LDAA on December 31, 1980 allowed not only public services but also a general business to be referred to the arbitration. It extended the scope of arbitration to a general business: it was made possible to refer the labor dispute in a general business to arbitration with the request of administrative agencies or ex officio by the LRC.

However, when the former LDAA was amended on December 31, 1986, the scope of arbitration was turned back and confined to public services.

### (3) Introduction of the remedy for unfair dismissal, etc.

In the amendment of the LSA on March 29, 1989, when an employer took a measure of unfair dismissal, etc. without justifiable reasons, the corresponding worker was able to file a request for remedy with the LRC. The remedy process for unfair labor practices applied to unfair dismissals, etc.

### (4) Curtailment of the scope for cancellation and modification of the labor union constitution or resolution

With the amendment of the former TULRAA on November 28, 1987, reasons for the cancellation and modification of a labor union constitution or resolution were scaled down.

Before the amendment, when a labor union's constitution or resolution impaired the public interest, administrative agencies could order its cancellation or modification after getting a resolution of the LRC. However, this was abolished in the amendment.

As a result, the cancellation or modification of a labor union constitution or resolution by administrative agencies was limited to a constitution “violating labor-related laws and regulations”, and a resolution “considered as violating labor-related laws or union constitutions.”

### (5) New establishment of the resolution system to dissolve a dormant labor union

With the amendment of the former TULRAA on November 28, 1987, the dissolution of a labor union violating laws or impairing the public interest

was abolished and the dissolution system for a dormant labor union was newly established which was stipulated under the Enforcement Decree of the former TULRAA. In case there was no labor union official and union activity for two years or more - a dormant labor union, it could be decided to dissolve it through an LRC's resolution.

### (6) Deletion of the provision on the principle of prior recourse to examination and arbitration for accident compensation

In the LSA amended on March 29, 1989, the provision that examination or arbitration of the LRC should be exhausted before filing a civil lawsuit for accident compensation was deleted.

### (7) Recognition of an exception to payment of business suspension allowance

With the amendment of the LSA on March 29, 1989, business suspension allowance was increased to more than 70% of average wage, and it was allowed to pay it below the range when an approval by the LRC was obtained.

### (8) Resolution on the issue of a corrective order against a collective agreement

With the amendment of the former TULRAA on December 31, 1980, it was stipulated that when illegal and unfair facts were included in a collective agreement, the administrative agencies could order their amendment or cancellation after winning a resolution of the LRC.

## 4. 1990s

Consolidating the former TULRAA and LDAA, a new TULRAA was enacted and enforced on March 13, 1997. Accordingly, two policies were introduced: one of an urgent implementation order for remedy of unfair labor practices and the other of dispute settlement in relation to the implementation of an arbitration award, opinion presentation on how to interpret and implement a collective agreement, etc.

The *Act on the Promotion of Workers' Participation and Cooperation* (WPCA) was enacted on March 13, 1997 and a compulsory arbitration on resolutions of a labor-management council was introduced. The most characteristic change related to the composition and operation of the LRC was that the focus of its operation had moved from the Three-Party Committee to the Sectoral Committees.

On March 13, 1997, the Three-Party Committee and the Public Interest Committee were abolished in accordance with the newly enacted and enforced LRCA, and the Adjudication Committee and the Special Mediation Committee (SMC) were newly established: the former was responsible for adjudication, decision and resolution under the relevant laws and the latter for mediation in public services and essential public services.

The members of the Adjudication Committee were appointed by the Chairperson of the LRC among the public interest members in charge of adjudication, and it consisted of three members. The members of the SMC were appointed by the LRC Chairperson among three to five mediation-responsible public interest members who remained intact after alternating selections by labor unions and the employers' association. The SMC was to be composed of three members.

With the introduction of a dispute settlement system related to the implementation of an arbitration award, the interpretation of the arbitration award for labor disputes and its implementation methods were delegated to the Arbitration Committee. The new LRCA also stipulated in details the matters to be handled by the plenary session as follows.

**Matters to be handled by the plenary session**

- Determination of general matters such as operation of the LRC, etc.
- Recommendation on improvement of working conditions
- Legislation of a directive and rules in accordance with the Articles 24 and 25 of the LRCA (only applies to the NRLC)

With the enactment of the *Act on the Establishment, Operation, etc., of Trade Unions for Teachers* (TTUA) on January 29, 1999, the Teachers' Labor Relations Adjustment Committee (TLRAC) was established in the NLRC for the mediation and arbitration of the labor relations of teachers.

The members of the TLRAC were to be appointed by the Chairperson of the NLRC among the public interest members, and when a person who was not among those mediation-responsible public interest members of the NLRC was recommended following an agreement among the parties concerned, he/she would be appointed as a member of the TLRAC. The TLRAC was supposed to be composed of three members.

### (1) Abolition of the conciliation function of the LRC and introduction of the principle of prior recourse to mediation

With the amendment of TULRAA on March 13, 1997, the conciliation function of the LRC was abolished and the principle of prior resort to mediation was introduced.

- A labor union cannot engage in industrial actions unless it goes through the mediation of labor disputes by the LRC (Principle of prior recourse to mediation).
- After receiving an application for mediation of labor disputes, the LRC composes the Mediation Committee for general businesses, and the Special Mediation Committee for public services and essential public services to start mediation.
- The period of mediation shall be within ten days for general businesses and fifteen days for public services, but can be extended within ten days and fifteen days respectively upon the application of both parties concerned.
- If the LRC finds that the application for mediation of labor disputes is not a subject to statutory mediation, it should provide information for the reason and other solutions (administrative guidance).

If the SMC conceded that there was no possibility of a mediation being established for essential public services, it could refer the case to the arbitration of the LRC before the mediation period expired. Regarding the recommendation by the SMC to refer the case to the LRC arbitration, the Chairperson of the LRC may decide whether or not to refer it to the arbitration after consulting with public interest members.

### (2) Curtailment of ex officio arbitration and introduction of dispute settlement system in relation to arbitration award

With the enactment of TULRAA on March 13, 1997, ex officio arbitration came to apply only to essential public services, and a dispute settlement related to the implementation of an arbitration award was newly established.

If there was any disagreement between the parties concerned regarding the interpretation or implementation of the arbitration award, priority was given to the interpretation of the concerned Arbitration Committee and its interpretation had the same effect as an arbitration award.

### (3) Improvement of emergency adjustment

With the enactment of TULRAA on March 13, 1997, whether or not to refer a case to arbitration in case of an emergency adjustment was decided after seeking the opinions of the public interest members.

The NLRC had to compose the Mediation Committee and start mediation; the Mediation Committee in case of an industrial action in general businesses and the Special Mediation Committee in case of an industrial action in public services or essential public services (mediation period was fifteen days).

If the Chairperson of the NLRC found that there was no possibility of a mediation being established, he/she could decide whether or not to refer the case to arbitration after consultation with the public interest members within fifteen days from the date the emergency adjustment was notified (arbitration period was fifteen days).

### (4) Introduction of urgent implementation order concerning a remedy order for unfair labor practices

The enactment of TULRAA on March 13, 1997 introduced an urgent implementation order concerning a remedy order for unfair labor practices.

If an employer failed to implement a remedy order only because he/she had filed an administrative lawsuit against a review award, the concerned court could order that it should be implemented in full or in part until the ruling was finalized with the application of the NLRC. It could also cancel the decision upon the application of either party concerned or ex officio.

A penalty of not more than five million Korean Won could be levied for those who violated the order of the court (the amount calculated by the rate of less than KRW 500,000 per day for its non-fulfillment if it was about feasance).

### (5) Strengthened conditions to request an LRC's resolution on the disposition taken by labor unions

With the enactment of TULRAA on March 13, 1997, when a resolution of labor unions violated their constitution, it was possible to request an LRC resolution, but only when there was an application from the parties concerned.

### (6) Direct stipulation of applicable provisions concerning dissolution of a dormant labor union in an act

In the former TULRAA, the dissolution of a dormant labor union was stipulated in its enforcement ordinance. However, with the enactment of the new TULRAA on March 13, 1997, the provision for the resolution on the dissolution of a dormant labor union came to be stipulated in an act.

### (7) Limitation on the scope of resolution concerning an order to correct CBAs

With the enactment of TULRAA on March 13, 1997, a resolution on the order to correct collective bargaining agreements was confined only to 'illegal contents'.

### (8) Giving an opinion on how to interpret and implement CBAs

With the enactment of TULRAA on March 13, 1997, if there was a disagreement between the parties concerned on the interpretation or implementation of their collective agreement, either party was allowed to request the opinion of the LRC on its interpretation and implementation method in accordance to an agreement between the parties concerned or following the stipulation in their collective agreement.

The LRC shall, within 30 days from the date of the receipt of the request, present its opinion on the interpretation and implementation method of their collective agreement and it shall have the same effect as an arbitration award.

### (9) Introduction of compulsory arbitration for resolutions by a labor-management council

With the enactment of *the Act on the Promotion of Workers' Participation and Cooperation* (WPCA) on March 13, 1997, the system of compulsory arbitration for matters to be resolved by a labor-management council was introduced. It was stipulated that the arbitration by the LRC could be pursued when matters could not be resolved by the council or when there was disagreement on the interpretation or implementation of the matters decided upon by the council. When the LRC handed down an arbitration decision, it shall be deemed as a resolution of the labor-management council, and the labor and management must comply with it.

## 5. 2000s

The LSA which was amended on January 26, 2007 (effective on July 1, 2007) removed a penalty clause for dismissal without a justifiable reason, etc., but introduced a compulsory enforcement levy for those who failed to deliver on a remedy order for them.

In addition, the system for an order of monetary compensation, which made it possible to order monetary compensation instead of reinstatement as a part of a remedy order, was also introduced.

As a result of the amendment of the FPWPA and the TAWPA, a discrimination redress system that allowed fixed-term workers, part-time workers

and dispatched workers to apply for redress of discriminatory treatment was introduced in the LRC on July 1, 2007.

As of January 1, 2008, the amendment of TULRAA abolished the system that allowed the LRC to refer ex officio labor disputes in essential public services to arbitration, and introduced a new system for maintenance of minimum services.

There was also a considerable change in relation to the sectoral committees; firstly, the Public Officials' Labor Relations Adjustment Committee (POLRAC) was established in the NLRC to mediate and arbitrate the labor relations of public officials in accordance to the enactment of the POTUA on Jan. 27, 2005.

The public interest members in charge of mediation of the labor relations of public officials were separated from the alloted number of the public interest members under the LRCA, and were appointed by the President with the recommendation of the Chairperson of the NRLC and the request from the Labor Minister.

The POLRAC had operated in a format of a plenary session in which all the seven members participated and a subcommittee which was composed of three members. The subcommittee was composed of three members appointed by the POLRAC Chairperson in consultation with the Chairperson of the NLRC. The plenary session was responsible for mediating labor disputes at the national level, determination of the referral to arbitration and arbitration award, and the subcommittee was responsible for mediating matters not covered by the plenary session.

With the enactment of the FPWPA and the revision of the TAWPA on December 21, 2006, the policy of discrimination redress was introduced and the Discrimination Redress Committee (DRC), which was composed of three

members, was set up in the LRC. The members of the DRC were appointed by the Chairperson of the LRC among the public interest members in charge of discrimination redress.

As a result of the amendment of the LRCA on December 21, 2006, the AC and DRC were required to consult at least one workers' member and one employers' member of the LRC respectively before making a resolution.

With the amendment of the LRCA on January 26, 2007 (effective April 1, 2007), it was institutionalized to include the Chairperson or one standing member in the composition of the AC and the DRC among sectoral committees, and the Chairperson of the sectoral committees designated a chief member who would supervise case handling. This was a result of the consideration that despite an increase in adjudication cases, etc., there was still a problem that in-depth reviews were not possible and case handling was delayed, for a large number of cases were handled by non-standing public interest members due to a lack of standing members.

Lastly, in the wake of the introduction of the policy of minimum services, the task of determining the level of their maintenance and operation has been added to the task of the SMC as of January 1, 2008.

### (1) Introduction of pre-mediation support and ex post facto mediation

The amendment of TULRAA on December 30, 2006 introduced pre-mediation support and ex post facto mediation. Accordingly, the LRC was able to support autonomous solution of disputes between the parties concerned, for example, by fixing up a negotiation between them for smooth mediation, etc., even before the mediation application. It was also able to mediate for settlement of labor disputes even after the termination of mediation had been decided.

### (2) Abolition of compulsory arbitration for essential public services

With the amendment of TULRAA on December 30, 2006, the compulsory arbitration for essential public services was abolished.

### (3) Introduction of order of monetary compensation and enforcement levy

Until the amendment of the LSA on January 26, 2007 (effective July 1, 2007), a remedy procedure for unfair labor practices was similarly used for cases of unfair dismissal, etc. However, after the amendment, it was directly stipulated in the LSA.

In addition, monetary compensation could be ordered instead of reinstatement to an original job as a part of a remedy order. When a worker did not want to be reinstated, the LRC could order his/her employer to pay money and valuables, equal to or more than the equivalent amount of wages he/she would have received if he/she provided work during the period of his/her dismissal.

It also became possible to impose an enforcement levy on employers who had not fulfilled a remedy order concerning unfair dismissal, etc. If he/she did not fulfill a remedy order by a deadline after receiving it, the LRC could impose and collect an enforcement levy of up to 20 million Korean Won.

The LRC shall determine the amount of an enforcement levy within the scope of the levy amount as per the type of violation, taking into account the motive of the violation, the extent of imputableness of employer's faults such as intention and negligence, the degree of an effort to fulfill a remedy order, the period a remedy order had not been fulfilled, etc.

The enforcement levy can be repeatedly imposed and collected until a remedy order is implemented within two times a year from the date when

the first remedy order is issued, but it cannot be levied or collected in excess of two years.

Lastly, instead of deleting the penalty provision for dismissal without a justifiable reason, etc., a penalty for non-fulfillment of a confirmed remedy order regarding unfair dismissal, etc. was established to ensure the effectiveness of remedy orders of the LRC. A person who had not fulfilled a remedy order or a review award containing a remedy order, which was confirmed as an application for review or an administrative litigation was not filed within the exclusion period, came to be sentenced to imprisonment of not more than one year or a fine of not more than KRW 10 million. However, an accusation by the Chairperson of the LRC was required to bring the case forward.

#### (4) Establishment of discrimination redress for non-regular workers

With the enactment of the FPWPA and the revision of the TAWPA, a discrimination redress system that allowed fixed-term and part-time workers and dispatch workers to apply for redress of discriminatory treatment was introduced from July 1, 2007.

They could file a complaint for redress to the LRC within three months from the day discriminatory treatment occurred – from the end date for ongoing discriminatory treatment.

When the LRC concluded investigation and interrogation and found that discriminatory treatment was constituted, it shall issue a redress order to the employer. When the LRC determined that discriminatory treatment was not constituted, it shall decide to dismiss the complaint.

The LRC could initiate a mediation procedure with the application of either or both parties concerned or ex officio in the course of interrogation, and

could arbitrate the case when both parties had agreed to comply with the arbitration decision of the LRC in advance and applied for the LRC's arbitration.

The conciliation or arbitration decision of the LRC shall have the same effect as a consent judgment under the provisions of the *Civil Procedure Act.*

### (5) Introduction of essential minimum services

With the amendment of TULRAA on December 30, 2006, the policy that the LRC could ex officio refer labor disputes of essential public services to its arbitration was abolished, and a policy of minimum services was introduced (effective January 1, 2008).

Minimum services refer to works among essential public services that are defined by the Presidential Decree as ones which could seriously endanger the life and health or physical safety or the daily lives of the public when it is suspended or abolished.

Parties to labor relations must conclude an MOU on minimum services for their fair maintenance and operation during industrial actions. When an MOU on minimum services is not concluded, either or both parties concerned should request the LRC to decide a minimum level of their maintenance and operation, targeted jobs, the number of necessary workers, etc. The LRC can decide upon them, taking into account the characteristics, contents, etc. of minimum services of each business or workplace.

In the case of disagreement between the parties concerned regarding the interpretation or implementation of the LRC decision, the interpretation of the SMC will be abided by and it will have the same effect as a decision of the LRC.

Appellate procedure for an LRC arbitration shall be borrowed from those used for an LRC decision on minimum services. If there was an LRC decision and an industrial action was waged pursuant to such a decision, it shall be deemed to have taken the industrial action while justly maintaining and operating them.

## 6. After 2010

In accordance with the amendment of TULRAA on January 1, 2010, the establishment of multiple unions at an enterprise level was permitted in 2011. So, works with respect to the establishment of a single bargaining channel among multiple unions and duty of fair representation were added to the LRC.

Firstly, when there was objection to the fact of demanding a bargaining, a number of union members, etc. in the course of determining a representative bargaining union, it became possible for the LRC to make a decision on the objection as stipulated in the Presidential Decree with an application from labor unions.

In addition, when it was acknowledged that there was a need for separation of a bargaining unit due to discernible differences in working conditions, employment type, bargaining practices, etc. in a business or workplace, the LRC could make the decision to separate the bargaining unit with the application from either or both parties concerned.

When a representative bargaining union and an employer discriminated against labor unions or their members participating in a bargaining channel unification procedure without a justifiable reason, the unions concerned could seek redress to the LRC within three months. When the LRC found that they were unfairly discriminated, it must issue a redress order.

The LRCA amended on January 27, 2016 strengthened fairness of the LRC by adding to the list of reasons for exclusion not only being the LRC members but also being a corporate body, to which they belong, participating as an agent in the relevant case.

[Table 2-4] Composition of the LRC meetings and change in their responsibilities

| Classification | Name of meetings | Composition | Responsibilities |
|---|---|---|---|
| Mar. 8, 1953 | Plenary session | All the members | • Mar. 8, 1953~Dec. 30, 1980: Handling of tasks under the authority of the LRC (Mediation & Arbitration Committees, except for cases in which only public interest members were decided to participate)<br>• After Dec. 31, 1980: Decision of general matters such as operation of the LRC, etc. |
| Apr. 20, 1953 | Meeting of Mediation Committee members | One workers' member, one employers' member and one public interest member respectively | • Matters concerning mediation of labor disputes (limited to general businesses after Mar. 13, 1997) |
| Apr. 17, 1963 | Meeting of Arbitration Committee members | Three public interest members<br>* Three mediation-responsible public interest members after Mar. 13, 1997 | • Matters concerning mediation of labor disputes |
| Dec. 31, 1980 | Meeting of public interest members (※ abolished after Mar. 13, 1997) | Three public interest members<br>* Meeting of all the public interest members was operated from Mar. 8, 1953 to Dec. 30, 1980. | • Examination and arbitration of accidents on duty<br>• Modification and cancellation of unlawful and unfair union constitutions and resolutions<br>• Appointment of a person who is to be authorized to convoke an extraordinary general meeting |

| Classification | Name of meetings | Composition | Responsibilities |
|---|---|---|---|
| | | | • Resolution to dissolve an unlawful and unfair labor union<br>• Remedy for unfair labor practices<br>• Statutory interpretation in relation to handling of business affairs of the LRC |
| Dec. 31, 1980 | Meeting of the Three-Party Committee (※ abolished after Mar. 13, 1997) | One workers' member, one employers' member and one public interest member respectively | • Modification and cancellation of unlawful and unfair collective agreements<br>• Regional binding force of collective agreements<br>• An order to stop industrial actions and resolution on emergency adjustment<br>• Resolution on determination of businesses equalling public services<br>• Damages claim for breach of working conditions<br>• Exception to dismissal due to a reason imputable to workers<br>• Exception to compensation for business suspension<br>• Exception to compensation for business suspension and disability |
| Mar. 13, 1997 | Meeting of Adjudication Committee members | Three public interest members responsible for adjudication | • Matters related to adjudication, resolution, approval, recognition, determination, etc. under the relevant laws and regulations such as TULRAA, LSA, etc. |
| Mar. 13, 1997 | Meeting of Special Mediation Committee members | Three public interest members responsible for mediation | • Matters concerning mediation of labor disputes in (essential) public services<br>• Determination of a level of maintenance and operation, etc. of minimum services (from January 1, 2008) |
| July 1, 1999 | Meeting of TLRAC members | Three public interest members responsible for mediation | • Matters concerning mediation and arbitration of teachers' labor relations |

| Classification | Name of meetings | Composition | Responsibilities |
|---|---|---|---|
| Jan. 26, 2006 | Meeting of POLRAC members | Seven or less public interest members responsible for public officials' labor relations | • Plenary meeting: Labor dispute cases at a national level, decision for referral to arbitration, arbitration award<br>• Subcommittees (3 members): Cases not covered by the plenary session |
| Jan. 1, 2007 | Meeting of DRC members | Three public interest members responsible for discrimination redress | • Matters related to discrimination redress by the FPWPA and TAWPA. |

# Chapter 3

## Major Responsibilities and Achievements of the Labor Relations Commission

Section 1: Adjustment

Section 2: Adjudication

Section 3: Matters related to Multiple Unions

Section 4: Tasks of Administrative Litigation

# Chapter 3
# Major Responsibilities and Achievements of the Labor Relations Commission

Being a labor dispute resolution body, the LRC covers a variety of matters under its jurisdiction as discussed in the Chapter 1. In particular, its core responsibilities are: mediation of interests disputes between the labor and management, adjudication on rights disputes, handling of matters related to the plural unionism, and carrying out litigations in response to lawsuits filed against review awards by the NLRC.

Significance and main contents, the operating process and meaning of each of these major responsibilities will be examined, and the achievements that the Labor Relations Commission has garnered in the course of carrying them out as well as major cases are also to be discussed.

## Section 1: Adjustment

### 1. Adjustment of labor disputes

#### (1) Introduction

In the *Trade Union and Labor Relations Adjustment Act* (TULRAA) enacted on December 31, 1996 (effective March 1, 1997), the so-called 'rule of prior recourse to adjustment' was stipulated.[15] If a labor dispute arises due to

15) Article 45 of TULRAA enacted in December 1996 prescribed the rule of putting adjustment first, and this is kept until now. As the practice of reporting labor disputes in the past was abolished

failure of the bargaining between the labor and management parties, only after either party requests adjustment to the LRC and the adjustment of the LRC is carried out, then it becomes possible to wage an industrial action.

Adjustment of labor disputes include: ① mediation, in which the Mediation Committee which is established by the LRC on the request of either party produces a mediation proposal and recommends its acceptance to the parties concerned; ② arbitration, which both the parties concerned apply for or either party applies for in accordance with their collective bargaining agreement; ③ emergency adjustment, which is rarely carried out only when an industrial action presents a risk of jeopardizing the national economy or people's daily lives.

These labor disputes should be resolved when an adjustment is established, and they can go through a dispute settlement process by means of an industrial action when an adjustment is not constituted.

On the other hand, TULRAA adopts public mediation and arbitration through the LRC as a basic principle, but acknowledges private mediation or arbitration through a third party other than the LRC, stipulating, “The provisions shall not prevent the parties to labor relations from resolving industrial disputes through any other method of mediation or arbitration in accordance with mutual agreements or collective bargaining agreements” (TULRAA, Article 52).

If there is an agreement on mediation between the labor and management parties concerned in bilateral relations, the procedures of private mediation apply first.

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and adjustment by the LRC could start upon the request of either party, it looks like the rule of adjustment request is adopted. However, it can be said that adjustment is practically forced because it is not possible to wage an industrial action without going through adjustment. This is called the ‘rule of prior recourse to adjustment’. (Kim Hyung-bae, *Newly Written Labor Law* (25th edition), Pakyoungsa, 2016, pp. 1129-1130).

### (2) Basic principles

It is ideal that collective labor relations are governed peacefully by collective bargaining agreements. However, conflicts of interest between the labor and management can not always be settled peacefully. At any time, confrontation between the labor and management can be deepened or prolonged, resulting in tremendous economic losses for the labor and management themselves, as well as a considerable impact on people's lives. Therefore, countries around the world arranged various systems for peaceful settlement of labor disputes.

Currently, TULRAA stipulates in Article 1 (purpose): "The purpose of this Act is to maintain and improve the working conditions of workers and enhance their economic and social status by guaranteeing the rights of association, collective bargaining, and collective action as prescribed in the Constitution, and to contribute to the maintenance of industrial peace and the development of national economy by preventing and resolving industrial disputes through the fair adjustment of the labor relations." In addition, 'responsibilities of the parties concerned' are specified: the parties to labor relations shall make efforts to voluntarily resolve labor disputes, if any (TULRAA, Article 48).

In addition, 'responsibility of the state, etc.' is also specified: "The State and local governments shall, when there is any disagreement on labor relations between the parties concerned, prevent industrial actions, if possible, by helping them voluntarily adjusting to such disagreements and shall make every effort to promptly and fairly resolve industrial disputes, if they have occurred." (TULRAA, Article 49) Adjustment of labor disputes should be handled in a harmonious and balanced manner, taking into account both the private interests of the parties concerned and the national public interest. In particular,

“Adjustment of industrial disputes related to the public service businesses shall be treated with priority and promptly” (TULRAA, Article 51).

As described above, the adjustment of labor disputes in TULRAA is based on independence, promptness, fairness, public interest, etc.[16)]

TULRAA stipulates the principle of autonomous settlement of labor disputes; if a labor dispute arises, the adjustment of the LRC is supposed to be implemented with the request of either party concerned (TULRAA, Article 53).

### (3) Matters subject to mediation

‘Labor disputes’, which are subject to adjustment under TULRAA, refer to ‘any controversy or difference arising from disagreement between a labor union and an employer or employers’ associations with respect to the determination of terms and conditions of employment such as wages, working hours, fringe benefits, dismissal, and other conditions. In such cases, disagreement refers to a situation in which the parties are no longer likely to reach an agreement by means of voluntary bargaining even if they continue to make such an attempt’ (TULRAA, Article 2-5).

According to legal texts, the subject matter of labor disputes is defined as ‘determination of working conditions’. In this regard, it comes into question whether a dispute on collective labor relations can be regarded as a labor dispute. In one instance, the Court upheld that a dispute on collective labor relations could be regarded as a labor dispute (Supreme Court, 09/28/1990, 90Do602), but has sustained the position that it is not a labor dispute (Supreme Court, 10/10/1997, 97Nu4951). Recently, it upheld that it was a subject of arbitration if both parties concerned applied for it (Seoul High Court, 03/29/2000, 99Nu9867).

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16) Lee Sang-yun, *Labor Laws* (15th edition), Bobmunsa, 2017, p.82.

And when there was a situation in which both parties concerned applied for arbitration, i.e. the parties concerned had been negotiating matters related to collective labor relations together with working conditions and when an essential public service that was a subject matter of arbitration came into question, they were deemed as a subject matter of arbitration (Supreme Court, 07/25/2003, 2001Doo4818).

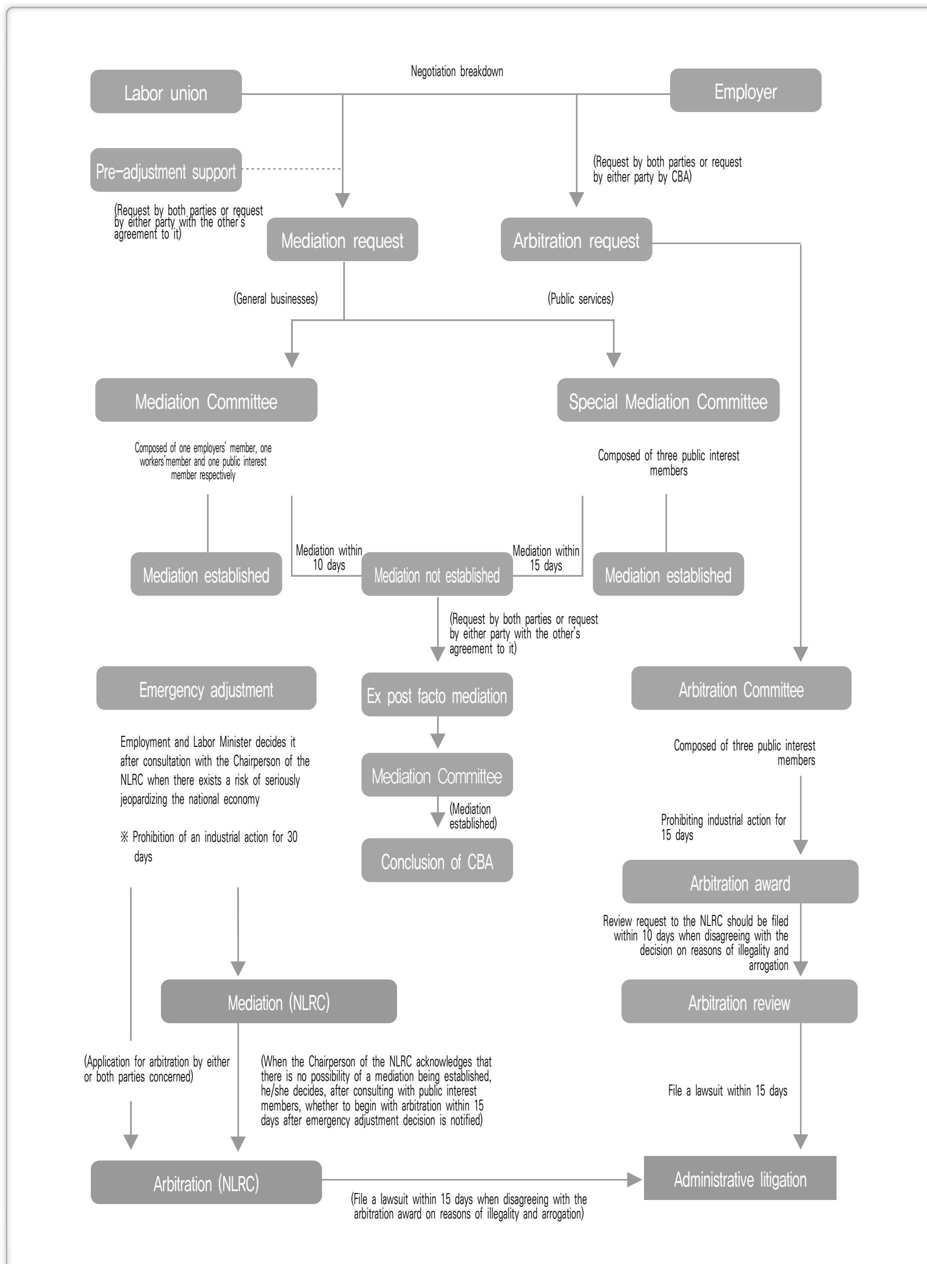
In the meantime, it is also questionable whether matters of arbitrary negotiation can be regarded as a subject matter of labor disputes. As they can be unilaterally decided by an employer and even if an employer discreetly accepted negotiations, he/she can deny them at any time. So, it is reasonable to consider that it is not desirable for a third party including the LRC to mediate or arbitrate them and accordingly, matters of arbitrary negotiation cannot constitute a subject matter of labor disputes.

### (4) Details of adjustment by type

Regarding adjustment of labor disputes, conciliation[17], mediation, arbitration, emergency adjustment, etc. were formerly in place. However, when TULRAA was enacted in December 1996, conciliation and mediation were merged. Currently, mediation, arbitration and emergency adjustment are in place. In other words, there are mediation, arbitration and emergency adjustment as types of adjustment in labor disputes, and they are organically linked to each other. The overall flow of these functions is shown in [Figure 3-1] below.

17) Conciliation is the simplest method of dispute settlement. It is a mediation process in which an intermediary of a dispute meets the parties concerned and help them find a solution on their own. It is common that the intermediary does not present a solution. However, this was removed from TULRAA when the December 1996 version of TULRAA was enacted.

### [Figure 3-1] Procedures of industrial action adjustment



### 1) Mediation

#### a. Introduction

Mediation is a process in which a neutral and impartial third party to a labor dispute becomes a mediator between labor-related parties and listens to the opinions of the labor and management sufficiently and understands their positions better in order to persuade them to reach an agreement.[18) ] Mediation is a proactive approach, such as suggesting a solution (suggestion, recommendation or advice) to the parties of the dispute, as opposed to facilitating discussion to help them find a solution themselves. However, they are not required to accept the proposed solution.

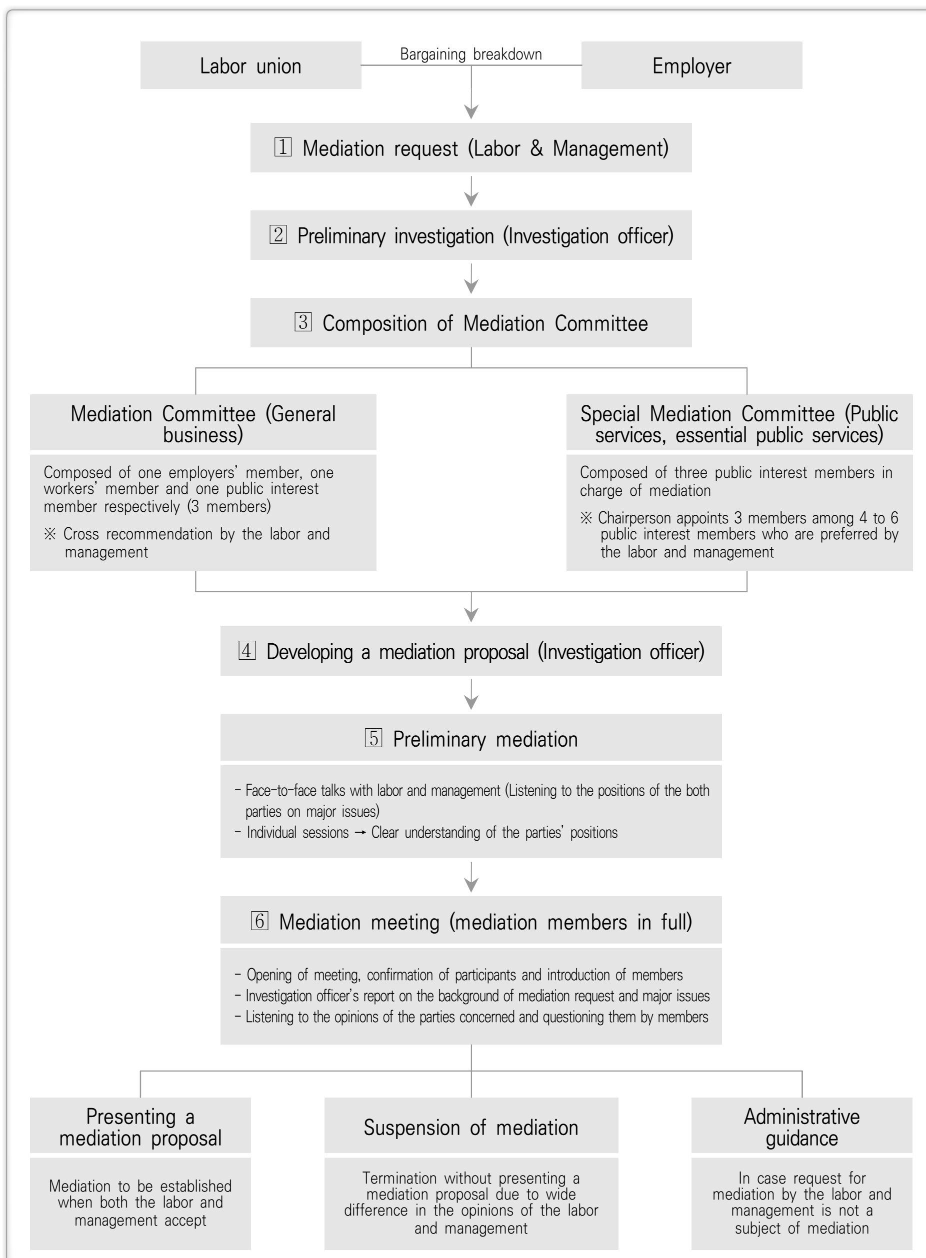
Besides such a general mediation, there is also a 'pre-mediation support system' that supports autonomous dispute resolution by the parties concerned, such as arranging negotiations for smooth mediation even before the request for mediation (TULRAA, Article 53, Para. 1), and an ‘ex post facto mediation system’ that supports autonomous dispute resolution by the parties concerned, carrying out mediation after the end of the mediation period even when a mediation is not established within the statutory mediation period (TULRAA, Article 61, Para. 2). In these cases, unlike ordinary mediation, there is no restriction on the mediation period, but a request or consent of both labor and management parties is required.

#### b. Mediation procedures

Mediation generally follows the steps shown in [Figure 3-2] below, each of which is briefly described.

18) Ministry of Employment and Labor, *2016 White Paper on Employment and Labor*, 2016, p.690.

[Figure 3-2] Mediation procedures



(a) Receiving a request

When a labor-related party requests mediation for a labor dispute, it should fill in a 'request for labor dispute mediation' and submit it to the LRC. Documents to be attached to the application are: (1) overview of the workplace, (2) dispute background, (3) disagreements between the parties concerned and their arguments against them, and (4) documentation specifying other references, etc. (TULRAA Enforcement Ordinance, Article 24, TULRAA Enforcement Regulations, Article 14).

(b) Jurisdiction and transfer of cases

The NLRC administers cases for adjustment of labor disputes stretching over the jurisdiction of two or more RLRCs, and the RLRCs oversee cases for adjustment of labor disputes arising in their jurisdiction (LRCA Article 3, Para. 1-2, Article 3, Para. 2). The Chairperson of the NLRC could designate a RLRC to handle the case if it is deemed necessary for effective adjustment of labor disputes even the case falls under the jurisdiction of the NRLC (LRCA Article 3, Para. 4). When the case received belongs to the jurisdiction of other LRCs, the LRC which received it shall immediately transfer the case and all the documentation to the concerned LRC, and notify this to the concerned parties without delay.

(c) Preliminary investigation

Statutory mediation period is condensed as Saturdays, Sundays and holidays are counted - ten days for general businesses, fifteen days for public services. So, expedited handling is required and preliminary investigation is usually conducted immediately after the receipt of a request. At the time of preliminary investigation, the documents submitted by the labor and management are

closely checked out. Specifically, 1) labor-related parties, 2) whether the case is of a public service, 3) progress in negotiations, and 4) disagreed points (major issues), etc. are to be confirmed.

a) Identification of labor-related parties

Only the labor union (enterprise labor unions, industry labor unions, regional labor unions, and occupational labor unions) which has been issued a certificate for the report on union establishment under TULRAA can become a party, and in the case of a workplace having multiple unions, the 'bargaining representative union', which is determined in accordance with the procedures of the establishment of a single bargaining channel under Article 29-2 of TULRAA, can enjoy the status as a labor-related party in principle. The validity of a bargaining representative union needs to confirmed.

An employer of the business to which union members belong (corporation in the case of a corporate enterprise, the owner in the case of a sole proprietorship) or an employers' organization which can coordinate or regulate its members with respect to labor relations can be a party. When industry labor unions, regional labor unions, etc. conduct group (collective) bargaining with various employers or request mediation, the existence of the union members in the workplace and their subordinate relationship with an employer are closely examined.

b) Checking upon whether the case is of a public service

Public services refer to businesses which are closely related to daily lives of the public or have enormous effect on the national economy: passenger transport business and airline business for regular routes; tap-water business, electricity business, gas business, petroleum refinery business and petroleum supply business; public sanitation business, medical service business and blood

supply business; banking and mint business; broadcasting and telecommunications businesses, etc. (TULRAA, Article 71, Para. 1).

Essential public services refer to the following public service businesses of which interruption or abrogation shall cause severe threats to the daily lives of the public or impair the national economy, and of which replacement is not easy: railway business, urban subway business and air transport business; tap-water business, electricity business, gas business, petroleum refinery business and petroleum supply business; hospital business and blood supply business; the Bank of Korea business; and telecommunications businesses (TULRAA, Article 71, Para. 2).

'Public services' have a longer mediation period of fifteen days than general businesses and differ in the aspect of procedures for going through mediation by the SMC composed of public interest members. 'Essential public services' have the same characteristics with public services as mentioned above and make minimum services at the same time. So, when a request for mediation is received, it will be carefully examined whether the case is of a public service or an essential public service.

c) Confirmation of the progress in negotiations and disagreed points (major issues)

If it turns out, after checking out the progress in negotiations, that the number of negotiations or the substance of the negotiation is insufficient and issues are not drawn up consequently, the parties concerned will be guided to extend the period of mediation or reapply after withdrawing the application. Through the submitted data and interviews with the parties concerned, contentious issues are to be identified, and in particular, labor-management relations in the workplace, substantive issues and interests of the labor

and management regarding hidden issues are also to be identified.

In addition, when there are many issues, key ones will be identified; subsidiary issues will left to an autonomous agreement by the labor and management or be reduced so that only the key issues can be intensively discussed in the mediation meeting.[19]

(d) Composition of the Mediation Committee

a) General businesses

In the case of general businesses, the Mediation Committee should be composed of one workers' member, one employers' member and one public interest member respectively - three members in total. The public interest member shall be appointed by the Chairperson of the LRC; five workers' members are recommended by the employer organization, and five employers' members by labor unions respectively; one member each from the two recommended groups will be appointed as a member by the LRC Chairperson. However, if there is no submission of a list of members recommended by the parties concerned until three days before a Mediation Committee meeting, the Chairperson can arbitrarily nominate them (TULRAA, Article 55, Para. 3).

When the Chairperson of the Labor Relations Commission finds it difficult to compose a mediation committee due to absence of the workers' member or employers' member, the Chairperson of the LRC can designate three mediation members among those who represent public interest in the LRC (TULRAA, Article 55, Para. 4). The public interest member of the Mediation Committee shall be the Chairperson. However, if the Committee consists of three public interest members, the Chairperson shall be elected among them.

19) National Labor Relations Commission, *Manual on Mediation and Essential Services* (Revised edition), 2018, p.39.

On the other hand, if the case is simple as the number of union members is small or there are few issues, a single mediation can be used. In other words, when there is a request by both parties concerned or mutual consent of both parties, the LRC has a single mediator carry out mediation instead of the Mediation Committee (TULRAA, Article 57).

b) Public services

In the case of the public services, the SMC shall be in charge, and it shall consist of three special mediation members who are public interest members. The special mediation members are appointed by the Chairperson of the LRC among four to six public interest members who are preferred by the labor and management.

However, if the parties concerned consent to recommendation of a person who is not a member of the LRC, he/she will be appointed (TULRAA, Article 72). If both parties do not submit a list of members preferred, the LRC Chairperson appoints special mediation members. The SMC Chairperson shall be elected among the three special mediation members who are the public interest members. When it is composed of those who are not the members of the LRC, the Chairperson shall be elected among them.

(e) Writing of investigation report and briefing the SMC members

The investigation report should be written to include introduction on labor and management parties, matters requested for mediation, major issues, arguments of labor and management parties, the progress in negotiations, and other references and supporting documentation.

In particular, the issues are to be classified as claims by the labor union, claims by the employer and references so that the claims can be contrasted and the core contents such as financial statements, wage increase rates in

the past and current levels of wages in the same industry that can be grounds for the arguments of labor and management parties should be written down in the report.

When there are matters confirmed in the course of preliminary investigation or changes made after preliminary investigation in the wake of negotiations, the report should include those changes. When the parties concerned carried out curtailment of issues, proposal of modifications, partial agreement, etc. in the course of negotiations, the investigation officer will organize the contents and report them to the mediation members at the next meeting. Also, the report will be sent by an e-mail to the mediation members before the meeting so that they can be aware of the information of the mediation case.

(f) Mediation meeting

a) Strategy meeting of mediation members

Strategy meeting of mediation members shall be held before the mediation meeting for the purpose of reviewing its agenda. At this time, the investigation officer distributes a plan to advance the meeting and report to them details of preliminary investigation and the state of the progress in negotiations between the labor and management.

In the case of general businesses, the Chairperson is elected at the strategy meeting for the first mediation. The investigation officer reports on the issues of the parties concerned and dispute background including labor-management negotiations and discusses the proceedings of the day's meeting. Starting the second mediation strategy meeting, the investigation officer briefly reports on the progress in negotiations made since previous mediation meetings and discuss the proceedings of the day's meeting.

b) Holding of mediation meeting

The mediation meeting is to be held with attendance of all the members of the Mediation Committee and a resolution is made with the affirmative vote of a majority of the members present. However, a meeting can be opened without all three mediation members attending it, if it is held for coordination of issues between the labor and management, etc. without making a decision. The schedule of the mediation meeting shall be managed according to the order of the meetings such as the first mediation meeting, the second mediation meeting, etc. and the final mediation meeting is usually held on the expiration date of the mediation period. Minutes are taken of the results of the meeting.

Mediation members or the investigation officer may visit the site and conduct activities such as persuasion, advice, etc. for effective mediation, if it is a remote workplace or the labor and management wish to do so.

c) Individual meeting with either a labor or management party

Individual meetings with either a labor or management party is the process of persuasion; mediation members suspend the meeting and discuss ways to proceed with mediation; a separate meeting will be held with the labor and management parties respectively; they can listen to their unrevealed intention and the maximum extent of concession, etc. and propose an alternative for an agreement.

When persuasion is necessary, the workers' member persuades the labor and the employers' member takes on the management. A proposal based on as objective data and reasonable grounds as possible is to be presented.

(g) Extension of mediation period

An agreement was not established during the mediation period, but if it

is deemed possible to reach an agreement by further mediation, its extension can be recommended to both sides.

Mediation shall be terminated within ten days for general businesses and fifteen days for public services from the day mediation is applied for. However, its extension is demanded with an agreement between the parties concerned, it can be extended within ten days for general businesses and fifteen days for the public services (TULRAA, Article 54).

(h) Presenting a mediation proposal and termination of mediation

The Mediation Committee writes up a mediation proposal after confirming the positions of the labor and management parties concerned and recommends it to them. Whether to accept it or not is up to them, but they should participate in the mediation procedures in a faithful manner, and the Mediation Committee shall confirm points of their arguments by having them attend meetings after the commencement of mediation procedures.

The party requesting mediation may withdraw all or part of the mediation request at any time before mediation is terminated. If the Mediation Committee finds it difficult to continue due to unavoidable reasons, it can conclude the mediation by notifying the parties concerned in writing of the reason not providing a mediation proposal.

a) Presenting a mediation proposal (acceptance or rejection)

If opinions of the labor and management are approached to some degree and it is likely that they will accept a mediation proposal when it is presented, or if it is judged that it will help autonomous settlement of the dispute between the parties concerned in the future, a mediation proposal will be presented. It is possible to make it public including a reason in it when recommending

its acceptance. When necessary, coverage in the newspapers or TV broadcasting can be requested.

If both parties accept a mediation proposal, the mediation statement shall be written down and all the mediation members or a single mediator signs it or puts a seal on it together with the parties concerned. If the parties refuse to accept it and it is judged that there is no room for further mediation, it shall be decided to terminate the mediation and they will be notified of it.

b) Decision to suspend mediation

If the parties concerned do not want a mediation proposal or it is feared that it is impossible to present one due to significant difference or it is likely to adversely affect the future industrial relations to the present one, mediation can be terminated by notifying the parties concerned in writing of the reason without presenting a mediation proposal. When determining or notifying mediation suspension, meaning of mediation suspension, the reason for making the decision, entreaty that the labor and management should reach an agreement through autonomous negotiation, etc. should be specified.

c) Decision of administrative guidance

If a mediation request for labor disputes is found not to be a subject to mediation or arbitration, the reason why it is not eligible for mediation and other possible solutions should be provided. For administrative guidance under TULRAA, mediation has not been implemented. So, it is deemed that mediation procedures are not carried out and mediation can be requested for later.

The LRC can make a decision of administrative guidance in the following cases: when the party who requested mediation or the other party is not

a labor-related party under Article 2, Para. 5 of TULRAA; when negotiations are not enough at the time of the mediation application or either party did not present a negotiation proposal or the mediation application was filed for matters other than determination of working conditions pursuant to Article 2, Para. 5 of TULRAA; and when the procedures for establishment of a single bargaining channel pursuant to Article 29-2 of TULRAA were not carried out.

**c. Effect of mediation**

When a mediation proposal is accepted by the labor-related parties, all the mediation members or a single mediator shall write a mediation statement and sign it or put a seal on it together with the concerned parties. In this case, its contents shall have the same effect as a collective bargaining agreement (TULRAA, Article 61, Para. 1 and 2). In other words, it does not fall under a collective bargaining agreement, but has the same effect as a collective bargaining agreement in deference to the will of the labor related parties.

**d. Annual statistics**

(a) Receiving and handling of mediation cases

As shown in [Table 3-1] below, the number of mediation requests filed with the LRC is about 800 to 900 per year, including those that have been carried forward from the previous year. In 2017, 863 mediation cases were received and 839 cases among them were resolved. Out of 839, 443 cases were successfully mediated, and 313 cases failed. Administrative guidance was given to 16 cases and 67 cases were withdrawn. The mediation success rate was 58.6% and the rate usually remained in the upper 50 percentile. In particular, in the case of the years 2016 and 2017, the mediation success

rate has risen despite the labor-management confrontations surrounding the introduction of a performance-based annual salary system and restructuring of the shipbuilding industry, etc. On the other hand, the LRC's administrative guidance decision has been on a declining trend for the past three years.

**[Table 3-1] Yearly mediation cases filed and handled**

(cases, %)

| Classification | Cases filed | Cases handled | Mediation successful | | | Mediation not successful | | | Administrative guidance | Withdrawal | Mediation success rate |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Subtotal | Acceptance of mediation proposal | Withdrawal agreed | Subtotal | Rejection of mediation proposal | Mediation suspension | | | |
| 2013 | 762 | 739 | 414 | 252 | 162 | 223 | 71 | 152 | 34 | 68 | 65.0 |
| 2014 | 886 | 864 | 401 | 169 | 232 | 327 | 43 | 284 | 45 | 91 | 55.1 |
| 2015 | 877 | 858 | 382 | 148 | 234 | 328 | 51 | 277 | 42 | 106 | 53.8 |
| 2016 | 822 | 796 | 410 | 161 | 249 | 293 | 32 | 261 | 14 | 79 | 58.3 |
| 2017 | 863 | 839 | 443 | 188 | 255 | 313 | 47 | 266 | 16 | 67 | 58.6 |

* Cases filed include those that have been passed down from the previous year.

* Mediation success rate = Number of successful mediation cases/(successful mediation cases+ unsuccessful cases)×100

(b) Monthly receiving of mediation cases

Looking at the monthly status of mediation cases received by the LRC, cases are concentrated in the second half of the year, starting in June, rather than in the first half of each year, as shown in [Table 3-2]. Excluding January when the cases carried forward from the previous year are included, they gradually increase from February to May and are mostly received from June to September.

