A Study on the Labor Disputes Solution System of Air Transportation Business.

Youngsoo Park*, Kangshik Kim**

ABSTRACT

항공운송산업은 여객운송과 화물운송 등에 있어서 그 비중이 계속적으로 증가하여 왔으며 다양한 산업 및 기업들과 연관되어 있다. 그런데 항공운송산업에서 파업이 발생한다면 이를 대체할 만한 수단이 없어 항공사가 막대한 손실을 입을 뿐만 아니라, 파업의 연쇄효과로써 적기항공 구간으로 인한 수출관련 기업의 타격, 관광 등 연관산업에의 영향, 기업 및 국가 신인도 하락, 국민생활의 불편
과 사회불안 등을 야기시킨다. 이렇듯 항공사 파업에 의한 경제 손실규모가 일반 사업장과는 비교가 안 될 만큼 막대하기에 국가적 차원에서 논의되어야 할 필요가 있다. 현행법상 항공운송산업은 공익 사업으로서 노동부장관의 긴급조정 결정으로 노동쟁의를 해결할 수 있게 되어있다. 그러나 긴급조정
제도는 발동요건 등 활용에 어려운 점이 많아서 경영계는 직권중재제도의 도입을 주장하고, 노동계는
직권중재 및 임명중재신청제도의 폐지를 주장하고 있으며, 정부는 새로운 대안으로서 최소업무 유지
의무 제도 도입 등을 고려하고 있으나 항공운송산업이 갖는 특수성, 공공성과 국민경제에 미치는 영
향을 고려해 볼 때 필요수익사업 지정과 직권중재의 활용이 더 적절한 방법이라고 보여지며, 남용방
지를 위해 퇴보요건·절차 등은 법률로 명시할 필요가 있다. 만약 직권중재제도가 폐지되고 최소업무
유지의무 제도가 도입된다면 항공운송산업이 그 대상업무에 반드시 포함되어야 한다.

Key Words : essential public services, labor disputes, strike, mandatory arbitration, emergency adjustment

I. Introduction

The Asiana aviation company pilot labor union’s 24 days-long strike since July 17, 2005 and
the Korea Air aviation company pilot labor union’s strike in June, 2001 had brought about
extraordinary inconvenience to both the country and the people and damaged the national
economy very severely, which caused social unrest and damages at national security evaluation.
Especially according to the Asiana company’s announcement concerning the Asiana pilot labor
union’s strike, the company lost 400 billion won, could not deliver 40,000 ten of freight, and
damaged 510,000 tourists. Like this example, as the airline companies’ strikes can bring about
greater damages than other businesses, it is necessary that treatment of the airline companies’
labor disputes shall be taken care of by the some level of public authorities. While the
management group supports the introduction of mandatory arbitration system over the labor
disputes–solving system and the labor unions are against this system, the government is making
a special effort in finding a possible alternative method. Accordingly, this study is to analyze the

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air line companies’ labor relations, characteristics of union disputes, and side-effects of disputes, and to try to find the most suitable disputes-solving system of the airline companies.

II. Main Contents

1. Characteristics of the labor disputes

1) The party of labor relations

(1) Airline Company

Our air freight industry is least developed business and has relatively shorter history than other industries. This industry has been monopoly system operated by two airline companies in terms of the country’s strategy, which is distinct from other industries competing with multiple rivals. Also, due to its characteristics of public business, since the government has intervened at its labor relations directly or indirectly, it is limited for both parties of labor and management to maintain its relations independently and to cultivate cooperative labor–management culture.

As for its employers, airline company’s management and labor relations has changed greatly and their consciousness has changed rapidly. That is, a majority of employers have gradually admitted the existence of the labor union and treated it as a partner of the company’s management. However, so far the employers’ efforts has been lack of preventing labor disputes by improving labor relations actively.

However, due to recently occurring several labor disputes, it is becoming more recognized of a possible severe crisis if the labor relations are not amicable. It is also recognized that past typical labor management has a lot of problems on account of the labor union’s activities and employees’ increased sense of right. So, it is much required to develop positive labor relations. As the world has changed to globalization and limitless market competition, it is hard to survive in the international competition without cooperative labor relations.

