

A Study on the Labor Director System of Public Institutions in the Digital Age

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[Abstract]

The labor director system to be introduced into the company law, the labor director must be explained in the Korean company law and the inevitability of its introduction must be persuaded. Conflicts with shareholders' right to appoint institutions are also a task that must be resolved. Management has absolute meaning for shareholders who receive dividends from operating profit. On the other hand, for workers who are guaranteed the right to collective action and are paid for their labor according to the contract law and the labor law, the management must be considered as a partner in labor-management cooperation, so the labor director system may cause confusion. There are growing calls to create a system that can form a 'relationship of understanding, participation, and cooperation', away from the existing 'control and command'-centered manpower management that causes labor-management confrontation and the system can also serve as an opportunity to reduce harmful effects of high-handed personnel administration in public institutions.

▶ **Key words:** The Labor Director System in Public Institutions, OECD Public Enterprise Governance Guidelines, Free market economic order, Economic democratization, Social market economy order

[요 약]

노동이사제도가 회사법에 도입되기 위해서는 노동이사가 우리 회사법 속에서 설명되어야 하고 도입의 불가피성이 설득되어야 한다. 그리고 주주의 기관 선임권과의 갈등도 해결되어야 하는 과제이다. 영업이익에 연동하는 배당을 받는 주주들에게 경영진은 절대적 의미를 갖는다. 반면 단체행동권을 보장받고 노동의 대가를 계약법과 노동법에 의해 지급받는 노동자에게 경영진은 노사협력의 파트너로서의 위치에 있다고 보아야 하므로 노동이사제도는 자칫 혼동의 문제점이 발생할 수 있다. 노사대결을 유발하는 기존의 '통제와 명령' 중심의 인력관리에서 벗어나 '이해와 참여, 협력하는 관계'를 형성할 수 있는 시스템을 만들어야 한다는 목소리가 높아지고 있고 기관의 이해당사자인 노동자들의 직접 경영참여를 통하여 공공기관 낙하산 임용 폐해를 개선할 수 있다는 계기가 될 수도 있다.

▶ **주제어:** 공공기관 노동이사제, OECD 공기업 지배구조 가이드라인, 자유시장경제질서, 경제민주화, 사회적시장경제질서

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I. Introduction

From August 4, 2022, the labor director system was implemented in 130 domestic public institutions such as Korea Electric Power Corporation, LH (Korea Land and Housing Corporation), and National Pension Service. The labor director system is a system in which one non-executive director, the representative of a worker, participates in the board of directors of public institutions and directly participates in management with voting and speaking rights. A public institution that appoints an executive must have one labor director participate in its management. It is implemented sequentially from the public institutions that make up the Executive Recommendation Committee. If there is a majority union in the institution, the union representative recommends up to two candidates to the Executive Recommendation Committee and a labor director is appointed through the Executive Recommendation Committee recommendation process. In the absence of a majority union, no more than two candidates are recommended by direct, secret, and unsigned ballot, and with the consent of a majority of the workers. After that, one labor director is selected through the nomination process of the Executive Recommendation Committee. A labor director is selected from among those who have served at the institution for more than three years. The term of office is two years and can be renewed on a yearly basis.

A person appointed as a labor director must withdraw from the union. This is because the current trade union law prohibits a union member from 'acting for the employer'.

II. Significance of the Labor Director System

1. Definition

In 1974, at the International Labor Organization (ILO) Oslo Symposium on Workers' Participation in

Management, it was expressed that "the worker's participation in management system is not a matter of whether or not to implement it, but how it will be implemented." Although the form of management participation varies according to region, country, and company size, the basic types of management participation that are relatively widely practiced can be divided into three types: decision-making (management participation in consultation), performance participation (profit participation), and property participation (capital participation).[1]

Board-level employee representation refers to the participation of worker representatives in the corporate society to make important corporate decisions together with the management. In other words, the labor director system is an official system that guarantees the participation of workers in management, and it is evaluated as a means to realize economic democracy by ensuring that workers who are affected by corporate decision-making can directly participate in the decision-making process.

