

Gregory Patton and 10 petitioners v. Amagasaki City Board of Education, City Equity
Committee of Amagasaki, 2023-2

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Rebuttal II

We submit the rebuttal II against the Opinion II dated 10 April 2024 (hereinafter, Opinion II) made by the name of Masaru Shirahata, superintendent of Amagasaki City Board of Education.

FIRST: Regarding petitioners

This petition for demand measure to improve working conditions was jointly submitted by 11 out of 14 foreign language assistant teachers (hereinafter, ALT) employed by Amagasaki City Board of Education (hereinafter, BoE). The rebuttal dated 16 February 2024 (hereinafter, Rebuttal) was also submitted by the joint petitioners. Therefore, the submitter is Gregory Patton as representative of joint petitioners.

BoE, however, wrote in its Opinion II that Rebuttal was submitted by Gregory Patton. BoE's must change its attitude recognizing this petition as individual not collective. Therefore, we call petitioners as the joint petitioners.

SECOND: Rebuttal against Opinion II

1. Correctness of facts written in Rebuttal

BoE assert 7 subjects in Opinion II that were pointed as hidden and mistaken facts by the joint petitioners in Rebuttal. We detail here that their Opinion does not make sense.

(1) 40 hours ALT commonly called

The weekly work hours for ALTs including lunch time (or not including) as 40 hours was explicitly written in the regulation made by BoE (Kou 11). Accordingly, BoE, ALTs and

Education Workers and Amalgamated Union Osaka (hereinafter, EWA) have called them as 40 hours ALTs.

BoE does not accept this historical fact as if History Revisionist.

(2) Real work situation of ALTs

First of all, BoE argues 'petitioners assert that these real work situations are indicated in job descriptions (Kou 1)' at p.3 in Opinion II, but the joint petitioners did not write so in Rebuttal. The joint petitioners wrote in Rebuttal that ALTs' duties regulated in job description (to assist teachers' job at classrooms) are different from the real work situations. BoE's way of criticism against opponent must be condemned since they read into them opponent does not contain.

While the joint petitioners explained ALTs' duties (tasks) in Rebuttal, these duties are regulated in 'Terms and Conditions of Employment' (Kou 11) and 'Protocol for Foreign Language Assistant Teachers' (Kou 12) made by BoE and have not been revised when ALT's were converted to Kaikeinendo (Kou 8, p.1). ALT's Duties indicated by BoE and its job description is just one of 9 as (1). ALT's are assuming 8 more duties out of classrooms.

The Protocol above must have been revised, but no ALT has been informed and the joint petitioners have assumed duties indicated by Kou 8.

Parts of real duties are shown in Kou 13 in which club activities, committee commitment and research studies in vacations are found.

(3) Arbitrary exclusion of 30 hours ALT

It is unclear why Opinion II emphasizes about exclusion of 30 hours ALT from the comparison among various kind of workers' wages due to the working hours counted. But BoE's assertion is not appropriate since 30 hours ALT's working hours can be calculated as fulltime worker's one.

When 30 hours ALT's working hours is calculated as fulltime, the wage is 450,000 yen a month.

(4) How to adopt MIC's manual

BoE says Kaikeinendo of Amagasaki is divided parttime assistants and parttime clerks. BoE recognizes the highest wage of Kaikeinendo is 211,790 yen a month based on the MIC's manual (8/23 notification).

The joint petitioners pointed that Kaikeinendo's wage must be based on the MIC's manual II. BoE assert 'Rebuttal is not accurate', but Rebuttal is more accurate than Opinion II.

(5) Comparison with neighboring municipal ALT

BoE has contacted to Itami City because the joint petitioners criticized BoE's data in its Opinion about Itami ALT's wage. However, BoE is not able to deny the joint petitioners' information about Itami ALT's wage. While BoE replies 'neighboring municipal ALT's wages are put in Opinion as same as neighboring municipal governments have informed', their research ability as municipal government is poor enough.

When BoE also asserts that it is impossible to compare the wage of Amagasaki ALT and Itami ALT since Itami ALT's wage includes regional allowance, it does not make sense because Amagasaki ALT's wage also includes the regional allowance (Kou 1).

According to EWA, Itami municipal government has increased ALT's wage twice this year in January and April (Kou 14).

