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EMPLOYEE PARTICIPATION IN MANAGEMENT IN SOUTH KOREA

1. Introduction

The advocacy of Korean trade unions has influenced the broader labor movement and contributed to labor law reforms. However, South Korea's labor unions are often characterized by a confrontational and combative approach in their workplace interactions. This confrontational nature stems from a history of contentious labor relations in South Korea, where unions have had to fight vigorously for workers' rights amidst the backdrop of rapid industrialization, a dictatorial political system, and the dominance of powerful corporate conglomerates, particularly within the Chaebol system. During South Korea's rapid economic development, especially from the 1960s to the 1980s, the authoritarian government often suppressed labor unions, which prioritized economic growth over workers' rights.

While labor unions in Korea have achieved significant improvements for workers, such as higher wages and better working conditions, labor disputes like strikes and protests have often strained relationships between employees and employers in Korea. The traditional emphasis on employers' "right to manage" and the historically adversarial stance of unions have made it challenging to establish systems that promote more harmonious labor relations and shared decision-making. Nevertheless, ongoing efforts are being made to bridge this gap and to enhance cooperation by involving employees in management.

This paper examines the system of employee participation in management in South Korea, with a particular emphasis on labor-management councils, which represent the most widespread form of employee involvement. In addition, this study seeks to analyze the role of collective bargaining agreements negotiated by labor unions as a potential, albeit limited, mechanism for employee participation in management.

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2. The concept of employee participation in management

The concept of employee involvement in management is subject to varying interpretations and manifests differently depending on the source. The nature and extent of such involvement are contingent upon the specific conditions prevailing in each country. Employee participation systems in management have evolved distinctively across different nations, shaped by unique social, economic, cultural, and political contexts. Consequently, there is significant diversity not only in the content and structure of participation but also in the methods of implementation and the rationale underlying introducing these systems.

In the 1970s, academic research on employee participation in management began in South Korea. This research focused on cultural, legal, and organizational differences between South Korea and European countries like Germany and Sweden, which are known for their advanced participatory practices. Korean law scholars also examined the potential benefits and challenges of adapting European employee participation models to the Korean socio-economic context. With the enactment of the Labor-Management Councils Act in 1980, research in South Korea diversified, concentrating on local experiences and finding suitable participatory solutions tailored to local realities.¹

After the financial crisis in late 1997² in Korea, many companies had to undergo restructuring, including mergers, acquisitions, and downsizing. This led to a significant increase in job insecurity among workers. In response, the workforce began to demand greater participation in management, mainly through trade unions. Increased job insecurity and concerns about future employment prompted workers to take action to protect their interests and influence corporate decisions. Some companies responded to these demands by increasing employee participation in decision-making processes, recognizing the role of trade unions, and allowing workers more involvement in management.³

¹ D.K. Han, *No-dong-ja gyeong-yeong-cham-ga-ga da-si ju-mok-ba-da-ya ha-neun i-yu* [Reasons why worker participation in management should be regained attention], "Labour Journal" 2009, pp. 101–102.

² The financial crisis in Korea, which began in June 1997, was precipitated by the Thai government's decision to float the baht, a currency previously pegged to the U.S. dollar. This decision was compelled by the unsustainability of defending the baht against speculative attacks. The sudden devaluation of the baht significantly increased the cost of servicing foreign debt, pushing the country to bankruptcy. The crisis rapidly spread across the region, profoundly impacting other nations, including Malaysia, the Philippines, Indonesia, Singapore, and South Korea.

³ H.S. Lee, S.H. Kwon, *Geulloja gyeong-yeongchamyeoreul wiban nosahyeobuihoeni hangyewa gaeseonbang-an* [Limitations and Proposals for Improvement of the Labor-Management Council for Employee Participation], "Dong-A Law Review" 2020, no. 90, p. 239.

