

SB 165

WRITTEN COMMENTS

Date: 02/27/2009

Committee: Senate Ways and Means

Department: Education

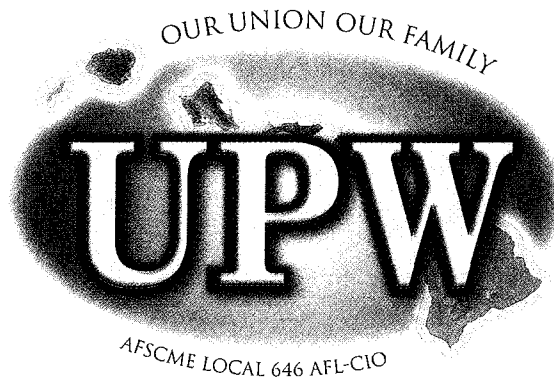
Person Testifying: Patricia Hamamoto, Superintendent of Education

Title of Bill: SB 0165, SD1 (SSCR92) RELATING TO PUBLIC SCHOOL CAFETERIA WORKERS.

Purpose of Bill: Clarifies that public school cafeteria workers employed after July 1, 2009, will be compensated for a school-year period and compensation will be prorated over a calendar-year period; cafeteria workers employed prior to July 1, 2009, will continue to receive compensation over a calendar-year period. (SD1)

Department's Position: The Department supports this bill however prefers the original language in SB 165. SB 165, as introduced, provides that cafeteria workers hired on or after July 1, 2009 are 10-month employees, with their salary pro-rated over 12 months. This arrangement presently applies to teachers and school food service (cafeteria) managers. Existing cafeteria workers will remain 12-month employees.

The gradual conversion of cafeteria workers from 12-month positions to 10-month positions will slow the rate of increase of our food service costs without affecting current employees. We expect the 10-month positions will reduce the need for substitutes; 12-month cafeteria workers may take their vacation at any time, necessitating the hiring of substitutes if the cafeteria is operating. Ten-month cafeteria workers, like teachers, will not take vacation while school is in session.



The Senate
The Twenty-Fifth Legislature
Regular Session of 2009

Committee on Ways and Means
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

DATE: Friday, February 27, 2009
TIME: 9:00 a.m.
PLACE: Conference Room 211
State Capitol
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO ON S.B. 165, S.D. 1
RELATING TO PUBLIC SCHOOL CAFETERIA WORKERS**

My name is Dayton M. Nakanelua, and I am the state director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW represents approximately 8,500 blue collar non-supervisory employees in bargaining unit 1 and 2,900 institutional, health and correctional workers in bargaining unit 10. The Department of Education employs more than 2,300 employees in bargaining unit 1. The UPW opposes Senate Bill No. 165, S.D. 1 which creates a two tier wage and compensation system for cafeteria workers on and after July 1, 2009. Under this measure those employed prior to July 1, 2009 will purportedly be hired on a "calendar year" basis and those employed after July 1, 2009 will be hired on a "school year" basis. In addition, those in the second category will have their wages and compensation reduced and spread over a calendar year.

We oppose this measure because wages, hours, and other terms and conditions of employment of cafeteria workers are mandatory subjects of collective bargaining, and creating a two wage structure is inequitable and unjustified.

As you know, since 1968 public employees in Hawaii have been afforded the constitutional right to engage in collective bargaining under Article XIII, Section 2 of the State constitution. Under chapter 89 employees were granted the statutory right to negotiate over wages, hours of work, and other terms and conditions of employment. See Section 89-3, HRS. As indicated in Section 61 of the current unit 1 agreement the work schedules, hours of work and compensation of DOE employees (including cafeteria workers) have been recognized as mandatory subjects of bargaining. See attachment 1. This measure interferes with the process of collective bargaining, and changes the substantive terms by which bargaining unit 1 employees in the Department of Education (DOE) are scheduled and paid. As our Supreme Court has held when the legislature seeks to impose by statute what wages to pay in a certain timeframe it violates the constitutional right to engage in collective bargaining. See United Public Workers, AFSCME, Local 646, AFL-CIO v. Yogi, 101 Hawai'i 46, 62 P.3d 189 (2002) (A statute which freezes wages for two years is unconstitutional because it affects a "core" subject of collective bargaining).

