

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NO. S-05-16
)	
BOARD OF EDUCATION, State of)	DECISION NO. 186
Hawaii,)	
)	
Petitioner,)	
)	
and)	
)	
HAWAII STATE TEACHERS')	
ASSOCIATION,)	
)	
Exclusive)	
Representative.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On November 16, 1983, the BOARD OF EDUCATION, State of Hawaii [hereinafter referred to as BOE or Employer] filed a Petition Relating to Strike Occurring or About to Occur Endangering Public Health or Safety with the Hawaii Public Employment Relations Board [hereinafter referred to as HPERB or Board]. The BOE petitioned this Board to conduct an investigation pursuant to Section 89-12, Hawaii Revised Statutes [hereinafter referred to as HRS], to determine whether a strike by employees in bargaining unit 5 (Teachers and other personnel of the department of education under the same salary schedule) presents an imminent or present danger to the health or safety of the public and to set requirements to avoid or remove any such danger.

The BOE alleges that a strike by Unit 5 employees would present an imminent and present danger to the public's health or safety. Thus, it seeks the designation of enough

teachers to maintain a 1:75 teacher-student ratio, four dormitory counselors at Lahainaluna High School, and 894 special education teacher positions as essential, whose incumbents must be precluded from participating in any Unit 5 strike. The BOE also urges the Board to adopt specified requirements which it believes must be complied with in order to remove or avoid any danger.

An investigation in this matter was conducted by the Board on November 28, 29, 30, December 6 and 7, 1983. All parties were represented and participated in the investigation. All parties were afforded the right to present evidence and cross-examine witnesses.

Oral arguments were presented at the investigation and written arguments were filed on January 3, 1984. Based upon the entire record developed during the subject investigation, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

The BOE is the public employer, as defined in Subsection 89-2(9), HRS, of employees of the Department of Education [hereinafter referred to as DOE] which includes employees in collective bargaining unit 5.

The HAWAII STATE TEACHERS' ASSOCIATION [hereinafter referred to as HSTA or Union] is the exclusive representative, as defined in Subsection 89-2(10), HRS, of employees in collective bargaining unit 5.

There are approximately 9,060 employees in Unit 5 employed throughout the 233 public schools in the State of Hawaii.

Negotiations for a new contract for Unit 5 employees commenced on November 29, 1982. On April 6, 1983, HSTA filed a Notice of Impasse with this Board. On April 12, 1983, the Board issued a Notice of Finding of Impasse and Appointment of a Mediator, declaring that an impasse existed in the negotiations for a new Unit 5 agreement and appointing a mediator to assist the parties. Mediation, however, failed to resolve the dispute and a fact-finding panel was appointed by the Board pursuant to Subsection 89-11(b)(2), HRS, to review the remaining issues and to make recommendations for the resolution of the dispute. The Report of the Fact-Finding Board was filed on May 11, 1983. The report was accepted in part and rejected in part by both parties. Both parties rejected referring the unresolved issues to final and binding arbitration. Thereafter, HPERB made the fact-finding board's report public on May 18, 1983. More than 60 days have elapsed since the fact-finding board's report was made public. According to the Honolulu Star-Bulletin, on November 5, 1983, the Board of Directors of HSTA approved taking a strike authorization vote of all Unit 5 members. However, the Employer and HSTA, by written memoranda of agreement, have agreed to extend the terms and provisions of their current collective bargaining agreement until December 31, 1983.

Based upon these events, the fact that the 60-day "cooling off" period has expired and the reported statements of union officials, Employer believes that a strike, as defined in Section 89-2(19), HRS, is about to occur by Unit 5 employees.

The BOE alleges that the interruption or withholding of services normally performed by Unit 5 employees at its 233 public elementary and secondary schools throughout the State presents an imminent or present danger to the health or safety of the State's public school student population and to individual members of the public. Given the need, as perceived by the BOE, to keep schools open, the positions designated as essential by the BOE in its petition are:

- (a) Enough classroom teachers to maintain a 1:75 teacher-student ratio;
- (b) Four dormitory counselors at Lahainaluna High School; and
- (c) Eight hundred ninety-four special education teachers.

