

2. Allegation received from the All Japan Teachers and Staff Union (ZENKYO)

Background

1. Under cover of a letter dated 28 June 2002, addressed to the secretariat of the Joint Committee, the All Japan Teachers and Staff Union (ZENKYO) submitted allegations on non-observance of the provisions of the Recommendation concerning the Status of Teachers, 1966 by the Government of Japan, in relation to the introduction of a system of evaluation of teachers and its mode of implementation and also the introduction and operation of what is said to be a new merit rating system.

2. On or about 24 September 2002, ZENKYO further supplied supplementary documentation in support of its allegations and provided detailed illustrations of a number of the matters asserted.

3. The Joint Committee requested the appropriate ministry of the Government of Japan to present its observations on the allegations and the supplementary material supplied by ZENKYO.

4. On 3 March 2003, the Ministry of Education, Culture, Sports, Science and Technology ("the Ministry") transmitted its written response to the Joint Committee.

5. In accordance with its procedures, the Joint Committee invited ZENKYO to provide its observations on the information supplied by the Government and any additional information concerning recent developments that it felt would be helpful to the Joint Committee. ZENKYO replied to that invitation on 21 April 2003 in writing, addressing elements of the Government's response. Further written observations of the Ministry and supporting documents in relation to the reply by ZENKYO were received on 26 June 2003.

Findings

6. The submissions of both ZENKYO and the Government ranged over a substantial number of topics and practical situations, but, distilled to the essence, they identify a limited number of core issues. The Ministry has recently initiated new systems to deal with teachers perceived to be incompetent (in the sense of having been repeatedly evaluated as being unable to conduct effective teaching and class management) and also reward teachers who have demonstrated excellence in their work through special promotions and by direct financial benefits.

7. A consideration of the material supplied by the parties indicates that they are in conflict as to a substantial volume of factual detail, which would only be capable of resolution by an appropriate fact-finding mission. However, the Joint Committee considers it premature to seek to mount such an exercise before a full discussion of the issues raised.

8. It will be convenient to discuss each of these two systems separately. However, there is one aspect that is common to both, which ought to be identified at the outset.

9. Clause 9 of the Recommendation states, as a guiding principle, that teachers' organizations should be recognized as a force that can contribute greatly to educational advance and which, therefore, should be associated with the determination of educational policy. So it is that clause 10(k) further states that "there should be close cooperation between the competent authorities [and, inter alia,] organizations of teachers, for the purpose of defining educational policy and its precise objectives". Those themes are further expanded in clauses 75, 49, 44 and 124. In essence of such clauses propound the following principles:

- (a) in order that teachers may discharge their responsibilities, authorities should establish and regularly use recognized means of consultation with teachers' organizations on such matters as educational policy, school organization, and new developments in the education service;
- (b) teachers' organizations should be consulted when the machinery to deal with disciplinary matters is established;
- (c) promotion should be based on an objective assessment of the teacher's qualifications for the new post, by reference to strictly professional criteria laid down in consultation with teachers' organizations; and
- (d) no merit rating system for purposes of salary determination should be introduced or applied without prior consultation with, and acceptance by, the teachers' organizations concerned.

10. ZENKYO asserts that not only have the new systems been developed without proper consultation between the Ministry and/or actual employing authorities (education boards at prefecture level) and it, but also that education authorities have *refused* to engage in dialogue with ZENKYO. ZENKYO stated that the Ministry rejected a written request to meet with the union on the issue of dealing with incompetent teachers and that almost every education board has refused to enter into negotiations on the grounds that the issues are “items concerning administrative and operational affairs”. Similarly, ZENKYO alleged that education boards have refused proper consultation with unions concerning the development of the teacher assessment system on the ground that it relates to “a management matter that requires no consultation”.