We fundamentally disagree with the proponents of this measure regarding a two tier wage structure. As indicated in Roberts' Dictionary of Industrial Relations (3rd ed. 1986) at 727, such a plan is not generally favored because it is inequitable:

Two-tier wage structure. A plan allowing reduced pay and benefits for new hires while maintaining or improving the wages, benefits, and job security of current employees. Unions have been reluctant to agree

to two-tier wage structures, under which pay for newly-hired employees may be as much as 50 percent lower than the regular pay rate. Such plans, however, are sought by employers, who cite financial problems or the need to improve competition with nonunion companies. According to a 1983 Bureau of National Affairs Survey, about 5 percent of the surveyed contracts contained some form of two-tier wage structure.

Source References: "Analysis of 1983's Most Significant Events," Retail/Services Labor Report, January 9, 1984; "Analysis of What's Ahead in 1984," Retail/Services Labor Report, January 16, 1984. (Emphasis added).

Paying employees on a "school year" basis and reducing their pay to a "calendar year" period violates the principle of "equal pay for equal work" which is a vital component of the merit principle recognized in Section 76-1 (5), HRS. That is why when DOE converted teachers from 10 month to 12 month employees for multi-track schools it adjusted their salaries by 20%, and adjusted their fringe benefits including sick leave and vacation benefits. See attachment 2 at p. 79, ¶ V.A.1.

There is also no justification for the proposed changes because DOE is already afforded too much flexibility in the hiring and retaining of cafeteria workers under "executive orders, executive directives, or rule." Numerous cafeteria workers throughout the state are hired on a limited term contract with no civil service protection. These employees are not "regular" employees, and occupy such positions as "substitutes" in cafeteria helper jobs and are paid at the lowest wage levels. These employees are not even assured "full-time" or "part-time employment" as contemplated under the current statutory language of Section 302A-637 (second paragraph). Those who are hired as "regular" employees under the merit system are needed throughout the calendar year because they are essential for cleaning and maintaining our school

cafeterias and facilities when schools are not in session. For all of the foregoing reasons we urge you not to pass Senate Bill No. 165, S.D. 1 (or any version thereof).

OUR UNION OUR FAMILY

UPW

AFSCME LOCAL 646 AFL-CIO

UNITED PUBLIC WORKERS

UNIT 1 AGREEMENT

JULY 1, 2007 - JUNE 30, 2009

SECTION 61. DEPARTMENT OF EDUCATION.

Section 61 shall apply to Employees of the Department of Education, State of Hawaii.

61.01 **WORK SCHEDULES.**

61.01 a. Non-Shift and Shift Work. (In lieu of Section 25.03 a. and 25.03 b.) The work schedules of non-shift Employees who work other than Monday through Friday and Employees who work in operating units subject to shift work including units operating less than twenty-four (24) hours per day shall be prepared and administered as follows:

61.01 a.1. **LENGTH.**
Each work schedule shall be prepared for one (1) semester.

61.01 a.2.

MANPOWER.

The Employer shall set forth its required manpower coverage for the required shifts per workday over a five (5) day work week from Monday through Friday referred to as a work schedule in Section 61.01 a.

61.01 a.3.

NUMBER OF EMPLOYEES.

61.01 a.3.a)

The work schedule shall specify the number of Employees in each work classification needed for the required shifts for each day of each work assignment of each work week on Exhibit 61.01 a.

61.01 a.4.

PRESENTED TO EMPLOYEES.

The work schedule shall be presented to Employees commencing in Baseyard/Workplace or Institutional Workplace seniority order for each classification nine (9) weeks prior to the beginning of the work schedule.

61.01 a.5.

WORKDAYS, DAYS OFF AND SHIFTS.

Employees shall have three (3) weeks to exercise their choices of shifts and work assignments, however, in choosing shifts and work assignments each Employee is required to select the same shifts and work assignments for each work week of each semester, subject to the manpower coverage, contractual restrictions, and limitations in order of Baseyard/Workplace or Institutional Workplace seniority for each classification. Provided that shift and work assignments may be reasonably changed between postings to accommodate senior Employees desiring shift and work assignment changes.

61.01 a.6.

FULL-TIME AND PART-TIME.

61.01 a.6.a)

In making their choices, full-time Employees shall select a schedule that requires the Employee to work forty (40) hours per work week.

61.01 a.6.b)

In making their choices part-time Employees shall select a schedule that requires the Employee to work the number of hours on the workdays of each work week the Employer establishes for part-time Employees.