The mediation success rate - cumulative mediation success rate until the concerned month - is generally high in the first half of the year when applications are small in number, but then falls in the second half. In 2017, 410 cases, 47.5% of the total 863, were filed in a June-September period. Mediation success rate remained above 60% until May, but it dropped below 60% from June.

[Table 3-2] Yearly and monthly mediation cases filed and mediation success rates

(cases, %)

| Classification | | Monthly mediation requests | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Month / Total | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec. |
| 2013 | Cases filed | 762 | 43 | 29 | 34 | 35 | 70 | 70 | 100 | 93 | 45 | 97 | 74 | 72 |
| | Mediation success rate | 65.0 | 70.8 | 69.4 | 69.7 | 73.0 | 67.6 | 70.1 | 62.6 | 64.6 | 66.3 | 66.4 | 64.9 | 65.0 |
| 2014 | Cases received | 886 | 70 | 49 | 65 | 76 | 83 | 89 | 98 | 65 | 78 | 75 | 76 | 62 |
| | Mediation success rate | 55.1 | 57.8 | 61.6 | 50.8 | 56.9 | 54.2 | 54.2 | 51.2 | 50.9 | 52.6 | 53.9 | 53.8 | 55.1 |
| 2015 | Cases filed | 877 | 60 | 29 | 53 | 74 | 47 | 132 | 100 | 74 | 80 | 101 | 67 | 60 |
| | Mediation success rate | 53.8 | 61.1 | 60.3 | 59.1 | 59.5 | 56.8 | 53.1 | 50.0 | 50.6 | 51.4 | 52.6 | 53.4 | 53.8 |
| 2016 | Cases filed | 822 | 47 | 32 | 40 | 40 | 61 | 121 | 81 | 102 | 84 | 78 | 82 | 54 |
| | Mediation success rate | 58.3 | 71.0 | 70.8 | 66.7 | 64.9 | 66.7 | 63.1 | 58.6 | 57.7 | 56.1 | 57.8 | 58.3 | 58.3 |
| 2017 | Cases filed | 863 | 65 | 29 | 35 | 45 | 57 | 133 | 83 | 86 | 108 | 77 | 79 | 66 |
| | Mediation success rate | 58.6 | 66.7 | 64.8 | 62.7 | 61.9 | 61.2 | 58.6 | 54.1 | 56.2 | 58.9 | 59.1 | 57.4 | 58.6 |

* January includes cases that have been passed down from the previous year. Monthly mediation success rate is cumulative data until the relevant month.

* Mediation success rate = Number of successful mediation cases / (successful mediation cases+ unsuccessful mediation cases)×100

(c) Ex post facto mediation

The ex post facto mediation has been steadily increasing for the past several years as shown in [Table 3-3], increasing from 15 cases in 2013 to 33 in 2017. It is seen as a result of strengthening support for resolution of conflicts between the labor and management through regular monitoring and proactive mediation services even after a mediation is not established.

[Table 3-3] Yearly ex post facto mediation cases handled

(cases)

| Classification | 2013 | 2014 | 2015 | 2016 | 2017 |
| --- | --- | --- | --- | --- | --- |
| Cases handled | 15 | 20 | 26 | 28 | 33 |

**e. Overview of the results**

In the early 2000s, the number of mediation applications exceeded 1,000 per year, and was steadily decreasing until 2011 due to increased joint collective bargaining by industrial unions and stabilization of industrial relations. However, after the introduction of plural unionism, it showed a slight increase but steadied recently at the level of 800 to 900 cases.

There has been a positive outcome that the mediation success rate has exceeded 60% since 2007 whereas it had been only 40% before 2000. The average rate for the last five years remained in the upper 50% and it is estimated to have contributed to stabilization of labor relations to a certain extent.

Despite legal limitations such as the rule of prior recourse to mandatory mediation and short mediation period, the mediation success rate is similar to that of Japan, which adopts the principle of prior recourse to arbitrary mediation. The LRC, in order to enhance the effectiveness of the mediation

service, composes the Mediation Committee mainly with members who have expertise in the relevant field and are experienced in mediation, taking into account characteristics of each workplace. In the case of a workplace for which mediation is not established, it provides an ex post facto mediation when the labor and management parties agree to it. Efforts are being made to enhance the expertise of public interest members and investigation officers through sharing of efficient mediation techniques and mediation cases, etc.

As recent labor disputes have a nature of mixing rights and interests disputes together, and various issues such as restructuring, reform of the wage system are being raised, the LRC provides active mediation service reflecting the reality of workplaces and meeting demands of the labor and management for mediation service.

### 2) Arbitration

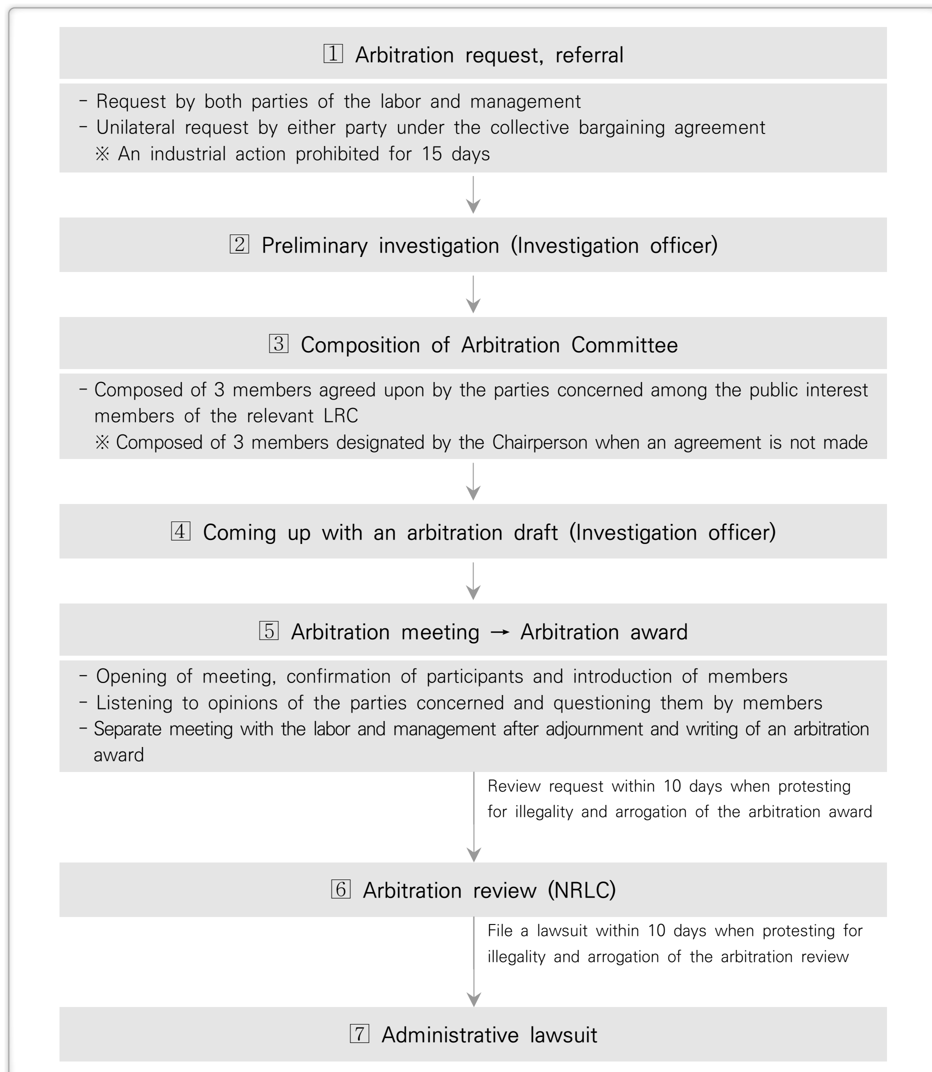
#### a. Introduction

Arbitration is a procedure in which both parties or either party to a labor dispute requests to the LRC in accordance with their collective bargaining agreement to settle it based on the disposition which is the arbitration award of the LRC. Arbitration is a disposition that is legally binding on the parties concerned, unlike mediation that is based on the principle of autonomous resolution between the labor and management. Acceptance of the arbitration statement is not entrusted to the will of labor and management parties and the parties concerned must comply with it. When a labor dispute is referred to arbitration, no industrial action can be taken for fifteen days from the referral date.

### b. Arbitration procedures

Arbitration generally follows the steps shown in [Figure 3-3] below, each of which is briefly described.

[Figure 3-3] Arbitration procedures



(a) Receipt of an application

Arbitration commences when both labor and management parties request arbitration in accordance with Article 62 of TULRAA or when either party applies for it based on their collective bargaining agreement. If both the parties have applied for arbitration, it should be checked out whether they have signed or put a seal on the 'arbitration request.' Documentation which can verify the identification of both the parties should be attached, and whether they are eligible to be a party to arbitration should be confirmed. If either party concerned filed a request, it shall be ascertained whether or not there is a ground for the arbitration request in the collective bargaining agreement.

(b) Composition of the Arbitration Committee

The Arbitration Committee shall consist of three members agreed upon by the parties concerned among the public interest members in charge of mediation including the Chairperson or a standing member of the concerned LRC. However, if no agreement is reached between the parties concerned, the Arbitration Committee will be composed of three members appointed by the LRC Chairperson among the public interest members in charge of mediation (TULRAA, Article 64, Para. 2 and 3, LRC Rules, Article 161, Para. 3). In this case, a public interest member who has been responsible for the mediation of the case in question shall be included in the arbitration members for continuity of handling the case.

(c) Holding and termination of mediation meeting and writing of an arbitration award

a) Holding and termination of mediation meeting

The Arbitration Committee shall determine a due date and have both parties concerned or either party attend it to ascertain the points of their arguments.

When the parties concerned designate a workers' member or employers' member, they can attend the arbitration meeting with the consent of the Arbitration Committee and state their opinions (TULRAA, Article 66, Para. 1 and 2).

At the first arbitration meeting, the opinions of the parties concerned will be heard and negotiations are to be arranged so that they can reach an autonomous agreement before an arbitration award is handed down. An arbitration award is to be prepared for the issues that are difficult to reach an agreement by autonomous negotiations between them.

The arbitration meeting shall be open with the attendance of all the members and make a resolution with the affirmative vote of a majority of the members present. The meeting for an arbitration award shall be held with the arbitration members only attending it. The period of arbitration is not stipulated, but when a labor dispute is referred to arbitration, an industrial action cannot be waged for fifteen days from the date of the referral (TULRAA, Article 63). So, the arbitration usually ends within fifteen days from the day of the request for arbitration.

b) Writing of an arbitration award

An arbitration award does not need to be constrained by a proposal presented in the course of mediation process, but it can be referred to. The arbitration award can be presented for the issues requested for mediation within the scope of a subject for negotiation. An arbitration statement shall be arranged respecting the part to which the parties concerned agreed in relation to the issues requested for mediation, and as for the part to which they could not agree, within the scope of the opinions presented by the parties. When writing an arbitration award, it shall not be written in violation of the Acts applicable to the relevant industries, occupations, etc. as well as labor-related laws.

### c. Effect of arbitration

The arbitration statement drawn up as a result of an arbitration is referred to as an arbitration award. Unlike mediation, an arbitration award is a disposition that is legally binding on the parties concerned. The contents of the arbitration award have the same effect as a collective bargaining agreement. This means that its contents becomes the elements of an collective bargaining agreement and it shall be deemed that the provisions applicable to the collective bargaining agreement under TULRAA apply to the arbitration award in principle.[20) It shall be made in writing and the effective date must be specified within it.

When the parties concerned find that an arbitration award of an RLRC is illegal or constitutes an act of arrogation, they may file a petition for review to the NLRC within ten days from the date of service of the arbitration award. When they find that the arbitration award or the written decision of the arbitration review by the NRLC is illegal or constitutes an act of arrogation, they can file an administrative litigation within fifteen days from the date of service of the arbitration award or written decision of the arbitration review.

Failure to petition a review or file an administrative litigation within the mandated time limit shall result in the confirmation of the arbitration award or the decision of the review by the LRC. Their effect shall not be suspended by filing a petition for review or an administrative litigation.

### d. Annual statistics

After the abolishment of compulsory arbitration for essential public services since 2008, the number of cases received for arbitration has significantly

20) Lee Sang-yun, *Labor Laws* (15th edition), Bobmunsa, 2017, pp. 847-901.

reduced to less than ten cases per year. [Table 3-4] below shows that the number of arbitration cases received after 2013 is less than ten per year, including the cases carried forward from the previous year. Nine out of the 20 arbitration cases processed in the last five years were about an arbitration award and eleven cases were withdrawn.

[Table 3-4] Yearly arbitration cases filed and handled

(cases)

| Classification | Cases filed | Handled | | | | Transfer |
|---|---|---|---|---|---|---|
| | | Total | Arbitration award | Administrative guidance | Withdrawal | |
| 2013 | 1 | 0 | 0 | 0 | 0 | 1 |
| 2014 | 10 | 10 | 6 | 0 | 4 | 0 |
| 2015 | 2 | 2 | 1 | 0 | 1 | 0 |
| 2016 | 6 | 6 | 1 | 0 | 5 | 0 |
| 2017 | 2 | 2 | 1 | 0 | 1 | 0 |

* Cases filed include those that have been passed down from the previous year, and only the cases filed for the first instance was counted (cases for arbitration review are excluded).

### 3) Emergency adjustment

#### a. Introduction

Emergency adjustment is a system in which the Minister of Employment and Labor decides emergency adjustment for labor disputes, in consultation with the Chairperson of the NLRC, which are unsolved through normal mediation procedures of the LRC from a public interest point of view in order to suspend an industrial action and have the NLRC initiate mediation procedures to solve them.

Emergency adjustment is an exceptional measure which is to be taken when a risk of jeopardizing the national economy or the daily lives of the people is present. When the NLRC is notified of an emergency decision

from the Minister of Employment and Labor, it shall initiate adjustment without delay (TULRAA, Article 78).

Emergency adjustment is a series of urgent procedures; when it is judged that the national economy or the daily lives of the people are endangered by an industrial action. Emergency adjustment temporarily stops the action and solves the labor dispute that introduced it by means of the ex officio mediation or compulsory arbitration by the NLRC (TULRAA, Article 76, Para. 1).

**b. Conditions for emergency adjustment**

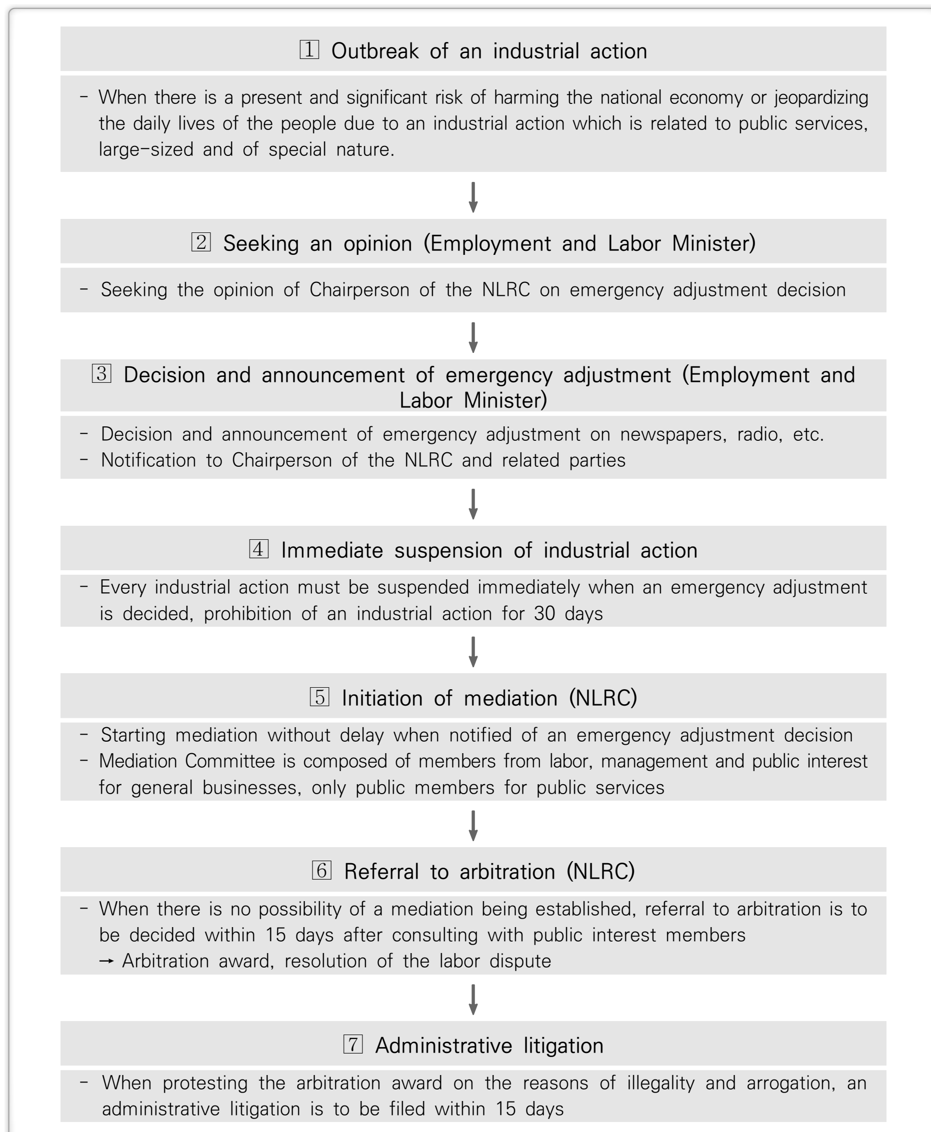
Emergency adjustment can be initiated under the condition that an industrial action is being carried out and it fits the following conditions: 1) it is related to public services, 2) it is large-sized, 3) its nature is special and there is a present and significant risk of undermining the national economy or jeopardizing the daily lives of the people (TULRAA, Article 76, Para. 1).

In determining whether ‘there is a present and significant risk of undermining the national economy or jeopardizing the daily lives of the people’, comprehensive consideration is given to the impact on the national economy and the daily lives of the people and the prospect of autonomous agreement between labor and management parties; it is important to consider not only the direct damage of an industrial action that can be calculated such as the amount of sales loss, but also the nature of the corresponding business, the status it takes in the national economy, the range of impact that the industrial action deals to, direct or indirect damage caused by the industrial action, the degree of discomfort of the public, whether public health and safety are threatened or not, impact on external credibility and national competitiveness, etc., and the prospect of autonomous agreement between the labor and management parties.

### c. Emergency adjustment procedures

Emergency adjustment generally follow the steps shown in [Figure 3-4] below.

[Figure 3-4] Emergency adjustment procedures



(a) Decision and announcement of emergency adjustment and notification

When the Minister of Employment and Labor decides an emergency adjustment, he/she must seek the opinion of the Chairperson of the NLRC in advance (TULRAA, Article 76, Para. 2). In case of the decision of an emergency adjustment, its reason should be announced without delay via the newspaper, broadcasting or in a way that it can be quickly known to the public. It should be also notified to the NLRC and related parties (TULRAA, Article 76, Para. 3).

(b) Commencement of mediation

When the Chairperson of the NLRC receives the notice of an emergency adjustment decision from the Minister of Employment and Labor, he/she shall form the Mediation Committee without delay and initiate mediation. The Committee shall be composed of one member from the labor, management and public interest respectively in the case of general businesses, and three public interest members in the case of public services. Mediation-related actions such as writing of a mediation statement and its presentation, recommendation of its acceptance, etc. shall be carried out for the parties concerned. In the event that the parties agree that there is no possibility of mediation establishment, whether to refer it to arbitration or not shall be decided within fifteen days from the date of notification of the emergency adjustment decision (TULRAA, Article 79).

(c) Commencement of arbitration

When there is a request for arbitration by either party[21] or both parties, or the Chairperson of the NLRC decides to refer the case to arbitration after the emergency adjustment procedures are initiated, arbitration shall start without delay.

21) In case of an emergency adjustment, either party can apply for arbitration even if there is no clause on unilateral arbitration in their collective bargaining agreement.

The Arbitration Committee shall consist of three members agreed upon by the parties concerned who are selected from among the public interest members in charge of mediation of the LRC. However, if no agreement is reached between the parties concerned, it will be composed of three public interest members in charge of mediation who will be appointed by the Chairman of the NLRC. The mediation and arbitration shall be completed and shall deliver an arbitration award to the parties concerned within 30 days from the date of the announcement of the emergency adjustment decision.

**d. Effect of emergency adjustment**

The parties concerned shall immediately halt an industrial action when a decision of emergency adjustment is made public, and can not resume it unless 30 days have lapsed from the date of announcement (TULRAA, Article 77).[22] In this case, halting an industrial action means that employees should respect the employer's right to place employees, not that they have to go back to normal operation immediately after the decision is made public. When the parties concerned accept the mediation by emergency adjustment or an arbitration award is handed down, the same effect as a collective bargaining agreement will be given, and a subsequent industrial action will be deemed illegal.

**e. Cases of emergency adjustment**

Since the introduction of an emergency adjustment system in 1963, the emergency adjustment has been initiated four times in total.

22) The violation of Article 90 of TULRAA could result in imprisonment of up to two years or a fine of up to KRW 20 million.

In 1969, an emergency adjustment was initiated for Korea Shipbuilding Corporation on September 18, 1969 with an all-out strike by the labor union and lockout by the employer, but the situation ended with an agreement on wage bargaining on October 13, 1969.

Emergency adjustment was decided on July 20, 1993 for the strike by the labor union of Hyundai Motor Company in 1993, and it ended with the signing of the wage and collective bargaining agreement between with the labor and management on July 21, 1993.

In 2005 when Asiana Airline's labor union went for a strike for 25 days, an emergency adjustment was initiated following the decision of emergency adjustment on August 10, 2005. The case was referred to arbitration after the union rejected the mediation proposal presented by the NLRC and ended with an arbitration award of the Arbitration Committee on September 9, 2005.

In 2005, at the time of the general strike of the labor union of Korean Air, an emergency adjustment was initiated following the decision of emergency adjustment on Dec. 11, 2005. The case was referred to arbitration after the labor union rejected the mediation proposal presented by the NLRC. It ended with an arbitration award of the Arbitration Committee on January 10, 2006.

#### 4) Private mediation

Mediation of labor disputes is usually subject to the public mediation procedures of the LRC, but they are not compulsory. Accordingly, the labor and management can receive private mediation or arbitration from a third party or organization other than the LRC either pursuant to an agreement between the parties or a collective bargaining agreement.

As such, mediation other than one by the LRC - public mediation - is called ‘private mediation’. Labor and management parties can request mediation or arbitration to the LRC by an agreement between the parties concerned, even in the course of private mediation or arbitration.

The current TULRAA acknowledges private or arbitrary mediation as a way for autonomous resolution. A method of mediation or arbitration that is different from the contents or the procedures prescribed in Article 52, Para. 1 of TULRAA can be adopted. Labor and management parties can stipulate all the private adjustment procedures of mediation or arbitration together or only the procedures for one of the two.

Therefore, the private mediation process can be organized into various forms according to the characteristics of each workplace. In addition, the private mediation procedures agreed upon by the parties concerned are understood as having priority over the public mediation procedures under TULRAA. This is called the 'principle of having a priority recourse to private mediation'.[23)]

If labor and management parties decide to resolve a labor dispute in accordance with private mediation procedures, they must report it to the concerned LRC. As in the case of public mediation, a ten-day mediation period also applies to general businesses, and a fifteen-day period for public services. The prohibition of an industrial action during the mediation periods also applies. When a mediation or arbitration is established under private mediation procedures, its contents shall have the same effect as a collective bargaining agreement.

Labor and management parties can resolve labor disputes through private mediation and arbitration even if public mediation is under way by the LRC.

23) Lee Deok-roh·Jeong Jong-jin, *Latest Labor Relations*, Bobmunsa, 2017, pp. 390-391.

In this case, the period of mediation is to be counted anew from the date when the private mediation commenced. However, if labor disputes are not resolved by private mediation, both sides can request mediation and arbitration to the LRC in accordance with TULRAA. The period of mediation is counted anew from the date of the request to the LRC (TULRAA, Article 52).

As such, TULRAA allowed resolution of labor disputes by means of private mediation other than public mediation, according to a mutual agreement between the parties concerned. However, it was not widely uses as an infrastructure because support of private mediation were insufficient; for example, paying a fee for private mediator was illegal.

With the amendment of TULRAA in December 2006, legal grounds were created to allow a private mediator or arbitrator to receive a fee, allowances and travel expenses from labor-related parties, thereby paving the way for the participation of professional and competent people in the activation of private mediation.[24]

## 2. Adjudication on the maintenance and operation levels of the essential minimum services

### (1) Introduction

The term *essential minimum services*[25] means "businesses of which suspension or discontinuance may seriously endanger life, health or physical safety

24) Ministry of Labor, *A briefing document on legislations for the advancement of labor-management relations*, 2007, pp. 12-37.

25) The term *essential minimum services* are suggested by some scholars, as the concept of the term reflects both 'essential services' and 'minimum services' of the ILO (Lee Jun-hee, "A Review on the Jurisprudence of the Minimum Services", Labor Policy Review, Book 8, 2nd Issue, 2008, p.88).

of the public or their daily lives, which is prescribed by Presidential Decree, among the essential public services provided for in Article 71, Para. 2" (TULRAA, Article 42-2, Para. 1, and TULRAA Enforcement Decree, Article 22-2, Attached Table 1). The parties to labor relations should conclude an agreement in writing that stipulates the necessary minimum level of maintenance and operation of the essential minimum services, targeted jobs, and the necessary number of workers, etc. in order to maintain and operate the essential minimum services during the period of industrial actions. In such cases, both parties to labor relations should sign and put seals on the agreement on the essential minimum services (TULRAA, Article 42-3). This agreement is called Essential Minimum Service Agreement (EMSA).

When the EMSA is not concluded, both parties or either party to labor relations should file a request to the LRC to determine the necessary minimum level of the maintenance and operation of the essential minimum services, targeted jobs, and the necessary number of workers (TULRAA, Article 42-4, Para. 1).

Upon receiving the request, the LRC may adjudicate on the above-mentioned items, taking into account the characteristics, job content, and so forth of each workplace for the essential minimum services (TULRAA, Article 42-4, Para. 2).

[Table 3-5] Essential public services and essential minimum services

| Essential public services | Essential minimum services |
| --- | --- |
| 1. Railway and metropolitan railway | 7 services, including the train operation of the railway or metropolitan railway |
| 2. Air transportation | 14 services, including boarding process for passengers and flight attendants |
| 3. Water supply and sewerage | 3 services, including the operation of water intake, purification, pressurizing, and drainage facilities |
| 4. Electricity supply | 12 services, including the operation of power generators in 3 sectors such as power generation |
| 5. Gas supply (excluding LPG) | 2 services related to gas acquisition, production, storage and supply. |
| 6. Petroleum refinery and supply (including LPG) | 2 services, including acquisition, production, storage and supply of petroleum (excluding natural gas) |
| 7. Medical services | 3 emergency medical services according to Article 2, Para. 2 of *the Emergency Medical Service Act* |
| 8. Blood supply | 3 services, including collecting blood and testing blood collected |
| 9. Bank of Korea | 6 services, including monetary and credit policies and the operation of the BOK according to Article 6, 28, and 29 of *the Bank of Korea Act* |
| 10. Telecommunications | 4 services, including the operation and maintenance of backbone network and subscriber network |

### (2) Matters to be decided

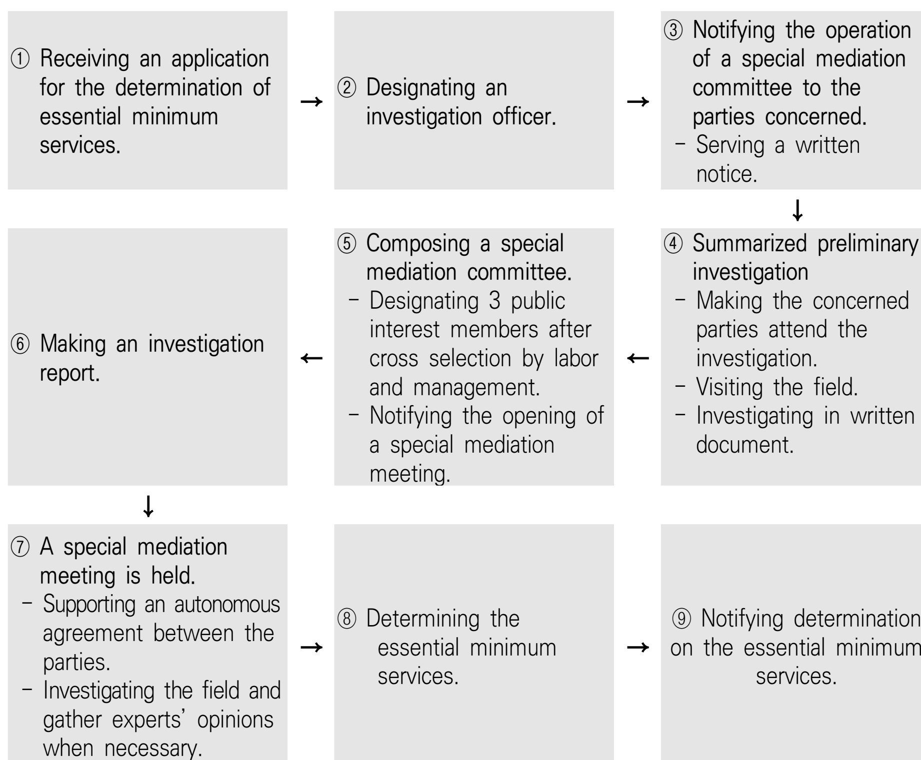
In determining the necessary minimum-level maintenance and operation in the essential minimum services, targeted jobs mean detailed job services that must be provided during strike, and the necessary number of workers is the number of workers required during strike for the minimum-level operation and maintenance of the essential minimum services.

Given factors such as the nature of goods and services provided by essential public services, the possibility of their replacement, their influence on the life, health, and physical safety as well as daily lives of the public, the LRC supports the labor and management to agree on the scope of the essential services so that right to strike and public interest can be balanced harmoniously. If both sides fail to reach an agreement, the LRC determines it instead.

### (3) Determination procedures

The level of the maintenance and operation of the essential minimum services is determined in following procedures as shown in [Figure 3-5].

[Figure 3-5] Procedures to determine the maintenance and operation level of the essential minimum services



### 1) Receiving an application

When the parties concerned to labor relations fail to reach an agreement autonomously, both parties or either party file a request for determination on the essential minimum services to the LRC. When they request this service, along with a 'written application for the determination on the maintenance and operation level of the essential minimum services', they have to submit to an RLRC with jurisdiction over their region documents regarding company overview, reasons behind the essential minimum service agreement failure, minimum level of maintenance and operation of the essential minimum services, targeted jobs, disagreement in the number of workers necessary for the jobs, and summarized claims of both sides.

### 2) Case handling

When a request for the determination on the essential minimum services is filed, an RLRC adjudicates on the case first and when the adjudication is suspected of illegality or arrogation of power, the case can be filed to the NLRC for a review. When the main business or workplace that provides the essential minimum services directly, which should be maintained and operated during strike, is located in a region over which only one RLRC has jurisdiction, then the case is handled by the RLRC. If such a business or workplace is located across an area that more than two RLRCs have jurisdiction over, then the case is handled by the RLRC that covers the area where the main business or workplace is located.

When it is difficult to decide where the main workplace is located or if the RLRC, which has jurisdiction over the location of the main workplace, has difficulties in handling the case, the Chairperson of the NLRC may, ex officio or upon the request of either of the parties or the chairperson

of the RLRC, designate any other RLRC to handle the case (LRCA, Article 3, Para. 2 and 5).

### 3) Composing a special mediation committee

The chairperson of the LRC designates three candidates out those who have been narrowed down by both parties into the members of a special mediation committee (SMC). If any of these three members cannot participate in the committee, then, another candidate, who is also among those who have been narrowed down, is designated as a committee member instead of the member unavailable. If there is no available candidate, then, a new list is made and the narrowing-down process starts anew to form the SMC. The chairperson of the SMC is nominated among and by members of the committee.

### 4) Investigation

Investigation can be divided into two phases. The first phase is a *preliminary investigation*, in which an investigation officer checks the claimant's eligibility and writes an investigation report before a special mediation meeting is held. The second phase is an *SMC investigation*, in which a special mediation meeting is held after the formation of the SMC to investigate and confirm facts underlying the judgment in review and determination. To make an accurate judgment on the determination of the essential minimum services, a fair and thorough investigation by both SMC members and an investigation officer is necessary.

The SMC chairperson, if deemed necessary, designates an SMC member or an investigation officer to investigate the situation and facts surrounding the workplace concerned and report them to the committee. In doing so,

various investigation methods can be used such as an investigation in written document, having the concerned parties attend the investigation, visiting the field, and taking experts' advice, and so on.

#### a. Preliminary investigation

The purpose of preliminary investigation is to make an investigation report for the SMC. In this investigation, an investigation officer who is assigned to the case checks in advance whether both parties concerned have acquired eligibility for this service, whether the filed request satisfies the requirements for document, or whether there is a reason for the dismissal of the case.

In more detail, the investigation officer confirms factors such as: whether the claimant has legitimate eligibility in labor relations; why essential minimum service agreement has not been reached; what is the minimum level necessary for the maintenance and operation of the essential minimum services; what is the disagreement in determining the targeted jobs and the number of workers necessary as well as claims of both parties on disagreement; and business overview, business process flowchart, and job contents of different departments at the workplace.

#### b. SMC investigation

When a special mediation committee (SMC) is composed, the investigation officer submits the investigation report to the SMC and, if deemed necessary, the chairperson of the LRC or the SMC designates an SMC member or the investigation officer to investigate further on concrete facts and matters necessary for the determination on the essential minimum services.

If the SMC decides a further investigation is needed, the investigation officer may request the concerned parties to submit necessary document or

request them to be present in the SMC to inspect them. When the investigation officer believes that the documents the concerned parties hold need to be secured, he or she can ask them to present the facts of the case.

If the submitted documents are insufficient or if it is difficult to make a judgment on the facts by reviewing the submitted documents or summoning the concerned parties to the investigation, or in case an in-depth analysis through an additional investigation is needed, the investigation officer may visit the workplace for field investigation.

#### 5) Determination

The SMC determines the essential minimum services after reviewing the documents submitted by the concerned parties, the investigation report made by the investigation officer, the results of the field investigation by SMC members or the investigation officer, and the discussions made in the SMC.

If the parties concerned reached an agreement on the most of the essential minimum services autonomously through a bargaining and request the committee to determine only the part that they haven't agreed on, the SMC is supposed to do so. The chairperson of the SMC determines on the essential minimum services based on the consensus of SMC members, after reflecting on the opinions of the SMC members sufficiently. However, if a consensus is not reached, the attendance of the total members of the SMC and the concurrence of a majority of the members present is necessary for the determination by the SMC.

After reviewing the case, if it is recognized as a relevant case, the SMC determines on the minimum level of the maintenance and operation of the essential minimum services, targeted jobs, and the necessary number of workers, taking into account the characteristics and the content of the jobs of

the essential minimum services that may differ according to different businesses and workplaces.

If the SMC considers that the claimant does not have the clear legitimate eligibility, or a review request is filed after the request period is over, the request is to be dismissed.

### (4) Effect of determination

The acts of stopping, discontinuing or impeding the proper maintenance and operation of the essential minimum services are industrial actions and such actions are prohibited (TULRAA, Article 42-2, Para. 2)[26). Therefore, a labor union cannot stop, discontinue or impede the maintenance and operation of the essential minimum services by engaging its union members who carry out such duties to participate in industrial actions, and cannot prevent union members or non union members from carrying out such duties[27).

When both parties or either party concerned suspects of illegality or arrogation of power in the determinations by the RLRC, they can file a review to the NLRC within 10 days since they are served with the written determination. If the adjudication made by the NLRC is also suspected of illegality or arrogation of power, they can file an administrative lawsuit to a judicial court within 15 days since they are served with the written adjudication by the NLRC.

The effects of the determination on the essential minimum services by an RLRC and the adjudication by the NLRC are not suspended even if a review is requested to the NLRC or an administrative lawsuit is filed to the court. When a review request or an administrative lawsuit is not filed

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26) The acts of stopping, discontinuing or impeding the justifiable maintenance and operation of the essential minimum services are subject to imprisonment for below three years or a fine not exceeding 30 million won (TULRAA, Article 89, Subpara. 1)

27) Lim Jong-ryul, *Labor Laws* (ver. 15), Parkyoungsa, 2017, p.228.

within the limitation period stipulated by the laws, the determination or adjudication on the essential minimum services is final and conclusive and therefore, the parties concerned must follow it.

### (5) Annual statistics

As shown in [Table 3-6], the essential minimum service cases filed each year is around 12, except 76 cases in 2014 (including 3 cases that had been passed down from the previous year). In 2014, the number increased significantly as a large number of telecommunication businesses filed a request. The figure in 2015 seems to be also very high as a considerable number of cases had been passed down from 2014, but the actual cases filed in that year was only 14. For the past 5 years, a total of 117 cases related to the essential minimum service determination have been handled and among the total, 22 were adjudicated and 95 were withdrawn.

[Table 3-6] Yearly cases filed and handled for essential minimum service

(cases)

| Classification | Cases filed | Handled | | | | Passed down from the previous year |
|---|---|---|---|---|---|---|
| | | Total | Adjudicated | Dismissed | Withdrawn | |
| 2013 | 11 | 8 | 6 | 0 | 2 | 3 |
| 2014 | 76 | 15 | 2 | 0 | 13 | 61 |
| 2015 | 75 | 72 | 6 | 0 | 66 | 3 |
| 2016 | 15 | 11 | 4 | 0 | 7 | 4 |
| 2017 | 14 | 11 | 4 | 0 | 7 | 3 |

* The cases that had been passed down from the previous year are included in Cases filed.

## Section 2: Adjudication

### 1. Adjudication on the remedy requests for unfair dismissal, etc.

#### (1) Introduction

According to Article 23, Paragraph 1 of the LSA, employer should not, without a just cause, dismiss, suspend, or transfer a worker, reduce his/her wages, or take other punitive measures (hereinafter referred to as "unfair dismissal, etc.") against him/her. Also, though Article 24 of the same Act constrains dismissals on managerial reasons, it considers following cases as dismissals with justifiable reasons: when employer dismisses a worker for an urgent managerial necessity; when employer has made every effort to avoid dismissal; when employer has established and followed reasonable and fair criteria for the selection of the workers subject to dismissal; and, when employer negotiate with the employee representative on the issue before the actual dismissal takes place.

Workers dismissed by employer can file a remedy to an ordinary judicial court or to an LRC, which has remedy procedures as an independent administrative committee. Article 28 of the LSA stipulates that unfairly dismissed workers by their employer can request a remedy to an LRC, which should be made within 3 months from the date of the actual unfair dismissal, etc.

The purpose of the remedy procedures by the LRC is to support workers who have been dismissed to receive a remedy in an easier, faster and less expensive way (Supreme Court, 11/13/1992, 92Nu11114)

The administrative remedy procedures by the LRC are introduced to avoid lengthy and often delayed process and excessive cost burden of a civil litigation,

which is an ordinary remedy measure for violation of one’s right (Constitutional Court, 05/29/2014, 2013Heonba171).

## (2) Overview of the adjudication on unfair dismissal, etc.

### 1) Scope of application

Remedy request for unfair dismissal, etc. by the LSA applies to all companies or workplaces in which five workers or more are ordinarily employed. However, this law does not apply to any company or workplace in which only the employer's relatives living in the same household are engaged, nor to domestic workers hired for house work (LSA, Article 11, and Enforcement Decree of the Same Act, Article 7).

*Ordinarily* means *on average* and should be decided by objective social norms. Therefore, although sometimes the number of workers is below five, if it is over five on average for a certain period (i.e. for one month immediately before the reason for law application arises), the number of the workers employed is ordinarily over five. The number of the workers includes both of the workers: those who continue to work at the designated workplace and whose status is protected by the LSA, and daily workers who are hired temporarily according to the situation of the company. Also, *business* means *an organization in which every part is closely operated while achieving a managerial unity* (Supreme Court, 10/12/1993, 93Da18365), and includes both corporate bodies and private entities, regardless of its purpose or industry.

In the case of central or regional government agencies, however, the LSA is applied irrespective of the number of workers hired ordinarily. Namely, the LSA is applied even if there is only one worker who is not a public official (LSA, Article 12).

### 2) Adjudication Committee

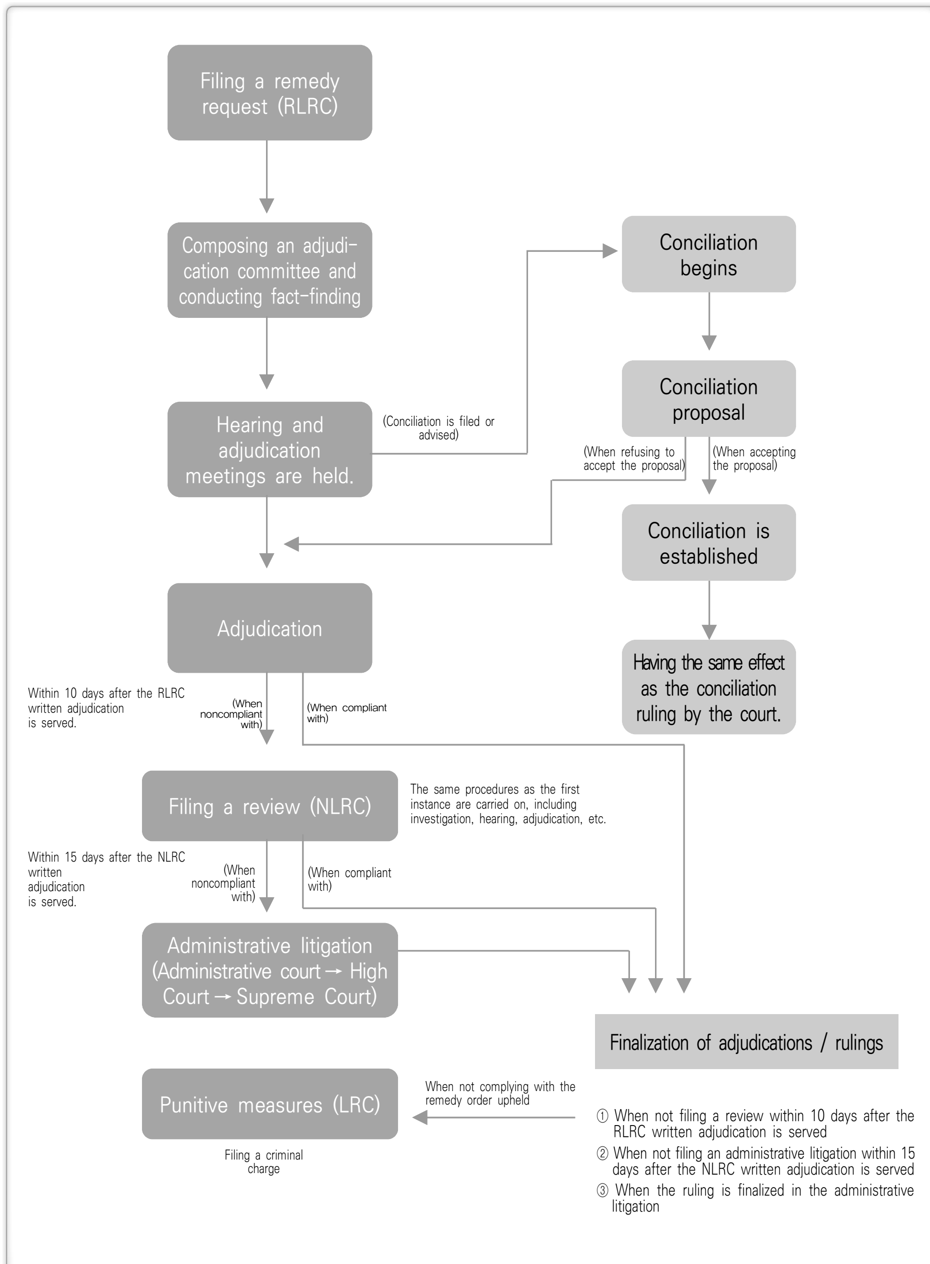
Matters like unfair dismissal remedy, and so forth, are handled by the Adjudication Committee, one of the sectoral committees of the LRC, and the Adjudication Committee consists of three public interest members in charge of adjudication, who are appointed by the chairperson of the LRC (LRCA, Article 15).

### 3) Adjudication procedures

#### a. Flow of adjudication procedures

When a remedy request is filed to an RLRC, a hearing and an adjudication meeting are held after checking the eligibility of the claimant and verifying facts. After adjudication is awarded, a written adjudication is served. When either party concerned does not comply to the adjudication by an RLRC, the concerned party can file a review to the NLRC and when they are non-compliant with the adjudication by the NLRC, they can file a lawsuit to the court. Detailed process is shown in [Figure 3-6].

[Figure 3-6] Adjudication procedures for unfair dismissal, etc.



**b. Commencement of the adjudication on unfair dismissal, etc.**

(a) Jurisdiction

An RLRC has jurisdiction over cases which occur within its jurisdictional area, but cases which are under concurrent jurisdiction of at least two RLRCs are handled by the RLRC, which has jurisdiction over the location of the main workplace. The NLRC has jurisdiction over remedies ordered or cases dismissed by the RLRCs (LRCA, Article 3).

(b) Request for remedy

Remedy process for unfair dismissal, etc. begins when a worker who has been unfairly dismissed requests it (LSA, Article 28, Para. 1).

a) Complainant: worker

The one who can request a remedy for unfair dismissal, etc. according to the LSA is only a worker who has received disciplinary measures such as dismissal, not a labor union (Supreme Court, 05/25/1993, 92Nu12452). This is what is distinguished from remedy request for unfair labor practices. In this case, the term *worker* means a person who offers labor to a business or workplace for the purpose of earning wage, regardless of the kind of occupation, according to Article 2, Paragraph 1 of the LSA.

Legal precedents provide *a subordinate relationship to an employer* as a criterion to define a worker by the LSA with detailed sub standards for this criterion. In other words, according to the Supreme Court, whether or not a person is a worker by the LSA should be determined, taking into accounts whether the person actually provides his/her labor to a business or a workplace for the purpose of earning a wage in a subordinate relationship to the employer, rather than what kind of contract the person has, e.g. employ-

ment contract or service contract. Whether or not there is a subordinate relationship between a worker and an employer is determined by following factors: whether the employer sets the content of the job for worker and directs and controls the worker considerably, and whether the worker is subject to the employment rules or the company regulations in carrying out his/her duties; whether the employer decides work hours and workplace for the worker and the worker has to follow such decisions; whether the labor-providing person can run the business by his/her own calculation independent of the employer, for example, by possessing office fixtures, raw materials, or tools and device for the work, or by hiring a third party for the purpose of substituting for him/her in carrying out the work; whether the person takes the risk for creating profits and incurring losses by himself/herself by providing his/her labor; whether the monetary remuneration is a compensation for his/her labor; whether there is a basic pay or a fixed pay; whether the employer perceives that a withholding tax is deducted from *the earned income*; whether the person continues to provide his/her labor and is under the exclusive control of the employer, as well as how exclusively he/she is subject to the control of the employer; whether the person is guaranteed of the status of worker by social insurance laws; and other socio-economic conditions.

However, factors such as the existence of a basic pay or a fixed pay, employer's perception on the deduction of withholding tax from the earned income, and the guarantee of the status of worker by social insurance laws are likely to be decided by employer, who may use his/her economically upper hand in doing so. Therefore, even if these three factors are not satisfied, they should not be used as a reason to deny the status of worker without considering other factors (Supreme Court, 12/07/2006, 2004Da29736).

The definition of *worker* by the LSA does not exactly match that by TULRAA. Therefore, even though a person is recognized as a worker by TULRAA and can request a remedy for unfair labor practices, if he/she is not recognized as a worker by the LSA, the person cannot request a remedy for unfair dismissal, etc. (Supreme Court, 02/13/2014, 2011Da78804).

b) Respondent: employer

The party that a remedy request is charged against for unfair dismissal, etc. is the employer, the business owner who is the counterpart of the worker in the labor contract. Article 2, Sub-paragraph 2 of the LSA defines employer as a business owner, or a person responsible for the management of business, or a person who acts on behalf of a business owner with respect to matters relating to workers. In terms of a remedy for unfair dismissal, etc., the employer is *the business owner* in the case of an sole proprietor and is *the corporation itself* in the case of a corporate body. Also, the corporate body includes not only a corporation that is registered as an established entity but also an organization that is considered as a substantial entity with the articles of association and the representative (including an association or foundation without the capacity of enjoyment of rights) (*Civil Procedure Act*, Article 52).

c) Parameters of remedy request

When a worker is *dismissed, forced to take a leave of absence, removed from the position, transferred to another position or region, or experiences a wage reduction* without a just cause, or *dismissed for a managerial reason*, he/she can file a remedy for unfair dismissal, etc. to an RLRC in his/her region.

First of all, dismissal means a unilateral termination of labor contract relations

by the employer, against the will of a worker, irrespective of its terms or procedures at the workplace (Supreme Court, 03/24/2011, 2010Da92148).

If a dismissal is forced by the unilateral decision of the employer against the worker's will, it is in effect a dismissal, regardless what it is called, such as prescribed retirement or dismissal which is stipulated in CBA or the company regulations, retirement by the employee's request or ex officio dismissal. Except these, retirement that is wished or agreed by a worker or dismissal as a result of termination of labor contract, which has nothing to do with the will of either worker or employer, such as business close-down, death of the worker, or retirement due to age, is not considered as dismissal.

Also, labor contract, which has a fixed term, is automatically terminated upon its expiration without a separate procedure such as dismissal by employer, unless otherwise agreed in the contract. However, in case the term in the contract is considered only as a formality (practically non-fixed term contract) or if there is a just reason to expect a contract renewal (entitlement to expect a renewed contract), the employer's refusal to renew the contract may be recognized as a dismissal.

Even in case of a change in the person who is in charge of the business management or administration including business transfer or changes in contractors or consigned firms, if employer has the duty of guaranteeing employment succession, his/her refusal to do so can be considered as a dismissal.

