Autonomous labour-employer relations system in Japan

Bunzo HIRAI
(Chief Analyst for Human Resources Management)

Yoko NUMATA
(Official for Appointment System)

Personnel and Pension Bureau
Ministry of Internal Affairs and Communications
Government of Japan
The background of basic labour rights of public service employees in Japan

1945
Establishment of Labour Union Act
All employees in Japan (including public service employees) were granted the basic labour rights (the right to organize, the right to collective bargaining, the right to strike) based on this Act.

1946
Establishment of Labour Relations Adjustment Act
National public service employees in the non-operational sector were denied the right to strike based on this Act.

1947
Establishment of National Public Service Employees Law
No changes in basic labour rights

1948
Revision of National Public Service Employees Law
National public service employees in the non-operational sector were denied the right to strike and the right to conclude collective agreements.

Establishment of Labour Union Act
Establishment of Labour Relations Adjustment Act
Establishment of National Public Service Employees Law
MacArthur’s Letter (July,22)
Cabinet Order 201 (July,31)
Revision of National Public Service Employees Law
1 Basic labour rights in Japan

Basic labour rights in Japan consist of the right to organize, the right to collective bargaining and the right to strike, and these are regulated by article 28 of the 1946 Constitution.

2 Current situation of basic labour rights of public service employees

<table>
<thead>
<tr>
<th>Division of personnel</th>
<th>Right to organize</th>
<th>Right to collective bargaining</th>
<th>Right to conclude collective agreements</th>
<th>Right to strike</th>
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<tbody>
<tr>
<td><strong>National public service employees</strong></td>
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<td>Regular service</td>
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<tr>
<td>Employees in the non-operational sector</td>
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<tr>
<td>(Excluding, police officials, officials working for the Japan Coast Guard and penal facilities, and entry guards)</td>
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<tr>
<td>Employees in the operational sector and specified incorporated administrative agencies personnel</td>
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<td>Court personnel</td>
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<td>Diet officials</td>
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<td>Ministry of Defense personnel</td>
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<td><strong>Special service</strong></td>
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<td>○</td>
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</tbody>
</table>

※ On the left chart, “○” means that the right is granted. “×” means that the right is not granted. “△” means that the right to collective bargaining is granted, but the right to conclude collective agreements is not granted.

These rights will be granted through the ongoing civil service reform.
Current situation of basic labour rights in Japan (2)

3 Judicial precedent of basic labour rights of public service employees in Japan

<Case on Incident by all Agriculture & Forestry Minister’s Workers Union of Opposition to the National Public Service Employees Law (rendered by the grand bench of the Supreme Court on April 25, 1973)>

- There are sufficient reasonable grounds to impose necessary and inevitable restrictions on the basic labor rights of public employees on the basis of "their distinctive status" and "the public nature of their functions".
- Appropriate measures should be taken which compensate for restrictions on basic labor rights.
- Appropriate compensatory measures have been established for public service employees, and accordingly, the restriction of their basic labour rights does not violate Article 28 of the Constitution.

"their distinctive status" and "the public nature of their functions"

- All public officials are servants of the whole community and not of any group thereof. (Article 15 The Constitution of Japan)
- Every official, as a servant of all citizens, shall serve the public interest, and exert his/her utmost effort in the performance of his/her duties. (Article 96(1) National Public Service Employees Law)
- Unlike acts of dispute by private enterprises that face restrictions due to corporate management and market restraints, acts of dispute by public employees might risk one-sided force lacking any counterbalance. (Case of incident by all Agriculture & Forestry Minister’s Workers Union of Opposition to the National Public Service Employees Law)

Compensatory measures

- The principle of statutory work conditions
- The recommendation system by National Personnel Authority (NPA)
- The request for Administration Action to the National Personnel Authority ... etc,
Compensatory measures for restriction of basic labour rights

The principle of statutory work conditions

1. Remuneration—the Law on Remuneration for National Public Employees in Regular Service Employees
2. Work time, holiday, vacation—the Law Concerning Working Hours, Leave of Absence, etc. of National Public Employees in Regular Service

The Recommendation system by National Personnel Authority (NPA)

(Principle of Meeting Changing Conditions)

The fundamental matters concerning working conditions to be established pursuant to this Act may at any time be changed by the Diet to bring them into accord with general conditions of society. It shall be the duty of the National Personnel Authority to recommend such changes. (Article 28 National Public Service Employees Law)

The Request for Administrative Action to the NPA

(1) Officials may make requests to the National Personnel Authority that appropriate administrative action be accorded by the National Personnel Authority, the Prime Minister, or the head of the government agency employing that official, relative to salary, pay, or any other working condition. (Article 86 National Public Service Employees Law)

(2) When a request provided for in the preceding Article is received, the National Personnel Authority shall conduct such investigations, hearings or other fact-finding reviews it finds necessary, and evaluate the case with due regard to fairness to the public. (Article 87 National Public Service Employees Law)

(3) When the National Personnel Authority finds it necessary to take certain measures in regard to working conditions based on the evaluation provided for in the preceding Article, it shall implement its own measures on the matters under its jurisdiction, and recommend the Prime Minister or the head of the government agency employing that official to take measures in regard to other matters. (Article 88 National Public Service Employees Law)
Outline of civil service reform related bills