61.01 a.7.

CONTACT BY THE SUPERVISOR.

When an Employee is not available to exercise the choices because of an authorized absence, the supervisor shall make a reasonable effort to contact the Employee and give the Employee a reasonable amount of time to exercise the choices. Contact by the supervisor shall not qualify the Employee for overtime.

61.01 a.8.

EXERCISE CHOICES.

61.01 a.8.a)

Each Employee shall exercise the choices on the first workday that the Employee is assigned by the Employer to exercise the choices.

UNIT 1 AGREEMENT – July 1, 2007 to June 30, 2009

61.01 a.8.b) When an Employee does not exercise the choices, the Employee shall be assigned to any unselected shifts and work assignments on the posted work schedule without regard to seniority.

61.01 a.9. **REVIEW CHOICES.**

The Employer shall have two (2) calendar weeks to review the choices made by the Employees to ascertain whether any of the choices would violate this Agreement. In the event it is necessary to modify choices to avoid violations of this Agreement, the Employer shall contact Employees to have them modify their choices.

61.01a.10. **POSTING.**

The Employer shall post the final work schedule at least four (4) weeks in advance.

61.01a.11. **EXEMPTIONS.**

61.01 a.11.a) The Employer shall not pay overtime as a result of the application of Section 61.01, which allows for the selection of shifts and work assignments by seniority.

61.01 a.11.b) Section 35.03 shall not be applicable to Employees subject to Section 61.01.

61.01 a.12. **EXCHANGE.**

Employees may exchange shifts and work assignments during the same work week with the Employer's approval. Employee initiated exchanges shall be requested on a form and shall not qualify the Employees involved in the exchange for overtime.

61.01 b. The work hours made available by the addition of temporary Breakfast Program positions shall be considered when determining whether or not a shift operation exists in a school cafeteria.

61.02 **ADJUSTMENT OF HALF-TIME EMPLOYEE SCHEDULES.**

61.02 a. A half-time school Employee through Exhibit 61.02 Adjustment of Half-Time Employee Schedule with the principal shall be permitted to have the work schedule adjusted from four (4) to eight (8) hours per day on certain days within the pay period when school is not in session, provided that the minimum number of hours worked during the pay period would be equal to the number of hours the Employee would have worked as a half-time Employee.

61.02 b. In lieu of Section 26.02 j., k., l. and m., the adjustment shall be shown on the posted work schedule following the signing of Exhibit 61.02 Adjustment of Half-Time Employee Schedule.

61.02 c. The adjustment shall indicate the days on which eight (8) hours are worked and the days on which less than eight (8) hours are worked provided that the minimum number of hours worked each pay period would be equal to the number of hours the Employee would have worked in the pay period as a half-time Employee if Exhibit 61.02 Adjustment of Half-Time Employee Schedule had not been signed.

61.02 d. The adjustment provided in Section 61.02 shall not entitle the Employee to accumulate benefits in excess of those that would have accumulated as a half-time Employee.

61.02 e. Adjustment to the work schedule in Section 61.02 b may be changed with mutual consent by initialing Exhibit 61.02 Adjustment of Half-Time Employee Schedule.

61.02 f. The Department of Education shall maintain a central file at each school of Exhibit 61.02 Adjustment of Half-time Employee Schedule, and copies shall be provided to the Union upon request.

61.03 **BASEYARD/WORKPLACE DETERMINATION.**
The Cafeteria unit and the Custodial unit in a school shall be considered separate Baseyards/workplaces for determining seniority as provided in Section 16.02 d. (e.g., an Employee who transfers or is promoted from a position in the Custodial unit to a position in the Cafeteria unit in the same school shall not have the Baseyard/Workplace seniority transferred with the Employee as provided in Section 16.01 b.).

61.04 **VACATION LEAVE.**

61.04 a. Employees of the Department of Education are encouraged to request the scheduling of vacation leave when classes are not in session.

61.04 b. School administrators shall have the authority to approve vacation leave requested by an Employee in the school year and to employ a substitute for the Employee as necessary to ensure the continuation of adequate services to the school.

61.05 **CLASSROOM CLEANING.**

61.05 a. The Department of Education shall offer to extend hours of part-time School Custodians and part-time Cafeteria Helpers to work additional hours of classroom cleaning in the school year when classes are in session.