If an employer forces or induces a worker who has no intention of retirement to submit a resignation, it falls on the category of terminating the labor contract unilaterally by the employer and can be seen as a dismissal (Supreme Court, 02/03/2017, 2016Da255910).

*Forced leave of absence, removal from the position, job transfer, wage*

*reduction, and any other disciplinary measure* may be subject to a remedy request. Among other things, a problem can be raised regarding whether a disciplinary measure taken by employer, which is not listed in Article 23 of the LSA, can be categorized as *any other disciplinary measure* of the Act and is subject to adjudication by an LRC. The court, however, interprets *any other disciplinary measure* of the Act as *disadvantageous measures as punishment*, not all disadvantageous measures that may arise in an employment relationship (Seoul High Court, 10/27/2009, 2009Nu8382). Disciplinary measures such as demotion, removal from one's position, standby order, suspension of driving a vehicle (in the case of a public transportation driver), removal from one's position, etc., which are *disadvantageous measures as punishment* by employer against employee's will, are subject to a remedy request to the LRC.

However, removal from one's position can be a provisional measure to prevent possible work-related difficulties, which are expected if the worker stays in the same duty in the future. In this case, it is different in nature with removal from one's position as a punitive measure, which is taken to set the business order correct against corruption and irregularities committed by the worker. Also, personnel orders including standby order belong to employer's discretion and should not be considered as law violation unless there are special reasons such as violating the LSA or arrogating one's power (Supreme Court, 08/25/2006, 2006Du5151).

In other words, if a personnel measure such as removal from one's position or standby order is taken, not to prevent possible business difficulties in the future, but to punish the acts related to corruption and irregularities in the past, or if it is suspected of violating the LSA or abusing one's right,

it is considered as *any other disciplinary measure* of the Act and therefore, is subject to a remedy request to the LRC.

Some companies consider standby order as a disciplinary measure. In this case, unlike its original purpose, it is a punishment in nature and should have a reason for punishment and just disciplinary procedures[28).

d) Merit of remedy

If a worker who has filed a remedy for unfair dismissal, etc. is to be remedied by the LRC, there should be a solid benefit of the remedy order. *Merit of remedy* or *merit of remedy request* is a concrete benefit or necessity that should be accompanied by the adjudication or remedy order on unfair dismissal or unfair labor practices, etc., which the LRC may award with authority (Supreme Court, 04/24/2001, 2000Du7988). Compared with this, merit of lawsuit is a legal benefit that is a basis to seek an order or disposition of a judicial court, in case an administrative lawsuit is filed against the NLRC for its review adjudication (Seoul High Court, 11/02/2006, 2005Nu27811).

Both merit of remedy and merit of lawsuit are the same in their de facto effect because they indicate there is a justifiable benefit or necessity to use remedy procedures or a lawsuit. However, there is a difference between merit of remedy and merit of lawsuit in that, the former is related to the remedy procedures of an LRC, while the latter is related to a trial by the court, and the former is considered in the time of making an adjudication by an LRC, and the latter is considered in the time of closing the argument of the inquisition in the court.

According to Article 60, Paragraph 1, Sub-paragraph 6 of *the Labor Relations Commission Rules*, "when the merit of remedy requested is unrealistic or

28) NLRC, *Precedents Analysis by Theme* (individual employment relations), 2017, pp.158, 220-221.

there is no merit of remedy", the remedy request shall be dismissed. When a remedy is requested according to the relevant laws, merit of remedy is recognized in principle. However, if there is a special reason, such as realizing the purpose of remedy request such as reinstatement is impossible or restoring the original state is unachievable (due to the termination of labor contract, closing of the business, etc.), it can be problematic. For example, after a worker whose remedy request is rejected files a lawsuit to reverse the NLRC adjudication, or if an employer closes down his/her business before the argument of the inquisition is closed in the court, the case is dismissed without hearing as it does not have a merit of lawsuit.

The cases in which merit of remedy can be problematic are generally categorized into the followings: (1) when the purpose of remedy is already achieved; (2) when restoring the original state is impossible due to changes in situation; (3) when the worker's defeat has already been upheld in a separate civil lawsuit[29] (judicial rights and duties are finalized); (4) and others. If the above-mentioned reasons exist in the time of adjudication by an LRC, the LRC dismisses the case due to no merit of remedy. If the reasons occur after the NLRC issued its adjudication but before the argument of the inquisition in the court is closed, the court dismisses the case for the reason of no merit of lawsuit.

Other issues related to merit of remedy are whether there is a separate merit of remedy, which is different from that of reinstatement, in: (1) a

29) A precedent said that "although the regulation stipulated by Article 27-3 of the LSA (amended as Law No. 4099 on March 29, 1989) allows a worker who has been unfairly dismissed to request a remedy to an LRC, the regulation is not interpreted as depriving the employer of the right to file a civil lawsuit on the dismissal." Therefore, procedures for civil lawsuit such as litigations on dismissal nullification and payment of wage-equivalent remuneration may coexist with administrative remedy procedures by an LRC (Supreme Court, 07/12/1991, 90Da9353).

remedy request to seek the *payment of wage-equivalent remuneration* along with reinstatement order, and (2) a remedy request to seek the *payment of monetary compensation* instead of reinstatement.

In the case of (1), the Supreme Court has a position that “If an employment relationship is terminated at the end of labor contract, although a worker has already filed a remedy for unfair dismissal, payment of the delayed wages can be resolved through civil lawsuit procedures such as a litigation for the payment of delayed wage. Since there is no need to pursue remedy procedures, merit of remedy should be considered to have been forgone (Supreme Court, 06/28/2012, 202Du4036). In other words, the payment order for wage-equivalent remuneration is allowed only based on possible reinstatement. Therefore, if reinstatement is impossible, there is no merit of remedy to seek the payment of wage-equivalent remuneration. This position of the Supreme Court has stayed unchanged until the present.

However, in the case of (2), there are two different positions. One is that monetary compensation is not a secondary remedy order which accompanies possible reinstatement. The other is, on the contrary, that since this order is given instead of reinstatement order when a worker does not want to be reinstated, monetary compensation order cannot be given if reinstatement itself is impossible. The latter position has been occasionally adopted in the precedents of lower courts, but there is no ruling thereof by the Supreme Court.

e) When and how to request a remedy

In order to request a remedy for unfair dismissal, etc., a worker has to submit a written request to an RLRC in his/her region within 3 months from the date when a cause of remedy such as unfair dismissal, etc. occurs.

The request should detail the name of the workplace and its location, detailed descriptions on unfair dismissal, etc., and purpose of the request (what remedies the claimant wants) and should be attached with the documents that prove his/her claims.

When either party concerned disagrees with the adjudication by an RLRC, he/she can file a review to the NLRC within 10 days from the date when the written adjudication is served. The remedy request procedures to the NLRC are the same as the one to an RLRC.

The reason why remedy request period is limited to 3 months from the date when a cause of remedy occurs is that it becomes increasingly difficult to prove what has occurred and to secure effectiveness of the remedy order over the course of time. Also, policy considerations for stabilizing industrial relations and easing the burden on the LRC are reflected in it. The three months for remedy request is a limitation period, so that if this period lapses, the right to seek an administrative remedy ceases to exist (Supreme Court, 02/14/1997, 96Nu5926).

The date when a cause of remedy occurs is the date when employer took a disadvantageous personnel measure such as dismissal, etc. When a disciplinary measure goes through a review procedure at the workplace, the remedy request period is counted from the date the original disciplinary measure was taken against the worker. However, in the case that the original disciplinary measure is canceled or changed in a review, or if the company regulation stipulates that the effect of the original disciplinary measure is suspended when a review on the measure begins, then the remedy request period is counted from the date when the second disciplinary measure is taken after reviewing the first one (LRC Rules, Article 40).

**c. Investigation and hearing**

(a) Introduction

The LRC should, when requested for remedy for unfair dismissal, etc., immediately conduct necessary investigation and question the parties concerned (LSA, Article 29, Para. 1). Remedy requests for unfair dismissal, etc. are handled by the Adjudication Committee, which is comprised of three persons nominated by the chairperson of the LRC, from among the public interest members in charge of adjudication (LRCA, Article 15, Para. 3).

If requirements for filing a remedy are not fulfilled for reasons such as missing a deadline, or if both parties have requested adjudication by a single member or have consented to do so, the chairperson of the LRC may nominate one person, from among public interest members in charge of adjudication to handle the case (LRCA, Article 15-2).

(b) Investigation

When a remedy request is filed, an LRC chairperson designates an investigation officer to conduct investigation (LRC Rules, Article 45). The investigation officer may conduct investigation necessary for the case under the command of the chairperson of the Adjudication Committee or the chief member (LRCA, Article 14-3, Para. 3). If deemed necessary, the investigation officer may request to the parties concerned submission of related document and, when there is a discrepancy in the arguments of both parties, he/she may ask the parties concerned, witnesses, or persons for reference to attend the LRC for investigation (LRC Rules, Article 46).

The LRC grants an opportunity to both parties to make a statement for their claims, and identifies what happened in reality through fact-finding, securing evidence, and so on. (LRC Rules, Article 43). The investigation of an

LRC is different from that in a civil lawsuit in that the LRC has to investigate relevant facts and collect evidence ex officio via an investigation officer, which lives up to the purpose of remedy for unfair dismissal, and so forth of the LRC.

(c) Hearing

The LRC investigates remedy requests for unfair dismissal, etc. and ask questions to the parties concerned. A hearing is held within 60 days from the date when the request is filed. However, if the parties concerned request it to be delayed or if the case needs a large amount of time as a significant number of people are involved, the 60-days period can be extended with approval of the chairperson of the LRC or the Adjudication Committee.

For a hearing, the LRC may, upon a request by the parties concerned or ex officio, have witnesses present themselves to make necessary inquiries, and give the parties concerned sufficient opportunities to produce evidence and to cross-examine the witnesses (LSA, Article 29, Para. 1, 2, 3).

The total members of the Adjudication Committee constitute a quorum for a hearing (LRCA, Article 17, Para. 2), and the chairperson of the LRC has a workers' member and an employers' member attend the hearing (LRC Rules, Article 54, Para. 4).

**d. Conciliation and single-member adjudication**

(a) Conciliation

a) Introduction

Conciliation is important in that it helps early resolution of a dispute, prevents administrative and social costs, and encourages the parties concerned to reach an agreement autonomously. In other words, conciliation is an autono-

mous dispute resolution process that can reduce the costs and administrative expenditures that may increase as a dispute is prolonged, help the parties concerned reach an agreement in different levels, and simplify complex adjudication procedures, all of which in turn contribute to resolving labor disputes in a quicker manner.

Conciliation is stipulated by Article 16-3 of the LRC Act. The LRC may recommend conciliation or make a conciliation proposal upon the request for it by the parties concerned or ex officio, before a determination, order or adjudication is awarded according to Article 29-4 and Article 84 of TULRAA, or Article 30 of the LSA. The LRC listens to the opinions of the parties concerned sufficiently in coming up with a conciliation proposal and when both parties accept the proposal, it makes a conciliation statement.

b) Conciliation procedures

The Rules of the LRC, which were enacted according to the LRC Act, stipulate details regarding conciliation procedures such as how to compromise and how to make a conciliation statement. The parties concerned can request a conciliation before a hearing is held, and even during the time when a hearing is proceeded, both parties can request a conciliation verbally (LRC Rules, Article 68).

Also, the Adjudication Committee may recommend a conciliation to the parties concerned or arrange it during the investigation or hearing process (LRC Rules, Article 69). If deemed necessary, the Adjudication Committee or single-member adjudicator may hold an individual meeting for conciliation (LRC Rules, Article 70, Para. 2). Conciliation is effected by signing or putting a seal on it by the parties concerned and all members of the Adjudication Committee involved in the conciliation (LRC Rules, Article 71).

c) The effect of conciliation

A conciliation statement has the same effect as conciliation of a trial according to the CPA (LRCA, Article 70, Para. 2), and conciliation by trial has the same effect as the final and conclusive judgment of the court (CPA, Article 220). When conciliation is established, the parties concerned cannot overturn it and the settled case cannot be reopened as long as it remains the same. If a burden of payment obligation arises due to the conciliation established, mandatory implementation of the conciliation can be filed to the court.

(b) single-member adjudication

When requirements of a remedy request are clearly not met (i.e. missing the deadline), or when both parties request or agree with single-member adjudication, the chairperson of the LRC may designate a public interest member in charge of adjudication to handle the case (LRCA, Article 15-2).

In addition, the LRC may hold a single-member adjudication meeting on a regular basis with the chairperson of the LRC or a standing member designated by the chairperson as the single adjudicator (LRC Rules, Article 67, Para. 4). Currently, single-member adjudication is usually used in connection with conciliation.

**e. Adjudication**

(a) Process and effect of adjudication

a) Adjudication process

When a hearing is closed, the Adjudication Committee holds an adjudication meeting to decide on unfair dismissal. Before making a final decision, the Adjudication Committee listens to the opinions of the workers' member and the employers' member respectively who attend a hearing. Then, the Committee

adjudicates with a majority vote of the three public interest members (LRCA, Article 17, Para. 2 and Article 18, Para. 2).

When a remedy request does not meet the requirements for filing a remedy, the Adjudication Committee dismisses the case (LRC Rules, Article 60, Para. 1), and when it decides that unfair dismissal, etc. was constituted, the Committee orders employer to remedy the situation. On the other hand, when it decides that unfair dismissal, etc. was not constituted, the Adjudication Committee dismisses the remedy request. Adjudication, remedy order or dismissal of the remedy request is served to the employer and worker in a written document (LSA, Article 30, Para. 1, 2).

**Conditions for dismissal of a case (LRC Rules, Article 60)**

- If the case is filed after the request period stipulated by the relevant laws expired.
- If the complainant does not follow the LRC's request to supplement the filed documents two or more times.
- If a party concerned does not satisfy the eligibility requirements.
- If the request for remedy is not within the scope of the LRC remedy order.
- If the same person repeatedly files a remedy for the same purpose; if the same person files a remedy for the same purpose even though the adjudication has already been upheld (including conciliation); or if the complainant withdraws a request for remedy after it is adjudicated, but not before the statement is served, and files it again.
- If a remedy request cannot be realized either by law or in effect, and if it is clear that there is no merit for its request.
- If the complainant does not comply with the order to attend the investigation more than twice; the notice for attendance order is returned more than twice due to unclear address or location, or the complainant is recognized as having given up his/her intention for the remedy request due to some other reasons.

b) Effect of adjudication

An adjudication by the LRC is a quasi-judicial administrative disposition with a legally binding force, authenticity, non-variability, indisputability, and enforceable force.

The binding force is an effect that enforces the parties concerned to follow a remedy order when it is issued, and in particular the employer must implement the remedy order. Those who are under this legally binding requisite are the parties concerned who are directly ordered for the remedy and their successors. Also, the scope of this binding force includes the statement of ruling and the facts that serve as the grounds for it[30].

The authenticity of an adjudication means that although the LRC adjudication is suspected of an error, unless that error is so grave and indisputable that it invalidates the adjudication, the LRC adjudication is recognized as valid until the court or any other authority reverses it. Therefore, when the LRC orders a remedy for unfair dismissal after deciding that there was unfair dismissal by an employer, the employer has to pay the enforcement levy until the remedy order is reversed, although he/she wins in a civil lawsuit such as in a wrongful dismissal nullification lawsuit. If the employer does not comply with the remedy order upheld, he/she may be subject to a criminal punishment according to Article 111 of the LSA.

The adjudication of the LRC has also non-variability, which means that since the LRC adjudication is a quasi-judicial disposition, the LRC cannot reverse or change it, even though errors are found.

The indisputability of the adjudication means that when the appeal period expires, the parties concerned cannot argue against its adjudication (LRCA,

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30) The scope of the legally binding force of revocation adjudication of administrative trial or revocation decision of the administrative litigation (Supreme Court, 12/09/2005, 2003Du7705).

Article 26, 27). Due to the non-variability and indisputability, the LRC adjudication is conclusive.

The enforceability of the adjudication means that the effect of the remedy order is not suspended even if a review is filed with the NLRC (in the case of an review award, an administrative litigation is filed) (LSA, Article 32). Even if an employer who has been ordered a remedy files a review to the NLRC or an administrative litigation to the court, he/she may be imposed with an enforcement levy if not complying with the remedy order. However, if the employer files an administrative litigation to the court regarding the NLRC adjudication, he/she may request a suspension of its implementation, according to the *Administrative Litigation Act*.

(b) Content of remedy order

a) Reinstatement, etc.

If a dismissal, etc. is considered to be unfair, the LRC issues an order for remedy to employer (LSA, Article 30, Para. 1). Since there are no special regulations on the content of remedy order, the LRC may make a decision using its proper discretion. However, it can only adjudicate within the scope of the remedy that a worker has requested, or it cannot issue a remedy order that goes against the purpose of the remedy request or acknowledges what has not been requested.

In the case of *dismissal*, a remedy order for reinstatement is generally issued with an order to pay remunerations equivalent to the wages so far, which might have been given if the worker had not been dismissed. If the worker does not want reinstatement, then the LRC may order to pay monetary compensation instead of reinstatement (LSA, Article 30, Para. 3).

Just like *dismissal,* in the case of *forced leave of absence, suspension*

*from work, job transfer, wage cut, and any other disciplinary measure*, remunerations equivalent to the wages so far are ordered to be paid, which might have been paid unless such punitive measures had been taken.

b) Monetary compensation order

① Introduction

As mentioned above, monetary compensation may be ordered instead when a worker does not want to be reinstated. By diversifying remedies for unfair dismissal, it aims to make remedies more substantial and prevent prolonged disputes, so that company stability can be expedited. Article 30, Paragraph 3 of the LSA stipulates that "In issuing an order for remedy (only referring to an order for remedy following dismissal) under paragraph (1), if a worker does not desire to be reinstated in his/her former position, the LRC may, instead of issuing an order to reinstate him/her in his/her former position, order the employer to pay a worker the amount of money equivalent to or higher than the amount of wages which he/she would have been paid if he/she had worked during the period of dismissal".

Monetary compensation can be requested when both a remedy order is issued for unfair dismissal and the worker wishes not to be reinstated. Any form of *dismissal*, whether it is called disciplinary dismissal, managerial dismissal, ex officio dismissal, immediate dismissal (in cases when causes for terminating the labor contract are stipulated in the CBA or company regulations), or refusal to renew the contract, means a unilateral termination of an employment relationship by the employer. Therefore, a request for monetary compensation is not allowed for other disciplinary measures such as suspension from work, wage cut, warning, forced leave of absence, job transfer, and transfer to an affiliated company. Since the person who *does not want reinstate-*

*ment* is a worker, the party that can request monetary compensation is only workers.

② Calculation of monetary compensation

The monetary compensation period is counted from the dismissal date to the adjudication date of the case (LRC Rules, Article 65, Para. 2). However, if there is a special reason for terminating employment such as completion of the contract period or reaching a retirement age, according to some LRC adjudications, the monetary compensation period is reduced to the point when such a reason occurred. However, some adjudications in lower courts find that there is no merit of remedy for monetary compensation, as explained in the *merit of remedy* part, when reinstatement is impossible due to termination of employment relationship, etc. So far, there has been no rulings in regard to this matter by the Supreme Court.

When the LRC orders payment of monetary compensation, the compensation amount should be decided. Article 30, Paragraph 3 of the LSA only stipulates that employer has to pay the worker “the amount of money equivalent to or higher than the amount of wages which he/she would have been paid if he/she had worked during the period of dismissal” and there is no mention regarding how to calculate the amount of money equivalent to the wages.

In this regard, the LRC has a position that without a special reason, the calculation should be based on average wage before the dismissal occurred and the compensation amount should be decided as much as the worker would have been paid if he/she had offered work from the dismissal date to the adjudication date.

(c) The effect of remedy order

a) Conditions for finality: acceptance or protest

The effect of remedy order takes place from the date when a written adjudication is served to the parties concerned, and the parties concerned must comply with the remedy order, which is an administrative disposition, as an obligation by public law. Since the effect of remedy order is not suspended due to the employer's request for a review to the NLRC or filing an administrative lawsuit to the court (LSA, Article 32), the employer must take the obligation to comply with the remedy order. The remedy order loses its effect and the obligation by public law dissolves only when the NLRC adjudicates to reverse or change the order in a review or the court adjudicates to reverse the remedy order in an administrative lawsuit.

An employer or worker who disagrees with the remedy order or case dismissal by an RLRC may file a review to the NLRC within ten days from the date when he/she has received a written notice on it (LSA, Article 31, Para. 1). With respect to the adjudication by the NLRC in a review, the employer or worker may institute a lawsuit pursuant to *the Administrative Litigation Act* within 15 days from the date when he/she is served with the written adjudication by the NLRC (LSA, Article 31, Para. 2).

If neither review request nor administrative litigation is filed within the period mentioned above (10 days for an NLRC review and 15 days for administrative litigation), the order for remedy, case dismissal, or the review adjudication by the NLRC becomes final and conclusive (LSA, Article 31, Para. 3). When the remedy order is finalized, the employer must follow it, which is an obligation by public law (Supreme Court, 06/28/1994, 93Da33173)[31].

31) LRC's remedy order compels the employer by the LRC burdens the employer to comply with

Currently, the implementation of remedy order is guaranteed through an enforcement levy (LSA, Article 33), and criminal penalty regulations for failing to comply with the remedy order (LSA, Article 11). The party that has failed to comply with a remedy order or remedy adjudication awarded in a review, which is final and conclusive, is punished by imprisonment for not more than one year or by a fine not exceeding ten million won (LSA, Article 111).

b) Enforcement levy for securing the implementation of remedy order

① Introduction

As explained above, those who do not comply with the remedy order or remedy adjudication awarded in a review, which is final and conclusive, are subject to the penalty stipulated by Article 111 of the LSA. However, in the case of a remedy order which is not final and conclusive, there are no proper measures to enforce the employer to comply with the order, triggering criticism on its ineffectiveness. In 2007, when the LSA was amended, a new measure was introduced reflecting such criticism, which is an enforcement levy.

Article 33, Paragraph 1 of the LSA stipulates that the LRC shall impose an enforcement levy of not exceeding 20 million won on an employer who fails to comply with remedy order (including review adjudication for the remedy order) within the specified deadline for implementing the order after such an order is issued. In this case, the LRC may impose and collect the enforcement levy repeatedly to a maximum of twice per year from the date when it issues the first remedy order, until it is complied with by the person

an obligation by public law, but not generate or modify legal relations between an employee and management directly. Therefore, even though a remedy order is finalized, this alone does not restore *the employment status*.

subject to the order. In this case, the enforcement levy cannot be imposed and collected for more than two years (LSA, Article 33, Para. 5).

Enforcement levy was introduced to protect workers by securing effective implementation of the remedy order, when the employer does not comply with the remedy order for unfair dismissal, etc. by the LRC. At the same time, it is intended to resolve the disputes between the labor and management as early as possible.

The purpose of enforcement levy is to notify an employer in advance that if he/she fails to implement the obligation for remedy within a fixed period, he/she would be imposed of a certain amount of levy. Like this, enforcement levies are an indirect administrative measure to enforce the compliance of one's obligation, by placing pressure on the person. It is not a punishment for violation of the law in the past but rather, a compulsory measure to enforce the compliance of a future obligation (Constitutional Court, 05/29/2014, 2013Heonba171).

② Parameters of enforcement levy imposition

Enforcement levy is imposed on an employer who does not comply with remedy order of the LRC. In this case, the employer means *a business owner* among those listed in Article 2, Sub-paragraph 2 of the LSA (a business owner, or a person responsible for the management of business, or a person who acts on behalf of a business owner with respect to matters relating to workers). The remedy order, which may impose an enforcement levy, includes both remedy orders issued by an RLRC and the NLRC.

Also, since the effect of remedy order is not suspended due to a review request or an administrative litigation, the employers who do not comply with a remedy order are subject to an enforcement levy, regardless of the

fact that they have filed a review or an administrative lawsuit.

③ Procedures for imposition decision on enforcement levy

The LRC issues a remedy order by setting the deadline for implementing the order (LSA, Article 33, Para. 1). An employer shall carry out the remedy order within 30 days of the date of the remedy order (LSA Enforcement Decree, Article 11). The chairperson of the LRC may order the employer to submit a report on the implementation of the remedy order for unfair dismissal, etc. and in this case, informs the employer that an enforcement levy may be imposed in case he/she fails to comply with the remedy order until the fixed date (LRC Rules, Article 77).

When the implementation period for remedy order is completed, the LRC must immediately verify its implementation (LRC Rules, Article 78). If the remedy order implementation falls short of the standards clarified in Article 79 of the LRC Rules, by not complying with all or part of the orders, procedures for imposing enforcement levy begins. In this case, the LRC should give the employer a prior notice in writing that enforcement levy will be imposed and collected, up to 30 days before it is imposed (LSA, Article 33, Para. 2).

If the employer does not comply with all or part of the remedy order during the given period, the chairperson of the LRC convenes the Adjudication Committee to decide whether or not to impose an enforcement levy, no later than 10 days previous to the notified due date. According to the enforcement levy imposition criteria clarified in [Attached Table 3] of Article 13 of the LSA Enforcement Decree, the Adjudication Committee decides on the amount of enforcement levy based on the motivation of the violation, employer’s accountabilities including intentional violations and accidental mistakes, and efforts made to implement the remedy order (LRC Rules, Article 81).

| Enforcement levy imposition criteria (Enforcement Decree of the Labor Standards Act, Article 13, Attached Table 3) | |
|---|---|
| Violations | Amount range |
| ▪ Those who have not implemented a remedy order for dismissal without a just reason | 5M won and over 20M won and below |
| ▪ Those who have not implemented a remedy order for forced leave of absence and suspension from work without a just reason | 2.5M won and over 10M won and below |
| ▪ Those who have not implemented a remedy order for job transfer and wage cut without a just reason | 2M won and over 5M won and below |
| ▪ Those who have not implemented a remedy order for any other disciplinary measure without a just reason | 1M won and over 5M won and below |

When a remedy order issued by an RLRC is reversed by the NLRC, or the adjudication by the NLRC is reversed by the judgment with conclusive power of the court, the LRC immediately stops imposing or collecting enforcement levy, and refunds the levy already collected (LSA Enforcement Decree, Article 15, Para. 1).

## (3) Justifiability of dismissal and other disciplinary measures

### 1) Justification of reasons

#### a. Justifiable reasons of disciplinary dismissal, etc.

Article 23, Paragraph 1 of the LSA stipulates that an employer shall not, without a just reason, dismiss, suspend, or transfer a worker, reduce his/her wages, or take other punitive measures against him/her. However, since the LSA does not clarify what is a just reason, it is supplemented by legal precedents and theories.

(a) Dismissal

a) General dismissal and disciplinary dismissal

Depending on whom is to blame for the reason of dismissal, applicable laws may be different.

For example, Article 23 of the LSA (Restriction on dismissal, etc.) is applied when a worker is blamed for the reason of dismissal and Article 24 of the LSA (Restrictions on dismissal for managerial reasons) is applied when the employer is blamed for the reason of dismissal. In the former case, there are two kinds of dismissals: general dismissal, which is due to worker's personal reasons such as health and disease; and disciplinary dismissal, which is due to worker's behavior or attitude.

If a disciplinary measure is clarified in company regulations and the worker is actually dismissed by the employer for a disciplinary measure, it should be considered as a disciplinary dismissal, even though the worker is dismissed due to personal reasons.

However, if regulations for general dismissal and disciplinary dismissal separately exist and their content is substantially different, disciplinary procedures are not required to be used for general dismissal (Supreme Court, 06/30/1995, 94Da35350). Likewise, although there are separate regulations for general dismissal and disciplinary dismissal, if their content is almost the same, procedures for disciplinary measures should be taken for the general dismissal (Supreme Court, 10/25/1994, 94Da25889).

Generally, reasons for dismissal are clarified in company regulations or CBA. However, even in this case, not all the reasons can be a just reason for dismissal (Supreme Court, 06/11/2009, 2009Du3583) and whether the dismissal has a just reason in effect may be decided separately. The just reason of dismissal

should be determined either by the LRC or the court case by case, but generally speaking, a *just cause* for dismissal means when the worker is responsible for his/her wrongdoings to the extent that his/her employment cannot be kept in line of social norms (Supreme Court, 11/10/1998, 97Nu18189).

b) Refusal to renew fixed-term labor contract

In the case of a worker who has a fixed-term labor contract, employment relations are immediately terminated when the term expires. Therefore, a fixed-term worker cannot request a remedy for unfair dismissal, etc. on the reason that the term has expired.

However, if it is believed that making a fixed term contract is only a matter of formality and the contract is not construed as its literal meaning, it is recognized as a non-fixed term labor contract and, as a result, refusal to renew the contract without a *just cause* possibly constitutes unfair dismissal (de facto non-fixed term labor contract) (Supreme Court, 02/24/2006, 2005Du5673).

Even if it is recognized as a fixed-term labor contract, in case when a worker is entitled to expect a renewal of the contract, if the employer refuses to it without *a rational reason,* it may constitute unfair dismissal (an entitlement to expect a renewal of the contract).

In this case, the labor relationship after the expiration of the contract period is considered to be the same as the previous labor contract is renewed (Supreme Court, 07/28/2011, 2009Du2665).

According to precedents, “If labor contract, company regulations, collective bargaining agreement, etc. stipulate that labor contract is renewed when certain requirements are met even though the contract period expires; or even without such provisions, it is recognized that the worker is entitled to expect a renewal of the labor contract, when the parties concerned trust that the labor contract

can be renewed when certain requirements are met, for example, various factors surrounding labor relations such as motivations for and process of the labor contract, requirements for renewal of the contract such as renewal criteria and actual procedures for it, and work responsibilities that the worker has" (Supreme Court, 04/14/2011, 2007Du1729).

c) Refusal to employment succession

Firstly, let's take a look at employment succession in business transfer. Transfer of business means transferring a company organized for a certain business or sales purpose, in other words, transferring personnel and materials that constitute the company while maintaining its identity. Transferring part of the business or sales is also possible. When such a transfer is made, the workforce concerned is in principle considered to be comprehensively succeeded to the company that is taking over the business (Supreme Court, 06/28/1994, 93Da33137).

In the case of business or sales transfer, the company that is taking over the business, in principle, has to take over the workforce concerned comprehensively, unless the workers express their opposition to it. If there is a special agreement between the parties not to succeed part of the workforce, their employment may not be succeeded, but such a special agreement is the same as dismissal in effect, which requires a *just cause* stipulated in Article 23 of the LSA. Therefore, dismissal of a worker solely based on the reason of business transfer may not be regarded as a case with a just cause (Supreme Court, 06/28/1994, 93Da33173).

In case of merger[32] or if there is a special agreement for succession of

32) Article 235 of *the Commercial Act* on the legal effects of the merger stipulates that a surviving company or a company newly incorporated as a result of a merger shall succeed to the rights and obligations of the company which disappeared.

employment, it is assumed that the workforce is succeeded, too. Excluding part of the workforce is equivalent to dismissal, which should have a *just cause* as well.

In the case of division of business, *the Commercial Act* stipulates[33] that a newly incorporated company after division shall assume the rights and obligations of the divided company, as prescribed by a division plan. Therefore, the workforce of the divided company may be subject to succession, but only when it follows with the correct procedural justifications, for example, by seeking the understanding and cooperation of the workers. If the division of company is used as a means of encroaching on the dismissal related laws and regulations on the protection of workers, its effect may be denied (Supreme Court, 12/12/2013, 2011Du4282).

(b) Job transfer and replacement

Job transfer is a personnel order to change a worker's job responsibilities or workplace, so that the workforce is arranged in line with the business purpose. In particular, the order to change the workplace is called workplace transfer.

If the type, duties or place of work is explicitly or implicitly stipulated in the labor contract, its change is equivalent to a change in the labor contract, so the consent of the worker is required (Supreme Court, 01/21/1992, 91Nu5204).

If labor contract does not stipulate the type, duties or place of work, usually, the employer has considerable discretions within the extent necessary for the work, since a personnel order for job transfer or replacement belongs

33) Article 530-10 of the Commercial Act on consequential effect of division or merger after division stipulates that a newly incorporated company by simple division, succeeding company after division or newly incorporated company by merger after division shall assume the rights and obligations of the divided company, as prescribed by a division plan or agreement for the merger after division.

to the authority of employer in essence. However, since the order may be disadvantageous to the worker as it causes a change in the type, duties, or place of work, it should not violate Article 23, Paragraph 1 of the LSA or should not constitute arrogation of power.

In this case, whether the employer's personnel order has violated the LSA or arrogated its power is determined by considering various factors, such as comparing the necessity for such an order and its disadvantages that the worker has to go through, and reviewing that the principle of good faith has been considered in the process of implementing the personnel order (Supreme Court, 04/23/2009, 2007Du20157).

(c) Removal from one's position or standby order

Removal from one's position or standby order is an interim measure that prohibits a worker not to be engaged in the current position or job to prevent work-related difficulties that are expected when the worker stays in the current position or job (Supreme Court 10/11/2013, 2012Da12870).

In practice, it may be called removal from the position, standby order, or forced leave of absence. However, whatever it is called, if it is actually removal from one's position or standby order for its purpose, it should be determined in that respect.

A standby order belongs to the authority of the employer as a personnel manager. However, whether this order is within the legitimate right of the employer should be decided by comparing the necessity for such an order and disadvantages that a worker has to go through, and reviewing that the principle of good faith has been taken in the process of implementing the standby order by having a consultation with the worker. Although whether the employer had a consultation with the worker may serve as a factor in

determining if it was a rightful exercise of personnel authority, however, failure to go through such a procedure does not necessarily constitute a reason that immediately nullifies the standby order as arrogation of power (Supreme Court, 02/18/2005, 2003Da63029).

If removal from one's position or standby order is issued as a disciplinary measure for wrongdoings committed in the past, not as a measure to prevent possible work-related difficulties in the future, it is not a personnel order but a punitive measure and therefore, it should have justification as a disciplinary action[34].

**b. Justifiable reasons in relation to dismissal for managerial reasons**

(a) Introduction and decision criteria

a) Introduction

Article 24 of the LSA stipulates restrictions on dismissal for managerial reasons. The clause on dismissal for managerial reasons was legislated in 1997 incorporating contents of judicial precedents and theories.

Conditions for dismissal for managerial reasons are clarified as four points in Article 24 of the LSA, apart from Article 23, as it terminates employment due to the circumstances of the employer and it has a far-reaching social impact as a significant number of workers are usually dismissed in the process (LSA, Article 24, Para. 5).[35]

34) "Removal from one's position of a worker is a temporary measure to prohibit the worker not to be engaged in the current position or job as possible work-related difficulties are expected when the worker stays in the current position or job in the future, as the worker lacks job capacity, or the worker's job performance or work attitude is poor; the worker is going through disciplinary procedures; or the worker is filed for a criminal charge. Therefore, removal from one's position is different from a disciplinary action, which was taken in the past for the purpose of maintaining business order by punishing wrongdoings committed by the worker (Supreme Court, 08/25/2006, 2006Du5151).

b) Decision criteria

The LSA enumerates four requirements in the paragraphs 1 to 3 for dismissal for managerial reasons to be valid, and if any of these requirements are not met, it becomes null and void as dismissal without a *justifiable reason* (LSA, Article 24, Para. 5).

On the other hand, precedents before the legislation regarded the four requirements as elements for decision rather than conditions for decision on legitimacy. In particular, the court took a mitigated stance towards a procedure of prior consultation with workers (Supreme Court, 11/10/1992, 91Da19463). Precedents after the legislation examine whether each of the four legislated requirements are met, but their legitimacy was decided with comprehensive consideration of individual circumstances constituting each of the four requirements (Supreme Court, 11/13/2003, 2003Du4119).

The four elements concerning dismissal on managerial reasons are consistently acknowledged in the court rulings, in the perspective of comprehensive consideration; precedents ruled that "individual contents of each requirement are not definite or fixed but determined in a flexible manner in relation to the extent of fulfillment of other requirements in a specific case. Therefore, decision on whether dismissal in question is justified should be made by taking into account individual circumstances constituting each of the requirements" (Supreme Court, 11/13/2003, 2003Du4119). According to such precedents, even if there are some defects among the four requirements, dismissal for managerial reasons may be justified in terms of comprehensive consideration.

35) If an employer dismissed a worker satisfying the requirements in the Paragraphs 1 to 3 above, it shall be deemed that he/she had carried out dismissal having a just reason pursuant to Article 23, Para. 1 of the LSA.

(b) Legitimacy requirements concerning dismissal for managerial reasons

a) Urgent managerial necessity

Article 24, Paragraph 1 of the LSA stipulates, “Where an employer intends to dismiss a worker for managerial reasons, there must be an urgent managerial necessity.” In other words, dismissal for managerial reasons is justified only when dismissal is urgent for managerial necessity.

The degree of such urgency and its criterion for decision is not specified in the LSA, so they are made material by precedents and theories. Earlier precedents sustained stern position towards urgent managerial necessity; if such dismissal was not carried out, an enterprise can not continue its business due to deterioration of its business or at least there is probability that it would face severe situation in terms of corporate finances (Supreme Court, 03/13/1990, 89Daka2445).

Starting from the ruling in 1991, precedents have broadened it; “there is no need to limit it to something to avoid corporate bankruptcy, and it should be considered that there is an urgent managerial necessity when reduction of personnel is objectively deemed to be rational” (Supreme Court, 12/10/1991, 91Da8647). Furthermore, the 2002 ruling argued that the urgent managerial necessity is not limited to cases of avoiding corporate bankruptcy, but included is the case in which the reduction of personnel is objectively deemed to be rational in order to cope with a crisis that may come in the future (Supreme Court, 07/09/2002, 2001Da29452).

When such judgments of the court are generally reviewed[36], there are

36) Ha Kyeong-hyo, Park Jong-hee and Kang Sun-hee, “Research on *dismissal for managerial reasons through analysis of the adjudications and precedents of the Seoul Regional Labor Relations Commission*”, Quarterly Journal of Labor Policy, Vol. 11, No. 2, Korea Labor Institute, pp. 22-24.

two categories for their judgment: one is about personnel reduction which is carried out to save labor cost so as to overcome a business crisis under continued business operation in the red; the other is about redundancy caused by disappearance of specific jobs in the wake of abolition of business, introduction of new technology, outsourcing, etc. regardless of a deficit-ridden business situation.

In other words, in the case of the former, there must be a causal relationship between dismissal and the managerial necessity of reducing labor cost to overcome management situation of cumulative deficits[37]. In addition, as it is to reduce labor cost through dismissal and overcome a management crisis, the degree of urgency is decided based on the business situation at the time of dismissal.

In the case of the latter, irrespective of financial status such as accumulated deficits, jobs themselves disappeared or decreased due to change in work process, introduction of new technologies, abolishment or reduction of business, abolition of departments, outsourcing of work, etc. that are carried out according to a managerial decision of the employer. As a result, redundancy occurs and when the issue of workforce redundancy can not be solved through other measures like personnel reshuffle, reduction in personnel is considered to be a rational option and it is considered that there is an urgent managerial necessity.

On the other hand, transfer, acquisition and merger of businesses to prevent deterioration of business are considered to be urgent managerial decisions that require the necessity of a swift and/or unpopular decision (LSA, Article

37) Since the dismissal is taken to save labor cost, factors such as whether or not there is an effort to reduce other costs, whether or not there are new recruitments, and the degree of cost-saving effect of the dismissal. etc. are used to judge the causal relationship.

24, Para. 1).

b) Effort to avoid dismissal

When an employer intends to dismiss a worker for managerial reasons, he/she shall make every effort to avoid dismissal (LSA, Article 24, Para. 2). In order to minimize the dismissal, the employer must take measures such as improvement in management policies or work methods, suspension of new recruitments, encouraging temporary leave of absence and solicitation of voluntary retirement, job transfer, etc. (Supreme Court, 01/15/2004, 2003Du11339).

Dismissal can be justified only if it is acknowledged that although such measures are taken, it is inevitably forced to carry out dismissal for managerial reasons as it is not allowed to take other measures other than dismissal. The rule of last resort is particularly emphasized in light of the singularity of the dismissal for managerial reasons in that it is dismissal which cannot blame a worker.

In addition, the method and extent of an effort to avoid dismissal is not definite or fixed, but it depends on the extent of the management crisis of the employer concerned, managerial reasons to carry out the dismissal, content and size of the business, state of personnel by rank, etc. (Supreme Court, 01/15/2004, 2003Du11339).

c) Reasonable and fair selection of persons to be dismissed

An employer should establish and follow reasonable and fair criteria for the selection of workers subject to dismissal. In this case, there should be no discrimination on the basis of gender (LSA, Article 24, Para. 2).

In terms of rationality and fairness of selection criteria for persons subject to dismissal, a precedent ruled in favor of interest of an employer[38] and another ruled in favor of protection of workers[39]. Precedents rule that reason-

able and fair criteria are also not definite and fixed, but depend on the extent of the management crisis that the employer is facing, managerial reasons to carry out the dismissal, the content of business sector for which the dismissal is carried out and composition of workers, social and economic situation at the time of dismissal implementation, etc. If an employer consulted with the labor union or a workers' representative in a faithful manner on the criteria of dismissal and reached an agreement, such circumstance should be considered in judging fairness and rationality of the criteria of dismissal (Supreme Court, 09/22/2006, 2005Da30580).

In other words, the dismissal criteria to which an employer and a workers' representative have agreed are very much likely to be regarded as reasonable and fair. Seen from where such precedents stand, it seems that the court gives a considerable amount of discretion to an employer as to which criteria shall be adopted and how much of weight would be given to a criterion in terms of assessment.

d) Prior consultation with workers' representative

Where there is a labor union that represents more than half of the workers at the company or workplace, the employer shall inform at least 50 days before the intended date of dismissal and consult in good faith with the

38) It is not a deviation from objective rationality and equity to choose persons subject to dismissal according to criteria such as a worker's performance, reward and punishment, career, level of skills, etc. (Supreme Court, 05/12/1987, 86Nu690). In light of organizational composition and the nature of their work that workers are likely to be in contact with the US armed forces and required to have proficiency in English consequently, it is reasonable to select workers who are deemed to be lacking in English proficiency as persons to be dismissed (Supreme Court, 12/05/1996, 94Nu15783).

39) It lacks reasonableness and fairness in the process of selecting persons subject to dismissal to choose long-term employed persons, who should receive more protection from dismissal, as those to be dismissed first (Supreme Court, 12/28/1993, 92Da34858). However, in this case, urgent managerial necessity was not recognized.

labor union (where there is no such labor union, this shall refer to a person who represents more than half of the workers) regarding the methods for avoiding dismissals, the criteria for dismissal, etc. (LSA, Article 24, Para. 3).

This provision was stipulated to the purport that even if dismissal for managerial reasons is inevitable, it is desirable to be carried out within the understanding of both parties through consultation, while guaranteeing the fulfillment of substantive requirements of dismissal for managerial reasons (Supreme Court, 07/09/2002, 2001Da29452). The opposite party for prior consultation is a workers' representative (a labor union composed of a majority of workers, a representative for a majority of workers), and court precedents recognized representativeness broadly on a case-by-case basis on the grounds that the labor union is formally organized with a majority of workers (formal representativeness) or the labor union is practically representing workers to be dismissed, when the labor union is not representing a majority of the workers.

Whether or not dismissal is effective in the event that the workers' representative is not notified of it before the prior notification period depends on whether the nature of the rule of prior notification period is a regulatory provision or compulsory provision. However, a precedent saw it as a regulatory one; complying with a prior notification period is not a validity requirement for dismissal, and if other requirements are met, dismissal is valid even though the period is not strictly observed (Supreme Court, 10/15/2004, 2001Du1154).

#### 2) Procedural legitimacy

##### a. Introduction

Dismissal should be legitimate not only in reason but also procedurally. As dismissal is an unfavorable disposition unilaterally made by an employer,

it is necessary to protect workers from it, prevent dismissal-related disputes in advance and smoothly resolve disputes by clarifying the reasons for dismissal. In other words, the procedural legitimacy of dismissal is of significant importance as it can alleviate disadvantage which a worker will stand even under the circumstance that the dismissal is deemed legitimate and it can also defuse a situation of dispute which might occur in the future in an expedited and clarified manner.

**b. Procedural provisions on dismissal, etc.**

(a) Legal meaning of procedural provisions

In the case of a disciplinary procedure being prescribed in a collective bargaining agreement or company regulations or disciplinary provisions based on them, when a disciplinary measure was taken violating it, the exercise of such disciplinary power should be invalidated as a violation of procedural justice regardless of whether or not grounds for the disciplinary action are acknowledged (Supreme Court, 09/06/1996, 95Da16400).

On the other hand, a court precedent ruled that in case there was no written disciplinary procedure, it cannot be nullified even if it was taken without giving a prior notification and granting an opportunity to make an excuse to a worker (Supreme Court, 02/27/1996, 95Nu15698). Even if a personnel order connoting disciplinary meaning against a worker and even if a disciplinary procedure was not taken, its effect does not change as long as it is not clearly stipulated as a disciplinary measure requiring a disciplinary procedure prescribed in a collective bargaining agreement, company regulations, etc. (Supreme Court, 12/22/1998, 97Nu5435).

On the other hand, it was ruled that when provisions on a disciplinary

procedure were defined as arbitrary ones in a collective bargaining agreement or company regulations, a disciplinary action cannot be invalidated even if it is taken without going through said procedures (Supreme Court, 07/13/1993, 92Da42774).

(b) Prior consent and consultation provisions in a collective bargaining agreement

In relation to restriction of an employer's power to dismiss a worker, if an employer and a labor union have provisions of prior agreement or consent in their collective bargaining agreement to the effect that 'the employer would exercise the right to dismissal only if the union agrees to it', the disposition of dismissal which did not go through such a procedure is void (Supreme Court, 09/13/1994, 93Da500017). However, if a labor union is found to have abused or given up voluntarily its right to prior consent, an employer may exercise his/her right to dismissal without consent of the union (Supreme Court, 09/29/1993, 91Da30620).

Abuse of the right to prior consent by a labor union can be one of the following: (1) there was a serious act of betrayal on the part of a labor union, thereby resulting in a procedural defect on the part of its employer; (2) The person who got disciplined has caused serious harm to the company i.e. the employer by committing gravely unlawful acts, and it is objectively clear that his/her wrongdoings fall under the category of reasons for a disciplinary measure and the company has made a sincere and earnest effort to reach a preliminary agreement with the union, and it was not successful because the union kept objecting to it without presenting a reason or ground (Supreme Court, 09/06/2007, 2005Du8788).

On the other hand, the provision in a collective bargaining agreement that

prior consultation or an opinion of a labor union is to be considered is, unlike consent (agreement), merely to allow the labor union's opinion to be considered as a reference for the purpose of fairness in a disciplinary action. So, a disciplinary action which did not go through such a procedure is still deemed valid (Supreme Court, 06/09/1992, 91Da41477).

(c) Written notice of the grounds and date of dismissal

Article 27 (written notice of grounds, etc. for dismissal) of the LSA stipulates that when an employer intends to dismiss a worker, he/she shall notify the worker in writing of grounds and the date of the dismissal.

This provision will make an employer be more cautious in dismissing a worker through written notice of grounds for dismissal and clarify the existence and the date of the dismissal so that a dispute surrounding the dismissal could be resolved appropriately and easily and the concerned worker can respond appropriately to the dismissal (Supreme Court, 10/27/2011, 2011Da42324).

Therefore, it must be possible for a worker to know specifically what the cause of dismissal is, and in particular, in the case of disciplinary dismissal, specific facts or details of his/her wrongdoings constituting an actual ground of the dismissal must be stated. Just listing the provisions of a collective bargaining agreement or company regulations that the person disciplined has violated cannot be regarded as having met the written notification requirement of dismissal (Supreme Court, 10/27/2011, 2011Da42324). As refusal of employment at the expiration of a probation period also corresponds to dismissal, a written notice of the reason of dismissal, etc. must be issued (Supreme Court, 11/27/2015, 2015Du48136).

Here, “written” refers to a document containing certain contents. Therefore,

it can be said that a notification of dismissal via a social media messenger such as *Kakaotalk* and an e-mail is in principle different from a written notice. However, there is a precedent ruling that notification of dismissal via electronic documents can be valid under the following conditions: (1) the Framework Act on Electronic Document and Electronic Commerce stipulates that the effect as a document shall not be denied just because it is in an electronic format, (2) an electronic document that is ready to be printed immediately is in fact no different from a paper-based document and may be more sustainable or accurate in recording and storage, (3) an employer's intention for dismissal can be clearly confirmed in light of the format and contents of an e-mail and the details on the reason and the date of the dismissal are specifically stated so that there is no problem for the worker to appropriately respond to the dismissal (Supreme Court, 9/10/2015, 2015Du41401).

### 3) Statutory limitation on dismissal, etc.

#### a. Prohibition of discriminatory dismissal, etc.

An employer shall neither discriminate against workers on the basis of gender, nationality, religion, or social status (LSA, Article 6). Accordingly, if an employer carries out a discriminatory dismissal, etc., it may be nullified as not having a just cause. In addition, no employer shall discriminate workers on the basis of gender in retirement age, retirement, and dismissal (*Equal Employment Opportunity and Work-Family Balance Assistance Act*, Article 11, Para. 1).

#### b. Prohibition of disadvantageous treatment

Workers may report to the Minister of Employment and Labor or a labor inspector if any violation of the LSA occurs at a company or workplace,

and an employer shall not dismiss or treat workers unfairly for making such a report (LSA, Article 104).

An employer shall not take a measure of dismissal or other unfavorable treatment against fixed-term workers or part-time workers on the grounds: (1) refusal of an employer's unreasonable demand for overtime, (2) request for redress of the discriminatory treatment to the LRC, attendance at the LRC and making a statement, and request for review or filing an administrative litigation, (3) report on the employer's failure to fulfill a remedy order of the LRC, (4) notification to the authorities, etc. (FPWPA, Article 16).

A dispatching employer and a user employer shall not take a measure of dismissal or other unfavorable treatment on the reason that a dispatch worker filed a request for redress of discriminatory treatment to the LRC, attended the LRC and made a statement, requested a review or filed an administrative litigation, or reported his/her employer's non-compliance of a remedy order of the LRC, etc. (TAWPA, Article 21-3).

