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Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)

**Interim report on allegations received from teachers' organizations
on non-observance of the ILO/UNESCO Recommendation
concerning the Status of Teachers, 1966**

Geneva, September 2011

UNESCO – PARIS

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Further consideration of the allegations received from the All Japan Teachers and Staff Union (ZENKYO), Japan Teachers Union (JTU) and Nakama Union

Background

1. Details of this allegation are set out in the report of the Joint Committee at its Eighth, Ninth and Tenth Sessions (2003, 2006 and 2009) and in its interim reports of 2005 and 2008. In 2008, the Government of Japan through the Ministry of Education, Sports, Culture, Science and Technology (MEXT) and ZENKYO invited the Joint Committee to send a fact-finding mission to receive information on the allegation from ZENKYO and the views of MEXT on the subjects of the allegation. The mission also heard the viewpoints of a wide range of education sector stakeholders, including JTU and other teachers' organizations, prefecture boards of education, national employers' and workers' organizations, representatives of parents' and teachers' associations and independent experts. The 2008 interim report contained a full summary of the Joint Committee's examination of the mission's findings.
2. The report of the Tenth Session discussed the result of the Joint Committee's 2008 fact-finding mission and interim report, including its recommendations concerning possible improvements in the Government's policies regarding the teacher appraisal system, merit assessment, salary determination and consultation and negotiation with teachers' organizations on these matters. The Government of Japan, ZENKYO, the Japan Teachers' Union (JTU or NIKKYOSO) and the Nakama Union submitted additional information and comments on these reports in the period 2008–09.

Further developments

3. Since the Tenth Session, the Joint Committee has considered additional communications from the Government dated 19 August 2010, by ZENKYO dated 16 April 2010 and 22 October 2010 and by JTU on 10 March 2010 and 12 July 2011. The ZENKYO submissions included lengthy statements by five of its affiliates, Aichi Prefecture High School Teachers' and Staff Union, Kobe Municipal High School Teachers' and Staff Union, Tokyo Teachers' and Staff Union, Hokkaido Senior High School Teachers' and Staff Union and the All Hokkaido Teachers' and Staff Union. An additional submission dated 5 April 2010 was made by the Kanagawa Prefecture Disabled Children's Schools Teachers and Staffs Union (SINSHOKYOSO).
4. The Government communication contained a statement from MEXT that expanded on its previous statements on teacher assessment, competence and disciplinary measures. The Government had previously stated that it continued to encourage local boards of education to follow the "Guidelines on the Personnel Management System for Teachers providing Inadequate Instruction" issued in February 2008 (which was presented to the fact-finding mission). It considered that prefecture and major municipal boards of education continued to properly manage consultations with teachers' organizations on the subject of teacher assessment. When teachers are designated as lacking the ability to perform adequately, local authorities provide training to improve their instruction skills. In the Government's view, this training is not a change in employment status, so standards of procedural fairness in the 1966 Recommendation (paragraph 50) do not apply. Furthermore, the procedures used for a designation do not contravene the spirit of the Recommendation.

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5. The Government emphasized that under the national legal system “merit assessment” is not subject to negotiation under the Local Public Service Act (article 55, clauses 1 and 3). If an assessment of a teacher results in changes to salaries, hours of work or other working conditions, the teacher has the right to file an administrative appeal.
 6. The Government considered the views of ILO and UNESCO on the issues under consideration in this case to be important (although it has not specifically endorsed the possibility of using technical advisory services of the ILO and UNESCO to this effect) and that the provisions of the 1966 Recommendation were fully understood by all parties. In respect of previous CEART recommendations, the Government had distributed copies of the 2008 and 2009 reports and made additional explanations to the January 2010 conference of the personnel directors of prefectural and municipal boards of education.
 7. The Government concluded that it is respecting the spirit of the 1966 Recommendation with priority attention to the welfare of children, and that in the spirit of its previous comments that some of the recommendations in the CEART’s reports were based on a misunderstanding of the public sector legal regime in Japan, efforts would continue appropriate to Japan’s situation and legal system.
 8. The ZENKYO communications reported that MEXT had distributed a Japanese translation of CEART documents, including the 2008 interim report and the report of the fact-finding mission to officials of local education boards. ZENKYO has also informed all local education boards about the content of the 2008 interim report with the goal of establishing social dialogue with them. It encourages local affiliates to consult and have dialogue. It is also launching regional campaigns to increase awareness of the 1966 Recommendation and working towards the use of ILO and UNESCO good offices to establish mechanisms for consultation and negotiation. Yet, it considers that a mutually agreed Japanese version of the 1966 Recommendation, as the CEART previously recommended, would enhance consultation and negotiation between education boards and teachers’ organizations. ZENKYO has called for the creation of a consultative forum involving all interested parties to achieve a better understanding of relevant provisions of the 1966 Recommendation and begin a process of “good faith consultation”.
 9. ZENKYO attached to its communication reviews of efforts of its affiliates in several prefectures to resolve workplace problems in collaboration with the local education boards, using principles of the 1966 Recommendation and recommendations of the CEART. These reviews illustrated some of the problems that ZENKYO believes arise when teachers’ unions and local education authorities differ on matters of principle and lack social dialogue mechanisms for addressing these issues. While progress was made in some locations, ZENKYO and some of its affiliated unions continue to believe that mutual efforts could be improved, as was cited in Tokyo in regard to the definition and application of principles of consultation and negotiation, and in Hokkaido concerning the alleged lack of meaningful consultation and negotiation on various teacher policies and practices, including continued use of performance based allowances. The communication from SINSHOKYOSO also raised the refusal to dialogue on the continued use of the personnel evaluation system in schools serving disabled children in Kanagawa prefecture, echoing matters raised during the 2008 fact-finding mission.
 10. The JTU reported that on 3 June 2011, the Government of Japan presented proposals to implement fundamental changes in employment relations in the public sector in the form of a bill on the labour relations of public employees and related bills on the union-management relations system that would allow public employees at national level to conclude collective agreements, establish a new national public employees office, examine the rights of national public employees in regard to dispute resolution mechanisms; and consider local public employee labour relations in terms of compliance with a new national system. The effect of these proposals, if adopted, on the status of teachers in Japan is still

not clear. In the course of deliberations on the legislative proposals, JTU nevertheless expects there to be some improvement in the current reduced scope of bargaining that places many items considered as operational/management issues outside of negotiation, as well as the possibility for improved social dialogue in the form of institutionalized consultation, not just formal hearings, as previously recommended by the CEART.

