STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of JANET WEISS, Complainant, and CATHERINE BRATT, Principal, Kohala High & Intermediate School, State of Hawaii, Respondent.	CASE NO. CE-05-452 DECISION NO. 425 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 29, 2000, Complainant JANET WEISS (WEISS), proceeding pro se, filed this complaint with the Hawaii Labor Relations Board (Board) alleging that Respondent CATHERINE BRATT, Principal, Kohala High & Intermediate School, Department of Education (DOE), State of Hawaii (Employer or BRATT) retaliated against WEISS for engaging in protected activity in wilful violation of Hawaii Revised Statutes (HRS) § 89-13(a)(4).

Respondent's Motion to Dismiss and/or for Summary Judgment filed October 19, 2000 was denied by the Board in Order No. 1977 after oral arguments were heard on October 31, 2000. On February 6, 2001, the Board held a hearing on the merits. Both parties were afforded full opportunity to present evidence and argument before the Board. On April 16, 2001, the parties filed post-hearing briefs including Proposed Findings of Fact, Conclusions of Law and Order, and supplemental documents requested by the Board.

Based on a thorough review of the record, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Complainant JANET WEISS is employed by the DOE and was for all times relevant, a teacher at Kohala High & Intermediate School, and a public employee within the meaning of HRS § 89-2. WEISS is a member of

Bargaining Unit 05, whose exclusive representative is the Hawaii State Teachers Association (HSTA).

2. Respondent CATHERINE BRATT, as the principal of Kohala High & Intermediate School since 1990, is the designated representative of the public employer within the meaning of HRS § 89-2 for purposes of this prohibited practice complaint.

3. The Board takes administrative notice of Case No. CU-05-164, pursuant to Hawaii Administrative Rules (HAR) § 12-42-8(g)(8)(F), resulting in Decision No. 420, Janet Weiss, 6 HLRB ___ (2001). The case involved a prohibited practice complaint filed by WEISS against her union, the HSTA, for breaching its duty of fair representation in a grievance over BRATT's decision to involuntarily transfer WEISS from the high school to the Halaula middle school. Hearings were held on August 1, 2000 in Kapa'au, Hawaii, August 24 and October 6, 2000 in Kona and October 31, 2000 in Honolulu. Upon application by WEISS, BRATT was subpoenaed to appear before the Board on August 1 and August 24, 2000.

4. WEISS has been engaged in protected activity that includes filing past grievances for employment actions taken by BRATT which WEISS testified about, and compelled BRATT's appearance as a witness in her prohibited practice complaint against the HSTA in Case No. CU-05-164.

5. BRATT responded to the subpoena for the hearing in Case No. CU-05-164 on August 1, 2000 and waited all day to testify but was not called because there was no time. As a result, she was re-subpoenaed on August 23, 2000 to testify before the Board on August 24, 2000.

6. BRATT perceives herself to be the victim of past grievances filed by WEISS, which she feels were filed to harass and retaliate against her. BRATT believes by prevailing in all but one of the grievances filed by WEISS, which were pursued through arbitration by the HSTA, "that most of [WEISS'] accusations are based on either false presumptions." As BRATT puts it, "I mean that she's way offbase with most, everything that she's brought against me. And basically a large number of the faculty have testified in previous grievances against her as well. . . . That have substantiated my position."

7. Rosemary Kawamoto (Kawamoto) is the DOE's personnel regional officer in the Hawaii District Office. For the past eight years as the certificated personnel specialist in the personnel services branch, she has been responsible for all matters pertaining to the employment of certificated personnel. She also handles recruitment, leave administration, contract administration and

substitute teachers. As the certificated personnel officer in the district, Kawamoto handles all grievances filed formally at step one. This includes arranging the hearing and doing research for the district superintendent in responding to the grievances filed. As a result, Kawamoto has full knowledge and experience with past grievances filed by WEISS and the HSTA against the DOE for employment actions and decisions made by BRATT, including the grievance over WEISS' transfer by BRATT to the middle school in Case No. CU-05-164.