Participation in decision-making is divided into two types, the labor-management consultation system, and the labor-management joint decision-making system, depending on whether the worker or the union has the right to make management decisions. First, the labor-management consultation system is based on joint consultation and refers to a system in which labor and management cooperate to discuss matters that are of great interest to both parties and are not normally dealt with in collective bargaining. This is the most basic of today's management participation methods, and the International Labor Organization (ILO) recommended a labor-management consultation system for each company at the 35th General Assembly in 1952. In this way, the labor-management consultation system is being implemented in many countries around the world, including the UK, the US, and Japan. The peculiarity of this system is that although workers

or representatives of labor unions participate in management and influence management, such as providing information, communicating, and actively raising issues, the final decision is made by the management. Second, the labor-management joint decision-making system has been mainly developed in Germany, where the right to make management decisions is jointly exercised by labor and management. However, in a strict sense, as a global trend today, the labor union itself is oriented toward management participation.[2]

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2. Introduction background

In July 2017, right after the inauguration of the Moon Jae-in administration, the public organization labor director system began a full-fledged discussion when the National Planning Advisory Committee announced the 'Five-Year Plan for State Administration of the Moon Jae-in Government'. With the introduction of the labor director system (2016.9.29.) in the investment and sponsoring institutions of Seoul Metropolitan Government, centered on local governments, it became more active. Other local governments also refer to it and operate it in Gwangju, Incheon, Gyeongnam, Gyeonggi-do, and Ulsan. Among local public corporations located in Seoul, as of June 2020, it was introduced in five places, including Seoul Transportation Corporation and Seoul Urban Housing Corporation, and it is evaluated that communication within the institution is revitalized as the opinions of employees are actively expressed

to the board of directors. It is said that it was preemptively introduced under the recognition that changing the governance structure of public institutions to open the way for workers to participate in the board of directors responsible for decision-making of public institutions and to take certain responsibilities [3]

The labor director system allows workers who have various internal information and have authority as employee representatives to participate in the board of directors of public institutions, thereby enhancing the check and monitoring function against the management and contributing to the establishment of autonomous and responsible management systems. There are criticisms that the structure of the public institutions makes a responsible management difficult as the functions and roles of the board of directors are limited due to frequent high-handed personnel administration, while the autonomy of the institution is limited in the actual operation of public institutions⁴⁾ and the need to review a plan to strengthen the internal management monitoring function by improving the structure to a 'stakeholder participatory' structure arises.

III. Historical Origins and Current Status in Europe

1. Historical origins

Historically, the labor board system started from the economic democracy of the German Social Democrats in the 1920s. The German Social Democrats abolished Marx's radical communist revolutionary line and advocated social democracy such as the trade union movement and workers' entry into parliament and, based on this, Naphthali first proposed the concept of economic democracy and advocated the labor director system. After World War II, the labor director system was finally implemented in Germany in 1951, and 19 European countries introduced it, and four countries

including Spain and Portugal applied it only to the public sector as Korea does. German labor directors only participate in the supervisory board to monitor accounting fraud, and do not participate in the management board, but Korean labor directors in public institutions also participate in management. It is also true that there are concerns about labor-management conflicts at the board of directors as, in Germany, a cooperative labor-management culture has been established based on industrial unions, whereas in Korea, labor-management relations are confrontational, centered on company-specific unions. Germany's co-determination system is proposed as an alternative to overcome the reckless performance-based system that is engrossed in short-term achievements under the shareholder-centered corporate governance.[4]

2. Current Status in Europe

In Europe, the labor director system is differentially applied according to the 'size of the company', and each country operates a 'dual board (management board and supervisory board)' or a 'uniform board (single board)'. In Germany, companies with more than 500 employees should introduce a labor director system. On the other hand, in Ireland, one-third of the board of directors is made up of labor directors and the labor director system is only applied to state-owned enterprises. In Sweden, it is applied to companies with 25 or more employees and one third of the single board is made up of labor directors. In other words, Ireland, Sweden, and Luxembourg operate a 'unitary board' unlike Germany's dual board of directors. 19 out of 31 European countries have a labor director system. There is no labor director system in the UK, Italy, and Belgium. In Ireland, Spain, Portugal and Greece, only state-owned companies operate the labor director system. 15 countries operate a labor director system even in 'private companies'.[5]