The BOE contends these employees have been specifically trained to implement programs ensuring that all students are reasonably supervised and receive meaningful instruction, all dormitory students are appropriately counseled and supervised, and all handicapped students are properly supervised and cared for during their required attendance and presence at school. The BOE believes that these services must remain available without interruption to prevent or avoid imminent danger to the health or safety of the public school student population and individual members of the general public in the event of a strike by Unit 5 employees.

REGULAR EDUCATION TEACHERS

The Department of Education has entire charge, control and responsibility for the conduct of all affairs

pertaining to public instruction in the State of Hawaii. Section 298-2, HRS. Pursuant to this charge, the DOE operates 233 public elementary and secondary schools in the State, serving approximately 162,000 students in grades Kindergarten through Twelve and a limited number of pre-schoolers. Included among the 233 schools are elementary schools, intermediate schools, high schools, special schools for the handicapped, and a boarding school in Lahaina, Maui.

In the event Unit 5 employees strike, Employer intends to do everything possible to keep schools open. The Employer believes that the health and safety of the public, which includes both public school students and other members of the public, will be endangered if the schools are not operational and if certain Unit 5 members are not declared essential.

According to Dr. Donnis Thompson, Superintendent of the DOE, it is important to keep schools open during a strike by Unit 5 members because the BOE has set up a calendar which specifies the certain learning experiences that should take place throughout the year. In addition, she believes the community depends on this calendar in establishing work schedules. Also, certain graduation requirements have been based upon this calendar.

Dr. Thompson also testified that keeping the schools open is necessary for the health and safety of the students. She feels that schools provide supervision as well as instructional services which are essential to adolescents. If the essential workers are not provided, she believes it would not be possible to keep schools

operational and that releasing 162,000 students into the community would create havoc in the community.

Dr. Joseph Bratton, Child Psychologist with the Department of Health [hereinafter referred to as DOH], testified that the health and safety of students would be endangered during a teachers' strike because approximately one-half of the parents in the State would not have the resources to provide alternative care or supervision for their children. He feels that the health and safety of students are already jeopardized without a strike. When schools are in session, he feels this danger is minimized.

He believes those children younger than 11 or 12 years old have to be watched more carefully to ensure that they do not get into unexpected situations leading to accidents. Schools, he feels, provide structure, supervision, guidance for their growth and development, and safety. He believes that these youngsters, without supervision, are not going to have the judgment to know how to avoid some routine dangers in society. And, over an extended period of time, some of these youngsters are going to go outside and expose themselves to some physical dangers.

Older children are not going to need that kind of supervision during the day. But they may be tempted to do more complex and dangerous things such as drug abuse, sexual activity or criminal activity. He believes these things would occur because they take place already. If children are provided with adult supervision, they can be channeled into "productive outs." If they are not provided with activities under adult supervision, they will create their own activities.

According to Dr. Bratton, if schools are closed during a strike, it would impact on the DOH. Most child abuse cases and most children with mental health problems are referred to them by the schools. If students remained home during a strike, the department would have no idea of the number and location of children with mental health problems. He also feels that if some children with mental health problems did not receive immediate help, they could go into crisis thereby affecting their health and safety. However, he does not foresee these activities occurring immediately after a strike commences. He believes after a two or three week period, and maybe less for some youngsters, things are going to begin to break down.

Genevieve Okinaga, Director of the Office of Children and Youth, testified that the population of 5-17 year olds number about 200,000 or roughly 20% of the State's population. Of this, approximately 162,000 persons attend public schools, including nearly 10,000 students that are enrolled in special education classes. Her testimony included studies on latch key children, statistics on child care and after-school activities, traffic accidents involving juveniles (including injuries, deaths and drinking drivers), juvenile arrests, substance abuse, sexual activity, child abuse and neglect, and suicides, among others. In general, she presented a profile of youth in Hawaii which she thought was not too bright, citing that younger children are vulnerable and need protection and that adolescents need supervision. She believes that schools are the best resource to provide for supervision of such large numbers of youths. Schools also serve to identify youngsters that may

be in need of mental health services. Okinaga also speculates that in a strike situation, other child care providers could not substitute for the school system and all of its various roles, i.e., protection, guidance and safety. While she believes the family ultimately is responsible for children, she feels the State has always assumed the role of protecting and providing safety for the children.

