



above cases, were to notify the Board of their intent to intervene by May 30, 1980.

On May 30, 1980 BOE filed petitions to intervene in both cases, and the respective petitions were granted on June 4, 1980. (Order Nos. 322 and 323)

On June 10, 1980 Ann Thiede, on behalf of herself and all unit 13 speech/language pathologists, educational therapists and clinical psychology assistants, petitioned to intervene in the RA case. On June 12, 1980 the Board granted said petition to intervene. (Order No. 326)

On June 20, 1980 the Board granted HSTA's motion to consolidate the DR and RA cases. (Order No. 328)

Subsequent to Ann Thiede's petition to intervene, fifty-five unit 13 speech/language pathologists, educational therapists and clinical psychology assistants individually petitioned for and were granted intervenor status. (Order Nos. 335, 343, and 346)

Hearings in the consolidated cases were held on August 25, 26, 27, and September 2, 1980, with all parties afforded the opportunity to present evidence and arguments and to cross-examine witnesses. Post-hearing briefs were submitted by HSTA and BOE on September 30, 1980.

Based upon the entire record herein, the Board makes the following findings of fact, conclusions of law, declaratory ruling, and order.

#### FINDINGS OF FACT

Petitioner HSTA is the exclusive representative, as defined in HRS §89-2(10), of employees in bargaining unit 5 (teachers and other personnel of the department of education under the same salary schedule), HRS §89-6(a)(5).

Employer-Intervenor BOE is the public employer, as defined in HRS. §89-2(9), of employees of the Department of Education (hereafter DOE).

Intervenors Ann Thiede, et al., are DOE employees who are in bargaining unit 13 (professional and scientific employees, other than registered professional nurses), HRS §89-6(a)(13).

HSTA and BOE are parties to the unit 5 collective bargaining agreement in effect for the period July 1, 1979 to June 30, 1981.

The issues raised in this proceeding may be divided as affecting two groups of DOE employees whom Petitioner seeks to include in unit 5: (1) the less-than-full-time teachers who are excluded from HRS Chapter 89 coverage, and (2) certain members of diagnostic-prescriptive teams (hereafter D-P teams) who are now in unit 13. The findings of fact herein will be divided accordingly.

#### Teachers Excluded from HRS Chapter 89

The three categories of teachers employed by DOE whose exclusion from coverage under HRS Chapter 89 is at issue are the following: (1) half-time, or 50% FTE (full-time equivalency), salaried teachers, (2) substitute teachers, and (3) part-time temporary teachers (PTTs).<sup>2</sup>

Half-time teachers are paid one-half the annual salaries of regular teachers, pursuant to the teachers salary schedule under HRS §297-33(d). DOE's position is that half-time teachers work 17-1/2 hours per week, one-half the

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<sup>2</sup>Effective July 1980, Part-Time Temporary Teacher (PTT) is the classification title of what was formerly known as the Casual Temporary Teacher (CTT). (Emp. Ex. 18)

official work week of 35 hours for regular teachers. Half-time teachers are employed in situations where the number of students or the nature of services do not require full-time teachers. This practice was established prior to collective bargaining. (III Tr. 126-27)

Substitute teachers are paid on a per diem basis pursuant to HRS §297-33(i).

PTTs are employed on an hourly, non-contractual, no benefits basis not to exceed 17-1/2 hours per week to fill positions in what DOE refers to as "supplementary programs or off-season, off-hour programs." (III Tr. 129) The positions are as follows:

- |     |   |                    |
|-----|---|--------------------|
| 1.  | Adult Education                             | PTT (Academic)     |
| 2.  | Home/Hospital                               | PTT (Academic)     |
| 3.  | Driver Education                            | PTT (Academic)     |
| 4.  | Title I                                     | PTT (Academic)     |
| 5.  | Indo-Chinese Refugee                        | PTT (Academic)     |
| 6.  | Vocational/Technical                        | PTT (Academic)     |
| 7.  | Statewide Dropout                           | PTT (Academic)     |
| 8.  | Olomana Youth Center                        | PTT (Academic)     |
| 9.  | ESAA  | PTT (Academic)     |
| 10. | TESOL/SLEP/Bilingual/<br>Bicultural         | PTT (Academic)     |
| 11. | Other new academic<br>positions created     | PTT (Academic)     |
| 12. | Summer School [footnote<br>omitted]         | PTT (Academic)     |
| 13. | Adult Education                             | PTT (Non-Academic) |
| 14. | Occupational Skills                         | PTT (Non-Academic) |
| 15. | Other new non-academic<br>positions created | PTT (Non-Academic) |

State of Hawaii Part-Time Temporary Teachers [Hourly Paid] Employment Guidelines, July 1980. (Emp. Ex. 18, p. 4)

DOE has approximately 4,891 PTT positions distributed among its various programs. An individual may be employed in one or more PTT positions. (Pet. Ex. 4, I Tr. 24-25)

Pay rates for PTTs are based on the most current per diem rates established for substitute teachers, as follows:

Class I Per Diem Rate for Class I  
Substitute Teacher

Class II Per Diem Rate for Class II  
Substitute Teacher

Class III Per Diem Rate for Class III  
Substitute Teacher

Hourly Rates shall be derived from Per Diem Rates in accordance with the following formula:

$$\text{*Hourly Rate} = \frac{\text{Per Diem Rate}}{6 \text{ average working hours per day}}$$

Per diem rates for substitute teachers are based on the annual salary rate established for the appropriate salary range and step on the most current teachers' salary schedule as follows:

Class I Substitute Teacher . . .  
Salary Range 1, Step I

Class II Substitute Teacher . . .  
Salary Range 3, Step I

Class III Substitute Teacher . . .  
Salary Range 5, Step I

Per diem rates shall be derived from annual rates in accordance with the following formula:

$$\text{Per Diem Rate} = \frac{\text{Annual Salary Rate}}{12 \text{ Months} \times 21 \text{ Average Working Days Per Month}}$$

\*Note: Hourly Rate is based on student contact time exclusive of preparation time, lunch break, recess, etc.

DOE Regulation #5203. (Pet. Ex. 15)

In the Help Wanted section of the August 3, 1980 Sunday Star-Bulletin & Advertiser, DOE placed the following announcement, which read in pertinent part:

This is to announce that the Department of Education, State of Hawaii, is recruiting applicants to fill future vacancies in schools for CASUAL TEMPORARY TEACHER positions and SUBSTITUTE TEACHER positions.

MINIMUM QUALIFICATION REQUIREMENT. Graduation from high school. Preference may be given to applicants eligible for the

Basic or Professional Teacher's Certificate.

#### CASUAL TEMPORARY TEACHER

Part-time hourly employment; for example, Title 1 Reading/Math Teachers, Limited English Speaking Teachers, Home/Hospital Instructors, Adult Education Teachers, etc.