Reform Policy

- Establishment of an autonomous labour-employer relations system
- Centralizing of personnel management of executives and reforms of other personnel management
- Improvement of appropriate retirement management

1. Granting the right to conclude collective agreements to national public service employees in the non-operational sector
   - the Draft Act on Labour Relations of National Public Service Employees

2. Establishment of the employer organization - "Civil Service Office"
   - the Draft Act for Establishment of the Civil Service Office

3. Abolishment of National Personnel Authority and its recommendation functions
   - The Amendment Bill for the National Public Service Employees Law

On June 3, 2011 Submission of civil service reform related bills to the Diet
※ These Bills were not deliberated during the previous session and have been carried over to the current session.
The main points of Autonomous labour-employer relations system

1. Granting the right to conclude collective agreements to national public service employees in the non-operational sector

At the same time, the Draft Act identified the matters to be handled by collective bargaining as well as the parties thereto and procedures thereof, the validity of collective agreements, and procedures for conciliation, mediation, and arbitration by the Central Labour Relations Commission.

2. Establishment of the employer organization
   - “Civil Service Office”

The Civil Service Office is to have responsibility for the overall personnel management and remuneration system and undertake negotiations with labour unions as the employer.

3. Abolishment of National Personnel Authority and its Recommendation functions

With this abolishment, a Personnel Fairness Committee is to be established under the jurisdiction of the Prime Minister, as a third party organization which will be responsible for ensuring fairness in personnel administration.
Chart of personnel management organizations to be established

- **Cabinet**
  - **Cabinet Secretariat**
  - **Cabinet Bureau of Personnel Affairs**
    - "Unified Personnel Management of Executives"
  - **Cabinet Office**
    - **Civil Service Office**
      - [Draft Act for Establishment of the Civil Service Office]
    - **Personnel Fairness Committee**
      - [Amendment Bill for National Public Employees Law]
    - **National Personnel Authority**
      - Abolishment of National Personnel Authority and its recommendation system
  - **Ministry of Health, Labour and Welfare**
    - **Central Labour Relations Commission**
      - [Labour Union Act]
      - [External organ of the Ministry of Health, Labour and Welfare]
      - ※Existing organization
    - **National Public Service Ethics Board**
    - **Reemployment Surveillance and Appropriate Management Committee**

※ Organizations highlighted in pink are to be established. (Other ones are existing organizations)
Relationship between the current Personnel Management organizations and the new ones

Currently

Ministry of Internal Affairs and Communications
- Personnel and Pension Bureau
  - Affairs of Pension, Affairs of Administrative Procedure Act
  - Planning basic policies for personnel management…etc,
- Administrative Management Bureau
  - Management of fixed number of employees…etc,
- Employee Welfare Bureau
  - Improvement of working conditions such as working hours and leave system
  - Planning of service discipline and disciplinary action regulations…etc,
- Human Resources Bureau
  - Planning and operation of recruitment examinations, appointments, training system…etc,
- Remuneration Bureau
  - Recommendations for remuneration of national public employees.→【abolishment】
  - Establishment of standards to determine salary and allowances…etc,
- Equity and Investigation Bureau
  - Quasi-judicial function to deal with appeal against disadvantageous action,
  - Complaint counseling…etc,

National Personnel Authority
- Secretariat divisions
  - Internal management (general, personnel and financial affairs)
- Cabinet Bureau of Personnel Affairs
  -Unified Personnel Management of executives
- Cabinet Bureau of Personnel Affairs
  - Affairs of Pension
  - Affairs of Administrative Procedure Act
  -【abolishment】
  - Establishment of standards to determine salary and allowances…etc,
- Cabinet Bureau of Personnel Affairs
  -【remaining other Bureaus】
    - 2 bureaus are decreased

Cabinet Bureau of Personnel Affairs
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After the revision

Civil Service Office
- Transferred Affairs
- New Affairs
  - Affairs of collective bargaining
  - Affairs of collective agreements
  - …etc,
Role of Personnel Fairness Committee

1 Establishment
Personnel Fairness Committee is to be established under the jurisdiction of the Prime Minister.

2 Role
The Personnel Fairness Committee will be responsible for ensuring fairness in personnel administration to ensure fair public service and protect welfare of employees.

3 Affairs under the jurisdiction

i Matters concerning requests for administrative action on working conditions and appeal to disadvantageous dispositions and personnel complaints

ii Matters concerning restriction on political acts and on engagement in profit-making enterprises

iii Matters concerning the standards for personnel exchanges stipulated by the Act of Personnel Exchanges Between Public Sector and Private Sector.

iv Affairs of Reemployment Surveillance and Appropriate Management Comittee

v Affairs of National Public Service Ethics Board

vi Recommendations for improvement of personnel administration to the relevant minister or head of another government agency

vii In addition to the above, other affairs may come under the jurisdiction of the Personnel Fairness Committee depending on other laws or orders.
Granting the right to conclude collective agreements to national public service employees in the non-operational sector

1 Coverage

National Public service employees in the non-operational sector irrespective of category, or organization (core ministries, original local branches), - (excluding police officials and officials working for the Japan Coast Guard and penal institutions※1, and administrative vice-ministers, director-generals of agencies and director-generals of bureaus of ministries※2)

※1 The right to organize will continue to be restricted for and the right to conclude collective agreements will not be granted to police officials and officials working for the Japan Coast Guard and penal institutions. To address this, appropriate compensatory measures will be taken, such as legally ensuring that the working conditions of such personnel are determined in consideration of their job characteristics and the working conditions of personnel who will be granted the right to conclude collective agreements.