11. Leaving aside the detail of the two systems, to which the Joint Committee will return, it is to be noted that the responses of the Government do not refute the substance of the assertions in paragraph 10. As to the development of the system of dealing with incompetent teachers, the initial government response does not suggest that any relevant consultations or discussions were in fact held with teachers’ organizations. It relied on article 55.3 of the Local Public Service Law as a mandate for the proposition that the problem of incompetent teachers “qualifies as an item related to the management/operation of a local government body” and is thus not “subject to negotiation”. That stance re-emerges in the material delivered on 26 June 2003. In relation to the area of teacher assessment, the Ministry merely commented that there had been opinions collected from and discussions with teachers’ groups. The Joint Committee construes that reference as being to groups of teachers, rather than teachers’ organizations, as such.

12. In the above circumstances, the Joint Committee concludes that the allegation of failure to consult in manner contemplated by the Recommendation is correct. In this regard it makes the point that it is unhelpful to seek to categorize aspects as being matters of administration or management, as a basis for contending that this then automatically excludes them from the application of the Recommendation. The Recommendation distinguishes between “negotiation” and “consultation” between education authorities and teachers’ organizations. Some of the topics in dispute fall within the requirement to consult. The Joint Committee stresses that the Recommendation necessarily touches on a wide variety of topics that may well be matters of that nature, but which also have an important impact on the work environment and professional responsibilities of teachers and, ultimately, their status. The 1966 Recommendation does not remove the subject from management authority, but teachers’ organizations should be involved in establishing the processes and methods for addressing the results of evaluations. The Joint Committee entertains no doubt that the evolution and practical application of the systems here under consideration fall fairly and squarely within the ambit of operation of the relevant clauses of the Recommendation, to which reference has been made.

Teacher competence

13. In the documentation submitted by it, ZENKYO sought to submit a variety of practical case studies to illustrate detailed complaints that it made concerning the personnel management system to which it directs its criticism. The Government’s response sought to refute allegations made, saying that many of the points sought to be relied on are based on misunderstandings and facts not accurately conveyed. As previously indicated, the Joint Committee does not propose, at this time, to attempt to resolve detailed disputes over facts. Rather, it, initially, seeks to address important conceptual issues involved, as the resolution of them ought, in the future, also to resolve many individual cases in contention.

14. The primary complaints advanced by ZENKYO are:

- (a) a new system of dealing with teachers deemed incompetent was put into effect on 11 January 2002;
- (b) if, in the judgement of an education board, teachers are unable to carry out effective teaching and class management and have not improved after appropriate measures (including in-service training), they may be transferred to non-teaching positions or, in effect, forced to leave the teaching service if no suitable transfer position is available;
- (c) the criteria to be applied in arriving at a judgement are entrusted to education boards and vary significantly from prefecture to prefecture;
- (d) teachers are essentially in the hands of school principals, who can and do submit adverse reports to education boards without the teachers concerned seeing such reports and without any guarantee of an opportunity to make adequate representations in answer to them;

- (e) there are no adequate rights of appeal or redress against a designation as being a teacher of insufficient ability; and a teacher separated from a teaching post for remedial training has no guarantee of returning to his or her former teaching position on successful completion of that training. Moreover, the nature of training is in the hands of education boards and may, specifically, be for a position other than teaching;
- (f) the system is not transparent and impartial. Teacher representatives are not included on committees that consider the reports; not infrequently the composition of those bodies is not disclosed and there is no representation permitted before them of teachers under consideration.

In short, the ZENKYO allegation complains of what it says is a patent lack of due process.

15. The Joint Committee understands that the Ministry has espoused a system developed by the Tokyo Metropolitan Board of Education, as implemented in 2000, and promoted it to other prefectures. This system is based upon the premise that, when principals or other supervisory personnel observe teacher conduct which falls within a range of guideline examples of insufficient ability, they are to provide the teacher with guidance and advice for improvement. Records of that guidance and advice and results achieved are said to serve as a basis for any subsequent report of insufficient ability that may be sent to a relevant education board. It is said that, when principals or other supervisory personnel intend to make a report on a teacher deemed as having insufficient ability, that teacher is informed before the report is made and his or her opinions about being so reported upon are recorded and attached to the report. The report and any such opinions are then considered by an evaluation committee which makes a final determination.

