

LABOR DISPUTE RESOLUTION IN JAPAN

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I. FEATURES OF LABOR AND EMPLOYMENT RELATIONS IN JAPAN

1. Labor Market

Unemployment rate in September 2020: **3.0 %**

Slight increase due to COVID-19

2. Employment Practices

Traditional practices

Long-term employment & Seniority-based wages

Recent changes

Performance-based HR

Increase in atypical employment: **38.2 %** in 2019

Long-term employment for core employees

3. Industrial Relations

Enterprise-based unionism

Declining union density: **16.7 %** in 2019

II. BASICS OF JAPAN'S LABOR AND EMPLOYMENT LAW

1. Employment Law (Individual Labor Relations Law)

(1) Labor Standards Act

Regulations of payment of wages, working time, work rules etc.

Labor inspection system

(2) Labor Contract Act

Dismissal without just cause is impermissible (**abusive dismissal doctrine**).

(3) Equal Employment Opportunity Act between Men and Women

(4) Other Statutes

Minimum Wage Act, Industrial Safety and Hygiene Act,

Workers' Compensation Insurance Act

Part-time and Fixed-term Employment Act

II. BASICS OF JAPAN'S LABOR AND EMPLOYMENT LAW (ctd.)

2. Labor Relations Law (Collective Labor Relations Law)

(1) Labor Union Act

No exclusive representation system (**plural representation**)

Prohibition of employer's **unfair labor practices**

Labor Relations Commission (tripartite administrative agency)

(2) Labor Relations Adjustment Act

Assistance of voluntary resolution of collective labor disputes

3. Labor Market Law

(1) Job Security Act (regulation of employment agencies)

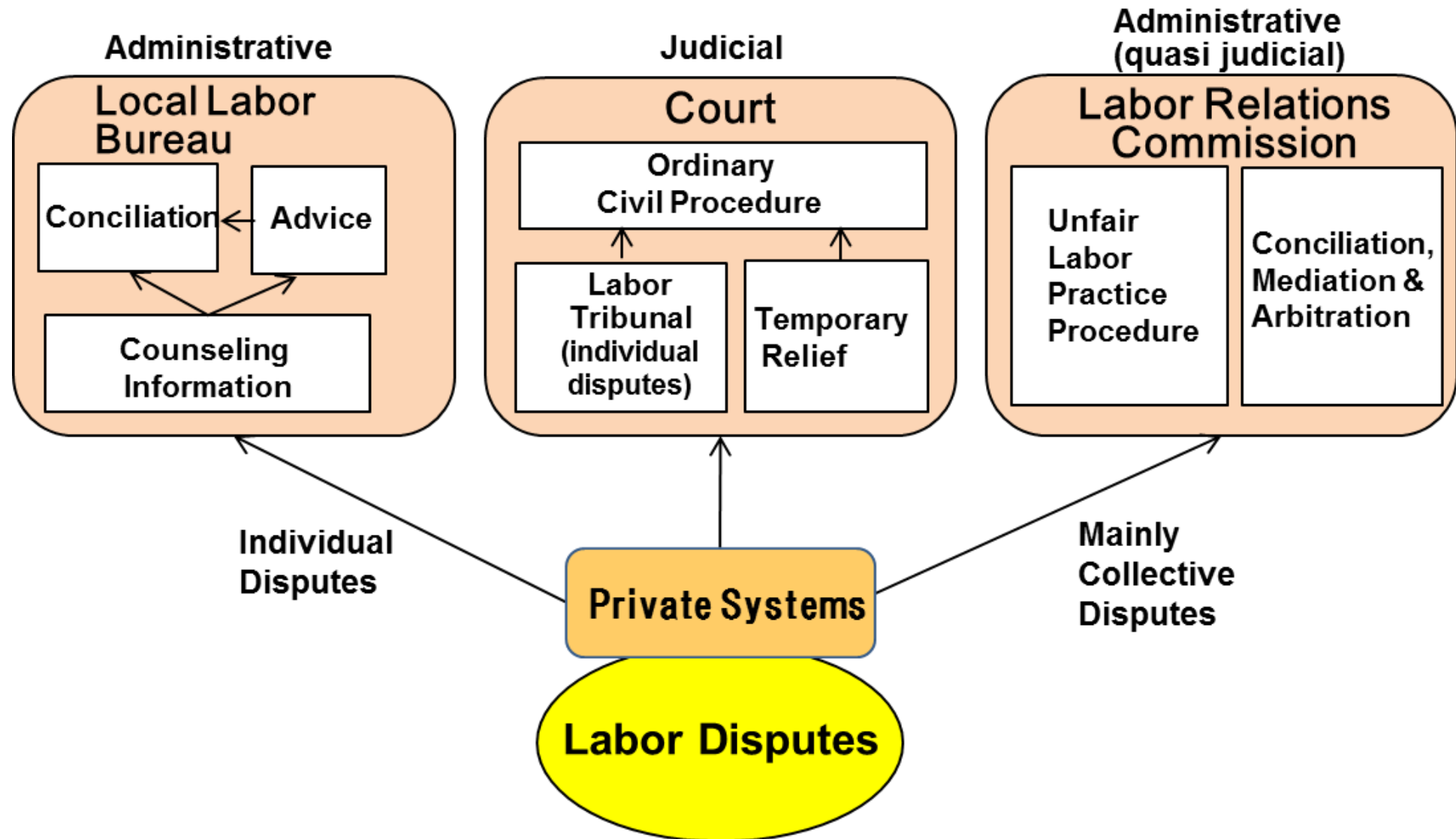
(2) Worker Dispatching Act (regulation of temporary work agencies)

