

SB2537

Charter Schools; Collective
Bargaining Master
Agreement
EDU/JDL, WAM

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON EDUCATION AND
JUDICIARY AND LABOR
ON
SENATE BILL NO. 2537

February 3, 2012

RELATING TO CHARTER SCHOOLS

Senate Bill No. 2537 amends Section 302B-9, Hawaii Revised Statutes, to allow charter schools to enter into either supplemental or master collective bargaining agreements separate from any other master agreement.

While the Department of Budget and Finance takes no position on this bill at this time, it should be pointed out that passing this bill could result in each such agreement requiring legislative approval for every charter school agreement that executes cost items different from extant master agreements. Therefore, legislative approval may be required for every bargaining unit within every charter school.

NEIL ABERCROMBIE
GOVERNOR



ROGER McKEAGUE
EXECUTIVE DIRECTOR

STATE OF HAWAII
CHARTER SCHOOL ADMINISTRATIVE OFFICE
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: 586-3775 Fax: 586-3776

FOR: SB2537 Relating to Charter Schools
DATE: Friday, February 3, 2012
TIME: 2:15 p.m.
COMMITTEE(S): Senate Committee on Education
Senate Committee on Judiciary and Labor
ROOM: Conference Room 225
FROM: Roger McKeague, Executive Director
Charter School Administrative Office

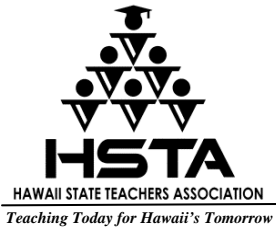
Testimony in support of the intent of SB2537

Chairs Tokuda and Hee, Vice Chairs Kidani and Shimabukuro, and Members of the Committees:

Aloha, I am Roger McKeague, Executive Director of the Charter School Administrative Office (CSAO).

SB2537 will allow local school boards to negotiate supplemental agreements or unique master contracts with their teachers and staff. We support the intent of this bill to provide charter schools with more autonomy, protect the rights of charter school employees, and more timely complete labor agreements at charter schools.

Thank you for this opportunity to testify.



1200 Ala Kapuna Street λ Honolulu, Hawaii 96819
Tel: (808) 833-2711 λ Fax: (808) 839-7106 λ Web: www.hsta.org

Wil Okabe
President

Karolyn Mossman
Vice President

Joan Kamila Lewis
Secretary-Treasurer

Alvin Nagasako
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEES ON
EDUCATION AND JUDICIARY & LABOR

RE: SB 2537 – RELATING TO CHARTER SCHOOLS.

Friday, February 3, 2012

WIL OKABE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chairs Tokuda, Hee, and Members of Committees,

The Hawaii State Teachers Association opposes SB 2537. If passed, this bill would allow local school boards of Charter Schools and HSTA to enter into separate Master Agreements, separate from the Master Agreement collectively bargained and ratified by its membership; as defined in Chapter 89.

We believe that having separate master agreements would remove an essential safety net for public charter school teachers. Our teachers fear it would allow for substandard salaries, benefits and working conditions and would take away their rights to due process. In a recent survey, 81% of the respondents indicated they do not favor a law that would exempt them from the Bargaining Unit 5 Master Agreement.

The ability for public charter schools to negotiate supplemental agreements that vary from the Unit 5 master agreement already exists in current law. HSTA has negotiated dozens of supplemental agreements that cater to the uniqueness of the various public charter schools we serve. We have not heard local school boards express to us any concerns with the current method in the law.

The Master Agreement sets the foundation for wages, benefits and working conditions for all public school teachers. It provides equality in due process. Supplemental agreements are allowed under 89.6- e and the language is clear.

We oppose SB 2537.

Thank for the opportunity to testify on behalf of our Charter School teachers.



THE HAWAII STATE SENATE
The Twenty-Sixth Legislature
Regular Session of 2012

COMMITTEE ON EDUCATION

The Honorable Sen. Jill N. Tokuda, Chair
The Honorable Sen. Michelle N. Kidani, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

The Honorable Sen. Clayton Hee, Chair
The Honorable Sen. Maile S.L. Shimabukuro, Vice Chair

DATE OF HEARING: Friday, February 3, 2012
TIME OF HEARING: 2:15 p.m.
PLACE OF HEARING: Conference Room 225

TESTIMONY ON SB 2537 RELATING TO CHARTER SCHOOLS

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

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 is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. Included in bargaining unit 1 are building maintenance, ground maintenance and food service employees assigned to charter schools of the Department of Education. The UPW also represents about 1,500 members of the private sector.

This proposed legislation redefines the process of negotiations by authorizing charter schools to negotiate separate master collective bargaining agreements on their own. The measure a) undermines the multi-employer bargaining process essential to protect employees who share common interests on a statewide basis, b) causes unnecessary fragmentation and duplication, and c) threatens to undermine stable collective bargaining relationships that have been established for

forty years under the merit principle and policies favoring collective bargaining on a statewide basis.

When chapter 89 was enacted in 1970 the legislature established collective bargaining units taking into account a statewide merit system and the community of interests shared by employees according to the “nature of their work.” See 1970 Hawaii Session Laws Act 171, § 6, at 313-314. For example, the blue collar workers who were covered under pre-existing compensation plans were placed in bargaining units 1 and 2 accordingly. By basing bargaining unit determinations on the nature of work the principle of equal pay for equal work was recognized. The nature of work and the need to avoid disparity in compensation for those performing similar work also served to establish the bargaining unit for “nonprofessional hospital and institutional workers” in unit 10. The same principle applied for all 13 bargaining units. Multi-employer bargaining was deemed most appropriate to continue the merit principle, and to implement a statewide policy on collective bargaining for all public employees.

In 2000 the legislature re-affirmed in Act 253 the continuing need for multi-employer bargaining and the involvement of the State and various counties in the negotiation process for master agreements under Section 89-6 (d), HRS. See 2000 Hawaii Session Laws Act 253, § 96, at 892 to 894. At the same time you recognized that the counties, the Judiciary, the Hawaii Health Systems Corporation, the Department of Education, and other employer jurisdictions should be afforded a greater measure of flexibility to independently address unique and separate concerns through supplemental agreements under Section 89-6 (e), HRS. The legislature in turn recognized, however, that allowing separate jurisdictions to negotiate separate master agreements would result in unnecessary fragmentation and duplication.

After the 2000 legislative session the UPW and the Department of Education (DOE) also recognized the need for flexibility for new century charter schools and entered a memorandum of agreement with the State of Hawaii and the DOE through supplemental agreements. Attachment 1 is the copy of the memorandum of agreement dated July 21, 2000. To the present date, however, charter schools have not requested negotiations over supplemental agreements to address concerns unique to the charter schools.

Instead of recognizing the duty to bargain since 2003 various unilateral actions have been taken to undermine the merit principle and repudiate the master agreements which have been in place since 1972 for bargaining unit 1 employees. This led to a prohibited practice complaint to restore the merit principle for employees in charter schools on March 15, 2004. Attachment 2 is a copy of the stipulation and order restoring civil service status to employees assigned to the charter schools. In 2004 a dispute over privatization at Wai`alae School led to another prohibited practice complaint and decision to restore DOE meals. Attachment 3 is a copy of the Board order in the Wai`alae case. In 2008 UPW filed a declaratory ruling to clarify the bargaining process involving the State, DOE, and charter schools. Attachment 4 is a copy of Order No. 2585 which prohibits charter schools from repudiating the terms of the master agreement, while preserving a certain degree of autonomy through supplemental agreements.

Allowing charter schools to negotiate their own master agreement threatens to undermine stable collective bargaining relationships which have been in place for forty years. The relationship is based on policies favoring collective bargaining on a statewide basis (consistent with Article XIII, Section 2 of the State Constitution), and the protection of the merit principle (consistent with Article XIII, Section 1 of the State Constitution) without interference with the need for flexibility or autonomy for charter schools. For the foregoing reasons we request that you protect the multi-employer bargaining process for master agreements, and continue to recognize flexibility through supplemental agreements only. Thank you.

**MEMORANDUM OF AGREEMENT
NEW CENTURY CHARTER SCHOOL**

This MEMORANDUM OF AGREEMENT is made this 21st day of July, 2000 by and between the UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO, hereafter referred to as the Union on behalf of Bargaining Unit 1 Employees and the STATE OF HAWAII, State DEPARTMENT OF EDUCATION, hereafter referred to as the EMPLOYER.

Chapter 302A, Education, Section D., New Century Charter Schools, Hawaii Revised Statutes shall be implemented as follows:

1. New Century Charter Schools shall comply with the Unit 1 Collective Bargaining Agreement that expired on January 31, 2000 until it is replaced by a new Collective Bargaining Agreement.
2. The Union and the Employer may enter into supplemental agreements that modify the Unit 1 Collective Bargaining Agreement.
3. It shall be the responsibility of the New Century Charter School to specify, prepare, provide staff support, i.e. providing information as may be necessary to consider proposals, etc., and participate in the negotiation of supplemental agreements to the Collective Bargaining Agreement under the auspices of the Office of Collective Bargaining.
4. New Century Charter Schools proposing supplemental agreements are urged to consult on proposed supplemental agreements with the Department of Education, that shall, to the extent resources are available and within operating priorities provide advisory assistance, prior to submitting proposals to the Office of Collective Bargaining.

STATE OF HAWAII

UNITED PUBLIC WORKERS

By: 
Its Chief Negotiator

By: 
Its State Director

DEPARTMENT OF EDUCATION

By: 
Its Superintendent

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of)
)
 United Public Workers,)
 AFSCME, Local 646, AFL-CIO)
 and Hawaii Government)
 Employees Association,)
 AFSCME, Local 152, AFL-CIO,)
)
 Complainants,)
)
 and)
)
 Kathleen Watanabe, Director,)
 Department of Human Resources)
 Development, State of Hawaii)
 and Linda Lingle, Governor,)
 State of Hawaii; Patricia)
 Hamamoto, Superintendent,)
 Department of Education,)
 State of Hawaii; and Board or)
 Department of Education,)
 State of Hawaii (2003-020),)
)
 Respondents.)
)

Case No. CE-01-537a
 CE-02-537b
 CE-03-537c
 CE-04-537d
 CE-06-537e

STIPULATION AND ORDER

HAWAII
LABOR RELATIONS BOARD

04 MAR 15 10:01

STIPULATION AND ORDER

COME NOW the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW), the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA), Patricia Hamamoto, and the Board of Education (Employer), by and through their undersigned counsel and stipulate to the following in the above referenced case:

1. The UPW is an employee organization and the exclusive representative, as provided under HRS § 89-2, of employees in bargaining unit 01, non-supervisory employees in blue collar positions.