#### c. Restrictions on the date of dismissal

An employer shall not dismiss a worker during a period of suspension for medical treatment of an occupational injury or disease and within 30 days immediately thereafter, and any woman before and after childbirth shall not be dismissed during a period of maternity leave as prescribed by this Act and for 30 days immediately thereafter. This shall not apply where the employer has paid compensation in full in a single payment as provided for under Article 84 or where the employer may not continue to conduct his/her business (LSA, Article 23, Para. 2).

### (4) Annual statistics

**1) Cases filed and handled for unfair dismissal, etc.**

As shown in [Table 3-7], about 12,000 cases of unfair dismissal, etc., including those that have been carried over from the previous year, were filed to the LRC every year to request for remedy. By year, the number was about 13,000 in 2013 and 2014, but decreased slightly to 11,000 in 2017. In 2017, 9,783 out of 11,134 cases were handled, among which 3,383 were concluded with an adjudication and 3,428 and 2,972 were concluded with withdrawal and conciliation respectively. The percentage of the cases concluded with withdrawal or conciliation (conciliation & withdrawal rate) was 65.4%, and that of the cases concluded with conciliation (conciliation rate) is 30.4%. Out of 3,383 cases of adjudication, 1,223 were concluded with recognition, 1,461 were dismissed and 699 were dismissed without deliberation due to lack of formal requirements. In 2017, the rate of recognition or conciliation cases to the handled cases excluding those of withdrawal (remedy rate) was 66.0%.

[Table 3-7] Yearly cases filed and handled for remedy requests for unfair dismissal, etc.

(cases)

| Classification | | Cases filed | Cases handled | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Total | Adjudication | | | | Withdrawal | Conciliation |
| | | | | Subtotal | Recognition | Dismissal | Dismissal without deliberation | | |
| 2013 | Total | 12,805 | 11,509 | 3,324 | 1,204 | 1,433 | 687 | 4,022 | 4,163 |
| | NLRC | 1,653 | 1,380 | 1,034 | 403 | 463 | 168 | 266 | 80 |
| | RLRC | 11,152 | 10,129 | 2,290 | 801 | 970 | 519 | 3,756 | 4,083 |
| 2014 | Total | 12,996 | 11,678 | 3,503 | 1,244 | 1,566 | 693 | 4,715 | 3,460 |
| | NLRC | 1,619 | 1,309 | 893 | 351 | 423 | 119 | 314 | 102 |
| | RLRC | 11,377 | 10,369 | 2,610 | 893 | 1,143 | 574 | 4,401 | 3,358 |
| 2015 | Total | 12,572 | 11,131 | 3,563 | 1,329 | 1,464 | 770 | 4,526 | 3,042 |
| | NLRC | 1,670 | 1,305 | 925 | 370 | 387 | 168 | 300 | 80 |
| | RLRC | 10,902 | 9,826 | 2,638 | 959 | 1,077 | 602 | 4,226 | 2,962 |
| 2016 | Total | 11,224 | 9,932 | 3,605 | 1,404 | 1,442 | 759 | 3,746 | 2,581 |
| | NLRC | 1,768 | 1,429 | 978 | 418 | 386 | 174 | 323 | 128 |
| | RLRC | 9,456 | 8,503 | 2,627 | 986 | 1,056 | 585 | 3,423 | 2,453 |
| 2017 | Total | 11,134 | 9,783 | 3,383 | 1,223 | 1,461 | 699 | 3,428 | 2,972 |
| | NLRC | 1,617 | 1,355 | 1,007 | 380 | 453 | 174 | 230 | 118 |
| | RLRC | 9,517 | 8,428 | 2,376 | 843 | 1,008 | 525 | 3,198 | 2,854 |

* Cases filed include those that have been carried over from the previous year.

### 2) Remedy requests by the type of disciplinary actions

As shown in [Table 3-8], cases concerning remedy for unfair dismissal took the largest portion followed by other disciplinary actions (removal from one's post, standby order, personnel disposition, warning, demotion, etc.) and suspension from work. In 2017, 8,011 cases (72%) out of the total 11,134 cases were about a remedy request for dismissal while 2,348 cases (21.1%) were about other disciplinary actions, and 545 cases (4.9%) about suspension from work; dismissal is steadily decreasing by year, while other disciplinary actions are steadily increasing.

[Table 3-8] Yearly cases filed for remedy requests for unfair dismissal, etc. by type

(cases)

| Classification | Total | Dismissal | Suspension from work | Job transfer | Wage cut | Leave of absence | Others |
|---|---|---|---|---|---|---|---|
| 2013 | 12,805 | 10,683 | 482 | 99 | 75 | 13 | 1,453 |
| 2014 | 12,996 | 10,488 | 496 | 118 | 90 | 12 | 1,792 |
| 2015 | 12,572 | 9,611 | 500 | 145 | 103 | 15 | 2,198 |
| 2016 | 11,224 | 8,041 | 610 | 111 | 150 | 12 | 2,300 |
| 2017 | 11,134 | 8,011 | 545 | 83 | 132 | 15 | 2,348 |

* Cases that have been carried over from the previous year are also included.

### 3) Imposition of enforcement levy

An enforcement levy was imposed on employers who have not fulfilled the remedy orders of the LRC for 500 to 700 cases per year, as shown in [Table 3-9]. This is the total number including the cases in which an enforcement levy was imposed twice a year according to the policy that an enforcement levy can be imposed twice a year (for up to two years)

for one case of non-fulfillment of a remedy order. In 2017, an enforcement levy was imposed on 644 cases, out of which 481 were related to dismissal, accounting for 74.7%, and 163 to disciplinary actions other than dismissal.

[Table 3-9] Yearly imposition of enforcement levy

(cases, persons, KRW million)

| Classification | Total | | | Types of disciplinary action | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Dismissal | | | Other than dismissal | | |
| | Case | No. people related | Amount | Case | No. people related | Amount | Case | No. people related | Amount |
| 2013 | 524 | 1,317 | 8,539 | 404 | 879 | 5,618 | 120 | 438 | 2,921 |
| 2014 | 591 | 1,394 | 9,843 | 466 | 1,061 | 7,612 | 125 | 333 | 2,231 |
| 2015 | 552 | 1,195 | 8,696 | 443 | 841 | 7,143 | 109 | 354 | 1,553 |
| 2016 | 715 | 1,232 | 8,868 | 515 | 872 | 6,722 | 200 | 360 | 2,146 |
| 2017 | 644 | 1,016 | 8,231 | 481 | 746 | 6,409 | 163 | 270 | 1,822 |

* All the impositions including the first, second, third, and fourth ones are counted. Those that are canceled are excluded.
* "Other than dismissal" includes disadvantageous measures, i.e. leave of absence, suspension from work, job transfer, and wage cut.

## (5) Major cases

### 1) Right to legitimate expectation of conversion to regular employment

#### a. Factual background

Foundation "A", which supports job placement of unemployed people in the name of a social service for the unemployed, has workers under the category of *fixed-term employment for permanent jobs*. A worker who is hired for this job can convert to a regular worker after going through employee evaluations at the end of the contract period of two years. Worker "K" was

hired for this job and worked as the head of Social Enterprise Establishment Support Division.

When expiration of the contract came closer, Foundation A carried out employee evaluations for “K” and “L”. In the evaluation, general manager’s score accounted for 60%, which was the first evaluation, and executive director’s score took up 40%, which was the second evaluation, and final evaluation was supposed to be made by the standing director. According to the company regulations, recruitment and dismissal of a worker was subject to a review by the personnel committee.

The first evaluator gave Grade S, which was the highest grade, to K, evaluating that K contributed significantly to enhancing the reputation of the Foundation and creating favorable social-economic circumstances for the social services it provides and, therefore, K is a talent that Foundation A needs the most. However, the second evaluator gave Grade B or D to all evaluation items, commenting that K fell short of the expectation for a middle manager as he was often late and received an oral warning from the standing director because he protested against the standing director when he criticized K’s poor work performance[40].

In 2011, K ranked 6th among 10 division heads in the performance evaluation and the lowest in the attendance and attitude evaluation. In the first half of 2012, K ranked top among 8 division heads in the first evaluation but ranked bottom in the second evaluation[41].

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40) For two years, he was actually late 114 times (5 times per month on average), and 13 hours and 38 minutes were lost due to arriving late (36 minutes per month and 7 minutes every time on average).

41) Other than this case, Foundation A conducted employee evaluations and convened a personnel committee to deal with the conversion of employment type for all 12 fixed-term workers whose terms were about to be expired.

〈Evaluation categories and their percentages〉

| Classification | Job performance | Capability | Attitude and attendance | Others (merit and discipline, previous year's evaluation, etc.) | Total |
|---|---|---|---|---|---|
| Ratio | 50% | 30% | 10% | 10% | 100% |

Foundation A notified K of termination of the labor contract as of October 25, 2012 and K requested a remedy to the LRC, insisting that this notice is none other than dismissal.

### b. Issues

The legal issues in this case are whether a fixed-term employee can automatically expect to become a regular worker when his two-year contract term has expired and whether there are justifiable reasons to refuse the contract renewal, which means the employee evaluation results are objective and fair.

### c. Case developments

(a) LRC

Seoul Regional Labor Relations Commission dismissed K's request for remedy for the reason that it is not subject to a remedy for unfair dismissal as his contract term expired in due course (Seoul RLRC, 01/24/2013, 2012Buhae2741, Buno95).

However, the NLRC accepted K's request for a review hearing, mentioning that although K has a right to expect renewal of the contract legitimately, it was refused without a justifiable reason, and reversed the first adjudication by Seoul RLRC (NLRC, 05/22/2013, 2013Buhae138, Buno23).

Quoting the jurisprudence on the expectation of a contract renewal, the

NLRC adjudicated that the worker's expectation for a non-fixed term employment status at the completion of the contract was legitimate, in line with the facts that: "As Article 5, Sub-paragraph 2 of the labor contract stipulates that 'the labor contract may be renewed one month before its expiration', the worker expected his contract to be renewed; although the worker has a fixed-term labor contract, he served as a middle manager (Head of Social Enterprise Establishment Support Division), who is in charge of some of the major projects commissioned by the Ministry of Employment and Labor, of which implementation was to be continued after the expiration of the contract period; there had been a practice in Foundation A, in which, since 2010, in the case of converting a fixed-term worker to a regular worker, the Foundation had comprehensively assessed recruitment eligibility of the worker whose term was about to be expired, taking into account its managerial situation, and the standing director of the Foundation convened the personnel committee to decide whether to recruit him/her as a regular worker; and the employer in this case carried out employee evaluations to decide whether to employ the worker continuously".

In addition, the NLRC found that the employee evaluation lacked objectivity and fairness because, unlike the second evaluator who gave the worker low grades, the first evaluator, who is the general manager (K's direct supervisor) concluded that K is a valuable employee for the Foundation. The Foundation notified only K of termination of labor contract as a result of the employee evaluation without convening the personnel committee.

(b) Court

Foundation A filed an administrative lawsuit in protest against the review adjudication by the NLRC and the court ruled in favor of Foundation A,

reversing the review adjudication by the NLRC (Seoul Administrative Court, 11/21/2013, 2013Guhap17688). The administrative court ruled that Foundation A's refusal to renew the contract does not infringe on K's right to legitimate expectation for contract renewal, in that: ① although the labor contract stipulates that it can be renewed, it does not clarify procedures and conditions for the contract renewal. Also, the contract had not been renewed before; ② due to implementation of *the Act on the Protection of Fixed-term Workers*, it may not be easy for the foundation to grant an employee the entitlement to expect a contract renewal after the expiration of the two-year contract; ③ although part of the evaluations made by the first and second evaluators are conflicting, the decision made by the final evaluator not to recruit K as a regular worker does not seem to be arbitrary or lack objectivity or fairness; and, ④ in determining whether to convert the worker's employment status to regular one, failure to holding the personnel committee is not regarded as violation of personnel regulations.

On the contrary, the High Court, which is an intermediate appellate court, and the Supreme Court ruled in favor of K (Seoul High Court, 11/06/2014, 2013Nu53679, Supreme Court, 11/10/2016, 2014Du45765).

The Supreme Court, quoting the jurisprudence on the entitlement to contract renewal, adjudicated that: "In case that labor contract, company regulations or CBA stipulates that the employment status of fixed-term worker can convert to that of regular one when certain conditions are satisfied after employee evaluations at the end of contract period; or although there are no such regulations, given the various factors of the labor relations such as content, reasons, or process of labor contract, the availability of the standards for employment status conversion to the non-fixed term, the requirements for such standards

as well as actual practices, and content of the job that the worker actually carries out; if trust is established between the parties concerned that when certain requirements are met, a fixed-term worker can become a regular worker, employer's refusal to convert the worker's status into the non-fixed term and unilateral notification of termination of labor contract without a proper reason constitutes violation of worker's right and, thus, it does not have legal effect, as it is considered unfair dismissal, and the employment relationship after that should be considered as the one between a non-fixed term worker and the employer." The Supreme Court acknowledged the appellate court decision, which recognized K's entitlement to employment status conversion to a regular worker. The High Court adjudicated that K's expectation to become a regular worker after the employee evaluation was legitimate, considering that: ① fixed-term employment for ordinary job is an employment type which was requested by the personnel committee, in which a fixed-term worker who was hired by company goes through employee evaluations at the end of the contract period, which is to decide whether to recruit him/her as a regular worker; ② K conducted the same duties as regular workers did and Foundation A repeatedly mentioned that if there are no special reasons, fixed-term workers for ordinary jobs would be recruited as regular workers; ③ previously, all of the three fixed-term workers who wanted to become a regular worker were converted to the regular status, and to all of those whose contract term had expired, opportunities to become a regular worker were given including having employee evaluations and being reviewed in the personnel committee; ④ and K also had employee evaluations one month before the termination of his contract, of which purpose was to give him an opportunity to become a regular worker.

The Supreme Court acknowledged the decision by the appellate court, which said that the employee evaluations were not objective and fair because there were no proper reasons to reject his contract renewal. The High Court pointed out that: ① Foundation A notified K of expiration of the contract period without a review by the personnel committee. However, in the case of L, who was also subject to employee evaluations like K, he was converted to a regular worker after being reviewed by the personnel committee, but he didn't have the employee evaluations before the status conversion (unfair procedures of the employee evaluations); ② there are no clear standards for employment status conversion to a regular worker. Although the appraisals on K made by the first and second evaluators were contradictory, it is not clear on which basis such different results came out (The employee evaluations are suspected of lacking objectivity due to absence of the evaluation criteria); ③ the second evaluator gave grade D for K's attendance and attitude, but according to the employee evaluation criteria that Foundation A submitted, K should have been given grade B, which gives doubt that the employee evaluations were objective; ④ in 2011 capacity evaluation, K ranked $6^{th}$ among 10 division heads and in the first half of 2012 evaluation, he ranked top among them in the first appraisal and there are documents proving K carried out his duties faithfully.

#### d. Case significance

First, the significance of this case is shown by the implementation of *the Act on the Protection, etc. of Fixed-term and Part-time Workers* (FPWPA). Discussion topics have advanced from worker's right to expect contract renewal to worker's right to expect employment status conversion to a regular worker,

which is a significant step forward. In other words, for this reason, the employment relationship after the expiration of labor contract was considered the same as the previous one in the past. However, in this case, the court recognized that after the expiration of labor contract, fixed-term workers may legitimately expect conversion of their employment status to a regular worker. The term *the expectation to employment status conversion* was used first by the NLRC and the Supreme Court accepted this term. Second, although the employee evaluations belong to the discretion of the employer, if it violates labor relations laws such as the LSA or TULRAA, or if it is regarded as having lacked in objectivity and fairness due to arrogation of power in which employer exercises his/her discretions beyond the legitimate scope in employee appraisals, it is subject to a review of the LRC.

#### 2) The employment status of TV producers

##### a. Factual background

The second case is about news program producers who started working at Broadcasting Company "B" in 2002 and 2003. They started working after an interview by the head of division without signing a labor contract. They had been involved in making a series of a news reports, which were composed of three installments. Each installment consisted of a prologue (about 1 minute and 40 seconds), a preview (40 seconds) and 5 main items (8 minutes each).

Based on the broadcasting plan made by reporters and the head of the division, the producers completed preliminary tasks, edited VCR tapes in line with the intention of the plan, filmed the studio part, and produced a final program under the direction of the head and vice head of the division. The complainants received wages in the form of weekly payment without

basic pay or fixed pay. The payment was made on an irregular basis, when production expenses were paid from the budget allocated for each installment of the program.

The complainants did not receive wages during the three weeks after the program ended as they didn't work. Except this period, they had received weekly wages for 64 installments of which broadcasting was canceled until their employment ended. Broadcasting Company B did not apply company regulations and company regulations to the complainants, although there was an agreement that, if their skills are not satisfactory, they may be removed from the program production. The company also did not check what time they arrived at and left the workplace; did not provide computers for them; had them use desks in a meeting room; provided them with a visiting pass, which were usually given to managers of entertainers, instead of the employee pass; did not give them a company email account; deducted a withholding tax for *business income*; and didn't pay into the main four social insurance coverage categories.

After the implementation of the FPWPA, Broadcasting Company B proposed making an agency worker contract but the company notified them of termination of contract in July 2009 by phone, when the complainants refused its proposal.

#### b. Issues

The producers requested a remedy to the LRC, claiming the company's termination of contract is equivalent to unfair dismissal. In this case, the issues were whether or not the producers are *workers* protected by the Labor Standards Act, who are entitled to request a remedy. The LSA defines a worker as "a person who offers labor to a business or workplace for the

purpose of earning wages, regardless of the occupation, who offers labor to a company or workplace for the purpose of earning wages."

**c. Case developments**

(a) LRC

The RLRC denied the producer's employee status for the company but the NLRC acknowledged it (Seoul RLRC, 10/06/2009, 2009Buhae1684, NLRC, 01/05/2010, 2009Buhae966).

The NLRC adjudication was based on the Supreme Court ruling in 2006 on *the employee status* of a "test prep school instructor", which showed changes in determining the status of worker by the LSA (Supreme Court, 12/07/2006, 2004Da29736). The NLRC recognized the producers as workers by pointing out following factors. ① The process of work shows that the producers produced the preliminary tapes requested by the employer who covered the news and made the script. The program went through editing in line with the instructions by the head of the division and desk persons and was finalized after comprehensive editing with the head of division, desk persons and news reporters in presence. The program was a current affairs program dealing with controversial social issues, so that it could have been neither produced by the producers alone, nor finalized by going through several simple steps. The program had to go through several production phases and at each phase, it was modified and supplemented as requested by the employer to meet the purpose of the program planning. ② Although the working time of the producers was not controlled by the employer, their working time was not flexible, since a broadcast schedule was fixed and the producers had to produce the program in accordance with it. Regarding workplace and equipment and

devices, their workplace was confined to the editing room or studios of the broadcast company and they used equipment and devices provided by the employer. ③ Although the complainants did not receive wages for three weeks as there was no work to do, they did receive a certain fixed amount as a weekly wage except that three week period. ④ Although the company did not prohibit outsourcing of the program production to a third party, since production of a program needs expertise and understanding accumulated for a long time, the complainants had not outsourced the program production, nor hired any other person to substitute themselves. Also, they did not take any other job, except the program production requested by the employer. ⑤ The employer requested the producers to change their employment status to agency workers to avoid the application of the FPWPA, which protects fixed-term workers.

(b) Court[42)]

The Supreme Court acknowledged the rulings by the High Court, which was based on the above-mentioned adjudication by the Supreme Court in 2006. The High Court mentioned that factors below could be decided by the employer, who has the upper hand in position, and it was possible for the employer to decide that if they did not want to recognize the producers as workers. Therefore, factors below are only secondary in determining the actual labor relations. The factors are: the workers, who worked as the program producers, did not have basic pay or fixed pay in their wages while they were working on the program; a withholding tax was deducted from their

42) Seoul Administrative Court, 10/08/2010, 2010Guhap6502, Seoul High Court, 06/30/2011, 2010Nu37973, Supreme Court, 04/10/2014, 2011Du19390 (The Supreme Court dismissed the request by the employer, acknowledging the High Court ruling. For reference, there was no explanation on the employee status in the Supreme Court ruling.)

wage for business income; they were not recognized as workers in terms of social insurances; they were not subject to company regulations or company regulations (As these regulations or rules were not applied to them, they were not supposed to be subject to disciplinary measures. However, it was possible that they were excluded from the work, which was none other than dismissal in effect); they were not provided with company email accounts and computers for work; and they received a visitor pass rather than an employee pass.

The High Court said that whether a person is a worker or not should be determined by intrinsic measures, considering comprehensively other socio-economic factors that workers are facing. In this regard, there is not much evidence to regard the producers as independent business owners but plenty of evidence to think that they provided their labor to the employer in subordinate relationship, which justifies regarding the producers as workers by the LSA. The intrinsic features are as follows: ⓐ whether the employer decides which tasks a person should take and exercises considerable direction or control for the person in carrying out the job; ⓑ whether the employer decides the working time and place for the person and whether the person must follow it; ⓒ whether the labor providing person possesses his/her own equipment or devices or raw materials, or whether he/she can hire a third party for the purpose of outsourcing his/her work to the person and likewise, run the business by his/her own calculation, or whether he/she takes the risk of creating profits and incurring losses that might arise through the provision of his/her labor; ⓓ whether the payment to a worker is made to compensate for his/her labor; ⓔ whether the labor relations are continuous, and whether or not the worker's labor is subject to the direction of the employer and if it is so, to what extent.

The High Court mentioned that "ⓐ Regarding the content of the work and work process, the intervenors (meaning *workers* in this case) carried out the work closely cooperating with other regular workers to produce a program and part of the work may not be separated and outsourced to an independent business owner; the program is a current affairs program that deals with controversial issues in society and cannot be made by going through several simple steps, but should go through several phases and should be consulted with the employer in each phase to modify or supplement the program in line with the program planning. In that process, the plaintiff's interference and involvement went beyond the ordinary extent of a preliminary request for the result of the commissioned work or ex post facto evaluations or proposals. Rather, the employer interfered in the work routinely and continuously, while controlling the work of the intervenors directly. Considering this, it can be sufficiently believed that the plaintiff had a considerable direction or control over the job performance of the intervenors.

ⓑ Regarding the working time and place, the program that the intervenors were producing was supposed to be aired once a week, so that the broadcasting timetable was already tight and sometimes, they had to work even all night even. This fact indicates that though the working time was relatively flexible, it was due to the characteristics of the work, and it might have been pretty much similar to regular workers who worked together with the internevors for the program production. Regarding the workplace, it was impossible for the intervenors to work at other places due to the tight schedule and also, as they had to use editing equipment, cameras, and the studio that the employer owned, it is safe to say that their workplace was fixed and the intervenors could not choose the workplace.

ⓒ Regarding the ownership of the equipment or devices, substitutability of the work, and the structure of profit and loss, the intervenors did not have to invest capital or prepare their own equipment, except providing their labor for the work. Also, given the characteristics of the work and the reasons why the plaintiff chose them, it is not easy to imagine that the intervenors would have hired a third party to replace themselves, rather than carrying out the work directly and, given that there was no additional profits to take or risks to incur, it is not likely to consider the intervenors as independent business owners.

ⓓ Regarding the wage, although the intervenors received weekly wages in accordance with the number of program productions, there was no change in the wage itself and except for the three weeks in 2005, they had received wages every week even when the program was not broadcast. Though the amount of the wage was fixed irrespective of the working hours, the working hours of the intervenors were predictable enough and did not fluctuate much. In this regard, it is safe to say that the intervenors received their wages in compensation for their labor.

ⓔ Regarding exclusive and continuous provision of labor to the employer, the intervenors did their part in the production of the program, which was not much different from the work of regular workers. As they had to do their part repeatedly on a tight schedule arranged every week, the intervenors did not have time to do other jobs and actually didn't do any other job, which means they solely carried out the work requested by the plaintiff. As they had worked continuously for the six years except the three weeks, the continuous provision of labor was recognized."

#### d. Case significance

In the broadcast industry, there are various types of workers including freelancers, let alone those who are directly hired by broadcasting companies. In this case, producers of news programs are recognized as workers. The NLRC and the High Court, by applying the Supreme Court ruling in 2006 to producers, distinguished the criteria to determine the status of a worker between essential factors and secondary ones, which is significant.

### 3) Dismissal by email as a written notice

#### a. Factual background

Worker K was dismissed from Company "C" on April 30, 2013 and requested a remedy for unfair dismissal to an RLRC. The employer sent reinstatement order by email to the certified public labor consultant who represented K, and K was reinstated on June 26, the same year. However, the employer held a disciplinary committee on July 2, 2013 with K in presence and decided disciplinary dismissal again. On the date, K requested the employer to "send relevant documents to his certified public labor consultant", saying that "since I am dismissed again unfairly, I will request a remedy." The employer sent a notice of the result of the disciplinary committee to K's public labor consultant and verified that he received the email, and K filed a remedy request to the RLRC for the second dismissal.

#### b. Issues

Article 27, Paragraph 1 of *the Labor Standards Act* stipulates that "When an employer intends to dismiss a worker, he/she shall notify the worker of the grounds and the date for the dismissal" in writing, and Paragraph

2 of the same Article said, “The dismissal of a worker shall become effective only upon a written notice pursuant to paragraph (1)”. The issue in this case is the fact that the employer sent a notice of the disciplinary result to K’s legal agent by *email*, not in a *written document*.

**c. Case developments**

(a) LRC

Both the RLRC and the NLRC adjudicated that sending the disciplinary result notice by email is legitimate as a dismissal notice in writing (Gyeonggi RLRC, 10/23/2013, 2013Buhae1280, NLRC, 01/24/2014, 2013Buhae1017).

The NLRC adjudicated that sending a notice of the disciplinary result to the concerned worker’s legal agent by email cannot be regarded as a procedural fault violating the purpose of the law, reflecting following factors: ① during the time of the first dismissal remedy, the worker was reinstated after receiving the reinstatement order, which was sent to his legal agent by email; ② the worker actually requested the employer after the disciplinary committee, saying “Send all of the materials including CCTV data to my legal agent, not to me”; ③ since the address that the worker wrote on the labor contract was different from his actual residence address, there was a possibility that the worker would not receive the notice and that is why it was sent to his legal agent by email; ④ after the employer e-mailed “a notice of the disciplinary outcome” clarifying the dismissal date and the reasons to the worker’s legal agent, it was verified that the worker’s legal agent had received it, and the worker filed a remedy to the RLRC in a timely manner because of this notice. Also, the purpose of sending a notice of the disciplinary outcome in writing is to avoid reckless dismissal and clarify

legal conditions for dismissal in order to minimize conflicts between the parties concerned.

(b) Court

Courts of all instances ruled that the review adjudication by the NLRC was legitimate (Daejeon Regional Court 11/19/2014, 2014Guhap1415, Daejeon High Court, 04/02/2015, 2014Nu12696, Supreme Court 09/10/2015, 2015Du41401). The Supreme Court explained that “Article 27 of the LSA stipulates that ‘the dismissal of a worker by the employer shall become effective only upon a written notice which contains the reasons and the date for the dismissal’, so that the employer may decide whether or not to dismiss a worker in a more considerate way.

Also, by clarifying the date and reasons for the dismissal, any disputes arising from it may be resolved in an appropriate and convenient manner and the dismissed worker may take an appropriate countermeasure against it. The term a *written notice* here means a document and is distinguished from electronic document such as email, but ① Article 3 of *the Framework Act on Electronic Documents and Transactions* stipulates that ‘This Act shall apply to all electronic documents and electronic transactions, except as otherwise expressly provided for in other Acts’, and Article 4, Paragraph 1 of the same Act says that ‘No electronic document shall be denied legal effect as a document solely because it is in an electronic form, except as otherwise expressly provided for in other Acts’; ② an electronic document that can be printed out immediately is practically not different from paper document and in terms of storage and preservation, the continuity and accuracy of electronic document can be guaranteed better; ③ if an email notice fulfills its role and function as a written notice for dismissal, for example, the employ-

er's intention of dismissal can be verified in its format and content, and reasons and date for dismissal are detailed in the email, and the dismissed worker can take action against it without any obstructions, then, the electronic notice including email should not be disregarded only for the reason that it is not a paper document.

Given these factors, as long as the dismissed worker perceives the content of dismissal through email, in some cases, it needs to be validated as a written notice of dismissal within the scope of the purpose of the legislation for Article 27 of the LSA."

Acknowledging the adjudication by the NLRC as it is, the Supreme Court ruled that "Although Article 27 of the LSA stipulates that the reasons and date for dismissal shall be notified in writing to take effect, it does not clarify what kind of a format the document has to take. The notice of the disciplinary result that the intervenor sent to the plaintiff via email mentions the reasons and the date for the dismissal specifically and clearly, and as long as the plaintiff was given an opportunity to take a counter action, email notice is equivalent to the written notice stipulated by Article 27 of the LSA."

#### d. Case significance

The above-mentioned rulings do not allow email dismissal notice all the time but rather, in case when the *email* notice fulfills certain conditions, it can be regarded as a written notice. Whether or not to allow electronic document like email as a written notice is determined considering the following factors: ① whether there is a special reason for why it has to be written in electronic document; ② whether the electronic document should be a copy of the written notice in a complete format that can be sent via electronic device and printed out as well as being stored and preserved; ③ whether

the reasons and date for dismissal are clarified; ④ whether the dismissed worker had any difficulties in taking a counter action regarding the dismissal, for example, failing to verify whether the worker has received the email or not.

## 2. Adjudication on the remedy request for unfair labor practices

### (1) Introduction

Unfair labor practices are prohibited by Article 81 of TULRAA as follows: disadvantageous treatment against a labor union by the employer which does not have a just cause (Sub-paragraph 1, 5); unfair employment contract (Sub-paragraph 2); refusal or delay of the collective bargaining request (Sub-paragraph 3); domination of or interference in organizing or operating a labor union (Sub-paragraph 4), and so on.

There are two theories regarding the purpose of unfair labor practices: *a theory on the embodiment of fundamental rights* and *a theory on securing fair order*. According to the theory on the embodiment of fundamental rights[43], the purpose of the system is to realize the three fundamental labor rights guaranteed by the Constitution. The other theory on securing fair order[44], however, explains that, although a system to forbid unfair labor practices contributes to securing the three fundamental labor rights protected by the Constitution more effectively, it aims to secure fair employee-employer relations or bring about smooth collective bargaining relations, rather than guaranteeing the three basic labor rights themselves.

There is a court ruling that views the system as the one to secure the

43) Kim Yu-seong, *Labor Laws II*, Beopmoonsa, 2001, pp315

44) Kim Hyung-bae, *Labor Laws: a New Version* (25th Issue), Bakyoungsa, 2016, pp1232

three labor rights substantially (Supreme Court, 12/21/1993, 93Da11463), or another ruling that regards it as a method to secure the three fundamental labor rights by preventing or removing the employer's actions that destroy collective labor relations order (Supreme Court, 05/08/1998, 97Nu7448).

Unfair labor practices have been included in the former *Trade Union and Labor Relations Adjustment Act* (TULRAA) and *the Labor Disputes Adjustment Act* (LDAA), which were legislated in 1953. At that time, however, the laws stipulated only punishments without remedy procedures through the LRC (the principle of punishment), and the types of unfair labor practices were scattered in both Acts. For example, provisions forbidding the domination of or interference in organizing or operating a labor union were stipulated in Article 10, Sub-paragraph 1 of then TULRAA; prohibiting disadvantageous treatment on workers for joining a labor union was included in the Sub-paragraph 2 of the same Article and Article 10 of the LDAA; and prohibiting refusing collective bargaining was stipulated in Article 34 of the same Act.

In 1963, when the former TULRAA was revised, the punishment provisions were removed as remedy procedures to reinstate through the LRC were introduced (the principle of restitution), and all types of unfair labor practices including making a conditional contract regarding the participation of a labor union were incorporated into one provision. In 1986, the punishment provisions were re-added in the law and currently, there are both remedy procedures through the LRC and punishment provisions in the labor law (both the principle of restitution and the principle of punishment at present).

One of the sectoral committees of the LRC, the Adjudication Committee deals with the matters on remedies for unfair labor practices. The Adjudication Committee is composed of three public interest members in charge of ad-

judication upon the designation of the chairperson of the LRC (LRCA, Article 5).

The remedy procedures for unfair labor practices are basically the same as those for unfair dismissal, etc.

## (2) Conditions to constitute unfair labor practices

### 1) Who may commit unfair labor practices?

Article 81 of TULRAA stipulates that only employers may commit unfair labor practices. In the U.S., unfair labor practices by a labor union are also recognized, however in Korea, it is not the case. Article 2, Sub-paragraph 2 of TULRAA defines an *employer* as “a company owner, a person responsible for the management of a company or who acts on behalf of a company owner with regard to matters concerning workers in the company”.

Court rulings indicate that an employer is “a person whom a worker is subordinate to when providing labor” (Supreme Court, 12/22/1995, 95Nu3565). In principle, an employer defined by TULRAA matches with the scope of the employer defined by the LSA. However, some court rulings upheld that the definition of an employer who may commit unfair labor practices with regard to dominating or interfering in organizing or participating in the labor union, prohibited by Article 81, Sub-paragraph 4 of TULRAA, is exceptionally broader than that of the LSA (Supreme Court, 03/25/2010 2007Du8881).

### 2) Types of unfair labor practices

#### a. Disadvantageous treatment

Disadvantageous treatment is composed of two subcategories: ordinary disadvantageous treatment and acts of retaliation.

Article 81, Sub-paragraph 1 of TULRAA defines ordinary disadvantageous

treatments as “dismissal or disadvantageous treatment of a worker on grounds that he/she has joined or intends to join a labor union, or has attempted to organize a labor union, or has performed any other lawful act for the operation of a labor union”.

Sub-paragraph 5 of Article 81 of the Act says that acts of retaliation are “dismissal of workers or acts against their interests on the ground that they have participated in justifiable collective activities, or that they reported to or testified before the LRC that the employer has violated the provisions of this Article, or that they have presented evidence to the relevant authorities.”

#### b. Unfair employment contract

Article 81, Sub-paragraph 2 of TULRAA defines unfair employment contract or *yellow dog contract*[45], as an “act of employing a worker on the condition that he/she will not join, or will withdraw from or join a particular labor union”.

At the same time, the same Sub-paragraph recognizes the effect of union shop agreement, saying that “if a labor union represents two-thirds or more of the workers working in the workplace, a conclusion of a collective agreement under which a person is employed on condition that he/she should join the labor union shall be allowed as an exceptional case”. In other words, union shop agreement is prohibited in principle as an unfair employment contract but the provision stipulates that it can be recognized exceptionally in this case.

The conditional clause attached to the above-mentioned Sub-paragraph, which allows union shop agreement of the compulsory unionization, was

45) Unfair employment contract is sometimes called an ironclad oath, a yellow-dog contract, or a conditional contract.

problematic as it might violate the Constitution protecting the individual worker's freedom not to be unionized.

The Constitutional Court recognized *pessimistic freedom of association* (worker's right not to join a union) only by Article 10, which guarantees all citizens freedom to pursue happiness, or Article 21, Paragraph 1 of the Constitution, which guarantees freedom of assembly and association, but not by Article 33, Paragraph 1, which assures three basic workers' rights.

In this case, worker's freedom not to join a union and labor union's rights to organize proactively (compulsory unionization) conflict with each other. However, *proactive freedom of association* for workers is more meaningful than worker's freedom not to join a union and since labor union's compulsory unionization right has the nature of the right to exist (social rights) that modifies the right to freedom, it is guaranteed as having more special value than individual worker's right to freedom. In this regard, the Constitutional Court ruled that granting labor unions the compulsory unionization right does not constitute violation of the Constitution, as it is not considered to infringe on the intrinsic nature of worker's freedom not to join a union (Constitutional Court, 11/24/2005, 2002Heonba95·96 and 2003Heonba9 combined).

In a workplace which has union shop agreement, if a worker does not join the union or withdraws from it, the employer has to dismiss the worker in accordance with the CBA (union shop agreement) (Supreme Court, 03/24/1998, 96Nu16070). However, Article 81, Sub-paragraph 2 of TULRAA stipulates in the provisional clause that in case when a worker is expelled from the labor union, or organizes a new labor union or joins another union after withdrawing from the existing one, the employer may not take disadvantageous measures to the employment status of the worker (i.e. dismissal).

Until January 1, 2010, the provision stipulated only that “an employer may not take any measure disadvantageous to the status of a worker on the grounds that the worker is expelled from the labor union concerned”, but as union pluralism has been allowed since that date, “or organizes a new labor union or joins another union after withdrawing from the existing one” has been added in the provision.

#### c. Refusal or delay of collective bargaining

Article 81, Sub-paragraph 3 of TULRAA defines it as “refusal or delay of the implementation of a collective agreement or other collective bargaining with the representative of a labor union or with a person authorized by the labor union, without any justifiable reason”.

#### d. Domination or interference

According to Article 81, Sub-paragraph 4 of TULRAA, it means “domination of or interference in the organization or operation of a labor union by workers, and payment of wages to the full-time officers of a labor union or financial support for the operation of a labor union”. However, in the same provision, it is articulated that the employer may allow union officials paid time off to conduct union duties without wage cut and provide a minimum size union office, despite the provision of unfair labor practices.

Article 24, Paragraph 2 of the Act stipulates that full-time union officials should not be remunerated in any way by the employer during the exclusive involvement in union duties. However, a provisional clause attached to Article 81, Sub-paragraph 4 stipulates that “the employer may allow workers to do activities pursuant to Article 24, Paragraph 4 of the Act, and it shall

be allowed as an exception that the employer contributes funds for the welfare of workers, or for prevention and relief of economic misfortunes or other disasters, and that the employer provides a minimum size labor union office."

### 3) Intention for unfair labor practices

For a labor practice to become an unfair labor practice, it needs to be committed on purpose. The employer's intention needs to be proved. The intention for such an unfair labor practice is internal and is not manifested externally. For this reason, the judicial precedents show that the court needs to review objective factors comprehensively to indicate the intention of unfair labor practices (Supreme Court, 07/28/2011, 2009Du9574). The burden of proof lies with labor unions or workers.

### 4) Combination of principles of restitution and punishment

Regarding unfair labor practices in Korea, both *restitution* by a remedy system of the LRC and *the principle of punishment* through law enforcement authorities. Combination of both restitution and the principle of punishment is a unique practice in Korea.

Restitution means restoring the infringed right of a worker to the original status before the unfair labor practice was committed. There are not any strict regulations regarding what remedy order the LRC has to issue when an unfair labor practice is recognized. According to judicial precedents, the LRC has considerable discretion to order a specific remedy, which is necessary and appropriate for restoring a worker's right infringed by an unfair labor practice (Supreme Court, 03/25/2010, 2007Du8881).

The principle of punishment mean punishing the employer who committed unfair labor practices directly. Article 90 of TULRAA stipulates that a person

who violates Article 81 shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won. Also, Article 89, Sub-paragraph 2 of the same Act says that a person who does not comply with the remedy order of the LRC shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won. In other words, the same law has a provision that stipulates punishing the unfair labor practices themselves (Article 90) and another provision that stipulates punishing noncompliance with the remedy order by the LRC (Article 89, Sub-paragraph 2).

**5) Emergency implementation order**

When the LRC orders a remedy to an employer, the employer has to take an obligation stipulated by the public law but the order itself does not generate or modify legal relations between the labor and management (Supreme Court, 04/23/1996, 95Da53102). When the employer does not comply with the remedy order, he/she may be subject to criminal penalties according to TULRAA, which, therefore, forces the employer to comply with it (TULRAA, Article 89, Paragraph 2). Nonetheless, when the employer does not comply with the remedy order which has not been finalized, there is no regulations to enforce it.

To resolve this problem, TULRAA, which was legislated in 1997, introduced an emergency implementation order. It means that, in case when an employer files an administrative lawsuit against the NLRC for its adjudication review, the court may order the employer to implement the whole or part of the remedy order until the court ruling is finalized, upon the request by the NLRC (TULRAA Article 85, Paragraph 5).

## (3) Remedy request for unfair labor practices

### 1) Complainant

A worker or labor union whose right has been infringed by an unfair labor practice of the employer may request a remedy to the LRC (TULRAA, Article 82, Para. 1). In this case, a *worker*, who requests a remedy for an unfair labor practice, is a worker defined by TULRAA, who is, like a *worker* defined by the LSA, the person that provides "his/her labor in a subordinate relationship to the employer" (Supreme Court, 05/25/1993, 90Nu1731). In the case of non-enterprise level labor unions such as industrial unions, occupational unions, or regional unions, *the eligibility of a worker* is determined based on "the necessity to guarantee three labor rights". Therefore, those who are seeking jobs and those who are temporarily in unemployment are also included in the workers' definition stipulated by TULRAA (Supreme Court, 02/27/2004, 2001Du8568).

A labor union here means a labor union that is established and registered according to Article 10 and Article 12 of TULRAA and unregistered unions due to failing to meet the formal requirements are not included in this category, even though they have substantial entity (TULRAA, Article 7, Para. 1). Nonetheless, members of unregistered unions can still file a remedy for disadvantageous treatment by the employer or unfair employment contract in the name of an individual worker (TULRAA, Article 7, Para. 2).

Apart from the remedy request by an individual worker, a labor union has its own right to request a remedy for unfair labor practices. In this case, a labor union does not subrogate or substitute a worker in requesting a remedy but files a remedy request on its own against unfair labor practices that give a disadvantage to a worker who wants to join the union (Supreme Court 09/11/2008, 2007Du19249).

#### 2) Period of limitation

A remedy request for unfair labor practices must be filed within three months from the date the unfair labor practice by the employer occurred. In the case of a continuous practice, the limitation period is counted from the date when the unfair labor practice has ended (TULRAA, Article 82, Paragraph 2). A continuous practice means an act that is repeated with an intention for the same unfair labor practice and does not mean an act committed by the employer stays in effect. (Supreme Court, 03/23/1993, 92Nu15406).

#### 3) Using both administrative and civil remedies

Since TULRAA was amended in 1963, it has become possible to request a remedy for unfair labor practices to the LRC. Article 81 of TULRAA prohibiting unfair labor practices is an administrative regulation in public law and also is a mandatory provision that is applied to both labor and management[46]. It means that a worker can file not only a remedy request to the LRC but also a civil lawsuit to the court, when the employer commits unfair labor practices. In other words, a worker can file a litigation for nullification of the unfair labor practices for damages from the unlawful act.

### (4) Review on unfair labor practices

#### 1) Disadvantageous treatment

##### a. Conditions that constitute disadvantageous treatment

Those who can request a remedy for disadvantageous treatment to the LRC are labor unions that are registered according to TULRAA and workers

46) Moon Mu-gi, Kim Hong-young, Song Gang-jik, Park Eun-jeong, *A Study on Unfair Labor Practices Prohibition System*, KLI, 2005, p.22.

who want to join or have already joined such unions or unregistered unions (TULRAA, Article 7, Paragraph 1 and 2).

For a disadvantageous treatment to become an unfair labor practice, a worker should do justifiable union duties including joining a union and the employer must take an action that has some form of disadvantage to the worker for that reason (Supreme Court, 09/10/1996, 95Nu16738). In other words, there must be a "justifiable act to carry out union duties" for the part of the worker and then, the employer must "treat disadvantageously" to the worker for this reason.

In the phrase "justifiable act to carry out union duties", "union duties" mean not only activities carried out by the resolution or specific orders of the union, but also activities approved or authorized tacitly by the union (Supreme Court, 06/13/1995, 95Da1323).

Although company regulations adopt a permission system for distribution of union leaflets, the justification of the activity should be determined taking into account the content, amount, distribution date and method, and target readers of the leaflets as well as their influence on the business. In principle, reasonable union activities cannot be prohibited (Supreme Court, 09/24/1996, 95Da11504).

For a disadvantageous treatment to become an unfair labor practice, there must be an "act that treats a worker disadvantageously". When a worker is promoted to a position that prohibits union activities, whether or not such a promotion is an unfair labor practice is decided by considering personnel policies and the equity of treatment between the promoted worker and his/her colleagues who joined the company at the same time.

Even if a worker is promoted against his/her will, so that he/she cannot

carry out union activities, it is not necessarily an unfair labor practice (Supreme Court, 10/27/1992, 92Nu9418). The *disadvantageous treatment acts* include not allowing a worker to work overtime or on holidays so that he/she might incur economic or work-related disadvantages (Supreme Court, 09/08/2006, 2006Do38). The comparable workers in determining "whether an act is disadvantageous or not" should be non-union members whose job skills and performance and eligibility for promotion is similar to those of the union member in the case (Supreme Court, 02/10/1998, 96Nu10188).

#### b. Unfair dismissal as an unfair labor practice

The LRC deals with remedy cases for unfair dismissal, unfair job transfer, or unfair disciplinary measures, let alone cases related to unfair labor practices (LSA, Article 28, Para. 1). So, an employee may request a remedy for unfair dismissal, etc. as well as a remedy for unfair labor practices to the LRC. In this case, the LRC handles two cases together by combining them.

If the employer's dismissal of a worker is recognized as a disadvantageous act for the worker's justifiable union activities, not because of the supposed disciplinary reason that the employer mentions in nomenclature, it constitutes an unfair labor practice of disadvantageous treatment (Supreme Court, 03/28/1997, 96Nu4220).

However, lack of justification for a disadvantageous act does not necessarily constitute an unfair labor practice. For such an act to become an unfair labor practice, the employer's intention for treating the worker disadvantageously needs to be proven. That is because, even though there is no justification in the act of disadvantage, such an intention cannot be assumed automatically (Supreme Court, 08/26/1994, 94Nu3940).

#### 2) Unfair employment contract

Those who can request a remedy for disadvantageous treatment to the LRC are labor unions that are registered according to TULRAA and individual workers, who are forced not to join such unions or unregistered unions, or forced to withdraw from them, or join a specific union on condition for recruitment (TULRAA, Article 7, Paragraphs 1 and 2). However, these cases are hardly found in the actual remedy requests to the LRC.

Usually the problem is the interpretation on the application of union shop agreement. For example, "two-thirds or more of the workers", which is mentioned in the condition attached to Article 81, Sub-paragraph 2 of TULRAA on union shop agreement, does not include "an employer or other persons who always act in the interest of the employer" in Article 2, Sub-paragraph 4, (a) of the same Act, who cannot join a labor union[47].

The employer of the company with union shop agreement has an obligation to dismiss the worker who has withdrawn from the labor union (Supreme Court, 03/24/1998, 96Nu16070). In this case, however, if the employer does not dismiss the worker, it does not necessarily constitute an unfair labor practice. The provisional clause attached to Article 81, Sub-paragraph 2 of TULRAA stipulates that if a worker is expelled from the union, not withdrawing from it, he/she should not be subjected to measures to his/her disadvantage. Likewise, since the implementation of union pluralism, a worker who has withdrawn from the existing union and joins another one, or forms a new labor union should not be subjected to similar measures.

47) The Ministry of Employment and Labor, *Collective Industrial Relations Manuals*, 2016, p.179.

#### 3) Refusal or delay of collective bargaining

Those who can request a remedy for refusal or delay of collective bargaining, which is an unfair labor practice, to the LRC are labor unions formed in accordance with TULRAA. The employer has to comply with the bargaining request not only by the labor union but also by those who have been given the authority by the union (TULRAA, Article 29, Paragraph 3).

This type of unfair labor practice is constituted when the employer refuses collective bargaining or delays the implementation of the CBA without proper reasoning, or when there is no objective and justifiable evidence that the employer participated in the requested bargaining in good faith, or when it is turned out to be unfaithful one, even if the employer believes that there is a justifiable reason to refuse the bargaining request or he/she actually participated in the bargaining (Supreme Court, 05/22/1998, 97Nu8076).

Justifiable reasons to refuse the bargaining are acknowledged when it is difficult by social norms to expect the employer to carry out the obligation of collective bargaining, based on who is the authorized union representative in the bargaining, and bargaining time, place and agenda that the union requests, as well as bargaining attitude.

Since strike is means to facilitate collective bargaining, the employer cannot refuse a bargaining request claiming a strike is going on. On the contrary, in spite of the efforts made by both parties, if the collective bargaining process is stalled and cannot be expected to make further progress, the employer's refusal to collective bargaining can be considered to be justifiable. However, in case of circumstantial changes in which a bargaining resumption would be meaningful, such as a new compromise is proposed by the labor union, the employer has to respond to the bargaining request again. If the employer

continues to refuse the collective bargaining request despite of the circumstance changes mentioned above, his refusal cannot be regarded as being justifiable (Supreme Court, 02/24/2006, 2005Do8606).

When there is a huge difference in opinions on agenda between the employer and the labor union such as a wage increase, the employer cannot be said to have responded to the collective bargaining without good faith for reasons that the employer refused to accept the union's opinion or made a proposal that is significantly different from the union's position (Supreme Court, 06/09/2005, 2005Du2964).

At a company where multiple unions exist, the unions must set up the single bargaining channel before making a bargaining request, unless the employer has agreed otherwise according to TULRAA. Therefore, the employer's refusal to the collective bargaining request during the period necessary for the unification of bargaining channels is considered justifiable (TULRAA, Article 29-2, Para. 1).

#### 4) Domination or interference

##### a. Types of domination or interference

TULRAA stipulates that the employer's domination of or interference in the organization or operation of a labor union by workers is an unfair labor practice of domination or interference (TULRAA, Article 81, Para. 4).

Domination or interference means unfair interventions by the employer in the union organization and operation which should be decided autonomously by workers. *Domination* refers to the employer's playing a leading role in the organization of a union or taking the initiative in its operation. *Interference* refers to the employer's interfering with the organization and operation of

a labor union and affecting its decision making, though not yet reaching the extent of domination. For example, criticizing, appeasing or threatening workers for the establishment of a labor union, or intervention in the union resolution or elections are included in the *interference*. Since the implementation of union pluralism, there have been quite a few cases in which conflicts or discrimination between two different unions have led to unfair labor practices and in most of the cases, minority unions have been discriminated compared with the representative bargaining union. As discriminatory activities, employers support the establishment or activities of a labor union that is either cooperative or friendly with them, and attempt to undermine the existing unions.

Although employers are prohibited from unfair labor practices of domination or interference, they also have freedom of speech to express their own opinions. Therefore, it needs to be distinguished when an employer's critical views against unions are allowed or not. Regarding this, judicial precedents state the employer's expression of critical views against union activities or explanation on the position of the company may not necessarily become unfair labor practices of domination or interference (Supreme Court, 01/10/2013, 2011Do15497).