IV. Legal Issues of Labor Directors in Public Institutions

First, the labor director system is a system that can be permissible under the Constitution. The Constitution stipulates the basic principles of a free market economic order (Article 119 Paragraph 1) and a social market economy order through economic democratization (Article 119 Paragraph 2). The concept of guaranteeing management freedom of a corporation or public institution and workers' participation in management rights don't conflict. The labor director system conforms to the Constitution that stipulates economic democratization.[6] On the other hand, to establish the relationship between the union and the labor director, severing the official relationship with the labor union can be seen as consistent with the provisions of the current law by considering that the labor director participates in the board of directors as the representative of all workers. The current regulations under the Trade Union Act are as follows. "A person who acts for the employer with respect to matters concerning the employer, the person in charge of business, or the workers of the business" is an employer and (Article 2, Item 2) and "in case of allowing participation of an employer or a person who always acts on behalf of his/her interests" is not considered a union (Article 2, Item 4). In the case of Seoul Metropolitan City, it is stipulated that if a union member becomes a labor director, he/she must withdraw from the union in accordance with the "Labor Union and Labor Relations Adjustments Act" with the introduction of the labor director system.

The level of authority and responsibility the labor director is granted with respect to certain tasks from the employer and whether he/she has the authority to directly participate in labor relations decisions or handle confidential matters related to labor relations can be determined by the jurisprudence of current laws and precedents. For example, a decision on changes or adjustments to important working conditions, restructuring

including reduction of personnel, etc. would fall under this category. Interestingly, in the process of selecting the first director of the Busan Credit Guarantee Foundation, which introduced the labor director system from 2021, two branch managers, who were former trade union executives, were nominated as candidates for recommendation and there was a conflict between employers and employees over their qualifications as the employers insisted that they should be considered as the employers not as employees as they have a supervisory authority against employees.

There is a possibility that the board of directors and labor directors who are members of the board of directors may not conform to the interpretation of the union membership according to the current laws and precedents. If a labor director is cut off from the labor union, there is a risk that it will become a means of representing the interests of the employer or become an isolated third-party intermediary, rendering the labor director system ineffective. It is necessary to find a way to maintain labor directors qualified as union members. Looking at foreign legislative trends, most of them let labor directors continue to maintain union membership, or at least there are no legislative examples that force withdrawal from the union.[7] They consider that there is no conflict between the duties over a worker and the guarantee of rights as a union member in labor-management relations. In Sweden, in some cases, union representatives act as labor directors.

If a system needs to be designed in a way that a labor director maintains the union membership, there may be a controversy over the interpretation of the current union law, so the relevant law needs to be amended. It is necessary to revise the relevant law to let labor directors be qualified for union members by considering them 'as workers under the Trade Union Act'. There may also be a way to prepare the rules based on the Act on the Management of Public Institutions and reflect them in the articles of incorporation, collective agreements, and union rules of each institution.[8]

When a trade union representative becomes a labor

director, he/she becomes a member of the board of directors as well as in charge of collective bargaining, so when conducting collective bargaining or industrial action as a union representative, it is unavoidable that the labor director will be in a confrontational relationship with an employer. In the case of allowing labor directors to retain their union membership, restricting their participation in board meetings on issues with a clear conflict of interest between the employer and the trade union, such as collective bargaining or collective action, might be required even though labor directors are general union members, such as Sweden.[9]

Second, if it is mandatory for workers' representatives to be non-executive directors, the participation of workers in management can act as a constraint or regulation on the economic activities of companies, which can lead to controversy over the political neutrality of the board of directors. It is necessary to consider that non-executive directors of public institutions should play a role in participating in decision-making regarding institutional management from an objective and neutral standpoint. [10]

The board of directors is not an institution where representatives of various stakeholder groups gather to adjust the interests of each group and directors, who are members of the board of directors, must play a role in enhancing the value of the corporation, so it is not appropriate to let people, representing the interests of a particular stakeholders be a member of the board of directors. The introduction of the labor director system may reduce the management efficiency of public institutions. The board of directors should make decisions based on mutual cohesion, trust, and cooperation, however, there is a possibility that labor directors will put only the workers first rather than the overall interests of public institutions, and as a result, conflicts between the labor directors and other directors may occur. In addition, timely and clear decision-making may be delayed or hindered by worker representatives' participation in the board of directors for promoting specific interests or their lack professional

management skills and, as a result it may lead to inefficient negligent management of public institutions and deepening of fiscal deficits. Facilitation of communication between labor and management, minimization of labor-management conflict by solving painful situations, strengthening of mutual recognition and trust and labor-management cooperation, and increasing efforts to strengthen workers' responsibility and productivity are positive aspects. By combining workers' unique experiences and know-how through diversification of the composition of the board of directors, the support and execution power of fellow workers will be improved, which will lead to faster decisions.