Employee participation in management is not uniformly defined in Korean legal literature. Employee participation can be understood narrowly as the involvement of workers in a company's decision-making processes and their influence on those decisions. In a broader sense, it involves collaboration between workers and employers to jointly perform management and administrative functions, traditionally the domain of employers, to protect and promote workers' interests.⁴

In South Korea, employees primarily participate in management through labor-management councils. Labor unions also have a role in management through collective bargaining agreements. However, employee participation in management through these agreements is mainly indirect. Like labor-management councils, workers do not participate in management directly, but they can play an important role in influencing management policies.⁵ Therefore, while employee participation in management can be achieved to some extent through collective agreements, the specific content and scope may vary depending on the collective agreement of individual companies.⁶

In addition to the previously mentioned forms, South Korea also implements the Employee Stock Ownership Plan (ESOP)⁷ as a means of employee capital involvement. However, compared to mechanisms such as labor-management councils, involvement in management through capital participation remains limited. Capital participation is primarily utilized in a few companies rather than being widespread. Beyond equity participation, profit-sharing⁸ systems reflect performance-based employee involvement and are commonly found among large corporations in South Korea. This suggests that capital and performance-based participation mechanisms are not universally adopted for employee involvement in management across all enterprises in the country. Implementing these systems and their specific structures vary significantly depending on each company's unique circumstances.

⁴ *Ibidem*, p. 240.

⁵ S.H. Kwon, *Geulloja gyeong-yeongchamyeeo ghan ban youn gu* [A Study on Workers' Participation Systems in Management], Won Kwang University, Iksan 2021, pp. 70–71.

⁶ H.Y. Kim, *Danche-hyeopyak-gwa gyeong-yeong-chamyeo-ui beob-jeok-jaengjeom* [Legal Issues of Collective Agreements and Management Participation], Korea Labor Institute, Seoul 2018, pp. 56–57.

⁷ The Employee Stock Ownership Plan (ESOP) is a system in which employees hold shares of their own company, thereby acquiring the rights of shareholders. In South Korea, this system is the most representative mechanism for illustrating employee participation in capital. When employees acquire shares in their company, they can exercise voting rights at the general shareholders' meeting and receive financial benefits such as dividends. This arrangement can enhance employees' interest in the company's management and foster a sense of responsibility for the company's performance.

⁸ Profit-sharing is a mechanism whereby a company, upon realizing a certain level of profit, distributes a portion of that profit to its employees in the form of bonuses. This system enhances employees' engagement with the company's operational performance and provides compensation based on the outcomes achieved.

3. The constitutional basis for employee participation in management

It's important to understand the basic principles outlined in the current South Korean Constitution and the underlying market economy system to discuss the legal issues surrounding employee participation in management. The constitutional basis for establishing employee participation in management can be found in the Constitution's guarantees of a "free-market economy order" and "the principle of a social state."

Article 119 para. 1 of the Constitution of Korea establishes that "the economic order of the Republic of Korea shall be based on respect for the freedom and creative initiative of individuals and enterprises in economic affairs," thus affirming the foundation of a free market economy. In addition, Art. 119 para. 2 of the Constitution provides that "the State may regulate and coordinate economic affairs to maintain balanced and stable growth of the national economy, to ensure the equitable distribution of income, to prevent the domination of the market and the abuse of economic power, and to achieve economic democratization through harmony among the economic entities." This provision suggests that the economic order in Korea not only upholds capitalist principles but also inherently incorporates elements of the principle of a social state.

The Constitutional Court of Korea has stated in various rulings that the Korean Constitution is based on the principle of a social state. Although the Constitution does not explicitly mention this principle, it is reflected in various provisions, including the Preamble,⁹ Art. 31,¹⁰ Art. 34,¹¹ and Art. 119 para. 2. The Constitutional Court in Korea clarified that a "social state" does not mean a "socialist state" but rather a state that intervenes, regulates, distributes, and coordinates in all areas of the economy, society, and culture to establish a just social order.¹² Ultimately, the state must create the substantive conditions necessary for each individual to exercise their freedoms genuinely.

In the Korean constitutional framework, employee participation in management is significant in achieving workplace and company democracy. Instead of employers unilaterally making decisions, this system encourages resolving workplace and

⁹ The Preamble of the Constitution establishes the state's purpose as the pursuit of liberty and equality, laying the foundation for the principles of a social state.

