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Employment and Labor Policies in Transition : Labor

Debate on Reform Measures for the Collective Bargaining Framework

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I. Overview

There are various types of trade unions in Korea. It is a well-known fact that most unions are organised at enterprise-level, and unionized workers of a single enterprise (or workplace) are under an employment contract with a specific employer. It must be understood that even for the Federation of Korean Trade Unions (FKTU), the only confederation recognized throughout the 60s and 70s, having reorganized into an industry-level union, it was not taken by voluntary union decisions but by a governmental measure to strengthen top-down control by the government, and thus it is reasonable to say that most trade unions in Korea have been operating as enterprise-level unions.

It was not until the mid-to-late 90s when various types

of unions, especially those at industry-level (beyond enterprise-level) started to emerge in a full-fledged form. With increasing awareness for the need to overcome the issues and limits of the enterprise-level union system, workers began to join in industry-level unions of a kind in medical, financial, or metal sectors. As an impact by the diversification of forms of employment and higher awareness for labor rights, unionization to appropriately advocate the interests of the unionized members themselves also increased. For example, there are the National Women's Trade Union League, the Youth Community Union, or the Senior Union, which respectively represent specified age groups or gender groups of their own. Trade unions based on employment status or jobs were created as well, such as those for sanitary workers, in-house subcontracted workers, or atypical workers working at

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schools or in the public sector. Others include unions of teachers and public servants, whose legal rights have been secured in the late 1990s through fierce struggles, and those by region or specific business/occupation.

Along with the diversity in organizational forms, the goals and activities of unions have also been diversified. An enterprise-level union which collectively bargains with its relevant employer mostly for the improvements in wages or working conditions, and the Youth Community Union which usually operates to protect the labor rights of the youth in general (rather than bargaining with specific employers) are both “trade unions”, but in terms of the types of unions, these two show a different story. The issue lies in the fact that in Korea, all types of unions are forced to exist and operate within the enterprise-level union structure. For a long time, detailed institutions have been created under the premise of enterprise-level unions by law, and they are unable to embrace diverse forms of trade unions.

Therefore, this paper insists that the various levels of collective bargaining should be able to operate in line with the diverse types of trade unions, and accordingly autonomous collective bargaining should be encouraged with the elimination of all the legal barriers to promote appropriate environment for the various levels of collective bargaining systems. The issue discussed in this paper is regarded as urgent considering the increasing need for the multi-employer kind of bargaining like industry-level bargaining which could be a solution in industrial relations for the low-growth paradigm and the ever-increasing dualization problem.

The contents herein are as follows: In Chapter 2, the current status are to be examined reviewing the trade unions and collective bargaining in general; and in Chapter 3, alternative solutions for the problems lying in various types of unions are to be discussed; followed by the conclusion.

II. The Reality of Trade Unions and Collective Bargaining in Korea

This chapter reviews collective bargaining and the relevant issues in Korea based on each bargaining unit, emphasizing the need for a new research in the pending issue. The first to be discussed is the impact of organizational changes on the form of collective bargaining, considering the fact that unions which once was in the enterprise-level are transforming into the unions existing beyond enterprise boundaries. The percentage of unionized workers joining the unions beyond enterprise-level (including unions established by industry, occupation, region, or other nature of the group of workers) stood at 39.7% in 2006, but this percentage increased over 50% in 2007 (at 51.3%) and continued to grow to reach 56.7% as of the end of 2015 (Ministry of Employment and Labor, 2015). What is the status of bargaining beyond enterprise boundaries against the backdrop mentioned above?

First of all, issues around industry-level bargaining are to be reviewed. Trade unions organised by workers in medical, financial, and metal sector are engaging in the centralized industry-level bargaining, but the most common difficulties arising in the industry-level bargaining include whether there is employers’ organization, (and if any) its roles and representation, whether the contents of the bargaining can be generally applied across the industry, and the cost of bargaining. The employers’ organization in the medical industry dissolved due to the complaints concerning the bargaining process, and in the financial industry, conflicts concerning the introduction of a merit-based wage system in 2016 led to individual banks withdrawing from the employers’ organization, resulting in a *de facto* dissolution. There is an existing employers’ organization in the metal industry, but it has low level of employers’ participation and only a few of unionized workers work at these companies participating in the employers’ organization.¹¹ Aside from the shift in unionization towards unions beyond enterprise

boundaries, the scope implicated by industry-level collective bargaining is limited. Bargaining concerning the terms of actual wages and working conditions is mostly conducted at the enterprise-level. This points out the mismatch between the form of unionization and the type of bargaining. The labor (trade unions) continues to emphasize the need for the industry-level bargaining, but the response of the employer side is passive. Complaints from the employer side are related to redundancies in bargaining and the agenda for bargaining. To name a few, they are discontent with the issue of the three-tier bargaining structure including bargaining on the central (national), regional, and branch (enterprise) level, repeated occurrences of strikes including political strikes and collective strikes, and bargaining agendas difficult to handle uniformly at the central level with possible breaches of rights to personnel and business management.²¹ In considering the above statements, we need to examine to what extent should the appropriate agenda be dealt in the industry-level bargaining along with the issues on bargaining costs and the externalization of conflicts.

