Co-published feature

New era of union pluralism in Korea

By Young-Seok Ki, partner, Shin & Kim

The Constitution of the Republic of Korea provides that, as fundamental rights of the people, workers have the right to independent association, to collective bargaining, and to collective action. It is doubtless that, in the words of UN agency the International Labour Organization, "the right of workers and employers to form and join organizations of their own choosing is an integral part of a free and open society".

Labor unions have been created in various forms in Korea. The Federation of Korean Trade Unions (FKTU) was first established as a nationwide union in 1946 under the name of the 'Korean Labor Federation for Independence Promotion'. As of 2010, 2,292 trade unions with 728,649 members were affiliated with the FKTU. The second largest national trade federation next to the FKTU is the Korea Confederation of Trade Unions (KCTU), which was founded in December 1995. As of 2010, 432 trade unions with 580,064 members were affiliated with the KCTU. The Korean Labor Unions Confederation was most recently established in 2011 as a new national-level federation of trade unions, focusing more on the protection of the rights of workers and promoting workers' welfare. On the other hand, many industry-based or regional unions were also established throughout the years, including the Korean Construction Industry Union, the Korean Financial Industry Union, the Korean Metal Workers Union and the Korean Public & Social Services and Transportation Workers Union.

In the past, Korean laws allowed only one enterprise-level trade union per company in general. If a trade union limited to company employees was already established, employees were prohibited from establishing another trade union whose membership is limited to the same category of employees in the same company. Critics argued that such single union system excessively restricted the employees' constitutional right to association. In response, the Trade Union and Labor Relations Adjustment Act (TULRAA) was amended in 2010 and allowed multiple unions from July 1 2011. TULRAA stipulates that workers can freely establish one or more trade unions in a business, and join trade unions of their own choosing. Thus, the workers' freedom to establish and choose a trade union at the enterprise level was guaranteed with the amendment.

The amended TULRAA mandates that if multiple trade unions are established in a company, the labour unions are required to select one representative bargaining union to engage in collective bargaining with the employer. The purpose of mandating a single bargaining channel is to reduce the burden of an employer to negotiate with each union separately, to secure the integrity of working conditions for union members,

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and to preclude excessive competition between the labour unions. Bargaining channels are required to be unified regardless of the type of organisation of the unions or whether the members of the unions overlap. Therefore, industrial unions and local unions are also subject to the unification of bargaining channels in a single company if another union, industrial level or enterprise-level, is established in the company. The unification of bargaining channels will lead to a so-called "one-enterprise, one-bargaining system".

The process to determine the representative bargaining union is as follows:

By allowing multiple unions at the enterprise level, workers are expected to have more freedom to establish and choose trade unions, and competition among trade unions will be promoted

First Step: Unions select a representative bargaining union among themselves within a certain period of time.

Second Step: If the trade unions fail to determine the representative union among themselves within such time, the trade union comprised of a majority of all involved trade union members becomes the representative bargaining union.

Third Step: If there is no trade union comprised of a majority, trade unions participating in the process of unifying the bargaining channel can create a joint bargaining team to serve as the bargaining representative by agreement among themselves. If the participating trade unions fail to reach an agreement on the formation of a joint bargaining team, the Labor Relations Commission may organise a joint bargaining team by considering the percentage of union members participating in the unifying process, at the request of the involved trade union. In this case, only trade unions with at least 10% of the total members of trade unions participating in the unifying process are eligible for a seat in the joint bargaining team. Nevertheless, a union with membership of less than 10% of the total is subject to the collective agreement executed by the joint bargaining team.

Industrial action is led by the representative bargaining union upon the majority vote of all members of trade unions that participated in the bargaining channel unification process. A single trade union cannot independently carry out an industrial action by its own vote.

The representative bargaining union has the power of attorney for all participating trade unions and their members and bears the duty of fair representation. Restated, the representative bargaining union should fairly and impartially engage in collective bargaining and execute a collective agreement. Unreasonable discrimination in handling grievances of trade unions or carrying out union activities would be a violation of the duty of fair representation. If the duty of fair representation is breached, the affected trade union is entitled to seek remedy through the Labor Relations Commission.

There are a few exceptions to the mandatory unification of bargaining channels. If the employer gives consent to individual bargaining in accordance with the TULRAA, the bargaining channels are not required to be unified. Each union can individually bargain with the employer without selecting a representative bargaining union. Furthermore, if bargaining units are separated by the decision of the Labor Relations Commission at the request of a concerned trade union or the employer, one representative bargaining union will be selected in each bargaining unit respectively. The Labor Relations Commission will take into consideration various facts, including material disparity in working conditions, employment status and bargaining practices.

Workers are still concerned that minority unions will not be fairly represented in the bargaining process under the mandated unification of bargaining channels even if multiple unions are permitted. In addition, if a labour union is established or becomes a majority union after the representative bargaining union is determined, the labour union cannot engage in collective bargaining with the employer for a certain period because the existing representative bargaining union's exclusive right to collective bargaining is secured for two years.

According to 'Industrial Relations Outlook Survey for 2011', which was conducted on 230 companies by the Korea Employers Federation, 51% of companies expected the establishment of new trade unions after the multiple union system came into effect. It is reported that 676 new unions were established during the period from July 1 2011 to January 31 2012. By allowing multiple unions at the enterprise level, workers are expected to have more freedom to establish and choose trade unions, and competition among trade unions will be promoted.

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