The BOE believes schools normally provide guidance, protection and safety for students. In a strike situation, parents will need alternative care for their children. The BOE contends alternative care is limited and extremely difficult to find, based on a sample of day care facilities available in the State. Given this condition, it speculates that parents will either stay at home with their children or leave them at home unattended. The BOE posits that for many parents, the choice will be that of economics and therefore, many will be forced to leave their children at home, alone. The BOE believes that this is when the health and safety of the public school population and that of the general public will be threatened. If the younger students are at home unsupervised, they are vulnerable to accidents and injury. And if these students are in the community, they may be prone to victimization. Conversely, without proper supervision, teenagers will manifest various degrees of deviant behavior. Without school in session, many more hours during the day will be available for the students to be on their own. The students will engage in undesirable activity because of the long hours of idle time, boredom, and frustration. Thus, given the potential for harm and injury to students and others during a strike when

schools are closed, the BOE believes the more prudent course of action is to keep schools open. Therefore, the BOE requests enough teachers be designated as essential workers so schools can be kept open utilizing a 1:75 teacher-student ratio.

Pat Bilyk, parent of a nine-year-old child attending Kahala Elementary School, testified that she does not leave her daughter at home, unsupervised, for more than one hour at a time. In the event of a strike and assuming schools were open with the proposed 1:75 teacher-student ratio, she feels her child would not get the education she should be getting, as the school would be performing only custodial care. However, in the event of a strike and schools were closed, she would provide alternative care for her child. Although it would be inconvenient, she does not feel her child's health and safety would be endangered.

The Union emphasizes that public schools operate for approximately 180 days of the year; for the remaining 185 calendar days, it is inoperative. Schools are not open on weekends, holidays, vacations and part of the afternoon on school days. The total contact time for teachers, then, is only 12% of a student's time. The Union argues that if schools have a basic custodial function, they can hardly perform it under these conditions.

The Union next posits the argument that having children in school creates an opportunity for offenses which could be considered threats to public health or safety. During the 1982-83 school year, 6,917 students were suspended for committing 10,170 offenses, including assault, robbery, terroristic threatening, and drug sales and use.

The Union argues that if schools were closed, these offenses would not occur at schools.

HSTA disagrees with the BOE that releasing 162,000 public school students into the community would create havoc. The Union emphasizes that for the vast majority of their time, these students are at home or operating in the community. If they are going to destroy society, they have ample time and opportunity in which to do so whether or not a teachers' strike occurs.

Further, HSTA discredits the BOE's statistics regarding multiple worker families. The Union contends the statistics do not accurately indicate whether parents' work time is staggered so that one parent is home most of the time, nor do the figures indicate whether other adults in an extended family are at home. The Union also points out that most multiple worker families cope with the fact that school is not in session for more than one-half of the year. Having schools closed during a Unit 5 strike would be an inconvenience, but hardly an "imminent or present danger to the health or safety of the public."

Further, HSTA points out that the BOE's witness, Andy Nii, testified that if given the requested essential workers (1:75 ratio) the schools could operate, but it would be "hard-pressed." It would be a very different school situation. All 75 students cannot be put in one classroom; schools would have to use "side by side" classes, or large instructional areas. Subjects being taught now would not necessarily be taught under the proposed system, as the BOE's proposed method of filling the essential worker positions would be utilizing grade level and departmental

chairpersons, then selecting the remaining essential teachers by seniority. This proposed method does not account for the selection of teachers by subject matter. Therefore, HSTA objects to the designation of any teacher as essential because a teacher's primary and overriding function is to instruct, not to provide custodial care to students.

Based on the facts and arguments presented in this case, the Board is not persuaded that there is an imminent or present danger to the health and safety of the students and/or the public should Unit 5 members strike. In determining whether or not the teacher positions should be designated as essential, the Board has carefully reviewed the DOE's position descriptions of its various teacher classifications, albeit in draft form. After examining their duties and responsibilities, we are of the opinion that their primary function is instructing/teaching. Although the Employer has posited arguments that teachers provide supervision, guidance, and protection, the cessation of which would pose a threat to the health and safety of students, we believe those functions are ancillary to their teaching function. We feel that in a strike situation, the schools and the teachers would be unable to meaningfully implement their primary teaching function given a 1:75 teacher-student ratio. Thus, the Board is not convinced that a teacher is required to perform the type of function proposed by the Employer. While the Board realizes that a strike by Unit 5 members may disrupt established schedules and may cause inconvenience to parents in finding alternative care for their children, the Board finds that the deprivation of instructional services by Unit 5 members