(3) Act on Promotion of Employment of Elderly Persons

(4) Act on Promotion of Employment of Persons with Disabilities

III. LABOR DISPUTE RESOLUTION SYSTEMS IN JAPAN

1. Overview



III. LABOR DISPUTE RESOLUTION SYSTEMS IN JAPAN (ctd.)

2. Public System / Private System

(1) Public System

a. Judicial System: Courts

b. Administrative Systems

Local Labor Bureaus

Labor Relations Commissions (Local and Central)

Tripartite composition

(2) Private System

a. Grievance Procedure under Collective Bargaining Agreement

Not often used

b. Private Arbitration

Rarely used

Arbitration Act:

Pre-dispute arbitration agreement on individual disputes is impermissible

III. LABOR DISPUTE RESOLUTION SYSTEMS IN JAPAN (ctd.)

3. Judicial System / Administrative System

(1) Judicial System (Courts)

(a) Ordinary Civil Procedure

About **3,500** cases are filed per year

Average time for disposition: **14** months

(b) Labor Tribunal Procedure (individual disputes)

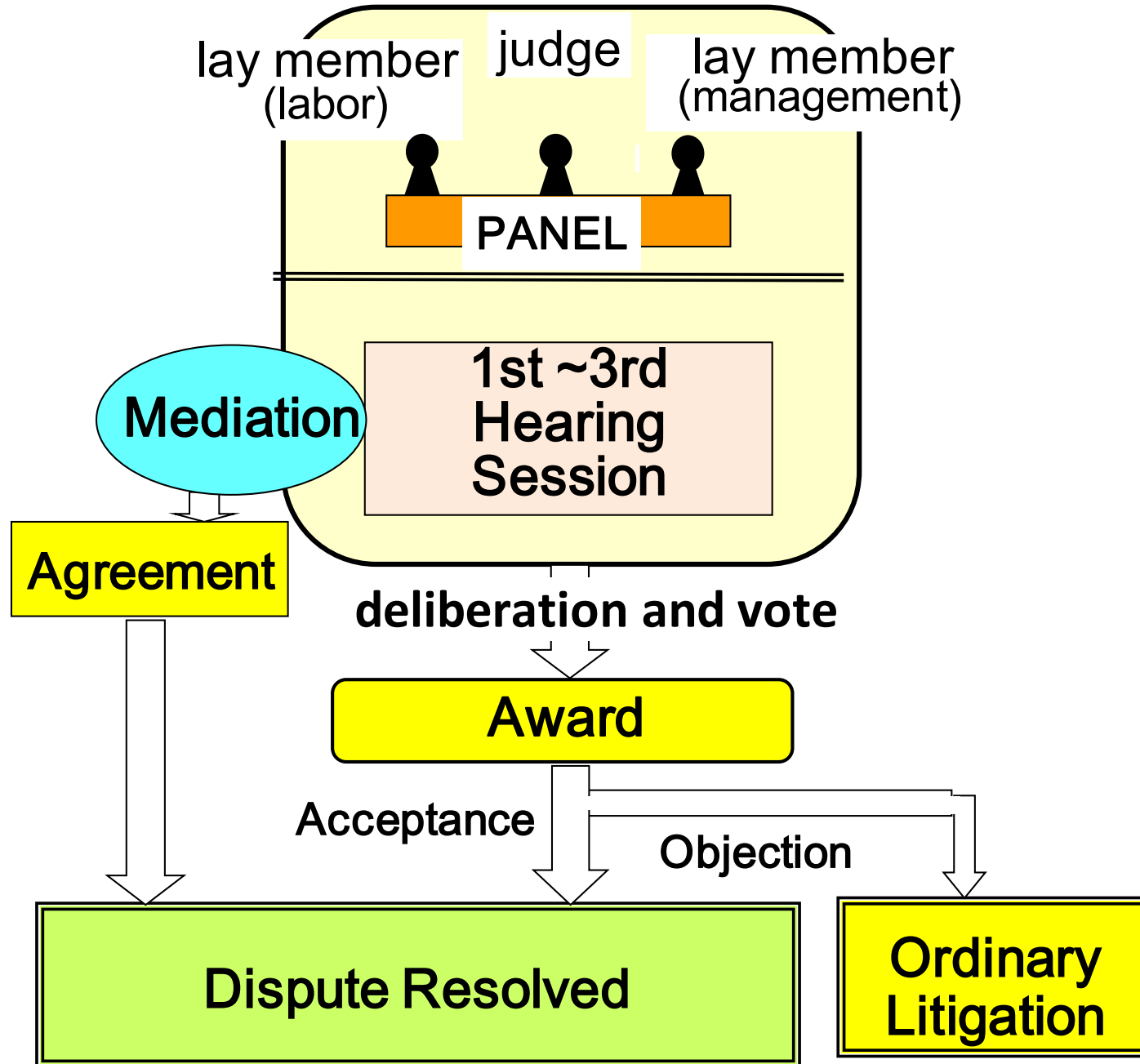
Tripartite panel: one professional judge & two lay judges

About **3,500** cases are filed per year

Disposed within **three hearing sessions** (about **75** days in total)

70 % are settled through **mediation**

【Labor Tribunal Procedure】



III. LABOR DISPUTE RESOLUTION SYSTEMS IN JAPAN (ctd.)

3. Judicial System / Administrative System (ctd.)

(2) Administrative Systems

(a) **Local Labor Bureau**