#### PRESENT HOURLY SALARY RATES

Class I: \$7.40 per hour--Less than a Baccalaureate Degree;  
Class II: \$7.98 per hour--Baccalaureate Degree from an accredited institution;  
Class III: \$8.63 per hour--Baccalaureate Degree plus 30 semester hours earned subsequently and/or Masters Degree and/or Five Year Teaching Diploma and/or DOE Professional Teaching Certificate.

TYPE OF ASSIGNMENT: Hourly employment (17-1/2 hours per week or less) for as long as funds are available. No benefits are accrued in this type of appointment.

#### SUBSTITUTE TEACHER

#### PRESENT DAILY SALARY RATES

Class I: \$44.41 per day--Less than a Baccalaureate Degree;  
Class II: \$47.90 per day--Baccalaureate Degree from an accredited institution;  
Class III: \$51.77 per day--Baccalaureate Degree plus 30 semester hours earned subsequently and/or Masters Degree and/or Five Year Teaching Diploma and/or DOE Professional Teaching Certificate.

TYPE OF ASSIGNMENT: Day-to-day employment. No benefits are accrued in this type of appointment.

(Pet. Ex. 17)

In the August 10, 1980 Sunday Star-Bulletin & Advertiser, DOE placed an announcement for "PART-TIME TEMPORARY TEACHERS" similar to the one above for the CTT. (Pet. Ex. 17)

Petitioner submitted into evidence portions of two studies concerning the amount of non-compensated time spent by full-time teachers in school-related tasks outside of classroom instructional hours. The first was entitled "A Study of Preparation Periods, Duty Free Lunch Periods and Optional Accomplishment of Professional Tasks," done in 1970-71 and referred to by Petitioner as the Kellett Minn Study. (Pet. Ex. 18, II Tr. 37, 45) The second was entitled "Profile of Hawaii's Public School Teachers," a research project of Petitioner's negotiating committee based on a survey conducted by the National Education Association done in 1975-76 (hereafter the HSTA-NEA study). (Pet. Ex. 19, I Tr. 38, 45)

The Kellett Minn study showed that the number of hours spent on noncompensated, school-related activities averaged 15.1 hours per week for elementary teachers and 15.5 hours per week for secondary teachers. (Pet. Ex. 18, I Tr. 44)

The HSTA-NEA study showed that the average amount of noncompensated school-related time was 533 minutes and the median time was 480 minutes. (Pet. Ex. 19, I Tr. 46)

BOE and HSTA are parties to the unit 5 collective bargaining agreement in effect for the period July 1, 1979 - June 30, 1981. Provisions therein relevant to teachers' work time are hereafter cited from Article VI, Teaching Conditions and Hours. The provisions deal with the definition of a regular work day, recognition of the need for preparation time outside of school hours, and distribution of work time within the work week:

D. WORK TIME

1. Regular Work Day

The regular work day shall be defined as the amount of time per day that bargaining unit members shall be required to be present at their assigned place of work during such day as determined by the Employer. The regular work day shall consist of seven (7) hours.

AA. SCHOOL RELATED ACTIVITIES

The parties recognize that teachers as a part of their professional obligations must devote considerable time outside of school hours to prepare for instruction. The parties recognize further that in addition to such professional obligations teachers have a supplemental professional obligation to participate in a reasonable amount of school related activities.

CC. WORK TIME DISTRIBUTION,  
WEEKLY TOTALS, WITHIN THE  
7 HOUR DAY, 5 DAY WEEK

1. Self-Contained Classes<sup>3</sup>

- a. Fourteen hundred fifteen (1415) minutes of instructional time per work week.
- b. Two hundred (200) minutes of preparation time per work week in blocks of not less than forty (40) continuous minutes during the teachers' regular work day, except as provided for in Article VI, Section X-1.
- c. One hundred fifty (150) minutes of duty-free lunch periods per work week in blocks of not less than thirty (30) continuous minutes during the teachers' regular work day except as provided for in Article VI, Section Y.

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<sup>3</sup>Generally speaking, "Self-Contained Classes" refers to elementary schools, and "Departmental Classes" refers to secondary schools. (I Tr. 43)



d. Three hundred thirty-five (335) minutes to be used during the work week exclusively for;

- (1) all faculty meetings
- (2) departmental meetings
- (3) grade level meetings
- (4) curriculum meetings
- (5) passing time
- (6) opening and closing time
- (7) recess
- (8) homeroom
- (9) scheduled activity periods on a voluntary basis
- (10) study hall

2. Departmental Classes (see footnote 3)

a. Twelve hundred eighty-five (1285) minutes of instructional time per work week.

[Paragraphs b. and c. herein are identical to paragraphs b. and c. under "Self-Contained Classes." Paragraph d. is also identical except that four hundred sixty-five (465) minutes are allotted for the 10 activities listed.]

The following table shows in summary form, according to DOE, a comparison of duties among the classes of teachers at issue herein: \_\_\_\_\_

