

## **No.23 Ban on Unfair Labor Practice (text 334-350)**

### **1 Gist of System for Unfair Labor Practice**

- Theory of the violation of the right to organize
- Theory of the legislative policy
  - \*Where are practical differences between these two theories?  
#130, #131, etc.

### **2 Requisites to Effectuate Unfair Labor Practice**

#### **2.1 Outline**

##### **2.1.1 Types of Unfair Labor Practice**

- Disadvantageous treatment (Para.1 and 4)
- Refusal of collective bargaining (Para.2)
- Overriding intervention (Para.3)

##### **2.1.2 Subject of Unfair Labor Practice**

- Principle: an employer under the labor contract
- Exceptions:
  - Party in the position capable to “govern/decide realistically and specifically”  
#4
  - Employer in “near past” and “near future”  
Cf. #117

Case of JR Hokkaido/Japan Freight Railway Company: Verdict by 1st Petty Bench of Supreme Court dated Dec. 22, 2003, included in *Law Reports*, vol. 57, no.11, p. 2335

<http://www.courts.go.jp/hanrei/pdf/2754A7F80E1357A249256F3A00269E82.pdf>

#### **2.2 Disadvantageous Treatment**

- Requisites for effectuation
- Intent of unfair labor practice
  - Rivalry in reasons
  - Extortion by the third party
- Substantiation of collective wage discrimination
  - Mass observation method  
#115
  - “Continued practice” (Art. 27, para. (2) of Labor Union Law)  
#127

#### **2.3 Overriding intervention**

- Requisites for effectuation
  - Concrete example

- Employer's expression of remarks/opinions

#121

Intent of an overriding intervention

Exercise of the right to manage facilities and an overriding intervention

#122

### 3 Relief of Unfair Labor Practice

#### 3.1 Relief by Labor Relations Commission

Relief proceedings

Contents and limitation of a labor relief order

- Discretion of a labor relations commission (effective discretion  $\neq$  necessary discretion)

- Limitation of discretionary powers

#125

Suit seeking revocation of an order of a labor relations commission

- Emergency order

#129

#### 3.2 Judicial Relief of Unfair Labor Practice

Legal grounding

#130, #131 and such

Contents of judicial relief

- Typical examples

- Difference from administrative reliefs

**RESEARCH** In the U.S., not only an unfair practice on the employer's part, but also one on the worker's part, are banned as the unfair labor practice, while in Japan just an employer's practice is prohibited. What do you think about this? Further, in the U.S. the relief of unfair labor practices is supposed to be the exclusive task of the specialized administrative agency (National Labor Relations Board), and the court gets involved merely in an indirect form of the judicial review. Should institutional arrangements be designed in Japan so as to make the relief of unfair labor practices the exclusive mission of the labor relations commission?