11. In the meantime, the JTU reported that it had participated with MEXT in an international summit on the teaching profession that had acknowledged the value of social dialogue in matters concerning recruitment and salary of teachers, as well as union participation in education reforms. With a change in government, the JTU had engaged in more dialogue with senior officials of MEXT. However, conditions for social dialogue by local associations and prefectural boards of education have not improved significantly. The JTU considers that legislative reform is essential in order to establish a stable system for union-management consultations or negotiation at any level, central or local.

Findings

12. Although the recent communications of the parties do not explicitly refer to all of the issues originally raised to this case, the Joint Committee considers it important to recall the recommendations contained in its 2008 interim report concerning teacher assessment, competence and disciplinary measures and merit assessment, in addition to consultation and negotiation. In this respect, the Joint Committee further recalls the attention it drew in its 2009 report to important provisions of the 1966 Recommendation concerning: adequate protection against arbitrary action affecting teachers' professional standing (paragraph 46); the need for procedural safeguards when disciplinary proceedings do take place (paragraphs 47–52); non-discrimination (paragraph 7); and women teachers with family responsibilities (paragraphs 54–58).
13. The Joint Committee expresses its appreciation for the efforts of the parties in this case, including local education authorities, ZENKYO and its local affiliates, MEXT officials and JTU representatives at national level to engage in social dialogue with each other on the substantive issues note above. Ideally, these procedures should occur on a regular basis, not only when a dispute or difference of opinion arises. Based on the evidence before it, though some progress has been noted at prefectural and municipal level, the Joint Committee concludes that examples of effective social dialogue still are sporadic and hampered by a lack of mutual understanding of the terms of the 1966 Recommendation.
14. Although the Government has assured the Joint Committee that the parties understand the meaning of the 1966 Recommendation in terms of Japanese language and culture, both parties use English terminology in ways that are confusing to readers in that language. In addition, the Government has cited specific articles of the Local Public Service Act to support its position that matters contained in the allegations are not “potential negotiation items,” or administration and management items which are “outside the scope of negotiations”. The Joint Committee notes that the Government’s submission was made prior to a change in the Government’s approach to national labour relations as indicated above.
15. The Joint Committee has not reviewed an English text of the Local Public Service Act, cited by the Government, and it is not the Joint Committee’s role to interpret national legislation on this question. However, the Joint Committee is responsible for monitoring application of the 1966 Recommendation which clearly distinguishes between “negotiation” and “consultation”. For example, paragraph 49 of the Recommendation states that “Teachers’ organizations should be consulted when the machinery to deal with disciplinary matters is established.” The conventional English meaning of the term “consultation” is that management meets with employee organizations and discusses

proposed actions openly and meaningfully before acting. If, after this process, the employer and employee representatives do not agree, management can act. Similarly, paragraph 75 of the Recommendation states that “authorities should establish and regularly use recognized means of consultation with teachers’ organizations on such matters as educational policy” By contrast, paragraph 82 refers to the need for salaries and working conditions to be negotiated between employers of teachers and their organizations, and paragraph 83 of the Recommendation recommends that “Statutory or voluntary machinery should be established whereby the right of teachers to negotiate through their organizations with their employers, either public or private, is assured.” Paragraph 84 outlines the steps to be taken should the parties in negotiation not reach agreement. Both the Government and ZENKYO use the terms “consultation and negotiation” in tandem, not as proposed in the Recommendation. In this context, the scope of negotiation is one of the main issues that needs to be resolved, so that matters such as the teacher evaluation system, and merit- or performance-related pay and allowances that directly or indirectly affect terms and conditions of employment are not automatically excluded from the subject of negotiation.

16. The Joint Committee has noted that ZENKYO and the JTU have reported that the Government of Japan is committed to reviewing the principles and institutions governing labour-management relations in the national public service. Both organizations expressed the view that efforts to achieve effective social dialogue in the education sector, both at the national and prefectural levels, will contribute to the success of this review. In its latest report the JTU informed the CEART that the outlines of new policies governing the national public service have been announced. Depending on the outcome of the Parliament’s deliberations and the impact on teachers at prefecture and municipal level, reforms along these lines hold promise for a more effective social dialogue climate in relation to the provisions of the 1966 Recommendation, and therefore resolution of the other issues initially raised in this case.

Recommendations

17. The Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO:
- (a) take note of the situation described above;
 - (b) communicate the above findings to the Government of Japan, to ZENKYO and to the JTU, urging the parties to build upon the dialogue already established by enhancing good faith discussions at the national and prefectural levels with the objective of resolving the issues identified in the previous reports of the Joint Committee in a mutually agreeable manner;
 - (c) request that the Government, ZENKYO and the JTU inform the Joint Committee of developments and progress with regard to these problems so that the Joint Committee can review this information in accordance with approved procedures;
 - (d) request that the Government, the JTU and ZENKYO inform the Joint Committee of progress in recently announced government policies to govern employment in the national public service and their possible impact on the subjects raised in the Joint Committee’s previous reports.