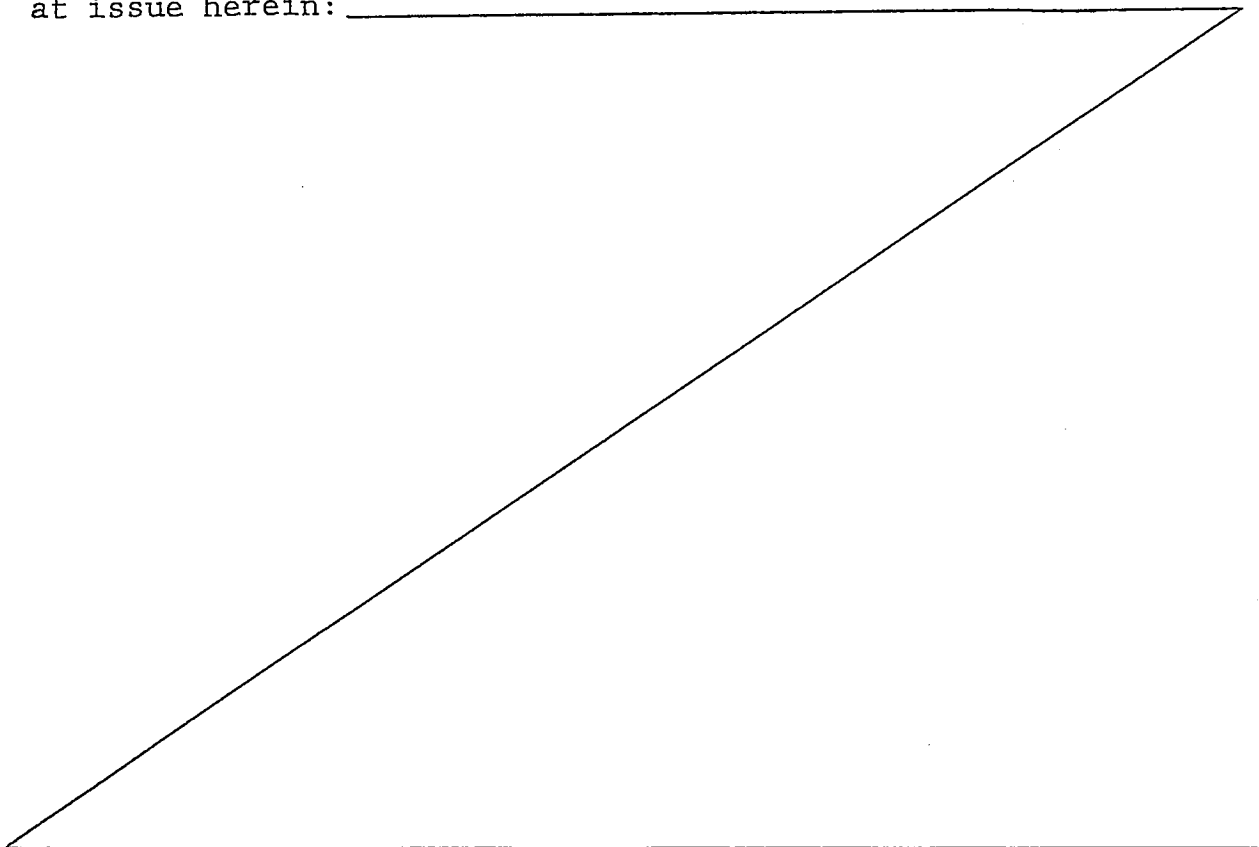


TABLE I<sup>4</sup>TABLE OF COMPARATIVE TYPICAL  
DUTIES AND RESPONSIBILITIES

The following table is a partial comparison of duties and responsibilities of these classes of teachers. It is intended to highlight the significant differences in these classes by comparing typically assigned duties and responsibilities usually assumed and performed by each class.

Regular Teacher	Substitute Teacher
<b>Supervision</b> Works under the general supervision of the principal.	Works under the immediate supervision of principal or vice-principal.
<b>Appointment</b> Is on a continuing contractual basis (permanent or temporary).	Day-to-day.
<b>Instructional Program</b> Takes full responsibility for the educational program of the assigned students over the school year.  Performs the full range of instructional services.  Plans overall course objectives.  Develops course outline.  Prepares lesson plans.	Responsible only for one day at a time.  Instructional only.  No  No  No
<b>Student Evaluations</b> Prepares student progress reports.  Confers with parents.	As required.  As required.
<b>Other Related Duties</b> Participates in the budget process.  Supervises students before school, during recess and after school.	No  As required.
Participates in faculty committee and the sponsorship of pupil activities.	No

<sup>4</sup>Due to space limitations in reproducing this table by typewriter, the table's single-page format is herein divided, and the "Regular Teacher" column is repeated for convenience on the following page. In the original, the table's columns read from left to right: Regular Teacher, Part-Time Temporary Teacher, and Substitute Teacher.

Regular Teacher	Part-Time Temporary Teacher	
	Regular Program*	Supplementary Program**
Supervision Works under the general supervision of the principal.	Works under the immediate supervision of a teacher.	Works under the general supervision of principal vice-principal or coordinator.
Appointment Is on a continuing contractual basis (permanent or temporary).	Hourly, part-time. Not contracted.	Hourly, part-time. Not contracted.
Instructional Program Takes full responsibility for the educational program of the assigned students over the school year.  Performs the full range of instructional services.  Plans overall course objectives.  Develops course outline.  Prepares lesson plans.	Responsible only as assigned by the regular teacher.  Instructional only.  No  No  No	Responsibility limited to proper educational development of students as related to class or course instruction only.  Instructional only.  Yes  Yes  No
Student Evaluations Prepares student progress reports.  Confers with parents.	As necessary.  No	Yes  Not usually.
Other Related Duties Participates in the budget process.  Supervises students before school, during recess and after school.	No  No	No  No
Participates in faculty committee and the sponsorship of pupil activities.	No	No

\* Includes staffing needs of educational programs serving students with special needs such as Compensatory Education, Special Education, Bilingual/Bicultural, etc.

\*\*Includes staffing needs of off-hour, off-season programs such as Adult Education, Summer School, Driver Education, etc.

State of Hawaii Part-Time Temporary Teachers [Hourly Paid]  
Employment Guidelines, July 1980. (Emp. Ex. 18, Table 1)

### Diagnostic-Prescriptive Teams

The District Diagnostic Team is a psycho-educational team, and its main objective is to improve identification and follow-up services for children with special education needs.

The team is generally comprised of the following members:

Psychological Examiner  
Speech-Hearing Specialist  
School Social Worker (Civil Service Employee)  
Visiting Teacher  
Diagnostic Prescriptive Teacher  
Clerical Assistance (Civil Service Employees)

Source: DOE (Pet. Ex. 9)

The psychological examiner, speech-hearing specialist, and diagnostic prescriptive teacher are certificated positions. When DOE converts these positions to classified civil service positions, they are given new titles. The certificated-classified counterparts are as follows:

Psychological examiner - clinical psychology  
assistant III  
Speech-hearing specialist - speech and hearing  
therapist II or III  
Diagnostic-prescriptive teacher - educational  
therapist III

(Pet. Ex. 29, II Tr. 30-32)

A summary of duties of the classified D-P team members was gleaned from representative witnesses called by Petitioner:

The clinical psychology assistant III administers the same battery of tests as does his certificated counterpart to children on a one-to-one basis. The tests measure verbal and visual comprehension, motor development, and level of learning. (II Tr. 88-96, 102-103)

The speech and hearing therapist III, like her certificated counterpart, tests for speech, language and hearing problems, and gives speech therapy to children on a one-to-one basis. (II Tr. 138-39)

The educational therapist III, the classified counterpart of the D-P teacher, gives a partial or complete academic assessment to a child, depending upon the nature of the referral. The complete assessment would include testing in reading, math, spelling and written language. (II Tr. 180)

The Central Oahu District Special Services Handbook was introduced into evidence by Petitioner. (Pet. Ex. 23) Reginald Jaderstrom, a certificated psychological examiner and D-P team leader, explained that "[t]his was compiled by district staff people telling the school people, principals, counselors, teachers, whoever might want to look at it, what the roles of each of the team members are." (II Tr. 83)

The duties and responsibilities of both the D-P teacher and the educational therapist are listed under the combined heading "Diagnostic-Prescriptive Teacher/Educational Therapist." Mr. Jaderstrom testified that in practice as well as on paper their jobs are the same. Likewise for "Psychological Examiner/Clinical Psychologist Assistant." (II Tr. 83-84) The duties and responsibilities of the "Speech, Hearing, Language Specialist" and the "Speech, Hearing Therapist" are written on separate pages to differentiate between language evaluation and therapy functions, but Mr. Jaderstrom stated that there has been a reversion to combining the two jobs, and both classified and certificated positions alike play dual roles in this area. (II Tr. 84-86)