System to Promote Voluntary Resolution of Individual Disputes

Information and counseling, administrative advice, and **conciliation**

About **5,000** cases are filed for conciliation per year

More than 90 % of conciliation cases are closed within two months

(b) **Labor Relations Commission** (mainly collective disputes)

Unfair labor practice procedure

About **300** cases are filed per year

Average time for disposition: **400 ~ 500** days

Adjustment of collective disputes (conciliation, mediation, arbitration)

About **300** cases are filed per year (mostly for conciliation)

III. LABOR DISPUTE RESOLUTION SYSTEMS IN JAPAN (ctd.)

4. Collective Disputes / Individual Disputes

(1) Collective Disputes

Courts have general jurisdiction over collective disputes

Labor Relations Commissions (Central & Local)

Adjudication of unfair labor practice disputes

Adjustment of collective disputes in general

(2) Individual Disputes

Courts have general jurisdiction over collective disputes

Labor Tribunal procedure for individual disputes

Local Labor Bureaus

System to Promote Voluntary Resolution of Individual Disputes

III. LABOR DISPUTE RESOLUTION SYSTEMS IN JAPAN (ctd.)

5. Interest Disputes / Right Disputes

Interest disputes ⇒ adjustment of collective disputes through conciliation, mediation and arbitration (Labor Relations Commission)

6. Human Rights (Public Policy) Disputes / “Private” Disputes

Disputes regarding discrimination, harassment etc.