(2) Labor Union

Two airline companies have not maintained good cooperative relations with their labor union. Both parties have been lack of mutual trust and reached the positive participations and cooperations. The labor union has had a tendency to distrust the company’s business information. Accordingly the labor union has not often considered seriously about the company’s business innovation and efforts to improve competitive power and the people’s economic situation related to price, export, growth, etc. So far, the labor union has concentrated upon the increase short term gains related to wage and other working conditions, which made the labor union maintain the collective bargaining–focused labor relations. Even the labor union recognized the good negotiation result of collective bargaining like the farmer finished harvesting that year. This has resulted in the fact that the union pursue more collective bargaining than general participation and cooperation at the workplace. The parties in the labor relations dependent on collective bargaining play a zero–sum game and cannot avoid confrontational relations. Also, the Korea Air pilot union belongs to the Confederation of Trade Union, while its general employees’ union belongs to
Federation of Korea Trade Union. This difference at one company has caused some kinds of unrest in their pursuit of their umbrella union’s policies and ideology, strike goal, intensity of strike, etc.

2. Characteristics of Labor Disputes

1) Impossibility to its substitution

If the airline business cannot operate its function due to pilots’ strike and others, there is no means to substitute other transportation, or there can be available a limited substitution in the transportation supply.

The airline transportation, compared with other transportation means such as train, subway trains, bus, etc. cannot find other transportation substitution to be replaced when this business stops. This transportation range is wider than any other means, and cannot find any other substitution means in its service quality and contents.

Some domestic airline transportation can be replaced to trains and express bus, but at its rapid speed, other transportations cannot catch up with this airline. Furthermore, as the range of airline transportation industry is widened to all over the countries, unlike the train and bus industries that travel in the domestic area, its substitution is almost impossible. If the airline transportation industry stops or is abolished due to a strike, it will cause much damage to the national economy and also affect the national security evaluation.

2) Tremendous economic damages

When the airline company’s passengers are reduced every 1,000 due to a strike, its economic damage including direct loss reaches up to 160,000 dollars. This damage calculation includes direct airline company’s direct loss without considering damages occurring in the related industries, and so all damages will be much more(http://www.iata.org).

The strike held in June 2001 had damaged two airline companies severely. During the strike period, the Korea Airline company could only operate 56.2% of domestic operation and 11.1% of international operation, which caused 39.5 billion won in damages. The Asiana Airline company could operate 75.4% of domestic operation and 11.1% of international operation, which also caused 10.2 billion won loss in total sales.

The strike of the Asiana airline company held in July 2005 damaged 134.4 billion won in passengers loss, 96.8 billion won in freight loss, and 173.4 billion won for air freight and tourist industries, which reached up to 400.4 billion won (for reference, Chosun Ilbo on Aug. 10, 2005). This strike also affected 510 thousand passengers with direct or indirect damages to substitute to other airline companies or reschedule their business plans, and delayed 42,000 ton of its freight. When you see the airline export as follows, your can realize how much the airline industry’s strike can cause other business. (Refer to the table 1, 2, and 3)
### Table 1: The airline-based export status

<table>
<thead>
<tr>
<th>Division</th>
<th>2004</th>
<th>2005 (Jan. ~ Jun.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount</td>
<td>83.2 billion dollars</td>
<td>40.6 billion dollars</td>
</tr>
<tr>
<td>Ratio among total exports</td>
<td>32.8 %</td>
<td>29.8 %</td>
</tr>
</tbody>
</table>

Source: Korea International Trade Association

### Table 2: Major export items using air freight (Jan. - May, 2005)

<table>
<thead>
<tr>
<th>Items</th>
<th>Semiconductor</th>
<th>Cell phone components</th>
<th>Monitor (CRT)</th>
<th>LCD</th>
<th>Personal Computer</th>
<th>Pharmacy</th>
<th>Clothes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weight (%)</td>
<td>34.67</td>
<td>27.65</td>
<td>5.86</td>
<td>2.97</td>
<td>0.41</td>
<td>0.37</td>
<td>0.72</td>
</tr>
</tbody>
</table>

Source: Korea Airports Corporation

### Table 3: Air freight portion per the major airline companies

<table>
<thead>
<tr>
<th>Division</th>
<th>Asiana</th>
<th>Korea Airline</th>
<th>Foreign Airlines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market share</td>
<td>21.4 %</td>
<td>50.1 %</td>
<td>28.5 %</td>
</tr>
<tr>
<td>Capable market share</td>
<td>17.8 %</td>
<td>35.7 %</td>
<td>46.5 %</td>
</tr>
</tbody>
</table>

Source: Korea Airports Corporation

3) Decreasing of the national security evaluation

It is very important to be punctual at airline transportation. In the airline transportation, the operation schedule has been announced in the worldwide network, and one year in advance of its actual operation, the reservation service is provided. The schedule shall be implemented on the designated time, except a special reason like weather worsening, etc. So, this business is very closely related to the customers’ trust. If the company would lose its trust, it could have hard time taking regular operations and recovering its once lost trust.