I do hereby certify that this is a full, true and correct copy of the original on file in this office.

Wali Sei Hamamoto

Executive Officer
 Hawaii Labor Relations Board

2. The HGEA is an employee organization and the exclusive representative, as provided under HRS § 89-2, of employees in bargaining units 02, supervisory employees in blue collar positions, 03, non-supervisory employees in white collar positions, and 04, supervisory employees in white collar positions.

3. Patricia Hamamoto, superintendent of the Department of Education, and the Board of Education are a public employer within the meaning of HRS § 89-2, and are hereafter referred to as "Employer."

4. The UPW, HGEA, and the State of Hawaii are at all times relevant herein parties to the collective bargaining agreements covering employees in bargaining unit 01, 02, 03, and 04.

5. Classified employees of the Department of Education (DOE) covered by these collective bargaining agreements have historically and customarily been part of the "merit" or "civil service" system of the State of Hawaii. There are approximately 150 classified positions of DOE which are in public charter schools and covered by such civil service system.

6. The collective bargaining agreements contain provisions for the maintenance of prior rights of employees pursuant to civil service statutes and rules, and require negotiations before changes in conditions of work may be implemented.

7. On or about June 9, 2003 the Department of Human Resources Development (DHRD) informed Employer of its position (and policy) that employees of public charter schools in the DOE "do not have civil service status" and are no longer part of the merit system.

8.. On or about June 12, 2003 DHRD requested Employer to "convert all public charter school positions to reflect the fact that these positions do not have civil service status" by June 30, 2003, and thereafter informed Employer that DHRD would not provide "certified lists of eligible applicants" and "civil service appointments may not be made to fill public charter school positions."

9. On and after July 8, 2003 the aforementioned DHRD position, policy, and actions were communicated to public charter school administrators and employees.

10. As a direct consequence various public charter school employees (in order to preserve and maintain their civil service status, rights and benefits), initiated transfers and other changes in their terms and conditions of work.

11. As a further consequence on or about July 1, 2003 and thereafter, DOE failed to process for hiring approximately fifteen (15) or more public charter school employees in classified positions through the statewide merit system for compliance with civil service requirements, and as a result these employees are currently exempt from civil service coverage.

12. On or about January 13, 2004 public charter school employees were informed by Employer that the June 30, 2003 deadline for compliance with the DHRD position and policy had been extended to June 30, 2004, and that public charter school employees with civil service appointments would continue "with civil service status through June 30, 2004."

13. On or about March 5, 2004 Employer was informed by DHRD that the June 30, 2004 deadline could be extended to September 30, 2004.

14. Employer hereby stipulates and agrees to cease and desist from implementing the aforementioned DHRD position or policy regarding loss of civil service status for public charter school positions and employees, and to make whole all adversely employees (including but not limited to the restoration or return of said employees to their former public charter school positions without loss of rights, privileges, and benefits).


15. Within 30 days from the date of this Stipulation and Order Employer shall process all currently exempt public charter school employees in classified positions through the statewide merit system and restore them to civil service status. All classified positions in public charter schools shall be restored to the merit system within thirty days.

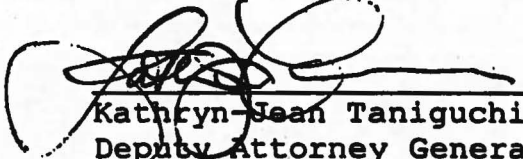
16. Within 30 days from the date of this Stipulation and Order Employer shall provide to UPW and HGEA a report of its compliance with the make whole provisions herein, and shall provide all public charter school employees a copy of this Stipulation and Order.

17. No changes in the terms and provisions of this Stipulation and Order shall be made, except by negotiations and mutual consent of the parties prompted by legislative clarifications hereafter to the public charter school laws or as a result of a final decision and order of the Hawaii Labor Relations Board (subject to judicial review) in this or other related proceedings.

17. In accordance with the terms and conditions herein Patricia Hamamoto and the Board of Education shall be dismissed as respondents in the above referenced case.

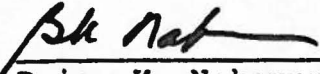
Dated: Honolulu, Hawaii, March 15, 2004.


Herbert R. Takahashi
Attorney for Complainants
United Public Workers, AFSCME,
Local 646, AFL-CIO and Hawaii
Government Employees
Association, AFSCME, Local
152, AFL-CIO

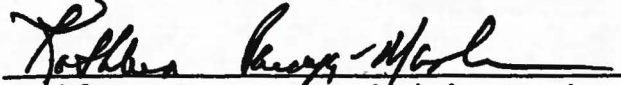

Kathryn-Jean Taniguchi
Deputy Attorney General
Attorney for Respondents
Patricia Hamamoto and Board
of Education

Approved and So Ordered:

ORDER NO. 2237


Brian K. Nakamura, Chair


Chester C. Kunitake, Member


Kathleen Racuya-Markrich, Member

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO,

Complainant,

and

ROBERT WATADA, Chairperson, Wai'alaie
School Board, Wai'alaie Elementary School,
State of Hawaii; WAI'ALAE ELEMENTARY
SCHOOL, State of Hawaii; and JONATHAN A.
SWANSON, Deputy Attorney General, State of
Hawaii,

Respondents.

CASE NO. CE-01-558

ORDER NO. 2264

ORDER GRANTING COMPLAINANT'S
MOTION FOR SUMMARY
JUDGMENT

ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

On March 24, 2004, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint against Respondents ROBERT WATADA (WATADA), Chairperson, Wai'alaie School Board, Wai'alaie Elementary School, State of Hawaii, WAI'ALAE ELEMENTARY SCHOOL, State of Hawaii (WAI'ALAE SCHOOL), and Deputy Attorney General JONATHAN SWANSON (SWANSON), for repudiating and refusing to sign a March 3, 2004 Memorandum of Agreement resolving Case No. CE-01-550.

On April 19, 2004, the UPW filed a Motion for Summary Judgment in the instant case and on April 27, 2004 Respondents filed a memorandum opposing UPW's motion. A hearing was held on the motion on May 13, 2004 and the parties had full opportunity to present oral arguments and evidence to the Board. After full consideration of the evidence in the record and the arguments of the parties, the Board hereby makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The UPW is the certified exclusive representative as defined in Hawaii Revised Statutes (HRS) § 89-2, of blue collar nonsupervisory employees in bargaining unit 01.

I do hereby certify that this is a full, true and correct copy of the original on file in this office.

Wahie Li Kuindoto

Executive Officer

2. **WAI'ALAE SCHOOL is a public charter school within the Hawaii State Department of Education (DOE), and as such is the designated representative of the public employer within the meaning of HRS § 89-2. WATADA is the Chairperson of the School Board of WAI'ALAE SCHOOL.**
3. **On December 23, 2003 the UPW filed a prohibited practice complaint in Case No. CE-01-550 against WATADA, WAI'ALAE SCHOOL, the DOE, and its Superintendent Patricia Hamamoto (Hamamoto). The complaint challenged WAI'ALAE SCHOOL's decision to discontinue cafeteria services and the impact on Unit 01 members employed at WAI'ALAE SCHOOL working in the DOE cafeteria.**
4. **SWANSON is a Deputy Attorney General assigned to represent WATADA and WAI'ALAE SCHOOL in Case No. CE-01-550. SWANSON is neither a public employer nor designated representative of the public employer within the meaning of HRS §§ 89-2 and 89-13.**
5. **On December 30, 2003, WATADA called and faxed Dayton Nakanelua (Nakanelua), the UPW's State Director, expressing a willingness to meet on the matter.**
6. **On January 16, 2004, the Board conducted an evidentiary hearing on UPW's Motion for Interlocutory Relief in Case No. CE-01-550. On that same day in an effort to settle Case No. CE-01-550, negotiations were held between WAI'ALAE SCHOOL, as represented by WATADA and its principal Annette Masutani (Masutani), the UPW, as represented by Nakanelua and other personnel, and the DOE, as represented by DOE personnel specialists Solette Perry and Leonard Agor. A second meeting was held on January 28, 2004.**
7. **On February 4, 2004, the Board, having denied the UPW's Motion for Interlocutory Relief, held a hearing on Respondents' Motion to Dismiss. SWANSON represented WATADA and WAI'ALAE and Deputy Attorney General Kathryn-Jean Taniguchi (Taniguchi) represented the DOE. After the Board announced its inclination to deny said motion, Taniguchi requested that further hearings in the case be continued to afford the parties an opportunity to negotiate a resolution. The Board was further requested to be available to mediate the dispute, if necessary.**
8. **Negotiations resumed on February 5, 2004 in the Board's hearing room. Also present was Hamamoto. Negotiations that day were suspended to permit WATADA to obtain formal authority from the Wai'alaie School Board.**
9. **Further bargaining sessions were held on February 2 through 12, 16, 17, and March 1, 2004.**

10. In the bargaining session held on February 17, 2004, WATADA represented to UPW that the School Board of WAI'ALAE SCHOOL had decided to resume food services from the DOE effective March 1, 2004. After he announced this decision, WATADA asked the UPW whether he needed to attend the continuing negotiations between the UPW and the DOE. Nakanelua indicated that WATADA did not need to attend the negotiation sessions. WATADA and Masutani did not attend bargaining sessions after February 17, 2004.
11. Relying on WAI'ALAE SCHOOL's decision to resume food service from the DOE, the DOE representatives continued to bargain with the UPW over the effects on Unit 01 employees impacted by WAI'ALAE SCHOOL's decision to discontinue cafeteria services that gave rise to a prohibited practice charge in Case No. CE-01-550. The UPW believed the DOE representatives had been delegated the necessary authority to resolve the matter.
11. On March 1 and 3, 2004, written proposals were exchanged, which resulted in a memorandum of agreement (MOA) between the DOE, WATADA and WAI'ALAE SCHOOL, and the UPW.
12. On March 4, 2004, the evidentiary hearing on Case No. CE-01-550 was scheduled to commence. After noting the appearance of counsel but before any testimony could be received, the following exchange took place:

The Chair: You want to make an opening statement, or---

Mr. Takahashi: No. We are asking you -- we are offering into evidence Exhibit 57, which represents an agreement reached between the parties. Signatures are being circulated. This document is being circulated at the present time. We have the original documents with us for signatures by Superintendent, by Robert Watada and by Mr. Nakanelua.