¹⁰ Art. 31 of the Constitution: "Every citizen has the right to receive an equal education in quality and opportunity according to their abilities. Every citizen must ensure that their dependent children receive at least elementary education and any further education as prescribed by law; Compulsory education shall be provided free of charge."

¹¹ Art. 34 of the Constitution: "Every citizen has the right to live a life worthy of human dignity; The State bears the duty to enhance social security and welfare."

¹² The Constitutional Court ruled on 28 June 2001, in Decision 2001 HunMa132; the Constitutional Court ruled on 25 April 1996, in Decision 92HunBa47.

enterprise issues through dialogue and mutual agreement between employees and employers. This approach establishes a foundation for employment relationships characterized by communication and cooperation, ultimately leading to economic democracy.¹³

4. Participation in management through the labor-management council

4.1. Introduction

The labor-management council in South Korea was first introduced under the amended Trade Union Act in 1963.¹⁴ The legislative intent behind the labor-management council system primarily aimed to foster cooperation between employees and employers, prevent labor disputes and maintain industrial peace.¹⁵ This system is often interpreted as a tool created in the 1960s, in line with the economic industrialization policies of the South Korean dictatorship, to suppress labor disputes.¹⁶

The labor-management council in Korea is similar to the Works Council in Germany (*Betriebsrat*) in some respects, but the key difference lies in their composition and function. The Korean Council is a joint organization that includes employee and employer representatives, reflecting a collaborative approach to labor-management relations. In contrast, the German Works Council is solely composed of employee representatives and focuses more on representing the interests of the workforce independently from management. This distinction highlights the two countries' different approaches to workplace governance and employee participation.¹⁷

Article 6 of the 1963 Trade Unions Act provided that “employers and trade unions shall establish the labor-management council to promote cooperation between employees and employers and to maintain industrial peace.” It is important to note that the labor-management council was established only in workplaces

¹³ G.C. Park, *Geulloja gyeongyeongchamyeo-e gwanhan beobjeok geomto* [Legal Review on Employee Participation in Management], “Labor Law Forum” 2016, no. 19, p. 6.

¹⁴ The Act was amended on 17 April 1963 (No. 1329).

¹⁵ C.S. Lee, B.S. Yoo, *Pal-sip-chil-nyeon ibu nodongbeop-je-ui gaejeong mit jeongchaek-hyeonbwa-ui yeoksa* [The Changes in the Labor Law System in South Korea since 1987], Publication of the Ministry of Labor in Korea, Seoul 1999, p. 75.

¹⁶ *Ibidem*, p. 78.

¹⁷ In Germany, collective bargaining negotiations occur at the industry level, while works councils focus on the workplace level. However, in South Korea, the roles of trade unions and works councils are not significantly different when it comes to unionization. There has been a recent shift in the organizational structure of trade unions towards industry-level unions, but negotiations still occur at the workplace level. It is challenging to expect the distinct role of works councils to develop similarly to that in Germany.

where trade unions were organized. In the early 1960s, the authoritarian South Korean government deliberately introduced workplace councils during industrialization to prevent labor disputes, strengthen cooperation between employees and employers, and promote industrial peace.¹⁸

On 31 December 1980, the Korean government implemented a specific law regarding the labor-management council.¹⁹ According to Art. 4 of the Act on Labor-Management Council of 1980, every enterprise or workplace with the authority to decide working conditions must establish a labor-management council. Additionally, councils can be set up for each establishment if a company has branches in different regions.

In 1997, the Act on Works Councils was replaced by the Act on the Promotion of Employee Participation and Cooperation²⁰ (hereinafter APEPC), which mandated the establishment of councils in companies employing more than 30 employees (Art. 4). Moreover, this legislation further strengthened the functions and powers of these councils. According to Art. 3 of APEPC of 1997, the term “Labor-Management Council” refers to a consultative body established by employees and employers to promote employee welfare and ensure the proper development of the enterprise through cooperation.

4.2. Establishment and composition of the labor-management council

Employers with 30 or more regular workers should establish the labor-management council as mandated in Art. 4 para.1 of APEPC of 2022.²¹ If the council’s establishment is unreasonably refused or obstructed, a penalty of a fine not exceeding 10 million KRW²² may be imposed under Art. 30 of APEPC. Whether a labor union exists within the company or the percentage of union members is irrelevant to the obligation to establish the council.