Also, in case when there was a labor dispute occurred in the airline transportation industry and its operation stopped, it took considerable time to resume its regular airline operation. It also takes much effort to rehabilitate the lost trust. When the airline industry has a industrial action and its service stops, it can not only cause a delay of export or import freight to the exporting companies, but also influence the domestic economy very badly.

The stop of airline transportation may isolate our country from international societies and bring about non-recoverable damages to general people, causing severe bad effects. This may also worsen the national security evaluation and be developed to serious crisis to the entire country.
3. The impact of the strike in the airline industry

1) Inside chain effect
(1) Direct business damage

According to International Air Transport Association’s analysis, when the airline company came to lose 1,000 passengers due to the airline company’s strike, the might lose 225,000 dollars worth of economic damage, which is the effect of reducing 2 jobs. In the view of productivity, when the strike is extended one day, the productivity per the employee may be lowered up to 1,782,000 RTK. This effect refers to the only inside damage that the airline company can ever have, excluding the impact affecting related industries(http://www.iata.org).

The products provided by the airline transport industry is very different from those provided by other industries in their characteristics. The products of the airline transport as a typical service cannot be stored at the spot and may lose its chance to sell if not sold. Accordingly the strike in the airline transport industry shows many differences in the strike effects from other companies which sell general products. That is, when the company cannot sell their products, it can delay its sales later, which brings the least amount of damage. but when the airline transport industry cannot sell the product due to the strike, it will lose its potential chance to sell the products, meaning extinction of the service. As the airline transport product cannot be stored, non-product activities during the strike period can be direct damage that the company must accept.

(2) Damage in the company’s reputation

The airline transport product has stronger characteristics of demand derived from demands of other industries rather than its original demand, and this industry is closely related to production and consumption of other products. It means this airline transport industry can influence other related industries greatly. That is, the strike brings a high chain effect.

This chain effect plays a main role in decreasing the demand of the air transport again even after the end of strike and causes the double damage. The product of the air transport industry which has characteristics as service product depends on the company’s reputation to be able to maintain fixed customers. As the product of the air transport has no visible factor, the company has to focus on invisible factors to advertise and sell its product. Accordingly its reputation is very important factor for its advertisement or sale. Then, when the strike breaks out, some discords potential inside the company are revealed to the customers, which harms the company very much. This results in influencing the customers’ favorable decision and affecting a disadvantageous result.

2) Outside chain effects
(1) Effect influencing passenger transport

The number of airline passengers in 2004 are 26,930,936 in overseas flight and 18,892,652 in domestic flight. Daily passengers are 73,783 in overseas flight and 51,760 in domestic flight. The number of flight passengers and the frequency of air plight have been increased greatly each year.
Along with this, air freight industry has been increased gradually in the portion of
transportation. The air freight has become very important and influential transport means. The
passenger transport by overseas travel has reached 95% in the portion of transportation, and so
the stop of air transport for overseas flight can cause the fatal result.

In the air transport, the domestic lines are flown by both the Korea Air and the Asian Air
company, and the international lines are flown by the Korea Air, the Asian Air, and many other
foreign airline companies. Here, as the Korean Air and the Asiana Air takes up 100 percent
market share in the domestic market and 55.7% in the overseas market, if there are strikes at the
Korea Air and the Asiana Air and the airline service stops, there will be almost impossible to
replace the airline service for the Korea Air and the Asiana Air.

Even though foreign airline companies besides the Korea Air and the Asiana Air are operated
in the international lines, two Korean airline companies, the Korea Air (40.7%) and the Asiana
Air(15%), take up the majority of market share, in total 55.7%. Therefore, if there are strikes
occurred in the Korea Air and the Asiana Air in the international lines, it is impossible to
substitute to foreign airline companies. The reason is that foreign airline companies cannot replace
the huge amount of demand, about 56% share of total market, to their airlines in the short period
of time.