The terms of the settlement are as specified in Exhibit 57-1 to 57-3. Exhibit 57-4 is the verification of acceptance of the final written terms of the memorandum of agreement.

Transcript of March 4, 2004 hearing in Case No. CE-01-500 (Tr.), p. 4; Exhibit 59 attached to UPW's Motion for Summary Judgment.

13. All parties were represented before the Board at the time, including WATADA and WAI'ALAE SCHOOL (through Deputy Attorney General SWANSON.) When the MOA was presented, the Board recessed the proceeding to afford those present an opportunity to review its contents.

14. The proffered Exhibit 51 was a document dated March 3, 2004 entitled "Memorandum of Agreement Between State of Hawaii Department of Education, the Waialae Elementary School, and the United Public Workers." Its terms detail action to be taken by the respective parties to settle Case No. CE-01-550. Paragraph 8 provides: "The parties shall notify the Hawaii Labor Relations Board of this Agreement as the basis for resolving the pending case."
15. When Board proceedings resumed all attorneys represented to the Board that based on the MOA, the case was considered resolved. Respective counsel stated:

Mr. Takahashi: I have a question for the attorneys for the other side. Am I to -- are our statements and representations correct?

Mr. Swanson: With the exception -- my understanding is that the parties agreed that this would resolve it, and you said it was subject to the Board's approval.

Mr. Takahashi: What I mean was we want to notify the Board pursuant to paragraph 8.

Board Member Racuya-Markrich: So the Board's been notified, so what? What does it do to this case?

Mr. Takahashi: It resolves this case.

Mr. Swanson: My understanding is we resolved this case.

* * *

Ms. Taniguchi: Yes.

Tr., p. 6.

16. The MOA of March 3, 2004 was subsequently signed by Hamamoto and Nakanelua. The MOA states in relevant part as follows:

Whereby the United Public Workers filed a prohibitive (sic) practice with the Hawaii Labor Relations Board (CE 01-550) (sic) against the DOE and the Waialae Charter School Board regarding the closing of the Waialae School cafeteria;

Whereby the Waialae Charter School Board has agreed, effective March 1, 2004 to purchase from the State of Hawaii Department of Education school meals at an agreed upon price to include the

preparation of the meals at Anuenue School, delivery and assistance in the serving of said meals at Waialae Elementary School;

Any modifications to this agreement shall be made through negotiations pursuant to Section 1.05 of the Unit 1 Agreement.¹

17. On or about March 16, 2004 WATADA refused to sign the MOA, before “corrections and clarifications” were made as summarized by SWANSON,² which changed the terms of the agreement including the substitution of the third paragraph (as stated in Finding of Fact No. 16) beginning “Whereby the Waialae Charter School Board...” with the following language:

Whereby insofar as this dispute involves DOE employees who were assigned to work at Wai’alae School and have been reassigned by their employer to other venues of employment, Wai’alae has no further involvement in these employees’ work assignments and wage or benefit payments.³

18. Contrary to SWANSON’s characterization of the proposed “corrections and clarifications” as nonsubstantive, WATADA and WAI’ALAE SCHOOL wanted to limit its decision to purchase DOE school lunches to the 2003-2004 school year. The Unit 01 collective bargaining agreement provides a duration clause, which is a material term of the contract. Therefore, any changes by WAI’ALAE SCHOOL to modify the purchase of food services from the DOE as provided in the Stipulation and Order “shall be made through negotiations pursuant to Section 1.05 of the Unit 1 Agreement.” This explains why on March 17, 2004, the UPW notified Respondents that the UPW would not renegotiate the terms of the MOA.

DISCUSSION

The UPW asserts that the Respondents’ refusal to execute the March 3, 2004 MOA constituted a repudiation of the settlement agreement that resolved Case No. CE-01-550, evidencing a refusal to bargain in good faith violative of HRS §§ 89-13(a)(1), (5),

¹See, Exhibit 60 attached to the UPW’s Motion for Summary Judgment.

²SWANSON’s fax transmittal to UPW’s counsel, first suggested revising the agreement by eliminating WAI’ALAE SCHOOL as a signatory to the MOA altogether. In the alternative, SWANSON identified eleven points that needed correction and clarification, characterized as “not substantive.” See Exhibit 61 attached to UPW’s Motion for Summary Judgment.

³See, Exhibit 61 attached to the UPW’s Motion for Summary Judgment.

and (7). Respondents assert that the MOA was neither binding nor conclusive as to them because the negotiators for the DOE lacked the authority to bind WATADA or WAI'ALAE SCHOOL.

Summary Judgment

Summary judgment is proper where the moving party demonstrates that there are no issues of material fact in dispute and, therefore it is entitled to judgment as a matter of law. State of Hawai'i Organization of Police Officers (SHOPO) v. Society of Professional Journalists-University of Hawai'i Chapter, 83 Hawai'i 387, 389, 927 P.2d 386 (1996). A fact is material if proof of that fact would have the effect of establishing or refuting the essential elements of a cause of action or defense asserted by the parties. Konno v. County of Hawai'i, 85 Hawai'i 61, 937 P.2d 397 (1997). Accordingly, the controlling inquiry is whether there is no genuine issue of material fact and the case can be decided solely as a matter of law. Kajiya v. Department of Water Supply, 2 Haw.App. 221, 629 P.2d 635 (1981).

It is axiomatic that an employer's failure to sign a bargaining agreement that has been agreed to by authorized negotiators representing the parties is conclusive evidence of a refusal to bargain in good faith. The UPW argues that the agreement of DOE negotiators Perry and Agor on behalf of WAI'ALAE SCHOOL and WATADA to the terms of the agreement bound WATADA and WAI'ALAE SCHOOL because they possessed either the expressed or implied authority to negotiate for the charter school. Respondents WATADA and WAI'ALAE SCHOOL contest the authority of the DOE to negotiate on their behalf and support their assertion with affidavits by WATADA, Perry and Agor to that effect. The UPW concedes that if the issue were dispositive of the motion, the affidavits would create a material issue of fact. But the Union argues that summary judgment is nonetheless required because Respondents are estopped from repudiating the MOA under principles of judicial estoppel.

The doctrine of judicial estoppel as articulated by the Hawaii Supreme Court in Torres v. Torres, 100 Hawai'i 397, 408, 60 P.3d 798 (2002) provides that:

Moreover, under the doctrine of judicial estoppel, a party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him [or her], at least where he [or she] had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his [or her] action. (citations omitted.)

The UPW contends that the representation of SWANSON, as WATADA and WAI'ALAE SCHOOL's counsel, to the Board that the MOA resolved the dispute ("My understanding is we resolved this case.") was necessarily impliedly binding as to the parties and stands in direct contradiction to the position asserted herein that they are under no legal

obligation to sign the MOA. The UPW argues that Respondents WATADA and WAI'ALAE SCHOOL should therefore be estopped from maintaining the latter inconsistent position.

Respondents argue that estoppel cannot lie for lack of any detrimental reliance. And such reliance is indeed an element of judicial estoppel. In Roxas v. Marcos, 89 Hawai'i 91, 124, fn. 19 (1998), the Hawaii Supreme Court stated:

However the doctrine of judicial estoppel does not apply unless the changed argument *prejudices* the opposing party. Rosa, 4 Haw.App. at 218, 664 P.2d at 751. "To constitute this sort of estoppel[,] the act of the party against whom the estoppel is sought must have gained some advantage for himself or produced some disadvantage to another; or the person invoking the estoppel must have been induced to change his position or by reason thereof the rights of other parties must have intervened." Yuen, 40 Haw. at 230. (citation and internal quotation signals omitted.) In other words, a party is free to "plead[] inconsistent claims or defenses within a single action," but "[a] party is precluded from subsequently repudiating a theory of action [that has been] *accepted and acted upon by the court*" or that has otherwise detrimentally affected the opposing party. Rosa, 4 Haw.App. at 220, 664 P.2d at 752 (emphasis added).

The Board finds that the necessarily detrimental reliance is present here. In the bargaining session held on February 17, 2004, WATADA represented to UPW that the School Board of WAI'ALAE SCHOOL had decided to resume food services with the DOE effective March 1, 2004. After he announced this decision, WATADA asked the UPW whether he needed to attend the continuing negotiations between the UPW and the DOE. Nakanelua indicated that WATADA did not need to attend these negotiation sessions. WATADA and Masutani did not attend bargaining sessions after February 17, 2004. Relying on WAI'ALAE SCHOOL's decision to resume food service from the DOE, the DOE representatives continued to bargain with the UPW over the effects on Unit 01 employees impacted by WAI'ALAE SCHOOL's initial decision to discontinue cafeteria services that gave rise to the prohibited practice charge in Case No. CE-01-550.

The UPW believed the DOE representatives had been delegated the necessary authority to resolve the matter. Neither the UPW nor the DOE have repudiated the MOA and, having executed and implemented the agreement in reliance on Respondents WATADA and WAI'ALAE SCHOOL's commitments and participation, presumably remain bound by its terms. And if Respondents WATADA and WAI'ALAE SCHOOL are excused from executing the tripartite agreement notwithstanding the commitment of their representative, the MOA might be found to be an illusory agreement thereby wasting the parties' and the Board's time, efforts, and resources spent on negotiation, consideration and implementation to date.

Moreover, Respondents represented before the Board that a final agreement had been negotiated between the parties in Case No. CE-01-550 and that the resultant MOA disposed of the case. They now want to reopen negotiations and claim not to be bound by the terms of the agreement. Contrary to SWANSON's characterization of the proposed "corrections and clarifications" as nonsubstantive, WATADA and WAI'ALAE SCHOOL wanted to limit its decision to purchase DOE school lunches to the 2003-2004 school year. The Unit 01 collective bargaining agreement provides a duration clause, which is a material term of the contract. Therefore, any changes by WAI'ALAE SCHOOL to modify the purchase of food service from the DOE as provided in the Stipulation and Order "shall be made through negotiations pursuant to Section 1.05 of the Unit 1 Agreement." This explains why on March 17, 2004, the UPW notified Respondents that the UPW would not renegotiate the terms of the MOA.

The UPW and DOE relied upon Respondents WATADA and WAI'ALAE SCHOOL's initial position to their detriment. The Board therefore concludes that Respondents are estopped from maintaining a position contrary to their representations before the Board on March 4, 2004. Accordingly, the Board grants summary judgment in favor of the Complainants and WATADA and WAI'ALAE SCHOOL are hereby ordered to execute and implement the MOA of March 3, 2004.

