Key Labor News

The Serious Accidents Punishment Act Expanded to Apply to Businesses with Fewer Than 50 Employees Starting Jan. 27, 2024

Starting from January 2024, the Serious Accidents Punishment Act, which imposes criminal penalties in the event of serious accidents such as worker deaths when business owners or responsible managing officers violate their obligation to establish a safety and health management system, will be expanded to apply to businesses with fewer than 50 employees.

The Serious Accidents Punishment Act, which came into effect on January 27, 2022, currently applies only to businesses with 50 or more employees(or construction sites with construction cost exceeding 5 billion won). However, starting from January 27, 2024, it will also be applied to businesses with fewer than 50 employees (or construction projects with construction costs below 5 billion won in the case of the construction industry). This means that any businesses with five or more employees will be subject to the Serious Accidents Punishment Act.

The Serious Accidents Punishment Act imposes penalties on business owners and responsible managing officers who fail to fulfill their duty of accident prevention in the event of a serious industrial accident resulting in worker fatalities. They can face imprisonment for more than one year or fines of up to 1 billion won, while corporations can be fined up to 5 billion won. Additionally, the Act introduces punitive damages, which means that if business owners or responsible managing officers deliberately or through gross negligence violate their obligation to ensure safety and health, resulting in a serious accident, they may be liable for compensation of up to five times the amount of damages incurred.

Furthermore, the Serious Accident Punishment Act has introduced the concept of ‘serious civic accident’ to address accidents occurring in public-use facilities or public transportation. The penalties for such accidents are regulated in the same manner as serious industrial accidents.

The number of accidents occurring in businesses with fewer than 50 employees accounts for over 70% of all industrial accidents. Moreover, many of these small businesses face challenges in establishing a safety and health management systems due to their limited resources. As a results, there are growing concerns regarding the implementation timing of the Serious Accident Punishment Act. Under the Act, the establishment and implementation of a safety and health management system are the most fundamental obligations. We provide the following guidance on how to establish and implement a safety and health management system for your reference.

<Establishment and Implementation of Safety and Health Management System>

1. Define objectives and management policies regarding safety and health.
2. Establish an organization exclusively responsible for the overall control and management of affairs concerning safety and health.
3. Identify and improve hazardous or risk factors varying on the characteristics of the relevant businesses.
   * Establish work procedures for identifying and improving hazardous or risk factors varying on the characteristics of the relevant business and take necessary measures after conducting an inspection at least once every half year
   ** Standard Operating Procedures (SOPs) should be developed and followed for high-risk tasks.
4. Set and spend a budget necessary for preparation of human resources, facilities, and equipment for safety and health required for accident prevention and improvement of hazardous or risk factors.
5. Support the responsibilities of a person in charge of safety and health management, etc.
   * Establish criteria to assess whether a person in charge of safety and health management, etc. performs his or her duties faithfully, and assess and manage such person at least once every half year in accordance with such criteria.
6. Assign specialized personnel such as safety officers and health officers, etc.
   * Assign more than the specified number of personnel under the Occupational Safety and Health Act
   ** Guarantee working hours on safety and health if the person required to be assigned holds other offices
7. Solicit and assess the opinions of employees and verify the implementation status of improvement measures.
   * If employee feedback is necessary for ensuring safety and health, develop improvement measures and assess their implementation status at least once every half year.
8. Prepare a manual in case a serious industrial accident occurs or there is an imminent risk of occurrence of such accident and conduct an inspection at least once every half year.
9. Establish the standards and procedures to secure the safety and health of workers and conduct an inspection at least once every half year where any work is contracted, outsourced, or entrusted, etc. to a third party

The Era of Integration of Overseas Korean Agency and Immigration Office, Are we ready for this?

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The immigration policy that will integrate the Overseas Korean Agency and the Immigration Office is gaining momentum in Korea. Immigration affairs and policies for overseas Koreans are not the issues that can only be solved by domestic experts. The declining birth rate in Korea is not a recent issue. Even annually allocating an estimated 40 trillion won may not bring fundamental solutions to increase the birth rate. In such case, utilizing overseas Koreans or foreigners could be a way to address the problem of population decline.

Therefore, the establishment of Immigration Office and Overseas Korean Agency is a means to utilize foreign labor for solving the issue.

Following the Korean War during 1950-1953 when Korea was in the developing stage, many people left for developed countries like the United States or Europe to study or immigrate. Among those who went abroad for studies, many settled down in the host countries through employment and other means. This was because there were various reasons for wanting to settle in the countries with advanced systems, cultures, and educational environments compared to Korea.

However, nowadays, as South Korea became an economic powerhouse in the top 10 and gaining global recognition through the Korean Wave (Hallyu), there is a significant phenomenon of reverse immigration among overseas compatriots who went abroad for various reasons. Especially during the COVID-19 period, South Korea's advanced handling of the pandemic has led to an admiration of the country. With per capita income surpassing $30,000 and Korean corporations like Samsung, LG, SK, and Lotte making a global impact, overseas Koreans (about 7.5 million) are living in a time when they can take pride in their homeland.

Yet, it is still a challenge that more people give up Korean citizenship than foreigners acquiring it; South Korea is running a deficit in terms of immigration. If the current low birthrate trend continues, the country will face a severe shortage of the working-age population in the future, impacting its economic activity and global competitiveness, leading potentially to a demographic crisis.

So, which countries have well-structured immigration policies? It's worth examining this closely. Because historically, South Korea hasn't experienced foreign invasions or colonized others, unlike countries like UK, France, the Netherlands, or Japan. Consequently, South Korea lacks the experience of managing immigration on the scale of these historically dominant nations. As a result, there's a potential risk of inadvertently creating systems that discriminate against its own citizens.

For example, in South Korea, young people tend to avoid jobs in certain industries (known as 3D jobs), leading to the employment of foreign labors. According to the Korean Labor Law, foreign workers are subject to the same minimum wage as Korean workers. Similarly, in an aging society with low birth rates, many foreign domestic helpers are employed to care for children and elderly family members. But due to minimum wage regulations, even if dual-income households hire foreign helpers, the combined income of the couple must cover the cost of the helper's wages.

Comparatively, let's consider Singapore as an example. Singapore has been utilizing foreign workers since 1978, accumulating over 40 years of experience in this regard. Over the years, they've faced challenges and gradually established a more stable system for managing foreign labor. They've leveraged the know-how of how to effectively integrate foreign labor into their economy, which has led to cost-effective labor solutions.

If South Korea were to introduce a similar system for foreign domestic helpers, it would require careful consideration, learning from the experiences of advanced nations. This is not a policy that can be decided in a short period of time without a long-term

plan. Currently, there are seven different ministries and four policy committees in South Korea dealing with foreign-related affairs, which can lead to administrative overlap and inefficient use of resources.

In light of this, there is a need for a consolidated control tower to manage these diverse departments and committees. The Ministry of Justice in South Korea is planning to streamline organizations like the Overseas Korean Agency and Immigration Office. However, if these organizations are established hastily without proper preparation or specialized personnel, the results may not be as desired.

Recently, the 25th World Scout Jamboree was held in Saemangeum. The organizing system did not operate well and was disappointing. The participation of over 30,000 attendees tarnished South Korea's reputation on the global stage. Criticism was raised by prominent international media outlets like the BBC and The Washington Times. An Indonesian entrepreneur who had planned to visit South Korea in August even canceled the visit due to the heatwave experienced by Indonesian participants at the Jamboree. As a Korean citizen, this is truly embarrassing.

This emphasizes the importance of thorough preparation for international events and addressing cultural differences. For the Immigration Office and Overseas Korean Agency, long-term stability can be achieved through comprehensive preparation and policy refinement, involving the participation of numerous experts. In particular, experts with experience of residing abroad, interacting with foreigners over extended periods, or conducting business internationally, as well as professionals familiar with foreign laws, regulations, and practical experiences, are essential to developing mature policies.

Korean labor law: Work-Related Fatality : Army Sergeant Dies due to Overwork

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Ⅰ. Introduction

This incident involved a non-commissioned officer (a sergeant, hereinafter referred to as "the deceased"), aged 32, who was responsible for personnel matters in xx battalion of the 12th Infantry Division located in Inje, Gangwon Province, and passed away on November 27, 2018. The deceased died from a deadly brain stroke while staying at a military residence. The Military Accident Compensation Review Board (hereinafter referred to as "the Review Board") rejected an application by the family of the deceased for survivor pension based on the claim it was a duty-related fatality. The rationale behind this rejection was that the average excess working hours of the deceased, three months prior to the incident, were 24 hours, which fell well short of the threshold of 50 hoursthe benchmark for excessive working hours that constitutes overwork. Furthermore, the Review Board determined that the stress resulting from work-related factors was a typical aspect of the job performed over an extended period and thus could not be regarded as excessive work-related stress. Specifically, the Review Board concluded that the pre-existing conditions of the deceasedhypertension and diabetesdeteriorated and led to the fatality.

In order to overturn this rejection, a thorough investigation of the factual circumstances was deemed necessary. Firstly, it was imperative to determine the accuracy of the calculation of excess working hours. Secondly, it was essential to ascertain the nature of the deceased's duties and identify any stressors associated with them. Thirdly, understanding the reasons behind the deceased's failure to adequately manage and exacerbate his medical conditions was crucial.

Ⅱ. Criteria for Military Accident Compensation and Precedents on Work-Related Fatalities

1. Criteria for military accident compensation

Article 35 of the Military Accident Compensation Act stipulates that in the event of a military member's death due to duty-related causes, a survivor pension is granted to the bereaved family following review by the Review Board. Furthermore, Article 4 of the same Act defines duty-related death as a fatality resulting from duty-related injury or duty-related illness. The specific provisions are outlined in Annex 2 of the Enforcement Decree of the Military Accident Compensation Act. Cerebrovascular and cardiac diseases are categorized as duty-related illnesses if they are caused or aggravated by physical or mental fatigue resulting from sudden incidents during duty,

significant changes in the work environment, substantial increases in work-related burden over a short period, performance of chronic and excessive tasks, and excessive overtime work. To qualify as a duty-related illness as prescribed by the aforementioned laws, a substantial causal relationship between the performance of duties and the illness must exist.

Based on these principles, the Ministry of National Defense's Military Accident Compensation Review Board employs the "work-related burden" criteria, evaluating work-related relevance through three aspects: ① Occurrence of sudden and unpredictable events related to work within 24 hours prior to the onset of symptoms, ② Increase in the amount or duration of work within one week of onset by at least 30 percent compared to the average over the previous 12 weeks (excluding the week of onset), and ③ Objective confirmation of sustained, excessive physical or mental burden continuously for at least three months prior to onset. In regard to ③, this Review Board employs a standard of over 50 hours of monthly overtime work on average for the preceding three months to assess work-related relevance.[1)]

2. Precedents on criteria for recognizing duty-related accidents

(1) The term "duty-related illness" in the criteria for recognizing an incident as duty-related as established by Article 3(2-2) and Article 61(1) of the Public Officials Pension Act, pertains to illnesses arising from the execution of official duties by a civil servant. A causal relationship must exist between the performance of official duties and the illness, and it is the responsibility of the asserting party to provide evidence of this causal connection. However, the causal relationship need not be strictly proven in purely medical or natural scientific terms; it should be considered substantiated if a reasonable causal connection is acknowledged from a normative[2)] standpoint.[3)]

(2) Regarding the criteria for payment of survivor compensation specified in Article 61(1) of the Public Officials Pension Act, a duty-related illness refers to an illness incurred by a civil servant during the execution of official duties. A causal relationship must exist between the civil servant's official duties and the illness. Even if the primary cause of the illness is not directly related to the official duties, if job-related strain or other factors contribute to the onset of the illness alongside its primary cause, a causal relationship should be recognized. Furthermore, illnesses stemming from excessive strain include cases where pre-existing conditions or basic illnesses, which would usually allow normal work performance, deteriorate significantly faster than usual due to the excessive demands of the duties. When determining whether an illness qualifies as duty-related, the presence of a reasonable causal relationship between the duty and

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1) Military Accident Compensation Review Commission 2022-11.

