

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

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Mitsuo Hayashi
President, City Equity Committee of Amagasaki

Gregory Patton
Representative of petitioners

Counter Argument

We submit the counter argument against the Opinion (hereinafter, Opinion) made by the name of Masaru Shirahata, superintendent of Amagasaki City Board of Education (hereinafter, BoE).

FIRST Contents of Opinion

The contents of Opinion says basically that the wage of Amagasaki ALT (hereinafter, ALT) is not increased based on the recommendation of National Personnel Authority (NPA) because ALT's wage level is too high. However, the Opinion does not explain the reasons which prohibit increasing those whose wage level is too high, and there are hidden and mistaken facts and misunderstandings of laws in the assertion of ALT's wage level.

Therefore, we make a counter argument by two points: the legitimacy of wage increasing for employee whose wage level is too high; the criterion of ALT's wage level. Though Local Public Service Act (hereinafter, LPSA) regulates wage for regular employee as salary and for non-regular employee as remuneration, we call them as wage.

BoE recognizes the MIC notification such as Kou 6 is technical advice which is not binding and municipal government can decide whether abide by or not (p.3, Opinion). BoE does not abide by the MIC notification Kou 6, and partly follows the MIC Manual issued on time when kaikeinendo system was introduced. On the other hand, BoE does not deny following LPSA. BoE respects the recommendation of NPA and partially follows it.

BoE's attitude toward notifications by the State is varied and in multi standards, arbitrary in other word, and we argue based on only the laws and notifications on which BoE refers and point out ones which BoE ignores.

SECOND Increase of wage of employee on high wage level

As BoE realized, Amagasaki City Mayor proposed the increase of wage of regular employees by submitting the "Ordinance" to the city parliament last November and increased the wages

retroactively to April 2023 with the agreement of the parliament.

The revised pay scale of city regular employees shows 417,000 yen in its 4-161 grade with 800 yen up. The 4-136 grade, counter part of 40 hours ALT wage, is 403,400 yen with 900 yen up. The highest wage in its 8-69 grade shows 545,300 yen with 1,300 yen up.

Accordingly, Amagasaki City has increased the wage of employee on high wage level. BoE states ALT wage cannot be increased based on the recommendation of NPA due to its high wage level, but regular employees wage has been increased even though their high wage level. This means that only ALT's wage cannot be increased if its wage level is high.

In addition, Amagasaki City has increased the wage of most of kaikeinendo and remunerations of Mayor and members of parliament.

By the way, BoE has distributed the job descriptions with "working hours; 40 hours a week" from the beginning unit the start of kaikeinendo and the word of 40 hours ALT has been commonly used, therefore BoE's state in Opinion p.6 ignores the history and industrial relationship.

THIRD Wage level of ALT

1. Working Hour and Wage of ALT

High or low of wage level is relative but its absolute standard exists in working hour. ALT's working hour is allegedly 36.25 hours a week for 40 hours ALT and 30 hours a week for 30 hours ALT, but it is not true.

30 hours ALT works 7.25 hours a day and 30 weekly average working hours for a year under one-year variable working hours System. That is why 30 hours ALTs receive a monthly remuneration in such as August when no teaching work allocated.

40 hours ALT works 7.25 hours a day and 36.25 hours a week. They are working in August when no class is scheduled, of course, receive full remuneration.

ALT's tasks are indicated in job descriptions (Kou 1), but they are working not only in English classrooms. ALTs answer questions from students and consultations of their schools ahead even outside of English classrooms and guide them at club activities after classrooms. They act as members of school committees, and work for sports festivals on Saturdays/Sundays. BoE encourages ALTs go back their own countries by their cost in order to touch updated English or study educational research, and requests them submit the reports. All these activities are ALTs' job for wage. BoE describes "ALTs receive full remuneration even in no classroom season such as summer holidays when they do not assist Japanese teacher" on p.4 in Opinion, this is an expression in bad faith since they know these realities.

Why BoE explains ALT's task as assist to Japanese teacher is because they regard ALTs as quasi subcontractor to whom tasks are committed (p.1, p.2 in Opinion). But the commitment to

ALTs not withholding teaching licenses is fake subcontracts against the dispatch law and prohibited severely by Ministry of Labor (notification issued on 28 Aug. 2009). The relationship between BoE and ALTs exists in employment contracts not in subcontracts nor in dispatch contracts so that wages are paid for their working time.