⇒ Mediation by Dispute Adjustment Commission in Local Labor Bureau

cf. Conciliation for private disputes

No exhaustion requirement before filing complaint in court

III. LABOR DISPUTE RESOLUTION SYSTEMS IN JAPAN (ctd.)

7.Private Sector / Public Sector

Public Sector

Civil servant ⇒ **National Personnel Agency**

Labor Relations Commission does not have jurisdiction

Employees of public enterprises

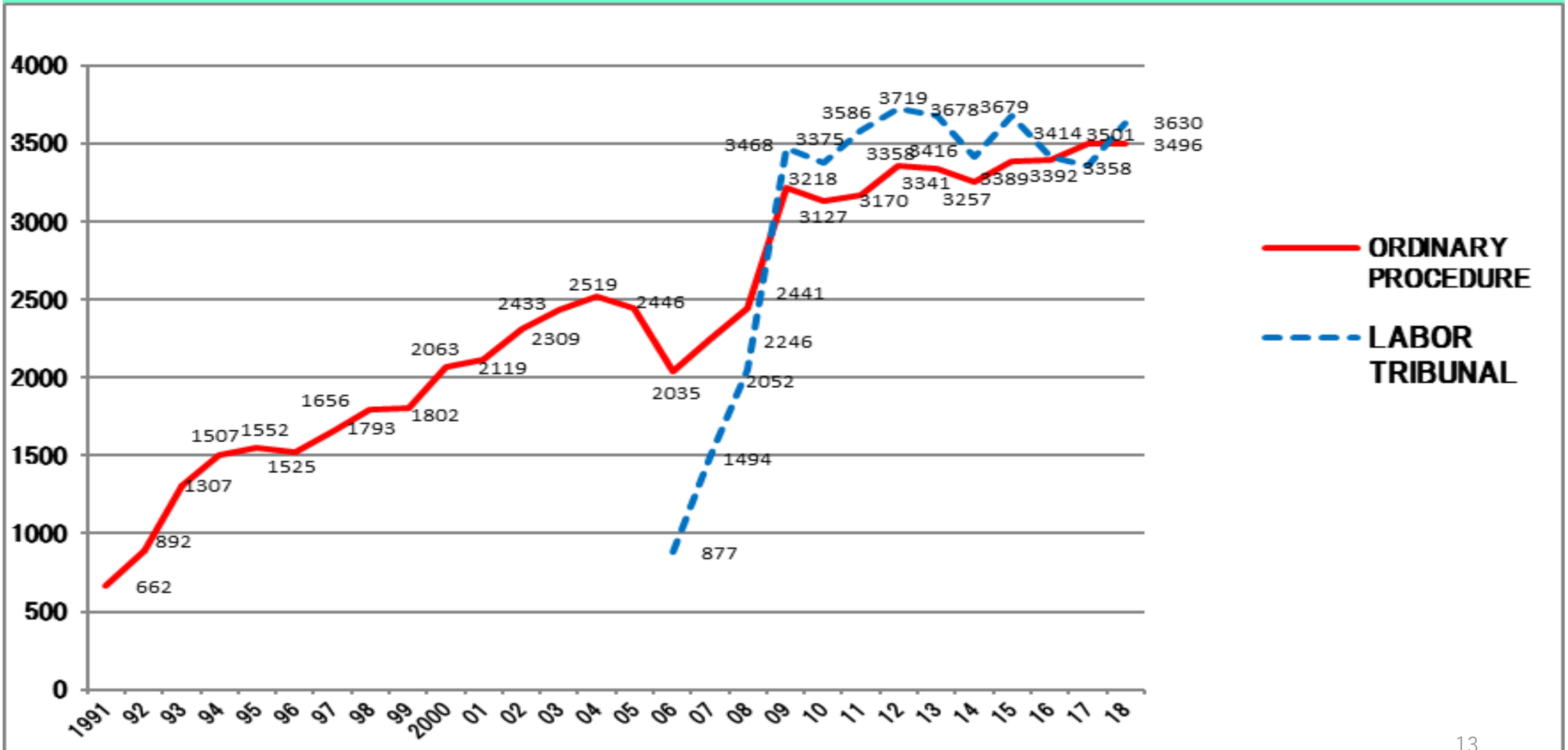
Central Labor Relations Commission has jurisdiction