At the hearing, SWANSON's counsel urged the Board to dismiss the complaint as to SWANSON because he was acting only as the employers' counsel and did not and could not exercise any authority and control over the affected public employees. The UPW did not object to such a dismissal. Accordingly, the complaint is dismissed as to SWANSON.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this complaint pursuant to HRS §§ 89-5 and 89-14.
2. Summary judgment is proper where the moving party demonstrates that there are no issues of material fact in dispute and, therefore it is entitled to judgment as a matter of law.
3. Under the doctrine of judicial estoppel, a party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, or previously assumed by him [or her], at least where he [or she] had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his [or her] action. Torres v. Torres, supra.
4. The Board finds that the necessarily detrimental reliance under the facts of this case. Neither the UPW nor the DOE have repudiated the MOA and, having

executed the agreement in reliance on Respondents WATADA and WAI'ALAE SCHOOL's commitments and participation, they presumably remain bound by its terms. If Respondents are excused from executing the tripartite agreement notwithstanding the commitment of their agent, the MOA might be found an illusory agreement thereby wasting the parties' and the Board's time, efforts, and resources spent on negotiation, consideration and implementation to date.

5. The UPW and DOE relied upon Respondents WATADA and WAI'ALAE SCHOOL's initial position to their detriment. The Board therefore concludes that Respondents WATADA and WAI'ALAE SCHOOL are estopped from maintaining a position contrary to their representations before the Board on March 4, 2004.
6. As Complainant did not oppose dismissing SWANSON as a Respondent in this matter because he was not a public employer, SWANSON is hereby dismissed as a Respondent in this case.

ORDER

1. WATADA and WAI'ALAE SCHOOL shall cease and desist from repudiating the MOA of March 3, 2004 and are hereby ordered to execute and implement the MOA of March 3, 2004.
2. Respondents shall immediately post copies of this decision in conspicuous places at work sites where employees of Unit 01 assemble and congregate, and on the Respondents' website for a period of 60 days from the initial date of posting.
3. Respondent shall notify the Board of the steps taken to comply herewith within 30 days of the receipt of this order with a certificate of service to the Complainant.

DATED: Honolulu, Hawaii, June 30, 2004

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. ROBERT WATADA, et al.
CASE NO. CE-01-558
ORDER NO. 2264
ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT



KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Herbert R. Takahashi, Esq.
Ryan W. Roylo, Deputy Attorney General
Joyce Najita, IRC

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
Local 646, AFL-CIO,

Petitioner,

and

PATRICIA HAMAMOTO, Superintendent,
Department of Education, State of Hawaii;
RESHELA DUPUIS, Director, Charter
School Administrative Office; WENDY W.
LAGARETA, Director, Wai'alaie Elementary
School; and MARIE LADERTA, Chief
Negotiator, Office of Collective Bargaining,
State of Hawaii,

Intervenors.

CASE NO. DR-01-95

ORDER NO. 2585

ORDER DENYING IN PART AND
GRANTING IN PART
INTERVENORS' MOTION TO
DISMISS AND/OR FOR SUMMARY
JUDGMENT; FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECLARATORY ORDER

**ORDER DENYING IN PART AND GRANTING IN PART INTERVENORS'
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT;
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECLARATORY ORDER**

On March 7, 2008, Petitioner UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW), by and through its counsel, filed a Petition for Declaratory Ruling (Petition) and a Memorandum of Points and Authorities in Support of the Petition for Declaratory Ruling (Memorandum) with the Hawaii Labor Relations Board (Board). The UPW requests a declaratory order pursuant to Hawaii Revised Statutes (HRS) § 91-8, and Hawaii Administrative Rules (HAR) § 12-42-9(a) as follows:

- a. The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,]¹ rests exclusively with the UPW, Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to

¹The Board believes the UPW inadvertently stated "2008" rather than "2009" in this paragraph of the Petition; nevertheless, the Board's ruling here would not be affected by either date.

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.

ATTACHMENT 4

Wali Yei Kumamoto

Executive Officer

Section 89-10.55, (b) (sic), HRS, and in accordance with Section 89-6 (d), HRS.

- b. Local school boards of charter schools may not repudiate the terms of said unit 1 master agreement or the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to Section 89-6(e), HRS.
- c. Although local school boards of charter schools may negotiate memorandum of agreement or supplemental agreements that apply only to employees of their particular school under Section 89-10.55(c), HRS, such agreements may not be inconsistent (or in conflict) with the master unit 1 agreement entered pursuant to Section 89-6(d), HRS, or prior memoranda of agreement or supplemental agreements entered by and between the UPW, the State of Hawaii, and the Department of Education entered pursuant to Section 89-6(e), HRS.

On March 25, 2008, petitions for intervention were filed by the following: PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawaii (Hamamoto); RESHELA DUPUIS, Director, Charter School Administrative Office (DuPuis); WENDY W. LAGARETA, Director, Wai'alaie Elementary School (Lagareta); and MARIE LADERTA, Chief Negotiator, Office of Collective Bargaining, State of Hawaii (Laderta) (collectively Intervenors).

On April 8, 2008, the Board granted the respective Intervenors' petitions for intervention.

On May 27, 2008, Intervenors filed a Motion to Dismiss and/or for Summary Judgment (Motion to Dismiss and/or for Summary Judgment), and on June 26, 2008, the UPW filed its Memorandum in Opposition to the Motion to Dismiss and/or for Summary Judgment.

On July 10, 2008, the Board held a hearing on Intervenors' Motion to Dismiss and/or for Summary Judgment.

After careful consideration of the record and arguments presented, the Board denies in part Intervenors' Motion to Dismiss and issues the following Findings of Fact, Conclusions of Law, and Declaratory Order.

FINDINGS OF FACT

1. The UPW is an employee organization² and the exclusive bargaining representative, within the meaning of HRS § 89-2, of employees included in bargaining unit (Unit) 01, composed of nonsupervisory employees in blue collar positions. HRS § 89-6(1).
2. Since July 1, 1972, to the present, the UPW has negotiated approximately fifteen successive Unit 01 collective bargaining agreements (CBAs) on a multi-employer basis pursuant to HRS § 89-6(d).³
3. The UPW has also negotiated memoranda of agreement (MOAs) and supplemental agreements with various employers, pursuant to HRS § 89-6(e).⁴

²HRS § 89-2 provides in relevant part:

“Employee organization” means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund or a voluntary employees’ beneficiary association trust, and other terms and conditions of employment of public employees.

³HRS § 89-6 provides in relevant part:

Appropriate bargaining units.

* * *

(d) For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:

- (1) For bargaining units (1), (2), (3), (4), (9), (10), and (13), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit[.]

⁴HRS § 89-6(e) provides:

In addition to a collective bargaining agreement under subsection (d), each employer may negotiate, independently of one

4. The Office of Collective Bargaining and Managed Competition (OCB) is within the office of the governor, and assists the governor in negotiations between the State and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment. HRS § 89A-1(a). In addition to other duties, the OCB assists the governor in formulating management's philosophy for public collective bargaining as well as planning strategies, conducts negotiations with the exclusive representatives of each employee organization and designates employer spokespersons for each negotiation. HRS § 89A-2.
5. Intervenor Laderta is the Chief Negotiator for the OCB, and heads the OCB. HRS § 89A-1(b).
6. The Department of Education, State of Hawaii (DOE), is headed by an executive board, the Board of Education (BOE). HRS § 26-12.
7. The Superintendent of the DOE administers programs of education and public instruction throughout the State, including education at the preschool, primary, and secondary levels, adult education, school library services, health education and instruction, and such other programs as may be established by law, under the policy direction of the BOE. HRS § 26-12.
8. Intervenor Hamamoto is the Superintendent of the DOE.
9. In the State of Hawaii, a charter school is a public school that comes into existence through a contract with the BOE. The charter – or contract – establishes the framework within which the charter school operates and provides financial and other public support for the school. See Legislative Reference Bureau, On the Level? Policy, Law, and Charter School Movement, p. 6 (2002).
10. Charter schools have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management. See HRS § 302B-1.

another, supplemental agreements that apply to their respective employees; provided that any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement and shall not require ratification by employees in the bargaining unit.

11. A local school board is the autonomous governing body of a charter school that receives the charter and is responsible for the financial and academic viability of the charter school and implementation of the charter, possesses the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws, and has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of its employees. See HRS § 302B-7(c).
12. There is a Charter School Administrative Office administered by an executive director. The executive director is responsible for the internal organization, operation, and management of the charter school system, including, among other duties, preparing and executing the budget for the charter schools, complying with applicable state laws related to the administration of the charter schools, and representing charter schools and the charter school system in communications with the board, the governor, and the legislature. HRS § 302B-8.
13. The executive director, upon request by one or more charter schools, assists in the negotiation of a CBA with the exclusive representative of its employees. HRS § 302B-8(b)(15).
14. Intervenor DuPuis was, for all relevant times, the executive director of the charter schools administrative office.
15. Wai`alae Elementary School is a public charter school. Wai`alae Elementary School was a party to a grievance filed by the UPW involving an MOA between the UPW, the DOE, and Wai`alae Elementary School, entered into on March 3, 2004, and signed by Intervenor Hamamoto, the Director of the UPW, and the Chair of the Wai`alae Charter School Board.
16. Intervenor Lagareta is the Director of Wai`alae Elementary School.
17. In 1999, the Legislature passed Act 62, the purpose of which was to "increase the flexibility and autonomy at the school level by allowing existing public schools and new schools to be designated as new century charter schools. These new century charter schools shall have a local school board as a governing body, and shall operate independent educational programs from those provided by the department of education statewide." (1999 Haw. Sess. Laws, Act 62, § 1).

18. Act 62 further provided in relevant part:

Schools designated as new century charter schools shall be exempt from all applicable state laws, except those regarding:

(1) Collective bargaining under chapter 89; provided that:

(A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decision-making;

(B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items; [and]

* * *

(D) These agreements may differ from the master contracts[.]

1999 Haw. Sess. Laws, Act 62, § 2.

19. The portion of Act 62 cited above was codified as HRS § 302A-1184.

20. HRS § 302A-1184 was repealed in 2006. 2006 Haw. Sess. Laws, Act 298, § 3.

21. Prior to the repeal of HRS § 302A-1184, the UPW negotiated an MOA with the State of Hawaii and the DOE on July 1, 2000. The MOA required the charter schools to comply with the requirements of the Unit 01 CBA, and to negotiate supplemental agreements through the OCB. The UPW asserts that the MOA was extended by the parties since July 21, 2000.