The Labor-Management Council shall comprise an equal number of representatives from employees and employers, each consisting of no fewer than three and no more than ten members (Art. 6 para.1 of APEPC). The employees shall elect the representatives of the employees; however, if a labor union is organized by a majority of the employees, the representatives shall include the union leader and other individuals appointed by the union (Art. 6 para. 3 of APEPC). In workplaces without a labor union representing the majority of employees, employee representatives must be elected by the employees through a direct, secret, and anonymous vote. If the specific characteristics of a business or workplace require it, representatives

¹⁸ C.S. Lee, B.S. Yoo, *Pal-sip-chil-nyeon...*, p. 85.

¹⁹ The Act was enacted on 31 December 1980 (No. 3348).

²⁰ The Act was enacted on 13 March 1997 (No. 5312).

²¹ The Act was amended on 10 June 2022 (No. 18027).

²² The equivalent of 10 million KRW is approximately 29,000 PLN.

may be chosen proportionally by each department based on the number of employees. This is followed by a direct, secret, and anonymous vote by the majority of the participants in the election to select the employee representatives²³ (Art. 6 para. 2 of APEPC).

A candidate seeking to run for the position of employee representative must be an employee of the relevant workplace (Art. 3 para. 2 of Enforcement Decree of APEPC). If the position of the employee representative becomes vacant, a substitute representative must be appointed or elected within 30 days. If no labor union represents the majority of the workers, the person who received the next highest number of votes in the initial election may be appointed as the employee representative (Art. 4 of Enforcement Decree of APEPC).

The employer is prohibited from interfering with or obstructing the election of employee representatives (Art. 10 para. 1 of APEPC). If the employer violates this regulation by interfering with or obstructing the election of employee representatives, the Minister of Employment and Labor may order corrective measures (Art. 11 of APEPC). The employer is obligated to provide basic conveniences, such as the use of facilities, for the activities of employee representatives (Art. 2 of APEPC). The employer's representative shall be appointed by the representative of the relevant business or workplace (Art. 6 para. 4 of APEPC).

The labor-management council shall have a chairperson who oversees its operations and represents the council. The chairperson is elected from among the council members, and it is permissible to appoint one member each from the employee and employer representatives as co-chairpersons (Art. 7 of APEPC). The council members serve in a non-permanent and unpaid capacity; however, the time spent attending the council meetings and any directly related time stipulated by the council's regulations shall be regarded as working hours (Art. 9 para. 3 of APEPC).

4.3. Duties of the labor-management council

4.3.1. Issues that need to be reported to the labor-management council

The employer must faithfully report or explain the following matters during regular meetings of the labor-management council (Art. 22 para.1 of APEPC):

The issues to be reported are as follows:

- 1) Overall management plans and performance,

²³ Proportional representation by department means that rather than electing representatives in a single vote across the entire workplace, each department can elect its own representatives. The number of representatives chosen from each department is proportional to the number of employees in that department. This ensures that larger departments have more representation. After representatives are chosen proportionally by department, the final step involves a direct, secret, and anonymous vote by the majority of the election participants to officially select the employee representatives.

- 2) Quarterly production plans and performance,
- 3) Workforce planning,
- 4) The economic and financial status of the company.

If an employer doesn't fulfill reporting and explanation obligations, the employee representative can ask for relevant materials for each matter. The employer must comply with this request in good faith (Art. 22 para. 3 of APEPC).

4.3.2. Issues that need to be consulted with the labor-management council

Under the provisions of Art. 20 para. 1 of APEPC, consultation, distinct from an agreement, does not obligate the employer or the employees to reach a consensus or pass resolutions within the labor-management council. However, a resolution is permitted if deemed necessary (Art. 20 para. 2 of APEPC).