The positive aspects of workers' participation in management for companies' economic activities are: First, by improving the decision-making structure of public institutions to a 'stakeholder participatory' structure, internal management monitoring functions are strengthened, and management transparency and responsibility of public institutions are secured. Second, if workers elect a representative and attend a board meeting to jointly make decisions, the labor directors will be able to share responsibility for the results of their participation in decision-making.

In European countries, worker participation in management is a universal example. The ways in which workers participate in management in European countries are very diverse, and it can be said that they depend on the political environment of each European country. The European Companies Act uses the labor director system as a relaxed way of worker participation in management, rather than forcing it to a high level of participation like in Germany.

There is a prejudice that views the professionalism of workers and directors as low. It is pointed out that inefficiencies may occur such as delays in the decision-making process of the board of directors due to lack of expertise in the management of companies or public institutions. It can be said that the managers and workers of the relevant institutions

who are well versed in the work have been participating in management in various ways to monitor and check the decision-making of the high-handed personnel administration. Therefore, it would be rather desirable to allow workers who have worked at the institution for more than a certain period of time and have accumulated experience in the work of the institution to participate in management from their own perspectives by formalizing the practice that influenced management in the form of labor-management collusion into a worker participation system such as the labor director system.

It is necessary to improve the level of participation by operating a program to enhance the professionalism of labor directors. The 「OECD Public Enterprise Governance Guidelines」 also stipulates that when the labor director system is implemented, it is necessary to make it easier to access information, education, and professional knowledge about the labor directors in order to enhance the professionalism of the board of directors. In foreign countries, the importance of continuous education and training for cultivating and enhancing the professionalism of labor directors are emphasized, so if a domestic public institution introduces the labor director system, an education program to enhance the professionalism of labor directors should be prepared. For example, in Sweden, the private sector trade union bargaining cartel (PTK) provides training on the role of the board of directors of corporations, practical training for understanding financial statements, practical English training, and various seminars for labor directors, while providing advanced course and degree course for labor directors who have completed certain training. In Germany, the Berlin Authority regularly invites lecturers to provide training in related fields according to changes in laws and regulations. In particular, the workers' representatives of the supervisory board are participating in the Hans-Böckler-Stiftung, a co-determination support foundation of the German Federation of Trade Unions, a think tank of the

German labor community, or in educational programs provided by each labor union.

Third, pursuing the interests of workers against those of shareholders may become a problem. In the labor director system, there is a risk that labor directors excessively pursue only workers' compensation or job security at the expense of shareholders' interests. In addition, labor directors can choose production technology in a way that maximizes the overall wage rather than reducing the cost of production, and it may undermine the profitability of the company by inducing excessively risky investment decisions. There is also the possibility of a problem in which labor directors and the management unite to pursue the interests of insiders only at the expense of the interests of shareholders.

The possibility of internal or external leakage of management information can be a problem. If the information is leaked to the labor union in advance by taking advantage of a position that has access to important management information, there is a risk that the profitability of a business requiring confidentiality may be lowered or even the completion of the business itself may be difficult. In addition, there is a risk that the sensitive management information decided by the labor directors at the board meetings will be leaked to the workers, including the labor union, or to the outside. As with any other general officer, it must be dealt with in a way that obliges labor directors not to divulge confidential information obtained from the board. It is necessary to stipulate in laws and articles of incorporation that the same duties and responsibilities of executives are imposed on labor directors, and that secrets acquired in the workplace should not be divulged while in office as well as after retirement.

It is also possible to consider using the labor director as a control against management. It would be necessary to limit the role of the labor directors to management checks, as is the case in Germany. For example, the German board of directors has a two-tier system in which the supervisory board and

the management board are separated. Labor directors, together with independent directors, are members of the supervisory board. The supervisory board acts as a check on the management board.

For wages, employment, and others that have a direct interest in workers, restricting voting rights of labor directors might be necessary as there is a cause for exclusion. Furthermore, to check the collusion between the management and the workers, and to promote the responsibility of the board of directors, including the labor directors, the details stated in the board meetings and the election process should be transparently disclosed. The issue of granting labor directors the right to subordinate the agenda needs to be further studied, including considering the issue of equity with other non-executive directors.