22. In 2006, the year HRS § 302A-1184 was repealed, the Legislature enacted HRS § 302B-9, which provides in relevant part:

Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
 - (A) The exclusive representatives as defined in chapter 89 and the local school board of the charter school may enter into supplemental agreements that contain cost and noncost items to facilitate decentralized decision-making;
 - (B) The agreements shall be funded from the current allocation or other sources of revenue received by the charter school; provided that collective bargaining increases for employees shall be allocated by the department of budget and finance to the charter school administrative office for distribution to charter schools; and
 - (C) These supplemental agreements may differ from the master contracts negotiated with the department[.]

HRS § 302B-9(a); 2006 Haw. Sess. Laws, Act 298, § 2.

23. In 2006, the Legislature also enacted HRS § 89-10.55, which provides in relevant part:

For the purpose of negotiating a collective bargaining agreement for charter school employees who are assigned to an appropriate bargaining unit, the employer shall be determined as provided in section 89-6(d).⁵

⁵For Unit 01, HRS § 89-6(d) provides that the “employer” shall be the governor (with six votes) and the mayors, the chief justice, and the Hawaii health systems corporation board (with one vote each) if they have employees in that bargaining unit.

HRS § 89-10.55(b); 2006 Haw. Sess. Laws, Act 298, § 5. The agreements negotiated pursuant to this provision are hereinafter referred to as “master agreements.”

24. Additionally, HRS § 89-10.55(c) provides:

For the purpose of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the employer shall mean the local school board, subject to the conditions and requirements contained in the applicable sections of this chapter governing any memorandum of agreement or supplemental agreement.

25. Pursuant to HRS § 89-10.55(b), the UPW and the employer group defined by HRS § 89-6(d) negotiated a Unit 01 Master Agreement covering the period from July 1, 2007, through June 30, 2009.
26. By letter dated December 12, 2007, addressed to Laderta, the UPW requested negotiations with the State of Hawaii, Department of Education, and charter schools to ensure compliance with the Unit 01 Master Agreement and the provisions of HRS chapter 89.
27. By letter dated January 12, 2008, Laderta responded to the UPW’s letter, stating that HRS § 89-6(d) does not require the OCB to handle negotiation of supplemental agreements and, rather, by statute it is up to each of the local school boards to determine for themselves who shall represent them in this regard. Laderta referred the UPW to the Charter Schools Administrative Office.
28. On March 7, 2008, the UPW filed the present Petition and its Memorandum with the Board. The UPW requested a declaratory order pursuant to HRS § 91-8, and HAR § 12-42-9(a) as follows:
- a. The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2009[,] rests exclusively with the UPW, Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to Section 89-10.55, (b) (sic), HRS, and in accordance with Section 89-6 (d), HRS[;]
 - b. Local school boards of charter schools may not repudiate the terms of said unit 1 master agreement or

the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to Section 89-6(e), HRS[; and]

- c. Although local school boards of charter schools may negotiate memorandum of agreement or supplemental agreements that apply only to employees of their particular school under Section 89-10.55(c), HRS, such agreements may not be inconsistent (or in conflict) with the master unit 1 agreement entered pursuant to Section 89-6(d), HRS, or prior memoranda of agreement or supplemental agreements entered by and between the UPW, the State of Hawaii, and the Department of Education entered pursuant to Section 89-6(e), HRS.
29. On March 25, 2008, petitions for intervention were filed by the Intervenors. On April 8, 2008, the Board granted the Intervenors' petitions for intervention.
 30. On May 27, 2008, Intervenors filed their Motion to Dismiss and/or for Summary Judgment. Intervenors argue that issue a and part of issue b have been resolved through agreement of the parties and thus no controversy exists over these issues; further, that the remainder of issue b and issue c are purely questions of law and not fact such that summary disposition is appropriate.
 31. On June 26, 2008, the UPW filed its Memorandum in Opposition to the Motion to Dismiss and/or for Summary Judgment. The UPW argues that agreement of the parties at this time does not negate a need for a declaratory ruling from the Board on recurring questions involving the statutory language at issue here; that Intervenors misconstrued the relevance of prior MOAs and supplemental agreements; that summary judgment standards are inapplicable to petitions for declaratory rulings; and that the process of collective bargaining under chapters 89 and 89A does not give unrestricted authority for local school boards to the exclusion of the BOE and the OCB.
 32. On July 10, 2008, the Board held a hearing on Intervenors' Motion to Dismiss and/or for Summary Judgment.
 33. After careful consideration of the record and arguments presented, the Board denies in part Intervenors' Motion to Dismiss and/or for Summary Judgment. The Board finds that it has jurisdiction to address the three

issues presented by the UPW in its Petition, involving interpretation of certain provisions in HRS chapter 89; further, that because of confusion in the past over the subject matter of the Petition and the risk of future dispute, as well as the existing dispute involving issues b and c raised in the Petition, the Board finds that a declaratory ruling on the issues is warranted.

CONCLUSIONS OF LAW AND DISCUSSION

1. The Board has jurisdiction over this petition pursuant to HRS §§ 89-5(b)(5) and 91-8, and HAR § 12-42-9.
2. HAR § 12-42-9, governing declaratory rulings by the Board, provides in part:
 - (a) Any public employee, employee organization, public employer, or interested person or organization may petition the board for a declaratory order as to the applicability of any statutory provision or of any rule or order of the board.

* * *

- (f) The board may, for good cause, refuse to issue a declaratory order.

Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.
- (3) The issuance of the declaratory order may adversely affect the interests of the board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.

- (4) The matter is not within the jurisdiction of the board.
- (g) The board shall consider each petition submitted and, within a reasonable time after the submission thereof, either deny the petition in writing, stating its reason for such denial, or issue a declaratory order on the matters contained in the petition.
- (h) Hearing:
 - (1) Although in the usual course of processing a petition for a declaratory ruling no formal hearing shall be granted to the petitioner, the board may, in its discretion, order such proceeding set down for hearing.
 - (2) Any petitioner who desires a hearing on a petition for declaratory ruling shall set forth in detail in a written request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda or legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts.
- 3. Summary judgment should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any (hereinafter, relevant materials), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. GECC Financial Corp. v. Jaffarian, 79 Hawai'i 516, 521, 904 P.2d 530, 535 (Haw. App. 1995), *aff'd* 80 Hawai'i 118, 905 P.2d 624. The burden is on the party moving for summary judgment to show the absence of any genuine issues as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. Id.
- 4. The Board found that it has jurisdiction to address the three issues presented by the UPW in its Petition; further, that because of confusion in the past

over the subject matter of the Petition⁶ and the risk of future dispute, as well as the existing dispute involving issues b and c raised in the Petition, the Board concludes that dismissal of the Petition is not warranted. Accordingly, the Board denies in part Intervenors' Motion to Dismiss and/or for Summary Judgment.

5. The Board rules do not provide for motions for summary judgment in the context of declaratory rulings. However, to the extent Intervenors argue the issues presented by the UPW are primarily legal in nature such that a hearing is not required, the Board agrees. While the Board may, in its discretion, order the proceeding set down for hearing, the Board concludes that the issues raised in the Petition are primarily legal in nature and the Board may issue the present declaratory ruling without hearing.

Further, the Board grants in part Intervenors' Motion to Dismiss and/or for Summary Judgment to the extent the Board agrees with Intervenors' argument that the Board should not rule upon non-statutory questions involving the interpretation, expiration, revocation, or extension of any MOAs or supplemental agreements attached to pleadings filed in this proceeding.

6. Issue a.

The UPW requests a ruling that:

The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,] rests exclusively with the UPW, Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to Section 89-10.55, (b) (sic), HRS, and in accordance with Section 89-6 (d), HRS.

7. Pursuant to HRS § 302B-9, charter schools are exempt from chapters 91 and 92 and all other state laws in conflict with chapter 302B, except those regarding, inter alia, collective bargaining under chapter 89, with some provisos.
8. With respect to Issue a, HRS § 89-10.55(b) provides:

⁶In its Petition, the UPW asserts that on or about January 15, 2008, various charter schools have contended that the Unit 01 master agreement is inapplicable to employees in charter schools without the consent of the local school boards of the affected charter school employees, and that confusion is further evidenced by an arbitration ruling involving Wai'alaie Elementary School.

For the purpose of negotiating a collective bargaining agreement for charter school employees who are assigned to an appropriate bargaining unit, the employer shall be determined as provided in section 89-6(d).

9. In turn, HRS § 89-6(d) provides in relevant part:

For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:

- (1) For bargaining units (1), (2), (3), (4), (9), (10), and (13), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit[.]

10. Accordingly, HRS §§ 89-6(d) and 89-10.55(b), read together, provide that for purposes of negotiating a Unit 01 master agreement, the employer group consists of the Governor, the Mayors, the Chief Justice, and the Hawaii Health Systems Corporation (HHSC) Board.
11. HRS § 89-10.55 became effective on or about July 11, 2006 (see 2006 Haw. Sess. Laws, Act 298, §§ 5 and 25; and Gov. Msg. No. 856 of the 2006 legislative session); the statute was therefore likely in effect during the negotiations of the Unit 01 master agreement covering the period of July 1, 2007, through June 30, 2009.
12. The Board therefore agrees with the UPW on Issue a, and concludes:

The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,] rests exclusively with the UPW, Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to Section 89-10.55, (b) (sic), HRS, and in accordance with Section 89-6 (d), HRS.

13. Ambiguity of statutory language.

The UPW notes that HRS § 302B-9(a)(1)(C) provides, “These supplemental agreements may differ from the master contracts negotiated with the department” (emphasis added), which apparently refers to the Department

of Education (see HRS § 302B-1, governing definitions of terms used in chapter 302B (“‘Department’ means the department of education”)).

However, as stated earlier, HRS §§ 89-6(d) and 89-10.55(b), read together, provide that for purposes of negotiating a Unit 01 master agreement, the employer group consists of the Governor, the Mayors, the Chief Justice, and the Hawaii Health Systems Corporation (HHSC) Board, and does not include the DOE as part of that employer group. The apparent ambiguity does not change the Board’s conclusions herein, as the Board believes the statutory provisions of chapter 89 (over which the Board has jurisdiction) are clear. The Board is of the opinion that HRS § 302B-9(a)(1)(C) is applicable to Unit 01 supplemental agreements, and that the language referring to “master contracts negotiated with the department” was perhaps unartfully drafted.⁷

14. The UPW further notes that there is apparent conflict between the language of HRS § 302B-9(a)(1)(C) and HRS § 89-10.55(d), which provides:

Negotiations over matters covered by this section shall be conducted between the employer and exclusive representative pursuant to this chapter (emphasis added).