Albert Yoshii, DOE personnel specialist, testified as follows on the background of the D-P teams. The diagnostic team concept was introduced in the fall of 1969. Dr. James Harris of the DOE's special education branch developed the model as a multi-disciplinary approach to the identification,

diagnosis, and follow-up of children with learning disabilities. A central diagnostic team was fully organized for the first time on September 1, 1969 to serve as a prototype of services to be made available in all districts of the state. At a BOE meeting held on December 4, 1969 the Board approved the establishment of diagnostic teams in selected school complexes. The minutes of that meeting record, without elaboration, that one Board member felt that the teams should be constituted on a 12-month year. That proposal was not discussed further, however, as the DOE Superintendent foresaw no backlog of cases warranting a 12-month operation. (Emp. Exs. 2, 3, III Tr. 57-58)

While still in its trial period, the diagnostic team project was expanded and staffed on a statewide basis. The same period saw the enactment of the Hawaii Public Employment Relations Act, HRS Chapter 89, the state's collective bargaining law. Because diagnostic team members were then being paid on the teacher's salary schedule, these positions were included in unit 5. (III Tr. 60-61)

The 1973 legislative auditor's report questioned DOE's staffing patterns. It recommended to DOE that "the positions of those teachers performing tasks similar to those performed by civil service employees should be reviewed to determine their proper classification." (Emp. Ex. 4, p. 11-47)

In 1975 BOE adopted the State Plan for Special Education, and Federal law P.L. 94-142, "Education for All Handicapped Children Act of 1975," was passed. For DOE the new laws and requirements for special education services resulted in an increased need for diagnostic team services, a growing backlog of cases, and repeated requests to the

Legislature for additional positions for the diagnostic teams.  
(III Tr. 61-62)

DOE submitted correspondence between itself and the Department of Personnel Services (hereafter DPS) showing the latter questioning DOE's classification of the diagnostic team positions as civil service positions. DPS was apparently satisfied with DOE's assessment of the duties to be performed by said positions, as it subsequently in 1976 and 1977 classified the educational therapist III, clinical psychology assistant III, and speech and hearing therapist III positions as civil service SR-18 positions. (Emp. Exs. 5, 6, 7, 8, 9)

In 1977 BOE signed a 13-page Consent Agreement and Order<sup>5</sup> in an action brought against it for alleged violations of HRS §§301-21, et seq., concerning special training for exceptional children. The document both reiterated and amplified DOE's duties and responsibilities towards these children. (Emp. Ex. 10, III Tr. 65)

The Federal Register of August 23, 1977, provided revised rules and regulations for the implementation of Part B--Assistance for Education of All Handicapped Children of P.L. 94-142, placing additional requirements on DOE. (Emp. Ex. 11, III Tr. 66)

In requesting the Legislature to provide more civil service positions to handle the increased workload, DOE was questioned in legislative hearings as to why, in the interest of greater efficiency, all of the team positions were not 12-month positions. After a staff study, Eugene Yamamoto, DOE's assistant superintendent of personnel services, by memorandum

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<sup>5</sup>Silva v. BOE, Civ. No. 41768. (1st Cir. Haw. 1977)

dated July 26, 1978, notified district superintendents and assistant superintendents of DOE's commitment to the conversion of vacant diagnostic team positions from 10-month certificated status to, and the establishment of new team positions under, 12-month classified status. By letter dated August 4, 1978 to DOE Superintendent Charles Clark, HSTA's executive director John Radcliffe sent formal notification of HSTA's objection to the proposed conversions, and stated its expectation that DOE would petition HPERB for a unit clarification decision, and until such decision were rendered, that the vacant positions would remain in unit 5. (Emp. Exs. 13, 14, III Tr. 66-67)

In three letters dated September 17, 1979, May 5, 1980, and May 21, 1980 to Joan Husted, HSTA's director of programs, Mr. Yoshii, pursuant to prior agreement with Ms. Husted, notified HSTA that specific vacant diagnostic team and speech and hearing specialist positions had been identified for abolishment as 10-month certificated positions, and that the freed position counts would be used to establish 12-month civil service positions. (Pet. Exs. 11, 12, 13)

At the end of 1978 BOE promulgated DOE Rule 49, Relating to the Provision of a Free Appropriate Public Education for Exceptional Children Who Are Handicapped, to implement P.L. 94-142. (Emp. Ex. 15)

Turning now to the actual operation of the D-P teams, we rely on the testimony of Sam Moore, HSTA Negotiations and Research Specialist, for the initial steps, beginning with a child being identified or screened from the classroom:

Ordinarily, the initial referral comes from the classroom teachers. . . .



Occasionally, the child may be referred by the parent or guardian. And by "referred," I mean someone is making a request to have the child tested, to have some diagnostic work done to hopefully identify the problem the child is having so that remedial action can be taken.

. . . [The referral] must be done in writing and submitted to the school principal. . . .

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Essentially, Rule 49 requires that within 30 days from the initial referral by the teacher or parent or whomever, the principal must make his decision about And ordinarily you have a screening committee in each school that would look at all the youngsters who are being referred for testing by all the teachers and try to figure out which ones really should be tested and which ones shouldn't be. . . .

Within the 30-day period the principal has to transmit this to the district superintendent for action. Once it reaches that level, then the district involves the diagnostic prescriptive team. . . .

(II Tr. 18-20)

After a child is tested and evaluated by the appropriate D-P team members, the team completes a Diagnostic Summary and Recommended Services form (hereafter DSRS) which calls for input in the following categories: achievement levels (in academic subjects and motor development); speech/language skills, behavioral data, learning style, relevant medical-development data, and relevant social-family information. (Pet. Ex. 24, 25, II Tr. 21-22) From the DSRS an Individual Educational Program (hereafter IEP) is prepared for the child. The IEP lays out the form of teaching or treatment the child is to receive. (II Tr. 22-23) The special education teacher, a PTT, or various members of the D-P teams, either certificated or classified, prepare the IEP. (Pet. Ex. 5, I Tr. 67, II Tr. 77-78, 125, 130, 141)

There is a maximum time limit of 180 days from initial referral to placement of a child into the special education program. Within the 180 days there is a maximum of 90 days allotted for the D-P team to evaluate the child. Summer recess ordinarily runs from June 11 (Kamehameha Day) to September 1, approximately 82 days. Thus, a summer hiatus in testing does not prevent DOE from fulfilling its 180-day requirement. By the same token, there is no prohibition against the 90-day diagnostic evaluation taking place during the summer. However, witnesses testified to occasional problems in locating and scheduling children for summer testing, not having all the team members together for the entire summer, and having no opportunity for classroom observation if a child were not enrolled in summer school. (II Tr. 25-26, 40-41, 183-84) Regarding classroom observation, Mr. Jaderstrom testified that federal regulations require the classroom observation of any child who is being considered for a special education program, and this function is carried out by one of the D-P team members. (II Tr. 68-69)

Employer submitted a table showing the comparative backlog of cases for diagnostic services between the summers of 1979 and 1980. In June 1979 the number of students requiring evaluations totaled 1,726. The number of such students evaluated during the summer of 1979 was 817. In June 1980 the number of students needing evaluations was 1,813. The number of such students evaluated during the summer of 1980 was 1,176.<sup>6</sup> (Emp. Ex. 29)

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<sup>6</sup>In the table the columns showing the number of students evaluated during the two summers is divided between DOE and "Contracted." For certain districts there is no breakdown between DOE and "Contracted," only a total figure. Where separately tallied, the "Contracted" figures constitute a relatively insignificant portion of the total: 86 in summer 1979 and 53 in summer 1980.

