

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. S-05-49
)	
BOARD OF EDUCATION, State of)	DECISION NO. 383
Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner,)	SIONS OF LAW AND ORDER
)	
and)	
)	
HAWAII STATE TEACHERS)	
ASSOCIATION,)	
)	
Exclusive)	
Representative.)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On February 4, 1997, the BOARD OF EDUCATION, State of Hawaii (BOE or Employer) filed a Petition Relating to Strike Occurring or About to Occur Endangering Public Health or Safety with the Hawaii Labor Relations Board (Board). The BOE petitioned this Board to conduct an investigation pursuant to Section 89-12, Hawaii Revised Statutes (HRS) to determine whether a strike by certain special education teachers in bargaining unit 05¹ presents an imminent or present danger to the health or safety of the public and to set requirements to avoid or remove any danger.

The BOE contends that a strike by certain Unit 05 employees would present an imminent and present danger to the public's health or safety. Thus, it seeks the designation of 556.5

¹Bargaining unit 05 consists of teachers and other personnel of the department of education under the same salary schedule, including part-time employees working less than twenty hours a week who are equal to one-half a full-time equivalent.

special education teachers as essential who must be precluded from participating in any Unit 05 strike. The BOE also urges the Board to adopt specified requirements in order to remove or avoid any danger to the public during a strike by Unit 05.

After notice, the Board conducted an investigation in this matter on February 6, 7, and 10, 1997. All parties were represented by counsel and participated in the investigation. All parties were afforded the right to present evidence and cross-examine witnesses. On February 12, 1997, the parties filed written arguments with the Board.

On February 14, 1997, Eric Seitz, Esq., faxed a letter to the Board indicating that he represented a class of students in a federal court matter which culminated in a consent decree referred to as the Felix Consent Decree. Mr. Seitz stated that he was concerned with the instant petition because the BOE relies upon the definition of essential employees without stressing the State of Hawaii's federal duties and obligations under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Vocational Rehabilitation Act and the Felix Consent Decree. Mr. Seitz offered to meet with the Board to provide further information in an effort to resolve the essential worker issues in light of the interests of the Felix class members.

Thereafter on that day, the Board received a fax transmission from counsel for the HAWAII STATE TEACHERS ASSOCIATION (Union or HSTA) objecting to Mr. Seitz' letter as being untimely and indicating that the class of students represented by Mr. Seitz had been considered by the Employer in formulating its petition.

Thus, the special education teachers of the Felix class of students were already included in the Employer's petition and had already been addressed by the Employer.

After considering the position advanced by Mr. Seitz, the Board agrees with the HSTA that interests of the Felix class members were adequately represented by the Employer in the investigation before the Board. While the Board appreciates the interests of the class of students which Mr. Seitz represents and the federal mandates constricting the BOE, the Board is also constrained by its governing statute to determine whether the withholding of services by the respective Unit 05 teachers creates an imminent or present danger to these students. The Board is mandated by Chapter 89, HRS, to investigate whether a strike presents an imminent or present danger to the health or safety of the public. Thus, as the parties to these proceedings have already completed their presentations and the onset of a strike by Unit 05 is imminent, the Board hereby issues the following order based upon its investigation at this juncture. This does not foreclose the Board from reopening its investigation at a later time in order to receive additional information which impacts upon the health or safety issues raised. The Board will provide Mr. Seitz with the opportunity to present any additional relevant information to the Board but is compelled to issue this order at this time.

Hence, after reviewing the entire record and the credible evidence presented during its investigation, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioner BOE is a public employer within the meaning of Section 89-2, HRS, of employees of the Department of Education (DOE) who are included in bargaining unit 05.

The HSTA is the certified exclusive representative, as defined in Section 89-2, HRS, of employees in bargaining unit 05.

There are approximately 11,709 employees in bargaining unit 05.

The BOE and the HSTA are parties to a collective bargaining agreement covering bargaining unit 05 which was scheduled to expire on June 30, 1995. On November 14, 1994, the parties commenced negotiations for a renewed collective bargaining agreement and continued negotiations until May 3, 1996. On May 7, 1996, the HSTA filed a Notice of Impasse and Request for Board Assistance with the Board requesting that the Board declare an impasse in the Unit 05 negotiations and appoint a mediator to assist the parties. On May 13, 1996, the Board issued an Order Declaring Impasse and Appointing a Mediator pursuant to Section 89-11, HRS. No agreement was reached on any of the proposals during mediation.