61.05 b. The following shall apply in extending the hours of Employees:

61.05 b.1. The Department of Education shall determine the number of hours to be allocated to each school for classroom cleaning.

UNIT 1 AGREEMENT – July 1, 2007 to June 30, 2009

61.05 b.2. The Department of Education shall use the following order of priority when offering additional hours for classroom cleaning work:

61.05 b.2.a) Part-time School Custodians.

61.05 b.2.b) Part-time Cafeteria Helpers.

61.05 b.3. A part-time School Custodian or Cafeteria Helper shall be offered additional hours for classroom cleaning work not to exceed a total of eight (8) hours of work per day at their basic rate of pay.

61.05 b.4. A part-time School Custodian or Cafeteria Helper who agrees to work additional hours of classroom cleaning shall work the additional hours of classroom cleaning for the school semester indicated on Exhibit 61.05 Classroom Cleaning.

61.05 b.5. If additional classroom cleaning hours are available, after compliance with Section 61.05 b.2.a) and b), the Department of Education may employ others as classroom cleaners exempt from the civil service on a less than half-time basis.

61.05 b.6. As provided in Section 26.11 the Department of Education may adjust the work schedules of part-time School Custodians and part-time Cafeteria Helpers to enable them to work the additional hours of classroom cleaning.

61.06 **RESIDENT CUSTODIAN COTTAGES.**

61.06 a. Existing resident custodian cottages in the Department of Education shall continue to be utilized until one of the following occurs:

61.06 a.1. The custodian cottage is in the way of new construction, or

61.06 a.2. The cost of repair to keep the custodian cottages in a livable state (good repair) to meet sanitary standards and to meet building code requirements shall not exceed the amount of two-years' rental fees.

61.06 b. A Custodial Housing Rental Agreement as provided by the Department and in which is established the rights and obligations of the Department and Tenant shall be executed by the Department and the resident custodian.

61.07 **TEMPORARY ASSIGNMENT TO SCHOOL FOOD SERVICES
MANAGER POSITIONS.**

When a Unit 1 Employee is considered for temporary assignment to School Food Services Manager (SFSM) positions with the Department, Section 16.04 of the agreement shall be modified as follows:

UNIT 1 AGREEMENT – July 1, 2007 to June 30, 2009

61.07 a. **DEFINITIONS.**

61.07 a.1. The definition of “qualified” shall include the certification by the Department of successful completion of a Department sponsored or approved training program.

61.07 a.2. Employees who have successfully completed the training program shall be deemed to be “certified”.

61.07 a.3. Employees who are not certified shall be referred to as “non-certified”.

61.07 b. Only certified Unit 1 Employees at the respective school shall be considered for temporary assignment to the SFSM position. In the event that there are no certified Employees at the respective school, the following is the order of the temporary assignment:

61.07 b.1. A certified Employee from another school in the respective district shall be offered the temporary assignment on the basis of district seniority.

61.07 b.2. A certified Employee in another district based on department seniority.

61.07 b.3. A qualified substitute (e.g., former SFSM).

61.07 b.4. A non-certified Employee.

61.07 c. The Department shall:

61.07 c.1. Conduct training as provided in Section 47. to enable interested Employees to be certified;

61.07 c.2. Conduct training at least annually when classes are not in session;

61.07 c.3. Provide appropriate time off from work to Employees indicating an interest in the training program;

61.07 c.4. Certify Employees who successfully complete the training program to be qualified for temporary assignments to SFSM positions when a SFSM is not available for temporary assignment;

61.07 c.5. Certify Employees who successfully complete approved community college, or equivalent, programs at the Employee’s own volition and expense.

61.08 **A+ PROGRAM CUSTODIAL AND CAFETERIA SUPPORT OPERATIONS.**

61.08 a. After School A+ Program will be implemented starting on the first (1st) full day for students and ending on the last full day for students.

UNIT 1 AGREEMENT – July 1, 2007 to June 30, 2009

61.08 b. The Department shall endeavor to minimize the impact of changes to the work assignments and working hours of its Employees necessitated by the A+ Program activities.