Certificated personnel have been employed by contract in summers to work on the D-P case backlog. Reginald Jaderstrom, the psychological examiner and D-P team leader referred to earlier, testified that he was contracted to work three summers on diagnostic teams. In the summer of 1980 he was contracted to do evaluations on 33 children and was paid approximately \$45 per case. (II Tr. 79)

The class specifications for the Clinical Psychology Series (which includes the clinical psychology assistant III), for the Speech and Hearing Therapy Series (which includes the speech and hearing therapist III), and for the Educational Therapist III do not require a teaching certificate, nor is classroom teaching included in the respective job descriptions. (Pet. Ex. 29)

Education and experience requirements, in relevant part, under Minimum Qualification Specifications for the subject positions are as follows:

Clinical Psychology Assistant III:

Applicants must possess a master's degree or two full years of graduate study from an accredited college or university which is creditable toward the requirement for a doctoral degree in clinical psychology or a closely related specialty. The graduate study must have included (1) diagnostic methods, including projective techniques, (2) psychotherapy and (3) supervised clinical practicum in psychodiagnostic testing.

Educational Therapist III:

Graduation from an accredited college or university with a major in education. Applicants must have had at least two years of responsible work experience in teaching emotionally disturbed or mentally retarded individuals or students with various learning disabilities. Possession of a master's degree in teaching the mentally handicapped may be substituted for the required experience.

Speech and Hearing Therapist III:

Applicants must possess a bachelor's degree from an accredited college or university with major emphasis in speech and hearing. The course work must have included a clinical practicum in both of these specialties. Professional experience must have dealt with the cure, alleviation or prevention of speech and hearing disorders, or teaching audiology and speech pathology at the graduate level in an accredited university. Possession of a master's degree in speech pathology or audiology may be substituted for the required experience. (Pet. Ex. 29)

By memorandum dated April 25, 1980 Superintendent Clark informed the district superintendents that references to instructional services in position descriptions for speech and hearing therapists and educational therapists were being deleted. The memorandum stated, in relevant part:

The Office of Instructional Services reviewed the position descriptions for all of the civil service Speech and Hearing Therapists and Educational Therapist positions in the department. It was found that a number of position descriptions made reference to the provisions of instructional services as part of the duties and responsibilities of these positions. Since the intended purpose of these positions is to provide speech therapy and diagnostic, prescriptive, and evaluation services, the position descriptions were revised to delete references to the provision of instructional services. (Pet. Ex. 28)

When asked by Petitioner's attorney if the deletion of "instructional services" made any change in his job or functions, Educational Therapist Alan Len replied in the negative. (II Tr. 185-86)

CONCLUSIONS OF LAW

In its RA petition for unit clarification, Petitioner submits that unit 5 should include the following employees of Employer BOE:

(a) All full time teachers and other personnel presently covered by the certification and the collective bargaining agreement;

(b) All teachers on the teacher salary schedule who work less than full time, but who teach the equivalent of half the student or credit hours taught by regular full time teachers;

(c) All full time adult education teachers whether on annual contract or not;

(d) All adult education teachers, whether on annual contract or not, who teach the equivalent of half the student or credit hours taught by full time adult education teachers;

(e) All special education, tutorial, and other certified employees including but not limited to teachers in SLEP, ESAA, ESEA, P. L. 94-142, and similar programs, who teach the equivalent of half the student or credit hours taught by regular full time teachers, whether such employees are on the teacher salary schedule or not;

(f) All substitute teachers who are employed by the Employer for more than sixty-three (63) days in any school year;

(g) All regular full time employees of the Employer, whether certified or on the teacher salary schedule or not, who are filling positions or performing functions on Diagnostic Prescriptive, Special Services, or Child Study teams or in other special or remedial educational services which have traditionally been filled or performed by certified personnel, or whose duties require or use teaching skills or training.

In its DR petition for declaratory ruling, Petitioner presents to the Board for decision the following questions regarding the interpretation of HRS §89-6:

1. Can the employees of the Department of Education who are not on the teacher salary schedule be included in Unit 5 if they are "teachers" as defined in 291-1 HRS, or the nature of their work is such that they have a close community of interest with teachers?

2. If the job requires any form of teaching certificate, is the employee a "teacher" who can be included in Unit 5 as described in 89-6(a)(5) HRS?

3. If the rate of pay of the employee of the Department of Education is, or at the time of passage of Chapter 89 was based on or related to the teacher salary schedule, is such employee eligible to be included in Unit 5?

4. In the case of teachers or other instructional personnel whose jobs require substantial outside preparation time, does the exclusion in 89-6(c) of a "part time employee working less than twenty hours per week" refer only to time spent teaching, or can it include the normal time required to prepare course material, correct examinations, attend faculty meetings or conduct other activities directly related to the job?

5. Is a teacher who works less than "100% of full-time equivalency (FTE)" but at "50% FTE or more" pursuant to DOE Regulation 5112, and is eligible to receive retirement and the other benefits set forth in that regulation, included in Unit 5?

In the Board's Certification of Exclusive Bargaining Representative (Decision 1, 1971), unit 5 was described as consisting of:

All Teachers and other personnel of the Department of Education under the salary schedule pursuant to Section 297-33, Hawaii Revised Statutes, employed during the payroll period ending April 15, 1971.