2) Wikipedia Dictionary: The term "normative," derived from the English word "Normative," generally refers to something associated with standards that are assessable and standardized.

3) Supreme Court ruling on June 28, 2018, 2017doo53941.

the fatality should be assessed based on the health and physical condition of the relevant civil servant, rather than a general average perspective.[4)]

Ⅲ. Factual Circumstances[5)] and Reasons for Rejection

1. Regarding work-related stress

The deceased enlisted as an Army private on April 11, 2006, and was commissioned as a sergeant on December 22 of the same year. Subsequently, the deceased performed duties in the 12th Infantry Division, including mine detection operations, until March 9, 2018, when the deceased commenced duty as a personnel manager in the unit related to this incident.

The deceased was responsible for 28 different types of tasks, including duties related to non-commissioned officers, military administration, personnel management, and allowance administration. Notably, the deceased had to follow a procedure that involved identifying personnel and reporting to the commanding officer regarding requests for weekday outings submitted after working hours. This made it practically difficult for the deceased to finish work by the designated end time of 17:30 due to the nature of the tasks. The tasks the deceased handled were often associated with overtime due to frequent evening work, which led to such duties being avoided by unit sergeants and officers.

The Review Board determined that it was difficult to acknowledge that the tasks the deceased performed for an extended period induced excessive work-related stress compared to routine tasks or exceeded normal levels of working hours and content.

2. Calculation of overtime hours

In cases of overtime work in this unit, individuals would make a computerized application, which the section chief would approve. Subsequently, the duty commander would decide the duration of the overtime work. The final determination of overtime hours was thus made. Due to the cumbersome reporting process, instances were frequent where actual records of overtime were not properly documented. Particularly, it was customary not to document instances where individuals worked beyond the permissible limit for overtime pay (recognized working hours).

The excessive working hours of the deceased for the period from September to November 2018, as input into the unit's computer system, exceeding the regular working hours of 08:30 to 17:30, are summarized in the table below. The unit recognized only the hours excluding duty and training times as "overtime hours.“

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4) Supreme Court ruling on September 6, 1996, 96noo6103.

5) The report from the 12th Infantry Division's investigation into this death describes the factual circumstances.

Division	Monthly total	Overtime work	Duty hours	Training
September	198:26	38:56	39:30	120
October	72:03	17:03	55:00	-
November	157:10	30:10	31:00	96
Total	427:39	86:09	125:30	216

In this particular unit, training and duty work were not considered as part of the overtime hours. (i) Although a maximum of 4 hours of overtime work was acknowledged for military training, when calculating work hours affected by training, the aforementioned 4 hours were already included in the calculation. Moreover, after the completion of training, considering the unit's schedule, combat rest was granted for a weekday. (ii) For duty work, it was customary to provide rest on the following day.

In practice, the recorded overtime hours included those beyond regular work hours during duty when individuals couldn't leave after duty ended. Additionally, hours outside of the 8-hour work period during training were recognized as overtime hours. Hence, the critical issue in this case revolved around whether the time spent working after duty and the waiting time during training should be considered as work hours. If the time spent working after duty and the waiting time during training are regarded as work hours, the actual accumulated overtime hours for the three months before the fatality would be 427:39, not 86:09. The Review Board concluded, "Since the total accumulated overtime hours for the three months before the onset of the illness, excluding training and duty work hours, amount to 86 hours, and it cannot be confirmed that the monthly average exceeds 50 hours, it is difficult to accept the claim of the petitioner." As the deceased's average monthly overtime work hours for the three months before his death amounted to only 24 hours, the Review Board deemed that there was no work-related cause.

3. Personal medical conditions

Before entering military service, the deceased had no pre-existing health issues. However, during his service, the deceased was diagnosed with diabetes in November 2016 and hypertension in April 2017. In July 2017, the deceased was hospitalized for around two weeks to treat his high blood pressure.

After taking on the role of personnel manager, the deceased visited the internal medicine department of the Armed Forces Hongcheon Hospital on April 24, 2018. The military medical officer noted that the deceased's blood pressure was at a maximum of 217 mmHg and a minimum of 138 mmHg. Comparing this with 2017, it was determined that the condition had worsened, and the military medical officer advised hospitalization.

The Review Board concluded, "It is difficult to attribute the onset of deadly stroke to excessive work-related stress and overwork during military service, as claimed by the petitioner. Moreover, there is insufficient medical evidence to suggest that work-related stress and overwork contributed to the onset of deadly stroke or

exacerbated it beyond natural progression, leading to the fatality."

Ⅳ. Judgment of the Administrative Court[6)]

1. Work-related stress

The court determined that the deceased experienced significant stress due to the following reasons: "The deceased was assigned the role of a personnel manager in this unit. This duty, involving frequent overtime, was avoided by other sergeants and military officers. The deceased received requests from the battalion commander and the chief sergeant officer of this unit to take on this role. Although these requests might not have been coercive in nature, it seems that from the standpoint of the deceased, who was a subordinate, it would have been difficult to refuse them. The duties of the personnel manager included reporting to the commanding officer about soldiers transferring into the unit or individuals leaving on weekdays, among 28 different types of tasks. Given the nature of these tasks, it was virtually impossible to leave work at the designated end time (17:30) and overtime became inevitable. Since assuming the role of a personnel manager, the deceased had to dedicate a substantial amount of time to evening work, coupled with irregular work hours due to duty shifts and training. It is likely that the deceased experienced significant physical and mental stress, accompanied by fatigue, while performing these official duties."

The battalion commander, who was the deceased's superior, fervently requested in court, "Considering promotions and other factors for the deceased, I asked him to take on the role of a personnel manager. The deceased accepted this request. Subsequently, the deceased diligently fulfilled these duties. Apart from the days on duty, the deceased was always present in the office. Even after performing duty shifts, the deceased often continued working with an exhausted appearance, despite the necessity of taking rest the next day."

2. Calculation of overtime hours

The court acknowledged the inclusion of training and duty hours as overtime for the following reasons: "In the case of the deceased, if we consider not only the recorded overtime hours but also training and duty hours included in overtime, the total non-scheduled work hours in the three months prior to the deceased's passing amount to 427 hours and 39 minutes. This translates to an average of 142 hours per month. In the case of duty hours and training hours, it appears that an additional day off was granted following duty shifts or training, and therefore, these hours were not accounted for as overtime. From this perspective, the defendant asserts that when excluding duty

6) Seoul Administrative Court ruling on July 11, 2023, 2022goohap79350: Cancelation of Decision Denying Payment of Survivor's Pension for Line of Duty Death

hours and training hours, the deceased's overtime hours fall within the realm of an average of around 24 hours of overtime per month, making it difficult to conclude the presence of 'work-related burden.' However, in the case of the deceased, it seems that only overtime not exceeding recognized working hours was documented, implying that more overtime was worked than reported. Considering that instances of performing regular work on the day following duty shifts were not uncommon for the deceased and that the majority of duty hours could reasonably be evaluated as overtime due to the physical toll of overnight duty, it is challenging to fully embrace the defendant's argument."

3. Personal medical conditions

Reviewing the medical records from April 2017 to March 15, 2018, prior to the deceased assuming the personnel manager duties, reveals a total of 19 hospital visits, including hospitalizations. However, subsequent to the deceased undertaking the role of personnel manager, only four medical visits are documented. Despite a medical recommendation for hospitalization received from a military official on April 24, 2018, it is noteworthy that the remote location of this unit in the forefront of Gangwon Province meant that it lacked specialized facilities for treating conditions such as hypertension and diabetes. As previously examined, given the excessive workload endured by the deceased and the nature of his role as a personnel manager requiring ongoing commitment, it appears that he was often unable to promptly seek medical attention.

4. Court ruling

Considering the legal principles and factual circumstances comprehensively, the administrative court asserted that a significant causal relationship between the deceased's duties and his passing was plausible. The court stated: "The prolonged periods of overtime, overwork, and stress experienced by the deceased might have potentially compromised his immune system by inhibiting lymphocyte production, leading to a weakening of his immune response. Based on the deceased's military service history as explored earlier, which involved duties such as mine detection within the Inje frontline unit of the 12th Division for over a span of 12 years since enlistment, the deceased diligently fulfilled his military obligations. Engaging in frequent overtime and duty assignments spanning extended periods of time became commonplace for the deceased following his assumption of personnel manager responsibilities within this unit. Moreover, considering the untimely passing of the deceased at the relatively young age of 32, when coupled with the burdensome workload mentioned earlier, it is highly plausible that the strenuous tasks the deceased undertook as a private in this case could have acted as precipitating or exacerbating factors of the ailment. Viewed solely

from the perspective of job-related and independently arising individual risk factors, it becomes difficult to consider that the illness in question naturally emerged and led to the deceased's passing. Ultimately, it is reasonable to speculate that the cumulative physical and mental stress encountered during the course of performing official duties, in conjunction with pre-existing risk factors, triggered or exacerbated the condition that led to the deceased's demise."

Ⅴ. Implications

The process through which the case of the overwork-related fatality of a sergeant in the Army was recognized as a work-related accident has revealed several important implications. Firstly, it is evident that servicemen are still not effectively covered by the provisions of the Labor Standards Act. The fact that the weekly maximum limit of 12 hours of overtime stipulated by the Act is exceeded, and that only the hours reflected in payment are recognized as overtime, highlights this issue. Furthermore, due to the arduous process of applying for overtime, cases of overtime tend to go unreported.

Secondly, proper recognition of duty assignments and training periods is lacking. While a rest day is allowed following a duty assignment, continuous duty beyond that day is not recognized as overtime due to unit conditions. Training periods are recognized only for the standard working hours of the day and an additional 4 hours, despite the fact that these periods involve a 24-hour standby, effectively making the entire duration count as working hours.

Thirdly, it is evident that medical support for servicemen is inadequate. The deceased in this case, having been stationed at the frontline, experienced a worsening of hypertension and diabetes due to inadequate treatment, ultimately leading to his death. The fragile working conditions for servicemen and the inability to properly uphold the Labor Standards Act led to the unfortunate death of a 32-year-old due to a deadly stroke resulting from pre-existing hypertension.

Despite 70 years having passed since the end of the Korean War, servicemen in South Korea continue to maintain a military culture akin to wartime, which prevents them from receiving the protections of the Labor Standards Act. As individuals entrusted with the critical responsibility of safeguarding the nation and its citizens' lives at the forefront, servicemen should rightfully take pride in their roles and be respected by society. Regrettably, however, servicemen in our country often face demands of sacrifice for the nation without proper adherence to the Labor Standards Act, while consistently operating under a tense state similar to wartime. This incident serves as an opportunity to advocate for the proper application of the Labor Standards Act to improve the work environment and quality of life for servicemen in their professional lives.

Workplace Harassment after Employee Request for Remedy against Unfair Demotion

Ⅰ. Introduction

On May 26, 2023, a high-ranking employee (hereinafter referred to as the "Employee") at 00 Research Institute of a foreign company (hereinafter referred to as the "Company") filed a complaint of workplace harassment with the Gyeonggi Provincial Office of Employment and Labor (hereinafter referred to as the "Labor Office") alleging that he had experienced workplace harassment.

The Employee was hired by the Company on July 1, 2020, to head the IT department. Although the Company recognized the Employee's excellent job performance, it dismissed the Employee from the position of IT department head on July 1, 2022, citing a lack of leadership and inadequate collaboration with other departments. They then demoted the Employee to lead a temporary organization within the IT department, known as the Cyber Security Management (CSM) team. The Employee filed a request for remedy with the Labor Relations Commission claiming that the demotion was unfair. Subsequently, the institute's director persuaded the Employee to withdraw the request for remedy, arguing that the cyber security tasks were critical for the Company and that there would be no adverse personnel actions. As a result, the Employee withdrew the remedy request.