8. Kawamoto also serves as the teacher housing liaison acting for the district superintendent to determine eligibility for teacher housing and establish the priority among teacher applicants.

9. Under a Memorandum of Understanding between the DOE and the former Hawaii Housing Authority, the DOE determines eligibility for housing and gives first priority to incoming teachers. Under the teacher housing policy and Regulation 6610.1, the DOE has a three-year occupancy rule, and the discretion to make exceptions beyond the three-year occupancy for communities where other housing is not available.

10. The DOE has not strictly enforced the three-year occupancy rule. WEISS has been residing at Halaula Teachers Cottage for over three years in a three bedroom unit. At least three teachers -- Melody Neufeld, Karen Hoot, and Cheryl Leany -- and one family -- the Duncans -- have also been residing at Halaula Teachers Cottage for over four years, and in one case over six years.

11. At all relevant times, management of Halaula Teachers Cottage has been the responsibility of the Housing and Community Development Corporation of Hawaii (HCDCH), formerly the Hawaii Housing Authority, Department of Business and Economic Development. Earl Nakaya (Nakaya) is the property management coordinator employed by HCDCH and responsible for overseeing all teacher cottages statewide including Halaula Teachers Cottage. Nakaya is based in Honolulu and relies on his on-site managers to be his eyes and ears in managing the teacher cottages.

12. According to Nakaya, the procedure for filling a vacancy begins upon receipt of an approved housing application form from the DOE. For the DOE Hawaii District, Kawamoto determines eligibility, approves the housing request, and forwards the application to Nakaya. Unless the DOE approves housing, Nakaya typically does not "talk to anybody" -- meaning that DOE approval is essential before he begins to do what is necessary to house a teacher.

13. On August 14, 2000, WEISS applied for an emergency leave of absence without pay for the school semester -- a five-month period beginning August 21, 2000 to January 19, 2001 -- to spend time on legal actions including her prohibited practice complaint, Case No. CU-05-164, against the HSTA.

14. On August 15, 2000, BRATT approved WEISS' leave application and sent it to the Hawaii District Office for approval by Kawamoto.

15. On August 16, 2000, BRATT called Kawamoto and informed her that WEISS was taking a leave of absence for the semester and was forwarding her leave form to Kawamoto for approval. BRATT also called Kawamoto for guidelines on cottage residency because she had just hired a couple to teach who needed housing. BRATT asked Kawamoto to send an application for teacher housing to a couple -- Mr. and Mrs. Michaelis -- which she wanted to hire to teach at the school.

16. Even before calling Kawamoto, BRATT knew that because WEISS would not be teaching for a semester, it logically followed that WEISS was not entitled to teacher housing. This was based on BRATT's understanding of the housing rules.

17. BRATT had previous experience with removing two teachers who were no longer employed by the DOE from teacher housing. Regarding eligibility for teacher housing, BRATT made no distinction between teachers no longer employed by the DOE and WEISS, who was still employed as a teacher and taking a leave of absence for one semester.

18. BRATT's attitude about WEISS' housing situation is reflected by her statement during the hearing, "I truly don't care whether she's in the cottage or not."

19. On August 17, 2000, Kawamoto signed and approved WEISS' leave of absence application. Kawamoto knew about BRATT's subpoena to appear to testify in WEISS' prohibited practice complaint against HSTA before the Board when she approved BRATT's leave form.

20. On August 17, 2000, BRATT took it upon herself to call Joy Alfiler (Alfiler), the on-site manager of the Halaula Teachers Cottage, ostensibly to inquire about any vacancies. BRATT informed Alfiler that WEISS was not teaching for a semester, and that BRATT wanted WEISS "to move out to possibly free up a family cottage" because there was a married couple which she wanted to hire who needed housing.

21. Immediately after her phone call from BRATT, Alfiler contacted Nakaya, who responded that he would send a letter of non-renewal to WEISS.