61.08 c. The Department of Education shall provide the following guidelines to its school administrators:

61.08 c.1. **CUSTODIAN OPERATIONS.**

61.08 c.1.a) School principals may, without creating an adverse impact on the workload, change or rearrange work assignments within an incumbent school custodian's workday provided that no change is made to the current workday beginning and ending times. This will permit the school, as feasible, to delay the cleaning of facilities used by the A+ Program until later in the workday when the facility is no longer in use.

61.08 c.1.b) If the cafeteria needs to be cleaned after usage by the A+ Program by school custodian(s) who cleaned the cafeteria after usage by the regular school program, additional hours of work may be assigned as provided in Section 61.08 c.1.e).

61.08 c.1.c) The school principal may change the work schedule of a vacant position to accommodate a later or early morning beginning time which would better fit a time when facilities will be available for cleaning.

61.08 c.1.d) The school principal may change the beginning and ending times of an Employee to permit facilities to be cleaned after A+ Program usage provided the Employee agrees to the change.

61.08 c.1.d)1) The change in work hours can be implemented immediately in lieu of Section 25.01 provided that:

61.08 c.1.d)1)(a) The change shall be documented and signed by the principal and the Employee.

61.08 c.1.d)1)(b) The Department of Education shall maintain a central file at each school of waivers and copies shall be provided to the Union upon request.

61.08 c.1.d)1)(c) Section 61.08 c.1.d)1) is applicable only to the initial change of work hours.

61.08 c.1.e) The school principal is authorized to offer additional hours of work to school custodians and cafeteria helpers or to hire classroom cleaners to the extent that funds have been allocated to the school for this purpose.

61.08 c.1.e)1) The additional hours of work shall not exceed a total of eight (8) hours of work per day and shall be offered in the following order of priorities:

61.08 c.1.e)1)(a) Part-time school custodians in the same school by seniority.

61.08 c.1.e)1)(b) Part-time cafeteria helpers in the same school by seniority.

61.08 c.1.e)1)(c) Part-time cafeteria helpers from the central kitchen serving the school by seniority.

61.08 c.1.e)1)(d) Part-time school custodians and cafeteria helpers from other schools based on the earliest date and time of application.

61.08 c.1.e)1)(e) Full-time custodians in the same school on overtime.

61.08 c.1.e)1)(f) Classroom cleaners hired from outside the Department. (Less than four (4) hours of work per day.)

61.08 c.2. **CAFETERIA OPERATIONS.**

61.08 c.2.a) Additional staffing will be provided to the schools to support the A+ Program in accordance with the existing staffing formula.

61.08 c.2.b) The additional staffing will be used by the schools to support the preparation of snacks for the A+ Program.

61.08 c.2.c) In the event that the A+ Program needs cannot be met due to unusual or unanticipated circumstances, overtime requests may be submitted to the district office in accordance with established procedures.

61.08 c.2.d) The district may approve requests at its discretion.

61.09 **MEAL PERIOD DELAYED - CAFETERIA EMPLOYEES.**

61.09 a. A cafeteria Employee who requests that the meal period as provided in Section 18.02 a. be delayed shall complete Exhibit 61.09 Meal Period Delayed - Cafeteria Employees which shall document Employee requests to delay or withdrawals of the request.

61.09 b. An Exhibit 61.09 Meal Period Delayed - Cafeteria Employees which is completed shall be effective with the beginning of the new work schedule, provided the request to delay or withdrawal is submitted when the new work schedule is proposed.

61.09 c. The Department of Education shall maintain a central file at each school of Exhibit 61.09 Meal Period Delayed - Cafeteria Employees and copies shall be provided to the Union upon request.

UNIT 1 AGREEMENT – July 1, 2007 to June 30, 2009

EXHIBIT 61.01 a.

WORK SCHEDULE

Classification: _____
 FTE: _____

School: _____
 Workplace: _____
 FIRST Semester Work Schedule: _____
 SECOND Semester Work Schedule: _____

Start and End Date of Schedule: _____
 Date Presented to Employees: _____
 Date Employee Selection Ends: _____
 Review Choices Completed: _____
 Date Final Schedule is Posted: _____
 Verified by: _____

<u>Shift No.</u>	<u>Hours of Work</u>	<u>Number of Employees Required Per Day/Shift</u>						
		SU	M	T	W	TH	F	SA
TOTAL REQUIRED MANPOWER COVERAGE								