On May 29, 1996, Federal Mediator Kenneth Kawamoto informed the Board that mediation efforts had failed to resolve the dispute between the parties and that the parties were prepared to proceed with fact-finding. On May 31, 1996, the Board appointed a Fact-Finding Panel, consisting of Ambrose Rosehill, Chairperson, and Thomas Mui and Andrew Mason, Members, in accordance with Section 89-11(b)(2), HRS, to make recommendations for the

resolution of the dispute. The Board twice extended the time for fact-finding and on July 15, 1996, the Fact-Finding Panel issued its Fact-Finders Report and Recommendations.

On July 22, 1996, each party filed its respective response to the report and the BOE did not agree to refer the impasse to final and binding arbitration.

The Panel's Report and Recommendations was made public on July 23, 1996 and the 60-day cooling off period began. On September 22, 1996, the 60-day cooling off period mandated by Section 89-11, HRS, expired. In addition, the contract between the parties which was extended from time-to-time during the impasse resolution procedure also expired.

The BOE filed the instant petition on February 5, 1997. The BOE alleges that the withholding of services by 556.5² special education teachers would pose an imminent or present danger to the public's health or safety during a Unit 05 strike. The BOE requests that the Board declare these positions essential to protect the public.

The Board issued a notice of investigation on the petition on February 5, 1997 and commenced the instant investigation on February 6, 1997. On February 10, 1997, the HSTA filed a Notice of Intent to Strike with the Board. The HSTA indicated that it intends to conduct a strike after ten days from the filing of the notice.

²At the hearing, the BOE amended its petition to include one special education teacher at Central Intermediate School and one at Kealakehe Intermediate School.

The Board takes notice that the HSTA has announced its intention to commence a strike on February 20, 1997.

Based upon the foregoing, the Board finds that a strike by Unit 05 employees is about to occur.

According to Robert E. Campbell, Ph.D., Administrator, Special Education Section, Office of Accountability and School Instructional Support, DOE, there are approximately 17,700 students aged 3 through 20, who receive special education services. The services are provided in all seven school districts and in all public school settings and three State special education schools. In addition, there are approximately 1,390 special education teachers providing services to eligible students.

In January 1997, in order to determine which teaching positions were essential, a panel of special education administrators in the Department of Education (DOE) identified broad types of student characteristics which may be indicative of a health or safety risk. District special education administrators were provided with a listing of special education students with the potential to pose a health or safety risk. School administrators identified any student whose unique characteristics met the broad types of characteristics which may pose a health or safety risk. The DOE then developed and refined discrete criteria to determine the reason a student's condition posed a health or safety risk based upon the broad types of student characteristics.

The criteria developed by the BOE to identify the at-risk student is as follows:

1. Require constant supervision, e.g., explosive-aggressive behavior whose behavioral plan is designed by trained professionals.
2. Require emergency medical procedures, e.g., seizures, asthma, severe allergic reactions.
3. Require skilled, non-medical procedures, e.g., feeding, positioning, suctioning, etc.
4. Require emergency behavioral interventions, e.g., MANDT, CPI Training.
5. Have other health and safety concerns such as (a) excessive behavioral or mental health concerns (Section 504) or (b) self injurious behaviors.
6. Because of age and or developmental needs require constant supervision, e.g., learning impaired, severely/multiply impaired, etc.
7. Require skilled professionals to interface with the educational programs, i.e. students with sensory impairments such as deafness and blindness.

The DOE applied this criteria and identified approximately 2,800 students whose health or safety would be jeopardized if their teacher's services were withheld. In general, these students are in fully self-contained classrooms where they receive special education services all day and who qualify for six additional weeks of instruction during June and July, which is referred to as extended school year services. Thereafter, the DOE asked school administrators to verify the health or safety risk of the previously identified students utilizing the criteria developed and to identify the special education teachers necessary to ensure the public's health or safety.

As a result of this process, the DOE identified 556.5 special education teachers as essential to ensure the public health and safety which it requested in its petition to the Board.

According to the DOE, the essential services expected of the special education teachers during any strike include, but are not limited to, monitoring the fluid level in the tube for the student with a tracheostomy; feeding, toilet training, and repositioning students with little or no voluntary movement; preventing explosive-aggressive behavior; assessing the severity of the medical emergency peculiar to the special education student; supervising and controlling students with little or no impulse control; and supervising and controlling deaf and/or blind students with multiple disabilities.