Mandatory arbitration for interest disputes

Strikes are prohibited

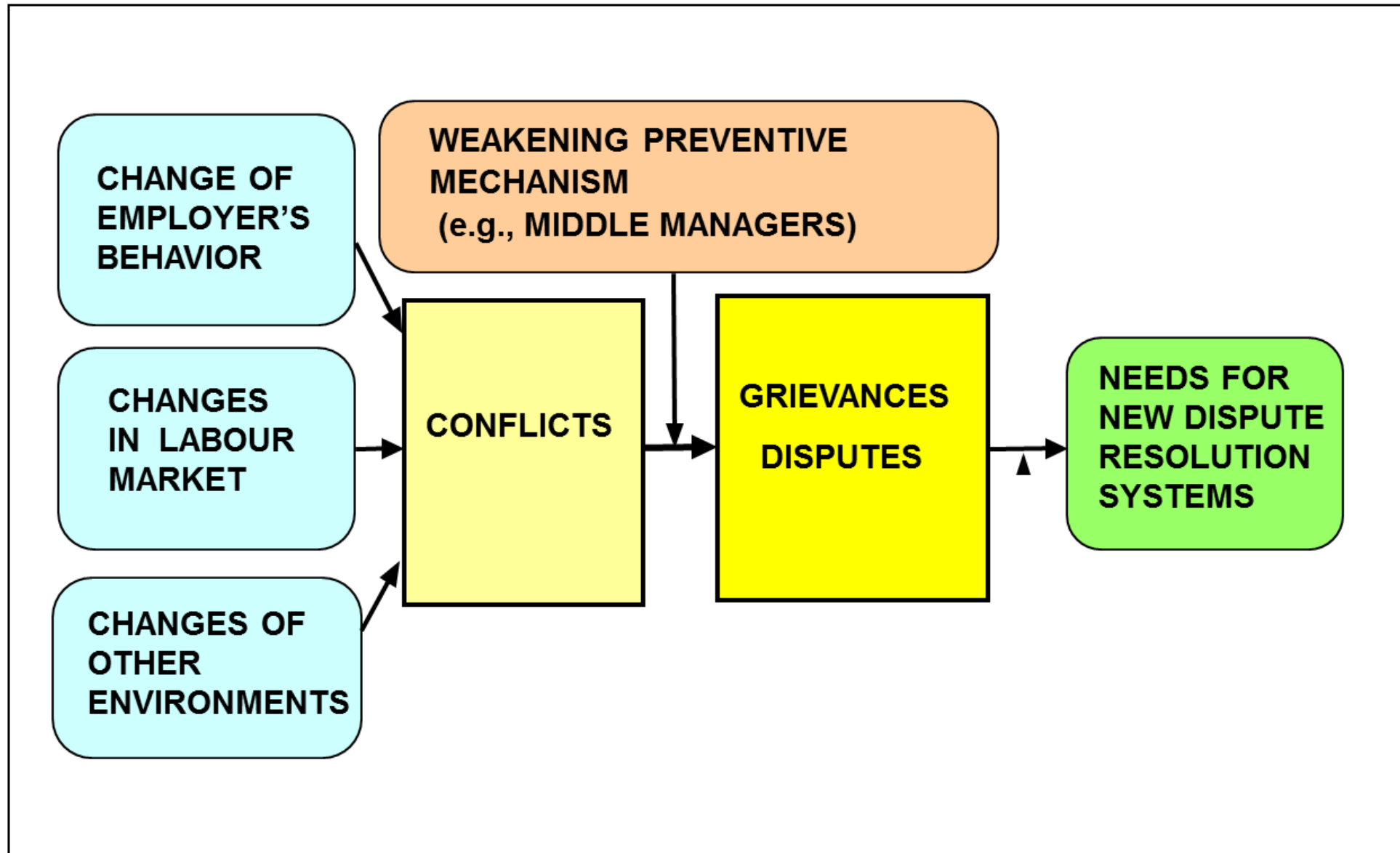
IV. FEATURES OF LABOR DISPUTE RESOLUTION IN JAPAN (ctd.)