Also, pursuant to HRS § 89-2, governing definitions of terms used in chapter 89, the “employer” in the case of the department of education is the BOE and any individual who represents the employer or acts in the employer’s interest in dealing with public employees.

However, the Board reads HRS § 89-10.55(d) in context with subsections (b) and (c). Subsection (b), read in conjunction with HRS § 89-6(d), makes it clear that for purposes of negotiating a Unit 01 master agreement, the employer group is the Governor, the Mayors, the Chief Justice, and the HHSC Board. On the other hand, subsection (c) provides that for purposes of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the “employer” shall mean the local school board.

⁷Even Units 05 and 06, which include teachers and educational officers, are negotiated by an employer group – the Governor with three votes, the BOE with two votes, and the Superintendent with one vote – and not “the department.”

Accordingly, the Board concludes that the definition of the term “employer” as used in HRS § 89-10.55, notwithstanding HRS § 89-2, depends on the type of negotiation – such as a master agreement, or a supplemental agreement or MOA applicable only to employees of a charter school – and the meaning of the term “employer” will be governed by the specific statutory provision (such as HRS §§ 89-10.55(b) and 89-6(d), or § 89-10.55(c) relevant to that type of negotiation.

15. Issue b.

The UPW requests a ruling that:

Local school boards of charter schools may not repudiate the terms of said unit 1 master agreement or the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to Section 89-6(e), HRS.

16. The term “repudiate” means to “put away, reject, disclaim, or renounce a right, duty, obligation, or privilege.” Black’s Law Dictionary 1467 (4th Ed. Rev. 1975).
17. A party may not repudiate the terms of a collective bargaining agreement which has been negotiated in accordance with the provisions of HRS chapter 89. See UPW and Jeremy Harris, 6 HLRB 13, 23 (1998).
18. With respect to Unit 01 master agreements, Intervenors agree with the UPW’s position that local schools boards may not repudiate the terms of master agreements negotiated by the employer group pursuant to HRS § 89-6(d). The Board concludes that local schools boards may not repudiate the terms of master agreements negotiated by the employer group pursuant to HRS § 89-6(d).
19. With respect to memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to HRS § 89-6(e), that statute provides:

In addition to a collective bargaining agreement under subsection (d), each employer may negotiate, independently

of one another, supplemental agreements that apply to their respective employees; provided that any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement and shall not require ratification by employees in the bargaining unit.

HRS § 89-6(d) provides the definition of “employer” for negotiating master agreements for various bargaining units. The local charter school boards and the DOE are not included in the employer group for Unit 01 bargaining under HRS § 89-6(d) (although the Superintendent of Education is included in the employer group for Units 05 and 06, governing teachers and educational officers, respectively). Additionally, HRS § 89-2 defines “employer” in the case of the DOE as the BOE and any individual who represents the employer or acts in the employer’s interest in dealing with public employees. It is possible that the Superintendent of the DOE enters into MOAs or supplemental agreements as an employer (for Units 05 and 06), or as the representative of an employer (for other bargaining units). For the reasons discussed below, following the enactment of HRS § 89-10.55, such MOAs or supplemental agreements would be applicable to employees of more than just the charter schools.

20. In short, the Board agrees with the UPW’s requested ruling that local school boards of charter schools may not repudiate such MOAs or supplemental agreements entered into by the UPW and the DOE pursuant to HRS § 89-6(e).
21. HRS § 89-6, cited in relevant part above, governs “[a]ppropriate bargaining units” for all public employees in the State. However, HRS § 89-10.55 is a more specific statute that governs “[c]harter school collective bargaining; bargaining unit; employer; [and] exclusive representative[.]”⁸ It expressly provides that:

For the purpose of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the employer shall mean the local school board, subject to the conditions and requirements

⁸If there is any conflict between two statutes, the more specific will control. See State v. Kamana`o, 118 Hawai`i 210, 217 n.14, 188 P.3d 724, 731 n.14 (2008).

contained in the applicable sections of this chapter governing any memorandum of agreement or supplemental agreement.

HRS § 89-10.55(c) (emphasis added). Accordingly, the Board concludes that following the 2006 enactment of HRS § 89-10.55, for purposes of negotiating MOAs and supplemental agreements applicable only to employees of a charter school, “employer” means the local school board affected by such agreement.⁹ A local charter school board is thus also bound by MOAs and supplemental agreements entered into by its own board pursuant to HRS § 89-10.55(c).

The Board’s conclusion is not inconsistent with the provisions of HRS §§ 89-6(d) and (e), for after July 11, 2006, HRS § 89-10.55(c) governs MOAs and supplemental agreements that are applicable only to employees of the charter schools, whereas HRS §§ 89-6(d) and (e) governs MOAs and supplemental agreements applicable to employees of more than just the charter schools – for example, an MOA that is applicable to all Unit 01 employees in the State.

22. Issue c.

The UPW requests a ruling that:

Although local school boards of charter schools may negotiate memorandum of agreement or supplemental agreements that apply only to employees of their particular school under Section 89-10.55(c), HRS, such agreements may not be inconsistent (or in conflict) with the master unit 1 agreement entered pursuant to Section 89-6(d), HRS, or prior memoranda of agreement or supplemental agreements entered by and between the UPW, the State of Hawaii, and the Department of Education entered pursuant to Section 89-6(e), HRS.

23. With respect to the first part of the requested ruling, “Although local school boards of charter schools may negotiate memorandum of agreement or

⁹Pursuant to HRS § 302B-8(b)(15), the executive director, upon request by one or more charter schools, may assist in the negotiation of a CBA with the exclusive representative of its employees.

supplemental agreements that apply only to employees of their particular school under Section 89-10.55(c), HRS,” the Board concludes that, absent express delegation by another local school board or statutory authority, local school boards may only negotiate on behalf of, and contractually bind, their own charter schools. However, the Board clarifies that more than one local school board may be involved in negotiations that affect more than one charter school. The Board notes that HRS § 302B-8(b)(15) provides that the Executive Director, “[u]pon request by one or more charter schools, assist[s] in the negotiation of a collective bargaining agreement with the exclusive representative of its employees.” It thus appears from the language of HRS § 302B-8(b)(15) that negotiations may involve “one or more” charter schools (however, as discussed earlier, the provisions of HRS § 89-10.55(c) would not apply to negotiations that affect employees of more than just the charter schools).

24. With respect to the latter part of the requested ruling, “such agreements may not be inconsistent (or in conflict) with the master unit 1 agreement entered pursuant to Section 89-6(d), HRS, or prior memoranda of agreement or supplemental agreements entered by and between the UPW, the State of Hawaii, and the Department of Education entered pursuant to Section 89-6(e), HRS[,]” there are no statutory provisions expressly prohibiting MOAs or supplemental agreements that are inconsistent or in conflict with the master agreements or subsequent MOAs or supplemental agreements entered into by the UPW, the State of Hawaii, and the DOE.
25. HRS § 89-10.55(c) provides a limitation on the negotiation of an MOA or supplemental agreement in that such negotiations are “subject to the conditions and requirements contained in the applicable sections of this chapter [89] governing any memorandum of agreement or supplemental agreement.”
26. There are a few conditions and requirements contained in chapter 89 governing MOAs and supplemental agreements. For example, HRS § 89-6(e) provides that, “any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement” and “shall not require ratification by employees in the bargaining unit”; accordingly, an MOA or supplemental agreement negotiated pursuant to HRS § 89-10.55(c) would be subject to these conditions.
27. Additionally, the Board reviewed a supplemental agreement reached between a charter school and the Hawaii State Teachers Association

(HSTA) in Seminavage and Ka Waihone O Ka Na'auao, Case Nos. CE-05-648 and CU-05-260. In that case, the Board interpreted a supplemental agreement in light of the provisions of HRS § 89-10.8, which provides that a public employer shall enter into written agreement with the exclusive representative setting for a grievance procedure culminating in a final and binding decision to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. See Order No. 2502, Order Granting Respondent Department of Education, State of Hawaii's Motion to Dismiss; and Granting Respondents' Motion to Dismiss, 4/16/08.

28. However, as noted above, there are no statutory provisions expressly prohibiting MOAs or supplemental agreements that are inconsistent or in conflict with the master agreements or subsequent MOAs or supplemental agreements entered into by the UPW, the State of Hawaii, and the DOE. Rather, with respect to master agreements, HRS § 302B-9 provides in relevant part (emphasis added):

(a) Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

(1) Collective bargaining under chapter 89; provided that:

(A) The exclusive representatives as defined in chapter 89 and the local school board of the charter school may enter into supplemental agreements that contain cost and noncost items to facilitate decentralized decision-making; [and]

* * *

(C) These supplemental agreements may differ from the master contracts negotiated with the department¹⁰[.]

¹⁰As noted earlier, the Board is of the opinion that the use of the term "department" in this statute is likely the result of unartful drafting.

Accordingly, there is explicit statutory language providing that supplemental agreements negotiated by local school boards may differ from master agreements. The Board is of the opinion that HRS § 302B-9(a)(1)(C) is applicable to Unit 01 supplemental agreements, and that the language referring to “master contracts negotiated with the department” was perhaps unartfully drafted, as discussed earlier.

29. The UPW argues that charter schools may not negotiate MOAs or supplemental agreements that are inconsistent or in conflict with supplemental agreements or MOAs negotiated by the BOE pursuant to HRS § 89-6(e) which would contravene Article X, section 3 of the Hawaii State Constitution, which provides that “[t]he board of education shall have the power, as provided by law, to formulate statewide educational policy and appoint the superintendent of education as the chief executive officer of the public school system.” However, even if the Board had the authority to interpret this provision of the Hawaii State Constitution, the Board does not conclude that allowing charter schools to negotiate MOAs or supplemental agreements that are inconsistent with or in conflict with supplemental agreements or MOAs negotiated by the BOE would violate Art. X, sec. 3 of the Constitution.
30. The UPW also argues that a “supplemental agreement” may not subtract or deviate from a master agreement, citing to Black’s Law Dictionary 1480 (8th ed. 2004) (“supplemental” is defined as “supplying something additional; adding what is lacking”). The Board disagrees for two reasons: first, the express language of HRS § 302B-9(a)(1)(C) indicates the Legislature’s intent that “supplemental agreements” may differ from master agreements; and second, HRS § 89-10.55(c) contemplates both supplemental agreements and MOAs – it would be mere semantics to hold that a charter school may negotiate a memorandum of agreement that subtracts or deviates from a master agreement, but not a supplemental agreement that does so.
31. Accordingly, the Board concludes that, absent express delegation by another local school board or statutory or other authority, local school boards may only negotiate on behalf of, and contractually bind, their own charter schools. However, the Board clarifies that more than one local school board may be involved in negotiations that affect more than one charter school. Further, the Board concludes that MOAs or supplemental agreements so negotiated may be inconsistent or conflict with master agreements as well as supplemental agreements or MOAs negotiated pursuant to HRS § 89-6(e), subject to certain conditions and requirements

contained in chapter 89 governing any memorandum of agreement or supplemental agreement, as discussed earlier.