during a strike does not present an imminent or present danger to the health and safety of the public. It is also worthy to note that the students' need for supervision, guidance and protection extends beyond the confines of the classroom and normal school hours and the responsibility for the same, we assume, is borne by the parents or guardians. Thus, we are of the opinion that instructional services concern general welfare rather than health or safety and that cessation of teaching services would not present an imminent or present danger to the health and safety of the students. Therefore, on that basis, we refrain from designating teacher positions as essential.

Further, the Board is unable to agree with the BOE that the safety of the public will be jeopardized should schools be closed during a strike. While the Board recognizes that the statistics presented by the Employer do not portray a glowing profile of today's youth, the Board is not convinced that releasing students into the community during a strike will create an imminent danger to the public's health or safety. Therefore, the Board finds that the withdrawal of services by Unit 5 teachers will not pose an imminent or present danger to the health or safety of the public.

Finally, we are cognizant of the fact that the members of Unit 5 have a statutory right to strike. And while we realize that a strike by teachers may disrupt established schedules and cause an inconvenience to many, it is a right afforded to Unit 5 members through the wisdom of our State lawmakers. We are not convinced that such inconvenience is tantamount to "imminent or present danger

to the health and safety of the public" as specified in Subsection 89-12(c), HRS.

LAHAINALUNA HIGH SCHOOL

The DOE operates a boarding facility at Lahainaluna High School on the island of Maui. Andy Nii, former DOE District Superintendent of Maui County, testified that approximately 100-110 students board at this school. About one-half of the students are from Maui County; the others are from Oahu, Hawaii and occasionally some out-of-state students. He believes these are average to better-than-average students.

Four Unit 5 members serve as full-time resident dormitory counselors, supervising students on a 24-hour basis. And, if all four counselors are not declared essential, the students would be sent home for the duration of any strike. He is not sure whether this would pose a problem to the student; it would depend on how quickly the parents could respond to the school's notification that the student will be returned home. However, he believes that if the students are at the facility for 24-hours a day, then they need supervision.

Thus, the BOE has asked that all four dormitory counselors be declared essential because they work on a 24-hour cycle, and decreasing the number of counselors would result in an overload to the remaining counselor(s). Also, without these dormitory counselors, the students would not have an adult present to care for any emergency and security needs that may arise. And, if the dormitory counselors are not present to meet the needs of the boarders, they may be sent home because of the unsafe conditions which may arise.

Should this occur, it may pose a hardship to some families because they may not be able to bring their child home as transportation costs must be borne by the family.

HSTA objects to the designation of the four dormitory counselor positions as essential. It believes that this would reduce the school to a non-educational "holding pen" operation. Should a strike occur, the union believes the students would be free to return home and they would have adequate notice to do so.

In deciding whether or not to declare the four dormitory counselors essential, the Board has carefully considered their position descriptions and their duties and responsibilities. It appears that a dormitory counselor's primary function is to provide counseling and guidance services to the boarder student.

Based on the evidence presented, the Board is not convinced that the cessation of these four dormitory counselors' services to the affected high school students poses an imminent or present danger to the health and safety of the boarding students or the public. The Board believes that the counselors' services, like that of regular education teachers, concern general welfare rather than health or safety. While returning home may be an inconvenience to students and their families, it does not amount to a health or safety issue. Given adequate notice, the Board believes the necessary accommodations will be made. Under the mandate of Chapter 89, HRS, the Board is constrained to consider only imminent health and safety concerns. Therefore, the Board finds that the four dormitory counselor positions at Lahainaluna High School are not essential.

SPECIAL EDUCATION TEACHERS

BOE has requested that the full complement of 894 special education teachers be declared essential workers in order to maintain the health and safety of the special education students.

Within the public school system, there are 10,206 students that require special education. These students are provided special services based on the Education for All Handicapped Children Act of 1975, Pub. L. 94-142. The DOE, through a multi-disciplinary team, evaluates each handicapped child. Based on this evaluation, a special education teacher, with the student's parent participation, formulates an Individualized Education Program [hereinafter referred to as IEP] for the student. This IEP addresses the unique needs of the child. To the extent possible, each special education student is mainstreamed with the other students in the school. Mainstreaming or providing the least restrictive environment to handicapped students, is required by Pub. L. 94-142.