2. Comparison of ALT's wage level

BoE asserts the ALT's wage level as high in comparison with ones of city regular employee, other kaikeinendo, neighboring municipal ALT, dispatched ALT and lecturer in private English school (p.9-10, Opinion). BoE make the comparison only with 40 hours ALT and excludes 30 hours ALT with less wage.

(1) Comparison with city regular employee

BoE recognizes that 40 hours ALT's wage level is lower than city regular employee (table 2 p.10, Opinion). And therefore 30 hours ALT's wage level is much lower.

(2) Comparison with other kaikeinendo

Comparison with other kaikeinendo by BoE discloses the following matter,

BoE insists that the highest wage of kaikeinendo is 211,970 yen (p.8, Opinion) calculated the MIC manual (p.3, Opinion). But that part of MIC manual (8.23 notification) referred by BoE explains the wage level of full time kaikeinendo not part time kaikeinendo. The wage level of part time kaikeinendo is shown in the MIC manual 2 dated 18 Oct. 2018: highest wage of assistant clerk for routine/auxiliary work is located in starting wage of regular employee (p.72); the abovementioned highest wage is just an example for kaikeinendo for routine/auxiliary work not all kaikeinendo (p.74); for example, wage level of professional jobs such as child carer and nurse can be located in much higher than assistant clerk for their job and responsibility (p.74).

Accordingly, BoE's idea does not refer to MIC manual. When the professionalism of ALT is considered, wage level of kaikeinendo for routine/auxiliary work calculated from regular employee wage scale table 1 is not suitable to ALT.

In addition, both Lower and Higher House made resolutions at the time of revision of LPSA that no disadvantageous treatment will apply to substitute/nonregular employee when converted to kaikeinendo, appropriate working conditions will have to cover them and municipal governments to be led to their right way, and so on". The decrease of ALT's wage down from current level means opponent to the contents of revision of LPSA.

The comparison between ALT's wage level and other kaikeinendo one has lack of premise so that no one can judges ALT's wage level as higher than other kaikeinendo one.

(3) Comparison with neighboring municipal ALT

BoE researches the wage and working hour of neighboring municipality ALT and shows

the result of comparison (table 1, p9, Opinion). It is impossible to identify the municipality because of the municipal names in initial. Among 9 municipalities exists full time ALT in only Itami city and therefore F city in table 1 can be recognized as Itami city. However, Itami city proposed the “wage scale” as follows when full time ALTs as kaikeinendo were introduced.

令和2年度 ALT会計年度任用職員給与算定指標

※平成31年度水準からの移行による給与算定指標

制度年齢	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	備考
査定時年齢	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
現行	212,400	219,600	227,000	236,200	246,900	254,600	262,000	268,800	275,300	283,500	286,600	299,700	292,800	295,900	299,000	
現行(年間)	2,548,800	2,635,200	2,724,000	2,834,400	2,962,800	3,055,200	3,144,000	3,225,600	3,303,600	3,402,000	3,439,200	3,476,400	3,513,600	3,550,800	3,588,000	
給料(月額)	244,300	251,500	258,900	268,100	278,800	286,500	293,900	300,700	307,200	315,400	318,500	321,600	324,700	327,800	330,900	住宅手当相当を現行ベースに加算
給料(年間)	2,931,600	3,018,000	3,106,800	3,217,200	3,345,600	3,438,000	3,526,800	3,608,400	3,686,400	3,784,800	3,822,000	3,859,200	3,896,400	3,933,600	3,970,800	
職員手当	991,858	1,021,690	1,051,134	1,088,486	1,131,928	1,163,190	1,193,234	1,220,842	1,247,232	1,280,524	1,293,110	1,305,696	1,318,282	1,330,868	1,343,454	
地域	293,160	301,800	310,680	321,720	334,560	343,800	352,680	360,840	368,640	378,480	382,200	385,920	389,640	393,360	397,080	
期末	698,698	719,290	740,454	766,766	797,368	819,390	840,554	860,002	878,592	902,044	910,910	919,776	928,642	937,508	946,374	年間2.6月
合計	3,923,458	4,039,690	4,157,934	4,305,686	4,477,528	4,601,190	4,720,034	4,829,242	4,933,632	5,065,324	5,115,310	5,164,896	5,214,682	5,264,468	5,314,254	
月額給与	327,000	336,600	346,500	358,800	373,100	383,400	393,300	402,400	411,100	422,100	426,300	430,400	434,600	438,700	442,900	
年額計	3,924,000	4,039,200	4,158,000	4,305,600	4,477,200	4,600,800	4,719,600	4,828,800	4,933,200	5,065,200	5,115,600	5,164,800	5,215,200	5,264,400	5,314,800	