The matters for consultation include the following (Art. 20 para. 1 of APEPC):

- 1) Enhancement of productivity and distribution of performance outcomes,
- 2) Employment, assignment, and training of employees,
- 3) Grievance handling for employees,²⁴
- 4) Improvement of safety, health, other working conditions, and promotion of workers' health,
- 5) Institutional reforms in personnel and labor management,
- 6) General principles of employment adjustment, including reassignment, retraining, or dismissal due to managerial or technical circumstances,
- 7) Management of working hours and rest periods,
- 8) Reforms in the payment methods, structure, and system of wages,
- 9) Introduction of new machinery or technology or improvements in work processes,
- 10) Establishment and revision of workplace regulations,
- 11) Employee stock ownership plans and additional initiatives aimed at supporting workers' asset accumulation,
- 12) Compensation mechanisms for employees regarding job-related inventions and other intellectual contributions,
- 13) Enhancement of employee welfare programs,
- 14) Implementation of surveillance systems within the workplace,
- 15) Protection of maternity rights for female employees and initiatives supporting the balance between work and family life,

²⁴ Dealing with employee grievances is crucial for addressing their concerns at work. It is important to establish a grievance committee in workplaces with a labor-management council to efficiently resolve issues related to wages, working hours, and working conditions that employees may face.

16) Prevention of workplace sexual harassment, as defined by Art. 2 para. 2 of the Act on Gender Equality in Employment and Support for Work-Family Balance,²⁵ including measures to prevent harassment by customers,

17) Additional matters about labor-management cooperation.

4.3.3. Issues that need to be adopted as a resolution by the labor-management council

The employer must seek the labor-management council's resolution on matters outlined in Art. 21 APEPC, including:

- 1) Formulation of fundamental plans for the training and skill development of employees,
- 2) Establishment and management of welfare facilities,
- 3) Establishment of employee welfare funds,
- 4) Matters that the Grievance Committee does not resolve.

If the employee representative and employer representatives are unable to reach an agreement on matters that require the council's approval, they can agree to establish an arbitration within the council or seek mediation from the Labor Relations Committee or a third party (Art. 25 para. 1 of APEPC). If an arbitration decision is reached, it is considered the same as a resolution by the council, and both employees and employers must adhere to the decision (Art. 25 para. 2 of APEPC). The labor-management council must promptly inform employees of any passed resolutions (Art. 23 of APEPC). Employees and employers must carry out the resolutions passed by the council faithfully, and any party that fails to comply with the resolutions without valid reasons may face a fine of up to 10 million KRW (Art. 30 of APEPC).

4.4. Problems with the labor-management council system in Korea

The Korean labor-management council system requires improvement in several critical issues.

Firstly, there is a lack of clarity in the current procedures for electing employee representatives and managing elections within the Labor-Management Council. Specifically, the absence of detailed legal provisions regarding the entity responsible for election management, the qualifications for employee representative candidates, and the election procedures highlights a significant gap in ensuring fair election management. This lack of institutional mechanisms challenges the integrity of the election process.

Secondly, the current labor-management council has a fixed number of representatives, ranging from three to ten, as set by law, regardless of workforce size. This inflexibility undermines the needed adaptability in determining the number

²⁵ The Act was enacted on 21 December 2007 (No. 8781).

of representatives. In contrast, in Germany, the number of representatives in the Works Council and the number of full-time representatives exempt from work obligations are determined based on the number of employees in the respective workplace, as stipulated by Art. 9 of the Works Council Constitution Act in Germany.²⁶

Thirdly, one major problem with the current Korean labor-management council system is its failure to adequately represent the interests of workers in different types of employment. Although the council aims to enhance worker welfare and corporate productivity by promoting collaboration between labor and management, its structure and methods are limited in effectively representing the interests of non-standard workers, such as temporary, dispatched, and freelance workers.

Lastly, the labor-management council is currently limited in its decision-making scope to areas such as education and training, welfare facilities, and in-house employee welfare funds. This limitation means that the council cannot decide on more significant matters affecting workers' interests, such as working conditions, hiring, and job placement. According to current regulations, the Labor-Management Council primarily deals with reporting and consultation matters, which can lead to a structure where the employer unilaterally provides information or conducts consultations through the council.²⁷ The council risks becoming a mere conduit for information exchange or formalistic opinion-sharing without real decision-making authority in such a scenario. Furthermore, the absence of legal enforcement for the decisions made by the labor-management council is another cause for concern. Unlike labor unions, which can enforce collective agreements with legal authority, the agreements reached in the council are not legally binding. This raises the possibility that they may not be effectively implemented.