The three reasons cited by the Employee for workplace harassment are as follows: (i) During the year-end performance bonus evaluation in 2022, while other department heads received performance bonuses of 16 million won, the Employee did not receive any bonus. Moreover, during the 2023 salary increase, while other colleagues received an 8% raise, the Employee received only a 2% increase, indicating relative discrimination. (ii) On May 1, 2023, the company unilaterally demoted the Employee within the CSM, assigning him to perform employee duties without any title. (iii) The new head of the IT department, who took over the Employee's former position, engaged in ongoing verbal abuse, humiliated the Employee in front of other employees, and unjustifiably reprimanded him, thereby constituting workplace harassment.

The Employee claimed that the Company subjected him to adverse personnel actions in terms of performance bonuses and salary increases, excluded him from significant responsibilities, and subjected him to workplace harassment. The complaint with the Labor Office was filed against the director of the research institute, the head of the HR department, the head of management, and the head of the IT department. In response, the Labor Office instructed the Company to conduct an objective investigation into the claims of workplace harassment and report the results by July 4, 2023, along with any measures needing to be taken.

Ⅱ. Company Actions and Criteria for Determining Workplace Harassment

1. Company actions

Upon receiving the order from the Labor Office to begin an objective investigation regarding the claim of workplace harassment, the Company commissioned an external labor law firm to conduct an investigation since the head of the HR department was named in the claim of workplace harassment.

Upon receiving the assignment, this labor law firm initiated the investigation into the incident, conducting interviews with the individuals involved over a period of one week beginning on May 24, 2023. Firstly, they obtained confidentiality agreements from the interviewees to ensure the protection of their identities. Additionally, they requested that the Employee work from home for two weeks during the investigation. The labor law firm thoroughly examined the specific allegations raised by the Employee to the Labor Office, including holding interviews with the Employee, witnesses of the claimed harassment and the individuals accused of engaging in it. After concluding the investigation, this labor law firm analyzed the facts, the types of workplace harassment involved, and the scope of that harassment within the context of job responsibilities, applying legal precedents to reach concrete conclusions.

2. Administrative interpretation and precedents on workplace harassment

Acts considered beyond the reasonable scope of work duties can be classified into the following seven categories:[7)]

1) Physical Assault and Threats: This refers to acts where direct physical violence or violence towards objects, such as exerting physical force directly or indirectly, is exercised to intimidate or threaten others.
2) Verbal Abuse, Insults, and Rumors: This includes language-based actions, such as public insults or rumors that are disseminated to third parties and harm the reputation of the victim.
3) Personal Errands: This involves repeatedly assigning personal errands beyond what would be acceptable in human relations, surpassing the reasonable scope of job-related requests.
4) Social Exclusion and Isolation: Deliberate disregard and exclusion during work processes that deviate from social norms.
5) Repetitive Instructions Unrelated to Work: This involves continuously instructing employees to perform tasks unrelated to the work explicitly stated in the employment contract, without valid reasons for the instructions.

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7) "Guidelines for Assessing Whether Workplace Harassment Has Occurred and Measures for Prevention," Ministry of Employment and Labor, 2019, pp. 24-27.

6) Excessive Workload: This includes excessively burdening an employee with tasks, not even allowing the minimum time necessary for completing the assigned work, without genuine work-related justification.
7) Obstruction of Smooth Work Performance: This includes actions that disrupt smooth work execution, such as withholding essential work equipment (computers, telephones, etc.) or blocking access to the company's intranet.

The courts have provided the following criteria for determining workplace harassment.[8] Whether an act constitutes harassment should be assessed by considering the following factors: ① The relationship between the alleged perpetrator and alleged victim regarding the act in question, ② The motive and intention behind the act, ③ The timing, location, and circumstances of the act, ④ The explicit or inferred reactions of the alleged victim, ⑤ The content and severity of the act, ⑥ The repetition or persistence of the act, and other factors to evaluate whether the dignity of the worker has been infringed upon. In summary, the determination centers on whether the alleged perpetrator, leveraging their position (power relationship), engaged in actions (related to work), unwanted by the other party (harassment, offensive behavior), thereby infringing upon human rights and dignity or worsening the work environment.

Ⅲ. Assessment of the Workplace Harassment Complaint

1. Determining whether the claimed harassment has resulted in adverse personnel actions to performance bonus and salary increase

(1) Employee's claims

In the evaluation for 2022, the Employee received a rating of "Strong" in quantitative evaluation but a rating of "Limited Contribution" in qualitative evaluation. Here, quantitative evaluation refers to the results of job performance, while qualitative evaluation pertains to factors such as leadership, organizational management, and interpersonal relationships. The Employee claims that due to this underwhelming evaluation, he suffered adverse personnel actions. Firstly, he did not receive a performance bonus of 16 million won for 2022. Secondly, during the 2023 salary adjustment, while other employees of the same rank received an average salary increase of approximately 8%, the Employee received a lower increase of only 2%.

(2) Facts and evaluation:

The Employee requested an explanation from the head of HR about the evaluation provided by the Executive and the director of the research institute. In response, the head of HR stated that they could not provide additional information beyond what was

8) Supreme Court ruling on Feb. 10, 1998, 95da39533.

documented in the evaluation report. According to that report, the Executive described the Employee's leadership and job performance abilities in managing team members and handling tasks as inadequate. It was also noted that the Employee had difficulty cooperating with other departments and had a tendency to become irritable when faced with challenges. Additionally, the director of the research institute commented that the Employee tended to prioritize personal perspective over considering the Company's perspective in handling tasks. It was further mentioned that the Employee lacked understanding regarding the Company's priorities in handling work, especially when it came to the automotive manufacturing industry.

The Employee argued that the evaluators should have provided objective evaluations using the Company's evaluation criteria. His claim was that the evaluators resorted to emotionally charged evaluations as retaliation for filing a claim with the Labor Office of unfair demotion. Nevertheless, unless there is substantial evidence of significant abuse of discretion, the evaluators, who hold the authority over personnel decisions, are entitled to exercise their discretion in conducting evaluations. It has been determined that the Employee's demotion from the position of IT department head in 2022 was justified, and the performance evaluation was deemed appropriate. Therefore, the differential application of performance bonuses and salary increases based on performance is considered a legitimate exercise of personnel authority.

2. Harassment due to unjust work changes and intentional work reductions

(1) Employee's claims

On July 1, 2022, when the Employee was serving as the IT department head, the director of the research institute made a decision to demote him and appoint him as the team leader of a newly created Cyber Security Management (CSM) team. At the time of the appointment, the research institute director promised to propose the necessary organizational structure by the end of September and create the team accordingly after review. The primary reason for the work change was that the research institute needed an employee with good knowledge of cybersecurity to respond to cybersecurity certification inspections, and since there was no one else in the IT department who possessed such knowledge, the Employee was appointed. The position previously held by the Employee as IT department head was then filled by employee A, who was promoted within the research institute. However, on December 1, 2022, the research institute director issued an additional order, demoting the Employee again, this time from CSM team leader to CSM team project leader. Subsequently, from December 2022 to the middle of February 2023, the Employee received multiple instructions from the new IT department head, A, to transfer CSM duties to another colleague, B, but the Employee refused, stating that there was no valid reason for the transfer. It is worth noting that the Employee successfully performed the cybersecurity

management tasks during internal audits conducted in November 2022 and March 2023.

(2) Facts and evaluation:

The Employee was hired by the Company as IT department head in 2020 and received positive performance evaluations until 2021. However, due to issues with teamwork and a lack of leadership in 2022, he was demoted from the department head position. On July 1, 2022, based on his experience in cybersecurity tasks, the Employee was assigned to lead the CSM organization, and he successfully handled internal audits in November 2022 and March 2023. However, on December 1, 2022, the Company moved the Employee from the position of CSM team leader to CSM team project leader, effectively another demotion. Additionally, on May 1, 2023, the Company unilaterally demoted the Employee, this time down to a regular CSM employee and appointed worker B as the CSM team leader, even though B had no experience in cybersecurity tasks.

Considering this sequence of events, it can be concluded that the Employee was intentionally excluded from duties. Despite the Employee demonstrating expertise in the CSM field and successfully handling internal audits, the Company appointed worker B, who had no experience in cybersecurity, as the project leader and relegated the Employee to a position of regular CSM employee without any specific job responsibilities. This can be interpreted as unjustified downsizing and exclusion, which falls under workplace harassment.

3. Determining whether the continuous verbal abuse, insults, and criticism by the department head qualify as workplace harassment

(1) Employee's claims

The Employee alleged that he was harassed by employee A, who became the new IT department head, in the following five instances.

On December 14, 2022, during a small meeting in the conference room, employee A made the Employee uncomfortable by stating with a displeased expression and tone, "Don't sit there arrogantly, sit up straight." When the shocked Employee asked, "What do you mean by arrogantly?" employee A replied, "Sitting like that is arrogant," leaving the Employee surprised. Employee A further added, "That's how I perceive it."

On December 20, 2022, during a Teams online meeting with more than ten employees present, employee A publicly reprimanded the Employee, saying, "I'll change the

color of your report from red to green as per my instruction." When the Employee responded, "Alright, I'll let it be changed," Employee A criticized him in front of many employees, saying, 'Yes, I'll change it.' That's what you should have said."

On January 16, 2023, in an email involving employee A, the Employee, and employee B, the Employee gave his opinion on some work matters. In response, employee A made the following remark: "When you think the directions from superiors are different from what you believe, please do not comment like you're expressing your thoughts to your colleagues. Instead, I urge you to ask questions based on your thoughts and show basic courtesy toward your superiors."

On January 20, 2023, during email correspondence with a headquarters representative while preparing for a second-round review for CSM certification, employee A and employee B criticized the Employee for their not being included in the email conversation as they were not cc list. However, the invitation recipients were decided by the headquarters representativethe Employee had nothing to do with it.

On January 27, 2023, during a Teams video conference at 11 a.m., attended by employee A, the Employee, and three other employees, the Employee was publicly criticized by the supervisor for not finding a work file. Employee A then insulted the Employee, saying, "Don't speak in a voice filled with complaints, and don't reject work." Even though the Employee did not reject any tasks, employee A criticized and humiliated him in front of other employees, falsely accusing him of refusing to work.

(2) Facts and evaluation

Workplace harassment occurred intensively between December 14, 2022 and January 27, 2023. The actions described above by the newly appointed department head towards the demoted Employee could be regarded as workplace harassment. These actions were unreasonable attempts to exert authority over the Employee, who was demoted from his previous responsibilities. It is noted that such behavior was not reported after January 27, 2023, which indicates that it may have been a temporary and short-lived situation of a power struggle. Nevertheless, the verbal abuse and near-humiliating reproach by employee A in front of other employees were undesirable actions. While the harassment appeared to be limited to a specific period and did not recur after that time, a written warning to employee A about refraining from any similar verbal abuse or insults that could be considered workplace harassment would be necessary.

Ⅳ. Determination of Workplace Harassment and Preventive Actions

1. Determination of workplace harassment

The Employee argued that the Company's unfairness in not granting him an incentive bonus in 2022 and giving him a relatively low salary increase in 2023 were in response to his filing for remedy due to unfair demotion. Additionally, the Employee alleged that the performance evaluations by the top management and the research institute head were not in line with personnel principles and were retaliatory evaluations. However, based on the investigation results, performance evaluations are within the Company's exclusive authority and are made based on independent and autonomous criteria, which does not fall under the scope of workplace harassment.

The second issue raised is the unfair exclusion and downsizing of responsibilities. Despite the Employee demonstrating expertise in cybersecurity and successfully completing audits in November 2022 and March 2023, the Company intentionally assigned his cybersecurity tasks to another employee starting from January 2023. The Company's decision to exclude the Employee from responsibilities without reasonable grounds qualifies as workplace harassment.

Thirdly, the cases of workplace harassment from December 14, 2022 to January 27, 2023 include actions that go beyond the appropriate scope of a superior's duties in the workplace, leading to humiliation for the Employee. Intentional verbal abuse and similar behaviors can be interpreted as workplace harassment. However, apart from these five instances, there is no other evidence supporting claims of workplace harassment. Moreover, the incidents were concentrated within a 40-day period and did not occur subsequently. Therefore, a written warning to the perpetrator, IT department head A, is necessary to prevent recurrence and raise awareness about workplace harassment.