(2) Effect influencing freight transport

The transport of air freight consists of Upstream activities like material delivery and
Downstream activities like a delivery to consumers who use the finished products, in which
process it uses various logistic skills, such as delivery in "just in time". This transport also
cultivates the complicated transport system in combination of maritime transport and ground
transport instrument. The strike at airline companies can limit the transport activities of air
freight, and bring about huge damages at national economy.

The air freight transport in our country has been increased in very fast speed. In case of the
air freight transport in the international lines, it has been increased from 2.08 million tons in 2002,
to 2.21 million tons in 2003, 2.57 million tons in 2004, and in the domestic air freight transport, it
was delivered 410 thousand tons in 2004. On the other hand, the air freight transport is mainly
used to deliver some products of small size and light weight, but economically valuable products
like a semiconductor, which means the air freight transport plays a very important role compared
to its quantity of transport. As the weight of the air freight transport has become larger in the
international trade, the strikes in the airline companies can not only prevent freight transport, but
also bring about claims for damages, which will cause economic losses and give a big shock to
the national economy.

Semi-conductor, flower, fish, etc. especially among freight required for the air transport are
directly related to their survival in case of a strike of the airline companies. Therefore, when the
air transport is stopped, our country’s main core export products would become interrupted or our
delivery could not be impossible in time, which will also damage national reliability evaluation.
Furthermore, our economy which is very dependent upon trade may bring a big damage of at
international trust.
(3) Effect influencing relevant industries

The air transport industry is related to various kinds of industries and companies. This relevance with other companies and other industries is due to the necessity of support and cooperation from external companies or industries in the process of combining different and wide jobs. Accordingly the strike in the airline companies can interrupt many companies and businesses designed to carry out air transport industry well; other airline companies to work in collaboration in the same business; and many different kinds of various companies in collaboration to expand the market and to cultivate bigger values.

It is the tourism that the industry receives the biggest influence due to the strike of the air transport industry. The airline industry and tourism are closely related each other, and most of overseas tour products include air transportation. Convenient airline routes and operations induce and promote tourist demand, and both industries build up synergy effect in the mutually cooperative relations. Therefore, when the airline business is stopped due to the airline company’s strike, tour products cannot be sold and may bring about tremendous damages.

The growth of tourism is developed on the basis of increase of overseas tourists and foreign tourists in Korea. The result of foreign tourists’ visiting was ranked 42nd place in the world (8th place in Asia) in 2004, and its tourist income reached 26th place. The number of visiting foreigners is about 5.82 million in 2004 and 16,000 on daily base. The tour income in 2004 was about 6521.1 billion won and 17.9 billion won on daily base.

4. Disputes-solving system of the air transport industry

1) Background

The Asiana Air company’s strike in July 2005 has caused tremendous inconvenience to the people’s normal life and damaged the national economy severely. This strike has brought social unrest and damaged our country’s security evaluation. In order to prevent tremendous damage of the national economy due to a long time strike of the airline company, lawmakers suggested to establishing law that the air transport industry be registered to the essential public services.

Lawmaker Kim, Woonam, Yeolrin Woori party, has proposed revised ‘Trade Union and Labor Relations Adjustment Act’ including the content to include the air transport industry in the essential public services in an effort to prevent national and social unrest and damage from the long-term strike of the airline companies. Ten lawmakers including Kang, Changil, Yeolrin Woori party, participated in the proposal of establishing law. They mentioned in their proposal that “our air transport takes up 33% of the total export delivery, and our two airline companies: the Korea Air and the Asiana Sir, take up 63% in passengers and 67.3% in freight.” They said in his proposal reason, “in case of the airline companies’ strike, it would be almost impossible to replace to foreign airline companies.” They mentioned, “The longer strike of the airline companies can have a great influence on lowering of the national security evaluation, disorder of national logistic system, and the people’s normal life. In terms of its importance that the air transport industry influences the national economy, we shall include it in the essential public services like train and bus industry in order to minimize the national and social damages from long-term strikes”.

(Donga Ilbo, Aug31, 2005)
However, the labor side opposed the proposal strongly and were ready to take resisting strike against passage of the proposed law, mentioning "in the condition that the ministry of labor decided to abolish a mandatory arbitration in the advanced ways for law and systems in labor relations, it is retroactive to the time if the airline industry becomes possible for a mandatory arbitration including essential public business.