According to the BOE, part of the reason that the special education teacher is considered essential is because the teachers are most familiar with their students and have established routines in the classrooms which provide a structured environment for the students. In addition, the teachers are able to identify certain triggering events and can anticipate and defuse or de-escalate volatile situations. With respect to the special education student's physical health, the BOE contends that the special education teacher is familiar with the student's medical issues.

Dr. Campbell testified that the student's special education teacher must be declared essential because of the teacher's familiarity with the student. Dr. Campbell testified that if school is closed, those with behavioral aspects may be placed with people with insufficient understanding of the issues. Either the care giver or the student will be injured. The school provides structure and provides a forum for the student to vent his or her energy and thus, the student will be able to deal with the

home situation better. According to Dr. Campbell, the parents cannot provide the same level of care found in the school but on cross-examination, stated that the child is just as safe at home assuming the parent or care giver is at home.

James Scanlon, District Educational Specialist for the Island of Hawaii, agreed that the school takes better care of the children than the parents.

Dr. Jean Prickett, Principal for Hawaii Center for Deaf and Blind (HCDB), requested nine special education teachers to be declared essential. Dr. Prickett testified that she identified 33 students whose health or safety would be impacted by a strike by Unit 05. There are ten students in preschool and kindergarten who have minimal or no language skills to communicate and their parents don't sign well or at all. Several of the preschool students also have an attention deficit hyperactive disorder (ADHD) and several others are mentally retarded. In addition, there are three students in a deaf and blind group, one of whom has severe behavioral problems. There is also a deaf and blind group with multiple disabilities. These students may self-injure and injure others and require 1:1 teacher:student ratio. There are also 12 students in upper elementary grade levels. Two of the students have been identified with ADHD who can attack others or run off. There are several students in the junior high school levels who have multiple disabilities. Some have minimal communication skills and are autistic.

Dr. Prickett testified that the students may receive adequate physical care in the home, but there may be no

communication there and the emotional well-being of the student is threatened. She believes that there would be a health or safety problem if supervision over the students is diminished by a strike.

Mark Rieben, special education teacher, Maunawili Elementary School, testified that he does not provide medical help to his students, including his student with a tracheostomy. Mr. Rieben stated that when the tubing clogs, the student clears the tube himself or the teacher calls the school nurse to assist the student. In addition to the special education teachers, Educational Assistants are also assigned to the classrooms to supervise the students. Mr. Rieben also testified that the student's family provides primary care for the student and that the hiatus from school caused by the strike would be similar to weekends and holidays. Rieben indicated that when he is absent, his Educational Assistant provides direction to a substitute who is assigned to the classroom. Rieben also testified that several of his students attend A+ after-school care and the A+ aides do not have any special training in handling the special education students.

Glen Nakamoto, Department Chair of the Special Education Department, Waianae Intermediate School, testified that if school was closed there would be no threat to the health or safety of the special education student.

DISCUSSION

In Decision No. 186, Board of Education, 5 HLRB 251 (1984), the BOE filed a petition to declare its regular education teachers and all of its 894 special education teachers essential.

The BOE in that case presented a great deal of testimony to indicate that there were no alternative resources in the community to meet the needs of the special education students should the schools close. The Board, in that case, stated as follows:

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 the 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 of 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 the 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.

Id. at 257-58.

With respect to the special education teachers, the Board stated:

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 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.

Id. at pp. 262-63.

The BOE argues that the Board's Decision No. 186 is not controlling since the BOE petitioned for all special education teachers to be declared essential in 1984. By contrast, in this petition the Employer requested only those special education teachers who provide services to special education students with health or safety risks. In addition, the BOE contends that the Board's denial of its previous request was based upon the rendering of services by regular education teachers whereas here, the services requested are provided by the special education teachers in fully self-contained programs.

However, the thrust of BOE's arguments is that it is not for the Board to decide whether to open or close the schools. The BOE maintains that the decision rests exclusively with the Employer. The Board agrees with the BOE's premise. The Board is, however, charged by statute to determine whether a strike by public employees poses an imminent or present danger to the health or safety of the public and if so, the Board may set requirements to remove such danger. The BOE has promulgated a policy to keep the schools open during a strike, if practicable, and in this case, at

the minimum may open the schools to those special education students identified in their survey who require health and safety services.

As with the 1984 case, the Board recognizes that the primary function of public school teachers is instructing/teaching. Again, the Board finds that such services affect general welfare as opposed to the public's health and safety. The BOE contends that in general, the special education teachers requested in its petition provide supervision, guidance and protection for the specifically identified students and that the cessation of these services during a strike endangers the student's physical as well as mental health. In order to accept the BOE's arguments, however, the Board would have to find that the special education students are safer, physically, mentally, and emotionally, with their special education teachers than they are with their parents or other care givers. The Board, however, is not prepared to make such a finding on this record.