32. Summary. The Board concludes:

- a. The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,] rests exclusively with the UPW, the Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to Section 89-10.55 (b), HRS, and in accordance with Section 89-6 (d), HRS.
- b. Local school boards of charter schools may not repudiate the terms of said unit 1 master agreement or the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to Section 89-6(e), HRS.
- c. Absent express delegation by another local school board or statutory authority, local school boards may only negotiate on behalf of, and contractually bind, their own charter schools. However, the Board clarifies that more than one local school board may be involved in negotiations that affect more than one charter school (see HRS § 302B-8(b)(15)). Further, the Board concludes that MOAs or supplemental agreements so negotiated may be inconsistent or conflict with master agreements as well as supplemental agreements or MOAs negotiated pursuant to HRS § 89-6(e), subject to certain conditions and requirements contained in chapter 89 governing any memorandum of agreement or supplemental agreement, as discussed earlier.

The Board further clarifies that it identifies three types of negotiations at issue in this proceeding: master agreements; MOAs or supplemental agreements affecting employees of more than just charter schools; and MOAs or supplemental agreements affecting only employees of charter schools. For master agreements, negotiations shall be conducted by the employer group as provided for in HRS § 89-6(b); for MOAs and supplemental agreements affecting employees of more than just charter schools, negotiations shall be conducted as provided for in HRS § 89-6(e); and for MOAs and supplemental agreements affecting only employees of

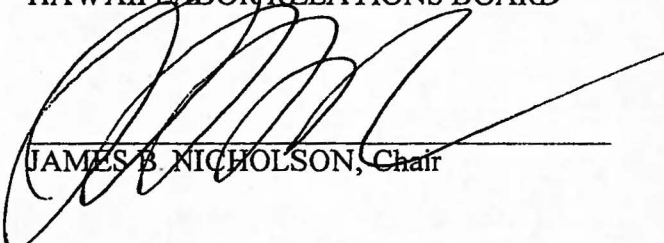
charter schools, negotiations shall be conducted as provided by HRS § 89-10.55(c).

DECLARATORY ORDER

- a. The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,] rests exclusively with the UPW, the Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to HRS § 89-10.55, (b), and in accordance with HRS § 89-6 (d).
- b. Local school boards of charter schools may not repudiate the terms of said Unit 01 master agreement or the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to HRS § 89-6(e).
- c. Absent express delegation by another local school board or statutory authority, local school boards may only negotiate on behalf of, and contractually bind, their own charter schools. However, the Board clarifies that more than one local school board may be involved in negotiations that affect more than one charter school (see HRS § 302B-8(b)(15)). Further, the Board concludes that MOAs or supplemental agreements so negotiated may be inconsistent or conflict with master agreements as well as supplemental agreements or MOAs negotiated pursuant to HRS § 89-6(e), subject to certain conditions and requirements contained in chapter 89 governing any memorandum of agreement or supplemental agreement, as discussed earlier.

DATED: Honolulu, Hawaii, February 2, 2009

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. PATRICIA
HAMAMOTO, Superintendent, Department of Education, State of Hawaii, et al.

CASE NO. DR-05-95

ORDER NO. 2585

ORDER DENYING IN PART AND GRANTING IN PART INTERVENORS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT; FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECLARATORY ORDER


SARAH R. HIRAKAMI, Member

Copies sent to:

Herbert R. Takahashi, Esq.

James E. Halvorson, Supervising Deputy Attorney General

Richard H. Thomason, Deputy Attorney General



KANEOHE
RANCH

February 2, 2011

The Honorable Jill N. Tokuda, Chair and Members
Senate Committee on Education
The Honorable Clayton Hee, Chair and Members
Senate Committee on Judiciary & Labor
Hawaii State Legislature
State Capitol
Honolulu, HI 96813

RE: TESTIMONY ON SB2537 RELATING TO CHARTER SCHOOLS

Ladies and Gentlemen:

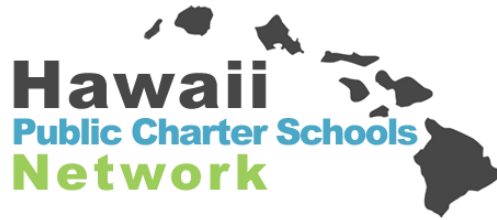
This letter provides testimony in support of SB2537 which is intended to allow local school boards of charter schools and exclusive representatives to enter into master agreements separate from other mater agreements collectively bargained between the exclusive representative and the Hawaii Department of Education.

The purpose of SB2537 is to provide flexibility for charter schools in Hawaii in their relationship with collective bargaining. The purpose of charter schools is to provide complete flexibility for school leaders and teachers to create alternative systems of education and implement alternative ideas in education to improve outcomes for Hawaii's children. Because adherence to master agreements could limit flexibility needed for charter schools to succeed, it is suggested that SB2537 continue. Hawaii is one of only a few states to require collective bargaining and exclusive representatives for charter schools. Permitting flexibility in connection with this requirement seems appropriate for charter schools.

Thank you for this opportunity to testify and for your kind consideration of these matters.

Very truly yours,

H. Mitchell D'Olier
President and
Chief Executive Officer



THE SENATE
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012
COMMITTEE ON EDUCATION
Senator Jill N. Tokuda, Chair
Senator Michelle N. Kidani, Vice Chair
COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Friday, February 03, 2012
TIME: 2:15 PM
PLACE: Conference Room 225
State Capitol
415 South Beretania Street

Chairs Tokuda and Hee, Vice Chairs Kidani and Shimabukuro, and members of the Committees on Education and Judiciary and Labor,

RE: SB2537 - RELATING TO CHARTER SCHOOLS, **In support**

The Hawaii Public Charter School Network (Network) is a 501(c)(3) non-profit organization that exists to advance high quality public education in Hawaii by advocating for, and providing supports to, public charter schools. The HPCSN represents all 31 of Hawaii's public charter schools, and their 9,000+ public charter school students.

The HPCSN is in support of SB2537. Simply put, this bill allows schools another option. Currently charter schools are allowed by law to negotiate supplemental agreements. Some of these supplemental agreements look very much like their own master contracts as they have large portions of the master contract language deleted or changed.

Our local school boards value their employees. After all, many of the charters that are here today could have only come into existence with cooperation, vision, and efforts from dedicated teachers and other staff members.

The bottom line is, if teachers, staff and the local school board of a charter school wants to collaborate and negotiate a separate master contract, they should be given the right to do so. If the teachers, staff and local school board choose to negotiate a supplemental agreement or use the existing master contract, they should maintain the right to make those choices as well.

We have schools that have local school boards and staff that can agree upon terms for a new contract today. Because this is not possible, some of our teachers and staff are not happy that it is not happening. The reason given to schools is that there is no master contract currently in effect and therefore, there is no way to negotiate supplemental agreements. Schools that continue practices allowed in a supplemental contract after a master contract expires would technically be out of compliance with Chapter 89.

Please support this bill to allow charter schools' staff and local school boards the flexibility, stability, continuity and control to find ways to work together when the state and unions are unable to reach agreement.

As stated in the existing charter school law, HRS chapter 302B-1 states that, "'Charter school' refers to those public schools holding charters to operate as charter schools under this chapter, including start-up and conversion charter schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to[...] personnel management." It is difficult when our law envisions both charter schools that have the flexibility to independently manage personnel while also being held to collective bargaining at the same time. We respect that Hawaii charter schools are within the estimated 12% of the nation's collectively bargained charter schools.

In conclusion, according to John Wilson's article in Education Week titled *Collective Bargaining in Charter Schools* dated December 8, 2011, "Unions and management have too much at stake not to make bargaining positive, progressive, and in service to the students they serve."

Sincerely,

A handwritten signature in black ink, appearing to read 'Lynn Finnegan', with a long horizontal flourish extending to the right.

Lynn Finnegan
Executive Director



HAWAII TECHNOLOGY ACADEMYSM

Hawaii Public Charter School #551

*94-810 Moloalo Street
Waipahu, Hawaii 96797
808-676-5444
808-676-5470 (Fax)*

February 3, 2012

Honorable Jill Tokuda, Chair
Honorable Michelle Kidani, Vice Chair
Senate Committee on Education

Honorable Clayton Hee, Chair
Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Re: SB 2537 – Relating to Charter Schools - Support
Conference Room 225, 2:15 PM

Aloha Chairs Tokuda and Hee, Vice Chairs Kidani and Shimabukuro and Committee Members:

On behalf of the Hawaii Technology Academy (HTA), a public charter school with learning centers in Waipahu and Princeville serving students on Oahu, Kauai, Hawaii Island and Maui, thank you for the opportunity to testify in support of this bill.

We support SB2537 to allow local school boards of charter schools and exclusive representatives to enter into master agreements separate from any other master agreement collectively bargained for between the exclusive representatives and department, as defined in chapter 89, HRS.

Hawaii's public charter schools exist to offer choices to students and parents who seek an education that best fits their needs. Likewise, local school boards should maintain the option to negotiate a separate master contract should they wish to endeavor into one. Finally, if teachers, staff and local school board members wish to negotiate supplemental agreements or use the existing master contract under which to operate, they should maintain the ability to exercise that choice.

For these reasons, we urge your strong support for the passage of this bill to assist Hawaii's public charter schools.

Sincerely,

Leigh Fitzgerald
Executive Director
Hawaii Technology Academy

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 8:52 AM
To: EDU Testimony
Cc: msgianfrancisco@ethompson.org
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Elizabeth Gianfrancisco
Organization: Myron B. Thompson Academy
E-mail: msgianfrancisco@ethompson.org
Submitted on: 2/2/2012

Comments:

I support SB2537 as it allows charter schools the flexibility to develop a master agreement separate from any other master agreement. This measure would strongly benefit our charter school communities. For example, while the tenure system was designed to protect teachers and ensure their long-term employment, there are some teachers who make a mockery of our profession knowing that they will not be fired. They provide a sub-par education to the children of Hawaii, having a negative impact on the quality of education for the State as a whole. If I am not doing my job well, I do not believe I should be allowed to stay in my position at the school. However, I realize that tenure may be important to some school communities. Therefore, by allowing charter schools to have the flexibility to make decisions like these on a case-by-case basis, it promotes an improved working environment for teachers and a superior educational environment for students.