For the employer's expression of opinions to constitute unfair labor practices of domination or interference, threatening workers with a possible disadvantage such as a disciplinary measure or promising to provide a benefit needs to be included in the employer's remarks, or factors that might undermine union sovereignty must be related with the expression. If such an act by the employer is done for the purpose of obstructing union activities, it may constitute unfair labor practices of domination or interference, though it did not result

in the violation of workers' freedom of association (Supreme Court, 05/07/1997, 96Nu2057).

**b. Financial assistance**

TULRAA stipulates that if the employer pays wages of full-time union officials or assists the union operating expenses, such an act constitute an unfair labor practice of domination or interference (TULRAA, Article 81, Sub-paragraph 4).

This is to prevent labor unions from losing their sovereignty, which may happen when they receive financial assistance from the employer. However, financial aid due to paid time off of full-time union officials within the extent of not encroaching on the union sovereignty (in accordance with Article 24, Paragraph 4 of TULRAA), and contribution of funds and provision of a minimum sized union office are not unfair labor practices (TULRAA, Article 81, sub-paragraph 4, a provisional clause).

Before 1997, employers used to pay wages of full-time union officials in Korea. In 1997, when the current Trade Union Act was legislated, a provision that prohibits wage payment for full-time union officials was introduced. The implementation of this provision, however, had been delayed for 13 years since 1997, only to resume after July 1, 2010 by TULRAA, which was revised on January 1, 2010.

Along with the changes in the system, the LRC's decisions on the unfair labor practice of providing financial assistance for operation of unions have changed as well. In the past, employer's financial assistance for union operation was a result achieved by aggressive demand or fights by the union. Therefore, paying the wages of full-time union officials was not regarded as an unfair labor practice as it did not undermine the union's sovereignty (Supreme Court,

05/28/1991, 90Nu6392).

Recently, however, the court has ruled that an employer's financial assistance for union operation does constitute an unfair labor practice by itself, irrespective of whether or not it undermines the union's sovereignty. Therefore, paying wages of full-time union officials and providing financial assistance for union operation are automatically unfair labor practices, unless it is considered an exception (Supreme Court, 01/28/2016, 2012Du12457).

#### 5) Burden of proof

There are no specific provisions in labor relations law, which stipulate who bears the burden of proof in regard with the LRC's remedy procedures for unfair labor practices. According to judicial precedents, when it is not clarified in the law who bears the burden of proof, it must be decided in accordance with the theory on the allocation of legal requirements (Norm Theory by Rosenberg) (Supreme Court, 03/26/2009, 2007Da63102). According to the theory, a person who claims a right bears the burden of proof for the legally required facts that his/her right stipulated by the law has been violated (Supreme Court, 09/30/1964, 64Da34).

Article 107, Paragraph 3 of the Constitution stipulates that "Administrative appeals may be conducted as a procedure prior to a judicial trial. The procedure of administrative appeals shall be determined by the Act and shall be in conformity with the principles of judicial procedures." Since the *Civil Procedure Act* is applied to administrative litigations according to Article 8, Paragraph 2 of *the Administrative Litigation Act*, the theory on the allocation of legal requirements, which is a general principle for the allocation of the burden of proof by the *Civil Procedure Act*, is applied to the hearing of the LRC and the administrative lawsuit against the NLRC for its review adjudication.

In the administrative litigation, the lawsuit is filed against the NLRC for its review adjudication, but employers and workers also have to bear the burden of proof according to Article 16, Paragraph 1 and Paragraph 3 of the Administrative Litigation Act[48]. In other words, workers and unions bear the burden of proof for the unfair labor practices that occurred and employer's will for the acts (Supreme Court, 07/28/2011, 2009Du9574).

## (5) Annual statistics

### 1) Cases of unfair labor practices filed and handled

As shown in [Table 3-10], annual remedy requests for unfair labor practices, including those that were carried over from the previous year, steadily increased from 1,163 cases in 2013 to 1,305 in 2016 but decreased to 1090 in 2017.

In 2017, 1,090 cases were filed and 928 were completed. Among them, there were 545 adjudication cases, 303 withdrawal and 80 conciliation cases, which indicates that the proportion of withdrawal and conciliation is not relatively high compared with that of the remedy cases for unfair dismissal, etc, which is 41.3%.

The conciliation rate, which means cases that are closed with conciliation, is 8.6%. The number of the cases adjudicated in 2017 (545) is composed of the cases recognized (103), dismissed (408) and dismissed without deliberation due to lack of formal requirements (34), which shows dismissed cases take up the largest proportion. It is because the employer's intention for unfair labor practices is difficult to prove and in the case of unfair dismissal and unfair labor practices combined, if the due reasons for the dismissal

48) Ryu Seong-jae, "The Burden of Proof for the Existence of Dismissal", *Labor Law Study*, Issue NO. 38, 2015, P.107

as a disciplinary measure are recognized, unfair labor practices are not recognized in many cases. The rate of the remedy for the infringement of right, which means the rate of recognition and conciliation combined among the total number of the cased handled except cases withdrawn, is 29.3%.

[Table 3-10] Yearly cases filed and handled for remedy requests for unfair labor practices

(cases)

| Classification | | Cases filed | Cases handled | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | Total | Adjudication | | | | Withdrawal | Conciliation |
| | | | | Subtotal | Recognition | Dismissal | Dismissal without deliberation | | |
| 2013 | Total | 1,163 | 966 | 594 | 67 | 500 | 27 | 266 | 106 |
| | NLRC | 339 | 286 | 233 | 34 | 191 | 8 | 39 | 14 |
| | RLRC | 824 | 680 | 361 | 33 | 309 | 19 | 227 | 92 |
| 2014 | Total | 1,226 | 1,046 | 576 | 59 | 502 | 15 | 366 | 104 |
| | NLRC | 278 | 206 | 152 | 15 | 133 | 4 | 46 | 8 |
| | RLRC | 948 | 840 | 424 | 44 | 369 | 11 | 320 | 96 |
| 2015 | Total | 1,276 | 1,024 | 645 | 116 | 482 | 47 | 288 | 91 |
| | NLRC | 329 | 257 | 198 | 50 | 136 | 12 | 47 | 12 |
| | RLRC | 947 | 767 | 447 | 66 | 346 | 35 | 241 | 79 |
| 2016 | Total | 1,305 | 1,129 | 675 | 183 | 476 | 16 | 358 | 96 |
| | NLRC | 326 | 264 | 182 | 69 | 112 | 1 | 75 | 7 |
| | RLRC | 979 | 865 | 493 | 114 | 364 | 15 | 283 | 89 |
| 2017 | Total | 1,090 | 928 | 545 | 103 | 408 | 34 | 303 | 80 |
| | NLRC | 286 | 238 | 185 | 43 | 129 | 13 | 39 | 14 |
| | RLRC | 804 | 690 | 360 | 60 | 279 | 21 | 264 | 66 |

* Cases filed include those that were carried over from the previous year.

### 2) Types of unfair labor practice cases filed and handled

As shown in [Table 3-11], most of the remedy cases for unfair labor practices are *disadvantageous treatment*, which is prohibited by Article 81, Paragraph 1 of TURLAA. This type accounts for 79.9%, or 871 of the total 1,010 cases in 2017. The proportion of this disadvantageous treatment, however, has been reduced from 86.1% in 2013 to 79.9% in 2017. Meanwhile, *refusal or delay of the collective bargaining request and its implementation,* which is prohibited by sub-paragraph 3 of the same Article, and domination or interference prohibited by sub-paragraph 4 have been on the steady increase. Up until 2016, sub-paragraph 4 case type had ranked as the second largest cases, but sub-paragraph 3 type took its position in 2017 as cases of this type had increased rapidly.

[Table 3-11] Yearly cases filed for remedy requests for unfair labor practices by type

(cases, %)

| Classification | 2013 | | 2014 | | 2015 | | 2016 | | 2017 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Cases | Proportion | Cases | Proportion | Cases | Proportion | Cases | Proportion | Cases | Proportion |
| Total | 1,163 | 100.0 | 1,226 | 100.0 | 1,276 | 100.0 | 1,305 | 100.0 | 1,090 | 100.0 |
| Sub-para. 1 (Disadvantageous treatment) | 1,001 | 86.1 | 1,075 | 87.7 | 1,067 | 83.6 | 1,059 | 81.1 | 871 | 79.9 |
| Sub-para. 2 (Unfair employment contract) | 5 | 0.4 | 10 | 0.8 | 8 | 0.6 | 9 | 0.7 | 6 | 0.6 |
| Sub-para. 3 (Refusal or delay of the collective bargaining) | 28 | 2.4 | 28 | 2.3 | 65 | 5.1 | 107 | 8.2 | 105 | 9.6 |
| Sub-para. 4 (Domination or interference) | 76 | 6.5 | 110 | 9.0 | 112 | 8.8 | 120 | 9.2 | 104 | 9.5 |
| Sub-para. 5 (Retaliation act) | 53 | 4.6 | 3 | 0.2 | 24 | 1.9 | 10 | 0.8 | 4 | 0.4 |

* Types of unfair labor practices follow the classification by Article 81 of TULRAA.

The rates of the recognition by type of the unfair labor practices are, as shown in [Table 3-12], 29.8% (Sub-para. 4), 24.0% (Sub-para. 3), and 17.3% (Sub-para. 1) in 2017, setting aside Sub-paragraph 2 and 5, which are few in the number of cases.

**[Table 3-12] Cases handled for remedy requests for unfair labor practices by type in 2017**

(cases, %)

| Classification | Cases filed | Cases handled | | | | | | | | | Not yet settled |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | Adjudication | | | | | Withdrawal | Conciliation | | |
| | | | Subtotal | Recognition | Recognition rate | Dismissal | Dismissal without deliberation | | | | |
| Total | 1,090 | 928 | 545 | 103 | 18.9 | 408 | 34 | 303 | 80 | | 162 |
| Sub-para. 1 | 871 | 741 | 468 | 81 | 17.3 | 368 | 19 | 205 | 68 | | 130 |
| Sub-para. 2 | 6 | 6 | 4 | 2 | 50.0 | 2 | 0 | 2 | 0 | | 0 |
| Sub-para. 3 | 105 | 89 | 25 | 6 | 24.0 | 11 | 8 | 60 | 4 | | 16 |
| Sub-para. 4 | 104 | 91 | 47 | 14 | 29.8 | 26 | 7 | 36 | 8 | | 13 |
| Sub-para. 5 | 4 | 1 | 1 | 0 | 0.0 | 1 | 0 | 0 | 0 | | 3 |

* Recognition rate(%): Cases recognized/ (cases recognized + cases dismissed + cases dismissed without deliberation) * 100

### (6) Major cases

#### 1) Unfair dismissal, etc. and unfair labor practices of disadvantageous treatment

##### a. Factual background

On July 8, 1997, a company named “A” assigned 21 editorial bureau reporters and one cartoonist to a post of general work. This included workers

"K" and "L" and "M" who was the cartoonist. Workers of the company A reported on their establishment of a labor union on July 9, 1997 and the labor union elected the worker K as the president and designated worker M as the secretary-general, and worker L as the chairperson for "the fair reportage committee."

The company A dismissed the worker K on July 25, 1997 on the grounds that he/she, in response to an order of job transfer, did not perform his/her duties, disgraced the company and disturbed the order of the company by posting a hand-written poster slandering the company and its management. In addition, the company dismissed worker L for the same reason and worker M for absence without permission which was in protest of the job transfer.

Workers K, L, and M filed a remedy request for an unfair job transfer and unfair labor practices to the concerned RLRC arguing that such a disposition constituted unfair labor practices as the job transfer was unfair and the company A dismissed them to thwart their union activities.

**b. Issues**

In a remedy request asserting that dismissal or a disciplinary action is unfair, and at the same time they constitute unfair labor practices of disadvantageous treatment, the relationship between legitimacy of unfair dismissal, etc. and the constitution of unfair labor practices of disadvantageous treatment can be an issue. In other words, the question arose if dismissal, etc. were acknowledged, unfair labor practices should also be acknowledged at the same time, and if dismissal, etc. were not acknowledged, unfair labor practices should not be acknowledged at the same time.

**c. Case developments**

(a) LRC

The concerned RLRC ruled that it was unfair job transfer as the company A did not seek for an opinion from workers while implementing a job transfer which deprived them of their position as a journalist and gave a disadvantage in their pay, and it also constituted an unfair labor practice that the company A dismissed them to obstruct their union activities (Seoul RLRC, 09/12/1997, 1997Buhae328 and Buno70 merged). The company A appealed against the decision of the RLRC and requested a review to the NLRC. The NLRC ruled that the job transfer was unfair and the dismissal constituted an unfair labor practice citing the same reason of the first trial (NRLC, 12/04/1997, 97Buhae231 and 97Buno72 merged).

(b) Court

The company A filed an administrative litigation against the decision of the NLRC and the High Court ruled that the dismissal of workers by the company A in this case was actually an act to give a disadvantage to the workers for organizing a labor union, which constituted an unfair labor practice in light of various circumstances: that there was no good reason for the company A to dismiss them in a disciplinary action, that they played a leading role in establishing a labor union and were appointed as the President or the executives and requested collective bargaining to the company A, that at the time of a personnel order of job transfer, journalists who were active in establishing a labor union were mainly selected as the targets, that the editor-in-chief persuaded the worker K to stop labor union activities before, etc. (Seoul High Court, 01/14/1999, 98Nu542).[49]

The Company A filed an appeal in objection to the ruling of the High Court. The Supreme Court ruled that when it was recognized that an employer in fact dismissed the workers on the reason of their justified union activities, differently from the ostensible reason for dismissal, it should be regarded as an unfair labor practice.

It also recognized establishment of an unfair labor practice in the original ruling, ruling that whether or not an employer took justified activities for labor union affairs as a substantive reason for the dismissal should be judged considering and comparing various elements as in the following: the professed reason for dismissal presented by the employer and the contents of workers' justified activities for labor union affairs, the time of dismissal, the relationship between the employer and the labor union, existence of imbalance in sanctions against union members and non-union members in the same case, conformity to conventional practices, words and actions or attitude of the employer toward union members, and circumstances that can assume existence of the intention for unfair labor practices, etc. (Supreme Court, 04/11/2000, 99Du2963).

#### d. Case significance

The ruling above is meaningful in that it clarified decision criteria with regard to unfair labor practices. In this case, the LRC and the court distinguished between an actual reason and an ostensible reason in the case of so-called

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49) Before the *Administrative Litigation Act* amended on July 27, 1994 was enforced on March 1, 1998, the rule of prior recourse to administrative adjudication was adopted: in principle, an administrative litigation to challenge an administrative disposition by authorities could be filed after going through administrative adjudication under the *Administrative Appeals Act* (Article 18, Para. 1). The High Court was in charge of appeal cases challenging an administrative adjudication (Article 9, Para 1).

‘competing causes’, and judged whether an unfair labor practice was established based on the substantive reason. And the substantive reason was to be judged in comprehensive consideration of all the circumstances that can presume existence of the intention for unfair labor practices.[50)]

#### 2) Scope of an employer as a subject of domination and interference

##### a. Factual background

A company named “B” was a contractor that conducted business employing 14 in-house subcontractors. Workers of the subcontractors established a labor union on August 30, 2003.

The company named “B”, which was one of the subcontractors, dismissed the worker named “K” on August 16, 2003 who was a worker of the company B and also the president of the labor union, and went out of its business. Companies “C”, “D” and “E” which were also among the subcontractors also dismissed their workers named “L”, “M” and “N” and went out of their businesses as well.

In response, workers K, L, M, and N and the labor union filed a request to the RLRC for remedy of unfair dismissal and unfair labor practices of the company B on the grounds that the subcontractors were not independent entities but the company B was their real employer, and the company B dismissed them by closing down the businesses of its subcontractors because

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50) However, as in this case, unfair labor practices do not always establish even though unfair dismissal, etc. are constituted. This is because unfair labor practices do not establish if the intention for unfair labor practices is not acknowledged, even though dismissal, etc. have been acknowledged. For example, an unfair labor practice by an employer might not be acknowledged on the grounds that the existence of his/her intention is not acknowledged, even though dismissal, etc. have been acknowledged due to a procedural defect in a disciplinary action. (Supreme Court, 01/15/1993, 92Nu13035).

of their union activities. They insisted that the measure taken by the company B constituted unfair labor practices of disadvantageous treatment as well as those of domination and interference which interrupted establishment of a labor union and related activities.

**b. Issues**

A remedy request for unfair labor practices should be filed against an employer, and the scope of the employer as a respondent came into question. This case handled the matter whether an employer as a principal agent of unfair labor practices is restricted to an employer under the LSA, or whether it can vary according to the type of unfair labor practices.

**c. Case developments**

(a) LRC

The RLRC declined to consider the request on March 23, 2004 on the grounds that the company B was not the employer of the concerned workers (Busan RLRC, 03/23/2004, 2003Buhae206, 224, 225, 228, 246, Buno81, 87, 88, 89, and 94 merged). The workers and the labor union appealed to the decision and requested a review to the NLRC regarding remedy of unfair dismissal and unfair labor practices on May 3, 2004.

On March 3, 2005, the NLRC canceled the part of fair labor practices of domination and interference out of the initial order by the RLRC and recognized the remedy request for unfair labor practices of domination and interference. The NLRC issued a remedy order that the company B must not engage in activities that precipitated closure of businesses by exercising substantial influence and dominance on subcontractors and must not restrict or infringe the activities of the labor union of the company B's subcontractors.

However, the part of unfair dismissal and unfair labor practices of disadvantageous treatment was dismissed for the same reason as the initial adjudication of the RLRC (NLRC, 03/03/2005, 2004Buno68-6, Buhae292-6).

(b) Court

The company B filed an administrative litigation against the decision of the NLRC. The Administrative Court denied the establishment of implicit employment relations between the concerned workers and the company B. However, it was ruled that an employer as a subject of unfair labor practices of domination and interference is generally referred to an employer under an employment contract; however, a contracting employer also can be considered as corresponding to an employer as a subject of unfair labor practices of domination and interference within a certain scope, when an employer is in a position to be able to dominate and decide the basic working conditions of workers in a realistic and specific way to such an extent as to consider that he/she is in charge of a certain part of the authority and responsibilities as an employer, even under the circumstances that direct or implicit labor relations are not established (Seoul Administrative Court, 06/16/2006. 2005Goohap11968).

The company B appealed against the ruling of the Administrative Court, and the High Court cited the same ruling and dismissed the appeal in an appellate trial (Seoul High Court, 04/11/2007, 2006Nu13970). The company B filed an appeal against the ruling of the Seoul High Court. The Supreme Court cited the original verdict stating, “The prevention and elimination of unfair labor practices is a thing to be carried out by a remedy order of the LRC. So, as long as an employer is in a position to have a legal or realistic authority or capability to implement a remedy order, he/she can be deemed

as an employer who is subject to a remedy request as a subject of unfair labor practices within the scope." (Supreme Court, 03/25/2010, 2007Du8881)

#### d. Case significance

In this case, a question was asked about whether a contracting company could be a subject of unfair labor practices when it interfered with union activities of the workers belonging to its subcontractors. Unlike the concept of a worker, the concept of an employer is basically the same in the LSA and TULRAA; legal definition is the same for the 'employer' under the two acts, unlike that of the 'worker'. However, it was ruled that when an employer was not an *employer* under the LSA, he/she could be exceptionally recognized as an employer under TULRAA in the case of unfair labor practices of domination and interference.

### 3) Employer's statement and unfair labor practices of domination and interference

#### a. Factual background

Workers of the company named "C" set up a labor union and elected the worker named "K" as their President on September 18, 1995, and reported its establishment to an authority on September 21. The company C was requested for bargaining by the union, but did not respond to it raising a question about the qualification of the President, worker K, etc. The union delegated the right to bargain to an upper-level organization and the company did not respond to the request for bargaining from it either, also raising a question for the union membership of the worker K.

Meanwhile, on December 29, 1995, the chairman and president of the

company C remarked the following in a year-end speech in front of all the employees: a labor union that, in light of the nature of the company C, should not have been created was actually created; all the members including himself are workers and he believed there is limitation to union activities due to the nature of company C; and he hoped that there would be no need to newly recruit all the employees, because of the continued confrontation, by means of an open recruitment after having employees submit their resignations.

For continued request from an upper-level organization, the company C continued not to respond. Only after receiving the notification that worker K's union membership was acknowledged by an authority, the company dismissed worker K on January 25, 1996 on the grounds of violation of company regulations, negligence of duty, damage to dignity and defamation of the company. On April 1, 1996, the union filed a request to the RLRC for remedy of unfair dismissal and unfair labor practices on the grounds that the company C continued not to respond to the request for collective bargaining, controlled and intervened in union activities, and unfairly dismissed the worker K on the reason of labor union activities.

**b. Issues**

An employer has the right to disclose his/her view to workers in connection with the business operation, etc. In some cases, however, it may undermine union activities. Therefore, it can be an issue as to which kind of opinion presentation by an employer is allowed and which is not, and where the boundaries lie.

**c. Case developments**

(a) LRC

The concerned RLRC dismissed the remedy request concerned with unfair dismissal on May 23, 1996. For unfair labor practices, it issued an order that the company C should stop unfair labor practices of refusing and delaying collective bargaining, immediately engage itself in collective bargaining, and stop unfair labor practices of domination and interference (Seoul RLRC, 05/23/1996, 96Buno25, 26, 96, Buhae100 merged).

The company C filed an appeal to the NLRC concerning unfair labor practices. The NLRC retained the adjudication of the first instance on unfair labor practices and dismissed the request for review on the grounds that even if the purpose of the year-end speech was not to undermine the union activities, it would have been regarded by union members as intentionally uttered words with an aim of restricting union activities by making workers who listened to the CEO's remarks feel insecure about their employment (NLRC, 08/16/1996, 96Buno38).

(b) Court

The company C filed an administrative litigation in protest against the decision of the NLRC and the High Court recognized the establishment of unfair labor practices citing the decision of the NLRC (Seoul High Court, 04/25/1997, 96Gu31842). In particular, for the part of the CEO's remarks in the year-end speech that a labor union that, in light of the nature of the company C, should not have been created was actually created and he hoped that there would be no need to newly recruit all the employees, because of the continued confrontation, by means of an open recruitment after having employees submit their resignations, it was deemed as an act of interference to constitute unfair

labor practices of domination and interference since it worked a great deal of influence on the organization of the labor union and its organizational expansion and restricted union activities by making workers feel insecure about their employment beyond a level of critical opinion toward the labor union.

The employer appealed against the ruling of the High Court and the Supreme Court stated, “An employer naturally has the freedom of the press to express his/her opinions through speech, internal broadcasting, bulletins, letters, etc. However, unfair labor practices are established when an employer dominates the organization or operation of a labor union or his/her intention to intervene in these is acknowledged in comprehensive consideration of the situation, place, contents, and method such activities are taken as well as how much it influenced the operation or activity of the union (Supreme Court, 05/22/1998, 97Nu8076).

#### d. Case significance

This case is significant in that it provides a criterion upon which the boundary between the freedom of expression of an employer and unfair labor practices of domination and interference can be judged. The LRC and the court made it clear that an employer’s casual critical opinion is allowed, but an act of interference is prohibited which deals a lot of influence on the organization of the labor union and its organizational expansion and undermines union activities by making workers feel insecure about their employment.[51)]

51) In another ruling, it was considered that uttering a threat of disadvantage such as disciplinary actions, promise of benefits and an element that could harm the independence of a labor union could qualify as unfair labor practices (Supreme Court, 01/10/2013, 2011Do15497).

## 3. Discrimination redress for non-regular workers

### (1) Introduction background

The number of non-regular workers has continued to increase and the gap in working conditions between regular and non-regular workers has expanded since the economic crisis in 1997. The issue of non-regular workers arose as a pending social issue. There has been a growing social consensus that their institutional protection should be prepared.

Thanks to this social consensus, the government pushed ahead with a legislation for protection of non-regular workers with an aim of redressing unreasonable discrimination against non-regular workers and strengthening the protection of working conditions. In December 2006, the FPWPA was enacted and the TAWPA was amended to introduce adjudication on discrimination redress for non-regular workers (effective on July 1, 2007).

### (2) Concept and significance

Adjudication on discrimination redress is a system in which the LRC adjudicates on discriminatory treatment by an employer and issues a remedy order when non-regular workers (fixed-term workers, part-time workers and dispatched workers) are faced with discriminatory treatment by an employer.

An employer should not adversely treat non-regular workers without a justifiable reason in terms of wage, bonuses, performance-based pay, and other working conditions and benefits, in comparison with regular workers (open-end contract workers, ordinary workers, direct employment workers) who are in the same and similar work in the workplace. When such discrimination occurred, an irregular worker may request the redress of such discrimination to the LRC.

The discrimination redress implemented from July 1, 2007 is a system that improves working conditions of non-regular workers by eliminating unreasonable discrimination against them and restricts the use of non-regular workers as much as possible.

### (3) Overview of adjudication on discrimination redress

#### 1) Scope of application

Adjudication on discrimination redress applies to all the companies or workplaces ordinarily employing five or more workers for both the FPWPA and TAWPA (FPWPA, Article 3, Para. 1 and TAWPA, Article 21, Para. 4). For the central government and local governments, they are applied regardless of the number of workers they ordinarily employ (FPWPA, Article 3, Para. 3 and TAWPA, Addenda Para. 1, Subpara. 2). However, in the case of the FPWPA, it shall not apply to a company or workplace which employs only relatives living together with their employer, nor to domestic workers (FPWPA, Article 3, Para. 1).

#### 2) Discrimination Redress Committee (DRC)

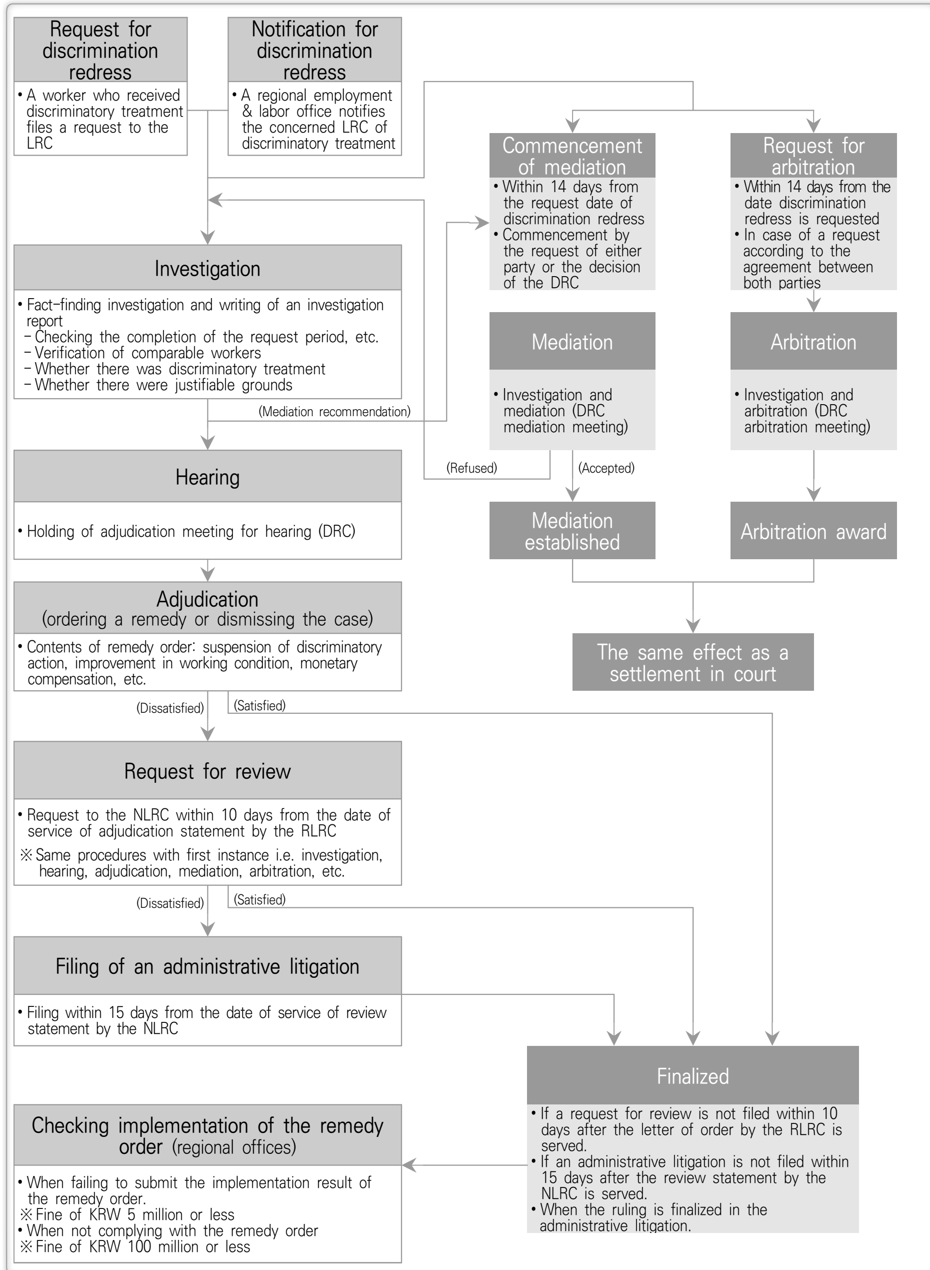
The handling of matters related to the redress of discriminatory treatment falls under the authority of the Discrimination Redress Committee, which is one of the sectoral committees of the LRC. The DRC consists of three members appointed by the chairperson of the LRC among the public interest members who are responsible for discrimination redress (LRCA, Article 15, Para. 4).

### 3) Discrimination redress procedures

#### a. Overview

The procedures for discrimination redress are as shown in [Figure 3-7] and are basically similar to cases of unfair dismissal, etc. or unfair labor practices. However, it is also worth noting that discrimination redress procedures can start upon a notification of the regional employment and labor offices, which is unique in discrimination redress, and there are mediation and arbitration procedures before an official adjudication is made.

[Figure 3-7] Discrimination redress procedures for non-regular workers



**b. Commencement of adjudication on discrimination redress**

(a) Jurisdiction of the case

An RLRC in charge of the location of the company where discriminatory treatment has original jurisdiction, and for a case involving two or more jurisdictional territories, an RLRC that has jurisdiction over the primary location of the company will handle the case. The NLRC is responsible for review on the remedy order or the decision of dismissal by the RLRCs (LRCA, Article 3, paragraphs 1 and 2).

(b) Request for discrimination redress and notification

Procedures for adjudication on discrimination redress start either by the request of a worker who received discriminatory treatment or by a notification for discrimination redress through regional employment labor offices.

a) Request for discrimination redress

A person who requests redress of discriminatory treatment to the LRC should be a worker under the LSA having actual employment relations with the company. A fixed-term worker and a part-time worker under the FPWPA and a dispatched worker under the TAWPA are included (FPWPA, Article 9 and TAWPA, Article 21). Therefore, in the case of labor providers according to a subcontract and regular workers, their eligibility to request discrimination redress is denied even if there is discriminatory treatment in comparison to other workers in the same or similar work. Whether the complainant is eligible or not is decided by when there was discriminatory treatment.

The term "fixed-term worker" means a worker who has concluded an employment contract of which period is fixed (FPWPA, Article 2-1). And in relation to Article 4, Para. 1 of the TAWPA, a worker who is not subject to time

limits is eligible for a request and also a worker who has not worked continuously for more than two years after the implementation of the FPWPA is eligible for a request even if their employment contract has been repeatedly renewed. Therefore, a worker who has already been transferred to an open-end contract by the provision of de jure employment (FPWPA, Article 4, Para. 2) will be denied the eligibility as a complainant.[52].

The term "part-time worker" means a worker whose prescribed working hours per week are shorter than those of a regular worker who is involved in the same type of work in the workplace (FPWPA, Article 2-2, LSA Article 2-8). In this case, whether or not the worker is a part-time worker is decided based on prescribed working hours rather than actual working hours.

The term "temporary agency worker (dispatched worker)" means a person employed by an agency to work for a user employer under the his/her direction and supervision in accordance with the terms and conditions of a contract on temporary placement of workers (TAWPA, Article 2-1, 2-1). A legally-dispatched worker is naturally eligible for a request of discrimination redress and, as in the case of illegal dispatch, even a labor provider, who works in accordance with a service contract but in substance is a dispatch worker, shall be eligible for discrimination redress (Supreme Court, 03/24/2011, 2010Du29413).

On the other hand, non-regular workers who sustained discriminatory treatment can file a redress request to the LRC within six months from the day of discriminatory treatment (or the end date for continued discriminatory

52) However, a complainant's eligibility is judged based on the time when there was discriminatory treatment not the time when the request for discrimination redress is requested. So, if discriminatory treatment by an employer occurred before two years of continuous working period passed and the request period (six months) has not passed, he/she is eligible to request discrimination redress even after being converted to an open-end contract worker (NLRC, 03/20/2008, 2007Chabyeol5).

treatment) (FPWPA, Article 9, Para. 1, TAWPA, Article 21, Para. 3). Since the period of six months is interpreted as a mandated time limit, the right to request expires after the period ended.[53] 'Continued discriminatory treatment' refers to continuation of an individual and specific act of discrimination. For example, the Supreme Court ruled that without special circumstances, it is reasonable to assume that discriminatory payment of wages constituted continued discriminatory treatment (Supreme Court, 12/22/2011, 2010Du3237), which the LRC has accordingly adopted.

b) Discrimination redress notification

Even if there is no request by a person who received discriminatory treatment, discrimination redress can start when the Minister of Employment and Labor (Regional Employment Labor Office) notified the LRC having jurisdiction over the company of discrimination redress (FPWPA, Article 15-2, TAWPA, Article 21-2), which is called a 'case of discrimination redress notification'. When the Minister of Employment and Labor (Regional Employment and Labor Offices) recognized discrimination against fixed-term, part-time and dispatched workers through workplace supervision, receipt of a complaint, etc., he/she can request redress to the employer, and when the employer does not comply with it, he/she can notify the LRC of discrimination redress. The LRC which received the notification of discrimination redress decides whether there is discrimination or not the same way as a case of discrimination redress request.[54]

This kind of notification case by the Minister of Employment and Labor

53) At the time of its introduction, the request period for discrimination redress was three months as in the case of a remedy request for unfair dismissal, etc. However, with the amendment of the Act in February 2012, it was extended to six months.

54) Procedures for a case of discrimination redress request shall apply mutatis mutandis to hearing and other redress procedures, etc. of the LRC (FPWPA, Article 15-2, Para. 4, TAWPA, Article 21-2, Para. 4)

(Regional Employment Labor Offices) is meaningful in that there is no mandatory time limit, and not only it can avoid undermining the status of an individual worker which may arise in discrimination redress request, but also a large number of workers are covered by discrimination redress when it is adopted.

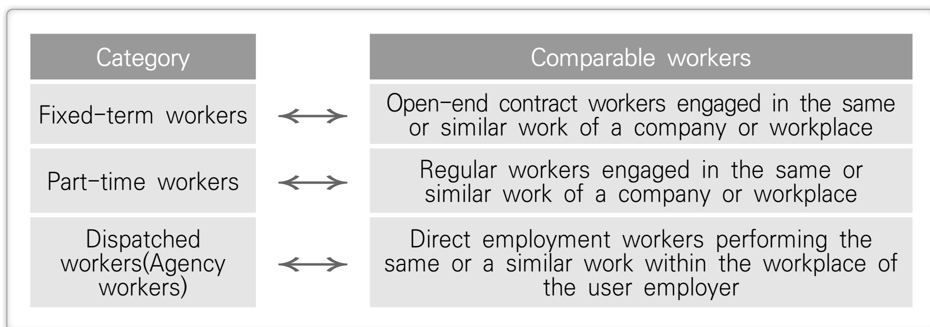
#### c. Discrimination redress review

When there is a request or notification of discrimination redress to the LRC, the LRC shall decide step by step whether (1) there are comparable workers, (2) the case falls under the area in which discriminatory treatment is prohibited, (3) disadvantageous treatment exists, and (4) there is a justifiable reason, etc.

(a) Comparable workers

Whether comparable workers are a criterion not only for deciding whether there is disadvantageous treatment but also for determining detailed contents of a redress order later. There must be comparable workers to decide the existence of discrimination. Therefore, the LRC dismisses a request or notification when there are no comparable workers.

[Figure 3-8] Comparable workers for determining the existence of discrimination



| Category | | Comparable workers |
| --- | --- | --- |
| Fixed-term workers | ↔ | Open-end contract workers engaged in the same or similar work of a company or workplace |
| Part-time workers | ↔ | Regular workers engaged in the same or similar work of a company or workplace |
| Dispatched workers(Agency workers) | ↔ | Direct employment workers performing the same or a similar work within the workplace of the user employer |

a) Criteria for determining the same kind or similar work

When selecting comparable workers who are subject to comparison with non-regular workers, the criteria for determining 'the same or similar work' is a common interpretational problem. For this matter, the Supreme Court ruled that 'if there is no difference in core elements such as the content of main tasks, working conditions, etc. - even though jobs do not completely coincide with each other and there is a little difference in the scope, responsibilities, authority, etc. of the jobs – workers are supposed to be regarded as being employed in the same or similar work unless there are special circumstances'. Whether or not they are comparable workers is decided based on the contents of the main work that is actually carried out (Supreme Court, 11/27/2014, 2011Du5391).

b) Meaning of 'being engaged and performing'

Another element to decide a comparable worker is whether the worker is currently engaged in the same kind or similar work or perform the same kind or similar work. In relation to whether a worker on maternity leave can be a comparable worker for a worker (fixed-term worker) substituting him/her, the LRC adjudicates that even those who are on leave of absence are not denied the possibility of being a comparable worker on the grounds that narrow interpretation of the phrase 'being engaged' as 'actually working together at the present time' does not accord with the purpose of the legislation of the FPWPA (NLRC, 12/09/2015, 2015Chabyeol17). The Court has also adopted this (Seoul Administrative Court, 07/15/2016, 2016Goohap1450).

c) Selecting a comparable worker

In relation to selection of comparable workers, when there are a large number of comparable workers who are subject to different working conditions,

there comes up an issue of who will be selected as a comparable worker; both the LRC and the court are in agreement that in general workers who are faced with the lowest treatment should be selected as comparable workers, because reverse discrimination can occur (NLRC, 01/27/2011, 2010 Chabyeol22 and 23 merged, Seoul High Court, 06/14/ 2012, 2012Nu5000).

However, in some cases, the LRC has chosen public officials rather than those who get the lowest treatment (NLRC, 08/11/2016, 2016Chabyeol8) or workers who perform the most similar work as comparable workers (NLRC, 07/11/2017, 2017Chabyeol19 and 20 merged) citing that comparable workers should be selected in consideration of adequacy of the protection level in accordance with the legislative purpose of the discrimination redress; in such cases, the LRC decides in due consideration of its legislative purpose for discrimination redress rather than monolithically selecting regular workers who are faced with the lowest treatment as comparable workers.

(b) Area of prohibition of discriminatory treatment

Contents of a request for discrimination redress and notification should correspond to the area of prohibition of discriminatory treatment prescribed in the FPWPA and the TAWPA. The 'area of prohibition of discriminatory treatment' stipulated in laws is wage, regularly-paid bonuses (regular bonuses, holiday bonuses, etc.), performance-based incentives paid in accordance with business performance, other matters concerning working conditions and fringe benefits, etc. (FPWPA, Article 2-3, TAWPA, Article 2-7).

**Scope of the area of prohibition of discriminatory treatment**

- Wages according to Article 2, Para. 1-5 of the LSA
- Regularly-paid bonuses such as regular bonuses, holiday bonuses, etc.
- Incentives in accordance with business performance
- Other matters concerning working conditions and fringe benefits, etc.

However, in actual cases, the LRC does not keep the scope for prohibition of discriminatory treatment to legal literature and broadly interprets 'other working conditions' as those that an employer is obligated to pay for in accordance with laws, collective agreements, company regulations, labor contracts, practices, etc. or those that should be kept for workers. So, the LRC adjudicated that even statutory violations such as annual paid leave, etc. belong to the area of prohibition of discriminatory treatment (NLRC, 06/30/2015, 2015Chabyeol3 to 11 merged).

In recent years, the court has reinforced the LRC's interpretation by adding specific grounds that there is a greater need to prevent discriminatory treatment as redress of discriminatory treatment and remedy for the violation of the LSA under the civil code differ in their procedures and contents, which is a step forward beyond adopting the LRC's decision (Seoul High Court, 05/17/2017, 2016Nu79078).

(c) Disadvantageous treatment

There must be disadvantageous treatment against non-regular workers, because the adjudication on discrimination redress is a system designed to redress discrimination when a discriminatory action actually occurs. 'Disadvantageous treatment' refers to overall disadvantage caused by treating fixed-term, part-time and dispatched workers differently from their comparable workers in terms of matters included in the scope of the area of prohibition of discriminatory treatment prohibition (Supreme Court, 03/29/2012, 2011Du2132). Here, the seriousness of the disadvantage does not matter.

Therefore, discriminatory treatment is decided based on the time when a specific discriminatory act took place (Supreme Court, 01/27/2012, 2009Du13627), and it cannot be considered that discriminatory treatment has occurred only

by the existence of discriminatory company regulations (NLRC, 11/04/2013, 2013Chabyeol13).

The LRC generally decides whether disadvantageous treatment exists by comparing in detail payment items of non-regular workers including wages to the corresponding items of their comparable workers (NLRC, 10/02/2013, 2013Chabyeol12). The LRC determines various methods tailored to the characteristics of cases such as comparing their total amounts when there is no corresponding item due to difference in their salary systems, etc. (NLRC, 12/31/2014, 2014Chabyeol10).

However, in recent years, the LRC has actively adopted the judgments of the court (Seoul Administrative Court, 07/02/2015, 2014Guhap74138), and determines using a method of categorization, differently from the past: instead of discarding the method of comparing total amounts when wage components are different between comparable workers or advantages or disadvantages vary by a wage component, disadvantageousness is not decided by a wage item.

Also separation is made between wage items of which the payment requirement is met only by providing prescribed work and those of which the payment requirement is met by corresponding to other specific conditions: in the case of the former, the sum of all the items included in the former must be added together to determine the total amount upon which judgment shall be made, and in the case of the latter, advantage or disadvantage shall be judged by an item.

(d) Justifiable reasons for disadvantageous treatment

In order to be recognized as discriminatory treatment under the FPWPA and the TAWPA, there should be no justifiable grounds for disadvantageous treatment in the area of prohibition of discriminatory treatment (FPWPA, Article

2-3, TAWPA, Article 2-7). Therefore, even if there is disadvantageous treatment, it is justified if there are justifiable grounds for the disadvantageous treatment.

The burden of proof for justifiable grounds in relation to disadvantageous treatment should be borne by the employer. The case 'there are no justifiable grounds' means that the necessity of treating fixed-term, part-time and dispatched workers differently is not acknowledged or that the method, extent, etc. of differentiated treatment are not appropriate even if the necessity is acknowledged.

The Supreme Court ruled on the criteria for deciding whether there are reasonable grounds as follows: based on the contents of the disadvantageous treatment which became a problem in an individual case and the circumstances under which the employer cited the reason for disadvantageous treatment, determining factors such as an actual purpose of benefits, the nature and relevance of employment types, the contents, scope, authority, responsibility of work, intensity, quantity and quality of labor, wage and other working conditions, etc. should be comprehensively taken into consideration (Supreme Court, 10/25/2012, 2011Du7045).

The most controversial interpretation in relation to the judgment whether there are reasonable grounds or not is about discriminatory treatment in accordance with the collective agreement. Regarding this issue, the LRC found in some cases at the early stage of the introduction of the system that there were justifiable grounds when discrimination occurred because non-regular workers did not join a labor union and consequently a collective agreement could not apply to them, even though they could join it (NLRC, 11/08/2010, 2010Chabyeol20). In addition, it once ruled that there existed reasonable grounds for the discrimination that occurred due to the fact that non-regu-

lar workers were not covered by a collective agreement as the scope of union membership was confined to regular workers. This was because it could not be deemed that an employer arbitrarily excluded the application of the collective agreement with an intention to discriminate them (Jeonnam RLRC, 08/20/2009, 2008Chabyeol2).

However, the LRC recently clarified its position and denied being justifiable based on the fact that 'allowing discriminatory treatment solely on the basis of an collective agreement goes against the purpose of the legislation of the FPWPA' (NLRC, 10/02/2013, 2013Chabyeol12). As well these judgments of the LRC are accepted by the court the way it was adjudicated in the LRC (Supreme Court, 05/29/2015, 2015Du38078).

#### d. Mediation and arbitration

The LRC can start mediation process by the request of either concerned party or ex officio during the process. It can also start arbitration when the parties applied for arbitration based on the agreement to comply with arbitration decision of the LRC. (FPWPA, Article 11, Para. 1, TAWPA, Article 21, Para. 3).

If both parties agree to the mediation proposal prepared by the LRC or in the case of an arbitration decision, it has the same effect as a settlement under the *Civil Procedure Act*. The parties concerned cannot reverse the decision after mediation or arbitration is established.

#### e. Adjudication

When the LRC determines that discriminatory treatment is established, it will issue a redress order to the concerned employer within the scope of the request and notification. It should decide to dismiss a redress request

and a notification when it is found that discriminatory treatment is not established (FPWPA, Article 12, Para. 1, TAWPA, Article 21, Para. 3). The redress order or decision of dismissal should be done in writing and notified to the parties concerned with detailed reasons stated (FPWPA, Article 12, Para. 2, TAWPA, Article 21, Para. 3).

(a) Contents of redress order

It is basically up to the LRC to decide what should be included in a redress order; its contents may include suspension of the discriminatory act, improvement in working conditions including wages (including an order for improving the policies such as company regulations, collective agreements, etc.) or appropriate compensation, etc. Implementation period, etc. should be clearly specified (FPWPA, Article 13, Para. 1, TAWPA, Article 21, Para. 3).

a) Order for improving policies

The LRC may issue an order for improving policies so as to fundamentally redress the discriminatory treatment when company regulations, collective agreements, etc. are the very source of it. However, the redress order basically presupposes the existence of an discriminatory treatment; if there is no discriminatory treatment in practice, it is impossible to order an improvement in policies on the grounds that discriminatory treatment is foreseeable under such company regulations, collective agreements, etc.

b) Order for monetary compensation

Redress orders issued by the LRC include an order for monetary compensation. It is to compensate the remaining disadvantage resulting from the discriminatory treatment of the past with cash. The Supreme Court ruled that redress order can be issued even when the labor contract has expired

stating that it is necessary to acknowledge its singularity as a means of sanction and it has an important meaning (Supreme Court, 12/01/2016, 2014Du43288). Therefore, even if the labor contract of a fixed-term worker expires at the time when he/she requests redress of discriminatory treatment or in the course of the redress request, the merit of the fixed-term worker seeking for redress of the discriminatory treatment still remains.

In addition, the LRC may, in relation to the determination of monetary damages, order monetary compensation not exceeding three times the amount of damages in the event that deliberation is clearly acknowledged in the discriminatory treatment by an employer or it is repeated (FPWPA, Article 13, Para. 2, TAWPA, Article 21, Para. 3). The LRC determines the amount of monetary compensation in consideration of the extent of deliberation, the number of repetition, etc. in the discriminatory treatment by the employer.

(b) Persons who are obligated to implement an redress order

A person who is obligated to implement a redress order is one who is prohibited from discriminatory treatment for non-regular workers under the FPWPA and TAWPA. Specifically, this applies to an employer who is directly employing fixed-term or part-time workers (FPWPA, Article 8) and a dispatching employer and a user employer in the dispatch labor relations (TAWPA, Article 24).

In regard to the matter who have to implement a redress order between a dispatching employer and a user employer in the dispatch labor relations, despite Article 21 of the TAWPA which stipulates that both a dispatching employer and a user employer are prohibited from discriminatory treatment, the LRC had a tendency to judge in the early stage of the policy implementation that a dispatching employer is obligated to implement a redress order in the field of discrimination such as wages, etc. and a user employer in the

field of discrimination such as working hours, rest and holidays respectively, making a distinction in accordance with the area of employer responsibilities specified in Article 34, Para. 1 of the TAWPA without clear grounds (NLRC, 06/26/2012, 2012Chabyeol5 and 6 merged).

However, the LRC changed its position in 2015 and judged that both a dispatching employer and a user employer be obligated to implement a redress order, citing the following: Article 21, Para. 1 of the TAWPA imposes the obligation of discriminatory treatment prohibition on both a dispatching employer and a user employer; a user employer can be aware of the fact that there is an discriminatory act; it becomes difficult to secure the effectiveness of a redress order when the responsibility is imposed only on a dispatching employer for whom dispatch fee is the source of income (NLRC, 06/30/ 2015, 2015Chabyeol 3 to 11 merged).

The changed judgment tendency of the LRC has been accepted by other LRCs (NLRC, 01/07/2016, 2015Chabyeol26 and 27 merged) and the court (Seoul High Court, 05/17/2017, 2016Nu79098).

(c) The effect of redress order

A redress order becomes effective from the date a written adjudication is served to the party concerned. As the redress order corresponds to an administrative disposition, the employer concerned shall bear the obligation under the public law to implement the order. In addition, its effect is not suspended by a request for review or filing of an administrative litigation, and the employer is obligated to immediately implement it.

a) How to appeal and when to finalize

A party challenging a redress order or a decision of dismissal of the RLRCs

can request a review to the NLRC within ten days from the date of the service of the order, and a party protesting the decision of the NLRC can file an administrative litigation within fifteen days from the date of the service of the review award (FPWPA, Article 14, Para. 2, TAWPA, Article 21, Para. 3). If petition for a review or an administrative litigation is not filed, the redress order will be finalized.

b) Extension of the effect of a finalized redress order

The Minister of Employment and Labor can investigate whether there is discriminatory treatment for fixed-term, part-time and dispatched workers other than those covered by the effect of the redress order in the company or workplace of the employer (including user employers or dispatching employers) who is obligated to implement the confirmed redress order. If discriminatory treatment is found, he/she can request its redress (FPWPA, Article 15-3, Para. 1, TAWPA, Article 21-3, Para. 1). If the employer does not comply with the redress order, it is possible to notify it to the LRC and proceed with redress procedures as a case of notification for discrimination redress.

c) Securing the implementation of a redress order

If an employer fails to implement a finalized redress order without justifiable reasons, the Minister of Employment and Labor may impose a fine of up to KRW 100 million (FPWPA, Article 24, Para. 1, TAWPA, Article 46, Para. 1), and may require the employer to submit a compliance status for it (FPWPA, Article 15, Para. 1, TAWPA, Article 21, Para. 3). If the employer fails to comply with the request for the submission without justifiable reasons, a penalty of up to KRW 5 million or less will be imposed (FPWPA, Article 24, Para. 2, TAWPA, Article 46, Para. 4).

d) Prohibition of disadvantageous treatment

An employer shall not take a measure of dismissal or other disadvantageous treatment against fixed-term, part-time and dispatched workers on the grounds that they requested redress of discriminatory treatment to the LRC; they attended an LRC meeting and made a statement; they requested a review or filed an administrative litigation for their cases, reported on the employer's failure to comply with a confirmed redress order, etc. (FPWPA, Article 16). (FPWPA, Article 16-2, 16-3, TAWPA, Article 21, Para. 3).