All special education students are categorized according to the following scheme:

- MIMR - mildly mentally retarded
- MOMR - moderately mentally retarded
- SMR - severely mentally retarded
- PMR - profoundly mentally retarded
- SLD - specific learning disabled
- SED - severely emotionally disturbed
- PS - partially sighted
- BL - blind
- HH - hard of hearing
- DF - deaf
- OH - orthopedically handicapped
- DBL - deaf and blind
- SMH - severely multiply handicapped
- LI - learning impaired

Given this categorization, special education can involve, in addition to traditional academic courses,

behavior modification, close supervision, self-awareness and inter-personal skills development, speech therapy, or mental health counseling.

As dictated by the IEP, a child will be placed in one of four "educational arrangements," i.e., a full time self-contained (FSC), an integrated self-contained (ISC), a resource services (RS), or an itinerant services (IS) arrangement or program. FSC classes are for students with handicaps and permits the least mainstreaming. There are 2,759 of these students. ISC students spend about one-half day with special education teachers and the other one-half day with regular students. There are 4,504 such students. RS students spend part of each day in a resource center and most of the day in regular classes. There are 2,816 of these students. Students in the IS program receive help from itinerant teachers who travel from school to school. IS students, of whom there are 127, spend most of their time in regular classes.

BOE asserts that the services provided to all of these special students as required by their IEP directly impact on their health and safety.

BOE maintains that the services provided to special education students embody a definition of "education" different from the traditional definition. Where traditionally a student works on reading, writing and arithmetic skills, the special education student, depending on the dictates of his or her IEP, is not limited to academics. The range of special education is much broader than the range of regular education. The closing of schools, BOE adds, will deny these students related services such as speech therapy

and mental health counseling. This deprivation of special education and related services may prove detrimental to their development, BOE argues.

Regarding the severely multiply handicapped students, BOE witness Jacqueline Young, Educational Specialist, testified that such children function below the two-year-old level. The educational program for these children concentrates on developing feeding and toileting skills, and managing and compensating for their multiple handicaps.

BOE further asserts that there are no alternative resources in the community to meet the needs of these special education students should schools close. Betsy Cotter, Program Director for Easter Seal of Hawaii, testified that the Easter Seals program can only provide services for 89 handicapped children. Because of their handicaps, these students cannot function in regular community programs such as the YMCA or Parks and Recreation programs. Family life revolves around the school calendar and 70% of mothers with school age children are in the labor force. Thus, a great number of families will not be able to provide for their special children should schools close during a strike.

Because of the special circumstances surrounding special education students, BOE argues, these students will not be able to function in a classroom setting with a 1:75 teacher-student ratio. Although mainstreaming will obviously be impossible during a strike, special education students can be provided with virtually the same services they normally receive if the full complement of special education teachers and 404 aides were mobilized. Therefore,

the BOE has requested that all special education teachers be designated as essential positions.

HSTA objects to the designation of any special education teacher as essential. The Union argues that of the 10,206 special education students, 7,614 (75%) are designated as specific learning disabled (SLD). By definition, SLDs are usually within the average range of intelligence and social adjustment. Furthermore, this group of SLDs generally is able to function in regular classes. More than 80% of SLDs graduate. Since most SLDs are mainstreamed for one-half or more of the day, it would be important that they have regular classes to attend.

Christine Urban, Special Education teacher, testified that requiring only special education students to attend school would be devastating to many. She feels that such differentiation would be the most detrimental discriminatory thing that could be done to them. Moreover, she feels they would not attend school in that situation. And, if regular classes were not held, these students could not be mainstreamed. She believes this would be a violation of the IEP.

As to the relatively small percentage of severely handicapped students, there was testimony that alternative care arrangements could be instituted by their families in the form of extended families, non-working mothers, neighbors or baby-sitters. The Union argues that these students, because of the abnormal school conditions, would face more risk than any hypothetical benefits they might receive in a strike situation. Thus, the Union argues that the BOE proposal to staff the special education program during a strike

would create more problems rather than solutions. Therefore, the Union argues, none of the special education teachers should be designated as essential workers.