5. Employee participation in management through collective agreements

5.1. Introduction

Before delving into the specifics of trade unions, it is essential to have a comprehensive understanding of the overall structure of Korean labor law. Korean labor law is divided into two primary categories: individual and collective labor law.

Individual labor law is grounded in Art. 32 para. 3 of the Constitution of the Republic of Korea, which stipulates that “the standards for working conditions shall be determined by law in a manner that ensures human dignity.” This body of law primarily addresses the rights and obligations of the parties involved in

²⁶ G.C. Park, *Geulloja gyeongyeongchamyeo-e...*, p. 9.

²⁷ *Ibidem*, p. 10.

an employment contract, including issues related to wages, working hours, leave, holidays, annual leave, worker safety and welfare, compensation for accidents, job security, anti-discrimination measures, vocational training, and labor supervision. It covers the detailed aspects of employment contracts.

On the other hand, collective labor law finds its constitutional basis in Art. 33 of the Constitution guarantees workers the right to independent association, collective bargaining, and collective action to improve their working conditions. These rights are fundamental and cannot be infringed upon by the state or employers. Any law or order that denies these constitutional guarantees is considered unconstitutional and can be declared null and void by the courts. Collective labor law reinforces individual labor law to enhance workers' social and economic welfare. It comprises a set of rules governing collective relationships between employers and workers (typically represented by trade unions), including statutes such as "the Trade Union and Labor Relations Adjustment Act" and "the Labor Relations Commission Act." Under collective labor law, collective agreements take precedence over individual labor contracts and conditions agreed upon under individual labor law.

5.2. Trade Union

The trade union landscape in South Korea is characterized by its enterprise-based structure. At the higher organizational level of enterprise-based unions, there are two major federations: the Federation of Korean Trade Unions and the Korean Confederation of Trade Unions. As of 2022, the national unionization rate in South Korea stands at 13.1%.²⁸ However, there is a stark contrast between different types of enterprises. In large enterprises with 300 or more employees, the unionization rate reaches 46.3%. In contrast, the unionization rate for workplaces with fewer than 30 employees is a mere 0.2%,²⁹ indicating that trade unions are not adequately representing small businesses or vulnerable workers.

Trade unions are regulated under the "Trade Union and Labor Relations Adjustment Act" (hereinafter TULRAA). To establish a trade union, both procedural and substantive requirements set forth by law must be satisfied. The Act specifies disqualifications for a trade union, including situations where the union permits individuals acting in the employer's interest to join, where the union is primarily financed by the employer, where non-workers are granted union membership, or where the organization's primary purpose is political activism (Art. 2 para. 4 of TULRAA).

²⁸ Statistic of Ministry Employment and Labor in Korea, https://www.moel.go.kr/news/enews/report/enewsView.do?news_seq=16108 (access: 27.10.2024).

²⁹ *Ibidem*.

5.3. Collective bargaining and collective agreements

To be considered a subject of collective bargaining, an issue must pertain to maintaining and improving working conditions and enhancing workers' economic and social status. Accordingly, topics such as wages, working hours, and other conditions affecting the entire labor union membership, along with matters concerning work facilities, the working environment, and employee welfare facilities, are appropriate subjects for collective bargaining.

A labor union may request the employer to engage in good-faith negotiations concerning current working conditions, provided such requests are made reasonably. When a labor union exercises its right to collective bargaining under the law, it is exempt from civil and criminal liability. The employer must respond to reasonable requests from the labor union and may not unjustifiably refuse to negotiate. Failure to engage in good-faith negotiations may subject the employer to penalties under the provisions governing unfair labor practices (Art. 81 para. 2 of TULRAA).

A collective agreement must be documented in writing and signed by both parties, i.e., the labor union and the employer. The parties to the collective agreement must report it to the relevant administrative authority within 15 days of its conclusion. If the administrative authority finds the collective agreement illegal or unjust, it may order corrective measures (Art. 31 of TULRAA). A collective agreement may not have a validity period that exceeds two years (Art. 32 of TULRAA).