(6) Margin and wage of dispatch ALT

While Rebuttal insisted that wage of dispatch ALT must add the margin and be calculated as same work hours with ALT, BoE asserts that it should not include margin and comparison with ALT as same work hours is inappropriate.

But the margin is for the dispatch company's income and not regulated by any law. BoE pays the dispatch company the margin and wage of dispatch ALT without a power to decide the wage of dispatch ALT. When the comparison the wage of ALT and dispatch ALT is conducted, all figure of payments to both ALT and dispatch company must be counted. Furthermore, the wage of ALT will include the margin when dispatch ALT being converted to direct employed ALT as if BoE analyses that it is very easy to recruit ALT these days (Opinion II, p.16). Needless to say, it is problem from educational point of view that the Dispatch ALTs quit in mid school terms or many dispatch ALTs are replaced at the beginning of new school term.

When the joint petitioners insisted that the dispatch ALT's wage must be calculated on the same work hours as ALT, BoE replies that it is inappropriate to calculate it by hypothesis dispatch hours. But it is BoE who asserts that the comparison of wage must be conducted as same work hours (Opinion II, p.4 and p.11). BoE envisages to try to make the wage of ALT higher than the dispatch ALT while the work hours of dispatch ALT is not calculated as same work hours.

(7) Comparison with lecturer in private English school

BoE asserts that the wage of lecturer in private English school is low with heavy duties. BoE says that the duty of ALT to assist teachers in classrooms and the duty of lecturer in private English school is much heavier than this one.

But the duties of ALT are described as above (2). That is why the comparison the wage of ALT with lecturer in private English school is impossible.

2. BoE's misunderstanding the laws regarding the wage

This is not a good place to argue the theory of wage but BoE's lack of knowledge about wage in general not only ALT's one should be pointed out.

While the Rebuttal asserted that we call them as wage though Local Public Service Act (hereinafter, LPSA) regulates wage for regular employee as salary and for nonregular employee as remuneration,

BoE asserts that the payment for parttime employee is remuneration since BoE has not found the word of wage in Local Autonomy Act. However, there is no definition in the Local Autonomy ACT Implementing Regulations that remuneration is 'in return' of parttime employee who works for some hours regardless of BoE's assertion.

Hashimoto's book about Local Public Servis ACT (hereinafter, Hashimoto's Book), which is a kind of bible for BoE, states that salary is for work hours not 'in return'. And Hashimoto's book stresses the salary is as same as wage. It also stresses 'there are various theories and facts about the principle by which the salary and wage is decided'.

For example, there are various theoretical and actual opinions about the payment whether for implemented work or for contracted work regardless of BoE's 'in return' or Hashimoto's 'for work hours'.

As above mentioned, BoE's view about salary and wage is just a one of the many. Therefore, we argue against the BoE's assertion as far as ALT's wage concerned below.

(1) Principles about the decision making for wage of public service employee

BoE argues against Rebuttal that the principle of equilibrium is included in the principles for decision making for wage of public service employee. BoE refers MIC's view and Hashimoto's book and asserts that the principle of equilibrium is regulated in the article 24-2 of Local Public Service ACT. But Hashimoto's book stresses that the article 24-2 of Local Public Service ACT is totally unclear and distances itself from BoE.

The joint petitioners asserted in Rebuttal that the principle of equilibrium must increase ALT wage in case it is applied to wage not only working conditions. We will be back to this issue below (3) .

(2) Principle of job wage

① Principle of job wage applied partially

Though BoE asserts that the principle of job wage is one of the principles for decision making for wage of public service employee, BoE does not have enough knowledge about the job wage because it says in Opinion II that the pay schedule reflects the job wage,

The pay schedules are based on the duties of employees and the grades and levels are also put into the schedules. Employees reach an upper level based on the criteria of promotion, but the duty is same. This means the pay schedule does not reflect the job wage based on duty. As BoE itself realizes the age or number of services as elements for upper-level wage (Opinion II, p,13), the pay schedule admits employees to reach an upper level with the same duties. Hashimoto's book also stressed not only the element of job wage and but also the element of living wage is included in the public employee's wage.

But BoE asserts that ALT's wage is based on the element of job wage and excludes the element of living wage so that ALT's wage is too high comparing with its duties.

② ALT wage and the job wage

BoE understands the ALT wage as the job wage and asserts ALT's duty and responsibility is 'to just assist teachers at the English classrooms' (Opinion II, p.8). But the duties and responsibilities (jobs) are described as above 2.(2) so that BoE's assertion is against the facts.