Based on the evidence presented, the Board declines designating any special education teacher as an essential position. Although the BOE has argued that special education is necessary for some students' health and safety, the Board finds that the presence of special education teachers is not the sole determinant in providing special education students with their accustomed curriculum. The presence of a full complement of regular education teachers is as critical to special education students' schooling as is the presence of the special education teachers. Thus, it is not at all clear that special education students' health and safety will be ensured by the convening of make-shift special education classes in the absence of regular education classes. It is thus virtually beyond the power of the special education teacher contingent to ensure such a degree of normal school conditions that the Board can safely conclude these students' safety would be enhanced by mobilizing special education teachers in extemporized classrooms than it is in leaving the care of the handicapped students in their families' hands.

Presumably, a strike situation would not necessitate a drastic upheaval in family care arrangements as much as it would necessitate a greater reliance on such arrangements. The Board is mindful of such complex and grave questions as the possibility that the education of some handicapped students will regress in the absence of school. However, students under normal school scheduling

have breaks in their schooling during holidays and summer; any strike will thus amount to an equivalent hiatus. The Board is not unmindful of strains that a strike may put on families and students, but must make its decision as to the declaration of essential workers solely on the basis of whether health or safety is threatened. Such possible strains, the Board concludes, do not amount to threats to health or safety. Moreover, BOE witness, Ivalee Sinclair, clarified that the main function of a special education teacher is teaching, not caring for the medical problems of the special education student. While the Board is concerned especially with the welfare of the severely multiply handicapped students, we are not persuaded that the deprivation of instructional services jeopardizes their health or safety. Thus, the Board finds that the withdrawal of services by special education teachers will not pose an imminent or present danger to the health and safety of the public.

OTHER REQUIREMENTS

The Employer specifies several requirements which it believes are necessary to remove any danger to the health or safety of the public in the event of a strike. Among other requirements, the BOE requests that the Board require HSTA to designate picket line captains to ensure that essential services will continue to be available with little or no interruption during a strike. Further, the Employer contends that it must be permitted to designate at least one entrance to every worksite with multiple entrances to be free of any pickets in order to ensure uninhibited ingress and egress to students, non-striking employees,

and the public. The Employer also contends the union may engage in staggered work stoppages at different times and at different worksites. Because of this possibility, the Employer argues the Union must provide a ten-day written notice before any work stoppage.

Andy Nii testified that during the UPW strike in 1979, the designation of picket captains greatly facilitated communication between the teachers, the students and the administration. He felt volatile situations were avoided or defused by knowing who the picket captains were and by being able to personally communicate with the picket captains.

He also states that a neutral gate at each school would aid the handicapped students, school buses and delivery people in obtaining safe ingress and egress to and from the school grounds.

Further, Nii believes a ten-day notice is necessary so that the principal of each school can coordinate the personnel and material to be used for classes. While he feels the ten-day notice would barely give the principal enough time to organize, the necessary arrangements could be made.

HSTA acknowledges that any requirements imposed on the conduct of the strike should be limited to activities which constitute an "imminent or present danger" pursuant to Subsection 89-12(c)(1)(B), HRS.

While the Board finds that the absence of teachers during a strike does not imperil the health or safety of the public, based upon the evidence before it, the Board hereby finds that the conduct of a teachers' strike on various school campuses in itself poses conditions that threaten

the health and safety of the public. There are situations that occur during a strike which require immediate attention. Thus, a contact person from each party is needed to facilitate communication. Therefore, the Board finds that a coordinator for the Employer and a coordinator for the Union must be designated to ensure that any Board requirements are implemented. While the pickets must permit uninhibited ingress and egress to all persons, the Board realizes that a strike situation cultivates short tempers and unpredictable circumstances. Thus, the Board finds that the designation of picket line captains serves to ensure the health and safety of the school community and the public. Further, the Board finds it necessary to designate a neutral gate, free of pickets, to remove danger to the health and safety of designated essential employees and private employees in the deliverance of their services. Finally, the Board finds that Subsection 89-12(c)(1)(B), HRS, mandates the Union to provide a ten-day notice to the Employer and this Board before the commencement of a strike. See, HPERB Decision No. 181 issued November 17, 1983. Therefore, the Board is compelled to establish requirements that must be complied with should the members of Unit 5 conduct a strike. The Board's order reflects these findings.