The provisions of a collective agreement supersede individual employment contracts, and the collective agreement is accorded comprehensive, legally binding authority. If an employment contract, or any part thereof, violates the terms or standards related to the treatment of employees as stipulated in the collective agreement, that portion of the contract is rendered null and void. In such cases, the invalid matters shall be governed by the standards established in the collective agreement (Art. 33 of TULRAA).³⁰

5.4. The issue of employee participation in management through collective bargaining

Employee participation in management through collective bargaining involves a collaborative decision-making process between employees and management, facilitated by a collective agreement. For such participation to be effective, it is essential first to define what constitutes corporate management matters and determine

³⁰ When a collective agreement is applied to more than half of the regular employees performing the same type of work in a single business or workplace, the provisions of that collective agreement may also be extended to other employees performing the same job within the same workplace. This mechanism is designed to ensure that the benefits of the collective agreement reach employees who are not members of the labor union.

whether these matters are within the scope of collective bargaining. In this context, management refers to the cyclical processes of decision-making, task execution, and oversight that are integral to the operation of a business. Consequently, corporate management matters encompass the powers and responsibilities of corporate bodies as delineated by commercial law, including the shareholders' meeting and the management board (decision-making bodies), the CEO (executive body), and the audit committee.³¹

In Korean legal scholarship, the issue of management participation through collective bargaining by labor unions is divided into two primary viewpoints. According to the negative view, management matters belong to the employer's inherent managerial rights and do not constitute employment conditions; hence, they are not subject to mandatory collective bargaining.³² Rather, they are considered optional matters that can be negotiated only at the employer's discretion. This perspective maintains that collective bargaining should be limited to issues related to maintaining and improving employment conditions, excluding management matters such as investments, mergers, and business transfers, which are considered exclusive to managerial authority.

In contrast, the restrictive affirmative perspective recognizes that within a capitalist framework, the right to private ownership of enterprises is constitutionally protected (Art. 119 of the Constitution³³). This view acknowledges that exercising property rights, including corporate management rights, cannot be outright denied. While it affirms the employer's unilateral decision-making authority in matters of management, commonly referred to as "managerial prerogative," it does not extend absolute immunity to management decisions from the realm of collective bargaining.³⁴ Instead, this perspective allows for the possibility that management issues directly affecting workers' employment conditions may be subject to collective bargaining, thereby permitting a measure of employee involvement in managerial processes.

Korean court precedents generally reflect the negative view, excluding management matters from the scope of collective bargaining. However, they also indicate

³¹ S.P. Ahn, *Geun-ro-ja gyeong-yeong-cham-yeo-ui sil-jeung-beop-jeok yeon-gu* [An empirical legal study on employee participation in management], "Justice Journal" 2005, No. 85, p. 66.

³² G.N. Jeong, *Dan-che-gyo-seop-eui ju-che-na dae-sang* [The subjects and scope of collective bargaining], "Journal of Legal Studies" 1991, vol. 2.

³³ Art. 119 para. 1: "The Republic of Korea's economic order is founded on respecting individuals' and enterprises' economic freedom and creativity;" para. 2: "The State may regulate and coordinate economic activities as necessary to ensure balanced growth and stability of the national economy, to maintain an equitable distribution of income, to prevent the domination of markets and the abuse of economic power, and to promote the democratization of the economy through the harmonious collaboration among economic actors."

³⁴ J.R. Lim, *No-dong-beop* [Labor Law], PYbook, Seoul 2002, p. 115.

that in cases where management and personnel-related matters are closely related to employees' working conditions, these matters could be considered legitimate subjects of collective bargaining, aligning with the restrictive affirmative view.³⁵

5.5. The relationship between the labor-management council and labor unions

Labor unions are primarily organized to protect workers' economic and social interests. They aim to improve working conditions, increase wages, and enhance the working environment. To achieve these goals, labor unions exercise collective bargaining and the right to collective action. Legally, labor unions hold the authority to negotiate collective agreements and can exert pressure on employers through industrial actions such as strikes.