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 9:34 PM
To: EDU Testimony
Cc: kaipo_kealoha@yahoo.com
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Chris Gates
Organization: Individual
E-mail: kaipo_kealoha@yahoo.com
Submitted on: 2/1/2012

Comments:

As a charter school teacher I am in favor of adding the option for charter school teachers to formulate a master contract unique to our place based school. As a small school with a functioning local school board and a high achieving student body I believe we are best prepared to create a contract that best serves our students and community. As a dues paying member of HSTA I would look forward to working with them to create a contract that best fits our small school in order to continue or success.

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 5:55 PM
To: EDU Testimony
Cc: jenhi@hawaii.rr.com
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Jennifer Hiro
Organization: Individual
E-mail: jenhi@hawaii.rr.com
Submitted on: 2/1/2012

Comments:

I support SB 2537 to give charter schools the option to create an agreement specific to their school. A specific master agreement, which allows charter schools to use an organizational model which honors teacher in making decisions in such matters as: school-by-school not to furlough, agreeing to increased responsibilities for supplemental pay, school hours, curricular models, etc. are important in designing schools that meet the needs of their learning community members: students, parents, staff and families.

Shared leadership models which involve and honor teacher teams in the governance and accountability of schools have been successful across the country. As a charter school teacher, I want the ability to create school-specific master agreements that will enable shared leadership models involving teachers to create and implement effective, innovative and successful school models in our community.

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 4:40 PM
To: EDU Testimony
Cc: hanahi@gmail.com
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Paula Satterthwaite
Organization: Individual
E-mail: hanahi@gmail.com
Submitted on: 2/1/2012

Comments:

I work at a charter school. For the past 9 years we have negotiated our own contract, have been satisfied with it and now HSTA has filed a lawsuit against our LSB for this. A charter school master agreement specific to my school would be beneficial to me personally and professionally (e.g. Teacher teams deciding school-by-school not to furlough, forgoing HSTA master agreement pay cuts, agreeing to increased responsibilities for supplemental pay, school hours, curricular models, etc.). A specific master agreement would provide a better "fit" for me and my colleagues because we are a unique school who try to consider what is best for our students, rather than what might be the best 'deal' for teachers.

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 3:06 PM
To: EDU Testimony
Cc: kristie.a.fetterly@gmail.com
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Kristie Fetterly
Organization: Individual
E-mail: kristie.a.fetterly@gmail.com
Submitted on: 2/1/2012

Comments:

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 2:26 PM
To: EDU Testimony
Cc: Emilie.Beadle@gmail.com
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Emilie Beadle
Organization: Individual
E-mail: Emilie.Beadle@gmail.com
Submitted on: 2/1/2012

Comments:

As a charter school teacher I believe that having a charter school master agreement specific to my school would definitely be beneficial to me personally. Due to the unique nature of my charter school, it is unrealistic to assume that we function the same way as the regular DOE schools and that we will always have the same needs. Having our own master agreement will give us the flexibility to meet our own distinctive needs.

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Dan Kuhar
Organization: Kihei Charter School
E-mail: dkuhar@kcsohana.com
Submitted on: 2/1/2012

Comments:

This Bill is good for teachers and great for kids! The kids will be the ultimate winners, which should be the goal of all educational legislation.

Support of SB2537 – Allowing Charter Schools to negotiate their own master agreements:

I am in great support of SB2537, which would allow charter schools to not fall under HSTA's Master agreement, and allow charters to negotiate their own master contracts. Charter schools are autonomous schools of choice and are tremendously stifled by HSTA's Master contract in many ways. First, HSTA's contract is never finalized when we begin hiring, making it impossible to communicate to potential employees what their contract will look like. Second, HSTA's contract sets a minimum bar for a teacher. They do not even consider the special needs, challenges, or goals of the independent, autonomous 32 charter schools. Many parts of the HSTA Master agreement do not even apply to charters as written. Third, charter schools exist as schools of choice for parents, students and teachers. HSTA stated in the email they sent to all HSTA members this week that they fear many charters will negotiate a contract that is worse than theirs. This is a moot point as teachers have the same right as parents and students to choose a charter school, or choose to work at a school that honors HSTA's Master agreement. HSTA's statement is offensive to all teachers, as it implies that they are not intelligent enough to choose the school and contract that is the best for them. Lastly, HSTA's Master agreement stifles creativity and innovation, which is why charter schools exist. By setting a minimum level of expectation, protecting ineffective teachers, providing tenure, and dictating specific minimal time parameters charter schools are forced to in many cases modify what they know is best for their students. HSTA's minimal efforts to negotiate contract addendums are not enough, and have been ineffective at best. Allow charter schools to freely negotiate their own master contracts, hold them accountable to their DIPs, missions, and goals and watch them soar.

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2012 7:16 PM
To: EDU Testimony
Cc: megandehning@gmail.com
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: megan dehning
Organization: Individual
E-mail: megandehning@gmail.com
Submitted on: 1/31/2012

Comments:

To Whom it May Concern,

A charter school master agreement specific to my school would be beneficial for me, both personally and professionally. This bill gives charter school teachers the freedom to make choices they feel would best benefit the student population. Length of the school day, refraining from furloughs, and curricular models can be determined by the teacher team and local school board, as opposed to mandates required by HSTA. As a dues paying HSTA member, I would like the chance to work closely with the union and the ability to create our own supplemental or master agreements.

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: No
Submitted by: Megan Edgar
Organization: Individual
E-mail: medgar@kcsohana.com
Submitted on: 2/2/2012

Comments:

As a teacher at a charter school I support the option included in SB2537 for charter schools to formulate a "master" contract specific to each school. Specific contracts directly benefit me both personally and professionally, and are very important in enabling charter schools to run unique programs.

On a personal level, I can work with my peers to negotiate a contract that insulates the teachers at my school from furloughs and other HSTA negotiated pay cuts. Benefits unavailable to HSTA teachers such as retention or wellness bonuses can be included in a specific contract. Teachers who want to take on extra jobs are able to negotiate increased pay for increased duties. School hours can be altered to best fit unique curriculum and best fit the needs of the staff and the students of the school. Finally, teachers on school specific contracts do not have remain locked in set HSTA negotiated salaries that may never change despite increased cost of living or the teachers performance.

From a professional standpoint, a contract specific to the school is essential for meeting the unique curriculum goals charter schools set for themselves. The HSTA master contract forces schools into non-negotiable restrictions such as specific day length, specific amount of prep time for teachers, and specific lists of teacher duties and roles. The unique curriculum of charter schools often requires creative scheduling and does not always work under such restrictions. With specific contracts teachers can be flexible in creating their schedules and the schedules of the students. This benefits everyone. Teachers are able to teach well, and students are able to get the classroom time they need to succeed. Flexibility is essential to successful implementation of the unique curricular opportunities charter school promise, and the current HSTA master contract greatly restricts that.

Finally, charter schools exist to provide choices. They provide choices for students and parents, but they also provide choices for teachers. I chose to work at a charter school because I wanted to be in an environment where teachers are given the opportunity to help govern their school. I wanted to work with unique curriculum I could help create. I wanted to work in a place where the needs of students are held in equal regard to the needs of the adults who work with them. When teachers can work with their school to negotiate their own unique contracts they are empowered to self-govern and innovate. Specific contracts allow charter school teachers to provide the choice options charter schools were created for.

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 8:48 PM
To: EDU Testimony
Cc: wheapcs@gmail.com
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Support
Testifier will be present: Yes
Submitted by: Curtis Muraoka
Organization: Individual
E-mail: wheapcs@gmail.com
Submitted on: 2/2/2012

Comments:
Re: SB2537

February 3, 2012
Joint Hearing of Committees on Education and Judiciary Testimony of Curtis Muraoka, BU5
Member and Employee of West Hawaii Explorations Academy Public Charter School

Position: Support

Aloha Chairs Tokuda and Hee, Vice-Chairs Kidani and Shimabukuro, and honorable members of the
Committees on Education and Judiciary:

Thank you for this opportunity to testify. I believe our school, West Hawaii Explorations
Academy, can provide some relevant context and experience to the bill now before you that
would provide an option for charter school boards and charter school teachers to enter into
either supplemental agreements, or master contracts specific to their schools.

In 2004, West Hawaii Explorations Academy teachers wanted to define their union contract to
better serve their situation. They worked with the HSTA in creating a contract largely based
on the 2005-07 HSTA master contract, but crafted significant language and elements relevant
to the teaching conditions at WHEA specifically. Although this contract may seem out-of-date,
it recently became very useful in helping us respond publicly to the findings of the State
Auditor regarding WHEA. While the audit found that we appear to have violated collective
bargaining law, we cite the 2005-07 contract where the board reserved the right to pay
teachers more for added responsibilities. It also contained a duration clause that the
agreement would remain in effect after the HSTA contract expired until either party gave
written notice that they would like to revise the agreement. Please note that this was more
of a stand-alone agreement than a "supplemental" in that regard.

The exercise of allowing teachers to closely manage the expectations of their employment in a
respectful, collaborative and professional manner was beneficial to all parties involved.
Both parties found that modifying elements together was helpful and instructive, leading to
greater understanding between management and labor; both parties found that certain elements
necessary in traditional schools, might be barriers to frugal operation of the charter school
program. Examples of these include requirements for bulletin boards, parking, duty-free
lunch, and after school working hours.

Most notably, it established a mutually agreed-upon Teacher Evaluation Rubric Scoring (TERS) system that would be used in the case that the school would need to RIF positions due to funding. This TERS process would also be used as an annual teacher evaluation, a hot topic of discussion today.

Since teachers have a significant say in governance structures at WHEA, this has been very good for its teachers.

Thank you for your attention in this matter.

Curtis Muraoka

Erin Conner

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 02, 2012 8:55 PM
To: EDU Testimony
Cc: ljww@hawaii.rr.com
Subject: Testimony for SB2537 on 2/3/2012 2:15:00 PM

Testimony for EDU/JDL 2/3/2012 2:15:00 PM SB2537

Conference room: 225
Testifier position: Oppose
Testifier will be present: No
Submitted by: Laura warner
Organization:
E-mail: ljww@hawaii.rr.com
Submitted on: 2/2/2012

Comments:

I am against bill SB2537
All Hawaii State Teachers, DOE and charter should be supported, protected under the master contract.