CONCLUSIONS OF LAW

The Board has jurisdiction over the subject petition pursuant to Subsection 89-12(c)(1), HRS, which provides:

If a strike, which may endanger the health or safety of the public, is about to occur or is in progress, the public employer concerned may petition the

board to make an investigation. If the board finds that there is imminent or present danger to the health or safety of the public, the board shall establish specific requirements that must be complied with and which shall include, but not be limited to:

- (A) Designation of essential positions; and
- (B) Any other requirement it deems necessary in order to avoid or remove any imminent or present danger to the health or safety of the public.

The Employer asserts that a strike by Unit 5 members is imminent while the Union argues that both parties have extended the present contract on a month-to-month basis, and therefore the Employer has no basis to believe a strike is about to occur.

The members of Unit 5 have been afforded the right to strike according to Subsection 89-12(b), HRS:

(b) It shall be lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (1) the requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith, (2) the proceedings for the prevention of any prohibited practices have been exhausted, (3) sixty days have elapsed since the fact-finding board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

Based upon our findings of fact, supra, it is clear that Unit 5 employees may strike upon giving this Board the statutorily required ten-day notice. The 60-day "cooling off" period required by statute expired on July 17, 1983. Although the evidence does not indicate that the Union has conducted a strike vote of its membership, we note

that a vote is not a statutory requirement. Thus, we consider the expiration of the cooling off period together with the fact that no tentative agreement has been reached, as the determinative basis of an impending strike.

We next turn to Employer's argument that teachers should be designated as essential because they are necessary to ensure the health and safety of the students and of the general community. In this case, Employer argues that the public school students, as an isolated group, should be considered the public, as well as the community in general. It is the opinion of the majority of this Board that many segments of the community comprise "the public" and that "the public" can be interpreted as one isolated group, i.e., the student population. In determining health and safety needs, the impact on isolated segments of the community as well as the impact on the general community can and will be considered. However, in this case, as the Employer's arguments encompass both facets of "the public," this distinction is not determinative.

Based upon the foregoing findings, we conclude that the withdrawal of services by the employees in Unit 5 does not present an imminent or present danger to the health and safety of the public.

ORDER

Based upon the above findings of fact and conclusions of law, the Board hereby orders the following in any strike conducted by the members of Unit 5:

1. To minimize confusion in communications between the parties, the Employer and the Union shall each

designate one overall coordinator to be contacted. The coordinator shall be responsible for maintaining essential services and implementing any order issued by the Board. Prior to the onset of any strike, each party shall notify the other and this Board, in writing, of the coordinator with his or her current address and business and residence telephone numbers.

2. To ensure the health or safety of the public, including students and non-striking employees at the picket lines, all picket lines of Unit 5 employees shall be supervised by an on-site picket line captain designated by HSTA. The Union shall provide the Employer with a list of picket line captains at all picket lines prior to the onset of any strike which shall contain the addresses and telephone numbers of those designated. The picket line captain and ultimately, HSTA, shall share the responsibility of ensuring that picketing is conducted in a lawful manner. Pickets must permit ingress and egress to all persons. Responsibility for insuring uninhibited ingress and egress to all worksites rests with HSTA.

3. Employer may designate one entrance to every worksite having multiple entrances specifically to permit uninhibited ingress and egress by essential employees as designated by the Board, and private employees only. The Employer shall notify the Union that these designated entrances shall be free of any pickets. Should the Employer fail to monitor the designated entrances and access is permitted to other than essential and private employees, the entrances may be lawfully picketed.

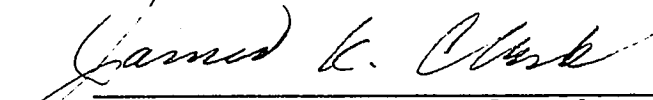
4. In order to maintain the delivery of essential services during a strike by Unit 5 employees, HSTA shall provide the Employer and this Board with written notice of its intent to strike ten days prior to any work stoppage, specifying the date of such stoppage.

5. This order may be amended by the Board. Any questions of interpretation of this order shall be brought to the immediate attention of this Board.

DATED: Honolulu, Hawaii, January 31, 1984.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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