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Employment and Labor Policies in Transition : Labor

Reorganization of the Worker Representative System

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I. Why Worker Representatives?

The period from late 2016 to early 2017 can be characterized with the word “agora.” Numerous people voluntarily poured out into the streets and into agoras. Why did Koreans pour out into the streets and agoras? What did Koreans wish to achieve?

From the current perspective of people possessing sovereign power rather than being simply ruled by the state, it is quite natural that people wish to enjoy a more active participation in the state or organization with which they are affiliated. In today’s democracy, the participation of the people in state and societal affairs has become a basic principle for social order. Such thoughts are rooted in the understanding that no decision may be made unilaterally by anyone with leadership or influence, and that decisions

need to be made in collaboration with the members of the group. This also implies that the members of a group do not simply stop at passively following orders but actively participate in decision-making.

The field of labor is also not an exception to such social principles. When such principles are achieved in the field of labor, the possibilities can be opened for achieving the dignity of workers as human beings, the freedom to build character, advocacy for collective interests, and collective self-determination. When acknowledging the participation of workers, a more ideal method would be to guarantee the direct participation of individual workers. Yet in most cases just as most democracies leverage a representative system, participation in decision-making is in the form of representation by interest groups in the labor field taking into consideration the practical feasibility.

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Therefore, interest groups to represent interests need to be organized, and the organization represents the interests of a certain group with status as a representative (Repräsentanten) as the national assembly represents the people in parliamentary democracy.

The current labor-related laws also institutionalize such a function. This includes not only trade unions (in Article 2 Clause 4)¹⁾ and the bargaining representative union (in Article 29-2) in the Trade Union and Labor Relations Adjustment Act, but also the worker representative (in Article 24 Clause 3) of the Labor Standards Act who represents more than half of the workers, and labor-management councils, workers councils, or actors representing more than half of the unions or workers with the authority to finalize agreements on changes in employment rules related to any possible disadvantages in the Act on the Promotion of Work Participation and Cooperation.

Worker representatives²⁾ are the channel for recognizing the participation of the representation of workers concerning issues such as employment or working conditions, which are at risk of the employer with a superior position making unilateral decisions, to enable decision making based on equality between the labor and the management. In other words, worker representative is an institutional mechanism to secure equal footing with employers by enabling the direct participation of employees in decisions which impact them directly.

II. The Current Worker Representative System: What Are the Issues?

As have been aforementioned, existing labor-related laws prescribe various types of worker representatives. It

can be said that the menu is grand, but concerning whether the representation of workers interests is as grand as the menu, that is not the evaluation it receives in reality. What are the reasons? A quote from the works of Professor Kang (2015) may facilitate an easier understanding. Concerning the issues of the current worker representative system, Kang writes, “Despite the wide variety, the actual representation remains weak,” because of the following institutional issues. “First, laws and institutions do not take proactive action to strengthen representation but often weakens representation. Second, the scope of representation, legal status, rights and roles, and relations of representatives are not clear. Third, the hierarchy for standards for self-governing, created by representatives or for the creation of which representatives participated (such as collective agreements, resolutions by labor-management councils, written agreements, and employment rules), is not clear, and the legal binding power is, at times, questionable. The legal binding power has not been clarified with the exception of collective agreements and employment rules. Fourth, the rules on representation, activities, and rights of representatives converge on the representation of worker representatives to units of workplaces. Fifth, the representation by representatives is fragmentary. Not only is there a lack of worker representation in the overall national economy, but there is also no institutional guarantee for representation at the industry level, nor is there a worker representative with representation of all issues at the workplace level. There is no universal representation, remaining at being fragmentary with representation for only individual issues.”³⁾

Various issues have been pointed out concerning the current worker representative system under labor-related

- 1) The traditional institution for advocating the interests of workers continues to be trade unions, but advocacy for the interests of workers by trade unions organized based on the voluntary solidarity of workers is not always achieved in reality. This is even truer in the case of Korea where the unionization rate is experiencing a sharp drop. As of 2015, the unionization rate stands at 10.2%, and the number of unions is a mere 5,794 (Ministry of Employment and Labor, 2016).
- 2) Kang (2015: 22) distinguishes “worker representation” and “worker representative,” explaining that the former is a normal noun referring to the instrument for representing the will/interests of workers, and the latter refers to “a person representing workers” in the Labor Standards Act. However, this paper uses the term “worker representative” as a general term to refer to the system of representing the interests of workers within a workplace as stipulated by labor-related laws.
- 3) Kang (2015: 39).

laws, but the following is an elaboration of the issues of various worker representative systems.

First, issues raised concerning labor-management councils under the current Act on the Promotion of Work Participation and Cooperation include whether the council has the right to make decisions on working conditions, the interpretation of the efficacy of the decisions made by the council, the lack of sufficient regulations on the election methods and defects in the election process, and the limitation in reflecting the opinions of various workers.