2) Public services and mediation of industrial disputes

The air transport industry is classified not general business but the business which is closely related to the daily life of the public at large or has enormous effect on the economy of a nation, is classified as public service business in the Labor Union and labor Relations Adjustment Act, and is treated differently from general business. That is, the nation unlike the case in the general business takes prior treatment at mediation of industrial disputes, and the period of mediation is given 15 days, days more than general businesses. If the industrial action endangers the national economy, the minister of labor can implement an emergency adjustment. In particular, the essential public business among public businesses can implement a mandatory arbitration called as a compulsory arbitration.

3) Mediation of industrial actions in the air transport industry

The air transport industry is classified as public business, but excluded as essential public business which can take compulsory mediation before taking industrial actions. The airline companies and employers’ side have strongly demanded that the business shall be included into essential public businesses which can implement a prior compulsory arbitration, recognizing destructive power of industrial disputes in the airline companies. As the essential public businesses contains hospital and banking businesses, railway, telecommunications, electricity, oil supply businesses, etc., they claim that the absence of the air transport business is the mistake in the law making. The compulsory arbitration which can suspend the airline companies’ strike to be able to cause enormous economic damages is urgent demand in the airline companies.

After all in the current legal systems, the disposals of labor disputes in the air transport industry are only two methods: when there are two parties’ agreement or when there is an emergency adjustment after occurrence of industrial actions. The strike of the Asiana Air company in July, 2003, was suspended through implementation of an emergency adjustment, rather than a compulsory arbitration. The big difference of compulsory arbitration and emergency adjustment is that the a compulsory arbitration can suspend the industrial actions no matter before industrial actions or after industrial actions and terminate industrial actions completely by the decision of the labor relations committee, while an emergency adjustment can be available only after occurrence of industrial actions, which is limited to prevent industrial actions. In reality, the air transport industry takes long time to normalize the operation from a strike due to the number of confirmed passengers, type of plane, airline route, limited flight hours of employees, etc. and troubles the people’s inconvenience very much. So, the emergency adjustment is absolutely limited to prevent disorder affecting national economy.
5. Foreign countries’ rules in disposal of the labor disputes in the air transport industry

1) ILO international labor standards
There are no ILO rules regulating directly the industrial actions of the air transport industry, but the protection of industrial actions were mentioned in Freedom of Association established in ILO in 1951 on the basis of the article 87 of convention about the industrial action of public services. According to the content, the right of strike is the fundamental and essential instrument to protect the interest of the employee and the union, which stated that the right of strike shall be provided fundamentally to the employee and the union. Also, the uniformed prohibition to the right of strike is not suitable for the article 87 of convention, and shall not be allowed unless emergency measures in a state of national emergency. (See the table 4)

<Table 4> Comparison of arbitration system for the air transport industry of some countries

<table>
<thead>
<tr>
<th>Division</th>
<th>Arbitration</th>
<th>Compulsory arbitration</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.A</td>
<td>○</td>
<td>×</td>
<td>• Emergency adjustment by the president</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• No limit to the right of strike on account of public serves</td>
</tr>
<tr>
<td>Germany</td>
<td>×</td>
<td>×</td>
<td>• No mandatory arbitration by the government</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Emergency services are admitted related to the minimum of human life</td>
</tr>
<tr>
<td>England</td>
<td>○</td>
<td>×</td>
<td>• Replacement is possible by the act of emergent authority</td>
</tr>
<tr>
<td>France</td>
<td>○</td>
<td>×</td>
<td>• Public services are admitted for returning to workplace</td>
</tr>
<tr>
<td>Japan</td>
<td>○</td>
<td>×</td>
<td>• Public services require early warning of industrial action and emergency adjustment.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• The public company is prohibited for industrial actions by the special law.</td>
</tr>
<tr>
<td>Taiwan</td>
<td>○</td>
<td>○</td>
<td>• Arbitration within 5 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Prohibition of rejecting arbitration</td>
</tr>
<tr>
<td>Singapore</td>
<td>○</td>
<td>○</td>
<td>• Arbitration by the president</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Order of arbitration by the minister of labor</td>
</tr>
</tbody>
</table>

Provided, the Freedom of Association admits temporary limit of the right of strike reasonable during mediation process like mediation and arbitration in the essential services. The essential services are translated, “its stop is directly related to life, individual safety, or portion to be harmful to some or entire people’s health, which ranges hospital, electricity, telephone, and air transportation control center.