The Ministry stresses that determinations are based on objective criteria, as to which it has given guidance to education boards.

16. The Joint Committee notes these features of the system, as described in the Government's response:

- (a) Teachers considered to be incompetent are assisted in two stages. A prefectural board determines when teachers lack the ability to perform effectively. Based on reports, such teachers receive additional guidance and training. Teachers who inappropriately guide their students and already have received guidance or training to improve teaching ability are redeployed to non-teaching positions, where these are available.
- (b) The response falls far short of indicating due process in relation to the consideration of adverse reports to a prefectural board. Whilst it indicates that, in a survey of such boards, "no one indicated that they do not intend ... hearing the opinions of a teacher undergoing review as a possible teacher with insufficient ability", there is no evidence of a general right of a teacher to be fully informed of the content of reports made, to appear and be heard, or any rights of appeal at any level, save that there is an appeal to the Personnel Committee against a dismissal, reassignment to a non-teaching post, or a requirement to take leave of absence. The view is expressed that measures to require specific training to improve teacher qualities and abilities are not detrimental to teacher interests and are excluded from any appeal to the Personnel Committee.
- (c) It is accepted that, where an adverse report is sent by a principal to a board with the views of a teacher attached, no further opportunity is given to the teacher to make representations. However, it does not appear that there is any requirement that the actual proposed report be placed before a teacher for expression of views. It seems to be assumed that the principal will have discussed the substance of any adverse comments made with the teacher during earlier guidance and advice sessions.
- (d) The Ministry concedes that the publication of the identities of committee members is a matter for discretion of individual boards, with the understanding that the release of names could result in pressure being applied to them or their families, thereby precluding unbiased judgements.

17. A series of clauses of the Recommendation apply to situations described above. These need to be considered in their totality. Their effect is as follows:

- (a) Clauses 45 and 46 make the points that stability of employment and security of tenure in the teaching profession are essential in the interests of both education and individual teachers; and that teachers should be adequately protected against arbitrary action affecting their professional standing or career;

- (b) Clause 64 stipulates that where any kind of direct assessment of a teacher's work is required, such assessment should be objective and its content made known to the teacher. It also specifically states that teachers should have a right to appeal against assessments that they deem to be unjustified;
- (c) Clause 50, taken together with clause 64, means that any assessments made in reports may lead to eventual action of a disciplinary nature, such as dismissal arising from perceived breaches of professional conduct. These also contemplate due process, involving full knowledge of the actual content of reports made, adequate rights of representation and to be heard, and an effective right of appeal.

18. The Joint Committee considers that the present system, as described by the Ministry, falls significantly short of meeting the standards of the Recommendation. The fact that, as is asserted by the Ministry, a relatively few teachers are involved in the processes described above does not serve to rebut such a conclusion. That system does not ensure that the specific content of any adverse report is made available to the teacher concerned; the teacher is therefore not guaranteed an effective opportunity of challenging and refuting what is said. There is no right to be heard before the Committee dealing with the matter and, except in a very limited respect, there is no right of appeal. In so far as prefectural boards decline to identify the membership of committees, the processes are by no means open and transparent.

19. Moreover, in the collective experience of the members of the Joint Committee, it seems inexplicable and contrary to normally accepted approaches to exclude practising teachers from bodies making such fundamental decisions, relating, as they do, to professional teaching issues and competencies. The exclusion of persons with such direct expertise tends to put in question the validity of the decision-making process. The Joint Committee does not find the reason for secrecy of committee membership compelling, particularly as this has not been the experience in other countries.

20. The Joint Committee therefore strongly recommends that the system of assessment of competency and the processes related to and consequent upon it be reconsidered, with a view to aligning them with the provisions of the Recommendation. It cannot accept the proposition that what is involved is simply a matter of local administration and management, falling outside the ambit of operation of the Recommendation.