2. Preventive actions by the Company

Upon receiving the results of the investigation on workplace harassment from the labor law firm, the company took the following actions.

Firstly, the Employee's lack of incentive bonus and low salary increase due to the qualitative evaluation in the performance review was deemed a reasonable autonomous decision by the Company, and no need for rectification was identified.

Secondly, concerning the exclusion and downsizing of responsibilities, the Company realized these were not justifiable personnel actions. Therefore, the Company decided to adjust the duties to continue assigning cybersecurity tasks to the

Employee, who had been performing them well.

Thirdly, regarding the verbal abuse, humiliation, and excessive reprimanding, it was recognized that these actions were limited to a specific period when the Employee had assumed a new position. As there were no subsequent instances of workplace harassment, it was concluded that the perpetrator, as a superior, engaged in intentional workplace harassment to assert his authority. As a final decision, a written warning to the superior was the chosen measure to prevent recurrence and resolve the issue of workplace harassment.

Case Study : A Claim of Workplace Harassment and the related Handling Process

Ⅰ. Introduction

Foreign company A (hereinafter referred to as "the Company"), located in Seoul, received notification from the Seoul Regional Employment and Labor Office (hereinafter referred to as the "Labor Office") regarding the Labor Office receiving a complaint of workplace harassment. The Company was instructed to conduct an investigation into the related incident and report its findings.

What follows is a summary of the relevant details: On October 1, 2022, the Company hired employee B (hereinafter referred to as the "Employee") as a mid-level manager in the Accounting Department, with a probationary period of three months. During the hiring process, the Company had high expectations for the Employee, considering her fluent English skills and prior experience working in the accounting department of a foreign-owned company. However, during the probationary period, the Employee's job-related performance was seen to be inadequate and she lacked the expected accounting abilities, which hindered her ability to independently execute tasks. As a result, the Company planned to terminate the Employee due to her displayed unsuitability during the probationary period. However, during the subsequent interview process, the Employee stated that she would improve if given another chance. Consequently, the Company agreed to extend the probationary period an additional three months, upon mutual consent with the Employee. However, despite receiving sufficient opportunities, the Employee's accounting skills and job performance did not improve, leading to her termination on March 31, 2023, during the extended probationary period.

In April 2023, the Employee filed a complaint with the Labor Office, alleging

workplace and sexual harassment by the Accounting Department Manager. The Labor Office instructed the Company to conduct an investigation into the alleged harassment and submit a report on the findings. Subsequently, the Company engaged this labor law firm to conduct an objective and fair investigation into the allegations of workplace harassment and sexual harassment. Through the investigation process, this labor law firm aimed to examine the Company's obligations and the appropriateness of its measures in handling the related incidents of harassment.

Ⅱ. Legal Obligations of the Employer

1. Employer's duty when claims occur of workplace harassment and/or sexual harassment[9)]

Under Article 76-3 (Duty in Cases of Workplace Harassment) of the Labor Standards Act (hereinafter LSA) and Article 13 (Duty in Cases of Workplace Sexual Harassment) of the Equal Employment Opportunity and Work-Family Balance Act (hereinafter Equal Employment Act), the following five obligations are described for employers. First, upon receiving a report or becoming aware of workplace harassment or related incidents, the employer must promptly conduct an objective investigation to ascertain the facts regarding the matter. Second, protective measures must be taken for the Employee who claims to be a victim. Third, an investigation into the facts of the workplace harassment must be conducted, and it should be determined whether the incident meets the criteria for workplace harassment. Fourth, the employer must implement appropriate personnel measures through necessary actions to prevent the recurrence of harassment, based on the conclusions reached regarding the workplace harassment incident, and inform the Employee of the results. Fifth, the employer must take measures to maintain confidentiality regarding the receipt of workplace harassment reports or the investigation process to prevent secondary harm. Failure to fulfill these obligations may result in the imposition of fines.

2. Concept and criteria for determining workplace harassment and sexual harassment

Article 76-2 (Prohibition of Workplace Harassment) of the LSA prohibits actions that exceed the scope of reasonable work-related conduct and cause physical or mental suffering to another employee or worsen the working environment, through the use of one's position or relationship of superiority in the workplace. To recognize workplace harassment, all three of the following criteria must be met: First, there should be the use in the harassment of one's position or relationship of superiority in the workplace. Second,

9) Kim Elim, Jung Bongsoo, "Manual on Bullying and Sexual Harassment in the Workplace," 2023, K-labor, pp. 14-15.

the conduct must exceed the scope of reasonable work-related conduct. Third, it must cause physical or mental suffering to the employee or worsen the working environment.[10)]

The Equal Employment Act defines "workplace sexual harassment" as actions by the employer, a superior, or an employee that utilize one's position in the workplace or are related to work and cause sexual humiliation or disgust through sexual advances or demands, or result in disadvantages in terms of working conditions or employment due to the employee's refusal to comply. To recognize workplace sexual harassment, all three of the following criteria must be met: First, there should be the use of one's position or relevance to work in the workplace. Second, there should be the use of means such as sexual advances. Third, the conduct must cause sexual humiliation or disgust, or result in disadvantage in terms of working conditions or employment due to the Employee's refusal to comply.[11)]

Ⅲ. Objective Investigation and Reporting by the Company

1. Objective investigation by the Company

In order to maintain objectivity in response to the request for investigation of workplace harassment from the Ministry of Employment and Labor, the Company entrusted the investigation to an external organization, this labor law firm. The reason for this was the sharp conflict of interest between the parties involved in the incident. The individual claiming to be the victim was a former employee of the company's accounting department who was dismissed for incompetence during the probation period. The individual identified as the perpetrator was the head of the accounting department, who dismissed this Employee alleged as a victim. If the company's HR department were to conduct an investigation into workplace harassment or sexual harassment on its own, the potential existed that there would be a lack of objectivity and fairness. Therefore, in order to ensure reliability of the investigation, it was decided to entrust the investigation to an external party.

2. Investigation of workplace harassment and sexual harassment and determination

This labor law firm, entrusted with the investigation, conducted interviews with the victim to gather her statements, both in writing and in person. Afterward, it interviewed potential witnesses who could provide information to verify the facts, and finally, interviewed the alleged perpetrator.

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10) Ministry of Employment and Labor, "Manual for Assessing, Preventing, and Responding to Workplace Bullying," February 2019.

11) Ministry of Employment and Labor, "Manual for Preventing and Responding to Workplace Sexual Harassment," 2021.

(1) Acts of phone interruption and monitoring

1) Claim by the Employee: While having a conversation with an employee of Company C on February 27, 2023, the alleged perpetrator repeatedly and suddenly called out loudly, saying, "Manager Kim, Manager Kim," while holding the phone she was receiving calls on. This caused confusion as the Employee had to immediately end the call with the other person to respond and go to the alleged perpetrator's location. The same situation occurred on February 28, 2023, while having a conversation with a bank employee, and during a call with Company D, where the alleged perpetrator came to the Employee's desk at some point and asked for the phone, while explaining the situation directly over the phone, thereby interfering with the Employee's work.

2) Determination by the investigator: Regarding the acts where the alleged perpetrator interrupted phone conversations of the Employee on three occasions, February 27 and 28, it was determined that the alleged perpetrator, as a direct supervisor, had the responsibility to guide the Employee's work and that the acts were necessary to ensure that the work was not proceeding in the wrong direction. The acts were also considered within the appropriate scope of work and did not appear to be excessively monitoring only the Employee's work, so they were not considered workplace harassment.

(2) Coercion to drink alcohol and mentioning alcohol

1) Claim by the Employee: During the job interview, when the alleged perpetrator, who was one of the interviewers, asked, "Can you drink alcohol?" the Employee replied, "I don't drink alcohol because I go to church." On January 20, 2023, during lunch with the alleged perpetrator at a kimchi stew restaurant near Seolleung Station, he said, "Even though Manager Kim doesn't smoke, she follows me downstairs to talk to me when I go out to smoke," and at the same time, he placed a glass of soju in front of the Employee's rice bowl. This was perceived as an act of pressuring the Employee to drink. Furthermore, on March 2, 2023, while having dinner with the alleged perpetrator and the head of the finance department at a Chinese restaurant beside the Company's office, the alleged perpetrator asked, "Have you never drunk alcohol before?" When the Employee answered "No," the alleged perpetrator said, "I want to make you try alcohol," and another person present said, "There was also a man who doesn't drink alcohol on a TV show called SOLO, and he was peculiar," making the Employee feel like not drinking alcohol was being treated as wrongdoing.

2) Determination by the investigator: The act of the alleged perpetrator pressuring the Employee, who does not drink alcohol, with remarks and placing a glass of alcohol

in front of her during lunch was a one-time occurrence. The behavior itself did not directly force the Employee to drink or go as far as coercion, so it is difficult to consider it as exceeding the appropriate scope. Additionally, the mentioning of alcohol did not involve the alleged perpetrator or witnesses directly telling the Employee that her behavior was strange. Therefore, it is difficult to conclude that it caused physical or mental distress to the Employee or worsened the working environment, so it was determined that it did not constitute workplace harassment.

(3) Acts of evaluation based on appearance

1) Claim by the Employee: During the job interview, the Employee was wearing a mask, so the alleged perpetrator could not see her face properly. However, after the Employee started working, the alleged perpetrator saw her face and commented, "Your actual appearance is thinner than in the photo." After that, the alleged perpetrator would occasionally ask the Employee, "When are you going to gain weight?" and "How much do you weigh now?" while checking her weight multiple times, engaging in persistent evaluations of her appearance.
2) Determination by the investigator: Regarding the claim that the alleged perpetrator repeatedly checked the Employee's weight, there were statements from witnesses that the Employee had mentioned losing 5 kg due to contracting COVID-19 and that there were conversations among female employees advising the Employee to eat more because she appeared thin. While it is possible that discussions about weight could have caused stress to the Employee, the comments related to appearance made by other employees could be interpreted in various ways depending on the context and situation. Considering that the alleged perpetrator, as a supervisor, may have mentioned the Employee's weight out of concern for her health and to encourage her recovery, and there were no additional conversations specifically related to appearance, it was determined that this did not constitute workplace harassment.

(4) Remarks related to "moolbong" (a type of drug)

1) Claim by the Employee: During dinner at a Chinese restaurant on March 2, 2023, the alleged perpetrator started talking about "moolbong (a date rape drug) and said, "Moolbong is used when dealing with women," "Moolbong doesn't leave any evidence in the body," "Moolbong keeps appearing on my YouTube," and "Should I try smoking marijuana on a business trip?"
2) Determination by the investigator: Regarding the claim that the alleged perpetrator mentioned "moolbong," the finance manager, who was present at the time, stated that she did not recall the alleged perpetrator making such remarks. Since there is no concrete evidence to confirm the exact conversation, it is difficult to determine

the facts. However, even if we assume that the alleged perpetrator did make the remarks related to "moolbong" as claimed by the Employee, it would need to be considered from an adult perspective whether such remarks could cause sexual humiliation or disgust for a person in a similar position to the victim. As the remarks did not involve explicit descriptions of physical relationships between men and women, and considering the possibility that the remarks were related to the recent news and issues surrounding drug cases, the presence of another female employee of a similar age nearby, and the frequency and context of the remarks, it is difficult to conclude that they would have caused sexual humiliation or discomfort for an average person in a similar situation. Therefore, it was determined that it did not constitute workplace sexual harassment.