2) USA
The disposal of disputes in the air transport industry is basically by an emergency mediation by means of the Railway Labor Act and the Airline Labor Dispute Resolution Act, and when the
National Mediation Board estimates that the industrial action may endanger essential transport service across the country, it should report to the president. Then the president can proclaim national emergency condition, host the emergency committee, and prohibit the industrial action. If the dispute has not been solved for last 6 days, the president can request the Congress to be involved. If the Congress was not involved, the union can resume the industrial action.

3) Germany
There is not rule in the federal government about compulsory arbitration for the airline companies’ labor disputes, and there are internal limits to the right of strike through court rulings. Provided, the right of strike shall consider the maintenance of the government’s function and the security of the people. In Germany there is no compulsory arbitration like Korean case.

4) Japan
In Japan, when the industrial action in the airline company endangers the national economy and the public normal life, the prime minister can take an emergency mediation (no industrial action for 50 days), and its emergency mediation has not been implemented. There is no such compulsory arbitration like Korea.

5) England
There is not special rule about public services, but when essential public services are terminated, it is possible to proclaim a state of emergency and mobilize the military for substitution. However, it is common practice not to limit the employees’ right of collective action.

6) France
When it is necessary to maintain the public order in the area of soldiers, prosecutors, policeman, prison officers, the government can issue an order of return to workplace, but this measure has not been taken since 1963.

6. Opinions about disposal system of labor disputes in the air transport industry

1) Employers
Korea Employers Federation proposed the inclusion of the air transport industry into essential public services in July 18, 2005 (Chosun ilbo, July 18, 2005). The reasons are that the strike of the air transport industry gives enormous damages to the national economy, there is not possible to replace the business, and there is no substitute transportation instrument due to the special characteristics of a peninsular country. Also, in consideration of internal limitations at collective bargaining and frequent strikes, it is necessary to maintain the compulsory arbitration for the essential public services. The KEF explains the necessities of adopting the air transport industry to essential public services as follows.
(1) Importance of the air transport industry in the national economy

Recently the air transport industry has become a major transportation instrument in accordance of more globalization. As the transport business is becoming popular due to the increase of personnel and material exchange, the air transport industry is becoming more important.

(2) Speciality of the air transport industry in Korea

The air transport industry cannot be operated entirely in all air transport businesses if one problem occurs in a specific part. As the airline schedule is planned in long term, the substitution flight is possible within the limited range in case of the strike in the airline company. It is impossible to increase supply to supplement in the time of strike because it takes much time to adjust the space airplanes and the employees concerned and to prepare for operations.

Korea’s air transport has the Korea Air and the Asiana Air companies operating in the domestic lines, and the Korea Air, the Asiana Air and many foreign airline companies in the international lines. As the Korean Air and the Asiana Air have majority market share, every air transport service will be almost paralyzed if a strike occurs and airline service stops.

(3) Difficulties in using the emergency adjustment system

The air transport industry in the current legal system is public service, and its industrial dispute can be solved by the emergency adjustment decided by the minister of labor. The decision condition is stipulated "as it is likely to impair the national economy or endanger the daily life of the general public" (article 76 of the Labor Union and Labor Relations Adjustment Act), which means that the emergency adjustment can be implemented in case of actual strike and its compulsory arbitration will be also available if there is no possibility for mediation. The air transport industry takes up long time to go back to normal business due to the number of reserved passengers, type of plane, air route, limited flight time of employees, etc. if the strike starts, and causes innumerable inconvenience to general people. Therefore, the use of emergency adjustment will be very limited to prevent any disorder affecting the daily life of the general public and the national economy.

2) Employees

The employees demand the abolition of the compulsory arbitration and the unilateral arbitration application system. This is the same demand from two umbrella labor unions: Federation of Korea Trade Unions and Korean Confederation of Trade Union. The reasons for the demand are as follows.

First, essential public services and compulsory arbitration system may be unconstitutional. The compulsory arbitration system is unconstitutional articles to get rid of the right of collective actions, violating Article 10, Article 33, Article 37 Paragraph 2, of the constitution. The constitution court decided against the articles of compulsory arbitration by the majority opinion (5:4).