Merit assessment

21. The Recommendation clearly accepts that an employing authority can develop and implement a fair and proper system of merit assessment of teachers; and that this may constitute a basis for salary preferment. However, as previously recited, clause 124 expressly states that no merit system for purposes of salary determination should be introduced or applied without prior consultation with, and acceptance by, the teachers' organizations concerned. Clause 64 of the Recommendation, also previously referred to, applies to this type of assessment as well. It envisages the establishment of objective criteria and specific rights of appeal.

22. The rationale for this principle is that, in the experience of the Joint Committee, many merit schemes implemented in the past have not operated fairly and successfully and have ultimately been abandoned. Success depends upon both a very careful definition of truly objective criteria and also the erection of a system of administration which is patently transparent and fair; including the provision of proper safeguards against abuse, such as effective rights of review by, or appeal to, an independent and suitably qualified body.

23. In its allegation ZENKYO advances these criticisms:

- (a) The system currently propounded was developed without adequate consultation with and acceptance by the teachers' organizations involved. Indeed, requests for consultation have been refused on the ground that the system is a management matter that requires no consultation. (This conflicts with the recent assertion of the Tokyo Board of Education that it, in particular, has taken "many opportunities to hear the opinions of teachers' organizations and exchange views with them.")
- (b) It involves an "absolute" (i.e. criterion referenced) assessment by deputy principals and principals, coupled with a "relative" (i.e. non-referenced) assessment by a superintendent, who may have the overview of as many as 15,000 teachers. There is, accordingly, a substantial subjective component involved by reason of the latter assessment.

- (c) The process commences with a mandatory “self-assessment” by the teacher, which the principal or deputy may require to be “redone”.
- (d) The competitive nature of the assessment is such that, in practice, it tends to be antithetic to the existence of collaborative collegiality among teachers and may well operate to pervert individual professionalism in order to secure a grading based on student results.
- (e) The proposed system is not truly transparent, because disclosure of assessment results is discretionary and has recently been suspended. A system of appeals against assessments has yet to be established.
- (f) The proposed system does not attract the confidence of teachers generally. It has, in practice, had a deleterious effect on morale and motivation. It has given rise to undesirable breakdown in trust between principals, as evaluators, and evaluated teachers.

24. The Ministry has sought to rebut those criticisms in a number of ways.

25. Fundamentally, it denies the applicability of clause 124 of the Recommendation to the assessment system – on the basis that the evaluation of the work-performance system espoused by it is not a “merit rating system for the purpose of salary determination”, as contemplated by that clause. Rather, its main purpose is to develop teachers’ skills. The Ministry states categorically that the personnel evaluations will not determine salaries and, consequently, the system is unrelated to working conditions.

26. As earlier recited, it contends that the evaluation system was developed by a widely based Committee whose “efforts included the collection of opinions from and discussions with teachers’ groups”.

27. The Ministry rejects the proposition that assessments made are not fair and objective. It is said that all supervisory personnel undergo evaluator training and evaluations are based on classroom observations.

28. In response to the criticism that evaluation results are not disclosed to teachers, the Ministry states that “in reality, accomplishments and points needing improvement are discussed in specific terms in private meetings with teachers. Specific advice is provided to teachers at these meetings, which are intended to encourage skill development. Therefore, the disclosure of results and opportunities for teachers to express their views are, in fact, guaranteed”. The Joint Committee notes that, in the final response of the Tokyo Metropolitan Board of Education, it is said that, under the scheme implemented by it, rights of disclosure are “guaranteed under the current institutional framework”. This is coupled with the statement that “Re: the criteria and process of the personnel evaluations system, teachers, teachers’ organizations, etc ,can file a request with the Personnel Committee for corrective action. If such a request is turned down, they can appeal to a court as a case of unlawful administrative disposition.”

29. Finally, the Joint Committee understands the stance of the Ministry to be that the implementation of the evaluation system is a matter of administration and management, to which the Recommendation has no application.