(5) Other claimed harassing behaviors

1) Claim by the Employee: (i) The Employee claims that after she had difficulty inputting her goals into the workday system, the alleged perpetrator expressed dissatisfaction and, while passing by the Employee's desk when leaving work, stuck out his tongue and shook his head in frustration. (ii) On another occasion, before a team meeting in a conference room, the alleged perpetrator approached the Employee's seat and threw a coil notebook at her. Although the finance manager from the same department was sitting slightly away from the Employee and was looking at her laptop, she did not witness the scene of the notebook being thrown. The alleged perpetrator later complained that the Employee had not worked on a public holiday.
2) Determination by the investigator: (i) The claim that the alleged perpetrator stuck out his tongue and shook his head in frustration behind the Employee's desk in February 2023 could not be corroborated through witness testimonies. Therefore, it is difficult to establish the facts and conclude that it constituted workplace harassment. (ii) The claim that the alleged perpetrator threw a coil notebook at the Employee's seat before a team meeting in a conference room and later complained about the Employee not working on a public holiday could not be confirmed through witness testimonies. Therefore, it is difficult to establish the facts and conclude that it constituted workplace harassment.

Ⅳ. Investigator's Determination and Recommendations

1. Investigator's determination

Regarding workplace harassment, the Employee expressed that she was deeply hurt by the alleged perpetrator's actions, such as interrupting her phone calls, pressuring her

to drink alcohol, mentioning alcohol, and criticizing her goal setting. However, from the perspective of an average person in a similar position as the Employee, it is difficult to conclude that the actions reached a level of causing mental distress and deteriorating the work environment.

Regarding workplace sexual harassment, concerning the perpetrator's mention of "moolbong" in relation to the Employee, the lack of objective evidence makes it challenging to confirm the exact conversation. Even if we assume that the alleged perpetrator made remarks related to "moolbong" as claimed by the Employee, it needs to be considered from an adult perspective whether such remarks could cause sexual humiliation or disgust for a person in a similar position to the victim. Considering the absence of explicit descriptions of physical relationships between men and women, the possibility that the remarks were related to recent news and issues surrounding drug cases, the presence of another female employee of a similar age nearby, and the frequency and context of the remarks, it is difficult to conclude that they would have caused sexual humiliation or discomfort for an average person in a similar situation.[12)]

2. Investigator's recommendations

Taking into account the statements of the Employee, the involved parties, and witnesses, it can be inferred that the alleged perpetrator's actions did not directly constitute workplace harassment or sexual harassment but rather created a strong perception of workplace harassment or sexual harassment for the Employee due to preexisting conflicts between the department manager and team members, as well as dissatisfaction related to recent agreements to extend the Employee's probationary period and later termination of employment. Therefore, the following measures are recommended to prevent incidents of workplace harassment and sexual harassment:

(1) Measures to protect the Employee:

According to the LSA, "necessary measures, such as changing the workplace or ordering paid leave, should be taken to protect the victimized employee during the investigation period." However, in the case of the Employee, whose employment relationship ended on March 31, 2023, such measures are not necessary.

(2) Improvement measures for the alleged perpetrator, although not constituting harassment:

Considering that the Company prohibits workplace harassment and sexual harassment in its employment rules and that disciplinary action can be taken when acts of sexual

12) Quoting the advisory content of Professor Kim Elim from the Department of Law at KNOU University regarding the related incident (June 2, 2023).

harassment are committed, it can be interpreted that such acts are considered significantly serious disciplinary offenses. Therefore, although the investigator did not recognize the alleged perpetrator's actions as workplace harassment or sexual harassment, there are aspects that should be improved, considering the potential for the mentioned remarks to be interpreted as sexual harassment when taken together, despite being related to social issues. It is important to be mindful that engaging in conversations with employees on certain topics may cause discomfort to the other party (such as "moolbong," body weight, alcohol-related mentions) and ensure that such incidents are not repeated. If they occur again, appropriate sanctions or disciplinary action should be taken.

(3) Necessity for organizational-level measures and education:

Since this is the first reported case of workplace sexual harassment and harassment within the Company, it is crucial to take this opportunity to raise awareness among employees, including the alleged perpetrator, about the potential for such remarks to be perceived as sexual harassment when targeting women. Thorough implementation of education on preventing workplace sexual harassment is necessary.

Feature Articles

Collective Bargaining Cases

An Evaluation of a Collective Bargaining Agreement between a Janitors' Labor Union and their University Employer

Bongsoo Jung / Korean labor attorney

Ⅰ. Introduction (Summary)

On May 27, 2014, a signing ceremony was held for a collective bargaining agreement between a certain university (hereinafter referred to as "the University") and the University janitors' labor union (hereinafter referred to as "the Labor Union"). As representatives of both the Labor Union and the University management signed the collective agreement, it marked an end to the labor disputes that had continued for more than a year and established a new employment relationship. In this article, I would like to review the content of the collective agreement, and the reasons why it took such a long time, in the anticipation of some lessons against making the same mistakes in the next collective bargaining sessions.

In July 2013 when the University had difficulty negotiating with the newly established Labor Union, it gave this labor attorney authority to negotiate on its behalf. The University janitorial staff were employed as regular employees from an outsourcing company on March 1, 2013. The University and the Labor Union began collective bargaining at the time, but this devolved into labor disputes that involved the Labor Commission until May, 2013. The University explained to this labor attorney that since there were no items the two parties could agree on, I could start the collective bargaining from the beginning. After drafting and obtaining University approval for a counter-proposal to the Labor Union's collective agreement proposal (80 articles), I was ready for collective bargaining.

The two parties' negotiating teams began their bargaining sessions on July 16, 2013. The Labor Union's negotiating team was composed of seven persons: two union officers from the umbrella union (the Seoul and Gyeonggi branch of the Korean Public & Social Services and Translation Workers' Union), three union officers from the janitor's union, and two observers from the building management team (outsourced workers at that time). The University negotiating team consisted of three persons: this labor attorney as the chief negotiator, a team leader in charge of general affairs, and the staff member responsible for managing the cleaning services on campus. During the first negotiating session, when the University team submitted the counter-proposal to the Labor Union, the Labor Union showed in the collective bargaining minutes that the previous University bargaining representative had already agreed to 50 of the 80 items. The previous University representative who was in charge of cleaning services explained that he had just signed the meeting minutes without approval from his superiors as the Labor Union had assured him that the meeting minutes could change at a later time. This labor attorney then told the Labor Union that the meeting minutes that the previous University representative had signed were of agreements that the

University could never accept, and any agreements made were mistakes by the staff member who had signed the minutes. I then requested that the meeting minutes be officially determined as void.

For this action, the Labor Union filed a complaint with the Labor Office against the University president, the general manager, a team leader in charge of general affairs, and the new chief negotiator (this labor attorney) for unfair labor practice in early August 2013. The Labor Union took several actions in protest including a press conference, a one-person picket of City Hall, a regular Wednesday sit-in protest at the University headquarters, and a slowdown of cleaning services. The chief Union negotiator took to tearing up the University's counter-proposal at the bargaining table, and throwing his hot coffee at the team leader in charge of general affairs for being late to one of the collective bargaining sessions.

In November, after investigation, the Labor Office found there to be no evidence of unfair labor practice by the University declaring the two meeting minutes void, and threw out the Labor Union's complaint. After this, the Labor Union demanded that there be no discrimination between the university labor unions, and that the University should allow this Labor Union's activities as it allowed other unions their activities. The University accepted some of the Labor Union's demands, and both parties managed to reach agreement on 20 items, including union activities.

In February 2014, major disputes moved on to job security, protection of union activities, and allowance of paid time off for one full-time union officer. In terms of job security, the Labor Union demanded extension of the retirement age to 70 (instead of the current 65 years of age), in light of over 20 union members expecting to have to retire at the end of the year if this was not done. When the University rejected the demand to extend retirement age to 70, the Labor Union began taking action on February 29, 2014, hanging up approximately 30 banners around the campus, and setting up a tent at a building near the main gate to engage in a sit-in strike at the tent.

By April 1, 2014, the number of union members had dropped to just half of the total janitorial staff. In this worsening situation, the Labor Union had to withdraw their demand for extension of the retirement age to 70, and instead accepted that the University would work to protect job security. As the Labor Union could not perform union activities for a long time without a collective agreement, it seems to have decided that the next best alternative was to accept realistic measures. The Labor Union then suggested to the University that a working level negotiating team be formed to draw up a collective agreement as soon as possible, which the University accepted. This working-level team consisted of three members of the Labor Union and three University representatives. The working level negotiating teams reached agreement on all remaining items and finalized the collective agreement.

Ⅱ. Rejection of Meeting Minutes & Unfair Labor Practice

When a labor union was established for the janitorial workers and demanded a

collective agreement, the University appointed the staff member in charge of cleaning services as its collective bargaining representative. This particular staff member had no experience negotiating with labor unions before, and as the Labor Union repeatedly asked him to sign the meeting minutes, he did so simply to confirm that he had negotiated with the Labor Union. When this labor attorney, in preparations for collective bargaining, reviewed the contents of the signed meeting minutes, there were many articles that the University must not accept in any situation. Some examples:
"Anyone engaging in unfair labor practice as defined in Article 81 of the Labor Union Act shall be subject to disciplinary action."

"The Disciplinary Action Committee shall consist of 4 representatives from the Labor Union and 4 from the University. Half or more of the Disciplinary Action Committee shall be present, and consent from a majority of those present is required before disciplinary action can be taken."

The University also disagreed with such requirements as it needing approval from the Labor Union when handling many different personnel issues.

For these reasons, the University could not accept the meeting minutes. In addition to filing a complaint against all negotiating team members of the University including the University president for unfair labor practice, the Labor Union also demanded the replacement of this labor attorney as University negotiating team representative.

The Labor Union delayed collective bargaining until the Labor Office determined there was insufficient evidence of unfair labor practice by the University, and dismissed the case on November 27, 2013.

Ⅲ. Issue Related to Extension of the Retirement Age

When the janitorial workers were employed by the outsourcing company, there were no regulations regarding retirement age, but upon direct hiring by the University in March 2013, the University's retirement age regulations became applicable. Their wages also increased considerably because they received the service fees normally paid to the outsourcing company, and other working conditions like welfare benefits improved as well. However, as the retirement age had recently been set at 65 (although the University allowed application for two years' delay in mandatory retirement), 22 of the approximately 60 janitorial staff were due to retire at the end of 2014 in accordance with retirement regulations. The Labor Union demanded extension of the retirement age to 70, but as the University received a subsidy for janitors' wages from Seoul city government, this was impossible without the city government changing its policy. The Labor Union had to accept the fact that the University could not agree to any extension of the retirement age without the consent of the city government, and on April 1, 2014, withdrew this demand, accepting that the University would seek to provide job security.

Ⅳ. Articles Related to Personnel & Managerial Rights

Articles related to personnel and managerial rights refer to an employer's authority to make decisions affecting personnel, such as determining regulations on working hours, work place, work assignments, and disciplinary action, etc. It would be an infringement of its personnel and managerial rights if a company were to be required through inclusion in the collective agreement such conditions as needing prior agreement from or advance consultation with the labor union, or having to seek the labor union's opinion before making such decisions. When the Labor Union in question requested collective bargaining, many of the articles they presented infringed on these employer rights. However, at the end of the day, many of these demands were moderated.

Items in the Labor Union Proposal Affecting the Employer's Personnel & Managerial Rights	**Negotiated Changes in Final Collective Agreement**
(Establishing & abolishing rules) In order to establish or abolish any rules, the University shall receive advance agreement from the Labor Union.	In order to establish or revise any rules, the University shall receive the Labor Union's opinions. However, before revising the rules unfavorably, the University shall obtain the Labor Union's consent.
(Disciplinary or personnel issues for union officers) Regarding disciplinary or personnel issues for the full-time union officer or other union officers, the University shall receive advance agreement from the Labor Union.	Regarding personnel issues for the branch union chairman and branch union officers, the University shall receive the opinion of that person in advance.
(Personnel assignments) The University shall receive advance agreement from the Labor Union when assigning Labor Union members to certain positions.	Personnel assignments shall be implemented fairly and objectively, with the University assigning positions in consideration of the individual's opinion and previous work location.
(Composition of Disciplinary Action Committee) 1. The Disciplinary Action Committee shall be composed of 4 persons representing labor and 4 persons representing management. 2. The Disciplinary Action Committee shall occur with a majority of all members, and decisions shall require agreement by the majority of those present. If votes result in a tie, the motion shall be rejected. Dismissals shall require the consent of at least two-thirds of those present.	The Disciplinary Action Committee shall be composed of three persons appointed by the University, and one observer from the Labor Union shall be allowed to represent the Labor Union's views, and to be present during the entire Disciplinary Action Committee meeting. If the observer's presence is not permitted, any disciplinary action taken is null and void.
(Maintaining appropriate headcount) When deciding to reduce the workforce, the University shall receive advance agreement from the Labor Union.	The University shall strive to maintain the appropriate size of workforce in cooperation with the Labor Union.