Second, we need a revision of law corresponding to international level. Korea is among OECD countries only the country which limits the right of collective action, which is violating
Article 87 of ILO agreement. ILO’s Committee on Freedom of Association recommended in November 19, 1998 that "the least number of essential public serves shall be prohibited to the right of strike." ILO’s Committee on Freedom of Association classified essential services as hospital, electricity, water supply, air control, and telephone service. If those businesses has stopped for a certain period of time and exceeded the certain realm, which endangers life of entire or some people, safety of body, and health, it can be justifiable for various restrictions such as prohibition of strike or compulsory arbitration, etc. by the law as one method to solve the labor disputes.

Third, public services are becoming less public according to the change of industrial environment. It is required to review the public aspect of each essential public service due to the weakening of public aspect and revitalization of international trade by means of the change of industrial environment and market opening.

Fourth, the employers’ insincere negotiation becomes a direct reason. A proposal of compulsory arbitration is suggested on the basis of the government’s guide and the employer’s proposal. By this reason, the employers keep insincere attitude for the negotiation.

Fifth, it produces criminals and illegal activities. The submission of compulsory arbitration produces criminals and illegal industrial actions by means of free decision-making of the chairman of the labor relations committee or submission of uniform compulsory arbitration.

Sixth, there is no realistic effectiveness. The purpose of compulsory arbitration system is designed to solve the labor disputes rapidly through arbitration, but it results in insincere negotiation and leads to strikes.

3) Ministry of Labor

(1) Concept of essential public services and abolition of compulsory arbitration system

The minister of labor demands that concept of essential public services and compulsory arbitration system shall be abolished and instead replaced to minimum maintaining duty.

The minimum maintaining duty during strike is the work to endanger the public’s life, safety, health and daily life, and such minimum works are described as ① the work related to protection of life, like medical operation, emergency treatment, etc. ② the work most required to provide central control and supply to customers for electricity, gas, water, etc. ③ the work most required to make sure of regular operation of the bank’s main computer center.

The concrete range of the minimum work is decided by labor and management’s agreement, but if there is disagreement about this, the labor relations committee can get arbitration. Also, in order to reduce the possibility of violating the public interest due to the abolition of compulsory arbitration system, the minister of labor will make use of the following; ① the order for emergency comeback to work can be given in case that workers at the minimum services participate in the strike. ② The labor relations committee can take special mediation with its own authority without quick temporary mediation or a request of the party related. ③ It should announce the fact-finding investigation about the strike and the mediation process, and lead to rational mediation. ④ Substitution work shall be permitted in case of strike, and strike shall be informed 7 days in advance. ⑤ The emergency adjustment for the case suitable for emergency
adjustment shall be positively utilized after the strike.

(2) Improvement for the emergency adjustment system
The prohibition of industrial action shall be extended from 30 days to 60 days to promote the effectiveness of solving disputes through the emergency adjustment. It is also to strengthen fact-finding investigation and announcement condition in the mediation process and induce settlement by the mediation. In case of emergency situation, mandatory arbitration shall be possible.

(3) Substitution work
The public services shall be permitted for new employment or subcontract, but prohibited from workers dispatch.

7. Comparison of compulsory arbitration and minimum services maintaining duty

The major issues to deal with labor disputes of the air transport industry are that the employers side supports disputes disposal through current compulsory mediation system and that the employees side demands the abolition of the current compulsory mediation system. In the confrontational situations between the employers side and employees side, the ministry of labor gave a research project to the "Research Committee for Advanced Labor Relations Systems". The committee suggested that compulsory arbitration shall be abolished and instead be replaced to minimum services maintaining duty for some services among public services. (Ways to advanced labor relations systems, Nov. 2003)

Accordingly, I would like to explain about the compulsory arbitration system to deal with disputes for the airline company’s strike and the minimum services maintaining duty system proposed by the committee for advanced labor relations systems.

1) Compulsory arbitration system
The employers side claims that the strike in the air transport has an enormous effect on the national economy and give enormous damages to the normal life of the general people, and that the compulsory arbitration system is suitable to solving disputes in the air transport industry.

The air transport industry has become the most important transport instrument by transporting people and freight at the same time and promoting internationalization. Korean air transport industry as the most core industry in logistic business has been working hard to be developed as the Asia’s main hub. Accordingly, the disorder of the air transport industry not only delays the export and import products and causes tremendous damages to exporting companies as well as the airline companies, but also influences the national security evaluation and gives fatal damages to the national economy.