Concerning worker representatives under the current Labor Standards Act, who does “worker representative” (representing more than half of the workers) refer to, how should the representative be elected, and what is the characteristics and efficacy of the written agreement signed by representatives are some of the points of controversy. There are limitations such as the lack of sufficient measures to reflect the opinions of various workers, the lack of the foundation for standing representation such as the tenure, and the lack of equal footing with employers.

Concerning the participation of workers groups in amending employment rules, representatives of more than half of the unions or workers are allowed only a passive role to express agreement or disagreement to the unilateral decision of the employer or when amendments are deemed to be disadvantageous to workers, and therefore, agreements between the labor and management concerning the establishment or amendment of working conditions are innately difficult.

III. Worker Representative System: What Should Be Done?

1. Basic Direction for Reorganizing the Worker Representative System

What should be done to find solutions? This subchapter presents the following suggestions for the establishment of

a worker representative system.

First, the labor-management council prescribed by the Act on the Promotion of Work Participation and Cooperation, and workers representatives or representation of more than half of the unions for workers in amending employment rules prescribed by the Labor Standards Act should be unified into a single worker representative system in order to overcome the chaos created by the mushrooming of various worker representatives under current labor-related laws and to establish a system for collective decision-making on working conditions for true representation of the interests of workers. In such a case, whether to integrate the worker representative system centered on worker members of the labor-management council or to establish an instrument to represent workers should be left up to legislative decision-making.

Taking into consideration the fact that the issue of advocating the interests of workers is not limited to the workplace level, there is a need to enable the establishment of an instrument to represent the interests of workers across the company or company group for cases in which company groups consist of multiple numbers of workplaces or companies.

Next, worker representatives should truly be a representative of workers. Related to the representation by worker representatives, Park (2015) states, “acquiring representation as a worker representative (elected as a person/organization to represent workers) equals acquiring the right to act on the part of those he/she represents,” and “the most important factor in acquiring representation is fair and democratic elections,” which means that “sufficiently fair and democratic process to acquire representation to represent the interest of workers should be secured.”⁴⁾ In the end, this refers to the need for worker representatives to acquire representation through delegation of legal power based on the collective will of all workers in the form of democratic election. From this aspect, rather than providing the right to elect worker representatives to majority

unions as is the current system, all workers should be given the right to elect worker representatives.

Finally, unions should be given priority in their relations with worker representatives. Unlike worker representatives whose status is recognized by law, trade unions are actors of the three basic labor rights stipulated by the Constitution. Improving the system of a single window for collective bargaining which binds collective bargaining to company or workplace units will enable extra-enterprise bargaining and agreements, and priority should be given to unions for issues subject to agreements.

2. Institutional Supplementation for the Establishment of the Worker Representative System

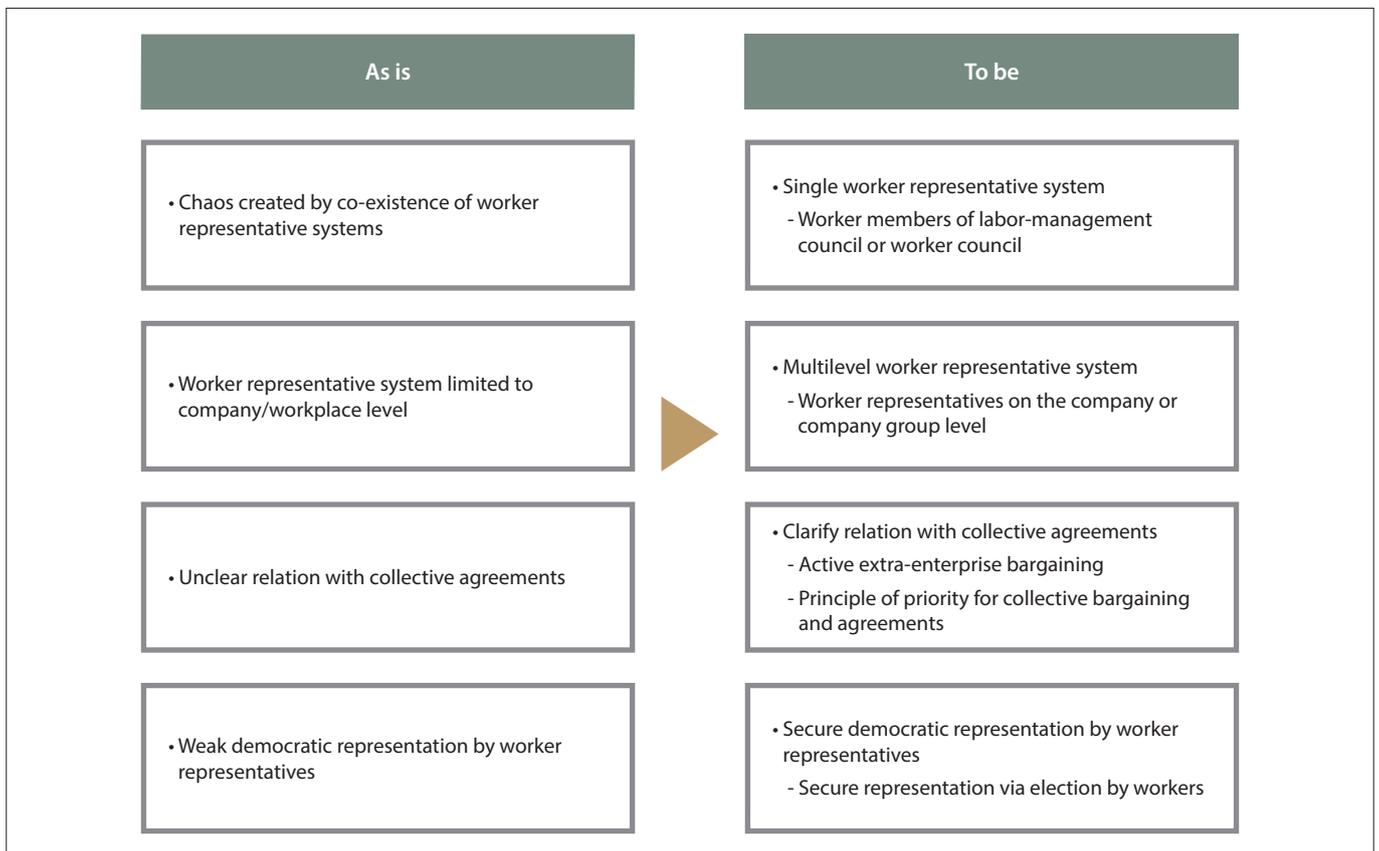
To establish a new representation system for workers interests in this direction, there are numerous institutional supplementations needed.