1. Increase of Individual Disputes (but far smaller number than other countries)



IV. FEATURES OF LABOR DISPUTE RESOLUTION IN JAPAN

2. Background of Increase of Individual Labor Disputes



IV. FEATURES OF LABOR DISPUTE RESOLUTION IN JAPAN (ctd.)

3. Legislative Development of Individual Dispute Resolution System

Administrative ADR (2001)

System to Promote Voluntary Resolution of Individual Disputes

Labor Tribunal Procedure (2004)

4. Plural Systems for Individual Disputes

Courts (Labor Tribunal procedure)

Administrative agencies (Administrative ADR and Labor Relations Commission)

5. Existence of Tripartite System

Labor Tribunal Procedure and Labor Relations Commission

Role of lay judges

Expertise and experience in matters relating to labor and employment

Balancing of interests ⇒ Active roles in settlement and mediation

IV. FEATURES OF LABOR DISPUTE RESOLUTION IN JAPAN (ctd.)

6. Underdevelopment of Private ADR

Grievance procedure is not often used

Preventive function of joint consultation is emphasized

Arbitration agreement before individual dispute arises is prohibited
by Arbitration Act

Need to build skills for effective dispute resolution

7. Emphasis on Consensual Resolution

Preference of settlement over adjudication in collective labor disputes

Maintenance of relationship?

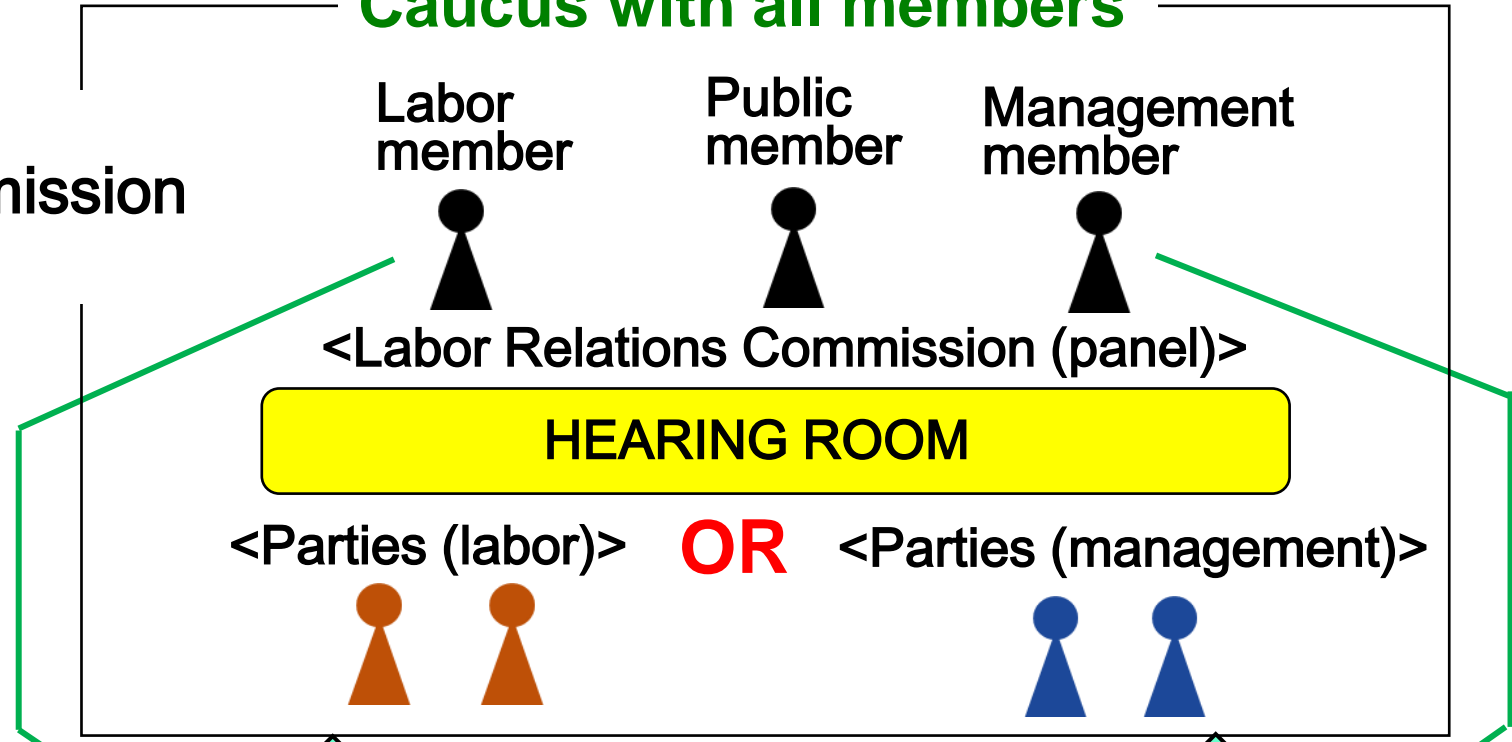
Preference of conciliation and mediation over arbitration