The retention of the compulsory arbitration system is approved by the great number of
scholars as well as the employers side, and it necessary to maintain the compulsory arbitration system in terms of the national interest and national competition confirmation. That is, as the compulsory arbitration shall be understood in the mutual relations with the labor-management autonomy, if the industrial action is abused exceeding limit of the labor-management autonomy, it is justifiable to apply the mandatory arbitration. Also, if the industrial action is extended for a long time and may bring about national economic and social emergency state, it shall be taken for granted to apply the compulsory arbitration. (Kim, Hyunghae, 2001). The principle of preventing excess for the industrial action shall be designed not to allow the violation of the public interest by means of industrial action. The purpose of compulsory arbitration system is to protect the people's normal life and the national economy from its severe violation due to the strike. (Lim, Jongryul, 2005)

2) Minimum services maintaining duty

The reasons to abolish the compulsory arbitration system and to propose the minimum services maintaining duty system are as follows. First, the right of strike and public interest shall be provided in harmony. Secondly, it is designed to make sure of security and independence of the labor relations by maintaining the socially acceptable condition in case of strike. Thirdly, in consideration of protecting the minimum public, it is purposed to maintain and cultivate rational practices to solve the labor disputes independently. (Kim, Hongyoung, 2005)

This minimum services maintaining duty system shall be stipulated in law, and if stipulated, it shall be defined for the minimum services’s industries and ranges. And the minimum services maintaining shall be practically possible by materializing process, which can reduce the problems in actual practices.

The minimum services maintaining works provided by the committee for advanced labor relations system are: ① the work related to protection of life, like medical operation, emergency treatment, etc. ② the work most required to provide central control and supply to customers for electricity, gas, water, etc. ③ the work most required to make sure of regular operation of the bank’s main computer center. I am sorry that the arbitration work in the air transport industry was not stipulated. In case of the draft of law, the committee shall make every effort to reflect the opinions of the industry.

III. Conclusion

The employees’s opinion is that if the air transport industry is designated as essential public services, the right of collective action is extremely violated, by submitting to mandatory arbitration in case of labor disputes, which is to violate the principle of prohibiting excess. This is also to deprive the right of collective action. The employees’ opinion can be accepted in some ways, but it has bigger problem to represent the some workers, by risking the entire people’s life. As for the employers’ opinion, it is highly possible for the airline operations to stop due to strikes in the airline companies, and this can influence the national economy negatively in accordance with opening and internationalization of the national economy.
In conclusion, first, as we have seen in advance, the air transport industry has such characteristics as particularity, public aspect, sociality, monopoly, etc., effect influencing the national economy, and convenience. So, I would like to treat it valid to stipulate it to essential public services like a railway industry. In the ILO regulations, the air control service was admitted necessary for essential public services. Accordingly, I would evaluate the compulsory arbitration system more superior in solving labor disputes in the air transport industry.

Second, it is required to stipulate the submission conditions and procedures. The reason why the labor side opposes the compulsory arbitration system is that the right of collective bargaining can be restricted by the labor relations commission’s own estimation. If it makes sure of the submission conditions and procedures for compulsory arbitration, and stipulates in the law the operation system of the labor relations commission, it can not only prevent the labor relations commission’s own estimate, but it can also eliminate the abuse of the compulsory arbitration system.

Third, it is necessary to revitalize the emergency adjustment system. Even though Japan and the United States do not have a compulsory arbitration system, they have solving the labor disputes of the public services through the emergency adjustment system. The prohibition period of industrial action is given 50 days in Japan and 80 days in the United States, which leads to a mediation rather than a mandatory arbitration by securing enough mediation period. We can adjust a decision-making right of an emergency adjustment up to the president, extend the mediation period from 30 days to 60 days, revise its formal process to the practical process by the law, and widen the range of mediators participating in the mediation so that the parties of disputes can adopt the mediation proposal.

Fourth, if the compulsory arbitration system is abolished and the minimum services maintaining duty is introduced, the services concerned shall include the air transport industry. As both the employer and the labor union can designate the range of the minimum services, the specific works required for minimum services shall be decided by the mutual consultation of both the airline company and the labor union.

References

[16] Korea Employers Federation : http://www.kef.or.kr