30. The Joint Committee finds puzzling the assertion of the Ministry that the new system is not a merit rating system, for the purpose of salary determination, in light of what is said to be the object of the relative assessment component, namely “for the purpose of appropriately linking the result to pay, promotion and other personnel matters”. Moreover, the most recent response of the Ministry clearly states that, in order to heighten the morale of teachers, it is desirable “that teachers who achieve good results should be evaluated appropriately, and the resulting evaluation should be aptly related to treatment including salaries”. The Ministry does not specifically comment on the unequivocal statement by ZENKYO that a new, discriminatory, performance-related pay level and personnel system, based on teacher evaluation, has already been introduced in Tokyo Metropolis and also the Kagawa Prefecture. Whatever may be the true factual situation, it must be concluded that, at the very least, the system certainly falls squarely within the aegis of clause 64. The Joint Committee rejects any suggestion that the Recommendation has no application to the situation, either because it is a pure managerial system, or otherwise. The expression of the Recommendation is unequivocal.

31. Based on the parties’ submissions, the Joint Committee concludes that the new system of teacher evaluation has been evolved in a manner inconsistent with the Recommendation, in that –

- (a) there has been no adequate process of consultation with teachers' organizations, as contemplated by the Recommendation;
- (b) it plainly involves the making of significant subjective evaluations;
- (c) teachers are not entitled to access to the precise evaluation made and its basis. (In this regard the discussions in private meetings referred to by the Ministry by no means guarantee the provision of specific information in the above regard. The teachers concerned remain in ignorance of the ultimate conclusions arrived at by evaluators and the basis for them. Further, the "guarantee" referred to by the Tokyo Metropolitan Board of Education appears more related to appeals against criteria rather than disclosure of the content of individual evaluations. The separate statement by the Board that "The Tokyo BOE believes that it is in principle necessary to disclose the evaluation results to the teacher in question. The timing and the range of such disclosure is now under study." clearly implies that there is no current disclosure process in place.); and
- (d) there is certainly a lack of openness and transparency in the process and a total absence of specific rights of review or appeal in relation to the evaluation itself, by way of contrast with the criteria and process aspects.

32. The Joint Committee considers it inappropriate to comment further as to matters of detail at this juncture because there are contentious factual issues as yet unresolved. The Joint Committee reiterates its opinion that, in any event, if by goodwill and proper dialogue, the key issues of non-compliance can be resolved, the other matters in contention are likely to abate and what appears to be a regrettable breakdown in relationships between ZENKYO and the relevant government agencies may well be resolved. As to this, the Ministry and the relevant teachers' organizations may find it beneficial to seek technical advice from the ILO and UNESCO to assist them in arriving at some mutually acceptable outcome.

Recommendations

33. The Joint Committee recommends that the Governing Body of the ILO and the Executive Board of UNESCO:

- (a) take note of the situation as described above;
- (b) communicate the above findings both to the Government of Japan and to ZENKYO, requesting the parties to enter into dialogue with a view to addressing the areas of non-compliance with the Recommendation in a constructive manner; and
- (c) request that the Government and ZENKYO keep the Joint Committee informed of developments with regard to these problems, and that such information be examined in due course, in accordance with approved procedures.

B. Further developments in allegations previously received

1. Allegation received from the Educational Workers' Union of Burundi (STEB)

Background

1. The allegations of non-observance by the Government of Burundi concerning the status of teachers in respect of salaries is fully described in the report of the Seventh Session of CEART (2000).¹

2. These were first submitted by STEB by facsimile letter dated 30 September 1997 to the Director-General of UNESCO, followed up by additional information by STEB submitted by letter dated 14 October 1998. The Government's reply, dated 7 April 1999, was forwarded to STEB on 28 May 1999, and STEB in turn submitted its further comments to the Joint Committee on 30 September 1999.

¹ CEART/7/2000/10, Annex 2, I.B.