8. Frequent Use of Caucus

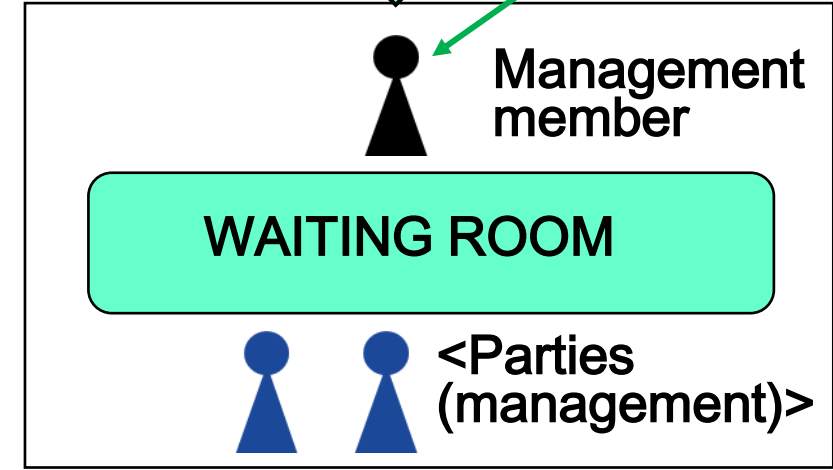
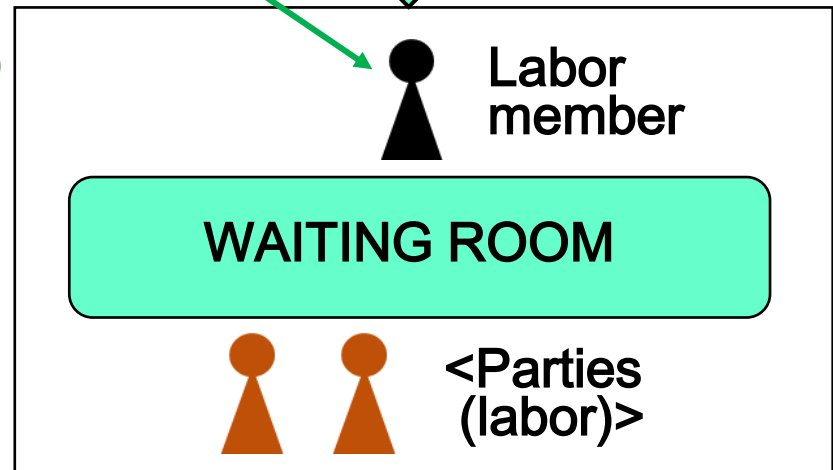
Role of lay members in tripartite composition

Settlement Process at Labor Relations Commission (Caucus)

Caucus with all members



Caucus with labor (management) member



V. CONCLUSION

1. Comparative Evaluation

Fairly accessible and speedy individual dispute resolution

Still small number of cases

Emphasis on consensual resolution

2. Future Issues

Division of role of each system

Need for enhancement of in-house conflict management

Need for skill development

THANK YOU