Secondly, issues around bargaining by occupation are to be reviewed as well. The Hope Solidarity Union, whose members are in different communication and cable TV companies, could be a prime example. Most members are service technicians whose employment status changed as subcontractor's employee from regular or subcontracted worker of the original company by the employer's outsourcing policy. They requested to bargain with the original contractors (generally large companies) as they believed their overall work process is still under *de facto* control of the company thanks to the technological development, despite the change in their employment contract. Notwithstanding the foregoing, the labor leveraged somewhat flexible tactics by conducting collective bargaining

with the suppliers' council or the employers' federation entrusted with the rights to bargain in the actual bargaining process, and it has been confirmed that agreements were reached in part as the original contractor joined the negotiation table in direct/indirect ways (Lee *et al.*, 2015). This is an important example revealing the need to expand the scope of dependence in line with the process of industrial structures transitioning from a pyramid-shaped structure into networks (Park *et al.*, 2011). However, current laws apply the duty to negotiate under the premise of employment contract, and therefore, lack relevance.

The third type of bargaining is the bargaining in groups of workers with common nature. The Youth Community Union consists of atypical workers, regular workers, and jobseekers between the ages of 15 to 39 regardless of the company, industry, or region, and therefore, it is difficult to specify its bargaining counterpart. According to the issue at hand, the counterpart may be the local or central government, or any specific employer (or association). The agenda for bargaining does not only concern on wages and working conditions, but also on increasing the minimum wage and, boosting its compliance as well as the compliance with the regulations in Labor Standards Act, such as the payment of weekly holiday allowance. Yet, the Youth Community Union have experienced difficulties in securing eligibility as a trade union as the government decided not to recognize the three basic labor rights for jobseekers. The type of collective bargaining that conducted by unions like the Youth Community Union have not been examined sufficiently so far.³¹

The fourth type of bargaining to review is in the cases of the public sector. The public sector can be divided into two groups: One is the cases for which special legal grounds have been secured for the basic labor rights such

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- 1) The number of companies participating in the metal industry bargaining peaked at 104 in 2008, followed by a gradual decrease. In 2016, only 66 companies took part in industry-level bargaining, and the percentage of unionized workers at these companies is approximately 12% or 20,000 workers (Sang-Shin Kwak, 2017).
 - 2) Korea Daily Labor News, December 3, 2012, contributed by Senior Vice Chairman Ssang-Shik Shin of the Korea Metal Industrial Employers' Association.
 - 3) According to the Supreme Court decision (on January 29, 2015) which judged the government decision to reject the declaration of the establishment of the union on such grounds to be unjust, the Youth Community Union received certification.

as teachers and government workers, and the other type of workers in public sector are directly/indirectly under the influence of the government. The former continued to dispute the scope of unionization and is in need of an institutional solution. As for the latter, legal disputes and systematic response by trade unions concerning industrial disputes were triggered by government administrative guidelines, but the effectiveness of existing measures like bargaining through small-scale institutions on the agenda of government measures such as the normalization of public institutions and merit-based wage system is highly problematical and it should be reviewed.

Along with the reality of multi-employer type of bargaining as stated, the predominant enterprise-level bargaining should also be discussed. Enterprise-level bargaining acts as a double-edged sword for both the labor and the management. On the positive side, this structure is favorable for mobilizing union members because it can possibly advocate members' interests confined to a single company, and thus the agenda is directly related to their economic benefits. From the corporate side, the bargaining can be "managed" based on logic specific to the company such as management results or forecasts, and labor can be controlled using economic benefits as a mechanism. However, there is also a major downside. The union are not free from the criticism of exacerbating inequality, gaps, and poverty within the labor market under the bargaining structure fragmented into enterprise units. In other words, the structure is not suitable for social solidarity, and even acts as a mechanism to aggravate labor market dualism. From the corporate side, bargaining on wage and the subsequent strikes on a yearly basis result in continuous expenditures that could otherwise be avoided. In particular, we can say that nothing more than the very own interests within a single company could be dealt in the current form of enterprise-level bargaining that it does

not only trigger similar conflicts every year, but also the low labor efficiency and stability in that it only advocates the interests within a single company.