In contrast, the labor-management council is an institution within the workplace designed to foster cooperation between workers and employers, facilitate participation in management, and establish cooperative labor relations. The council addresses non-economic issues, such as improving employee welfare, workplace safety and health, and working hours.

However, in Korea, a significant issue has been identified: in practice, labor unions sometimes replace the functions of the labor-management council, or conversely, the council encroaches upon the role of labor unions. This blurring of the boundaries between the roles of labor unions and the labor-management council can potentially weaken the protection of workers' rights and interests. It is important to recognize that the labor-management council is not a substitute for labor unions but should complement the collective bargaining and industrial actions that unions undertake. Therefore, it is crucial to delineate the functions and roles of each institution, ensuring that they can perform their respective duties effectively.

6. Conclusion

In South Korea, employees primarily engage in management through labor-management councils. Labor unions also influence management via collective bargaining agreements. However, such participation is primarily indirect, as workers do not directly manage but can still impact management policies. The extent and scope of this participation vary by company. South Korea implements the Employee Stock Ownership Plan (ESOP) as a means of employee capital involvement. However, compared to mechanisms such as labor-management councils, involvement in management through capital participation remains limited.

³⁵ The Supreme Court Decision, 12 May 1992, No. 91da34523; The Supreme Court Decision, 24 August 1994, No. 94da21514.

The authority of the labor-management council in Korea is relatively limited compared to Germany's co-determination system (*Mitbestimmung*). In Korea, the council's authority is confined to specific matters, which leads to differences in power and functionality compared to the German system. The Korean labor sector views the German system as an ideal model, with some advocating for transforming Korea's labor-management council into a German-style Work Council (*Betriebsrat*). However, within Korean legal academia, the prevailing opinion is that importing the German system into Korea may not be practical due to each country's distinct political, economic, social, and cultural contexts.

In light of this, what should be the direction for improving the labor-management council system in Korea?

Firstly, given that the labor-management council's current authority in Korea is relatively limited, it is necessary to strengthen the consultation outcomes' legally binding force. Furthermore, practical measures should be established to effectively implement the council's decisions.

Secondly, measures should be introduced to encourage workers to participate freely in the labor-management council without fear of retaliation. This includes enhancing legal protections to prevent any disadvantages arising from their participation. Additionally, the decision-making processes and outcomes of the council should be transparently disclosed, and a system should be established to make this information easily accessible to workers, thereby fostering greater trust in the council.

Thirdly, beyond the issues currently stipulated by law, the scope of the council's discussions should be expanded to include topics such as the company's long-term development strategies and social responsibility activities. In other words, efforts should be made to move beyond formalistic consultations, aiming instead to ensure that labor-management opinions are substantively reflected in management decisions.

Lastly, the diversity of the council's composition should be enhanced to allow participation from workers with various backgrounds and experiences. It is crucial to ensure representativeness across different dimensions, such as gender, age, job type, and employment status. By doing so, the council can reflect various perspectives and make more balanced decisions. In particular, actively encouraging the participation of groups that traditionally found it difficult to voice their concerns, such as non-regular employees and women, could significantly enhance the council's inclusiveness and effectiveness.

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STRESZCZENIE

UCZESTNICTWO PRACOWNIKÓW
W ZARZĄDZANIU PRZEDSIĘBIORSTWEM
W KOREI POŁUDNIOWEJ

Uczestnictwo pracowników w zarządzaniu przedsiębiorstwem w Korei Południowej odbywa się głównie za pośrednictwem rad zakładowych oraz układów zbiorowych zawieranych przez związki zawodowe. Dla zwiększenia efektywności tego systemu sformułowano szereg rekomendacji. Zaznaczono konieczność wzmocnienia wiążącego charakteru decyzji rad, rozszerzenia zakresu uczestnictwa pracowników, poszerzenia obszaru konsultacji i współdecydowania z pracownikami oraz zapewnienia większej różnorodności i reprezentatywności w składzie członków rad zakładowych. Przedstawione reformy mają na celu budowanie bardziej stabilnych i inkluzyjnych relacji pomiędzy pracownikami a pracodawcami w Korei Południowej.