EXCLUDING: Part-time teachers (less than 20 hours per week); Substitute Teachers; Adult Education Teachers except those on annual contract; Summer School Teachers; Summer School Supportive Staff (Counselors, Librarians, etc.); Special Contract Teachers (Consultants, Special Projects, Workshop Teachers, etc.); ROTC Instructors; Driver Training and Educational Instructors, Model Cities Teachers, PL 89-10 Title I (Not on regular teachers' salary schedule); Language Arts Lay Readers; Non-Teacher Athletic Coaches; Home/Hospital Instruction Teachers (Hourly or part-time less than 20 hours per week); Non-Teachers, Non-Athletic Activities Supervisors; Part-time Advisors, PL 89-10, Title I (Drop-Out Program); Civil Defense Teachers; National Teachers Corps Interns; Student Teachers; Vocational Home Economics Teachers (Part-time less than 20 hours per week); Vocational Agriculture Teachers (Part-time less than 20 hours per week). (1 HPERB No. 1 at 1-2)

The foregoing description was subsequently amended, pursuant to stipulation, by deleting the clause concerning Model Cities Teachers in the exclusions and inserting in its

stead: "Personnel employed on various federally funded programs who are not on the regular teachers' salary schedule"; (1 HPERB No. 20 at 200, 202).

As in the Findings of Fact our discussion hereunder will be divided between those employees, whom Petitioner seeks to include in unit 5, who are excluded from Chapter 89 coverage altogether and those members of D-P teams who are presently in unit 13.

#### Teachers Excluded from HRS Chapter 89

HRS §89-6(c) provides, in pertinent part:

No. . . . part time employee working less than twenty hours per week, temporary employee of three months duration or less, . . . shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

Broadly speaking, half-time teachers and PTTs (hereafter collectively referred to as "part-time teachers") are excluded from coverage under HRS Chapter 89 because they work less than 20 hours per week, and substitute teachers ("substitutes") are excluded because their terms of employment are of three months' duration or less.

We will first address the 20-hour criterion as it applies to part-time teachers.

Petitioner contends that part-time teachers, although hired to teach for less than 20 hours per week, in effect work more than 20 hours because they spend additional time in work-related duties outside the classroom.

On the basis of testimony presented by both full-time and part-time teachers, the Board does not question Petitioner's position that teachers spend more than their official work week or classroom time in work-related tasks.

However, the issue before us is not the fact or quantity<sup>7</sup> of noncompensated time, but whether such noncompensated time is includable as worktime to meet the statutory 20-hour minimum. The Board rules that such time is not so includable.

The Board holds that, under the facts presented herein, the statutory language and intent of HRS Chapter 89 do not warrant the inclusion of noncompensated time as working hours for chapter purposes.

Petitioner raised the issue of HPERB's action in Decision 21 in which the Board accepted a stipulation of the parties therein to exclude from unit 7 lecturers who teach less than 7 credit hours per semester at the University of Hawaii or less than 8 credit hours per semester at the Community College, thereby including in the unit those who teach at least 7 and 8 semester credit hours at the respective institutions. Petitioner's reliance on this decision as applicable to the instant case is misplaced. Aside from the significant fact that Decision 21 involved a stipulation between employer and employees, Petitioner is attempting to equate two very different educational institutions.

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<sup>7</sup>For the record, the Board notes that Petitioner attempted to bring a measure of precision to its argument by presenting the following theory: The average instructional time for self-contained (elementary) and departmental (secondary) teachers, based on the number of minutes in the unit 5 collective bargaining agreement, is approximately 22.5 hours per week. When the average noncompensated time shown in the HSTA-NEA study of 533 minutes, or 8.8 hours, is added to the contractual 35 hours, the total is 43.8 work hours, or a ratio of .95 additional hour to each hour of instructional hour to each hour of instruction. The formula "can easily apply" to part-time teachers. Rounding the figures of .9 and .95 upwards to a ratio of one to one, a PTT employed for 10 class hours a week would in effect be working 20 hours a week. PTTs are generally hired for 15 hours per week and half-time teachers for 17-1/2 hours per week. Therefore, their actual work time would exceed the 20-hour benchmark for bargaining unit inclusion. (I Tr. 49-51)



In University of Connecticut, 2 NPER 07-11076 (1980), the Connecticut State Board of Labor Relations was petitioned for a declaratory ruling as to which teaching faculty members employed part-time by the University of Connecticut were employees within the meaning of the Connecticut State Employees Relations Act with its "20-hour cut off." Relying on an earlier Connecticut Board ruling applicable to technical colleges, the faculty union contended that university faculty members who worked one half-time or more should be considered employees within the Act, and since the average contact (classroom) hours for full-time faculty members was 9.2 hours, that lecturers who carried 4.6 hours or more should be included in the Act. The University argued that the formula devised to meet the situation in the technical colleges should not be applied automatically to a different institution with different educational objectives and priorities. The Connecticut Board agreed, finding that the University's mission is far more heavily oriented towards research and that a far greater proportion of the University faculty's working time is spent outside of the classroom, the workweek for faculty members averaging 56 hours.

This Board is likewise of the opinion that a comparison of teaching hours at institutions as disparate as schools of grades one through twelve and the college system cannot be validly made.

As to the matter of substitutes, the Board was faced with conflicting testimony only, and without more, it has no grounds upon which to amend the present status of said teachers.

Ms. Husted testified that DOE records showed some substitute teachers substituting for periods of 90 or 120 days or up to the full school year of approximately 177 days.

(I Tr. 17-18) However, Mr. Yoshii testified that substitute teachers are not employed for more than three months at a time, and that under DOE regulations long-term positions requiring a substitute generally would be filled by a contracted teacher. (III Tr. 126, 159)

It was incumbent upon Petitioner to present evidence supporting its position that substitutes working more than 63 days should be included in unit 5.

In the case of Board of Education of the City School District of the City of Buffalo, 13 PERB 4045, for example, records for the previous two school years on per-diem substitutes were submitted to the New York Public Employment Relations Board, and it was found that:

Although the records list 1,606 names, only 1,241 appear to have actually worked for at least one day in one of the two years. More particularly, the records show that 870 individuals were employed in 1978-79 and 780 in 1979-80, but only 409 worked in both years--a 47% return rate. While the mean number of days worked in 1978-79 was 42.7 and 37.5 in 1979-80, it is more significant that the median number of days worked was much lower, 25 and 24 days, and only one-half of the per-diem substitutes worked a quarter year or more, and less than 15% worked more than one-half year.

The New York hearings officer found that case to be substantially similar to four previous New York PERB decisions in which "groups of per-diem substitutes were found to have a too ephemeral employment relationship to warrant representation." The decision concluded:

While there are some individuals within the group whose employment history might not indicate a casual status, the focal point is the group, and whether it satisfies the necessary criteria. (footnote omitted)

As the employees sought to be represented do not have a regular and substantial employment nexus, the petition is dismissed.

Without evidence similar in nature to that presented in the above New York case, this Board can render no opinion on the question of unit inclusion of substitute teachers.

With regard to substitutes and PTTs, inclusion in unit 5 is not merely a question of meeting statutory time requirements. Under HRS §89-6(a) unit 5 is described as: "Teachers and other personnel of the department of education under the same salary schedule."