The BOE also contends that in 1994, the Board determined that Educational Assistants, who provide services to moderately and severely handicapped students, were designated as essential workers. The Board held in Order No. 1050 issued on April 22, 1994 in Case No. S-03-33, John Waihee, III, that the health or safety of moderately to severely disabled children would be in imminent danger if the Educational Assistants positions requested were not staffed during a strike by Unit 03.

The BOE contends that the services provided by the Educational Assistants are identical to the services provided by

the special education teachers and thus logically, the teachers should likewise be found to be essential. This argument however begs the question: if the teachers are not providing instructional services but only child care, why is the student's health or safety jeopardized by receiving child care from the child's family or alternate care giver?

In Order No. 1050, the Board granted the State's motion for an interlocutory order pending a final decision in the case. The Board had not yet completed its investigation of the matter but made its findings on the evidence presented and based upon the assumption that in order to protect the public's safety and health, it would be more prudent for the Board to err in favor of the protection of the public by granting the interlocutory relief requested. In that case, the Units 03, 04 and 13 workers threatened to strike and the Board assumed that instructional services by Unit 05 would continue and the schools would remain open for instruction. In this case, while the BOE has a policy to open the schools during a strike, representatives of the BOE cannot say that the schools will be open for instruction.

The BOE does not argue that the withdrawal of instructional services by the special education teachers somehow creates a health or safety risk to the students. The BOE argues instead that the teachers are most familiar with their students and if they do not supervise their students, the students' health or safety is jeopardized. In this petition, the BOE seeks to provide supervision over the identified categories of students. However, the nature and level of the care rendered is in the nature of child

care and not the provision of instructional services. The Board thus recognizes that the students' parents and family members are the students' primary care givers and does not accept the assumption of the BOE that the school can provide better care for the students than the family.

The Board finds that the special education teachers do not provide medical services for the medically fragile students. When such medical services are required, the special education teachers notify the school nurse who provides any necessary medical assistance to the students. When the special education teachers are absent from work, substitute teachers, who may or may not be specially certified, or additional educational assistants are called to replace the teachers in the classroom. In addition, in some cases where the students attend A+ after-school care, the aides supervising the students are not specially certified nor trained to provide supervision for the special education students.

The Board also recognizes that the cessation of instructional services during a strike is like any other break in schooling such as weekends, holidays, Christmas or spring break, etc., which the BOE has not shown to create any imminent or present danger to the health or safety of the student. The Board is thus not convinced that the withdrawal of supervision by the special education teachers presents an imminent threat to the students' health or safety.

With regard to the HCDB, however, Dr. Prickett testified that the student population is such that they cannot be effectively served in a regular education setting even in a self-contained

classroom. While Dr. Prickett testified that the families of these students can take care of the student's physical needs, the student may be hurt mentally and emotionally if the services of the special education teachers were withdrawn. These students are especially vulnerable because of the limitations on their ability to communicate with others. Dr. Prickett testified that in some cases, even the student's parents do not or cannot communicate with them.

Dr. Prickett testified that the teachers for deaf preschoolers and kindergartners, several of whom are diagnosed with ADHD and mental retardation, and who lack communication skills; teachers for blind students with multiple disabilities and cognitive disabilities, one of whom has significant behavioral problems; teachers for deaf-blind and deaf-multiply disabled students, which includes several students with disruptive or problem behaviors; teachers for upper elementary students who have ADHD disorders; teachers for junior high school students who have multiple disabilities who communicate minimally including a student who is autistic with obsessive-compulsive disorder; and teachers for students with significant emotional disturbance in addition to other disabilities were essential to the students' health or safety. Dr. Prickett requested that nine teachers be designated as essential in order to remove any imminent danger to these students.

Based upon the testimony received, the Board finds that the withdrawal of services by the special education teachers at the HCDB will present an imminent and present danger to the health or safety of their students because of their lack of communication

skills unique to the deaf and blind students. Notwithstanding Dr. Prickett's testimony that Educational Assistants could be hired to assist in supervising the classroom, due to the special nature of the disabilities and the requirement to be fluent in sign language, the Board finds that these services are essential. Accordingly, the Board has established staffing requirements to avoid this danger.

