Claim for Unpaid Overtime by a Public School Teacher

The *Saitama Prefecture* Case
Saitama District Court (Oct. 1, 2021) 1255 *Rodo Hanrei* 5

HAMAGUCHI Keiichiro

I. Facts

X has been a public elementary school teacher employed by Y (Saitama Prefecture) since 1981. Under the provisions of a special measures law governing public school teachers' salaries (the Act on Special Measures concerning Salaries and Other Conditions for Education Personnel of Public Compulsory Education Schools, etc., referred to here as the "Education Personnel Salaries Act," EPSA, enacted in 1971) addressed further below, public school teachers are exempted from the application of provisions on premium wages for overtime work and work on days off set out in Article 37[1] of the Labor Standards Act (LSA), and instead receive a salary top-up equal to 4% of their monthly salary (*kyōshoku-chōseigaku*, literally "teachers' adjustment payment"). At the same time, the EPSA prescribes that overtime should be limited for work that falls under one of the following four categories: (1) practical courses for junior high and high school students, (2) school events, (3) staff meetings, and (4) disasters or emergencies in which it is necessary to take urgent measures to direct students (elementary, junior high and high school students, hereinafter "students"). X filed a suit in December 2018, seeking the payment of the premium wages (or compensation under the State Redress Act) for his overtime work between September 2017 and July 2018, on the grounds that said work did not fall under the above-mentioned four categories and the provisions of Article 37 (LSA) should therefore be applied according to the general rule.

II. Judgment

In its judgment on October 1, 2021, the Saitama District Court dismissed X's claims. Namely, it firstly recognized Y's claims, which were based on the premise that "unlike typical workers who work under the overall directions and orders of their employer, teachers' work is unique in the sense that they are expected to voluntarily and proactively engage in duties at their own discretion as suited to the education of students. The ways in which they engage in said work are also similarly unique due to the summer holidays and other such long school holidays during which they rarely engage in their primary task of teaching classes. Given these specific characteristics of teachers' work, it is unsuitable to closely manage actual working hours as applied in the case for typical workers," and that "as such work clearly differs in character to work conducted under the directions and orders of a supervisor, teachers who engage in such work outside of official working hours cannot immediately be determined to have engaged in work under the directions and orders of a supervisor." The District Court also recognized the claim that "due to the fact that the work of teachers is typically an inextricable combination of work that the teacher conducts proactively at their own discretion and the work that they engage in under the directions and orders of the

school principal, rendering it difficult to accurately distinguish between these two types, the current system does not in practice allow the principal, as the manager, to closely manage working hours to identify exclusively what amount of time was spent on work under directions and orders and pay salaries accordingly."

The judgment went on to address the purport of the provisions set out in the EPSA, noting that "having excluded public school teachers from the application of Article 37 (LSA) on the basis that the unique nature of teachers' work precludes it from the quantitative management of working hours applied to typical workers, the Act prescribes the payment of a salary top-up as a result of comprehensive evaluation of work performed out of hours, and limits the occasion in which teachers can be ordered to work overtime to four categories as a means of preventing the exemption from Article 37 (LSA) from resulting in longer working hours for teachers." On those grounds, the judgment concludes that teachers are "exempt from the application of Article 37 (LSA) with regard to not only the four overtime categories but also all forms of teachers' duties conducted outside of working hours." The District Court thereby rejected X's claim, stating that as the 4% salary top-up is "paid as a result of comprehensive evaluation of work conducted by teachers outside of working hours, and paid in lieu of an overtime work allowance for not only the work listed in the four overtime categories but also work outside of working hours to perform any other type of duty; therefore, it cannot be interpreted that the EPSA accounts for the possibility of duties other than those specified in the four overtime categories being compensated with the overtime premium wages prescribed in Article 37 of the LSA in addition to the salary top-up."

X's claim that having a teacher work overtime beyond the regulations set out in Article 32 of the LSA was in violation of the State Redress Act was also dismissed on the grounds that the overtime work did not directly pose a risk of damage to the teacher's health or welfare.

In concluding, the judgment also included an *obiter dictum* as follows: "The actual day-to-day conditions of teaching in Japan at present are such that many teachers have little choice but to conduct a certain amount of overtime work under the order to perform the duties or other such directions by the school principal. It must therefore be concluded that the EPSA, with its prescription of a salary top-up set at 4% of the monthly salary, no longer adequately reflects the actual conditions of teaching. It is a meaningful development that this issue has been highlighted for the public by the plaintiff's suit. In order to further enrich the education provided to students, who are Japan's future, it is the court's sincere hope that efforts will be made toward improving the actual working environments for teachers by promptly taking steps such as listening earnestly to the opinions of teachers, reducing the duties of teachers through work-style reforms, and seeking to develop a system for managing working hours and to review EPSA and other such salary structures in order to ensure that salaries are appropriately suited to the actual conditions of the work." It should, however, be noted that these observations have no impact on the content of the judgment.

III. Commentary

While this case has also attracted public attention, it must be said that the judgment itself is extremely poor. Firstly, the part in which Y's claims regarding the unique character of teachers' work are directly accepted does not stand up to logical analysis. It is certainly true that teachers' work is unique in comparison with the work of typical workers, in the sense that teachers may receive relatively little directions and orders and be allowed scope for independent decisions. Given such unique aspects, it can be suggested that the approach of establishing a special exemption for regulating teachers' working hours is to some extent rational. However, the unique characteristics of teachers' work that are referred to are the unique aspects of teachers as an occupation, which are entirely consistent across all types of schools, whether they be national, public, or private schools. At present, it is only public

school teachers who are exempt from the application of Article 37 of the LSA and to whom the EPSA is applied. In the case of both national school teachers and private school teachers, the provisions of the LSA are applied in full. Is this to suggest that such teachers' work does not involve the scope for independence and individual discretion that public school teachers are allowed?