III. Organizational Diversity and Collective Bargaining

1. Premise

The revision of the legal system designing on the premise of enterprise-level unions despite the existence of a variety of unions should be the first step of the new research. The "outdated" system not only creates a mismatch relating to the organizational diversity of unions but also prevents the exercise of the three basic labor rights stipulated by the Constitution.

Legal regulations concerning the definition of trade unions should be revised as well. The Trade Union and Labor Relations Adjustment Act, which is the foundation for the existing enterprise-level union system, stipulates that unions should be "independent," "have a concrete objective," and "of a single organization" as *de facto* requirements for establishing as an union, along with the clause that the fact that non-workers are allowed to join the organization is reason enough not to grant recognition as a union, which results in controversies related to the scope of unions. Article 10 Clause 2 defines industry-level unions as "a federation comprised of industry-level organizations or nationwide industry-level unit trade unions," which includes numerous regulations that make difficult to apply for industry-level unions' status.⁴⁾ Such issues are not limited to the process of establishing a union, and therefore, we should also examine the establishing the role of industry-level unions in bargaining to transcend the current system unified under the notion of "a single en-

4) Refer to Park *et al.* (2011) for the details.

terprise or workplace.”⁵⁾

The lack of premise interferes with the efforts of unions in coming to fruition. “Creating” what should have already existed would be the first step of the new research process.

2. Tasks to Review in the Execution Process

In order to establish a physical foundation for collective bargaining or action taken by various types of unions, examining the following for a new collective bargaining framework under the premise of amending the current legal system based on enterprise-level unions should be the most urgent task.

Related to the issue of bargaining cost resulted from the stratified bargaining, one way is to separate industry-level “bargaining” and workplace-level “consultation.” Bargaining can be conducted for the standardized framework for actual wages and working conditions of union members at the industry/business level (which can be expanded to include all workers in the given industry/business), and the right to strike can be secured for any disagreements in the process. This is expected to have the effect of reducing the cost of bargaining as well as externalizing conflicts. At the workplace level, participation in management and actual advocacy of the interests of the workers can be achieved through systems like board-level employee representation under the premise of industry-level bargaining, supplemented by consultation for workplace-specific issues such as management issues, working conditions, personnel management, occupational training, and prevention of industrial disasters.

However, this suggestion could be controversial considering whether the division between bargaining and consultation is possible, or the possibility that rights to bargain and strike may be restricted in workplace-level. Seeking for the solutions, the so-called “coordinated decentralization” should be examined in the long run to open the possibility for workplace-level bargaining coupled with industry-level coordination. Further discussions are needed especially for instruments for advocacy of interests within workplaces related to the relations with existing labor-management councils, as well as their scope, agenda, and methods. Considering the difficulty in changing the reality of bargaining focused on the enterprise-level, measures at least to partially achieve the effects of industry-level bargaining should nonetheless be considered even when the enterprise-level bargaining is conducted. Consultative bodies by industry/business should be leveraged. If it is difficult to institutionalize the structure for collective bargaining at the industry/business-level for the moment, social dialogue through consultative bodies can be leveraged for tentative measures to establish wage systems reflecting similarities in the given industry/business, and secure similar wage levels according to the job performed. As the situations in every industry/business differ respectively, the low hanging fruits should rather be targeted first than applying a uniform approach.

The shipbuilding, health and medical industries should be prime examples. In the shipbuilding industry directly faced with restructuring, government policies along with the industry forecasts are substantially impacting the employment and wages of workers, and it implies the need for dialogue among stakeholders in order to find break-

5) Article 29-2 of the Trade Union and Employment Relations Adjustment Act states “if there are two trade unions or more which are established or joined by workers in a business or workplace regardless of the type of organization, the trade unions shall determine the bargaining representative union.” On the other hand, the principle of bargaining for teachers’ unions is generally conducted in large units. “The representative of a trade union shall have the authority to bargain and conclude a collective agreement with regard to the improvement of the economic and social status of teachers, such as wages, working conditions, welfare, etc., with the Minister of Education, Science, and Technology, the superintendent of the office of education (city or provincial), and/or the person who establishes and runs the private school. In the case of private schools, the persons who establish and run such schools shall participate in negotiations at the national level or at the city or provincial level.” The clause prevents bargaining in school units, in other words, enterprise-level bargaining, and gives the duty to bargain at the national, city, or provincial levels (Article 6 Clause 1 of the Act on the Establishment, Operation, Etc of Trade Unions for Teachers).