22. On August 17, 2000, Nakaya sent a letter of non-renewal of her lease to WEISS. The letter stated:

> We have been informed that you will not be teaching in the Kohala School District this semester.
>
> This letter is to notify you that with the expiration of our rental agreement on July 31, 2000, we will not be renewing the lease for Halaula Teachers Cottage #3.
>
> Enclosed is a form D-60 to cancel payroll deduction for rent payments. Please contact Ms. Joy Alfiler, your cottage manager, for a vacate inspection.

23. Nakaya did not send letters of non-renewal to anyone else but WEISS residing at the Halaula Teachers Cottage even though all the leases had expired. Before teacher housing leases expire, he expects teachers to notify him or the site manager to let him know what plans they have to remain in housing or relocate elsewhere. As such, Nakaya explained that his August 17, 2000 letter to WEISS was only intended to find out what WEISS' plans were so that he would be able to respond to requests for housing. We find Nakaya's explanation as to his intent implausible. Although Nakaya testified he did not know WEISS' leave of absence was temporary and not permanent, there is substantial evidence to the contrary showing that Nakaya indeed knew that WEISS would not be teaching for one semester only. In particular, his letter of non-renewal to WEISS and sworn affidavit to the Board state otherwise. We find Nakaya's letter of non-renewal is clear and unequivocal.

24. But for BRATT's phone call to Alfiler, Nakaya would not have sent the August 17, 2000 letter to have WEISS vacate her residence. Indeed, Nakaya received no other official communication from the DOE, such as Kawamoto, or WEISS herself, about her eligibility or plans to remain in housing or to relocate.

25. Nakaya did not receive a DOE housing application form approving housing for the couple which BRATT said she needed to have housing. He did not ask BRATT or the DOE for the housing application form right away because it was so close to the beginning of the school year.

26. On August 17, 2000, after speaking with Nakaya, Alfiler called BRATT to let her know that Nakaya would be sending a letter to WEISS. When BRATT heard this, she told Alfiler to "put your bullet proof vest on when you go over there." BRATT admits making this statement as a joke. BRATT's remark shows she intended to have WEISS move out, and knew WEISS would be upset upon receiving Nakaya's letter.

27. We find BRATT's claim that she did not intend to have WEISS evicted from teacher housing, but "only meant that Ms. WEISS should move into another unit with a roommate," not credible. BRATT's message communicated to, and understood by Alfiler and Nakaya, was clear and unequivocal.

28. We do not credit BRATT's testimony that she had no feelings "one way or the other" about being subpoenaed and that it did not bother her. Nor do we credit BRATT's testimony that being subpoenaed two weeks earlier "played no role" in her placing a call to Alfiler to inform her that WEISS was not teaching for the semester and she wanted WEISS to move out. Indeed, upon receiving and approving WEISS' leave of absence application to focus on her prohibited practice complaint proceeding in which BRATT would have to testify, BRATT wasted no time in calling both Kawamoto and Alfiler.

29. BRATT spent an entire day waiting to testify under subpoena on August 1, 2000 only to have the hearing and her appearance continued to August 24, 2000. This date coincided with the first day of school. BRATT admits it was a hectic and very busy time of year for her. Although BRATT testified that she was not served with a subpoena until August 23, 2000, it was not unexpected since at the conclusion of the hearing on August 1, 2000 the Board continued the case to August 24, 2000 and instructed WEISS to re-apply for subpoenas with the new date.

30. We find suspect BRATT's motive for calling both Kawamoto and Alfiler, i.e., "that there was a need for housing for new teachers and it was my understanding that I might lose potential teachers, if they could not secure housing." Although Kawamoto sent a housing application to the Michaelis', Kawamoto did not receive a housing application from them. The couple found housing elsewhere in Kohala and never applied for teacher housing.

31. Nakaya did not follow through with his letter of non-renewal and WEISS continues to reside at the Halaula Teachers Cottage.

32. The Board accepts Respondent's Findings of Fact #1-5, 7, 11, 12, 16, 17, 19, 25, 26, 29, 32, and 33 and rejects Findings of Fact #6, 8-10, 13-15, 18, 20,

21-24, 27, 28, 30, and 31. The accepted findings of fact are incorporated herein by reference.