While the Board is concerned with the welfare of the other severely multiply handicapped students, we were not presented with sufficient evidence to convince us that the deprivation of instructional services jeopardizes their health or safety. Thus, based upon the record before us, aside from the students who attend HCDB, we are unpersuaded that the special education student who attends the public school is exposed to imminent or present danger without the provision of instructional services by the special education teachers requested.

CONCLUSIONS OF LAW

The Board has jurisdiction of the subject petition pursuant to Section 89-12(c), HRS.

Based upon the record, the Board concludes that a strike by employees in Unit 05 is about to occur, and that the withholding of certain services during such a strike which are the subject of these findings will create an imminent or present danger to the health and safety of the public.

Performance of the services found to be essential herein to remove such danger must be done by Unit 05 incumbents or their replacements listed in the orders.

In the Staffing Orders which follow, the Board has set forth the names of Unit 05 members who the Employer has designated as essential to perform the tasks which the Board finds necessary to avoid or remove danger to public health or safety during a strike by Unit 05. If, evaluation determines more essential positions are required than were granted then the Employer is expected to inform the Board immediately. The mandate of Section 89-12(c), HRS, is to protect the public health and safety from danger in the event of strikes.

ORDERS

Based upon the foregoing findings of fact and conclusions of law, the Board hereby orders the following positions be filled in the event of any strike or job action by Unit 05 employees.

STAFFING ORDERS

Hawaii Center for the Deaf and Blind

Hokama, Susan - 3 students
Morris, Michele - 5 students
Moy, Debra/Ishikawa, Tessie - 7 students
Stupfel, Dennis - 6 students
Unawai, Alice - 5 students
Hayler, Harry - 3 students
Graham, Tom/Freitas, Sydney - 4 students

GENERAL ORDERS

The Board further orders the following in the event of a strike by Unit 05 employees:

1. The positions which the foregoing employees occupy are designated as essential positions.
2. The Employer has identified the foregoing employees to fill the essential positions but in the event of the

unavailability of the designated employee, the Employer may designate any or all incumbents in the essential positions as essential employees. Each incumbent shall notify the Employer of his or her current residence and mailing addresses, telephone number, or pager numbers prior to the onset of a strike by Unit 05 employees. The Employer shall inform incumbents in essential positions that they may be designated as essential employees and that they are required to supply this information.

3. The Employer shall designate employees to fill essential positions. The Employer shall notify the essential employee in accordance with Section 89-12(c)(2), HRS. It is the duty and responsibility of the essential employee to contact the Employer for his or her work assignment. This duty continues throughout the duration of any strike.

4. The Employer may determine whether the failure or refusal of an incumbent to report or perform the functions, duties, and responsibilities of positions designated as essential is premised on good cause. The Employer may presume that any failure or refusal is not for good cause, unless the incumbent designated as an essential employee provides the Employer with a signed statement of the reasons or circumstances for such failure or refusal. In the event that such failure or refusal is based upon a medical disability, a signed statement by a physician licensed to practice in the State of Hawaii must be submitted upon such forms to be provided by the Employer.

5. If an essential employee does not report to work as directed and there are other incumbents to fill an essential

position, the Employer shall designate another incumbent to perform such work. The Employer may notify such employee by whatever means practicable, including by telephone contact, to ensure the delivery of essential services.

If the Employer is unable to fill the essential position with an incumbent, the Employer may assign other employees who are capable of satisfactorily performing the functions, duties, and responsibilities of the essential position, and shall notify the Board accordingly.

6. The HSTA shall be responsible for taking all necessary steps to ensure that essential services required by this order are performed without interruption, slowdown, sick-out or other forms of interference.

7. Work sites, buildings, or facilities may be picketed, but persons on the picket lines shall permit anyone to cross the picket lines without interference. Picketers shall not harass or impede anyone from ingress or egress to the buildings.

8. To minimize confusion in communications between the parties, the Employer and the HSTA 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 at the close of this proceeding or during a strike. 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 at least 24 hours before the onset of a strike.


9. In the assignment of incumbents or other employees to essential positions, the Employer shall refrain from assigning persons designated as picket line captain, stewards, negotiation team members and HSTA Board of Directors members unless there are no other employees capable of satisfactorily performing the functions, duties and responsibilities of the essential positions.

The HSTA shall forthwith furnish the Employer with the names of picket line captains, stewards, negotiation team members and Board of Directors members who have been designated as essential in this order.

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

DATED: Honolulu, Hawaii, February 18, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

Copies sent to:

Francis Paul Keeno, Deputy Attorney General
Vernon Yu, Esq.
Joyce Najita, IRC