throughs for the current situation. Enterprise-level unions under the Korean Confederation of Trade Unions (KCTU), of which stance is relatively passive in the current social dialogue regime, also suggested about the organization acting as an instrument for labor-management consultation in shipbuilding industry. In response to the crises faced by the industry including severe decline in orders, the following should be discussed in the long run: measures to minimize the effect of restructuring the labor, (in cases when restructuring is inevitable) measures to provide protection by companies as well as social safety net and the ensuring and managing of skilled workers and their occupational training, measures to introduce job-based wages based on skills required by various processes, and the creation of labor markets for different jobs and measures for appropriate matching. In the health and medical industry, issues within the industry itself such as securing manpower or the medical fee policy have direct impact on employment and working conditions (for instance, the impact on working hours, shifts, and holidays), and therefore, the union has been making efforts to intervene in industry policies. Special skills are required for each job in this industry, and therefore, the structure is rather favorable for discussing the reorganization of the wage system to a job-based system. By arranging the framework for multi-employer type of bargaining or consultation in areas where applicable, standardizing the wages and working conditions reflected in industry policies, employment policies, and features of different jobs should be examined to open the way for the discussions in any other industries/businesses.

For the enterprise-level bargaining, measures to promote efficiency and stability should be examined. Often in wage negotiations at large companies, macroeconomic indicators such as economic growth rates and inflation, and other indicators such as living expenses and management results are reflected, and therefore, establishing a formula for calculating the wage for each year may be considered. Naturally, this formula would be possible only when accurate

and detailed information is provided for the management status. Even for the enterprise-level bargaining, to bridge both the gap among companies within a single industry and the wage gap according to gender or employment type would be the solution. For example, mid-term goals (e.g. ten-year goals) may be established to bridge the gap among companies within a single industry through measures such as multi-year bargaining, i.e. extending the cycle of wage bargaining to two or three years based on coordination by industry-level unions or federations, and step-by-step execution should be examined to achieve such mid-term goals. Plus, as a part of the preemptive and proactive efforts on the part of unions to solve inequalities and gaps within the labor market, a certain percentage of the wage increase for regular workers may be used for supplementing the income of non-regular workers. For example, unions could monitor the execution process on this redistribution, which would trigger public discussions on the practice of unfair transactions among companies. In 2007, health and medical workers' union agreed to use one-third of the wage increase of union members (regular workers) to facilitate the transitioning of atypical/precious workers into regular employment and to improve their terms and conditions. This agreement is assessed to have contributed significantly to the employment of non-regular workers and the stabilization of their working conditions.

A wage notification system can be considered in the process of restructuring the bargaining framework to secure the precise term to decide the type of work, the extent of the skill and experience of workers who do the work, and the amount of wage with the type of wage system applied. A wage notification system is expected to act as a precondition to securing fair and appropriate payment based on the work performed rather than relying on the company's capacity to pay. When industry-level bargaining aims to standardize job-based wages and working conditions in order to secure the equitable structure as well as the equal payment system for the equal work (Lee,

2016; Jung, 2015), it could be the starting point for the discussion on the establishment of appropriate wage levels and systems reflecting factors like jobs, skills, experience, risks, difficulty, and working conditions, leveraging information provided through the wage notification system.

Bargaining based on workers' nature should be reviewed by two aspects. In the case of the indirectly employed, a bargaining structure should be created to enable them to bargain with an actor who exercises *de facto* dominance. On the other hand, for trade unions organized by groups of workers with common nature, a framework for social dialogue is rather needed than the traditional form of collective bargaining with specific employers. Considering the fact that the current Trade Union and Labor Relations Adjustment Act stipulates the goals for trade unions is "to enhance the socioeconomic status of workers" (Article 2 Clause 4), discussions are needed for the activities to achieve this goal without being bound by employers' interests.

IV. Conclusion

This paper asserts that to seek a solution for this mismatch problem, whereby trade unions exist in various

forms with their own roles and yet the basic framework for bargaining remains under the premise of enterprise-level unions, is a task for new employment and labor policies in transition. Under the condition that existing clauses in the labor law that have failed to reflect the variety of trade unions are to be amended, this paper suggests industry-level bargaining and workplace-level consultation based on coordinated decentralization, the introduction of a wage notification system, and measures to enhance the efficiency and stability of enterprise-level bargaining. The format of unionization by workers themselves should be left fully up to those who are engaged in the association and unionization. Furthermore, the right to bargain and collective action should be guaranteed by the legal system and in industrial relations practice regardless of the structure of a given union. Thus far, laws and institutions related to labor under the premise of enterprise-level unions have limited the activities of various forms of unions. Rectifying the problem would thus be a key priority. Reorganizing the collective bargaining structure is expected to serve as a starting point to find solutions for labor market dualization in the industrial relations aspect. In short, a "net" should be created to enable the parties of collective bargaining, i.e. that they could throw the net to catch the fish of their choice by their decision and according to their capabilities.

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