※2 Administrative vice-ministers, director-generals of agencies and director-generals of bureaus of ministries will not be granted collective agreement rights to make clear that their positions with respect to labour-employer relations are ones in which they carry out personnel and labour management wholly on behalf of the employer.

2 Parties representing labour-employer in Collective bargaining

Parties representing employees

Certified Labour union

Parties representing employer

Competent authority
When the Central Labour Relations Commission receives allegations pertaining to unfair labour practices from a certified labour union or an employee who is a member of a certified labour union, etc., ..
Matters of collective agreements

【Matters of collective agreements】
① Matters concerning remuneration, allowances, work time, holidays
② Matters concerning standards for promotion, demotion, transfer, temporary retirement, dismissal, disciplinary punishment
③ Matters concerning health of officials, maintenance of their safety, accident compensation
④ In addition to the above① ~ ③, Matters concerning the other working condition of officials
⑤ Matters concerning labour-employer relations such as collective bargaining procedures.

【Matters on which collective agreements can not be concluded】
× Matters concerning the administration and operation of state business (such as the competence of personnel management, budgets, policies
※ These matters are also not subjects of collective bargaining.

Obligations involved in concluding a collective agreement

In cases in which a collective agreement is entered into between a certified labour union and a competent authority, this shall be enforceable.

Example: In cases in which a collective agreement is entered into which includes matters necessitating the establishment or revision of a law or cabinet order providing for working conditions, the Cabinet shall be obliged to submit relevant bills to the Diet or enact or revise relevant cabinet orders.
Purpose of the introduction of the autonomous labour-employer relations system

- To establish a framework for determining working conditions autonomously by labour-employee negotiation such as collective bargaining while nurturing their sense of ownership.

- To establish a framework which allows personnel to take part in the process and requires them to share responsibility for their achievement with the understanding of the public.

- To foster the motivation and abilities of personnel and to secure and utilize a skilled workforce by promoting reform of the personnel management and remuneration system, responding to changing circumstances and new policy issues.

- To realize efficient and high-quality government services to respond quickly and decisively to new policy challenges.
Future considerations (1)

○ The basic rights of local public service employees
  • The “Basic Concept of the Labour-Employer Relations System for Local Public Service Employees” was compiled and published on June 2, 2011. The key contents are that a new labour-employer relations system shall be established for local public service employees in consideration of the autonomous labour-employer relations system for national public service employees.

Overview of the system

○ Local public service employees engaged in regular service (excluding personnel with restrictions on the right to organize, personnel making important administrative decisions, and personnel working at local public enterprises, etc.; hereinafter referred to as “personnel”) shall be granted the right to conclude collective agreements.

○ ‘Labour union’ shall refer to an organization that is formed voluntarily and composed mainly of personnel for the purpose of maintaining and improving their working conditions or a federation of such organizations.

○ A labour union certified by the Prefectural Labour Relations Commission may conclude a collective agreement; claim for relief against unfair labour practices; participate in mediation, conciliation, and arbitration procedures; have employees engaged exclusively in affairs of labour unions, etc.

○ Requirements for certification shall include that its constitution meets statutory requirements and that the majority of its members are personnel belonging to the same local government, etc.

○ A relief system overseen by the Prefectural Labour Relations Commission against unfair labour practices shall be established.

○ Following the granting of the right to conclude collective agreements to personnel, the Personnel Commission recommendation functions concerning working conditions shall be abolished.
Future considerations (2)

ORight to Strike of National Public Service Employees

A supplementary provision of the Draft Act on Labour Relations of National Public Service Employees provides that “Taking into consideration the status of enforcement of this Act including the status of operation of collective bargaining and the status of operation of the system for conciliation, mediation, and arbitration, and the status of public opinion on the implementation of the autonomous labour-employer relations system, the government shall examine the right to strike of national public service employees. And then, necessary measures are to be taken based on the outcome of the examination”.

ORight to organize of fire defense personnel

Necessary examination will be done toward the basic direction of granting this.
Concluding remarks

- Submission of the Civil Service Reform Related Bills to the Diet is a key turning point in basic labour rights for public service employees in Japan.

- The Autonomous labour-employer relations system will clarify the positions of both labour-employer parties and their relationship. Therefore, for the public, this system will be more comprehensible and, thereby, we believe this system will be able to gain more understanding from the public than before.

- The Autonomous labour-employer relations system can be said to be a drastic reform of the remuneration system for national public service employees in Japan.

As a matter of course, through this system, we will keep trying to deliver efficient and high-quality government services which meet the needs of the people.