## (4) Annual statistics

### 1) Discrimination redress cases filed and handled

As shown in [Table 3-13], the number of discrimination redress cases has fluctuated to the level of 100 to 200, including those carried over from the previous year. It was 103 in 2013, but increased to 184 in 2014 and 175 in 2015. Then it decreased to 137 in 2016 again and increased to 182 in 2017. In 2017, the number of discrimination redress cases handled was 155: 91 adjudicated, 18 mediated, and 46 withdrawn. Among the 91 adjudication cases, a redress order was issued for 65 cases, 13 cases were dismissed, and another 13 cases were dismissed without deliberation due to lack of formal requirements.

[Table 3-13] Yearly cases filed and handled for discrimination redress requests

(cases)

| Classification | | Cases filed | Cases handled | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Total | Adjudication | | | | Media-tion | Arbitra-tion | With-drawal |
| | | | | Subtotal | Redress order | Dismissal | Dismissal without deliberation | | | |
| 2013 | Total | 103 | 99 | 42 | 23 | 13 | 6 | 20 | 0 | 37 |
| | NLRC | 17 | 15 | 13 | 9 | 1 | 3 | 0 | 0 | 2 |
| | RLRC | 86 | 84 | 29 | 14 | 12 | 3 | 20 | 0 | 35 |
| 2014 | Total | 184 | 161 | 49 | 6 | 33 | 10 | 11 | 0 | 101 |
| | NLRC | 15 | 11 | 6 | 2 | 4 | 0 | 4 | 0 | 1 |
| | RLRC | 169 | 150 | 43 | 4 | 29 | 10 | 7 | 0 | 100 |
| 2015 | Total | 175 | 138 | 66 | 37 | 26 | 3 | 18 | 0 | 54 |
| | NLRC | 49 | 33 | 18 | 15 | 3 | 0 | 8 | 0 | 7 |
| | RLRC | 126 | 105 | 48 | 22 | 23 | 3 | 10 | 0 | 47 |
| 2016 | Total | 137 | 115 | 62 | 35 | 17 | 10 | 12 | 0 | 41 |
| | NLRC | 39 | 32 | 27 | 18 | 6 | 3 | 1 | 0 | 4 |
| | RLRC | 98 | 83 | 35 | 17 | 11 | 7 | 11 | 0 | 37 |
| 2017 | Total | 182 | 155 | 91 | 65 | 13 | 13 | 18 | 0 | 46 |
| | NLRC | 48 | 37 | 34 | 27 | 5 | 2 | 2 | 0 | 1 |
| | RLRC | 134 | 118 | 57 | 38 | 8 | 11 | 16 | 0 | 45 |

* Cases filed include those that had been passed from the previous year.

### 2) Recognition and remedy rates

The rate of the cases for which a redress order was granted to discrimination redress cases (recognition rate) is more than 50% except for 2014. It has been following an increasing trend for the past several years. In addition, the remedy rate which includes mediations and arbitrations in addition to redress orders exceeded 60% and especially shot up to 76.1% in 2017.

[Table 3-14] Yearly recognition and remedy rates for discrimination redress cases

(%)

| Classification | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| Recognition rate | 54.8 | 12.2 | 56.1 | 56.5 | 71.4 |
| Remedy rate | 69.4 | 28.3 | 65.5 | 63.5 | 76.1 |

* Recognition rate = (Redress orders/adjudication cases)×100
* Remedy rate = (Redress orders+mediations+arbitrations)/(cases handled-withdrawal)×100

### 3) Cases filed by employment type

As shown in [Table 3-15], the number of workers who were subject to discrimination redress was usually between 700 and 750, except for 1,134 workers in 2014 and 507 workers in 2016. When broken down by employment type, fixed-term workers accounted for the majority and dispatched workers also accounted for a large proportion. In addition, the number of fixed-term workers has rapidly increased in recent years, while that of dispatched workers has been declining.

[Table 3-15] Yearly discrimination redress cases filed by employment type

(persons, %)

| Classification | Total | Fixed-term workers | Part-time workers | Fixed-term workers+part-time workers | Dispatched workers |
|---|---|---|---|---|---|
| 2013 | 745 | 741 (99.5) | - | - | 4 (0.5) |
| 2014 | 1,134 | 145 (12.8) | 3 (0.3) | 128 (11.3) | 858 (75.7) |
| 2015 | 732 | 210 (28.7) | 7 (1.0) | 85 (11.6) | 430 (58.7) |
| 2016 | 507 | 360 (71.0) | 13 (2.6) | 7 (1.4) | 127 (25.0) |
| 2017 | 755 | 508 (67.2) | 67 (8.9) | 9 (1.2) | 171 (22.7) |

* The number of persons are based on cases of first instance (excluding cases carried over and review cases)
* The percentages are given in parentheses.

#### 4) Cases filed by redress content

[Table 3-16] summarizes all the types of discrimination for the concerned workers in discrimination redress cases. There were a large number of discrimination in bonuses and allowances, however those in retirement allowance or working hours were relatively low.

[Table 3-16] Yearly discrimination redress cases filed by discrimination type

(cases)

| Classification | Total | Base pay | Bonuses | Allowances | Retirement pay | Working hours | Fringe benefits | Others |
|---|---|---|---|---|---|---|---|---|
| 2013 | 1,085 | 176 | 511 | 229 | 0 | 33 | 88 | 48 |
| 2014 | 3,417 | 794 | 835 | 502 | 22 | 0 | 747 | 517 |
| 2015 | 1,124 | 45 | 350 | 192 | 3 | 2 | 229 | 303 |
| 2016 | 981 | 64 | 217 | 270 | 0 | 0 | 357 | 73 |
| 2017 | 1,721 | 201 | 413 | 451 | 21 | 100 | 199 | 336 |

* If there were two or more workers in one case or if there were two or more types of discriminatory treatment for a worker, each type of every worker was counted.

* Others include working conditions (number of working days, number of holidays), travel expenses, etc.

### (5) Major cases

#### 1) Whether the violation of laws falls in the area of discrimination prohibition

##### a. Factual background

A user employer called "A" concluded a dispatch worker contract with a dispatch worker employer called "B" to carry out production and auxiliary work. Accordingly, a worker named "K" and others concluded an employment contract with the dispatching employer B and were dispatched to the assembly line in the production process of the user employer A.

The dispatched worker K and others and workers of the user employer A were up to a little different work but carried out tasks together such as insertion inspection, line work, and final inspection of mobile phone parts in the same line. Salary components for the dispatched workers including the worker K and the workers of the user employer A were the same (base pay, extra, night and holiday work allowances and bonuses). However, in the case of bonus payment, the workers of the employer A were paid 400% of base pay, but dispatched workers were paid 200%. And dispatched workers were not paid annual paid leave allowance which was supposed to be paid when they worked a full month.

The dispatched worker K and others requested redress of discrimination against the employers A and B on March 17, 2015 on the grounds of discriminatory payment of bonuses, non-payment of annual paid leave allowance due to non-granting of annual paid leave, etc.

**b. Issues**

The case is about whether the violation of the LSA like non-payment of annual paid leave allowance, caused by not granting annual paid leave, falls in the area of discrimination prohibition as “other working conditions” in relation to prohibition of discriminatory treatment for dispatched workers.

**c. Case developments**

(a) LRC

The LRC determined that bonuses, annual paid leave, etc. were considered as belonging to other working conditions, because Article 17 of the LSA and Article 8 of the LSA Enforcement Decree stipulated that prescribed working hours, holidays, annual paid leave, place of employment, re-

sponsibilities, and company regulations are items to be included in the working conditions. However, the RLRC dismissed the case citing that the LSA has already imposed the obligation for annual paid leave to employers and the responsibility for annual paid leave falls on a dispatching employer; if there existed a part of the obligation unfulfilled in the use of annual paid leave and payment of allowance for unused annual paid leave, it was the violation of the LSA and should be handled as a civil or criminal case rather than being handled as an issue of discrimination (Incheon RLRC, 03/17/2015, 2014Chabyeol2, 9, 10, 12 to 15, and 17 merged).

Unlike the decision of the RLRC, the NLRC issued a redress order concluding that the issue of annual paid leave falls under the area of discrimination prohibition of the FPWPA as "other working conditions", leaving whether it violates the LSA or not as a separate issue. On the employers' assertion that the case did not fall under the area of discrimination prohibition, the NLRC reasoned: since Article 2-3 of the FPWPA, which the TAWPA refers to on prohibition of discriminatory treatment for dispatched workers and its redress, stipulates that matters in relation to 'other working conditions' fall under the area of discrimination prohibition; 'other working conditions' refer to items that an employer bears an obligation for payment for or items that should be observed for workers as working conditions regulated by the LSA and those regulated by CBAs, company regulations, labor contracts, etc. in relation to working hours, holidays, leaves, safety and health, and accident compensation, etc. which arise from the employment; under Article 20, Para. 2 of the TAWPA and Article 4-2 of its Enforcement Decree, a user employer, when concluding a worker dispatch contract, should provide in writing information on working conditions subject to discriminatory treat-

ment such as 'wage and its components, holidays and leaves', etc. for workers who carry out the same or similar work as dispatched workers in the workplace of the user employer so as to make the dispatching employer comply with the provision for prohibition of discriminatory treatment of dispatched workers (NLRC, 06/30/2015, 2015Chabyeol3 to 11 merged).

(b) Court

In the litigation for revocation of a redress order of the NLRC, the Administrative Court cited the following grounds regarding whether the violation of the obligations under the LSA falls into the area of discriminatory treatment: ① when Article 21, Para. 1 of the TAWPA, which stipulates that both a dispatching employer and a user employer are subject to prohibition of discriminatory treatment, is applied, the purpose of Article 34 of the TAWPA, which clearly specifies subjects for the responsibilities under the LSA, becomes null; ② when the TAWPA is applied for the violation of the LSA, a problem of reverse discrimination can occur in which dispatched workers are more protected than regular workers; ③ Payment of unpaid portion of the annual leave allowance can be secured by means of a civil action, etc. as it is mere non-compliance of a part of the obligation to pay the annual leave allowance under the LSA, etc. The Administrative Court canceled the decision of the NLRC and ruled that the violation of the obligations under the LSA such as non-payment of annual paid leave allowance, etc. does not fall under the area of prohibition of discriminatory treatment prescribed by the TAWPA (Seoul Administrative Court, 11/18/2016, 2015Guhap70416).

The NLRC appealed against the judgment of the Administrative Court and the High Court ruled that, differently from the Administrative Court, the violation of the LSA falls under the area of prohibition of discriminatory

treatment (Seoul High Court, 05/17/2017, 2016Nu79078). The ruling of the High Court was finalized as the complainant did not appeal.

Firstly, the TAWPA does not distinguish between discrimination by the violation of the obligations stipulated in the LSA and one which does not violate the obligations stipulated in the LSA, and there could be many cases of discriminatory treatment in violation of the obligations under the LSA.

Secondly, when discriminating dispatched workers against regular workers, an employer can be subject to a redress order, compensation order, etc. under the TAWPA, in addition to the obligations under the LSA. This is a natural consequence of the protection provisions of the TAWPA and it cannot be regarded as reverse discrimination.

Thirdly, it is greatly needed to prevent discriminatory treatment by applying the provisions of the TAWPA even in the case where the violation of the LSA and discriminatory treatment exist at the same time. This is because there is a difference between the redress under the TAWPA and the remedy under the Civil Code for discriminatory treatment in terms of their procedures and contents.

#### d. Case significance

The issue of the case above is whether the violation of the LSA such as the non-payment of annual paid leave allowance, etc. falls under the area of prohibition of discrimination treatment which is prohibited in the FPWPA and TAWPA. It is meaningful in that the court also supported the NLRC's position and concluded that the violation of laws is included in the area of discrimination prohibition based on the necessity of preventing discriminatory treatment.

### 2) Disadvantageous treatment based solely on the collective bargaining agreement

#### a. Factual background

A worker named “K” was a fixed-term worker who worked as a parking fee collector in a sports complex under the management of Facilities Management Corporation of “City B”. He/she worked in day and night shifts. There was a labor union in the Corporation of City B, and the union barred fixed-term workers like worker K from joining it. In addition, the effect of the collective bargaining agreement concluded between the Corporation of City B and the union was only covering open-end contract workers.

Worker K requested discrimination redress to the RLRC arguing that he/she received discriminatory treatment in terms of bonuses, etc., compared to comparable workers who were an open-end contract workers, and the Corporation of City B argued that worker K was not paid bonuses, etc. because he/she was not covered by their collective bargaining agreement and it was discrimination with a justifiable reason.

#### b. Issues

The issue of the case is whether discrimination resulting from a collective bargaining agreement is justifiable or not.

#### c. Case developments

(a) LRC

The concerned RLRC ruled that the non-payment of bonuses, etc. to fixed-term workers including the worker K was discriminatory treatment having a justifiable reason on the grounds that a collective bargaining agreement

only affects the concerned employer and member workers of the labor union, and fixed-term workers including worker K are not covered by the wage and collective bargaining agreement (Gyeongnam RLRC, 08/06/2013, 2013Chabyeol3 and 4 merged).

However, the NLRC arrived at a conclusion different from that of the first instance that there was no just reason in discriminatory treatment which was caused by the fact that the Corporation of the City B did not pay bonuses, etc. to worker K solely because of the collective agreement. The reason is as follows.

Firstly, according to Article 2 of the collective bargaining agreement and the wage agreement of 2011, bonuses, etc. are not money and valuables arbitrarily paid by the Corporation to the workers for a special purpose, but are components of the wages for the workers. Also, they are not paid differently depending on the purpose of payment, the scope or difficulty of the work in its nature, a workload, etc.

Secondly, working conditions including wages, etc. are basically determined by an agreement between an employer and an individual worker. However, the discrimination redress system under the FPWPA is based upon the legislative purpose that there should be no discrimination by employment type between fixed-term workers and open-end contract workers despite such an agreement. Accordingly, there is no reason to see things differently, even though bonuses, etc. are determined by the collective agreement between the employer and the labor union, not between the employer and an individual worker.

Thirdly, if discriminatory treatment is allowed solely because of the collective agreement under the circumstances that it is not possible for fixed-term workers

to join the labor union as the collective bargaining agreement concluded between the Corporation and its labor union restricts their subscription, and also organizing a labor union is practically difficult for them due to the nature of their short-term labor contracts, etc., which would result in regular workers such as open-end contract workers further improving their working conditions through collective bargaining agreements with the employer whereas non-regular workers including fixed-term workers, etc. will be left unprotected by working conditions including wages. This even goes against the legislative purpose of the FPWPA.

(b) Court

As for the litigation for revocation by the employer, both the Administrative Court (Seoul Administrative Court, 05/08/2014, 2013Guhap62183) and the High Court (Seoul High Court, 01/28/2015, 2014Nu51779) maintained the same conclusion as the NLRC that Working conditions including wages, etc. are in principle determined by an agreement between an employer and an individual worker, but the basic purpose of the discrimination redress under the FPWPA lies in that discrimination without a justifiable reason between fixed-term and part-time workers and open-end contract workers shall not be allowed despite the agreement. So, it was ruled that even if the working including wages, etc. are determined by an agreement between the employer and the union, not between the employer and an individual worker, it cannot be deemed that such an agreement can be rightly cited as a justifiable reason for disadvantageous treatment for fixed-term or part-time workers engaged in the same or similar work with open-end contract workers. In the appeal, the Supreme Court dismissed the case without deliberation.

#### d. Case significance

This case is about justifiable grounds for discriminatory treatment by a collective bargaining agreement. This was one of the most controversial issues in interpreting whether or not there are justifiable grounds for discrimination. Regarding the issue, both the NLRC and the court rule that allowing discriminatory treatment solely on the basis of a collective bargaining agreement does not accord with the purpose of the legislation of the discrimination redress.

### 3) Those who are obligated to implement a redress order for dispatch employees

#### a. Factual background

A user employer named “A” has signed a contract with a dispatching employer named “B” while using dispatched workers to carry out production and accessorial works. Accordingly, a worker named “K”, etc. have signed an employment contract with the employer B and has been dispatched to work in the assembly line of the production process owned by the employer A.

The dispatched worker K and others and workers of the user employer A were up to a little different work but carried out tasks such as insertion inspection, line work, and final inspection of mobile phone parts together in the same line. Salary components for the dispatched workers including worker K and the workers of the user employer A were the same (base pay, extra, night and holiday work allowances and bonuses). However, in the case of bonus payment, the workers of the employer A were paid 400% of the base pay, but dispatched workers were paid 200%. And dispatched workers were not paid annual paid leave allowance which was supposed to be paid when they fully worked a month.

Accordingly, the dispatched worker K and others requested redress of discrimination against both the user employer A and the dispatching employer B.

**b. Issues**

In this case, the issue is who, between the dispatching employer and the user employer, becomes obligated to implement a redress order, when dispatched workers are not paid bonuses or annual paid leave allowances differently from their comparable workers and a redress order is granted after discrimination is acknowledged.

**c. Case developments**

(a) LRC

The RLRC decided that the principal agent that must redress discriminatory treatment in bonuses and annual paid leave be limited to the dispatching employer arguing that in accordance with the provisory clause of Article 34, Para. 1 of the TAWPA, the employer responsible for bonuses and annual paid leave is the dispatching employer, and the bonus payment is a determined working condition between the workers and the dispatching employer, and there is no direct employment relations between the user employer and dispatched workers (Incheon RLRC, 03/17/2015, 2014Chabyeol2, 9, 10, 12 to 15, and 17 merged).

On the other hand, the NLRC, in contrast to the previous judgment of the LRC, canceled the ruling of the first instance emphasizing that the dispatching employer and the user employer need to work together to implement the redress order (NLRC, 06/30/2015, 2015Chabyeol3 to 11 merged). The reason is as follows.

Firstly, Article 21, Para. 1 of the TAWPA imposes an obligation for discrim-

inatory treatment prohibition on both a dispatching employer and a user employer: “No temporary work agency nor user company shall give discriminatory treatment to any temporary agency worker on the ground of his/her employment status compared with other workers engaged in the same or similar kind of duties in the company of the user company.”

Secondly, a dispatching employer cannot independently and autonomously determine working conditions of dispatched workers.

Thirdly, it is difficult to secure the effect of redressing discrimination against dispatched workers if only a dispatching employer is obligated to redress discriminatory treatment without redress measures by a user employer.

(b) Court

The Administrative Court (Seoul Administrative Court, 11/18/2016, 2015Guhap 70416) and the High Court (Seoul High Court, 05/17/2017.5.17., 2016Nu79078), based upon the decision of the NLRC, acknowledged that those who are responsible for the implementation of the redress order in relation to the bonuses, etc., are both a dispatching employer and a user employer, citing the grounds in the following: Article 21, Para. 1 of the TAWPA imposes an obligation to prohibit discriminatory treatment to both a dispatching employer and a user employer; a dispatching employer is likely to pay a low level of wages for a reason attributable to a user employer when a user employer sets the price for worker dispatch at a significantly low figure; to prevent this, there is a need to impose an obligation of prohibiting discrimination in the area of wages, etc. on a user employer.

On the other hand, the court, ruling differently from the NLRC's decision that a user employer and a dispatching employer should work together to implement the redress order, ruled that it needs to be identified who is respon-

sible between a user employer and a dispatching employer for the situation that a dispatched worker is not paid the same wage with workers of an user employer. And when the reason is attributable to only one of them, only he/she must be made to bear the obligation to redress the discrimination. However, in this case, it was ruled that both of them should bear joint responsibility in connection with the bonus payment because both of them are accountable for the situation. The conclusion is the same, but there are some differences in their approaches. The ruling of the High Court was finalized as the complainant did not file an appeal.

#### d. Case significance

Unlike previous adjudication cases for discrimination redress done in the field of dispatch labor relations, in which the person obliged to implement a redress order is defined according to the area of employer responsibilities under the TAWPA, this case is meaningful because joint responsibility was imposed on both a dispatching employer and a user employer so as to secure the effectiveness of a redress order in the dispatch labor relations.

## Section 3: Matters related to Multiple Unions

### 1. Background of introduction

Multiple unions refer to a case where there are two or more labor unions established or joined by workers at a company or workplace. From July 2011 when the establishment of multiple unions on the enterprise level was allowed, establishment of a single bargaining channel and the duty of fair representation were added to the LRC’s agenda.

TULRAA stipulates that where two or more labor unions established or joined by workers exist in a company or workplace regardless of the type of organization, labor unions shall decide a representative bargaining union to request bargaining (TULRAA, Article 29-1, Para. 1).

The establishment of a single bargaining channel under TULRAA is intended to effectively solve problems that can arise when two or more labor unions exist in a company or workplace: 1) conflicts between labor unions or between the labor unions and their employer that may arise when each union exercises their own right to bargain, 2) reduced bargaining efficiency and increase in bargaining costs resulting from repeating the same bargaining on the same matters, 3) difficulties in labor affairs management that may arise when multiple collective agreements are to be concluded, 4) problems arising from the application of different working conditions depending on which labor union workers are affiliated to despite carrying out the same or similar work (Constitutional Court, 04/24/2012, 2011Hunma338).

## 2. Concept and significance of the establishment of a single bargaining channel

TULRAA stipulates, “Where not less than two labor unions established or joined by workers exist in one company or workplace regardless of the type of organization, trade unions shall determine a representative bargaining union (including a representative bargaining organization, the constituent members of which are members of two or more labor unions) and request bargaining.” (TULRAA, Article 29-2, Para. 1).

In other words, TULRAA allows multiple unions in a company or workplace, but requires the establishment of a single bargaining channel in collective

bargaining. Therefore, there comes up a problem that unions which fail to become bargaining representatives under the system of a single bargaining channel cannot exercise their collective bargaining rights guaranteed by the Constitution, even though they meet the requirements for a labor union.

It was an issue whether Article 29-2 of TULRAA stipulating the establishment of a single bargaining channel is a violation of the Constitution by infringing the right to collective bargaining, which is one of the fundamental rights guaranteed by the Constitution for non-representative unions. The Constitutional Court ruled that it is not a violation of the right to collective bargaining by violating the rule of excess prohibition, for establishing a single bargaining channel is to set up a stable bargaining system and integrate working conditions of union members regardless of their affiliation, and its drawbacks are complemented with division of a bargaining unit (TULRAA, Article 29-3) and the duty of fair representation (TULRAA, Article 29-4) (Constitutional Court, 04/24/2012, 2011Hunma338).

## 3. Establishment of a single bargaining channel and the representative bargaining union

### (1) Introduction

The establishment of a single bargaining channel can be roughly divided into two parts: 1) decision of a representative bargaining union through procedures for establishment of a single bargaining channel and 2) matters related to the retention period of a representative bargaining union.

The procedures for establishment of a single bargaining channel are further divided into procedures of finalizing bargaining request unions and those of determining a representative bargaining union. In addition, the establishment

of a single bargaining channel is to be done based on a bargaining unit and should be done in the unit of a company or workplace in principle. However, in some cases, division of a bargaining unit is allowed in certain exceptions.

Accordingly, the division of a bargaining unit also matters with regard to the procedures of establishment of a single bargaining channel. On the other hand, with respect to the status of a representative bargaining union, the retention period of a representative bargaining union and the duty of fair representation of a representative bargaining union are also issues.

### (2) Procedures for establishment of a single bargaining channel

#### 1) Finalization of bargaining request unions

The procedures for finalization of bargaining request unions begins when labor unions request collective bargaining to the employer. In the case of a newly established labor union, it can request bargaining at any time, and if there is already a collective agreement in the workplace, bargaining can be requested within three months before the expiration date of the collective agreement (Enforcement Decree of TULRAA, Article 14-2, Para. 1).

When an employer has received a bargaining request from a labor union, the employer shall make a public announcement for seven days (Enforcement Decree of TULRAA, Article 14-3), and other labor unions that intend to bargain with the employer shall request bargaining within the period of the public announcement (Enforcement Decree of TULRAA, Article 14-4). The employer shall publicly announce them the day after the period of the public announcement has ended for five days (Enforcement Decree of TULRAA, Article 14-5).

When the employer fails to make a public announcement of the bargaining request or makes a public announcement different from facts, labor unions can request the LRC to redress it (Enforcement Decree of TULRAA, Article 14-3,

Para. 2), and when the employer fails to make a public announcement finalizing bargaining request unions or the details of the finalizing announcement are different from what the labor unions submitted, they can file a redress request to the LRC (Enforcement Decree of TULRAA, Article 14-5, Para. 4).

### 2) Decision of the representative bargaining union

When bargaining request unions are finalized, a representative bargaining union that has the authority to bargain with the employer and conclude a collective bargaining agreement should be decided among these unions. If there are two or more labor unions in a company or workplace, the bargaining channel should be condensed in principle.

However, this does not apply where an employer consents not to go through the procedures for establishment of a single bargaining channel within the period for autonomously establishing a representative bargaining union (14 days) after bargaining request unions are finalized (TULRAA, Article 29-2, Para. 1). If there is no consent from the employer, a single bargaining channel should be established. The establishment of a single bargaining channel will proceed in the following four stages.

Stage 1: a representative bargaining union is autonomously decided. All the labor unions that participate in the procedures for deciding a representative bargaining union shall decide a representative bargaining union by their own decision within 14 days after bargaining request unions are finalized (TULRAA, Article 29-2, Para. 2).

Stage 2: if a representative bargaining union is not decided, a majority labor union becomes the representative bargaining union. In other words, a labor union organized by a majority of all the members of the labor unions that participate in the procedures for the establishment of a single bargaining

channel shall be a representative bargaining union (TULRAA, Article 29-2, Para. 3). If two or more unions become a majority union in a way of delegation or coalition, they are also regarded as a majority union.

Stage 3: when there is no majority union, all the unions participating in the establishment of a single bargaining channel autonomously form a joint bargaining delegation and give the delegation the role of representative bargaining union (TULRAA, Article 29-2, Para. 4). In this case, a labor union, of which number of the members is at least 10% of the total numbers of members of the labor unions participating in the procedures for the establishment of a single bargaining channel, can participate in the joint bargaining delegation.

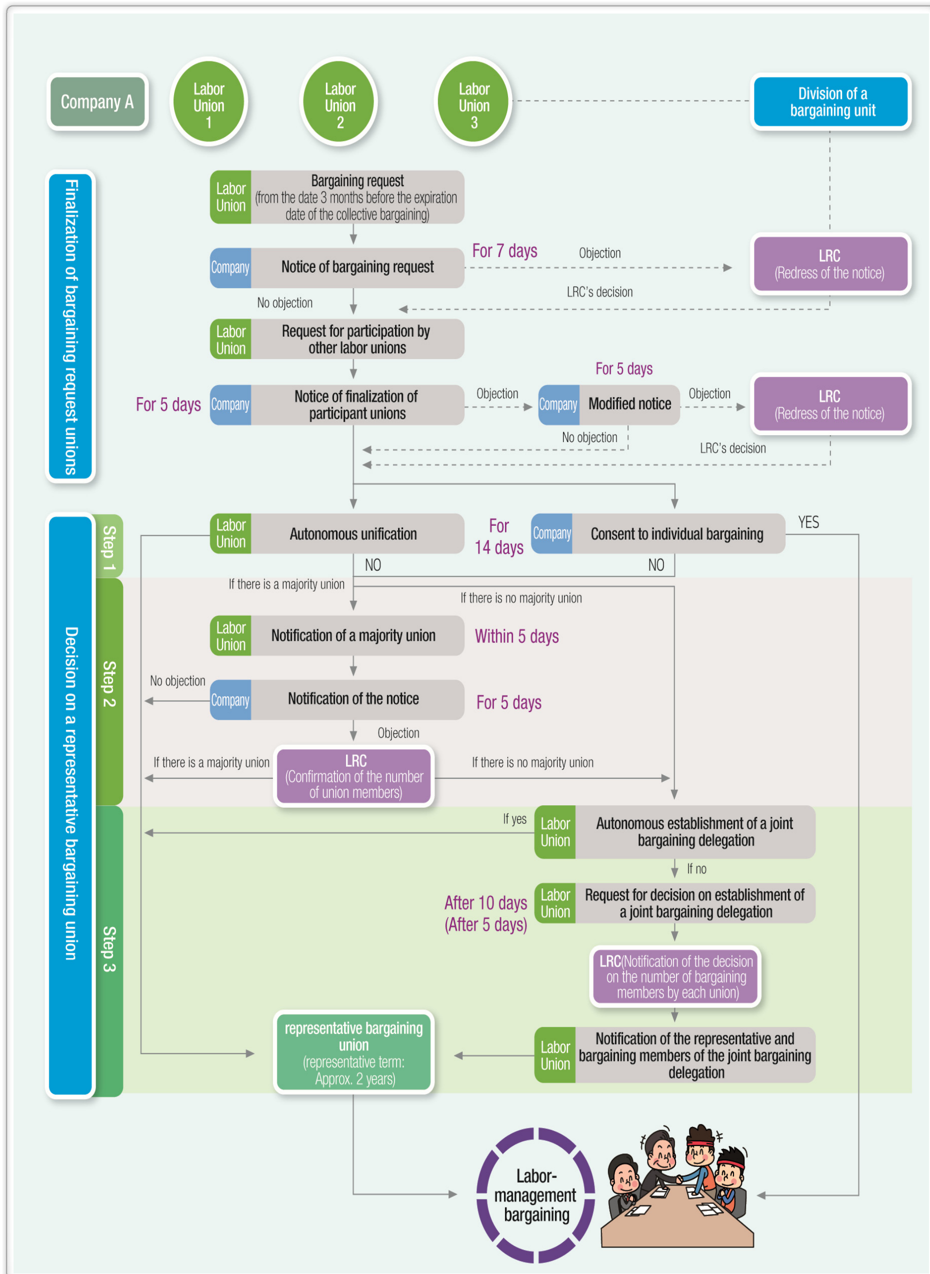
Stage 4: when the labor unions fail to organize a joint bargaining delegation on their own, the LRC may determine a joint bargaining delegation in consideration of the ratio of the union members of each labor union to the total number of members of all the labor unions (TULRAA, Article 29-2, Para. 5).

If there is an objection to the number of union members in deciding the representative bargaining union, the LRC can decide on the objection at the request by one of the labor unions (TULRAA, Article 29-2, Para. 6).

### 3) Division of a bargaining unit

A unit upon which a representative bargaining union should be decided by establishing a single bargaining channel according to TULRAA is called a bargaining unit. A bargaining unit is in principle should be a company or workplace (TULRAA, Article 29-3, Para. 1). However, when it is deemed necessary to divide a bargaining unit in consideration of huge differences in working conditions, employment type, bargaining practice, etc. in a company or workplace, the LRC can decide to divide the bargaining unit at the request of both parties or either party (TULRAA, Article 29-3, Para. 2).

[Figure 3-9] Procedures to determine a representative bargaining union



### (3) Retention period of representative bargaining union

Representative bargaining union status is to be maintained from the time when the representative bargaining union is decided to the date in the following: when the term of validity of the first collective bargaining agreement is two years, then that's its expiration date; when the term of validity of the first collective agreement is less than two years, at the end of two years after the agreement went into force (Enforcement Decree of TULRAA, Article 14-10, Para. 1).

The representative bargaining union can do various activities as a labor union including collective bargaining, concluding collective bargaining agreements, filing a conciliation request to the LRC, industrial actions during the period mentioned above. In case a new round of collective bargaining is to start during the period, collective bargaining can be conducted without going through a new set of procedures for establishment of a single channel.

The collective bargaining agreement concluded by the representative bargaining union applies to the labor unions and their members included in the announcement of the finalized bargaining request unions. Labor unions that are not included in the announcement will have no collective bargaining agreement and not be able to request bargaining on their own, nor will they be able to go on industrial actions. The collective bargaining agreement concluded by the representative bargaining union shall apply for them only within the scope of general binding force. In other words, in the case of a labor union that is not a part of the representative bargaining union or one that is newly established after the conclusion of a collective bargaining agreement, it will be restricted in union activities as long as the representative bargaining union status is maintained.

### (4) Duty of fair representation

A representative bargaining union decided by TULRAA and an employer shall bear the duty of fair representation so as not to discriminate labor unions participating in the procedures of establishment of a single bargaining channel and members thereof without reasonable grounds (TULRAA, Article 29-4, Para. 1). When a representative bargaining union and an employer discriminate labor unions participating in the procedures of establishment of a single bargaining channel and members thereof in violation of the duty of fair representation, a labor union can request a redress to the LRC (TULRAA, Article 29-4, Para. 2).

A redress request against a violation of the duty of fair representation should be filed within three months from the date of the occurrence. In case the whole or part of a collective bargaining agreement is in violation of the duty of fair representation, such a request should be filed within three months from the date when the collective agreement is concluded.

The fair representation principle in Korea is unique as not only a representative bargaining union but also an employer are obligated to abide by the duty of fair representation. In addition, the violation of the duty of fair representation by an employer does not necessarily constitute an unfair labor practic e.[55] In other words, there could be two kinds of violation of the duty of fair representation: a violation that constitutes an unfair labor practice (Seoul High Court, 03/30/2017, 2016Nu70088) and one that does not (Daejeon High Court, 06/16/2016, 2015Nu10242).

55) Yoo Seung-jae and Kim Hee-sun, *Fair representation in the U.S. and its implications*, Collection of Labor Law Treaties, Vol. 23, 2011, p. 66

## 4. Types and handling of multiple union cases

### (1) Redress request against an employer's violation of the obligation for public announcement

#### 1) Request

In connection with the finalization of bargaining request unions, a labor union can request its redress to the LRC in two cases: one is that an employer who is requested for bargaining fails to make a public announcement or makes a public announcement different from the facts (Enforcement Decree of TULRAA, Article 14-3, Para. 2); the other is that a bargaining request union raises an objection to the employer and then the employer does not make a public announcement or makes a different one from the facts when it is deemed that the employer's finalization announcement of the bargaining request unions is different from the details that have been submitted or omits details (Enforcement Decree of TULRAA, Article 14-5, Para. 4).

#### 2) Decision criteria

First, in a redress request with regard to an employer's public announcement that bargaining is requested, it is decided whether the bargaining request union is a legitimate union, whether it is correct timing when the bargaining can be requested, etc. Next, in a redress request with regard to an employer's public announcement of the objection raised by the bargaining request unions, it is decided whether the bargaining request union is a legitimate union or has submitted a redress request within the request period.

### (2) Request for objection to a majority labor union

#### 1) Request

When labor unions failed to decide a representative bargaining union within the mandatory time limit or have not obtained consent for an individual bargaining from their employer, a labor union that is organized by a majority of all the union members of the labor unions participating in the procedures for establishment of a single bargaining channel will be a representative bargaining union (TULRAA, Article 29-2, Para. 3).

In this case, the majority union should notify the employer of this fact within five days after the completion of the period during which the representative bargaining union can be autonomously decided (Enforcement Decree of TULRAA, Article 14-7, Para. 1), and the employer should make a public announcement of its contents for five days from the date of the majority union's notification (Enforcement Decree of TULRAA, Article 14-7, Para. 2). A labor union that has an objection to this fact may file a complaint to the LRC (Enforcement Decree of TULRAA, Article 14-7, Para. 3).

#### 2) Decision criteria

Receiving an objection concerning existence of a majority union, the LRC investigates and verifies the number of union members (Enforcement Decree of TULRAA, Article 14-7, Para. 4). The base date for calculation of the number of the members of each union for verification of a majority union is the date when the names of the bargaining request unions, etc. are announced, i.e. the day after a seven-day notice period of the public announcement that the labor unions requested bargaining has completed (Enforcement Decree of TULRAA, Article 14-7, Para. 5). However, if the date the employer confirms

and makes an announcement that the labor unions requested bargaining is different from the date the Enforcement Decree of TULRAA requires it to be announced, the latter becomes the base date for the calculation of the number of members (Seoul Administrative Court, 12/13/2013, 2013Guhap18995).

On the other hand, when there is a union member who has signed up for two or more unions, the number of members is to be calculated by a method in the following: when he/she paid union dues, the number calculated by dividing the number 1 by the number of unions to which union dues are paid shall be added to the number of the members of each union to which such union dues are paid; when there is no union to which union dues are paid, the number calculated by dividing the number 1 by the number of unions which he/she has joined shall be added respectively to the number of union members of each union which he/she has joined (Enforcement Decree of TULRAA, Article 14-7, Para. 6).

When a labor union member submits a letter of withdrawal to the labor union, the withdrawal becomes effective when the letter reaches the union. This is effective even if the union rejects the letter. The status of the representative bargaining union is to be maintained during the statutory period even if a majority union changes due to workers leaving or joining during the period (Changwon District Court, 01/11/2017, 2016Kahap10286).

### (3) Request for decision on a joint bargaining delegation

#### 1) Request

When the labor unions that participate in the procedures for establishment of a single bargaining channel fail to decide a representative bargaining union and there is not a majority union, they shall organize a joint bargaining

delegation (TULRAA, Article 29-2, Para. 4). When the labor unions fail to organize a joint bargaining delegation, they may request the LRC to decide one (TULRAA, Article 29-2, Para. 5).

#### 2) Decision criteria

The number of members of a joint bargaining delegation should be decided, within a maximum of ten members, in consideration of the ratio of each union’s members (TULRAA, Article 29-2, Para. 5, Enforcement Decree of TULRAA, Article 14-9, Para. 2). In addition, it needs to be checked out whether the number of member of a labor union that can participate in the joint bargaining delegation is more than 10/100 of the total members of the labor unions participating in the procedures for establishment of a single bargaining channel (TULRAA, Article 29-2, Para. 4).

### (4) Request for decision on division of bargaining unit

#### 1) Request

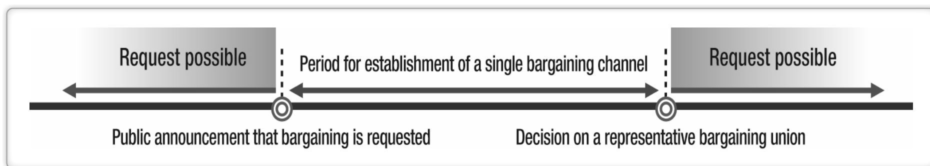
In principle, the procedures for establishment of a single bargaining channel are to be carried out in the unit of a company or workplace, but TULRAA exceptionally acknowledges division of a bargaining unit (TULRAA, Article 29-3, Para. 2). Labor unions that have been informed of the LRC's decision to divide the bargaining unit will proceed with the procedures for establishment of a single bargaining channel by each bargaining unit.

A labor union or an employer requesting division of a bargaining unit should submit a 'written request for division of the bargaining unit' to the LRC with documents proving the need for the division such as huge differences in working conditions, employment type, bargaining practices, etc. (Enforcement Decree of TULRAA, Article 10-8, Para. 1).

The request for division of a bargaining unit should be made before an employer makes an announcement that bargaining is requested; when the procedures for establishment of a single bargaining channel are already in progress, such request should be made after a representative bargaining union is determined (Enforcement Decree of TULRAA, Article 14-11, Para. 1).

To prevent unnecessary confusion, a representative bargaining union can change according to the result of the decision on division of a bargaining unit if the request is allowed during the course of establishing a single bargaining channel.

▌ Timing for request for decision on division of a bargaining unit ▐




When a labor union requests bargaining to the employer before the LRC decides on the request for division of a bargaining unit, the procedures for establishment of a single bargaining channel shall be suspended until the LRC decides upon it (Enforcement Decree of TULRAA, Article 14-11, Para. 5).

**2) Decision criteria**

The LRC has considerable discretion in deciding whether or not to allow the division of a bargaining unit. However, the necessity of division should be acknowledged to the extent that an exception should be permitted despite the stipulation of TULRAA that a company or workplace be a bargaining unit. Under TULRAA, the decision to divide a bargaining unit can not be

arbitrarily decided by an agreement between labor and management.

Huge differences in working conditions, employment type, bargaining practices, etc. are cited as criteria referenced in considering the necessity of division of a bargaining unit. In addition, it considers all other matters that can help consider the necessity of dividing a bargaining unit: whether there are personnel exchanges, whether there is difference in application of company regulations, etc. The criteria for considering the necessity of the division enumerated in Article 29-3, Para. 2 of TULRAA are merely examples. So, it is not the case that the necessity is acknowledged only when all the criterion are met and it is not either that the necessity is automatically acknowledged because all of them are met.

In considering the necessity of division of a bargaining unit in actual cases, a merit achieved by the separation and a merit achieved by maintaining the procedures for establishment of a single bargaining channel are compared. In this regard, the court considers that the necessity of dividing a bargaining unit cannot be acknowledged only on the grounds that there are some difference in working conditions (Seoul High Court, 10/10/2016, 2016Nu48234).[56] This is because all the bargaining units of the labor unions can be divided and then the policy for the establishment of a single bargaining channel can become meaningless.

In addition, the LRC found that the necessity of dividing a bargaining unit is not to be acknowledged on the grounds that demands of minority unions are not reflected in the bargaining process (NLRC, 10/07/2015, Joongang2015Danwie32). This is because it is a problem that must be solved through the duty of fair representative.

56) This ruling was maintained and finalized by the Supreme Court's decision without further deliberation (Supreme Court, 02/23/2017, 2016Du58949).

[Table 3-17] Decision criteria on the necessity of dividing a bargaining unit

| Classification | Major Areas |
|---|---|
| Huge differences in working conditions | Wages and wage systems, working patterns, holidays, leaves, working hours, fringe benefits, etc. |
| Employment type | Employment types (regular worker, fixed-term worker and part-time worker), recruitment method, existence of personnel exchanges, etc. |
| Bargaining practices | Existence of an individual bargaining practice at the level of a bargaining unit, etc. |
| Other necessities | Interested parties' position on the division of a bargaining unit, relationship between bargaining unit separation and stability of labor-management relations, difference in target groups or occupations of each labor union, etc. |

* NLRC, Manual on multiple unionism, April 2013, p. 11.

### (5) Redress request against a violation of the duty of fair representation

#### 1) Request

TULRAA protects the interests of labor unions of which right to collective bargaining is limited in the wake of the establishment of a single bargaining channel. In other words, the duty of fair representation is imposed on a representative bargaining union and an employer (TULRAA, Article 29-4, Para. 1).

When a representative bargaining union and an employer discriminate labor unions and their members who have participated in the procedures for the establishment of a single bargaining channel in violation of the duty of fair representation, a labor union that has participated in the procedures can request the LRC to redress such discrimination (TULRAA, Article 29-4, Para. 2). The redress request for the violation of the duty of fair representation should be filed within three months from the date of the discriminatory act (the date of the conclusion of a collective bargaining agreement in case part or

all of the contents of the collective bargaining agreement violates the duty of fair representation) (TULRAA, Article 29-4, Para. 2).

### 2) Decision criteria

Judgment on the violation of the duty of fair representation is divided into a violation of the duty of procedural fair representation and a violation of the duty of substantive fair representation.

Firstly, with respect to the duty of procedural fair representation, a representative bargaining union should not only give minority unions sufficient opportunity to submit their comments and consult with them in the process of collecting opinions about and confirming bargaining proposals but also explain reasons for proposal decisions.

In addition, if agendas of minority unions are excluded in the course of choosing those for bargaining proposals without justifiable grounds, it can be regarded as a violation of the duty of fair representation. However, a considerable amount of discretion is given to the representative bargaining union regarding judgement on the importance of each agenda for bargaining demands, concentration of bargaining power and strategy selection for achieving a goal when choosing agendas for bargaining demands (Seoul Administrative Court, 07/11/2013, 2012Guhap39292).

Next, with respect to the duty of substantive fair representation, a representative bargaining union and an employer shall not cause a disadvantage in terms of contents of the bargaining to the labor unions or their members who have participated in the procedures of establishment of a single bargaining channel without justifiable grounds. Issues concerning a violation of the duty of substantive fair representation have been provision of union offices and allocation of paid time-off.

For a violation of the duty of fair representation, the LRC and the Court consider that burden of proof should be borne by minority unions claiming it and when it is proved that there is discrimination, a representative bargaining union and an employer should bear burden of proof concerning whether there is a justifiable reason for such discrimination (Seoul High Court, 01/18/2017, 2016Nu52882, under consideration by the Supreme Court as of Jan. 7, 2018).

### a. Redress request against a violation of the duty of procedural fair representation

Regarding the duty of procedural fair representation, the LRC considers that the adoption of bargaining agenda is at the discretion of a representative bargaining union. Therefore it can not be regarded as a violation of the duty of fair representation that bargaining demands of minority unions have not been adopted (NLRC, 12/05/2012, 2012Gongjeong7).

The court also ruled to the same purport: considering the purpose of TULRAA that gives the representative of a representative bargaining union the authority to bargain with an employer on behalf of all the labor unions and their members and allows minority unions to enjoy the outcomes of the bargaining together, it should be deemed that a wide range of discretion is given to a representative bargaining union with regard to judgement on the importance of each agenda for bargaining demands, concentration of bargaining power and strategy selection to achieve a goal, etc. in choosing agendas for bargaining demands (Seoul Administrative Court, 07/11/2013, 2012Guhap39292).

### b. Redress request against a violation of the duty of substantive fair representation

(a) Application of the duty of fair representation to liabilities

Regarding a violation of the duty of substantive fair representation, it was firstly questioned whether it applies to labor union activities such as a limit on paid time-off or the provision of union offices, not the normative area. The court considered that the area of labor union activities can also be a subject to a redress request against a violation of the duty of fair representation on the following grounds: the area of labor union activities is a content of a collective bargaining agreement; minority labor unions cannot exercise their right to bargaining in this area; there is a greater need to protect minority labor unions when the content is related to basic activities of a labor union (Seoul High Court, 05/15/2014, 2013Nu52492).[57]

(b) Paid time-off

Regarding a violation of the duty of substantive fair representation, allocation of paid time-off remains as an issue. In this regard, a question is raised about the situation in which paid time-off are not allocated to minority unions at all, or significantly small hours are allocated to them.

Firstly, in the case in which paid time-off are not allocated to minority unions at all, the LRC and the court decided that it is hard to be recognized as being reasonable to completely exclude minority unions from the paid time-off allocation unless there are special circumstances, even though the allocation of full-time union officials and paid time-off does not necessarily have to be proportional to the number of union members. Grounds for the

57) This ruling was maintained and finalized by the Supreme Court’s decision not to continue the hearing (Supreme Court, 10/30/2014, 2014Nu38378).

decision are as in the following: even in the case of a labor union, not a representative bargaining union, union activities take time; it cannot be said that time is not needed at all for union activities even in the case of a labor union with a small number of members (Seoul High Court, 04/24/2014, 2013Nu53105).

Furthermore, the court regarded it as a violation of the duty of fair representation that a significantly small amount of paid time-off has been granted to minority unions (Daejeon District Court, 12/23/2015, 2014Guhap4292).

However, the allocation of paid time-off does not necessarily have to be proportional to the number of the members. This is because, considering the position and role of a representative bargaining union that should negotiate with an employer for labor unions or union members as a representative bargaining union, it can be reasoned according to social norms that it needs more paid time-off than a labor union requesting the review (NLRC, 07/08/2015, 2015Gongjeong27).

In other words, paid time-off does not necessarily have to be allocated in proportion to a ratio of union members, for a representative bargaining union is in charge of collective bargaining. However, an excessively unbalanced allocation of paid time-off is a violation of the duty of fair representation constituting discrimination without a justifiable reason, for it is difficult to say that the time required for union activities for a full-time union official of minority unions is far less than that of a full-time union official of a representative bargaining union (Seoul Administrative Court, 04/25/2013, 2012Guhap 35498).

(c) Provision of union offices

According to the proviso of Article 81, Para. 4 of TULRAA, it does not

constitute an unfair labor practice in a form of an aid to expenses that an employer provides a minimum-sized union office. However, a question is raised whether it constitutes a violation of fair representation when an employer provides a union office for a majority union or a representative bargaining union while not providing one for minority labor unions or labor unions that are not a representative bargaining union.

In some cases, the LRC and the court recognized it as a violation of the duty of fair representation on the grounds that a labor union office is a critical element in the existence and development of labor unions. There is also a case where it is considered that it is not  a violation of the duty of fair representation because it is practically difficult to provide labor a union office to all the labor unions in light of the facilities of a workplace.

The LRC and the court declared a violation of the duty of fair representation in a case where a union office is provided only to a representative bargaining union, but not to minority unions. The reason behind this was that the employer has not made significant efforts to prevent discrimination by providing minimum individual space for minority unions or inducing an agreement through sincere consultation between him/her and the labor unions so as to allow minority unions to share part of the office provided to a representative bargaining union (Seoul High Court, 06/17/2016, 2015Nu57064).

However, there is also a ruling that the matter concerning provision of a union office should be viewed according to whether there is a justifiable reason for the discrimination, based on a comprehensive consideration of the labor unions participating in the procedures of establishment of a single bargaining channel and the number of union members, the condition of company facilities, contents of the bargaining demands of the labor unions that are

not selected as a representative bargaining union, etc.[58)]

### (6) Procedures for review

#### 1) Review on the procedures for establishment of a single bargaining channel

##### a. Review request

A party or concerned person in a case of the procedures for establishment of a single bargaining channel and decision on a unit of bargaining can request the NLRC to cancel the disposition of the LRC if the decision of the LRC is based on illegality or arrogation of power (TULRAA, Article 29-2, Para. 7). In this case, provisions on arbitration apply mutatis mutandis. In other words, a review is allowed only if the decision of the LRC is made by illegality or arrogation of power (TULRAA, Article 69, Para. 1).

##### b. Decision criteria and validity of a review request

The court, regarding a review on an arbitration award, acknowledges ‘illegality’ and ‘arrogation of power’ in the cases where arbitration procedures are illegal or their contents are illegal due to a violation of the LSA, or an arbitration award is given in arrogation of power on a matter that is not disputed between the parties or on a part that is outside the scope of the dispute without a justifiable reason (Supreme Court, 04/26/2007, 2005 Du12992).