(Revision of wage structure) When intending to revise wages or organization, the University shall receive advance agreement from the Labor Union.	When intending to revise wages or organization, the University shall receive the Labor Union's opinion in advance.
(Working hours) When intending to revise working hours, the University shall inform the Labor Union 30 days in advance, and shall not adjust them without agreement from the Labor Union.	When intending to revise working hours, the University shall discuss with the Labor Union before making the adjustments.

Ⅴ. Conclusion (Evaluation of the Collective Bargaining Process)

Generally, collective bargaining with new labor unions results in many disputes, and the situation in this article was no exception. When beginning these particular collective bargaining sessions, I followed two principles: 1) the collective agreement shall not infringe on the employer's personnel and managerial rights; and 2) the collective agreement shall create an employment situation that is sustainable for the University later.

There were three major issues in the course of the collective bargaining. The first issue was that by signing the meeting minutes, the former University representative agreed on 50 of the proposed items from the Labor Union before this Labor Attorney came to represent the University as chief negotiator. This mistake by the previous representative resulted in extended conflict between labor and management when the original meeting minutes were rejected: the Labor Union filed a complaint against the responsible University managers for unfair labor practice, which also served to delay the collective bargaining process as both sides had to wait for a decision from the Labor Office. The second issue was the Labor Union demanding extension of the retirement age from 65 to 70. When this was refused, the Labor Union hung about 30 protest banners around the campus and staged a sit-in protest in a tent at one of the gates. Since any changes to the retirement age required city government approval, the University could not agree to this demand, even though it was understood that this demand arose from the fact that 20 of the 60 employees were supposed to retire by the end of 2014. The third issue was the infringement of the employer's personnel and managerial rights, which was the strategy the Labor Union used to protect jobs. In practice, when an employer allows such rights to be restricted in the collective agreement, labor disputes increase and rifts in labor-management relations arise.

Although a reasonable collective agreement between the University and the Labor Union was ultimately concluded, one major problem was the length of time it took: 15 months. There were two reasons for this. Firstly, the Labor Union involved the umbrella union at the bargaining table, resulting in the first draft proposal containing many items that infringed on the employer's personnel and managerial rights, and demands for working conditions and union activities beyond what the University could afford to

accept. Secondly, the University had no specialized staff with the knowledge of labor laws necessary for dealing with a labor union. As the Labor Union received professional support from its umbrella union, the University decided to hire an outside labor specialist for the professional legal support they lacked. Due to a failure to cooperate and compromise, the Labor Union and the University were unable to conclude a collective agreement except after labor disputes and a significant amount of time and effort.

Despite the aforementioned problems, the final collective agreement was accepted by both parties. The Labor Union was recognized as a labor union, receiving an office and workers' lounges, paid time-off for union activities, and additional off-days, etc. For its part, the University also views the outcome as a success, as it was able to protect its personnel and managerial rights as an employer, and sign a sustainable collective agreement. It is desirable that the resulting agreement, concluded after much struggle, will play a pivotal role in maintaining peace between labor and management, and allow both parties to base their labor relations on a win-win situation.

A Case of Recovery of Infringed Managerial Rights through Collective Bargaining

Ⅰ. Outline of Major Events

A labor union of civil employees employed by a certain autonomous local government (hereinafter referred to as "the employer") was established ten years ago, and had obtained rights for its members by getting involved in managerial rights issues and expanded paid union time through collective agreements. The employer could not operate its manpower efficiently due to the labor union's involvement in managerial rights issues, and the employer had also been gradually handicapped in its work performance, due to an excessive amount of paid union time. The existing collective agreement expired in April 2008, and under the above-mentioned circumstances, the labor union and the employer had been unable to renew the collective agreement despite repeated attempts at collective bargaining in ten meetings. The employer, therefore, commissioned me with negotiating authority in March 2009, requiring me to remove the union's infringement on the employer's managerial rights, and reduce the labor union's excessive amount of paid union time. As a labor attorney, I implemented 24 collective bargaining meetings with the labor union between March and October 2009. Due to the sincerity of the negotiations, the employer has recovered the infringed managerial rights in the new collective agreement, and the number of hours of paid union time has been cut in half. Of course, in return for this, the employer improved working conditions: extension of retirement age, increase of health checkup

subsidy, introduction of interim severance pay, etc. Finally, we concluded negotiations with a collective agreement, which included mutual gain.

Ⅱ. Collective Bargaining Summary

1. The employer gave a draft proposal of a collective agreement to the labor union (Feb 17, 2009)
2. 1st & 2nd collective bargaining meetings on March 11th and March 19th
   - The labor union did not recognize the company's labor attorney as the employer's negotiating representative.
3. 3rd ~ 7th collective bargaining meetings on April 1st, April 15th, April 24th, and April 29th
   - The labor union did not respond to the employer's proposed collective agreement draft, but instead requested collective bargaining on wages first.
4. 8th collective bargaining on May 6th
   - The labor union unilaterally declared an industrial dispute, held a press conference and announced a strike against the employer on the morning of May 13th.
5. The employer informed the labor union of the cancellation of the collective agreement on the afternoon of May 13, 2009, effective 6 months later on November 13th.
6. The labor union applied for mediation of the industrial dispute from the Labor Relations Commission, but both sides rejected the mediators' draft proposal (May 20th ~ 29th)
7. After negotiations broke down, the labor union held more than 50 demonstrations in front of City Hall from May to October.
8. The labor union requested a meeting with the mayor and met with the relevant director on June 10th.
   - Both parties agreed to resume practical collective bargaining.
9. 9th collective bargaining on June 17th The union held a sit-in strike demanding at least three collective bargaining meetings a week.
10. 10th collective bargaining on June 24th
    - Both parties agreed on one collective bargaining meeting per week, and the labor union began responding to the employer's initial draft.
11. 11th ~ 21st collective bargaining meetings (June 1st ~ September 24th)
    - The union agreed to most articles of the employer's draft, excluding certain controversial issues regarding managerial rights, disciplinary action, full-time union officials, etc.
12. 22nd & 23rd collective bargaining meetings on September 30th and October 14th
    - The labor union compromised greatly by proposing a collective agreement very similar to the employer's original draft agreement.
13. Both parties agreed on the new collective agreement and held a signing ceremony on October 30th, 2009.

Ⅲ. Background to the Employer's Cancellation of the Collective Agreement

1. The labor union's perspective

(1) The original collective agreement had a provision where the collective agreement would continue to be effective even upon expiration, as long as negotiations were taking place. Another provision allowed for the automatic renewal of the collective agreement, as long as neither party requested a revision of the current collective agreement. Therefore, due to these provisions, the labor union felt it did not have to negotiate the employer's proposed collective agreement, which it felt was significantly disadvantageous compared to the existing collective agreement. This is why the labor union did not respond to the employer's draft proposal.

(2) The labor union was unwilling to give up the original collective agreement because it represented the rights they acquired during their 10 year struggle against the employer.

2. The employer's perspective

(1) The original collective agreement was effective for two years and when that period expired, the collective agreement was no longer valid.

(2) The employer explained that it is not seeking to unfavorably revise current working conditions, but to recover infringed managerial rights, which are fundamental rights of the employer.

(3) Although the employer had held negotiations with the labor union 8 times, the labor union did not respond to the employer's draft at all, so the employer decided to cancel the collective agreement in order to start practical negotiations on the proposed collective agreement.

Ⅳ. Details of Recovered Managerial Rights

1. Revision of provisions requiring consultation with, and agreement from the labor union

(1) 'Establishment or revision of the regulation'
- Previous: When the employer intended to establish, revise or abolish regulations and rules related to labor union members, including Rules of Employment, the employer had to consult the labor union in advance.
- Revised: This provision has been replaced with Article 94 (Procedures for preparation of and amendment to Rules of Employment) of the Labor Standards Act.

(2) 'Restriction of hiring irregular employees (like daily workers)'
- Previous: When the employer intended to hire irregular employees, the employer had to consult the labor union in advance concerning the necessity of employment, employment period, number of workers, and positions.

- Revised: On principle, the employer shall not use irregular employees (like daily workers) on jobs that labor union members are engaged in.

(3) 'Introduction of new technology'
- Previous: The employer had to provide all information related to new technology to the labor union and could introduce new technology only after consultation with the labor union.
- Revised: When the employer intends to introduce new technology or change current technology, the employer shall provide relevant information in advance to the labor union.

(4) 'Outsourcing or subcontracting'
- Previous: The employer shall determine whether outsourcing or subcontracting is necessary through advance negotiations with the labor union.
- Revised: When there is a change in employment relations or working conditions, the employer shall listen to the opinions of the labor union.

2. Revision of disciplinary provisions

(1) Severity of disciplinary punishment
- Previous: The types of disciplinary punishment were based upon the number of times an employee behaved inappropriately. (For an example, disciplinary dismissal is only possible if a person used violence against his/her superior three times.)

→ This means that the employer could not dismiss a violent union employee until he/she was violent toward his/her superior three times. This article infringed on the employer's rights to bring about justifiable disciplinary action.
- Revised: The type of disciplinary punishment is determined by the severity of the violation and the degree of negligence. The previous provision, 'number of times an employee behaves inappropriately' was deleted.

(2) Composition of the disciplinary action committee
- Previous: The disciplinary action committee consisted of five members: three managers representing the employer and two representatives for the union members. Decisions were made by an affirmative vote of a majority of the members present at a meeting where a majority of all members are present.

→ As it was very difficult to get all the required people for a disciplinary action committee to discipline a union member who violated the rules, the employer often could not put together a disciplinary action committee when it was necessary. I persuaded the labor union that what they really wanted was a fair disciplinary process, not to interfere with that process taking place.
- Revised: The disciplinary action committee shall be composed of three persons designated by the employer, who shall provide an observer the opportunity to state his/her opinion, and will guarantee his/her presence at the disciplinary committee meeting until the final decision-making time. If the observer's presence is not allowed, any disciplinary decisions are null and void.

3. Revision of other unreasonable provisions

(1) Reduction of the number of full-time union officials and paid union time
- Previous: Two full-time union officials (for 230 union members) were permitted, and 4 hours per day (88 hours per month) were allowed as paid union time for branch representatives of the labor union.
- Revised: The number of full-time union officials was reduced to one, and paid union time for branch representatives was reduced to 8 hours per week.

(2) Deletion of detailed provisions related to the Labor-Management Council
- Previous: There were separate provisions for the Labor-Management Council in the collective agreement: [Labor-Management Council], [Matters to be Reported], [Matters Subject to Consultation], [Matters Subject to Council Resolution], [Provision of Business Data], and [Effect of Matters Subject to Council Resolution]

→ As the detailed provisions of the Labor-Management Council are stipulated in the collective bargaining agreement, the labor union can request collective bargaining every quarter and the company had to respond to the labor union's demand.
- Revised: all provisions of the Labor-Management Council, except one, [Composition and Operation of the Labor-Management Council], have been deleted from the collective agreement.

(3) Obligation to respond to collective bargaining requests
- Previous: 'When one party requests collective bargaining, the other party shall respond to that demand.'

→ Both parties have a duty to keep the peace during the effective period stipulated in the collective agreement, but the "Obligation to respond to collective bargaining requests" can nullify this duty.
- Revised: Added 'demands for collective bargaining can only be made within three months of the collective agreement expiry date.'