Under HRS §296-1, we find the following definition of "teacher":

"Teacher" means a person whose duties in the educational system are primarily teaching or instruction of students or related activities centered primarily on students and who is in close and continuous contact with students and shall include, but not be limited to, classroom teachers, school librarians, counselors, registrars, and special education teachers.

While substitutes and PTTs are called "teachers" and their duties are in the nature of teaching, a glance at the table of comparative duties and responsibilities of regular teachers with substitutes and PTTs, as set forth in the findings of fact, shows a distinct contrast between the first and latter two classes of teachers in the level and extent of duties and responsibilities. More fundamentally, the minimum qualification requirement for substitute and PTT positions is graduation from high school.

The following testimony is indicative of the nature of employment of PTTs. Petitioner called as a witness Julie Okihiro, who was employed for the school year 1979-80 at Castle High School as a PTT assisting the half-time teacher in biology. On cross-examination she testified, in relevant part, as follows:

Q (By Mr. Kumabe) Miss Okihiro, when you say that you and your [other CTT/PTT] friends spent all of this extra time preparing for class, is there any reason

that you spent this time, was it to do a good job?

A It was to get the necessary job done, you know.

Q Would you say that as part of your training as a teacher, that it would be part of a teacher's professional responsibility to spend the kind of time you are talking about to get the job done?

A I'm not really sure because I wasn't really trained to be a qualified teacher, as such.

Q What were you trained to do?

A Well, I got my Bachelor's in Psychology. I didn't realize at the time that I accepted the CTT job--I didn't expect it to be a teaching, teaching job, you know.

Q What did you expect, Miss Okihiro?

CHAIRMAN HAMADA: What do you mean, expect when?

Q (By Mr. Kumabe) What did you expect to do as a CTT?

A To tutor the students.

Q You didn't expect to teach them?

A Excuse me?

Q You didn't expect to teach them as a classroom teacher?

A Not as a classroom teacher, no.

Q You are not even trained as a classroom teacher; isn't that a fact, Miss Okihiro?

A I'm not certified as a classroom teacher.

(I Tr. 159-60)

While the Board was made aware at hearing of the fact that many professionally certified but unemployed teachers are filling positions as substitutes and PTTs, DOE's minimum requirements and the nature of duties of such positions compel the Board to rule that the term "teachers" in the statutory designation of unit 5 as "Teachers and other

personnel of the department of education under the same salary schedule does not extend to substitutes and PTTs.

More cogent to the Board's ruling is the requirement that unit 5 members must be under the teachers salary schedule. That schedule is set forth in HRS §297-33(d).<sup>8</sup> However, it is HRS §297-33(i) which provides, in part, that: ". . .per diem rates for substitute teachers shall be based on the annual salary rate established for appropriate salary range and step on the most current teachers' salary schedule . . ." Hourly pay rates for PTTs are in turn based on the per diem rates for substitutes. (Pet. Ex. 15)

The Board views the fact that there is a separate statutory pay provision for substitute teachers as indicative of legislative intent that the teachers salary schedule under HRS §297-33(d) does not apply to substitutes or to PTTs. Furthermore, provisions under HRS §§297-31, 297-32 and 297-33(f), (g) and (h) concerning classifications and salary ranges keyed to the teachers salary schedule under HRS §297-33(d) are obviously not applicable to substitutes or to PTTs. The Board therefore concludes that, while their pay rates are based on or derived from the teachers salary schedule, substitutes and PTTs are not "under the same salary schedule" so as to include them in unit 5.

#### Diagnostic-Prescriptive Teams

In an earlier decision this Board noted the following pertinent legislative background on the establishment of bargaining units:

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<sup>8</sup>Current rates for each grade and step may be found in the unit 5 collective bargaining agreement, which also specifies the teachers salary schedule as HRS §297-33(d). (Emp. Ex. 19, p. 1)

The Legislative history of Chapter 89, Hawaii Revised Statutes, reveals that it is the result of Senate Bill No. 1696-70, S.D. 1, H.D. 3, C.D. 1 which was enacted as Act 171, Session Laws of Hawaii 1970. In the original version of the bill, Section 6, inter alia, states:

(e) The Board shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, salaries, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. . . .

The aforementioned provision was subsequently deleted from Senate Bill 1696-70 in its S.D. 1 version and was replaced by the mandate that employees were to bargain collectively through the following designated appropriate bargaining units.

(Decision 9, 1 HPERB 71, 79)

The appropriate bargaining units referred to above are found in HRS §89-6(a) as follows:

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in blue collar positions;
- (2) Supervisory employees in blue collar positions;
- (3) Nonsupervisory employees in white collar positions;
- (4) Supervisory employees in white collar positions;
- (5) Teachers and other personnel of the department of education under the same salary schedule;
- (6) Educational officers and other personnel of the department of education under the same salary schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) Nonprofessional hospital and institutional workers;
- (11) Firefighters;

- (12) Police officers; and
- (13) Professional and scientific employees, other than registered professional nurses.

As evidenced in the following committee report, the Legislature clearly rejected the criteria for unit determination as set forth in the original bill cited above:

Appropriate bargaining units. Your Committee realizes that the determination of appropriate bargaining units by the public employment relations board, according to criteria such as community of interest, history of collective bargaining, etc., is the prevailing practice throughout the states which have enacted collective bargaining laws. A review of the effectiveness of such criteria and the inherent problems and disputes arising out of such determination, shows that the creation of many bargaining units as there are ways to interpret such criteria results and unnecessary fragmentation makes administration efficiency impossible [sic]. For the purposes of maintaining the merit principles and the principle of equal pay for equal work, avoiding multiplicity of bargaining units which would be administratively unmanageable, and minimizing jurisdictional disputes, your Committee has, in the public interest, designated those units which shall be appropriate for the purpose of collective bargaining. The designated units are occupational categories based on existing compensation plans, the nature of work involved, and the essentiality of services provided to the public. All designated units are applicable statewide to maintain uniformity among the several counties and to discourage "leap-frogging" tactics among employee organizations which may otherwise be representing employees within the same occupational category in different counties. (Senate Standing Committee Report, 745-70, Act 171.)

Apropos of the foregoing committee report, the Board held that:

. . . It is our opinion that the Legislature designated appropriate bargaining units irrespective of appointing authority, physical location and past practices. . . .

\* \* \*

We are of the opinion that the test which the Board is compelled to follow in designating a group or class of public employees into any

bargaining unit is the nature of work performed by such employees because the basis of the Legislature's determination of thirteen bargaining units is "occupational categories based on existing compensation plans." (Dec. 9, 1971 HPERB 71, 81.)

The Board reaffirms the criterion of "nature of work performed" as the test in designating a group or class of public employees into a bargaining unit.

Petitioner contends that the definition of "teacher" under HRS §296-1 encompasses the D-P therapists at issue herein.

Said therapists presently belong to unit 13. Unit 13 is described as: "Professional and scientific employees, other than registered professional nurses," HRS §89-6(a)(13).