Therefore, ‘illegality and arrogation of power’, for which a review request

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58) The NLRC (01/05/2016, 2015Gongjeong 45 to 50 merged) and the Daejeon District Court (10/13/2016, 2016Guhap270) held that it was not a violation of the duty of fair representation, but the Daejeon High Court (03/23/2017, 2016Nu13005) considered it as a violation of the duty of fair representation. The case is currently pending in the Supreme Court.

is acknowledged, cannot be recognized only because an arbitration award is considerably advantageous to one party. The validity of the decision of the LRC shall not be suspended even if a review request or an administrative litigation is filed with the NLRC (TULRAA, Article 70, Para. 2).

### 2) Review on cases of a violation of the duty of fair representation

#### a. Review request

If a party to a case of a violation of the duty of fair representation is dissatisfied with the decision of an RLRC, it can file a review request to the NLRC (TULRAA, Article 29-4, Para. 4). In this case, the provisions concerning a redress request of unfair labor practices shall apply mutatis mutandis. In other words, when a review request is not filed within the mandatory period, a remedy order or decision of dismissal of the LRC shall be finalized (TULRAA, Article 85).

#### b. Decision criteria and validity of a review request

A review request can not exceed the scope of the request to the LRC, and the hearing and decision of the NLRC shall be made within the scope to which the concerned party challenges (LRC rules, Article 89). The validity of the decision of the LRC shall not be suspended even if a review request is filed to the NLRC or an administrative litigation is filed to the court (TULRAA, Article 86).

In the case of review on a violation of the duty of fair representation, unlike cases of the procedures of establishment of a single bargaining channel and the decision of a bargaining unit, it is not limited to cases of illegality and arrogation of power. In addition, a person who violates the finalized

remedy order of the LRC shall be punished by imprisonment for not more than three years or a fine not exceeding KRW 30 million won (TULRAA, Article 89, Para. 2).

## 5. Annual statistics

As shown in [Table 3-18], the number of cases received with regard to multiple unionism was 627 cases in 2013 and 583 cases in 2014. It largely increased to 741 cases in 2015 but decreased to 498 cases in 2016, and then bounced back to 863 cases in 2017. By the type, the number of cases concerning the announcement of bargaining request is generally high. In 2017, 363 cases out of total 863 cases received were related to the public announcement, accounting for 42.1%. Meanwhile, in 2017, the number of cases related to the decision of a bargaining representative has greatly increased, whereas those related to the division of a bargaining unit have greatly decreased.

Specifically, cases related to the announcement of a bargaining request increased greatly in 2017: 363 cases were received and 352 cases out of them were handled. As for the cases handled, 296 cases were withdrawn, accounting for 84.1%; 37 cases were acknowledged and 19 cases were dismissed or dismissed without deliberation.

253 cases were received in 2017 with regard to the decision of a bargaining representative: 244 cases were handled, and 188 cases were withdrawn, accounting for 77.0%; 19 cases were acknowledged and 37 cases were dismissed or dismissed without deliberation.

The number of cases concerning the division of a bargaining unit sharply decreased in 2017 with 99 cases being received and 89 cases being handled.

Most of them (37 cases) were withdrawn, 33 cases were acknowledged, and 19 cases were dismissed or dismissed without deliberation.

148 cases were received with respect to a violation of the duty of fair representation in 2017 and 109 cases among them were handled: withdrawal cases counted 41 accounting for the largest portion, and 27 cases were acknowledged; another 27 cases were dismissed or dismissed without deliberation and 14 cases were conciliated.

### [Table 3-18] Yearly cases filed and handled concerning multiple unionism

(cases)

| Classification | | | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|---|---|
| Aggregate cases filed | | | 627 | 583 | 741 | 498 | 863 |
| Aggregate cases handled | | | 561 | 508 | 684 | 441 | 794 |
| Announce-ment on bargaining request | Cases filed | | 224 | 155 | 270 | 144 | 363 |
| | Cases handled | | 222 | 154 | 265 | 126 | 352 |
| | | Recognition | 57 | 25 | 21 | 41 | 37 |
| | | Dismissal | 10 | 12 | 25 | 9 | 6 |
| | | Dismissal without deliberation | 38 | 34 | 111 | 5 | 13 |
| | | Withdrawal | 117 | 83 | 108 | 71 | 296 |
| Decision on bargaining representa-tive | Cases filed | | 58 | 73 | 73 | 57 | 253 |
| | Cases handled | | 55 | 68 | 66 | 54 | 244 |
| | | Recognition | 13 | 21 | 17 | 4 | 19 |
| | | Dismissal | 31 | 31 | 37 | 20 | 26 |
| | | Dismissal without deliberation | 1 | 4 | 4 | 14 | 11 |
| | | Withdrawal | 10 | 12 | 8 | 16 | 188 |
| Separation of bargaining unit | Cases filed | | 178 | 158 | 194 | 135 | 99 |
| | Cases handled | | 149 | 136 | 184 | 127 | 89 |
| | | Recognition | 115 | 78 | 137 | 64 | 33 |
| | | Dismissal | 15 | 36 | 24 | 31 | 18 |
| | | Dismissal without deliberation | 3 | 3 | 1 | 1 | 1 |
| | | Withdrawal | 16 | 19 | 22 | 31 | 37 |
| Violation of the duty of fair represen-tation | Cases filed | | 167 | 197 | 204 | 162 | 148 |
| | Cases handled | | 135 | 150 | 169 | 134 | 109 |
| | | Recognition | 38 | 59 | 77 | 46 | 27 |
| | | Dismissal | 32 | 32 | 35 | 32 | 19 |
| | | Dismissal without deliberation | 30 | 16 | 13 | 7 | 8 |
| | | Withdrawal | 32 | 43 | 42 | 39 | 41 |
| | | Conciliaton | 3 | 0 | 2 | 10 | 14 |

* Cases filed include those that had been passed from the previous year.
* "Multiple labor unions-related cases" were aggregated by adding the adjudication cases of a 'violation of the duty of fair representation' to the multiple unions cases (bargaining request, decision of a bargaining representative, division of a bargaining unit).

## 6. Major cases

### (1) Cases of division of a bargaining unit

#### 1) Factual background

A local government named "A" employs workers with an open-end contract for nine job categories such as general affairs, IT, facilities, agriculture & forestry environment, sanitation, tourism and transportation, driving, road maintenance, and street cleaning to conduct comprehensive local administration.

The labor union named "K" is a company-level labor union organized with workers who are engaged in street cleaning work belonging to the local government A, and has about 150 union members. The labor union named "L" is organized with workers who are engaged in street cleaning work belonging to the city "B" in the local government A, and has about 100 union members. The current job categories of the public workers hired by the local government A is as follows.

〈Job categories of public workers of the local government A〉

(persons)

| Classification | Total | General affairs | IT | Facilities | Agriculture & forestry environment | Sanitation | Tourism and transportation | Driving | Road maintenance | Street cleaning |
|---|---|---|---|---|---|---|---|---|---|---|
| Total | 2,188 | 517 | 22 | 75 | 696 | 121 | 260 | 193 | 45 | 259 |
| Provincial HQ | 666 | 156 | 11 | 23 | 326 | 3 | 113 | 0 | 34 | 0 |
| City ○○ | 871 | 203 | 7 | 32 | 193 | 69 | 75 | 134 | 7 | 151 |
| City △△ | 651 | 158 | 4 | 20 | 177 | 49 | 72 | 59 | 4 | 108 |

In addition to unions K and L, there are three more labor unions in the local government A. These unions, after going through the procedures of establishment of a single bargaining channel, designated the labor union "M" as their representative bargaining union on January 10, 2013, and the union M signed a collective bargaining and wage agreement with the local government A.

Labor unions K and L submitted a request asking for the division of street cleaning workers of the local government A into a separate bargaining unit on July 29, 2015 on the grounds that there was remarkable difference in working conditions between the street cleaning workers and workers in other jobs.

**2) Issues**

TULRAA basically requires establishment of a single bargaining channel in the level of a company or workplace (TULRAA, Article 29-2, Para. 1, Article 29-3, Para. 1). However, when it is deemed necessary to divide a bargaining unit considering huge differences in working conditions, employment type, bargaining practices, etc., a party to labor relations can request division of a bargaining unit. However, if the division of a bargaining unit is broadly allowed, the establishment of a single bargaining channel can be made meaningless. Therefore, the necessity for division of a bargaining unit should be judged by comparing the merit achieved by maintaining the procedures of establishment of a single bargaining channel to that achieved by dividing a bargaining unit.

### 3) Case developments

#### a. LRC

The RLRC dismissed the request for division of a bargaining unit on the grounds that the job of street cleaning is partly different in working conditions from other jobs, but the necessity for separation is not significant since such differences are not regarded as huge differences in working conditions, employment type, etc. to the extent of setting up an individual bargaining unit, and the necessity to divide the job of street cleaning into an individual bargaining unit is not greater than the rule of unity in working conditions with other jobs, etc. (Jeju RLRC, 08/26/2015, 2015Danwie3 to 4 merged). Labor unions K and L filed a review request to the NLRC.

The NLRC found that there is no significant need to divide a bargaining unit as the ruling of the first instance based on the following reasons (NLRC, 10/07/2015, 2015Danwie32).

First, consolidated company regulations and a prefixed number of personnel are enacted and applied to all the workers. Second, it is not deemed that there is significant difference in working conditions compared to other jobs except for difference in the wage, work format and working hours due to the characteristics of the street cleaning job. Third, the employment type is the same as or similar to that of other jobs in a form of an open-end contract worker. Fourth, individual bargaining was natural in the situation where bargaining had to be individually done in accordance with the relevant laws before introduction of the establishment of a single bargaining channel; however, it cannot be deemed that there is a practice of individual bargaining that has been carried out after dividing the job of street cleaning even under the circumstances that a single bargaining

channel can be established, or such a practice has settled down. The NLRC also considered that an illegality in the procedures or a violation of related laws in the contents is not found in the process of the handling of the case by the RLRC.

**b. Court**

Unions K and L have filed an administrative litigation challenging the NLRC decision. The Administrative Court has canceled the decision for the following reasons (Seoul Administrative Court, 05/19/2016, 2015Guhap 12007).

First, street cleaners have a significant difference from those of other jobs in terms of working conditions, i.e. a wage system, wage components, a wage level, working hours, etc. Second, the street cleaners differ from workers in other jobs in terms of the employment type including retirement age, recruitment method, personnel exchanges, etc. Third, in the case of this workplace, there was a practice of holding an individual collective bargaining with street cleaners at least until the establishment of a single bargaining channel was implemented. And in this situation, when the labor union composed of a majority of workers of different jobs is selected as the representative bargaining union and collective bargaining is carried out, it is possible that the interests of the street cleaners may not be properly reflected.

Therefore, it is highly likely that keeping the bargaining unit as one would make the collective bargaining difficult and impair stability of labor-management relations by setting off conflicts among the labor unions. The representative bargaining union of the workplace in this case is also in favor of the separation of the bargaining unit. In other words, it was ruled that there is a need to divide the street cleaners from workers of other jobs as an

individual bargaining unit since the merit achieved by separating the bargaining unit is greater than that achieved by maintaining the procedures for establishment of a single bargaining channel for the street cleaners and workers of other jobs.

The NLRC appealed to the ruling of the Administrative Court. The High Court ruled that there is no need to divide the street cleaners from workers of other jobs for an individual bargaining unit for the following reasons: it can hardly be said that there are huge differences in working conditions or difference in the aspect of an employment type between the street cleaners and workers of other jobs of the local government A; it is also difficult to see that the practice of an individual bargaining only for the street cleaners has been established; it cannot be thought that the merit achieved by dividing the bargaining unit is greater than that achieved by maintaining the procedures for establishment of a single bargaining channel (Seoul High Court, 10/19/2016, 2016Nu48234).[59)]

In particular, the High Court did not acknowledge the necessity of division of the bargaining unit for the following reason: if the necessity is acknowledged only because there is a certain extent of difference in working conditions, every bargaining unit of the labor unions composed of the public workers of the local government A wanting individual bargaining can be separated, and as a result, the establishment of a single bargaining channel is likely to be made irrelevant.

#### 4) Case significance

As shown in the case above, the criteria for the separation of a bargaining

59) This ruling was maintained and finalized by the Supreme Court's decision without further deliberation (Supreme Court, 02/23/2017, 2016Du58949).

unit are not clear, as the decisions of the RLRC and the NLRC are different and the conclusions of the first and second instances are not the same. However, the case above can serve as a base of discussion upon which contradictory claims are presented and the decision criteria can materialize in the coming years.

### (2) Acknowledgement of representative bargaining union status of a single labor union

#### 1) Factual background

A labor union "K" was established on November 18, 2012 in the company "B" and union K requested collective bargaining on November 19, 2012. Company B made a public announcement of the request for collective bargaining on November 21, 2012. Thereafter, there had been no further request for collective bargaining, so company B did not proceed with the procedures to decide a representative bargaining union. The contract of company B with an original company expired and from January 2, 2013, the company "A" started to carry out the tasks that company B once carried out. Company B hired workers who had worked with company A, and concluded a collective bargaining agreement that was effective about one year (from March 21, 2013 to March 31, 2014) on March 21, 2013 with union K.

On December 17, 2013, a labor union "L" was established in company A. Union K requested collective bargaining on January 10, 2014 and union L also demanded one to company A on January 14, 2014. Company A decided the union L as a representative bargaining union on February 12, 2014 after going through the procedures of finalizing bargaining request unions. Company A concluded a collective bargaining agreement having a validity period of

two years with union L on April 3, 2014. Union K and its member workers filed a remedy request to the LRC against company A for the reason of an unfair labor practice, refusal of collective bargaining. They argued that their title as the representative bargaining union should be kept until March 20, 2015, pursuant to Article 14-10, Para. 1 of the Enforcement Decree of TULRAA.

### 2) Issues

Article 14-10, Para. 1, Subpara. 2 of the Enforcement Decree of TULRAA stipulates that in the case where the validity period of the collective agreement concluded with the employer after being decided as a representative bargaining union is less than two years, the title should be maintained for a period of two years from the effective date. However, it is questioned whether this regulation applies to the case where only one labor union exists at the workplace and it is recognized as the representative bargaining union without going through the procedures for establishment of a single bargaining channel.

### 3) Case developments

#### a. LRC

The RLRC dismissed the remedy request for the unfair labor practice on the grounds that union K cannot be regarded as a representative bargaining union that can be covered by Article 14-10, Para. 1, Subpara. 2 of the Enforcement Decree of TULRAA, as company A has not undergone the procedures of establishment of a single bargaining channel at the time of concluding the collective bargaining agreement with union K in 2013 (Jeonnam RLRC, 09/01/2014, 2014Buno35).

Union K appealed to the NLRC for review and the NLRC recognized the transfer of business between companies A and B, and approved union K as the representative bargaining union that could maintain the title for two years pursuant to Article 14-10, Para. 1, Subpara. 2 of the Enforcement Decree of TULRAA (NLRC, 12/29/2014, 2014Buno161).

Therefore, it was deemed that it constitutes an unfair labor practice to refuse collective bargaining with union K without a justifiable reason after deciding union L as a representative bargaining union by once again undergoing the procedures of establishing a single bargaining channel under the circumstances that there had already been a representative bargaining union.

**b. Court**

Company A filed an administrative litigation against the decision of the NLRC and the Administrative Court ruled that Article 14-10, Para. 1, Subpara. 1 of the Enforcement Decree of TULRAA, which stipulates the title retention period of a representative bargaining union, applies only to the case where there are plural bargaining request unions to the employer, but not the case where there is only one union (Seoul Administrative Court, 06/18/2015, 2015Guhap2840). The reasons are as in the following.

Firstly, a single labor union cannot become a representative bargaining union as Article 29-2, Para. 1 of TULRAA presupposes a case where *there are two or more labor unions established or joined by workers regardless of the type of organization in a business or workplace.*

Secondly, the position of a representative bargaining union is recognized only when it is finalized through one of the four stages listed in Paragraphs 2 to 5 of Article 29-2 of TULRAA since Article 14-10, Para. 1 of the

Enforcement Decree of TULRAA presupposes *a representative bargaining union determined pursuant to Article 29-2 (2) through (5) of TULRAA*.

Thirdly, the retention period of exclusive and monopolistic status as a representative bargaining union should be limitedly granted only when the procedures of establishment of a single bargaining channel have been completed, considering its possible significant influence on the activities of minority labor unions.

Union K filed an appeal against the Administrative Court's ruling, and the High Court quoted and maintained the position of the Administrative Court (Seoul High Court, 03/23/2016, 2015Nu57071). Union K again appealed to the High Court's ruling, and the Supreme Court also quoted and maintained the ruling of the Administrative Court (Supreme Court, 10/31/2017, 2016Du36956).

#### 4) Case significance

It was made clear from the ruling above that Article 14-10, Para. 1 of the Enforcement Decree of TULRAA on the retention period of the status as a representative bargaining union does not apply to a single labor union that has not undergone the procedures for establishment of a single bargaining channel.

However, it is regretful that the rulings have not clarified what they intend to say: is it that Article 14-10, Para. 1 of the Enforcement Decree of TULRAA shall not apply to all the cases in which there is only one labor union in the workplace, or is it that it does not apply to the case where the *procedures for establishment of a single bargaining channel* were not taken on the grounds that there is only one labor union, but not because of the fact itself that there is only one labor union?

In other words, in the case above, the labor union concerned was confirmed as a single labor union through the 'procedures of finalizing bargaining request unions, and subsequently *the procedures for establishment of a single bargaining channel* were not used. It is unclear which was the main reason the retention period of the status as a representative bargaining union has not been recognized: either the retention period was not guaranteed because there was a single labor union, or the status as a representative bargaining union was not recognized due to the lack of the procedures for the establishment of a single bargaining channel.[60]

### (3) A case of the duty of fair representation

#### 1) Factual background

In a company “C”, there were an enterprise-level labor union “K” which was composed of workers of company C and a chapter of an industrial union “L” which a part of workers of company C signed up for. In early November 2013, unions K and L requested collective bargaining, and company C conducted procedures for establishment of a single bargaining channel and confirmed union K, a majority union as the representative bargaining union on December 5, 2013. At the time of the request for collective bargaining, there were 140 members in union K and 17 members in union L. Union K signed a collective agreement with company A on February 27, 2014.

In the course of the collective bargaining, union K requested to company C that 3,000 hours of paid time-off in total be given, i.e. 2,080 paid time-off to the union President and 184 paid time-off to its five members. 3,000

60) Park Jong-hee, “*Is single labor union not able to be a representative bargaining union?*”, Labor Law, Vol. No. 320, Jan. 2018, p.121

hours was the maximum amount of working hours that could be exempted from the complainant's workplace according to the related laws and regulations. Company C provided paid time-off only to union K upon its request. It had been providing a union office to union K for about 20 years, but not to the chapter of union L. On May 20, 2014, union L filed a remedy request to the RLRC against company A for a violation of the duty of fair representation.

#### 2) Issues

It was questioned whether it can constitute as a violation of the duty of fair representation to grant paid time-off to the representative bargaining union but no paid time-off at all to a minority union under the situation that there is a significant difference in the number of members among the labor unions. In addition, it was also a question whether it can constitute a violation of the duty of fair representation to provide a union office only to the representative bargaining union but not to a minority union in the situation where there is not enough space to provide all the unions with union offices.[61)]

#### 3) Case developments

##### a. LRC

On July 15, 2014, the RLRC acknowledged that it was a violation of the duty of fair representation not to grant any paid time-off to the chapter of union L. However, it dismissed the request of union L ruling that it does not constitute a violation of the duty of fair representation not to provide a union office to a minority union on the grounds: it is not mandatory for

61) In this case, the act of not providing office equipment, furniture, communication facilities, etc. also became an issue but both the RLRC and the NLRC did not regard this as a violation of the duty of fair representation. Hereafter, these will not be discussed.

an employer to provide a union office to a labor union and when office space is actually calculated in proportion to the number of union members, the space to be provided to a minority union was less than 3.3m² (Seoul RLRC, 07/15/2014, 2014Gongjeong7).

Company C and unions K and L filed a request review to the NLRC, and the NLRC adjudicated that it constituted a violation of the duty of fair representation not to grant paid time-off and not to provide a union office to the chapter of union L (NLRC, 10/22/2014, 2014Gongjeong12 to 14 merged). With respect to the paid time-off, the NLRC considered that it is not necessary to allocate them in proportion to the number of union members. However, the NLRC ruled it as discrimination without a justifiable reason to provide them only to the representative bargaining union, for they should be also allocated to a minority union unless there are special circumstances. Regarding the provision of union offices, the NLRC considered that it is discrimination without a justifiable reason only to provide a union office to the representative bargaining union but not to a minority union; it is not mandatory for an employer to provide union offices, but when multiple labor unions coexist, the employer has to treat fairly and without discrimination to the unions participating in the procedures for establishment of a single bargaining channel.

**b. Court**

Company C filed an administrative litigation against the review award of the NLRC. The Administrative Court found that it is not a violation of the duty of fair representation, for there is a justifiable reason not to provide a union office to the chapter of union L. Notwithstanding, it was ruled that it is a violation of the duty of fair representation in a form of discrimination

without a justifiable reason to grant no paid time-off to the chapter (Seoul Administrative Court, 08/20/2015, 2014Guhap74237). The Seoul Administrative Court did not accept the rationale for not providing the chapter of union L with no paid time-off on the following grounds.

Firstly, in order to establish and maintain a labor union, a certain amount of time is required for union activities. That time is a fundamental and essential element for the existence of a labor union among others, as its existence is impossible when that time is not allowed.

Secondly, when it is considered that activities for paid time-off need to be essentially guaranteed, even within a minimum scope, to all the unions irrespective of the size of the number of the members, it should be seen that there is no justifiable reason in granting no paid time-off to a specific labor union unless there are special circumstances. However, it was considered that the allocation of paid time-off does not necessarily have to be equal or proportional to the size of the number of union members between the representative bargaining union and other unions.

On the other hand, the rationale was acknowledged for not providing a labor union office on the following grounds: 1) It is difficult to see a union office as a fundamental and essential element for the existence of a labor union, and if there is not enough space for union offices in the workplace of company C; 2) While the members of union K counts 140, the chapter of union L has only 17 members. The chapter that has a small number of members is able to carry out basic union activities without a union office; 3) Company C makes it possible for the chapter to use a substitute place as an alternative for failing to provide a union office so that it can deploy its union activities.

Union L appealed against the ruling of the Administrative Court that the failure to provide a union office is not a violation of the duty of fair representation. In the appellate trial, the High Court considered the failure to provide a union office to the chapter as a violation of the duty of fair representation on the following grounds (Seoul High Court, 06/17/2016, 2015Nu57064): firstly, a labor union office is an essential and core element for the existence and development of labor unions; secondly, even basic union activities are not likely to be easily conducted if space for union activities is not guaranteed, as union activities are mainly carried out within a company; thirdly, basic union activities require stable and permanent space in which the complainant' workers can visit the union at any time. Therefore, it cannot be said that they are sufficiently guaranteed with an opportunity to rent a meeting room of the headquarters whenever necessary. The employer and the representative bargaining union have an obligation to conclude an agreement on the use of the union office for the minority union, but there is no evidence that suggests such an effort.

#### 4) Case significance

The case is meaningful as it provided the criterion to decide whether the duty of fair representation is violated regarding allocation of paid time-off, provision of union offices, guarantee of hours for union activities, provision of office equipment, furniture, communication facilities, etc. that have been frequent troubling issues after multiple labor unions are allowed with the introduction of the establishment of a single bargaining channel and the duty of fair representation.

## Section 4: Tasks of Administrative Litigation

### 1. Overview

The tasks of the LRC including mediation, adjudication, etc. of labor disputes are basically an administrative action carried out by an administrative agency. An administrative litigation can be filed against administrative dispositions including adjudication, decision, arbitration award, etc. in order to seek their revocation.

The administrative litigation is based on the *Administrative Litigation Act*. However, the *Labor Relations Commission Act (LRCA),* the *LSA,* etc. have separate provisions regarding the major functions of the LRC. In other words, Article 3 of the LRCA has the NLRC handle a review case concerning a disposition by the LRC or SLRC, while Article 27 of the same act makes it possible to file an administrative litigation against the disposition of the NLRC. The litigation against an NLRC disposition should be filed within fifteen days from the date of service of the disposition, holding the NLRC Chairman as a defendant (LRCA, Article 27, Para. 1 and 3).

Apart from the LRCA, Article 31 of the LSA stipulates regarding a remedy case of unfair dismissal, etc. that ‘with respect to a decision made by the National Labor Relations Commission's review, the employer or worker may institute a lawsuit pursuant to the Administrative Litigation Act within fifteen days from the date when he/she is served with the written decision made by review’.[62]

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62) Article 14, Para. 2 of the FPWPA (remedy of discrimination against fixed-term and part-time workers), Article 21, Para. 3 of the TAWPA (remedy of discrimination against dispatched workers), and Article 85, Para. 2 (remedy request for unfair labor practices) and Article 29-4, Para. 4 (remedy request for a violation of the duty of fair representation) of TULRAA also have similar regulations.

On the other hand, Article 69, Para. 2 of TULRAA stipulates that ‘when the parties concerned consider that an arbitration award rendered by the National Labor Relations Commission or its decision on review (NLRC’s decision on review on an arbitration award rendered by LRC or SLRC) is inconsistent with any Act or subordinate statute or ultra vires, they may, notwithstanding the provisions of Article 20 of the Administrative Litigation Act, institute an administrative suit against the National Labor Relations Commission within fifteen days from the date of receipt of the award of arbitration or the decision on review’.[63)]

Administrative litigation has a positive aspect that the rights of the parties concerned can be faithfully protected and more careful decisions can be made, but there is also a negative aspect that disputes can be prolonged.

## 2. Jurisdiction of an administrative litigation

The former *Administrative Litigation Act* stipulated that an administrative court that has jurisdiction over the location of a defendant becomes a competent court of first instance in an appeal litigation (including a revocation litigation) against a disposition of an administrative agency. When a central administrative agency or its head is the defendant, an administrative court having jurisdiction over the location of the Supreme Court handled the appeal case. However, it has been pointed out it is unreasonable that a case on a disposition by central administrative agencies should be tried only in Seoul where the Supreme Court is located, even though many central administrative agencies have moved

63) This provision applies mutatis mutandis to appeal procedures regarding Article 29-2 (LRC’s decision on the procedures for establishment of a single bargaining channel), Article 29-3 (LRC’s decision on separation of a bargaining unit), and Article 42-4 (LRC’s decision on the level of maintenance and operation of essential services).

to Sejong City.

As a result, the Act was partially amended (effective on May 20, 2014), and the court of the first instance that will have jurisdiction over an appeal litigation is an administrative court having jurisdiction over the location of the defendant, and when the defendant is a central administrative agency or an organization affiliated with a central administrative agency, an appeal litigation may be filed to an administrative court having jurisdiction over the location of the Supreme Court, as well (*Administrative Litigation Act,* Article 9).

Accordingly, in case of an administrative litigation against the NLRC, the Daejeon District Court, which has jurisdiction over Sejong City, and the Seoul Administrative Court located in the Supreme Court's jurisdiction shall be the competent court, and the person who is to bring a lawsuit (plaintiff) can choose one between them. Currently, only one administrative court, Seoul Administrative Court (Seocho-gu, Seoul), has been established.

## 3. Procedures of administrative litigation by instance

### (1) Administrative litigation of first instance

#### 1) Filing an administrative litigation

A litigation against a disposition of the NLRC should be filed within fifteen days from the date of service of the disposition, in which the NLRC Chairperson becomes the defendant. This period is not prolongable (LRCA, Article 27, Para. 1 and 3). An administrative litigation against an NLRC disposition shall be filed to the Seoul Administrative Court or Daejeon District Court.

In order to file an administrative litigation, it is required to meet litigation requirements (main agent of litigation, merit of litigation, eligibility to sue,

eligibility to be sued, etc.). A person who intends to file an administrative litigation (plaintiff) must write up a complaint and submit it to the court together with a copy to be sent to the administrative agency, the other party in the case. The court should deliver a copy of the complaint to the administrative agency.

Electronic litigation has been recently expanded and an administrative litigation can be filed electronically. A copy of the complaint, too, can be electronically sent to the administrative agency.

**2) Accepting the complaint and designating an official in charge of litigation**

The NLRC shall designate a dedicated official in charge of litigation when a copy of the complaint is served from the court. Afterwards, the dedicated official in charge of litigation takes charge of the litigation. It is common to designate a maximum of five officials in charge of litigation in preparation for the case where the dedicated official in charge of litigation cannot attend the court proceedings on the date of (preparatory) pleading. In the past, the letter for designation of the officials in charge of litigation has been submitted to the court by mail or visit, but it can now be filed on the electronic litigation website of the Supreme Court.

**3) Notice of litigation filing**

An administrative litigation against a disposition of the NLRC usually affects the opponent of the plaintiff (when the plaintiff is an employer, the opponent is a worker and vice versa), so interested parties are informed that an administrative litigation has been raised and their supplementary participation is encouraged.

In addition, the dedicated official in charge of litigation shall report the

acceptance of the case to the General Litigation Officer (Head of Regulation Division) of the Ministry of Employment and Labor and the Head of the concerned High Prosecutor's Office (Seoul or Daejeon). The NLRC's department in charge of adjudication on review and the concerned LRC are also notified that the litigation has been filed.

#### 4) Writing up and submitting a written reply

A written reply is the first response in written to the complaint of a plaintiff. In accordance with the format prescribed in Article 2, Para. 1 of the *Civil Procedure Regulations*[64], it should be written, based on the contents of the NLRC disposition, in a way that refutes the claims of the plaintiff described in the complaint. The reply is encouraged to be filed within 30 days from the date of service of a copy of the complaint, unless the defendant falls in the category of service by public notice. The reply answers to the cause of action, based on the cause of action of the complaint, review adjudication and various supporting evidences, focusing on developments leading to the complaint, major points of the plaintiff's claims, contents of the fact-finding, and the reply and conclusion of the NLRC based upon these. The reply can be submitted through the electronic litigation website of the Supreme Court.

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64) Article 2 of the Civil Procedure Regulations (Matters to describe in a written reply to be submitted to the court) ① In a document to be submitted to the court by a party concerned or an agent, if there is no specific regulation, the matters listed below should be written down and the signature or the seal of the party or the agent must be put on.
1. Indication of the case; 2. Name, address and contact information (telephone number, facsimile number or e-mail address, etc.) of the party and the agent submitting the written reply; 3. Indication of the attached documents; 4. Date of the writing, and 5. Indication of the court

#### 5) Participation in pleading

A judge panel concerned shall designate a date for preparatory pleading or a date for pleading based on the progress of the litigation. The date of preliminary hearing is a procedure to clarify the litigation by organizing the arguments and evidences of the parties so that the defense can be conducted effectively and intensively before the date of the hearing. Usually only a presiding judge and the parties concerned are present. Relevant evidences are submitted, and witnesses, verification or appraisal should be requested.

The date for preliminary hearing is followed by a date for hearing. In recent years, it has become common practice to designate a date for hearing skipping a date for preliminary hearing. The date for hearing is for presenting one's case to the court, and a full-fledged hearing like questioning a witness takes place at this time.

When the judge panel in charge designates the dates for preliminary hearing or hearing, the NLRC official in charge of the litigation will attend them. If the participant does not appoint an agent for the case, the participant will be contacted and guided to attend the pleading session as much as possible. It is possible to respond to the pleading by submitting dossiers in the following cases, even after submitting a reply.

**Cases for submission of dossiers**

① If it is needed to refute the plaintiff's new claim which the plaintiff makes through a written preparation.
② If it is needed to ask the judge panel for elucidation as the plaintiff's allegation is doubtful or pleading is possible only after knowing relevant fact from the plaintiff.
③ If it is needed to continue debating controversial or repeated issues.

### 6) Closure of discussion and final ruling

When the parties concerned is finished with arguing or proving, or when the judge panel completes establishment of the decision, the discussion shall be closed. When the discussion is concluded, the judge panel will hand down a ruling based on the litigation materials submitted until the end of the discussion. In practice, the term “end of hearing” is often used instead of the end of discussion.

Even after the discussion is concluded, the NLRC official in charge of litigation may submit a written statement for reference or request resumption of discussion, if necessary. However, it is common to submit important statements or evidences in advance so that they can be adopted before the end of the pleading.

When the pleading is concluded, the judge panel will hand down a ruling on an appointed date of pronouncement. As the ruling must be verbally pronounced in an open court, the date of pronouncement is usually set as the date of the hearing of another case, which is held in open court. The NLRC official in charge of litigation does not have to attend the court on the date of pronouncement.

### 7) Reporting litigation affairs and deciding whether to appeal or not

Upon receiving the original written judgment from the court of first instance, the dedicated official in charge of litigation shall make a report of litigation affairs concerning the case to the General Litigation Officer (Head of Regulation Division) of the Ministry of Employment and Labor and the Head of the concerned High Prosecutor’s Office in the same manner as the report of the case acceptance.

In particular, if the case is defeated in the first trial court (including partial defeat), the NLRC needs to consider whether an appeal will be filed or not, and then direction on the appeal should be requested to the Head of the High Prosecutors's Office with an opinion on whether to appeal or not. The mandatory period for appeal (within 14 days from the date of service of the original written judgment) is unchangeable. Therefore, in practice, direction on the appeal is requested to the Head of the High Prosecutors's Office within seven days at the latest.

On the other hand, a participant can file an appeal within 14 days from the date of service of the original written judgment. In this case, the NLRC does not submit an appeal waiver to the court for the benefit of the participant even if it is directed to give up the appeal by the Head of the High Prosecutors's Office. If the defendant submits an appeal waiver, the participant will not be able to appeal independently. This is because the participant can not act against the will of the defendant who is the party to the case.

### (2) Administrative litigation of 2nd instance (appellate court) and 3rd instance (Supreme Court)

If there is no special provision, provisions of the litigation procedures for the trial of first instance shall apply mutatis mutandis to the litigation procedures in an appellate trial (CPA, Article 408), and litigation procedures of the trial of first instance and the appellate trial shall apply mutatis mutandis to the trial at the Supreme Court (CPA, Article 425). Therefore, the litigation generally proceeds similarly to a trial of first instance.

Firstly, an appellate court accepts a copy of the written appeal when it is served after a plaintiff or a participant who has lost the case in the trial

of first instance filed an appeal. When the defendant files an appeal, he/she submits to the court a written appeal stating the reasons for the appeal. The next step is to re-designate an official in charge of litigation and register him/her on the electronic litigation website of the Supreme Court. Other matters including submission of a written reply, participation in pleading, pronouncement of the ruling, report on litigation affairs, etc. are similar to those of the trial of first instance.

Next, the Supreme Court accepts a copy of the appeal from the court when it is served after the plaintiff or the participant who has lost his/her appeal in the trial of second instance filed an appeal to the court. If the defendant raises an appeal, he/she shall submit an appeal stating the reasons for the appeal. The next step is to re-designate an official in charge of litigation and submit his/her name in the same manner as the trial of first instance.

In the case of a trial in the Supreme Court, it is worthy of note that it is not possible to challenge the fact-finding of the original trial by making a new claim about the facts or submitting a new evidence. This is because it is an ex post facto trial, i.e. a trial handling legal matters, and as a result, the Supreme Court is subject to the facts legitimately finalized by the ruling of the original trial (CPA, Article 432). In addition, except for exceptional cases, ruling is made without holding pleadings (CPA, Article 430, Para. 1).

The judge panel in charge shall review the reason for appeal. If it falls under the reasons for discretionary review set forth in Article 4, Para. 11 of the *Act on Special Cases concerning Procedure for Trial by the Supreme Court*[65], it will no longer continue deliberation of the case and decide to

65) Article 4 *of the Act on Special Cases concerning Procedure for Trial by the Supreme Court (no further deliberation)* ① If the Supreme Court finds that the claim on the grounds for appeal does not include any of the following, it shall stop further deliberation and decide to dismiss the appeal.

dismiss the appeal.

When the defendant did not write down the reason on the final appeal, he/she shall submit a written statement of the reason within 20 days from the date of service of the notification of acceptance of the litigation records from the Supreme Court (CPA, Article 427). If he/she fails to submit a written statement of the reason for appeal within the time limit or if it is submitted after the period ended, the appeal is to be dismissed without further deliberation (CPA, Article 429).

Differently from the grounds for appeal, distinction is made for the grounds for 'appeal to the Supreme Court' between the general grounds for appeal (CPA, Article 423) and the absolute grounds for appeal (CPA, Article 424). So, the reason for appeal to the Supreme Court should be accordingly stated. In the case of the general grounds for appeal, 'if there has been a violation of the Constitution, Acts, administrative orders, or regulations that has affected the ruling' is an example. In the case of the absolute grounds for appeal, 'if the court for ruling is constituted violating the law', and 'if a judge that should not take part in the ruling participated in the ruling' are among those (CPA, Article 423 and 424).

When the original copy of the written judgment is served from the court, the NLRC official in charge of litigation records the results of the judgment in the book of current litigation, and reports the completion of the litigation

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1. If the original judgment is in violation of the Constitution or when it unfairly interprets the Constitution, 2. If the original judgment unfairly judged on the violation of laws by orders and regulations or dispositions, 3. If the original judgment interprets Acts, orders, regulations or dispositions contrarily to the precedents of the Supreme Court, 4. If there is no Supreme Court precedent for the interpretation of Acts, orders, regulations or dispositions, or if there is a need to change Supreme Court precedents, 5. If there is a grave violation of the Acts other than the provisions above from 1 to 4, 6. If there is one of the reasons stated in Article 424, Para. 1, Subpara. 1 to 5 of the *Civil Procedure Act*.

to the General Litigation Officer (Head of Regulation Division) of the Ministry of Employment and Labor and the Head of the concerned High Public Prosecutor's Office.

## 4. The closing of the administrative litigation and its feedback

### (1) The closing of the administrative litigation

There are four closing types in administrative litigations. The first one is when the complainant withdraws the complaint. When the complainant receives the copy of the litigation withdrawal statement issued by the court and waits for two weeks without taking a specific action, the litigation withdrawal becomes finalized. According to Article 266, Paragraph 2 of *the Civil Procedure Act*, the withdrawal from a lawsuit takes effect only by obtaining consent of the other party, if the other party has already submitted the preparatory document on the merits of the case, or made any statement or pleaded during the preparatory date for pleading. If the other party has not raised any objection within two weeks from the date when a written withdrawal from the lawsuit was served, he/she is deemed to have consented to the withdrawal from the lawsuit, according to Article 266, Paragraph 6 of *the Civil Procedure Act*.

The second one is when both parties concerned do not appear in the court on the date for pleading. When both complainant and respondent are not present in the court more than twice on the date for pleading, or do not plead even though both of them are present, the litigation is deemed to have been withdrawn unless they apply for designation of the trial date within a month. Also, even though they apply for designation of the trial date,

if they do not appear or plead on the date, the litigation is deemed to have been withdrawn.

The third one is when the ruling becomes finalized because the lost party does not appeal to a higher court. The ruling becomes finalized when it is made in the court of first or second instance and the lost party does not make an appeal within the given period to lodge the appeal.

The fourth one is when the ruling is upheld by the Supreme Court. When the Supreme Court makes a ruling, it becomes finalized and conclusive. However, when a case is remanded after reversal, the case is not closed yet as the court of second instance rehears the case and readjudicates on it.

When the administrative litigation is closed, it is reported to the Head of Regulation Division of the Ministry of Employment and Labor and the Chief Prosecutor of the High Prosecutors' Office with all of the written adjudications regarding the case attached and also, it is informed to the related divisions of the NLRC and the RLRCs.

### (2) Feedback on the result of the administrative litigation

Through its litigation task, the NLRC actively responds to the disputes over the NLRC adjudications, catching up with the current trend in court rulings and reflecting it in its adjudication, which enhances reliability and quality of the LRC adjudications.

To this end, when court rulings are made, those in charge of the litigation task of the NLRC spread the information to investigation officers and public interest members, and also provide them with analysis on the recent trend in court rulings, significant cases, and new rulings on controversial issues so that they can refer to them when making new adjudications.

When the court makes a ruling to reverse the NLRC adjudication and it becomes finalized, the NLRC redisposes the case after reconsideration by the Adjudication Committee (AC). However, in the case of a reversal of the NLRC remedy order, the NLRC redisposes it without reconsideration. In the case of the redisposition, a hearing meeting is not usually convened and in case when both parties agree or request, it can be redisposed by the single adjudicator (LRC Rules, Article 99).

## 5. Litigation statistics

Cases such as NLRC review adjudications or arbitrations, which are subject to lawsuit, are about 1,450 annually as shown in [Table 3-19]. Among them, those that are actually litigated are about 400 a year, which shows that the litigation rate is around 30%. In 2017, the litigation rate marked 31.7%, as 449 out of 1,417 cases were actually brought to the lawsuit. It means that less than 5% of the cases filed to the RLRCs are proceeded to the litigation phase after adjudications by the NLRC.

Also, the number of the cases that are closed each year is about 400, which has shown a moderate increase for the past five years except for in 2016. The litigation success rate has been around 80% and the sustainment rate of review award including withdrawal has been around 85% during the same period, but it was reduced to 77.9% in 2017.

[Table 3-19] Yearly administrative litigations

(cases, %)

| Classification | Cases subject to litigation | Cases filed for litigation | | | Litigation rate | Cases closed | | | | | Sustainment rate of review award | Still at hearing | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | Filed by workers | Filed by employers | | Total | Cases won | Success rate | Cases lost | Cases withdrawn | | Administrative court | High Court | Supreme Court |
| 2013 | 1,463 | 443 | 224 | 219 | 30.3 | 340 | 234 | 85.1 | 41 | 65 | 87.9 | 346 | 151 | 87 |
| 2014 | 1,304 | 384 | 211 | 173 | 29.4 | 381 | 246 | 80.7 | 59 | 76 | 84.5 | 357 | 151 | 76 |
| 2015 | 1,388 | 415 | 186 | 229 | 29.9 | 423 | 285 | 81.2 | 66 | 72 | 84.4 | 305 | 154 | 52 |
| 2016 | 1,423 | 457 | 183 | 274 | 32.1 | 387 | 241 | 79.5 | 62 | 84 | 84.0 | 410 | 164 | 90 |
| 2017 | 1,417 | 449 | 201 | 248 | 31.7 | 466 | 297 | 74.3 | 103 | 66 | 77.9 | 421 | 153 | 99 |

* Cases subject to litigation means cases regarding review adjudications, arbitration, decision of the essential minimum services, discrimination redress order, imposition order for enforcement levy of the NLRC (imposition order for enforcement levy has been reflected in the data since July 2013).
* Litigation rate = Cases filed for litigation / cases disposed by the NLRC * 100 (Since cases disposed by the NLRC and cases filed for litigation are one-year statistics for the concerned year, there might be some errors due to limitation period (15 days), petition submission date, cases combined or divided, etc.).
* Success rate = Cases won / (cases closed - cases withdrawn) (including partial wins)
* Sustainment rate of review award = (Cases won + cases withdrawn) / cases closed (including partial wins. The sustainment rate is based on the cases that are filed for litigation, not all of the cases disposed by the NLRC such as review adjudications and decisions).

If the cases filed for litigation in 2017 are taken for example, unfair dismissal and other discriminatory measures cases took the largest share, recording 357 out of the total 449 cases filed for litigation, followed by unfair labor practices, which marked 35. The litigation rate was, however, the highest in unfair labor practices with 59.3%.

[Table 3-20] Litigations in 2017 classified by the type of the case

(cases, %)

| Classification | Cases subject for litigation | Cases filed for litigation | | | Litigation rate |
|---|---|---|---|---|---|
| | | Total | Workers | Employers | |
| Total | 1,417 | 449 | 201 | 248 | 31.7 |
| Unfair labor practices (①) | 59 | 35 | 18 | 17 | 59.3 |
| Unfair dismissal, etc. (②) | 874 | 357 | 164 | 193 | 40.8 |
| Combined cases (①+②) | 259 | 24 | 9 | 15 | 9.3 |
| Discrimination redress | 34 | 7 | 1 | 6 | 20.6 |
| Essential minimum services decision | 0 | 0 | 0 | 0 | 0.0 |
| Others | 191 | 26 | 9 | 17 | 13.6 |

* Unfair dismissal, etc.: This category includes forced leave of absence, suspension from work, transfer, wage cut, removal from the position, etc., as well as unfair dismissal.
* Combined cases are the cases that have one written adjudication, although the number of cases is counted two. (When the cases were filed to the NLRC, they were filed separately. So, the NLRC counts them two cases but the court counts them one case).
* Others: This category includes bargaining representation, fair representation duty, enforcement levy, arbitration, and other cases such as damages claims.

# Chapter 4

## International Comparison of Labor Disputes Resolution Systems

Section 1: Labor Dispute Resolution Systems in Major Countries

Section 2: International Comparison by Category

Section 3: International Comparison and its Significance

Labor Relations Commission in Korea

# Chapter 4
# International Comparison of Labor Disputes Resolution Systems

The LRCs in Korea conduct various missions comprehensively for labor relations dispute resolution in areas of mediation, adjudication, union pluralism, and so forth. When compared with similar systems in other countries, a few things are notable. For example, the Korean LRC handles both mediation and adjudication cases; is composed of three parties; and, is an administrative agency in terms of its relation to other government agencies, but has a quasi-judicial role in terms of conducting responsibilities.

The labor relations dispute resolution systems in each country are all different. In this chapter, the functions and responsibilities of the LRCs in Korea are compared with those in other countries, which may shed a light on the unique characteristics of the Korean LRCs.

## Section 1: Labor Dispute Resolution Systems in Major Countries

### 1. United States

The U.S. labor dispute resolution system is largely divided into two: collective labor relations and individual labor relations. For collective labor relations, there are the National Labor Relations Board (NLRB) and the Federal Mediation and Conciliation Service (FMCS). The NLRB deals with unfair labor practices and the FMCS mediates collective disputes. For individual labor relations, there is the Equal Employment Opportunity Commission (EEOC), which

deals with employment discriminations based on Title VII of the Civil Rights Act, which guarantees employers freedom to hire whomever they want unless it is subject to discrimination.

### (1) National Labor Relations Board (NLRB)

The NLRB is a federal agency established by the U.S. Congress in 1935, which adjudicates on unfair labor practices and acknowledges exclusive bargaining representation. It also supports resolution of union election disputes. The NLRB is composed of the Board, General Counsel, Regional Directors, and Administrative Law Judges.

The Board is composed of five members and acts as a quasi-judicial body for unfair labor practices adjudication. The General Counsel governs 51 regional offices, represents the NLRB in the court, and has authority to investigate unfair labor practices and file a suit against those who are accountable for the acts. In addition to investigation and filing a suit for unfair labor practices, Regional Directors supervise elections for labor union representation[66].

In the NLRB, the roles of the Administrative Law Judges and field examiners are noticeable[67]. When a petition on an unfair labor practice is received, field examiners in the Regional Office concerned investigate the case to find out whether there is a proper reason to believe that there has been a labor law violation.

When the Regional Director decides that there is a justifiable reason to believe so, the Regional Office proceeds with voluntary settlement between the parties to remedy the violation. When such an informal settlement fails,

66) Kim Hoon and five other co-writers, “A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement”, KLI, 2009, p.184

67) Byeon Ji-young, “A Study on U.S. Administrative Law Judge System”, the Judicial Policy Research Institute, 2017, p.83

a formal action is taken and the case is allocated to an Administrative Law Judge.

The Administrative Law Judge presides over a trial to determine whether there has been an unfair labor practice. The judge orders an injunction for the charged unfair labor practice or a remedy for the act, or dismisses the complaint. Unless there are other requests filed to the decision by the Administrative Law Judge, it automatically becomes the finalized decision and order of the NLRB. If a review is filed, the order issued after the review by the 5-member Board becomes the finalized decision and order.

Field examiners of the NLRB[68], working at regional offices, are in charge of implementing the primary labor laws in the U.S. They investigate employees, labor unions, or employers who raised charges of unfair labor practices and requested remedies thereof, and take appropriate measures or advise remedies. They can conduct elections to determine union representation and also act as hearing officers in contested representation matters.

General Counsel has authority for ex officio investigation in prior to the formal hearing procedures. However, it is field examiners or field attorneys that carry out investigations on the field under the guidance of Regional Directors. The jurisdiction of ex officio investigation of the NLRB covers the whole nation, and they can issue a subpoena requesting witness attendance or submission of evidence. Those who obstruct these procedures may be subject to fine or imprisonment[69].

68) NLRC, “A Study on Ex Officio Investigation for Unfair Labor Practices and Burden of Proof in Other Countries”, International Labor Law Institute, 2016, p.26 and below.

69) NLRC, “A Study on Ex Officio Investigation for Unfair Labor Practices and Burden of Proof in Other Countries”, International Labor Law Institute, 2016, p.30.

### (2) Federal Mediation and Conciliation Service (FMCS)

The FMCS[70] provides mediation and preservation services of labor disputes in the U.S. It was founded in 1947, when *the National Labor Relations Act* was amended, to mediate and arbitrate labor disputes. Recently, it has extended its service coverage to mediation and arbitration for ordinary disputes such as disputes related to administrative services, environment, and education. It also provides assistance to other countries to establish a labor dispute resolution system in a globalized economy.

The Director of the FMCS is a secretarial level office and appointed by the President with consent of the Congress. He/She cooperates with the President or the Congress, mediates labor disputes in person when the disputes are significant, governs personnel and ethics matters for mediation officials, and controls the finances of the agency.

The FMCS staff is basically composed of full-time mediators, which were about 500 in 1947. Since then, as the U.S labor relations have been increasingly stabilized, the number of mediators has been on the continuous decline to around 200 until now. The services that the FMCS provides include mediation of interests, mediation for preventive purpose, arbitration, alternative dispute resolution for Government, grants to encourage labor-management cooperation, international programs, training courses of the FMCS Institute, etc.

### (3) Equal Employment Opportunity Commission (EEOC)

The mandate for the establishment of the EEOC[71] is specified under *Title*

70) Kim Hoon and five other co-writers, “A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement”, KLI, 2009, p.179-181; https://www.fmcs.gov

71) Kim Hoon and five other co-writers, “A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement”, KLI, 2009, pp.184-185.