制度年齢	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	備考
査定時年齢	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
現行	302,100	305,200	308,300	311,400	314,500	317,600	320,700	323,800	326,900	330,000	333,100	336,200	339,300	342,400	345,500	
現行(年間)	3,625,200	3,662,400	3,699,600	3,736,800	3,774,000	3,811,200	3,848,400	3,885,600	3,922,800	3,960,000	3,997,200	4,034,400	4,071,600	4,108,800	4,146,000	
給料(月額)	334,000	337,100	340,200	343,300	346,400	349,500	352,600	355,700	358,800	361,900	365,000	368,100	371,200	374,300	377,400	住宅手当相当を現行ベースに加算
給料(年間)	4,008,000	4,045,200	4,082,400	4,119,600	4,156,800	4,194,000	4,231,200	4,268,400	4,305,600	4,342,800	4,380,000	4,417,200	4,454,400	4,491,600	4,528,800	
職員手当	1,356,040	1,368,628	1,381,212	1,393,799	1,406,384	1,418,970	1,431,556	1,444,142	1,456,728	1,469,314	1,481,900	1,494,486	1,507,072	1,519,658	1,532,244	
地域	400,800	404,520	408,240	411,960	415,680	419,400	423,120	426,840	430,560	434,280	438,000	441,720	445,440	449,160	452,880	
期末	955,240	964,106	972,972	981,838	990,704	999,570	1,008,436	1,017,302	1,026,168	1,035,034	1,043,900	1,052,766	1,061,632	1,070,498	1,079,364	年間2.6月
合計	5,364,040	5,413,828	5,463,612	5,513,398	5,563,184	5,612,970	5,662,756	5,712,542	5,762,328	5,812,114	5,861,900	5,911,686	5,961,472	6,011,258	6,061,044	
月額給与	447,000	451,200	455,300	459,400	463,500	467,600	471,700	475,800	480,200	484,300	488,500	492,600	496,800	500,900	505,100	
年額計	5,364,000	5,414,400	5,463,600	5,512,800	5,562,200	5,612,400	5,662,800	5,712,000	5,762,400	5,811,600	5,862,000	5,911,200	5,961,600	6,010,800	6,061,200	

This table indicates that full time ALTs are employed at 22 years old with 244,300 yen (268,730 yen regional allowance included) as monthly wage, 3,100 yen increased every year, and reach 377,400 yen (415,140 yen regional allowance included) as 51 years or older as counterpart of representative of petitioners (58 years old) and 6,061,200 yen as annual rate. The wage of F city made by BoE is suspicious.

The abovementioned fact itself denies the trustiness of the wage of neighboring municipalities by BoE. The comparison without objective data null and void because it lacks the premise of comparison.

Accordingly, the wage level of ALT cannot be identified as higher than neighboring municipal ALTs.

(4) Comparison with dispatched ALT

BoE has accepted 9 dispatch workers for ALT jobs (dispatched ALT) with the dispatch contract with a private company. The whole figure of dispatch fee is not opened but BoE pays 3,419 yen per hour for a dispatch ALT. BoE calculates the monthly wage of a dispatched ALT as 348,652 yen after deducting margin of 33 %. A dispatched ALT receives 3,760,000 yen a year for 1,640 hours work, 40 hours ALT makes 1.6 times as dispatched ALT claims BOE.

But when the margin of company adds to the wage of dispatched ALT, BoE pays dispatch

ALT jobs as follows. $3,419 \text{ (hourly pay)} \times 7.25 \text{ (hours)} \times 21 \text{ (days)} = 520,543 \text{ yen a month}$. And it makes 5,607,160 yen a year for 1,640 hours work. A dispatched ALT would receive 5,949,060 yen a year for 1,740 hours work as same as 40 hours ALT work.