33. The Board accepts Complainant's Findings of Fact #1-3, 7-10, 14, and rejects Findings of Fact #4-6, 11-13, 15-25. The accepted findings of fact are incorporated herein by reference.

DISCUSSION

WEISS charges that BRATT retaliated against her by causing her to receive a letter of non-renewal and notice to vacate from her residence at the Halaula Teachers Cottage after she applied for a leave of absence for one semester to pursue, inter alia, her prohibited practice complaint in Case No. CU-05-164, in wilful violation of HRS § 89-13(a)(4).

This complaint arose during the course of WEISS' prohibited practice complaint against her union when she subpoenaed BRATT to appear. WEISS' complaint against her union stemmed from a grievance and arbitration upholding BRATT's decision to transfer WEISS from teaching at the high school to the middle school campus at Halaula.

In the instant complaint, WEISS alleges that BRATT singled her out for removal from Halaula Teachers' Cottage "only days before WEISS was to present her case to the Board against the teachers' union" on August 24, 2000. WEISS alleges that BRATT is "trying to take away my living arrangements to throw me into chaos psychologically" while she pursues her prohibited practice complaint against the HSTA.

BRATT admits contacting Alfiler, the Halaula Teachers Cottage on-site manager, the day after approving WEISS' leave application. BRATT told Alfiler that WEISS would not be teaching for one semester "and that [BRATT] wanted her to move out to possibly free up a family cottage for an incoming teacher with a family."

BRATT explains what she meant, as follows:

> I knew that Ms. WEISS occupied a three bedroom cottage that was meant for families. In making the statement, I did not mean to encourage Ms. Alfiler to evict Ms. WEISS from teacher housing. I only meant that Ms. WEISS should move into another unit with a roommate or out of the cottages (as she was not teaching) in order to free up a cottage for a family. I made the statement because there was a need for housing for new teachers and it was my understanding that I might lose potential teachers, if they could not secure housing.

WEISS contends she was "singled out" and questions BRATT's motive in contacting Alfiler because there were other single tenants who could have been moved to free up a cottage for a family.

Burden of Proof

HRS § 89-13 provides, in part, that:

> (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:
>
> * * *
>
> (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization; . . . .

Accordingly, an employer commits a prohibited practice by retaliating against an employee engaging in protected activity such as signing or filing an affidavit, petition, or complaint or giving any information or testimony under HRS Chapter 89.

To prevail before the Board on a retaliation theory, the burden of proof is on WEISS to show by a preponderance of evidence that 1) there was an improper motive; 2) that there was a causal connection between the improper motive and for engaging in protected activity before this Board; and 3) that the improper motive was a motivating factor for taking action adverse to WEISS. Thomas Lepere, V HLRB 123 (1993).

In Lepere, supra, the Board relied upon the analysis set forth in United Food and Commercial Workers Union, Local 480, 4 HLRB 568 (1988), for discrimination cases brought under HRS § 89-13(a)(4), as follows:

> Under the Wright Line test, the proponent initially must demonstrate that anti-union animus contributed to the decision to discharge the employee. If this burden is satisfied, the Employer must then show by a preponderance of the evidence that the employee would have been discharged even if he had not been engaged in protected activity. We note here, that a union advocate does not cloak himself with protection from discipline or discharge by his involvement with the union. While Respondent's union animus may be apparent from the

record, this does not mean that Respondent cannot discharge a union adherent so long as the discharge was not based on the adherent's union activity.

If WEISS establishes a prima facie case of retaliation under HRS § 89-13(a)(4) sufficient to support an inference of unlawful motive, the burden shifts to BRATT to show the same action would have been taken in any event, i.e., even if WEISS had not been engaged in protected activity. BRATT must establish legitimate, non-discriminatory reasons for her actions.

Protected Activity and Adverse Action

There is no dispute that WEISS has been engaged in protected activity within the meaning of HRS § 89-13(a)(4). Two weeks prior to filing the instant complaint, WEISS had appeared before the Board as the complainant in Case No. CU-05-164. She testified about past grievances challenging employment actions taken by BRATT. On the first day of hearing, she compelled BRATT's appearance as a witness.