Ⅴ. Background of the Union's Compromise and Evaluation of the Collective Bargaining Process

1. Background to the labor union's compromise

(1) The employer's consistency in explaining the purpose behind its desire for a new collective agreement

The employer consistently explained that the desire for a new collective agreement was not to worsen existing working conditions, but to recover managerial rights that were being infringed upon in the existing collective agreement. The labor union gradually tried to find a compromise, because otherwise it would lose all acquired contractual rights once the collective agreement expired. Under the circumstances, the labor union faced significant loss if it allowed the collective agreement to expire, so it accepted most provisions of the employer's proposed collective agreement just before termination of the previous collective agreement.

(2) The employer's consistency in exhibiting reliability during collective bargaining
During the weekly negotiations, the employer consistently exhibited good faith and sincerity, rotating the meeting places of both parties. Also, the umbrella labor union did not significantly interfere with the negotiations thanks to a long time confidence that had developed between the labor union and the employer.

(3) The labor union's inability to effect changes with protests
After mediation of the industrial dispute broke down, the labor union staged more than 50 protests in front of City Hall, but the employer consistently refused to respond to their demands, so the labor union's collective actions did not bring about their expected result.

2. Evaluation of the collective bargaining process

This collective bargaining agreement was remarkable in that it marks a break from the existing practice of an employer unilaterally giving in to the labor union's demands. The employer was able to recover managerial rights infringed upon by the previous collective agreement, by negotiating sincerely with the labor union, and the labor union was also able to acquire practical gains. Therefore, these negotiations have helped both parties to avoid the existing pattern of confrontation and combative working relations, and instead build up a mutually complementary and cooperative relationship.

Forced business closure as a result of a labor union' s abuse of its rights

Ⅰ. Summary

This case is about a taxi company in Yeosu, South Jeolla Province, that actually had to shut down its business due to abuses by the labor union of its own rights. These same abuses resulted in the new employer, who purchased the taxi company, also having to shut down. The taxi company had been unable to increase the 'deposit money which taxi drivers have to turn over to the company out of their daily earnings' (hereby referred to as the "daily deposit") for its last ten years, which resulted in accumulated deficits over a long period of time. Furthermore, the company was not allowed to discipline any employees who violated company regulations over the last ten years either.

This company was the biggest taxi company in Yeosu about 10 years ago, with 80 taxis. The company and the labor union agreed on a daily deposit amount in their collective agreement in 1998. The daily deposit amount stipulated in the collective agreement was much lower than that of any of the other taxi companies, and so this

helped to maintain peace between management and labor for some years. However, from 2000, the company started facing difficulty from operational deficits due to inflated prices, a rise in fuel costs, etc, and the company requested an increase in the daily deposit, but the labor union rejected, arguing that the company's explanation of the reasons for the monthly deficit could have been falsified. The employer then completely laid out the company's financial situation to the labor union in the hopes of being able to rescue the company, and desperately demanded the drivers' daily deposit be increased up to the minimum break-even point. However, this was impossible, as the labor union was unwilling to compromise. In the end, the employer had to sell the business in February of 2006, due to its accumulated debt.

A new employer purchased the taxi company with a verbal promise from the labor union that it would increase the daily deposit, but when the new employer purchased the company, the labor union allowed the increased daily deposit for only two months, after which the labor union returned to the previous daily deposit. When the new employer decided to stop subsidizing fuel in order to prevent another deficit, the union members submitted their daily deposit after deducting an amount equivalent to the fuel subsidy. The company, following the disciplinary procedures in company regulations, then dismissed several union officers who had led other union members to deduct the fuel subsidy from their daily deposit. However, the Labor Relations Commission ruled that the dismissals were unfair in that the company did not observe the expired collective agreement's disciplinary process, which was that "the disciplinary action committee shall consist of an equal number of representatives from the company and the labor union, and its decisions shall be decided by a two-thirds majority of the committee members present." The new employer could not raise the taxi drivers' daily deposit amount, and was also told that the Labor Office had decided that the company's cessation of a fuel subsidy was illegal. Again, in the end, the new employer had to give up the business, due to the accumulated debt, only two years after purchasing the company.

Ⅱ. Timeline of Major Events

1. 1979 The taxi company was established.
2. May 1, 1998 The drivers' daily deposit, 65,000 won, was stipulated in the collective agreement.
3. July 2004 A deficit of 10 million won per month started occurring, due to the rise in fuel costs. The company desperately demanded that the labor union accept a 5,000 won increase of the drivers' daily deposit, the minimum to break even, but the labor union refused.
4. Oct 29, 2004 The company notified the labor union of the cancellation of the existing collective agreement.
5. Apr. ~ May 2005 The labor union went on strike for two months to prevent the sale of the taxi company.

6. Dec 2005~Feb 2006 The taxi company suspended business for three months due to accumulated debt, and then was sold.
7. Mar ~ Apr 2006 A new employer purchased the company after obtaining a verbal promise from the labor union that they would raise the drivers' daily deposit by 9,000 won. However, the labor union returned to the previous daily deposit two months later.
8. May 2006 After two months, when the new employer continued to deduct the increased daily deposit, the employees sued the company for these deductions, and the Labor Office ordered the company to return these deductions to the employees.
9. May ~ Nov 2006 The new employer desperately demanded that the labor union raise the drivers' daily deposit so the company could stop running a deficit. Negotiations with the labor union were held more than twenty times, but the labor union rejected the increase to the end.
10. After Nov 2006 After sufficiently explaining the need to stop the fuel subsidy, the company stopped subsidizing fuel costs. The union members then reduced their daily deposit to 47,000 won, after deducting 18,000 won, equivalent to the fuel subsidy.
11. Nov 2006 The company dismissed key union officers who defied the company's decision to cease the fuel subsidy.
12. Dec 19, 2006 The Labor Relations Commission ruled that the dismissals were unfair because the company violated disciplinary procedures.
13. May 21, 2007 The employer appealed, but lost the case.
14. Aug 27, 2008 The new employer gave up the business due to the debt load.

Ⅲ. Necessity for the increase in the taxi drivers' daily deposit and the labor union's objections

1. Necessity for the increase in the taxi drivers' daily deposit

When the company and the labor union determined the drivers' daily deposit of 65,000 won in the collective agreement in May 1998, the fuel was 222 won per liter, but in June 2006, it rose up to 737 won, a 330% increase. During this period, the base taxi fare was 1,300 won, and increased to 1,800 won. However, the taxi drivers' daily deduction did not increase due to the labor union's continuous objections.

2. A written statement from one of the former company presidents

My company had the best working conditions of all taxi companies in July 2004. Their average monthly income was 300,000 won more than their counterparts at other taxi companies, and thanks to this situation, we were awarded a prize by the Minister of Construction and Transportation in the field of labor-management relations. However, with the rise in fuel costs, the company could not share any profit with its stockholders, and even the company's invested capital was at risk, due to the accumulated debt. The company had been losing, on average, 10 million won every month.

At the emergency board meeting, I was elected the new representative director. Based on my three basic standards of company management like a principle of trust, win-win situations, and transparency, I started to negotiate with the labor union and laid out the company's financial situation for the labor union to see (the union inspected the company's business practices three times), but the labor union would not agree to an increase of their daily deposit. The company requested only 5,000 won more, the minimum to break even, explaining that the company would do business without profit for the time being so as to rescue the company, but the labor union refused the company request, repeatedly claiming the company was not losing money. The board meeting concluded with the company still unable to recover from its accumulated fuel and other debts, and in the end, it was sold, with the entire amount from sale going to payment of company debts.

A considerable number of faithful union members suggested the daily deposit be increased an additional 10,000 won (even in this case, an employee could receive, on average, 100,000 won more per month than at other companies) demanding that the company suspend its sale, but their efforts availed nothing, due to threats and interference from a few militant union members.

3. Comparison of wages versus taxi drivers' daily deposit

− prepared by a certified public accountant (as of Nov 1, 2006)

1) Company income per driver (daily deposit): 65,000 won x 25 days = 1,625,000 won/month

2) Labor costs (direct costs + indirect costs)è 1,976,609 won per driver per month

- Direct labor costs: basic pay, long-term service allowance, car wash allowance, summer vacation allowance, tuition subsidy, severance pay reserve, insurance premiums for the four social security insurances, compensation for unused annual/monthly leave, paid leave allowance (5 days), gift expenses, fuel subsidy (26.7 liters) à 1,272,645 won
- Indirect labor costs: management staff labor costs, general expenses, car insurance, depreciation of car values, car repairs, dividends to stockholders → 703,963 won

3) Company income versus individual labor costs
1,625,000 won (company income) − 1,976,609 won (labor costs)
= -351,609 won (deficit amount per individual per month)

Ⅳ. Loss of the company's right to implement disciplinary action

Through negotiation with the labor union, the company introduced a disciplinary process in the collective agreement which stipulates, "the disciplinary action committee shall consist of an equal number of representatives from the company and the labor union, and its decision shall be decided by a two-thirds majority of the committee members present." The company gave up its right to unilaterally take disciplinary action in order to include the labor union as a business partner and to cooperate in a win-win strategy. Unfortunately, the company was not able to take disciplinary action against even one union member over the company's last ten years on account of the requirements for taking disciplinary action within the disciplinary process. Consequently, sometimes union members cursed the employer and neglected to carry out their duties properly. Union members also frequently caused car accidents. As a result of the lack of disciplinary action, the company had to pay more in annual car insurance premiums than other companies: more than 2 million won per taxi, compared to about 1 million won per taxi for the company's competitors. This was as a direct result of the company's inability to maintain ethical standards through disciplinary action. What is worse, under this disciplinary process, the company couldn't even punish an employee who sued the employer without justifiable reason. This resulted in a collapse of order within the company, so manager directions were not adequately implemented.

Ⅴ. Related judicial rulings and administrative interpretation

If a collective agreement expires, provisions concerning disciplinary process continue to be effective as normative sections. (Jan 25, 2007, Labor Relations-293)

Although the effective period of the collective agreement expires or the collective agreement is declared invalid by one party cancelling the agreement during the autonomous extension period, 'standards concerning working conditions and other matters concerning the treatment of employees' (namely, the normative section), as prescribed in the collective agreement, would still remain in effect as the working conditions of individual employees. If the employer wants to revise the normative section, he shall conclude a new collective agreement in accordance with legitimate procedures, or revise the Rules of Employment and obtain collective consent of the employees concerned. (Supreme Court Ruling, Jun 9, 2000, 98da13747)

In cases where the employer agrees with the labor union in the collective agreement

that “when taking disciplinary action, the disciplinary action committee shall consist of an equal number of representatives from the company and the labor union, and its decision shall be decided by a two-thirds majority of committee members present,” it is true that it is practically impossible to discipline employees who violate company regulations. Although this makes it difficult to take disciplinary action, the validity of the disciplinary process as stipulated in the collective agreement, will still hold.

Ⅵ. Conclusion

In this labor case, as in other cases where the employer gives up a certain range of personnel and management rights in order to maintain peace with the labor union, the results are evident. The loss of managerial and personnel rights will lead to failure of the business, reducing competitiveness in the market and employee job security as well. Therefore, when an employer establishes autonomous agreement by collectively bargaining with the labor union, the employer should not forget that he or she should negotiate with the labor union within certain boundaries: fundamental employers’ rights, namely, personnel and managerial rights, should not be given up in the collective agreement. If the employer hands over personnel and managerial rights to the labor union, it should be remembered that negative consequences will occur for the employer and the labor union in the long run.

An Airline Labor Union Improves Working Conditions

Ⅰ. Introduction

As a labor attorney, I have usually represented companies on labor issues, but recently I was asked to provide some consulting by a labor union (hereinafter referred to as “the Union”). This particular union is composed of employees of a foreign airline (hereinafter referred to as “the Company”) and was established in April 1989, surviving simply as an entity without a collective agreement for the past 25 years. As soon as the Union was established, the company had treated the Union chairman so disadvantageously (such as moving him from the Seoul office to a workplace at the airport) that he was obliged to resign. In addition, the Union was unable to carry out its duties due to the headquarters’ continuous habit of disadvantaging all succeeding union officers. Although Union members’ salary was superior to that of employees at other airlines in the beginning, their salary increases had not kept pace with their

peers' at other airlines. Through 10 months of collective bargaining, the Union was able to improve its working conditions, including salaries, with the assistance of a professional (this labor attorney) through legal advisory consulting.