NAME	Shift No.	Work Assign. No.	HOURS OF WORK	SIGNATURE OF EMPLOYEE

EXHIBIT 61.02

ADJUSTMENT OF HALF-TIME EMPLOYEE SCHEDULE

1. As provided in Section 61.02 of the Unit 1 Agreement, I agree to have my work schedule adjusted from four (4) to eight (8) hours per day on days within the pay period when schools are not in session, provided that the minimum number of hours worked during the pay period shall be equal to the number of hours I would have worked as a half-time Employee.
2. In lieu of Section 26.02 j., k., l. and m. the adjustments shall be shown on the posted work schedule following the signing of Exhibit 61.02 Adjustment Of Half-Time Employee Schedule.
3. The posted work schedule may be changed by initialing Exhibit 61.02 Adjustment Of Half-Time Employee Schedule.
4. The adjustments in the work schedule shall not entitle me to accrue benefits in excess of those which I would have accrued as a half-time Employee.

Acknowledgment:

<hr/>		<hr/>	
Employee's Signature		Principal's Signature	
Date: _____		Date: _____	
<u>Subsequent Adjustment as provided in Section 61.02 d.</u>	<u>Employee's Initials</u>	<u>Principal's Initials</u>	<u>Date:</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXHIBIT 61.05

CLASSROOM CLEANING

NAME: _____

WORKPLACE: _____

JOB TITLE: _____

POSITION NO: _____

BASEYARD/WORKPLACE SENIORITY DATE: _____

1. As provided in Section 61.05 I agree to work additional hours of classroom cleaning for the:

a. First Semester: Date: Month _____ Day _____ Year _____

b. Second Semester: Date: Month _____ Day _____ Year _____

2. Work Hours:

a. Regular: From _____ to _____

b. Classroom Cleaning: From _____ to _____

Acknowledgment:

Employee's Signature

Principal's Signature

Date: _____

Date: _____

EXHIBIT 61.09

MEAL PERIOD DELAYED - CAFETERIA EMPLOYEES

1. I request to delay my meal period beyond the five (5) hour requirement of Section 18.02 a. until I decide to withdraw my request by signing and dating the withdrawal on Exhibit 61.09 Meal Period Delayed - Cafeteria Employees.
2. I understand and agree that the delay will not allow me to claim overtime as provided in Section 18.02 c.

Acknowledgment:

Employee's Signature

Date: _____

Principal's Signature

Date: _____

Withdrawal of Meal Period Delayed
Acknowledgment:

Employee's Signature

Date: _____

Principal's Signature

Date: _____

AGREEMENT
BETWEEN THE



**HAWAII STATE
TEACHERS ASSOCIATION**
AND THE



**STATE OF HAWAII
BOARD OF EDUCATION**

JULY 1, 2007 – JUNE 30, 2009



APPENDIX IX
MEMORANDUM OF UNDERSTANDING
BETWEEN
STATE OF HAWAII
BOARD OF EDUCATION
AND
HAWAII STATE TEACHERS ASSOCIATION
(MULTI-TRACK YEAR ROUND SCHOOLS)

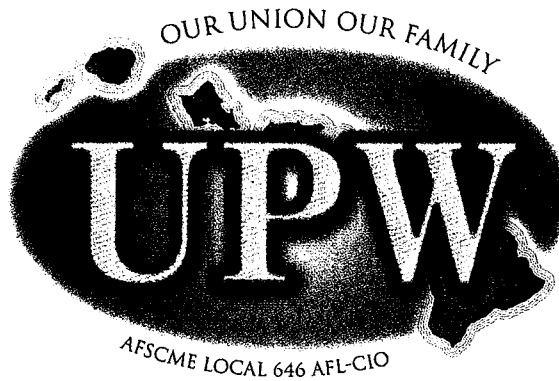
This Memorandum of Understanding is entered into this 1st day of July 2007, by and between the State of Hawaii, Board of Education and the Hawaii State Teachers Association.