Yet more incongruous is the fact that although at the time of its enactment in 1971 the EPSA was applied to both national schools and public schools, once national schools changed status in 2004 to become incorporated administrative agencies (the staff of which are not government employees), national school teachers were excluded from the exemption set out in the EPSA and came under application of the provisions of the LSA in full. Does this mean that 2004 saw national school teachers lose the independence and individual discretion that they had previously held? That is what is claimed by the Japanese Ministry of Education, Culture, Sports, Science and Technology (MEXT), but it is an implausible argument following a logic that quickly contradicts itself.

This judgment incidentally also traces in detail the developments leading up to the enactment of the EPSA, starting with a recommendation issued by the National Personnel Authority, but fails to touch on the key issue of why said act needed to be enacted in the first place. Prior to the EPSA, it was determined that teachers should not be ordered to work overtime in line with an administrative notification issued by the Ministry of Education, Science and Culture (currently MEXT), but as the reality was that teachers were often working overtime, a significant number of suits were filed by a teachers' labor union called the Japan Teachers' Union, leading to a succession of judgments recognizing payments of overtime allowances, which were ultimately confirmed by the Supreme Court in 1972. The EPSA was legislated in response to such developments and reflects such a background in the fact that it includes both exemption from the application of Article 37 (LSA) and a provision limiting overtime work to four categories as a general rule. This judgment does not give any consideration to the developments leading up to such legislation. The theoretical portion of this judgment can only be described as extremely low standard because it aimlessly accepts Y's claims, which are full of the kinds of contradictions noted above.

On the other hand, X's claims are also difficult to recognize when careful consideration is given to the application of the existing laws to this case (without addressing the laws' purports and objectives). X's claim is that the two provisions of the EPSA—namely, the payment of a 4% salary top-up in lieu of the application of Article 37 (LSA) and the limitation of overtime work to the four overtime categories—are closely interconnected (not only in their purport and objectives but also the scenarios to which they are applied), and therefore cases of overtime work other than that specified in the four overtime categories revert to the original provision —namely, Article 37 of the LSA applies—and yet, the nature of the provisions of the EPSA does not necessarily allow for such an interpretation.

Firstly, Article 6 of the EPSA merely orders employers to limit overtime work to "cases determined in municipal ordinances in accordance with the criteria set out in the Cabinet Order," such that any other overtime work simply constitutes a violation of said article by the employer, and the fact remains that it is overtime which is exempt from the application of Article 37 (LSA) in accordance with Article 5 (EPSA). X claims that the overtime work of a public school teacher can be divided into overtime work as categorized under Article 6 (EPSA) and all other overtime work, and that the latter does not fall under the application of the provision of Article 5 (EPSA) exempting the application of Article 37 of the LSA, but such an interpretation is not possible according to the provisions of the law.

Considering the aforementioned developments that prompted the enactment of the EPSA, it appears that the four overtime categories were introduced as an declaratory provision that sought to partially maintain the MEXT's façade (an official stance

divorced from reality) that teachers did not work overtime as a general rule, and it is not a provision that envisages cases of overtime to which LSA Article 37 is applied other than the overtime in the four overtime categories. The very EPSA itself merely states that overtime is restricted to "cases determined in municipal ordinances in accordance with the criteria set out in the Cabinet Order," such that the first appearance of the four categories is in a Cabinet Order, allowing limitless possibilities for expanding those categories depending on the way in which the Cabinet Order is determined, and, while there are outstanding theoretical issues, it is also impossible to suggest that these expansions are invalid when determined by municipal ordinances that go beyond the criteria of the Cabinet Order.

While the explanations by Y and MEXT regarding the purport of the EPSA are fundamentally flawed as discussed above, according to a literal interpretation of the provisions of the EPSA as a form of *ius positivum* (positive law— statutory man-made law), the only possible interpretation is that for public school teachers—and public school teachers *only*—overtime work is entirely exempted from the application of Article 37 of the LSA. Therefore, in this judgment, the conclusion—namely, that X's suit has no grounds and should be dismissed—alone is acceptable. All points regarding the reasons for reaching said conclusion can be refuted.

This conclusion is what could be described as *dura lex sed lex*—"the law is hard, but it is the law." The judgment would have been logically coherent if it had consisted of that conclusion with an *obiter dictum* such as the one provided in this case as final remarks. It is unfortunate that this judgment recognizes all of Y's explanations and even concludes with observations that contradict them, thereby adding a further layer of contradiction.

1. If an employer extends the working hours or has a worker work on a day off pursuant to the provisions of Article 33 or paragraph (1) of the preceding Article, it must pay premium wages for work during those hours or on those days at a rate of at least the rate prescribed by Cabinet Order within the range of not less than 25 percent and not more than 50 percent over the normal wage per working hour or working day; provided, however, that if the number of hours by which employer has extended the working hours it has an employee work exceeds 60 hours in one month, the employer must pay premium wages for work during hours in excess of those 60 hours at a rate not less than 50 percent over the normal wage per working hour. (LSA Art. 37 Para.1)

The *Saitama Prefecture* case, *Rodo Hanrei* (*Rohan*, Sanro Research Institute) 1255, pp. 5–38.

HAMAGUCHI Keiichiro
Research Director General, The Japan Institute for Labour Policy and Training. Research interest: Labor policy.
https://www.jil.go.jp/english/profile/hamaguchi.html