When the comparison between the wage of ALT and dispatched ALT is made, it shows as the table below since BoE's payment to dispatch company must be regarded as the wage of dispatched ALT.

	Monthly wage (yen)	Annual rate (yen)
40 hours ALT	442,300	5,869,600
Dispatched ALT	520,543	5,949,060

The wage level of dispatched ALT is higher than 40 hours ALT.

In addition, there is suspicion in the procedure of extension of dispatch period regulated by the Dispatch Act while BoE has accepted dispatch work since 2020 academic year. When the representative of petitioners brought this suspicion to Hyogo Labor Board, they replied they would detect BoE. This suspicion means that BoE's has illegally accepted dispatched ALTs, even though not related with the demand measure to improve working conditions of ALTs. Moreover, BoE has a fatal failure for dispatch ALT jobs since they cannot interview the prospect ALTs in advance regulated by the Dispatch Act,

(5) Comparison with lecturer in private English school

BoE choses lecturer in private English school as counterpart of ALT in private company and shows its wage level as 3,7600,000 yen a year based on a private recruit company web site.

But it is impossible to regard lecturer in private English school as ALT. Because in addition to jobs described 1. above, working hour, size of company, workplace and so on are varied. This means that the comparison lacks the premise. As BoE stresses "need for caution when comparison made", it is impossible to make comparison between ALT and lecturer in private company.

3. Summary

Accordingly, BoE's assertion that the wage level of ALT is high does not make sense since it is based on their hidden and mistaken facts and arbitrary misunderstandings of laws. BoE's assertion that the wage of ALT should not be increased due to its high level is totally illegitimate.

FOURTH BoE's understand of laws

1. Principle of decision making for wage of public service employee

Although the wage level of ALT is not high as described SECOND above, BoE judges “no circumstance allows to increase wage of ALT accordance with the principle of equilibrium”.

But the wage of public service employee “must be determined taking into consideration the cost of living, prevailing wage rates of national and other local public service sector and the private sector and other appropriate circumstances.” (article 24-2, LPSA), the “principle of equilibrium” applies the working conditions except wage as article LPSA 24- 4 says “working hour and working conditions other than wage must be determined taking into consideration the equilibrium with national and other local municipalities”.

Even if the principle of equilibrium applies also to wage, wage “must be determined taking into consideration the cost of living, prevailing wage rates of national and other local public service sector and the private sector and other appropriate circumstances”. But BoE has not taken into consideration the cost of living, wage rate of national public sector when they have asserted that the wage of ALT should not be increased.

“Wage rate of national public sector” is no other than the recommendation of NPA, it is obvious that BoE does not take into consideration wage rate of national public sector when they do not abide by the recommendation of NPA.

The price index is the important element when considering the cost of living. According to Japanese government statistics, the consumer price index is 106.5 in Dec. 2023 and 93.4 in Dec. 1991 (as same wage level of ALT in Dec. 2023) if it is 100 in 2020. The wage of ALT must be increased 1.14 times higher if taking into consideration only the consumer price index as cost of living. The 40 hours ALT’s wage must be increased from 5,869,600 yen to 6,691,300 yen.

Needless to say, the wage level of ALT is not higher than other municipal ALTs nor private sector workers as described above.

2. Principle of Equal Treatment and Principle of Meeting Changing Conditions

In LPSA no word of “principle of equilibrium” by BoE is found. Instead, LPSA explicitly emphasizes the principle of equal treatment in its article 13 and the principle of meeting changing conditions in 14. Although petitioners have stressed that the no increase of wage of ALT is against these principles, BoE does not response after acknowledging petitioners’ assertion (p9, Opinion). BoE may agree that no increase of wage of ALT is against these principles.

Followings finds the supplement opinion to the demand measure to improve working conditions in regard of these principles above.

According to the principle of equal treatment (LPSA 13), it is obvious that the principle of equal treatment has not applied to ALTs whose wage has not been increased though wage of city regular employees and other kaikeinendo have been increased based on the recommendation of

NPA as described above SECOND. This unequal treatment has no legitimate reason as described above THIRD so that it is “unjustified discrimination”. Therefore, no increase of ALT wage does not follow the principle of equal treatment (LPSA 13).