*VII of the Civil Rights Act* of 1964, which says, “It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, because of such individual's race, color, religion, sex, or national origin.” The mission of the EEOC is to administer the Civil Rights Act of 1964, which aims to eliminate all kinds of unlawful employment discrimination, as much as possible.

The amendment of the Act in 1972 granted substantial authority to the EEOC to file a charge against employers who do not comply with discrimination remedy to the federal court. The EEOC is composed of five Commissioners and one General Counsel. All of them is appointed by the President with consent of the Senate. The term of the Commissioner is five years and their appointment date and year may be different. Among them, the President designates Chairman and Vice Chairman of the Commission. The term of General Counsel is four years. General Counsel directs and supervises litigations according to the six laws related to the EEOC, and the Commissioners develop and implement policies on equal employment opportunities and have authority to order remedies and issue charges when discrimination is recognized.

## 2. United Kingdom

### (1) Employment Tribunal (ET)

The Employment Tribunal[72] has a similar function like the unfair dismissal adjudication of the Korean LRC. However, it adjudicates on not only unfair dismissal but also labor disputes regarding 70 different types of employees’

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72) Kim Hoon and five other co-writers, “A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement”, KLI, 2009, p.193 and below.

rights. When a complaint is filed to an ET, it is referred to the Advisory, Conciliation and Arbitration Service (ACAS) for conciliation or mediation first, through which labor and management try to reach an agreement autonomously. When such an attempt is failed, the ET is involved to dispose the case. Complaints dismissed by the ET can be appealed to the Employment Appeal Tribunal (EAT).

Currently, there are 29 ETs and 2 EATs (in London and Edinburgh) in the U.K. The ET is composed of judges with at least seven years of experience in practicing laws and lay members representing workers and employers. As of April 2011, there are 424 judges, and 1,783 lay members in ETs and 20 judges and 53 lay members in EATs. Salaried judges of the ETs are 170 and fee-paid judges are 254. The Employment Tribunal Service (ETS) under the Ministry of Justice administers the ETs. The staff of the ETS provide judges and members of the ETs, who usually form a three-member panel, administrative support such as writing and delivering documents regarding hearing preparation, conduction, and outcome, as well as hearing arrangement[73].

The ET is a three-member consensus based body, which is composed of a legally qualified Judge and two lay members with experience in labor relations. In the U.K., ordinary courts are often said to be hostile toward the interest of labor unions and, the ET, due to its structure as a three-member tribunal, is known as more amicable to labor unions than their ordinary counterparts. However, the two lay members of the ET from the labor and management sides do not act as those who represent the interest of the concerned

73) Lee Seong-hee and three other co-writers, “Labor Dispute Resolution System: International Comparison and How to Improve It”, Korea Labor and Employment Relations Association, 2012, p.29.

parties.

Claims that are brought to the ET are issues related to *statutory* breaches only. It has jurisdiction on: unfair dismissal; redundancy pay; failure to consult a union or representative organization over a proposed redundancy or business transfer; equal pay; violation of the laws that prohibit discriminations based on gender, race, disability, etc.; unlawful wage deductions; unlawful disciplinary measures; expulsion of members from the union; Sunday work; work hours and minimum wages, etc. It also has jurisdiction to some extent on workplace health and safety and occupational training and compensation. The jurisdiction of the ET shows that it mainly handles cases regarding individual workers' rights issues, while the ordinary court deals with collective industrial dispute cases.

When either party concerned disagrees with the ET ruling, they can appeal to the Employment Appeal Tribunal (EAT). The EAT also adopts a three-member panel system. The EAT reviews only whether the ET decision followed the statutory procedures, not any new claims or facts that the concerned parties are presenting. When either party still disagrees with the EAT ruling, they can appeal to the Court of Appeal, and finally to the House of Lords, which is the Supreme Court of the U.K[74].

### (2) Advisory, Conciliation and Arbitration Service (ACAS)

In the U.K., the Advisory, Conciliation and Arbitration Service (ACAS)[75]

74) Lee Seong-hee and three other co-writers, "Labor Dispute Resolution System: International Comparison and How to Improve It", Korea Labor and Employment Relations Association, 2012, p.25.

75) Lee Seong-hee and three other co-writers, "Labor Dispute Resolution System: International Comparison and How to Improve It", Korea Labor and Employment Relations Association, 2012, p.26.

plays a key role in resolving labor disputes. The ACAS mediates individual labor disputes, for example, unfair dismissal, contract breach, various types of discrimination (based on gender, race, disability, age, etc.), minimum wage, redundancy pay, equal pay for equal work, working time, labor flexibility, etc.

Since the ACAS does not have adjudication authority, except for the arbitrations by a few arbitrators, most of the services are mediations provided by individual mediators or senior mediators, who are usually hired by the ACAS. It has its head office in London and 11 regional offices across the country. The ACAS is governed by an independent Council, which consists of 12 non-standing members including four members representing labor and management, and four independent members including the Chair.

The ACAS has close relations with the ET in resolving labor disputes. While the ACAS tries to resolve disputes through mediation procedures as an independent organization, the ET disposes complaints filed according to the judicial procedures, showing a distinctive feature from the ACAS. All the complaints filed to the ET must go through mediation procedures first, prior to adjudication procedures. This is because the U.K. labor dispute resolution system is based on 'the principle of prior recourse to mediation', in which labor disputes should be settled between the parties concerned voluntarily, rather than resorting to judicial methods. In practice, about 75% of the complaints filed to the ET are settled or withdrawn in the ACAS phase.

### (3) Others

The Central Arbitration Committee (CAC)[76] recognizes labor unions and

76) Kim Hoon and five other co-writers, "A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement", KLI, 2009, pp.191-192.

supervises implementation of the EU guidances for workers'right to information and labor-management consultation as well as the guidance regarding the European Works Council. When an employer refuses the collective bargaining request by a labor union, the union files a complaint to the CAC. When the union is qualified by meeting certain requirements, the CAC awards an arbitration decision that recognizes the union and, as a result, the employer has to accept the bargaining request.

However, the CAC does not have any legal measures or procedures to force unification of bargaining channels of multiple labor unions at workplace.

## 3. Germany

### (1) Labor Court

The labor court[77] in Germany is established by Article 95, Paragraph 1 of the Constitution and *the Labor Court Act* (Arbeitsgericht-sgesetz, ArbGG) in Germany. *The Labor Court Act* stipulates jurisdiction of the labor court, its structure and procedures, composition of the bench, and other things related to its operation. Since the labor disputes are considered as civil cases, *the Civil Procedure Act* (Zivil-prozessordnung) is applied to the matters which are not stipulated by individual provisions of the ArbGG.

The labor court in Germany ① endeavors to resolve disputes through mediation and conciliation, and; ② facilitates the process of claiming workers' rights and attaining them in a relatively expeditious and less-expensive way. It also provides subsidies from the national fund for litigation expenses to workers whose income is below a certain level. In the first instance of the

77) Kim Hoon and five other co-writers, “A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement”, KLI, 2009, pp.207-208.

labor court, the complainant can file an oral complaint and conduct the proceedings by themselves without a legal agent. In the court of second instance, an attorney or a representative of workers' or employers' groups can serve as a litigation agent for the concerned party, and in the court of third instance, only attorneys can serve as litigation agents.

In Germany, the labor court system is successful because ① it has a variety of grounds by substantive law for issues that it handles; ② most of the dispute cases are claims on the rights based on collective agreement such as CBA or workplace agreement; ③ it has an independent system including receiving a remedy request to awarding final rulings.

### (2) Adjustment Systems

In Germany, when the parties concerned to the collective agreement voluntarily want to resort to the adjustment procedures set by the nation, they may request mediation or arbitration services provided by state governments. Compulsory mediation or arbitration systems by the nation were all abolished between 1910s and early 1930s. There are two measures for adjusting collective disputes on the interest between labor and management. One is to go through the arbitration service, either private or public, provided by the Arbitration Commission[78] (Schlichtungskommission) in prior to the vote on strike by union members after the collective bargaining failed. The other is to resolve disputes through services by a company conciliation committee (Einigungsstelle) when opinions conflict between work councils and individual employers regarding the application of workplace regulations.

Public mediation begins at the request of the labor and management when

78) Kim Hoon and five other co-writers, "A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement", KLI, 2009, pp.210-212.

private mediation procedures or agencies are not stipulated in the collective agreement or as they fail to agree with the mediation procedures stipulated in the CBA. The Mediation Office under the Ministry of Labor of a state government conducts mediation and mediators (Landesschlichter) from the Ministry provides mediation services. In their roles, the mediators consult the parties concerned to the CBA on their labor relations and help them reach an agreement to avoid disputes.

## 4. Japan

In Japan[79], the Labor Relations Commission (LRC) has resolved collective labor disputes for more than 60 years. In the case of individual labor disputes, there had been no specialized agencies for quite a long period. However, in early 1990s, when Japan's bubble economy collapsed, individual labor disputes increased sharply and the necessity for an individual labor dispute resolution system was raised to respond to the increase. As a result, *the Act on Promoting the Resolution of Individual Labour-Related Disputes* (個別労働関係紛争の解決の促進に関する法律) was legislated in 2001. Before the legislation of the Act, an aid program for resolving employment disputes had been offered by the Labor Standards Bureaus of the Prefectural Offices of the Ministry of Labor, which started in 1998, when *the Labor Standards Act* was amended. According to *the Individual Labor-Related Disputes Resolution Act*, the aid program was fully modified as an individual labor dispute resolution system. In 2004, *the Labor Tribunal Act* was legislated and the Labor Tribunal System was introduced as a new individual labor

79) Choi Seok-hwan, "The Labor Relations Commission System in Japan and Recent Trend", Labor Law Forum (18th Issue), 2016, p.217 and below.

dispute resolution system, in which part-time tribunal members participate as labor judges.

Currently, the Labor Relations Commission handles collective labor disputes such as strike mediation or remedies for unfair labor practices. Regarding individual labor disputes, Prefectural Labor Offices provide comprehensive counseling services and the Directors of the Labor Offices in each prefecture also provide advice and guidance in person. Also, the Dispute Adjustment Commission provides conciliation services and the Labor Relations Commission provides mediation services for individual labor disputes. Therefore, it can be said that administrative approaches as well as judicial resolution (labor tribunal system) are two keys in Japan's dispute resolution system[80].

### (1) Labor Relations Commission

The Labor Relations Commissions in Japan are composed of members representing workers, employers and public interest in equal numbers (the Labor Union Act of Japan, Article 19-3). This three-party panel system is good for promoting autonomous settlement of labor disputes between the parties concerned, while utilizing expertise of their members[81].

The members representing workers and employers are nominated by labor unions and employers' associations respectively. Before public interest members are designated, their list is provided to both workers' and employers' members to attain their consent. It is significant as it provides workers and

80) Lee Seong-hee and three other co-writers, "Labor Dispute Resolution System: International Comparison and How to Improve It", Korea Labor and Employment Relations Association, 2012, p.167.

81) Translated by Lee Jeong, Labor Laws in Japan, Beopmoonsa, 2015, p.850.

employers with a medium to secure neutrality of public interest members[82]. The term of the LRC member is two years and can be renewed. Due to the amendment in 2004, the Central Labor Relations Commission has been able to designate maximum two standing members among its public interest members (the Labor Union Act, Article 19-3, Paragraph 6)[83].

A non-standing public interest member system has merits as it is easy to find labor relations experts from the private sector and they are expected to maintain neutrality towards the concerned parties as they are only non-standing members, thus not being obsessed with their positions. At the same time, there are demerits as well, as they may not be fully committed to the case handling due to time restraints[84].

The Japanese LRC has authority on basically two key areas[85]: review on unfair labor practices and collective dispute adjustment (and recently, conciliation and counseling services for individual labor disputes have been added).

The LRC's quasi-judicial authority includes the review on the qualification of labor unions and unfair labor practices, and the Central LRC's review on adjudications by Prefectural LRCs[86].

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82) Translated by Lee Jeong, Labor Laws in Japan, Beopmoonsa, 2015, p.851.

83) As of August 3, 2015, there are no standing members in 15 public interest members, which consists of 11 professors, 3 lawyers, and 1 former judge.

84) Translated by Lee Jeong, Labor Laws in Japan, Beopmoonsa, 2015, p.853.

85) The LRC conducts its responsibilities in accordance with Article 5, Article 11, and Article 18 and has authority on review of unfair labor practices and conciliation, mediation and arbitration of labor strike (Trade Union Law, Article 20).

86) Compared with the Korean system, the Japanese LRC in principle does not have adjudication functions on individual remedy requests, which are usually handled through a labor tribunal system or conciliation by regional labor offices. Also, the LRC does not have jurisdiction on discrimination redress (in case of violation of the obligation of balanced employee treatment according to the newly introduced Part-time Act)

### 1) Unfair labor practice review and remedies

The LRC has the authority to determine whether the filed case constitutes an unfair labor practice and order a remedy in that case. This is the most essential authority of the LRC, which is usually exercised by public interest members. However, workers' and employers' members can also participate in investigation, hearing, or conciliation recommendation procedures, and may present their opinions when witness attendance order, evidence submission order, or remedy or dismissal orders are issued (Labor Union Act, Article 24).

### 2) Mediation of industrial action

Article 1 of *the Labor Relations Adjustment Act* (LRAA) stipulates that "The purpose of this Act are, in conjunction with the Labor Union Act, to promote the fair adjustment of labor relations and to prevent or settle labor disputes and thereby contribute to industrial peace and economic development." The Act mentions, as adjustment means of the LRC, *conciliation* (Article 10 and below), *mediation* (Article 17 and below) and *arbitration* (Article 29 and below). In other words, the adjustment of industrial actions by the LRAA includes conciliation, mediation, and arbitration.

Conciliation is the most easily accessible system, which can be requested by either labor or management side and be pursued by conciliation members designated by the LRC. In the case of mediation or arbitration, it starts with the request by both parties and is handled by the mediation committee or arbitration committee.

In the case of conciliation or mediation, the LRC does not force both parties to accept the LRC's resolution. Rather, it provides advice as a fair third party and encourages both parties to understand each other and resolve

the dispute voluntarily. It means that even after both parties request conciliation or mediation, they can sill use other methods for dispute adjustment as agreed by both parties or written in the collective agreement. Except arbitration, other resolution methods are not forced upon either party.

[Table 4-1] Types of industrial action adjustment in Japan

| Classification | Conciliation | Mediation | Arbitration |
|---|---|---|---|
| By whose request does it commence? | Either party or both parties | Both parties<br>Either party as stipulated in the agreement<br>In case of public services, either party | Both parties<br>Either party as stipulated in the agreement |
| Who in the LRC handles the case? | Conciliation members | Mediation Committee (Composed of a three party panel with labor, management, and public interest members) | Arbitration Committee (Public interest members) |
| Is a resolution proposed? | Sometimes it is proposed. | It is proposed in principle. | It is proposed in principle. |
| Is a resolution acceptance compulsory? | It is up to the parties. | It is up to the parties. | It has a binding force the same as CBA. |
| Is it possible to choose other adjustment methods after requesting it? | Possible | Possible | Possible |
| Can any other person except the concerned parties request it to begin? | Possible | Possible | Impossible |

* Refer to the Web site of the Central Labor Relations Commission in Japan (http://www.mhlw.go.jp/churoi/chousei/sougi/sougi01.html)

### 3) Qualification review of labor unions

The LRC has authority to review and decide whether a labor union[87] and its constitution[88] satisfies all the necessary requirements by the Labor Union Act. Only public interest members review the qualification of a labor union and this process is necessary when a labor union applies for registration as a juristic person or requests a remedy for unfair labor practices. There

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87) Article 2 of the Labor Union Act: The term "Labor unions" as used in this Act shall mean those organizations, or federations thereof, formed voluntarily and composed mainly of workers for the main purposes of maintaining and improving working conditions and raising the economic status of the workers, however, this shall not apply to any of the following items:
 (i) which admits to membership of officers; workers in supervisory positions having direct authority with respect to hiring, dismissal, promotions, or transfers; workers in supervisory positions having access to confidential information relating to the employer's labor relations plans and policies so that their official duties and responsibilities directly conflict with their sincerity and responsibilities as members of the labor union; and other persons who represent the interests of the employer;
 (ii) which receives the employer's financial assistance in paying the organizations' operational expenditures. (followings are omitted.)
 (iii) whose purposes are confined to mutual aid service or other welfare service;
 (iv) whose purposes are principally political or social movements.

88) The constitution of a labor union shall include the provisions listed in the following items:
 (i) name;
 (ii) the location of its principal office;
 (iii) members of a labor union other than a labor union that is a federation (such other labor union hereinafter referred to as a "local union") shall have the right to participate in all issues or disputes of such labor union and shall have the right to receive equal treatment;
 (iv) no one shall be disqualified from union membership in any case on the basis of race, religion, gender, family origin or status;
 (v) in the case of a local union, that the officers shall be elected by direct secret vote of the union members, and, in the case of a federation or a labor union with nation wide coverage, that the officers shall be elected by direct secret vote either of the members of the local unions or of delegates elected by direct secret vote of the members of the local unions;
 (vi) a general meeting shall be held at least once every year;
 (vii) a financial report showing all sources of revenues and expenditures, the names of main contributors and the current financial situation, together with certificate of accuracy by a professionally qualified accounting auditor commissioned by the union members, shall be released to the union members at least once every year,
 (viii) no strike shall start without a majority decision made by direct secret vote either of the union members or of delegates elected by direct secret vote of the union members;, etc.

is difference between Korea and Japan in regard to union qualification review. In Korea, labor unions need to report to the authorities when they are established but in Japan, the LRC reviews the qualification of a labor union only when they request a remedy to the LRC.

#### 4) Resolution of an extensive coverage of CBA

When a particular collective agreement is applied to a majority of the workers of the same kind in a particular locality, the Minister of Health, Labor and Welfare or the prefectural governor may, at the request of either one or both of the parties to the collective agreement concerned and, pursuant to a resolution of the LRC, decide that the collective agreement concerned shall apply to the remaining workers of the same kind employed in the same locality and to their employers. In the case the LRC finds that the collective agreement contains something inappropriate, the Commission may amend the part (Labor Union Act, Article 18).

#### 5) Enforcement authority

If necessary, the LRC may request the attendance of the employer or the employers' organization and the labor union or others concerned, or the presentation of reports or necessary books and documents. The LRC may also have its members or staff inspect factories and other workplaces concerned and inspect the business conditions, books and documents and other objects (Labor Union Act, Article 22, Article 30). Any person who has failed to report, made false reports, or failed to submit books and documents; and any person who has failed to appear or has escaped, obstructed, or refused inspection; is punished by a fine.

### 6) Adjustment of individual labor disputes

The LRCs are located in 44 prefectures out of the total 47 and provide labor relations counseling and conduct conciliation services. Since the services provided by Prefectural LRCs have been classified into the responsibilities of prefectural governments and *the Act on Promoting the Resolution of Individual Labor-Related Disputes* stipulated that prefectural governments must take necessary measures to promote autonomous settlement of labor disputes between the parties, employees have been able to choose LRC conciliation along with other dispute resolution measures, amidst an increasing trend of individual labor disputes.

Prefectural governments, in order to prevent the occurrence of individual labor disputes and to promote the voluntary resolution of individual labor disputes, shall endeavor to promote the provision of information, consultation, mediation and other necessary measures to workers, job applicants and business operators (Act on Promoting the Resolution of Individual Labor-Related Disputes, Article 20, Paragraph 1). In the case where a Prefectural LRC conducts above-mentioned responsibilities, the Central LRC may give the Prefectural LRC necessary advice and guidance for resolution of individual labor disputes (Act on Promoting the Resolution of Individual Labor-Related Disputes, Article 20, Paragraph 3).

On the occasion of the legislation of *the Act on Promoting the Resolution of Individual Labor-Related Disputes*, the LRC also conducts conciliation for individual labor disputes, which are about 500 cases annually[89]. This trend indicates that the LRC is responding actively to individual labor disputes.

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89) Lee Seong-hee and three other co-writers, “Labor Dispute Resolution System: International Comparison and How to Improve It”, Korea Labor and Employment Relations Association, 2012, p.167.

### (2) Labor Tribunal System

The Labor Tribunal System[90] aims to resolve individual labor disputes appropriately and expeditiously, based on the rights relations of the concerned parties, by a labor tribunal panel[91].

The labor tribunal panel is composed of three members: one judge and two members from the labor and management sides who have knowledge and experience in labor and employment relations. The panel disposes a case within three hearing sessions. The disposition by the panel has the same effect as a conciliation ruling by the court when no opposition is raised from either party concerned. Even when either party raises an opposition, the disposition by the labor tribunal panel is still effective but it is considered that a civil litigation is automatically filed to the district court and the case proceeds likewise.

This system is unique as it involves mediation procedures and is also connected to litigation procedures, as well as hearing limitation to three sessions, which focuses on expeditious resolution[92].

This system forces the concerned parties to participate in the dispute resolution procedures, which ensures effective handling of the case to some extent. The concerned parties are recommended with mediation first and when it fails, the panel disposes the case with its authority. When either party disagrees with the disposition by the panel, a civil litigation immediately proceeds.

90) Song Gang-jik, “Labor Tribunal System in Japan: its Operation and Problems”, *Labor Law Study* (27th Issue), 2009, p.345 and below. / Choi Seok-hwan, “Individual Labor Dispute Resolution System in Japan: Focusing on Non-trial Resolution Methods”, KLI, 2011.

91) Lee Seong-hee and three other co-writers, “Labor Dispute Resolution System: International Comparison and How to Improve It”, Korea Labor and Employment Relations Association, 2012, p.172.

92) Takashi Muranaka, "Current Situation and Problems of Labor Dispute Resolution System", Journal of Japanese Labor Research (No. 581 Issue), 2008

This system has strong points as its members representing labor and management participate in the hearing or mediation sessions and, since the panel is established under the judicial court, it naturally has authority on dispute resolution.

However, it also has some weak points: it costs as much as half of the expenses for civil litigation; it needs assistance from an attorney as the burden on writing the application form or submission of evidence is considerable and an expeditious proceeding of related procedures is required, and as a result, the expense for hiring an attorney is quite burdensome; and, from the perspective of workers, it may not be easy to use it.

### (3) Prefectural Labor Office

Prefectural Labor Offices[93] have Labor Standards Inspection Office, Employment Service Center (Hello Work), Dispute Adjustment Commission, and Equal Employment Department, which is an internal department of the Prefectural Labor Office. When requested by either or both parties to a labor dispute, Directors of Prefectural Labor Offices provide necessary advice or guidance.

The Dispute Adjustment Commission is composed of members between 6 and 12 and disposes labor disputes in a fair manner without any guidance or direction from the Director of the Labor Office. When either or both parties file a civil case regarding labor disputes, the Commission members come up with resolution after hearing claims from both parties. When requested by both parties, the Commission makes a conciliation proposal with consensus

93) Choi Seok-hwan, “Individual Labor Dispute Resolution System in Japan: Focusing on Non-trial Resolution Methods”, KLI, 2011. / Hong Seong-min, “Individual Labor Dispute Resolution System in Japan (Updated Information on Foreign Labor Laws)”, Korea Legislation Research Institute, 2017.

of all members.

Unlike a trial, conciliation is not legally binding and even though conciliation is proposed, the case is settled only when both parties accept the proposal, concluding a conciliation statement. Whereas dismissal and termination of employment contract are the most common reasons for the complaints filed to administrative agencies, wage issues account for more proportion in the case of civil litigation. This trend seems to be related to the litigation expenses. It is not easy for workers to file an injunction or a lawsuit to preserve their employment status when they face dismissal or employment termination, since workers want convenient and simple resolution of disputes. Therefore, they tend to resort to administrative methods and counseling services provided by administrative agencies.

## Section 2: International Comparison by Category

### 1. Adjustment of collective labor disputes

The Korean LRC provides mediation to prevent collective labor disputes, and adjudicates on them when they occur.

In the U.S., the Federal Mediation and Conciliation Service (FMCS) takes this role of mediating or preventing labor disputes. The dispute resolution functions of the FMCS are not confined to labor disputes, which is a clear distinction from the Korean LRC, which focuses only on labor disputes.

In Japan, the LRC has conciliation, mediation, and arbitration functions to mediate labor relations in a fair manner, to prevent and resolve labor disputes, and to maintain industrial peace.

In Germany, government interference in the interest disputes between labor

and management is not allowed in principle. Traditionally, labor disputes are expected to be resolved autonomously between the labor and management and the dispute adjustment roles of public agencies are only supplementary[94].

In regard to collective labor dispute adjustment, the Korean LRC adopts the principle of prior recourse to mediation.

## 2. Resolution of individual labor disputes including unfair dismissals and other discriminations

The main role of the Korean LRC is to adjudicate on individual labor disputes such as unfair dismissal. The most distinctive feature in this regard is to resolve labor disputes in an expeditious and less expensive way by disposing the complaint within three months. In addition, the Korean LRC is an administrative organization and composed of three parties representing labor, management and public interest to secure fairness for its adjudication. Also, it has a two-tier system to enhance accuracy as an RLRC takes the first-tier hearing and the NLRC takes the second-tier hearing. All of these are also features of the Korean LRC.

They are easily noticeable when compared with similar systems in other countries. In Japan, the LRC and Prefectural Labor Offices (which is equivalent to Regional Labor Offices of the Ministry of Employment and Labor in Korea) provide conciliation service and the judiciary runs the labor tribunal system, which has features of both conciliation and adjudication.

The conciliation by the Prefectural Labor Office pursues dispute resolution via the Dispute Adjustment Commission, in which labor relations experts

94) Lee Hee-seong, “Introduction on German Labor Dispute Adjustment System”, Journal of Labor Law (Issue No. 8), 2005, p.95.

with knowledge and experience participate. It has the same effect as conciliation by civil law. The conciliation provided by the LRC also has the same legal effect and composing the Commission with three parties serves as the focal point for securing fairness. The conciliation services provided by the prefectural Labor Offices and LRCs are based on *the Act on Promoting the Resolution of Individual Labor Disputes*.

Also in Japan, there is a labor tribunal system, which is composed of a judge and two members with knowledge and experience in labor relations, for expeditious and appropriate resolution of labor disputes, considering the rights relations of the parties concerned. This system is based on *the Labor Tribunal Act*, which was introduced in 2004, unlike the conciliation service mentioned above. Under this system, mediation or conciliation for individual labor disputes comes first, but when it fails, dispute resolution is sought by the adjudication of the tribunal. There are some opinions that it resembles the U.K. model (mediation by the ACAS and adjudication by the ET)[95].

In the U.S., there is no agency specialized in individual labor dispute resolution, which is why private labor arbitration agencies are involved in this[96]. In Germany, the judicial system represented by the labor court plays the main role in dispute resolution[97]. As a result, the resolution of labor disputes are usually sought by litigation.

A similar organization to the Korean LRC in this respect is the ACAS

95) Noda Susumu, "East Asian Labor Dispute Resolution Systems and Japan's Case", Gangwon Law Review (Issue No. 30), 2010, pp.102-104; Kim In-jae and four other co-writers, "60 Years History of the Labor Relations Commission: Evaluation and Improvement Measures for the Future", Korea Labor & Society Institute, 2014, pp.104-105.

96) Matthew W. Finkin, "The U.S. Individual Labor Dispute Resolution System", International Labor Brief (Volume 3, Issue No. 12), KLI, 2005. pp.3-8.

97) Kim Hoon and five other co-writers, "A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement", KLI, 2009, pp.207-208.

in the U.K., providing various services for individual labor dispute resolution. However, since the ACAS is not an adjudication agency, its role as an independent agency cannot go further than providing mediation procedures for labor disputes. In contrast with the ACAS, the Employment Tribunal disposes labor disputes in accordance with statutory tribunal procedures. However, all complaints filed to the ET should in principle go through mediation procedures first provided by the ACAS. It can be called the *principle of prior recourse to mediation*, which puts priority on dispute resolution by voluntary arbitration over legal methods.

## 3. Unfair labor practices

Another important feature of the Korean LRC, from the perspective of collective labor relations, is that it prohibits and adjudicates on employers' unfair labor practices to guarantee fair collective bargaining.

In this regard, the Korean LRC is similar with the U.S. NLRB. The NLRB, like the Korean LRC, adjudicates on unfair labor practices but is different in its operation of the agency. First of all, the NLRB is composed of the Board consisting of five members, General Counsel, Regional Directors, and Administrative Law Judges, and plays a role as a quasi judiciary. General Counsel governs 51 regional offices and represents the NLRB in the court. He/She also has authority to conduct investigation into and file a charge against unfair labor practices. In addition, Regional Directors conduct union representation elections[98]. The U.S. NLRB recognizes both workers and employers can be held accountable for unfair labor practices, which is different

98) Kim Hoon and five other co-writers, "A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement", KLI, 2009, p.184.

from Korea and Japan, as these two countries recognize only employers as the ones who should be held accountable for unfair labor practices.

In the U.K, the CAC takes up this role to some extent. When employers refuse the collective bargaining request of a labor union, the union can request a remedy to the CAC. If the union meets the necessary requirements, it issues an arbitration award recognizing the labor union, which forces the employer to respond to the bargaining request.

However, the CAC does not have legal methods that mandate the unification of bargaining channels of multiple labor unions at the workplace or such procedures. What it does is to supervise the implementation of the EU guidances for workers' rights to information and labor-management consultation as well as the guidance regarding the European Works Council[99].

In Japan, it is the LRC that remedies unfair labor practices. It adjudicates on charges of unfair labor practices and orders a remedy, which is the core authority of the LRC. Usually, it is public interest members who play this role. However, workers' and employers' members can also participate in investigation, hearing or conciliation procedures, and may present their opinions when orders for witness attendance, evidence submission, or remedy or dismissal are issued (Labor Union Act, Article 24).

The authority of the LRC on review of unfair labor practices originates from Article 1 of *the Labor Union Act*, which stipulates the purpose of the law is "to promote collective bargaining in equal footings." Article 7 of the Act prohibits the employer's anti-union activities as unfair labor practices. Article 27 of the Act stipulates that "When a complaint is received, which claims that an employer has violated the provisions of Article 7, the Labor

99) Kim Hoon and five other co-writers, "A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement", KLI, 2009, pp.191-192.

Relations Commission shall conduct an investigation without delay and, if it is deemed necessary, shall hold a hearing to decide whether there are justifiable reasons for the complaint. In this case, with regard to the procedures for such a hearing, sufficient opportunities to present evidence and to cross-examine the witnesses shall be given to the employer concerned and to the complainant."

Article 27-12 of the Act says that "The Labor Relations Commission shall, when the case is ripe for the issue of an order, find the facts and, on the basis of the findings, admit the whole or part of the remedy related to the request of the complainant, or issue an order to dismiss the complaint."

## 4. Discrimination redress

Another important feature of the Korean LRC is that it can order redress of discrimination against non-regular workers.

In the U.S., the Equal Employment Opportunity Commission (EEOC)[100] has this authority. What is noticeable is that it is a separate administrative commission specialized in discrimination redress, which orders a remedy for employment discrimination and files a charge against those who are accountable.

In Japan, Article 20 of *the Labor Contract Act* and Article 8 and Article 9 of *the Part-time Workers Act* prohibits discrimination and disadvantageous treatment against non-regular workers. Article 20 of *the Labor Contract Act* stipulates that if the working conditions of fixed-term workers are different from those of non-fixed-term workers, there shall be no unreasonable difference

100) Kim Hoon and five other co-writers, "A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement", KLI, 2009, pp.184-185.

in the treatment of the workers, while taking into account their duties and responsibility levels for their work. It shall be determined through the court review.

### 5. Union pluralism

In Japan, when discrimination occurs between multiple labor unions at the workplace, the LRC may exercise adjudication authority considering it as an unfair labor practice. In the U.S., the NLRB certifies exclusive bargaining representatives and helps in resolving disputes related to union elections. Other major responsibilities of the NLRB include remedies for violation of fair representation obligation and bargaining unit division.

## Section 3: International Comparison and its Significance

In Germany, the labor court plays key role in dispute resolution. Mostly, it deals with collective or individual rights disputes cases, which includes conducting obligations imposed by civil law in labor relations, changes in working conditions, termination of employment, and dismissal[101].

Other than these cases, the public mediation committee deals with cases regarding collective interests disputes and the arbitration committee disposes cases regarding rights disputes on vocational training and nurturing. However, not many actual disputes have been resolved through these committees. Since Korea adopts *the principle of prior recourse to mediation*, collective labor disputes in Korea have to be mediated first by a public agency, which is

101) Lee Hee-seong, "Introduction on German Labor Dispute Adjustment System", *Journal of Labor Law* (Issue No. 8), 2005, p.55.

different from Germany emphasizing private mediation procedures.

In the U.K., the Employment Tribunal (ET), a quasi-judiciary, disposes individual labor dispute cases. The Advisory Conciliation and Arbitration Service (ACAS) deals with cases regarding individual rights disputes and collective interests disputes.

When an individual labor dispute occurs, the complainant files a complaint to the labor court, which is sent to the ACAS first for mediation procedures. When the case fails to be settled, then the ET adjudicates on it. Also, collective disputes on interests are resolved by the Central Arbitration Committee (CAC); gender discrimination in labor relations, by the Equal Opportunities Commission (EOC); disputes on racial discrimination, by the Commission for Racial Equality (CRE)[102].

Like in the U.K., Japan also has two framework systems. The first one is an administrative system for dispute resolution, which is represented by the Labor Relations Commissions and labor inspectors under the Labor Standards Bureau of the Ministry of Health, Labor and Welfare and its prefectural Labor Offices. The LRC deals with cases regarding mediation of industrial action, unfair labor practices, and labor union certification. The second one is the labor tribunal system, which is established under the district court. Since *the Labor Tribunal Act* was legislated in 2004, when individual rights disputes including dismissal or wage disputes are not resolved through mediation procedures, the cases have been handled by the labor tribunal system[103]. Similar to the Korean system, the Japanese LRC also has a two-tier system

102) Lee Seong-hee "Labor Dispute Resolution System: International Comparison and How to Improve It", *Journal of Labor Law*, 2011, p.53.

103) Kim Hoon and five other co-writers, "A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement", KLI, 2009, p.216.

of Prefectural LRCs and the Central LRC. However, in Japan, complaints can be directly filed to the Central LRC, not necessarily filed to a Prefectural LRC (Regional LRC in Korea) first, which is different from Korea[104].

As shown above, the U.K. and Japan deal with individual dispute cases by a quasi-judicial body and collective interests disputes by administrative agencies. Not like these two countries, which have developed different resolution methods for different types, the Korean LRC handles both individual and collective labor disputes.

In the U.S., individual rights disputes and collective interests disputes as well as labor union rights disputes are all handled by administrative agencies. Collective interests disputes such as collective bargaining are resolved by the Federal Mediation and Conciliation Service (FMCS) and rights disputes including certification of bargaining-unit labor unions and unfair labor practices are resolved by the National Labor Relations Board (NLRB). Among individual labor disputes, those related to employment discrimination are handled by the Equal Employment Opportunity Commission (EEOC). Workplace grievances and working conditions disputes are disposed by the American Arbitration Association (AAA), a not-for-profit organization in the private sector. Rights disputes related to employment are resolved by the court according to related laws[105].

When compared with the U.S. NLRB, the Korean LRC deals with significantly broad areas. In the U.S., different agencies deal with different areas in labor relations. However, the Korean LRC covers overall cases related to quasi-judicial adjudication, dispute adjustment, and even remedies for dis-

104) In Korea, the Special Labor Relations Commission is separately established as mentioned before.

105) Lee Seong-hee “Labor Dispute Resolution System: International Comparison and How to Improve It”, *Journal of Labor Law* (Issue No. 37), 2011, p.53.

crimination against non-regular workers. It has jurisdiction not only on collective rights disputes but also on individual unfair dismissal cases, which is different from the American system[106].

Whereas the Korean LRC enjoys broad jurisdiction, it has relatively mild ex officio investigation authority, when compared with its U.S. counterpart. Also, even though it may adjudicate on unfair labor practices, it cannot actively participate in punishing criminal acts of the unfair labor practices, which is different from the U.S. system.

In a nutshell, the most distinctive feature of the Korean system is that the LRC, which is an administrative organization, plays various roles comprehensively including mediation for and adjudication on individual and collective labor disputes. In cases of individual labor disputes, complainants can resort to both civil lawsuits and resolution by the LRC. The latter is, however, used much more as it saves more time and expenses. As of December 2017, around 95% of the complaints filed to the LRC were resolved conclusively at the phase of the LRC. In addition, considering 80% of the cases proceeded to the court were also ruled as adjudicated by the LRC, it can be said that 99% of the all cases filed to the LRC are closed as adjudicated or resolved by the LRC.

106) Kim In-jae and four other co-writers, “60 Years History of the Labor Relations Commission: Evaluation and Improvement Measures for the Future”, Korea Labor & Society Institute, 2014, pp.107-108.

# Chapter 5

## The Future of the LRC

Section 1: Enhancing Expertise of the Personnel

Section 2: Reform in Roles and Organization Administration

# Chapter 5
# The Future of the LRC

The Korean LRC has broader and more comprehensive responsibilities compared with labor dispute resolution agencies in major foreign countries. It can be seen as a positive signal that the Korean LRC has developed continuously during the past 65 years, gaining the trust of Korean people.

However, depending on how to reflect the evaluation of the fairness and expertise regarding numerous decisions that the LRC has made in the course of continuous expansion of the roles and responsibilities delegated by the law, the LRC in Korea may sustain its continuous development or face new challenges in the future.

## Section 1: Enhancing Expertise of the Personnel

### 1. Expanding standing members

To secure a future development, the LRC needs to reform the Mediation Committee and the Adjudication Committee in terms of their composition and administration to ensure better fairness, expertise and reliability.

The public interest members of the Commission are nominated by the LRC and organizations representing labor and management, and chosen by the labor and management sides following a certain procedures. Therefore, it can be safely said that fairness is considerably guaranteed in the procedures of selecting public interest members. In the process, experts with excellent

qualifications and sufficient experiences are usually nominated, securing a significant level of expertise.

However, in the public interest member selection procedure in which a certain candidates nominated by labor can be ruled out by management and vice versa, some excellent candidates are possibly ruled out. Also, since the term is three years and he/she may not be redesignated as a member, it is not sure to secure a sufficient period for accumulating expertise as a public interest member. The term of the investigation officer, who supports the members, is also short, making it difficult to develop their expertise.

To enhance the mediation and adjudication expertise of the LRC, it is desirable to come up with a personnel scheme to place and arrange professional manpower who can work over the long term. To this end, expanding standing members should be considered.

Article 15, Paragraph 6 of *the Labor Relations Commission Act* (LRCA) stipulates that when the chairperson of an LRC organizes the Adjudication Committee/the Discrimination Redress Committee (AC/DRC), the chairperson or one standing member of the LRC shall be included in the committee, except in extenuating circumstances such as where it is difficult for the chair-person or the standing member to normally perform his/her duties due to excessive workload. However, in practice, the number of standing members is insufficient compared with the number of the cases to be handled. As a result, many sectoral committees are run without standing members.

For the NLRC, it needs around eight members to make sure that a standing member can be included in the Adjudication Committee, which is held every-day, and the mediation meeting, which is held once or twice a week. In the case of RLRCs, it is desirable to have around three standing members

(minimum one and basically in the range of two to four) in charge of mediation and adjudication.

Also, the qualification for standing members should change to enhance their expertise. Not only government officials from the Ministry of Employment and Labor but also lawyers, judges, professors, and union presidents of umbrella organizations, who are deemed to have experience and expertise recognized in society, should be designated as standing members.

To enhance the overall expertise of the LRC, standing members specialized in adjudication, discrimination redress and mediation should be fully committed to the cases in their specialty in principle. Generally, expertise on labor relations laws and systems is needed for adjudication and discrimination redress cases, and conflict management or negotiation skills are needed for mediation cases. Mediation and adjudication should be conducted by standing members to gain people's trust on the LRC's expertise.

## 2. Expanding investigation officers

Investigation officers open up the first gate for fairness and expertise of the LRC. It indicates how important the role of investigation officers is in mediation and adjudication. They compare and analyze claims of both parties and look for recognizable facts, laws, regulations and judicial precedents related to the complaint as well as systematically investigate how and why the dispute has developed. The investigation outcome is made into an investigation report and provided to members representing labor, management and public interest. Adjudication investigation officers draw up the adjudication statement with the outcome of the hearing and adjudication meetings[107], and recommend conciliation during investigation or hearing.

In order to raise the mediation success rate and reduce adjudication disagreement by making the concerned parties accept the adjudication more, investigation officers with expertise and professional capacity need to be expanded. For a short-term plan, government officials who are transferred to the LRC from the Ministry of Employment and Labor should be utilized and the number of those in specialized positions who can continue to work more than four years needs to be increased gradually.

For a mid-term plan, labor relations experts such as lawyers, certified public labor consultants, and civil-society experts in the local area should be tapped through special recruitment. In this way, the number of staff in specialized positions, who are fully committed to the LRC, needs to be expanded.

For a long-term plan, the promotion system for investigation officers needs to be improved with a policy support in which working at the LRC can substantially contribute to their promotion. In addition, the LRC should be able to recruit professional staff with its own discretion, and needs to come up with career development schemes which enable investigation officers with excellent performance to be promoted to division heads, director generals, and standing members of the LRC.

## Section 2: Reform in Roles and Organization Administration

### 1. Mediation role

Mediation, one of the roles of the LRC, is based on the principle of prior recourse to mediation. Under the current system, expanding the scope of

107) In the case of the court, a judge draws up the ruling statement and in the case of the LRC, a chief member (public interest member) writes a decision summary.

mediation issues or extending the mediation period is not easy in both practice and jurisprudence. In other words, not only may it infringe on the fundamental three labor rights of workers and labor unions, but it also has insufficient statutory grounds for the LRC's mediation for rights disputes.

Moreover, the current policy of prior recourse to mediation is serving as a major stumbling block for employers to choose mediation procedures. When an employer requests mediation procedures, the mediation period is counted from the date of request, which results in allowing a union to wage a strike legitimately[108]. Therefore, a social dialogue needs to be carried on regarding how to come up with a more efficient mediation system including the improvement of the current prior recourse to mediation policy.

Also, measures for keeping flexibility in the mediation issues and period flexible should be considered in cases of labor disputes of ordinary companies. To increase mediation effectiveness, both labor and management should be able to choose the mediation issues and period at their own will and the LRC should be able to respond to it in a flexible manner.

Under the current system, when an industrial action is waged in the essential public services, the right to collective action can be restricted to protect the general public's interest. However, it has been criticized that, with regard to the decision of the essential minimum service level, the right to collective action has been excessively restricted as its scope is too broad and workforce replacement is allowed. The current system needs to be improved over the long term by closely analyzing the system operation so far, so that it can reflect changes in the field.

108) Kim In-jae and four other co-writers, "60 Years History of the Labor Relations Commission: Evaluation and Improvement Measures for the Future", Korea Labor & Society Institute, 2014, p.233

## 2. Adjudication role

Complaints regarding unfair dismissal and discrimination against non-regular workers are usually disposed by adjudication. In many cases, however, individual disputes are settled in the phase of investigation through conciliation or withdrawal of the complaint which both parties agreed before a hearing for adjudication begins. It means that conciliation and mediation procedures should be more actively utilized as a short-term measure to resolve disputes in a more expeditious and conclusive manner. For this, the current system of introducing conciliation and mediation procedures in prior to adjudication needs to be improved.

Some legal restrictions need to be lifted. For example, when a fixed-term worker requests a remedy for dismissal to the LRC, remedy procedures are carried on. However, if reinstatement becomes impossible due to termination of the contract while the procedures are still going on, the LRC dismisses the complaint for the reason that the merit of remedy is extinguished. Therefore, efforts should be made to lift such legal restrictions as well as to come up with measures to make the merit of remedy more effective.

Also, for a mid-term plan, evaluations on the effectiveness of LRC remedy orders should be conducted, and laws and systems in this regard should be modified. In addition, various supplementary measures such as heavier enforcement levy should be provided to make sure effective implementation of the remedy order when it is not complied with.

As the labor market is expected to become increasingly diversified over the long term, various disputes may arise in new areas, i.e. using non-standard contract employees, workplace bullying, and employment discrimination. In case the LRC remedies such disputes, what will be the merit and demerit

of the LRC and what laws and systems will need to be modified? A policy study in this regard is necessary.

## 3. Organization administration

To enhance expertise of the LRC in a short period, it needs to reinforce its policy-making role in terms of the organization. To this end, a policy division should be newly established within the Secretariat of the LRC.

Since 2007, when the LRC Act was revised, the Secretariat Department and Administrative Bureaus have been established within the NLRC and RLRCs respectively (LRCA, Article 4). Also, it is clarified in the Act that "Business affairs related to survey, research, education, publicity, etc. related to the performance of its missions" shall be included in the responsibilities of the LRC (LRCA, Article 2-2, Paragraph 3). However, its policy developing function is not backed up by the organization.

Currently, full-time advisors are used only for discrimination redress. By modifying related laws and regulations[109], they should be used for other areas of the LRC so that they can support investigation officers in conducting their tasks.

A policy development division should be established in the Secretariat Department of the NLRC so that relevant policies can be developed more systematically, for example, regarding analysis of judicial precedents and the standards of the court rulings related to LRC adjudications and discrimination redress remedies, response to litigations filed against the LRC, and

109) The law that provides the basis for expert advisor recruitment should change from the current *Act on the Protection, etc. of Fixed-term and Part-time Workers (FPWPA)* to the Labor Relations Commission Act (LRCA).

measures to improve dispute mediation.

For a mid-term plan, the LRC should come up with a system to take the initiative in terms of its organization operation. Being affiliated to the Ministry of Employment and Labor, the LRC should play a bigger role for remedies for workers' rights and harmonious labor relations while gradually expanding its independent discretions for its structure, organization, and personnel in order to further strengthen its fairness, expertise, and independence.

# References

[Korean or translated references]

Kang Seong-tae et al., *Study on Ex Officio Investigation on Unfair Labor Practices and Burden of Proof in Foreign Countries*, National Labor Relations Commission Research Paper, 2016.

Ministry of Employment and Labor, *2016 White Paper on Employment and Labor*, 2016

Ministry of Employment and Labor, *2017 White Paper on Employment and Labor*, 2017

Kim In-jae et al., *60 Years History of the Labor Relations Commission: Evaluation and Improvement Measures for the Future*, National Labor Relations Commission Research Paper, 2014

Kim Hyung-bae, *Labor Laws* (24th edition), Pakyoungsa, 2015

Kim Hyung-bae, *Labor Laws* (25th edition), Pakyoungsa, 2016

Kim Hoon et al., *A Study on the Labor Relations Commission and Labor Dispute Resolution System Improvement*, KLI, 2009

Ministry of Labor, *History of Labor Administration, Chapter 4, Labor-management relations policy*, P·RN Books Co. Ltd., 2006.

Ministry of Labor, *A briefing document on legislations for the advancement of labor-management relations*, 2007

Byeon Ji-young, *A Study on U.S. Administrative Law Judge System*, the Judicial Policy Research Institute, 2017

Lee Deok-roh and Jeong Jong-jin, *Latest Labor Relations Theories*, Bobmunsa, 2017

Lee Sang-yun, *Labor Laws* (15th edition), Bobmunsa, 2017

Lim Jong-ryul, *Labor Laws* (7th edition), Parkyoungsa, 2008
Lim Jong-ryul, *Labor Laws* (15th edition), Parkyoungsa, 2017
Lim Jong-ryul, *Labor Laws* (16th edition), Parkyoungsa, 2018
National Labor Relations Commission, *50-year history of Labor Relations Commission*, Dongbang Corporation, 2003.
National Labor Relations Commission, *History of the law and institution of Labor Relations Commission*, Yeolim Design, 2008.
National Labor Relations Commission, *Manual on Mediation and Essential Services* (Revised edition), 2018
Choi Seok-hwan, *Individual Labor Dispute Resolution System in Japan: Focusing on Non-trial Resolution Methods*, KLI, 2011
Ha Kap-rae, *Laws on Collective Labor Relations* (5th Edition), 2018.

[Korean dissertations]
Park Jong-hee, *Is single labor union not able to be a representative bargaining union?*, Labor Law, Vol. 320, 2018, pp. 121-128
Song Gang-jik, *Labor Tribunal System in Japan: its Operation and Problems*, Labor Law Study (27th Issue), 2009
Yoo Seung-jae and Kim Hee-sun, *Fair representation in the U.S. and its implications*, Collection of Labor Law Treaties, Vol. 23, 2011, pp. 41-72
Lee Seong-hee, *Labor Dispute Resolution System: International Comparison and How to Improve It*, Journal of Labor Law, Vol. 37, 2011
Lee Joon-hee, *Review on the legal principle of essential minimum services*, Research on Labor Policy (Vol. 8, Issue No. 2), 2008, pp. 83-113.
Lee Hee-sung, *Introduction on the Mediation of Labor Disputes in Germany*, Collection of Labor Law Treaties (Vol. 8), 2005
Choi Seok-hwan, *The Labor Relations Commission System in Japan and Recent*

*Trend*, Labor Law Forum (18th Issue), 2016

Ha Kyeong-hyo, Park Jong-hee and Kang Sun-hee, *Research on dismissal for managerial reasons through analysis of the adjudications and precedents of the Seoul Regional Labor Relations Commission*, Quarterly Journal of Labor Policy, Vol. 11, No. 2, Korea Labor Institute, pp. 22-24.

Hong Seong-min, *Individual Labor Dispute Resolution System in Japan*, Updated Information on Foreign Labor Laws, Korea Legislation Research Institute, 2017.

Matthew W. Finkin, *The U.S. Individual Labor Dispute Resolution System*, International Labor Brief (Volume 3, Issue No. 12), KLI, 2005

[Foreign references]

毛塚勝利(編), 個別労働紛争処理システムの国際比較, 日本労働研究機構, 2002.

菅野和夫, 労働法(第11版補正版), 弘文堂, 2017.

Johnston, T.L, Introduction to Industrial Relations, Estover, Plymouth: Macdonald & Evans, Ltd, 1981, pp.146.

野田進, "東アジア労働紛争解決システムの中の日本", Kangwon Law Studies (Vol. 30), 2010.

浜村彰. "個別労働関係紛争の解決の促進い関する法律 の検討", 労働法律旬報(1515号), 2002.

村中孝史, "労働紛争解決制度の現状と問題点", 日本勞働研究雑誌(581호), 2008.

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