Fourth, whether to carry out corporate restructuring, such as layoffs and consolidation of business organizations, is a matter that belongs to a high-level management decision by the management and precedent held that it cannot be subject to collective bargaining, so it was difficult to resolve with the existing structures of unions or labor-management committees. Such a one-sided structure resulted in clashes between labor and management, leading to long-term conflicts. On the other hand, the labor director system can be a means for establishing governance that promotes win-win cooperation within a company, and since decisions are made by reflecting workers' opinions in advance, unnecessary conflicts are reduced, and goal can be achieved faster even if the procedures take more steps. It can bring about a paradigm shift from the existing confrontation and conflict to a labor-management relationship of cooperation and win-win, and it can be developed into a system that enables democratic discussion and decision-making within the company.

Regarding the possibility of interference by public institutions, it is necessary to fundamentally consider the cause and background of the failure of public institution reform. In public institutions, executives are often determined by the

government's appointment, so even if they lack expertise, they often take charge of management, and, in many public institutions, various union participation in management and labor-management collusion have been carried out.

Considering that the labor director system can play a role of checking and monitoring through labor-management supervision and transparent management to enhance the management capability of public institutions, the necessity of the system needs to be promoted to enhance the understanding and cooperation of the employer. Furthermore, in terms of the governance structure of public institutions, workers' representatives should participate in the board of directors and take responsibility for their decisions.

V. Conclusion

The nonexecutive director system examines whether the reasons for disqualification are applicable and systematically addresses problems that arise when executive directors control the board of directors by introducing those who can objectively and transparently perform the duties of directors by fulfilling the duties of election and fidelity of the directors. Then, the labor director system is not an attempt to resolve the defects of the board of directors from another dimension, nor is it intended to fill gaps in the board of directors and fully secure the original role of the board. If that was the case, an approach would have been taken to compensate for the lack of the director's duty and responsibility system. It is difficult to know at present whether the labor director system, which connects labor relations to the management system, will positively contribute to the development of the corporation system if introduced into the company law. However, for the labor director system to be introduced into the company law, the labor director must be explained in the Korean company law and the inevitability of its introduction must be persuaded. Conflicts with

shareholders' right to appoint institutions are also a task that must be resolved. Management has absolute meaning for shareholders who receive dividends from operating profit. On the other hand, for workers who are guaranteed the right to collective action and are paid for their labor according to the contract law and the labor law, the management must be considered as a partner in labor-management cooperation, so the labor director system may cause confusion.

There are growing calls to create a system that can form a 'relationship of understanding, participation, and cooperation', away from the existing 'control and command'-centered manpower management that causes labor-management confrontation and the system can also serve as an opportunity to reduce harmful effects of high-handed personnel administration in public institutions.

On the other hand, in Korea, where labor-management conflicts are frequent in public institutions, the introduction of a full-scale labor director system in public institutions may have a negative effect on management efficiency.

The labor and financial circles are at odds with the implementation of the public sector labor director system. The financial world is concerned that board decisions may be delayed after the introduction of the labor director system. In the worst case, there is a possibility that corporate investment will shrink, and jobs will be reduced due to the labor director system, and all domestic companies may go abroad. The business community also raises concerns that the introduction of the labor director system in public institutions is highly likely to impede efficient management and undermine the political neutrality of the board of directors of public institutions. The introduction of the labor director system has clear advantages and disadvantages. First, it is positively evaluated that it is an opportunity for workers to directly participate in the management of the institution and understand the operation of the institution or the position of the management. There is also an argument that it is possible to supplement the expected side effects, such as the appointment of

an incompetent person, by providing an additional institutional device to prevent it. It was suggested that, from a practical point of view, if the representatives of workers working in the relevant public institution play a role in conveying the opinions of workers related to the direction of operation of the public institution, it can contribute to some extent to enhancing the efficiency of the management of the public institution.

Since the introduction of the full-scale labor director system to public institutions is expected to have a significant impact on private companies, sufficient discussion and review will be required.

It is necessary to complement countermeasures against problems that occur in the operation process and gradually expand the scope of introduction by accumulating experience through the introduction of the labor director system in public institutions and evaluating the degree of influence of the operation of the labor director system on management efficiency and productivity.

The labor director system should not just include workers in the simple management class and allow them to participate in decision-making, but rather suggest a way for workers to participate in management that can enhance the democracy and transparency of company management. And for this to happen, the perception of win-win cooperation between labor and management must be established. It should also be remembered that the participation of both labor and management in management comes with responsibilities and obligations.

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