In conjunction with the provisions of the Master Agreement, the parties agree to the following:

V. Rainbow Teachers (12-month MTYRS Work Schedule)
Compensation and Sick/Vacation Leave Accumulation

A. Compensation and Pay Administration

1. Rainbow Teachers shall be compensated from the Bargaining Unit 5 10-month salary schedule and shall receive a 20% pay differential for working a 12-month work year. Salary payments shall be earned and paid on a 12-month basis and shall not be prorated.
2. The "annual salary rate" shall be the appropriate annual rate from the 10-month salary schedule plus the 20% differential.
3. The "monthly salary rate" shall be the annual salary rate divided by twelve (12) months.
4. The "daily salary rate per paid day" shall be the monthly salary rate divided by the number of weekdays in the month.
5. A "holiday" is a paid non-working day officially recognized as such in the Master Agreement.
6. A "scheduled paid break day" is a non-holiday within the common two-week winter break and the day after Thanksgiving.
7. A "paid day" shall be defined as a weekday (Monday through Friday). Paid days consist of working days, holidays and scheduled paid break days.
8. Pay is earned for working days if the employee is on duty or is on authorized leave with pay.
9. Pay is earned for holidays and scheduled paid break days if the employee is on paid status for one (1) of the five (5) working days immediately preceding the holiday or scheduled paid break day.
10. "Paid status" means entitled to receive pay for a paid day.



The Senate
The Twenty-Fifth Legislature
Regular Session of 2009

Committee on Ways and Means
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

DATE: Friday, February 27, 2009
TIME: 9:00 a.m.
PLACE: Conference Room 211
State Capitol
415 South Beretania Street

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO ON S.B. 165, S.D. 1
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We oppose this measure because wages, hours, and other terms and conditions of employment of cafeteria workers are mandatory subjects of collective bargaining, and creating a two wage structure is inequitable and unjustified.

As you know, since 1968 public employees in Hawaii have been afforded the constitutional right to engage in collective bargaining under Article XIII, Section 2 of the State constitution. Under chapter 89 employees were granted the statutory right to negotiate over wages, hours of work, and other terms and conditions of employment. See Section 89-3, HRS. As indicated in Section 61 of the current unit 1 agreement the work schedules, hours of work and compensation of DOE employees (including cafeteria workers) have been recognized as mandatory subjects of bargaining. See attachment 1. This measure interferes with the process of collective bargaining, and changes the substantive terms by which bargaining unit 1 employees in the Department of Education (DOE) are scheduled and paid. As our Supreme Court has held when the legislature seeks to impose by statute what wages to pay in a certain timeframe it violates the constitutional right to engage in collective bargaining. See United Public Workers, AFSCME, Local 646, AFL-CIO v. Yogi, 101 Hawai'i 46, 62 P.3d 189 (2002) (A statute which freezes wages for two years is unconstitutional because it affects a "core" subject of collective bargaining).

We fundamentally disagree with the proponents of this measure regarding a two tier wage structure. As indicated in Roberts' Dictionary of Industrial Relations (3rd ed. 1986) at 727, such a plan is not generally favored because it is inequitable:

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to two-tier wage structures, under which pay for newly-hired employees may be as much as 50 percent lower than the regular pay rate. Such plans, however, are sought by employers, who cite financial problems or the need to improve competition with nonunion companies. According to a 1983 Bureau of National Affairs Survey, about 5 percent of the surveyed contracts contained some form of two-tier wage structure.

Source References: "Analysis of 1983's Most Significant Events," Retail/Services Labor Report, January 9, 1984; "Analysis of What's Ahead in 1984," Retail/Services Labor Report, January 16, 1984. (Emphasis added).

Paying employees on a "school year" basis and reducing their pay to a "calendar year" period violates the principle of "equal pay for equal work" which is a vital component of the merit principle recognized in Section 76-1 (5), HRS. That is why when DOE converted teachers from 10 month to 12 month employees for multi-track schools it adjusted their salaries by 20%, and adjusted their fringe benefits including sick leave and vacation benefits. See attachment 2 at p. 79, ¶ V.A.1.

There is also no justification for the proposed changes because DOE is already afforded too much flexibility in the hiring and retaining of cafeteria workers under "executive orders, executive directives, or rule." Numerous cafeteria workers throughout the state are hired on a limited term contract with no civil service protection. These employees are not "regular" employees, and occupy such positions as "substitutes" in cafeteria helper jobs and are paid at the lowest wage levels. These employees are not even assured "full-time" or "part-time employment" as contemplated under the current statutory language of Section 302A-637 (second paragraph). Those who are hired as "regular" employees under the merit system are needed throughout the calendar year because they are essential for cleaning and maintaining our school

cafeterias and facilities when schools are not in session. For all of the foregoing reasons we urge you not to pass Senate Bill No. 165, S.D. 1 (or any version thereof).