The principle of meeting changing conditions regulated by article 14 of LPSA states “municipal governments must take appropriate measures to bring wage, working hours and other working conditions of employees established based on this Act into accord with general conditions in society as a whole”. As for wage, it stresses that the personnel committees make the recommendations to parliaments. BoE’s practice to increase wages based on the recommendation of NPA due to no existence of the personnel committee in Amagasaki has followed the principle of meeting changing conditions. But BoE’s practice not to increase the wage of ALT does not explicitly follow the principle of meeting changing conditions.

3. BoE’s understanding of limitation to fundamental labor rights

BoE expresses that it is not obligated to negotiated with EWA to which the representative of petitioners belongs because EWA is not an employee organization regulated by LPSA since it does register it to the equity committee of Amagasaki (p5, Opinion). It is true that EWA has not registered it to the equity committee of Amagasaki. But BoE’s assertion is wrong stem from their misunderstanding of laws when it asserts “EWA is not an employee organization regulated by LPSA” and “no obligation to negotiate”.

LPSA regulates that an employee organization means an organization which is formed by officials for the purpose of maintaining and improving their working conditions, or a federation of such organizations (article 52), and that those employee organization composed only by officials of one same municipality can register to equity committee of personnel committee (article 53). Those employee organization with other municipality officials or employees not covered LPSA (ex. employees regulated by article 3-3-3) cannot register but still an employee organization regulated by LPSA. BoE expresses that non-registered organization is not an employee organization due to their misunderstanding of LPSA.

Next, it is also wrong when BoE expresses that they have no obligation to negotiate with non-registered employee organization.

The negotiation between municipal government and employee organization is regulated by article 55 of LPSA, but it makes the difference between registered organization and non-registered, ignoring ILO reports, which is criticized as against “freedom of Association”, “voluntary unionism” and so on (ILO Convention no.87) when the amendment of LPSA was passed in 1965. In this regard, Ministry of Home Affairs, then, issued a notification (Jichi-ko-hatsu 48, 21 Jun. 1966) that non-registered employee organization can negotiate with municipalities.

It is also lawful for a hybrid union such as EWA composed by both employees covered by LPSA and ones by Trade Union Law to negotiate with employers: “(a hybrid union) can exercise right to negotiate as an employee organization for its members covered by LPSA and as a trade union for its members covered by the Trade Union Law” (Tokyo High Court verdict 21 Oct. 2013, EWA v. Osaka Prefecture. This verdict was approved by the Supreme Court). In other words, EWA can negotiate with BoE by the right to negotiate regulated by LPSA. BoE’s attitude to benevolently negotiate with EWA denying this kind of right is come from its law illiterate. Their attitude of benevolence is found in its management to allocate a personnel chief into charge of negotiation with EWA, and found in its Opinion without shame “(we) have negotiated with EWA in good faith regardless of point of view of laws” (P5).

Furthermore, BoE stresses its warning to EWA voices at negotiations: “EWA adviser stated that they would go on strike unless the demands are accepted.” on 14 Nov. and “BoE also explained that they will cope with the strike forbidden by Local Public Service Act following the guideline of punishment for employee of BoE Amagasaki” on 27 Nov. But BoE does not express the background of EWA voices of strike though apart from freedom of expression in modern states. As BoE states “the recommendation of NPA is compensational measure for the limitation of fundamental labor rights” (p9, Opinion), they have to accept the excising the right to strike due to lack of reason for limitation of fundamental labor rights in case the recommendation of NPA is not carried out. It is not condemned for the union leader to be upset representing union members who are deprived of their compensational measure when BoE tells its practice of not following the recommendation of NPA since no wage scale applies to ALT. And petitioners made a file to demand measure for improvement of working conditions as compensational measure for the limitation of fundamental labor rights.

FIFTH Conclusion

As described above, BoE has not increased wage of ALT by reasons of hidden and mistaken facts and arbitrary misunderstandings of laws and law illiterate. These unlawful practices are against the principles of LPSA and opposes advice from national institutions such as MIC notifications and recommendation of NPA. It is very regrettable of BoE’s no compliance. It means “not see the wood nor the trees, but think about their own interests”, in other words egoism of regular employee.

The petitioners request the Equity Committee of Amagasaki to increase wage of ALT based on the recommendation of NPA as compensational measure for the limitation of fundamental labor rights. We believe in without doubt that this is the mission of the institution of compensational measure.