First, workers subject to representation should be expanded. The Act on the Promotion of Work Participation and Cooperation covers companies or workplaces with 30 or more workers, but workplaces in dire need of representation of workers interests are micro workplaces. Taking this into consideration, expanding the coverage for the establishment of worker representation should be considered.

Next, regulations in relation to the composition of worker representation should be prepared such as regulations on the right to vote and eligibility to run for office, diversification of the size of worker representation, guarantee of status as candidates or election commissions, provision of convenience for employers in relation to elections such as election expenses, and regulations related to the election itself such as flaws in the election.

Furthermore, the subject for protection by worker representatives should be expanded. Even workers without

Figure 1. Basic Direction for Reorganizing the Worker Representative System



direct employment relations such as temporary agency workers and in-house subcontract workers need to have appropriate protection of their interests by worker representatives in relations to the work performed within the given workplace.

Concerning the operation and activities of worker representatives, representation should become a standing instrument by guaranteeing the tenure of representatives, the chairperson should be elected as the instrument for representation, detailed regulations for the meetings and decisions of worker representatives should be established, duties of worker representatives should be defined including the dismissal of worker representatives, the shouldering of expenses by employers and protective measures for worker representatives are needed to guarantee the activities of worker representatives, and regulations on the workers general assembly are needed to establish a more active democracy among workers within the workplace.

Related to the rights of worker representatives, employment rule systems should be abolished and substituted with a system for collaborative decision-making or agreement between the labor (worker representatives) and the management (employer). For issues requiring written agreements with worker representatives according to the Labor Standards Act, agreements between employers and worker representatives may be leveraged, and for issues requiring decisions or agreement of labor-management councils according to the Act on the Promotion of Work Participation and Cooperation, the current format should be maintained but in the future, the adjustment of rights may be considered to guarantee the provision of informa-

tion from employers to enable the appropriate functioning of worker representatives concerning practical issues.

IV. Conclusion

This paper describes why worker representatives are needed, the issues of the current worker representative system, and what is needed to establish a current worker representative system for the future along with several suggestions.

Aside from the issues of the current system, the rapid digitization of the labor circle represented by the “fourth industrial revolution” is expected to bring about significant changes in corporate structures and systems of labor organizations. Digital technologies will dismantle businesses (Betrieb) in the traditional sense, which are currently unified bodies serving as the space and organization for workers to be included to perform continuous work and the primary unit in existing labor-related laws. Accordingly, this may weaken the institutionalized representation system to have certain influence on the decision-making by employers.

Whatever changes digitization may bring, the ought-proposition for the labor to defend is that the burden or sacrifice of only the working people should not be enforced. Therefore, the dignity of labor is a task to maintain and achieve in the future, and establishing a “true” worker representative system to enable collective concertation and agreements on working conditions is the urgent task ahead from the perspective of equal footing for the labor and the management.

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