This article will describe how the Union concluded a successful collective agreement, and dealt with major issues.

Ⅱ. Company Handling of the Union

1. Company refusal to recognize the Union

The Company refused to recognize the Union entity, and shut down attempts at collective bargaining by creating an atmosphere of insecurity for Union members and treating them unfavorably. Some of the details are listed below.

(1) When the Union was established in 1989, the Company moved its new Union chairman from the head office in Seoul to the airport branch office, without a promotion or salary increase, after which the Union chairman decided to resign.

(2) Between 2009 and 2012, the branch manager emailed Union members at "director" level (a Korean employment rank designation) and threatened them as pressure to withdraw their membership from the Union. This included public orders to withdraw their membership during wage bargaining meetings, which resulted in several directors withdrawing their union membership. As an explanatory side note, although their Korean title was "Director", they did not have any practical management authority over lower-ranking employees, and just worked as "persons in charge". Their English title was still "Employee": only those with the Korean rank of "Manager" could use their Korean titles in English, as they had actual management authority (Manager = Team leader = Department head). "Director" was simply a title given to recognize their age and their long service.

(3) The branch manager also included threats during labor-management council meetings or the wage bargaining table, saying repeatedly "My company's wage level is inferior. If you don't want to work for that wage, then quit." This prevented any effective bargaining with the employer.

(4) The company also constantly reminded employees through various department heads and the branch manager's secretary, of its intention to disadvantage any union members refusing to obey company policy.

Together, this kind of environment cowed the Union members against pursuing a collective agreement.

2. Disadvantageous changes in working conditions

(1) Wage cut: The Company unilaterally cut out almost 1/3 of its regular bonus in

2009 (normal bonuses equaled 650% of normal salary, but only 450% was paid out that year). Although the Company informed the Union chairman and Union officers in writing in February 2009, the Company designated a particular Union member to sign the agreement, completely ignoring the Union chairman, and used this "agreement" to make the unilateral cut in May of the same year.

(2) Unpaid incentive (in 2012): The Company paid incentive bonuses every year in the past when it reached its corporate targets. However, although the Company reached its 2012 targets, no incentive bonus was paid, nor any explanation given.

(3) Changing menstruation leave from paid to unpaid leave (from 2009): Prior to 2009, the Company had paid menstruation leave allowances to women, but changed this to unpaid leave without collective consent or Union agreement.

(4) Unilateral reduction of sales allowances for sales department employees: Sales employees had received 450,000 won in sales allowance every month, but in 2009, the Company reduced this sales allowance to 350,000 won without notification or explanation to the sales department. It was again unilaterally reduced to 250,000 won in 2012. Unilaterally changing a long-running sales allowance twice is a disadvantageous change of working conditions.

Ⅲ. Details of Collective Bargaining

1. The Company's attempts to evade collective bargaining

The Union requested collective bargaining in January 2014, and at the first meeting on February 10, 2014, demanded a collective bargaining schedule. The Union also handed over a draft of the collective bargaining demands, without response from the Company. The Union sent two reminders in writing, but still no response. Then, suddenly, the Korean branch manager (a non-Korean) returned to his home country without notifying the Union of any bargaining schedule. It is assumed that this was part of the Company's strategy to maintain the existing situation and avoid making a collective agreement.

2. Inducing the Company to engage in collective bargaining through Labor Ministry authority

When the branch manager returned to his home country in March 2014, the Union decided to exercise its rights guaranteed by the Constitution to force the Company to the bargaining table, and began lawsuit proceedings with the Ministry of Employment & Labor for the Company's unfair labor practices and violations of the Labor Standards Act.

The purpose of the suit was to retrieve the illegally reduced wages, and continue to

work out collective bargaining with the Company. The Company's former branch managers were required to attend the Labor Office investigations, coming to realize the power of the Union for the first time. After two months of investigations, in July 2014 the Company had to return the unpaid wages, and also the additional 200% of the regular bonus that was deducted illegally. As the Union accepted the payment of the retroactive wages and trusted the Company's verbal promise to engage in collective bargaining, the Union withdrew the suit it had filed against the Company.

3. Concluding a collective agreement through the Labor Relations Commission

The Company appointed the Busan branch manager as its representative negotiator and began to negotiate a collective bargaining agreement with the Union in July 2014, meeting 8 times up to September 23. However, the Company continually rejected any other working conditions except those agreed on in the rules of employment, claiming that the collective bargaining draft contained so many articles that infringed on Company personnel and management rights. On top of this, the Company also pushed to lower the current working conditions in return for increasing salaries.

The Union decided that this kind of collective bargaining would yield nothing in the way of better working conditions, and on September 25, 2014, applied to the Labor Relations Commission for adjustment of labor disputes towards obtaining the official right to strike (case number: NLRC 2014 mediation 99). [13)]

The Labor Relations Commission assigned this case to the Special Mediation Committee of the National Labor Relations Commission for 15 days, as the Company belonged to the public services industry as an aviation service and had workplaces in several cities (Seoul, Busan, Incheon etc.). The Special Mediation Committee held its first investigation meeting on September 29, 2014, and then held a preliminary mediation hearing for 4 hours on October 7. The Company had stubbornly rejected the Union's proposals, but displayed serious concerns at the present situation which could lead to a strike by the Union. Although the Company began negotiating more actively than previously, the parties could not reach agreement within the permitted mediation period of 15 days due to the wide gap in their viewpoints.

The Company and the Union agreed to extend the mediation period and an additional 15 days were permitted. The Union focused on obtaining Company recognition of itself and recovering the unfavorably-changed working conditions rather

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13) LABOR UNION AND LABOR RELATIONS ADJUSTMENT ACT. Article 45 (Mediation before Industrial Action) (2) No industrial action shall be taken without first undergoing mediation procedures (excluding mediation procedures that come after the decision to end the mediation is made pursuant to Article 61-2) under the provisions of Sections Two to Four of Chapter V. This paragraph shall not apply when mediation procedures do not finish within the period prescribed in Article 54, or when the arbitration ruling is not made within the period prescribed in Article 63.
Article 53 (Commencement of Mediation) (1) The Labor Relations Commission shall conduct the proceedings of mediation, without any delay, when one of the parties to labor relations submits a request for mediation to the Labor Relations Commission. The parties concerned shall undertake in good faith the proceedings of mediation.

than striking. Labor and Management made the most of the mediation period, intensively negotiating a final agreement on changes related to 28 of the 60 articles in the first collective agreement draft. Both parties submitted the agreed draft to the Special Mediation Committee which in turn accepted it, making the collective agreement official. [14)]

This successful outcome was possible thanks to two distinctive factors: (1) the two parties were required to attend the compulsory mediation hearings held by the Labor Relations Commission; (2) three commissioners from the Special Mediation Committee worked hard with labor and management in the process of reaching agreement. If the commissioners had been unsuccessful in persuading the employer, concluding a collective agreement would have been impossible with a company that thought the Union was an organization to be under its control.

Ⅳ. Evaluation and Lessons

1. Evaluation

One of the most significant outcomes for the Union was successful conclusion of a collective agreement, something it had not had in its 25 years of existence. Although the collective bargaining agreement contained only 28 of the original 60 articles, the Union was recognized as a real entity through the collective agreement, and obtained the legitimacy and power to negotiate with the Company as an equal bargaining party concerning the determination of terms and conditions of employment. The details of what was obtained in this collective bargaining include a Union office, paid time-off for full-time Union officers, and an equal number of labor and management representatives in the disciplinary action committee. The improved working conditions include restoration of the original sales allowances, restoration of the paid menstruation leave, and stipulations in the collective agreement protecting working conditions that had been previously obtained. As the structure for wage agreement and general collective agreement bargaining was also established in the first collective agreement, the Union is now equipped with knowledge and a recognition of its authority to negotiate improvements to working conditions.

2. Lessons

Article 32, Paragraph 3 of the Korean constitution stipulates, “Standards of working conditions shall be determined by Act in such a way as to guarantee human dignity.”

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14) Article 54 (Period of Mediation) (1) Mediation shall be completed within ten days in the case of general businesses, and fifteen days in the case of public services, after the request is made for mediation pursuant to Article 53.

(2) The parties concerned may agree to extend a period of mediation under paragraph (1) up to ten days in the case of general businesses, and fifteen days in the case of public services.

Article 61 (Effect of Mediation) (2) The contents of the mediated agreement shall have the same effect as a collective agreement.

Out of this article came the Labor Standards Act. Here, if the Labor Standards Act existed without the Labor Union Act, improving working conditions would be difficult as employers usually pursue profit over worker benefits. Enhancing working conditions is the reason why the Labor Union Act guarantees three rights for labor: association, collective bargaining, and collective action. Through exercise of these three rights guaranteed by the constitution real working conditions can be improved, based upon mutual determination of working conditions where labor and management can negotiate on equal footing.

Ⅴ. Conclusion

The foreign airline's labor union had simply existed without a collective agreement for 25 years, and was unable to represent its members effectively or act collectively towards improving their working conditions. However, through the process of concluding a collective agreement this time, they understood the importance of exercising their three rights of labor in the workplace, and also restored the Union's real functions and at the same time achieved the power to protect their working conditions through a collective agreement achieved by collective bargaining. It is my hope that this Union will maintain the solidarity that its members showed throughout the collective bargaining process and protect its members' job security, while also improving their relatively lower wage levels and working conditions when compared to other airlines.

인사관리 앱 개발 (Mobile App)

기본서 Basic Guides	1. 노동법전 2. 노동법 해설 3. 노동 사건 사례	1. Labor Law 2. Labor Law Guide 3. Labor Cases
동영상 (Video)	YouTube GO	Korean and English videos (each 20 categories)
매뉴얼 Manual	1. 구조조정 2. 해고 3. 외국인 고용과 비자 4. 노동조합 5. 임금 6. 근로시간, 휴일, 휴가, 7. 비정규직 근로자 8. 근로계약 9. 산업재해보상보험 10. 직장내 괴롭힘&성희롱 예방 11. 근로감독 준비 12. 취업규칙 13. 고용보험 14. 남녀고용평등 15. 노사협의회 16. 산업안전보건법 17. 국민연금, 국민건강보험	1. Workplace Restructuring 2. Dismissal 3. Foreign Employment and Visa 4. Labor Union 5. Wage 6. Working Hours, Holiday, Leave 7. Irregular Workers 8. Employment Contract 9. Industrial Accident Compensation 10. Workplace Harassment Prevention 11. Labor Inspection Preparation 12. Rules of Employment 13. Employment Insurance 14. Equal Employment Act 15. Labor Management Council 16. Industrial Safety and Health Act 17.National Pension, Health Insurance
Auditing	Self-Assessment for Labor Inspection	근로감독 자가진단 앱 추가 제작
외국인 Foreigner	출입국관리법과 외국인 (기고글, 동영상, 비자36가지)	Immigration Laws and Foreigner Workers (Law, Articles, Video, Visa)
근로계약 Employmt Contract	근로계약 자동작성 (5가지 기본 틀을 가지고 작성) (정규직, 기간직, 시간제)	Making Employment Contracts based on 5 basic templates (Regular, fixed-term, and part-time)
자동계산 Automatic Calculation	1. 임금명세서, 2. 연차휴가, 3. 퇴직금 4. 4대보험, 5. 퇴직소득세 6. 산재보상 (장해보상, 유족보상, 민사상 손해배상)	1. Payslip, 2. Annual Leave, 3. Severance Pay 4. Social Insurance Premiums 5. Retirement Income Tax 6. Industrial accident benefits and civil compensation
Labor Auditing	1. 주요 질문/답변 2. 인사감사	1. FAQ 2. Labor Auditing

● "___" underlined parts are being prepared, and other parts are completed and posted.
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