Even though BoE asserts the ALT's wage is not based on the duties, in other word too high, the assertion makes no sense since BoE does not recognize the duties of ALT in detail even if ALT's wage is based on the duties. For instance, one of ALT's duties as of 'support teachers to study foreign language' cannot be carried out by elementary/junior high school teachers or city personnel chiefs. BoE also asserts ALT's wage was too high at the beginning of ALT system due to the historical background, but ALT's wage at that time was obviously matched for the duties. Therefore no one judges ALT's wage is not for the duties.

ALT's wage reflects the duties but out of the principles of decision making of wage for public service employees due to the exclusion of the element of living wage.

BoE must make a comparison table including allowances, out of job wage, for regular employees instead of the comparison table shown in Opinion II, p.10.

(3) Principle of equilibrium

BoE asserts that ALT's wage is not against the principle of equilibrium because it is good enough for living standards and 1.2 times higher than average wage indicated by the research of National Tax Agency of private sector workers' wage (Opinion II, p.11). But that research is for the private sector workers' wage not for the cost of living. In this regard, National Personnel Agency (hereinafter, NPA) has conducted the research of private sector workers' wage in order to reflect it to the wage of public sector employees, and it recommended national/regional governments to increase wages by 1.1% and 0.1 month increase for bonuses based on the research as of April 2023. According to the research by NPA the cost of living for one person was 120,910 yen in April 2023 (5.6% higher than previous year) and 261,700 yen for 5 persons

(13.6% higher).

Furthermore, BoE confesses that they have not considered the wage rate of national public sector because ALT's wage is not based on the pay schedules.

Accordingly, BoE has not abided by the principle of equilibrium when making decision of the ALT's wage since they show the data of National Tax agency which does not related with the cost of living, and they confess no consideration of the wage rate of national public sector was taken into account.

(4) Principle of equal treatment

BoE asserts ALT's wage is decided different from other city staff because principles of the decision making for wage of public service employee do not apply ALT's wage (Opinion II, p.12). Therefore, BoE admits that they do not follow the principle of equal treatment. The reason of BoE's assertion is that regular employee wage is based on the pay schedules reflected the job wage principle and ALT's wage is not based on the pay schedules. But as described above (1) the pay schedules are not based on the principle of job wage, BoE's assertion is not legitimate.

(5) Principle of meeting changing conditions

BoE asserts that BoE has not been against the principle of meet changing conditions because ALT's wage is not based on the principle of job wage and no increase is required by the principle of equal treatment by referring to Hashimoto's book saying the principle of meet changing conditions is following the principle of equal treatment (Opinion II, p.13). It is difficult to understand BoE's assertion above, but it is obvious that BoE does not argue the assertion of joint petitioners saying the principle of meet changing conditions require to follow the NPA recommendation. Therefore, BoE recognizes that they do not partially abide by the principle of meet changing conditions in case deciding to keep ALT's wage as same.

THIRD: What happened on the local distribution tax for pay increase? Organizational slush fund?

As the reason of demand measures by the joint petitioners referred, MIC issued the notification which advised local government to increase Kaikeinendo wage as same as regular employees (Kou 6).

In addition, MIC also informed all local governments the action for supplement budget of 2023 (Hereinafter, MIC Information, Kou 15). MIC Information has requested all local governments to increase Kaikeinendo wage since supplement budget including local distribute

tax was passed by central government cabinet and parliaments will pass it soon. And the upper house passed the budget on 17 Nov. 2023 so that MIC distributed the local distribute tax to all local governments.

But Amagasaki City did not use this local distribute tax to increase ALT's wage though accepting it.

It is sure this local distribute tax is general one not for limited purpose. In MIC Information, however, explicitly expressed the local distribute tax for kaikeinendo wage, therefore it is not against laws when not using for that purpose but it is of morality problem. When an EWA executive member pointed it as morality problem, MIC person agreed to him.

If the local distribute tax for the original purpose is not implemented, it means to use for other purpose, repurpose in other word. Taxpayers may wonder it as the organizational slush fund by city hall.

The Equity Committee of Amagasaki is expected to make decent measures soon by using the local distribute tax for all kaikeinendo including ALT which will end stopping the reckless activities of City and BoE of Amagasaki.