Under HRS §89-2(15), we find "professional employee" defined as follows:

"Professional employee" includes (A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (B) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (A) (iv), and (ii) is performing related work under the supervision of a professional employee as defined in (A).

The Board does not totally discount Petitioner's argument that the statutory definition of teachers may apply to D-P team members. However, on the basis of evidence presented, the Board judges the therapists' work to be that of professional employees rather than that of teachers.

The Board accepts the fact of the great similarity, if not identical nature, of duties performed by certificated



and classified counterparts on the D-P teams. However, the history of diagnostic teams indicates that team members were initially placed into unit 5 because the passage of Chapter 89 establishing bargaining units occurred when diagnostic teams were new and were being staffed on a trial basis by 10-month certificated personnel. (III Tr. 58) No analysis was made at that time as to the nature of their work on such teams.

Dr. Herman Aizawa, Assistant Superintendent for the Office of Instructional Services, DOE, testified in essence as follows: The special education teacher, or regular teacher, provides the educational services to the student. The members of the diagnostic team provide the diagnostic and prescriptive, or education-related, services to the student. The educational process or teaching of a student consists of four phases: (1) needs assessment, (2) program planning, (3) instruction, and (4) evaluation. The diagnostic team provides services in the needs assessment area only. Asked to distinguish between diagnostic therapy functions and teaching functions, Dr. Aizawa stated:

Therapy is a specific thing that is done to take care of a specific, let's say disorder or problem, and, again, what it does is provide that kind of education related service to the student, and it is not the same as what a teacher does in the classroom, in the total sense where the teacher is responsible for much more than that one specific disorder that is being worked on.

III Tr. 108-110

The Board finds Dr. Aizawa's assessment supported by the following portions of the speech and hearing therapist's testimony. In response to questions by Petitioner's attorney, the testimony is informative as to how, in the therapist's view, her work contrasts with that of the classroom teacher:

Q Now, after they are assigned to your team, how do you personally work with the student who is involved?

A The coordinator assigns to me the name of the child I am to test. . . . And, then, I arrange time in my week to pull the child out of his setting, his classroom, with the least amount of interference and give him testing, which amounts to an hour and a half or two of fact to fact contact.

Q Do you also go into the classroom on occasion?

A To work with him, no. To teach him, yes, for testing purposes. I have worked in the classroom when it comes to the instructional area, the teaching part.

\* \* \*

Q. How do you mean you've worked in the classroom?

A That means -- well, I'll give you an example.

Children who are trainable retarded, like the older kids, I have gone into the classroom into a small area of the classroom and worked with the child there in relative peace and quiet, rather than taking the time to drag the kid out of the class, walk half-way across the campus to another area and do some work and then spend more time walking back. So that's what I mean.

When it's appropriate and feasible, I can work with a child, when it's not interfering with the rest of the class process and if the child can handle that setting.

Q You're acting as a one-on-one teacher in that classroom?

A In that situation, yes.

II Tr. 138-39

\* \* \*

Q How are these things that you're doing different in basic content from what the classroom teacher has to do when she takes over a class of people that has all levels of skills and she has to teach them to articulate and to spell

and come up with a vocabulary and something of this sort? What is the difference?

A Okay. Well, the articulation part is the easiest to describe that difference. Articulation-wise, I wouldn't expect that teacher to perform the training of the child, teaching and instructing and how to make an "s." She hasn't had the training. And while she might figure it out by hook or by crook, and I won't deny her that, there is this profession whereby they took a lot of trouble to train us on how to do it and it's easy for us to do it.

I'll take the child out, teach him how to do it as soon as possible, then go back and instruct the teacher how she can recognize stages of development for the child and how she can follow up.

II Tr. 160

The Board views the foregoing testimony as illustrative of the therapist's specialized training and expertise.

The Board also finds that the educational and experience requirements for the three types of therapists attest to a specialized training and expertise distinct from that of unit 5 teachers.

In light of all of the evidence presented, the Board finds that the work of the therapists herein meets the statutory definition of "professional employee" under HRS §89-2(15). As such, they are properly included in unit 13.

The Board, however, hereby admonishes Employer that it was incumbent upon DOE to come before this Board on the matter of placing the subject therapists in unit 13, in accordance with HRS §89-6(d) which reads as follows:

Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific positions and employees.

While DOE has the right to abolish certificated positions and to create classified positions, "where any controversy arises" it is for this Board to determine which unit new positions are to be placed in. The Board believes DOE was well aware of the controversial nature of its classification actions regarding these therapists.

#### DECLARATORY RULING

The Board, after due consideration of the foregoing and the record as a whole, rules as to each Petitioner's questions in its petition for declaratory ruling as follows:

1. Can the employees of the Department of Education who are not on the teacher salary schedule be included in Unit 5 if they are "teachers" as defined in 291-1 HRS, or the nature of their work is such that they have a close community of interest with teachers?

No. Unit 5 members must be under the teachers salary schedule, HRS §297-33(d).

2. If the job requires any form of teaching certificate, is the employee a "teacher" who can be included in Unit 5 as described in 89-6(a)(5) HRS?

The Board declines to rule on this question for lack of sufficient evidence.

3. If the rate of pay of the employee of the Department of Education is, or at the time of passage of Chapter 89 was based on or related to the teacher salary schedule, is such employee eligible to be included in Unit 5?

No. Unit 5 members must be directly under the teachers salary schedule, HRS §297-33(d).

4. In the case of teachers or other instructional personnel whose jobs require substantial outside preparation time, does the exclusion in 89-6(c) of a "part time employee working less than twenty hours per week" refer only to time spent teaching, or can it include the normal time required to prepare course material, correct examinations, attend faculty meetings or conduct other activities directly related to the job?

The 20-hour cut-off in HRS §89-6(c) refers only to time spent teaching, or to the number of hours for which an employee is hired.

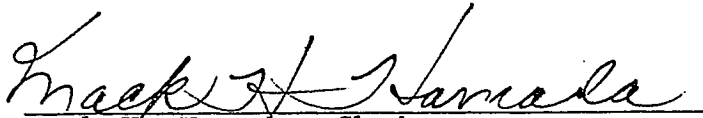
5. Is a teacher who works less than "100% of full-time equivalency (FTE)" but at "50% FTE or more" pursuant to DOE Regulation 5112, and is eligible to receive retirement and the other benefits set forth in that regulation, included in Unit 5?

If a teacher works less than 20 hours per week (see answer to Question 4 above), that teacher is not included in Unit 5 nor entitled to coverage under HRS Chapter 89.


ORDER

The RA petition for unit clarification is dismissed, except as to the inclusion of "All full-time teachers and other personnel presently covered by the certification and the collective bargaining agreement," which merely restates the status quo.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: January 5, 1981

Honolulu, Hawaii