WEISS contends she suffered adverse action because of BRATT's phone call to housing manager Alfiler informing her that WEISS would not be teaching for a semester and that she wanted WEISS out of teacher housing. As a result of BRATT's phone call, WEISS received a letter of non-renewal dated August 17, 2000 from Nakaya.

Respondent contends that WEISS has not suffered any actual eviction because she continues to live in her unit at Halaula Teachers Cottage. Respondent argues that technically by definition an eviction means forcing a tenant to leave before the lease expires. WEISS' lease, like all leases, had expired on July 31, 2000, thus making her a "holdover tenant." Therefore, Respondents contend no eviction has occurred. We are not persuaded by this argument.

Nakaya's letter of non-renewal was clear and unequivocal. Even as a holdover tenant, WEISS was no longer eligible for teacher housing because Nakaya learned she was not teaching for the semester. Consequently, he was not renewing WEISS lease and expected her to vacate the premises. The result is the same whether it occurred before or after WEISS' lease expired.

Furthermore, we give no credence to Nakaya's explanation that his letter of non-renewal was not intended to evict WEISS. Nakaya testified that he sent the letter of non-renewal and notice to vacate, simply to find out what WEISS' plans were "so that [he] could respond to the Michaelis' request for housing, as well as other requests." Nakaya never received a request for housing from the DOE for the Michaelis'. He sent the letter of non-renewal based solely on information Alfiler communicated to him after speaking to BRATT. But for BRATT's phone call to Alfiler, Nakaya would not have sent the August 17,

2000 letter. Therefore, we conclude that the letter of non-renewal constitutes adverse action by BRATT.

Moreover, WEISS' eligibility for teacher housing continues to be in jeopardy under the DOE housing policies and rules, because she has lived there beyond the three-year limit. Kawamoto testified that the purpose of teacher housing in general is to provide temporary housing for new incoming teachers and administrators. In establishing the priority for placement in teacher housing, priority is given to incoming teachers. She confirmed that under DOE's Statewide Teacher Housing Assignment Priority policy, a teacher who is on a temporary leave of absence would lose his or her priority for housing. As such, even after WEISS returns from her temporary leave of absence, there is nothing to prevent the DOE and BRATT from adversely affecting WEISS' eligibility for teacher housing by removing her from the priority list simply because she has lived in teaching housing beyond the three-year limit.

Unlawful Motive

We conclude that WEISS has shown by a preponderance of evidence that BRATT's phone call to Alfiler and Nakaya's letter of non-renewal to WEISS was unlawfully motivated.

We rely on a number of factors in determining unlawful motive. For instance, what the employer knew of the protected activities, the employer's attitude toward the protected activities, and whether the timing of the adverse action was suspect.

In the instant case, not only was BRATT well aware of the grievances filed by WEISS, but she was subpoenaed to the prohibited practice complaint hearing before the Board where WEISS testified about her grievances against BRATT. Even Kawamoto, in her capacity as the DOE's personnel regional officer, was fully aware of the contentious employer-employee relationship between BRATT and WEISS. And, Kawamoto, knew of BRATT's subpoena when she approved WEISS' leave request.

BRATT felt victimized by WEISS' grievances. The subpoena compelling her to testify about her decision to transfer WEISS posed more than a nuisance. She was subpoenaed to appear on August 1, 2000 and in fact waited all day to testify, but did not. No doubt this was a busy and hectic time of year for BRATT. WEISS' leave of absence form approved by BRATT on August 15, 2000, served as a reminder that BRATT would be subpoenaed again to testify on August 24, 2000–which was the first day of school. BRATT's testimony that being subpoenaed "didn't bother" her simply is not credible.

Moreover, the timing of BRATT's adverse action is suspect. BRATT knew she would be compelled to testify. She wasted no time calling Kawamoto and Alfiler. One day after approving WEISS' leave of absence form on August 15, 2000, BRATT called

Kawamoto, the DOE's Hawaii District teacher housing liaison and BRATT, not Kawamoto, called Alfiler on August 17, 2000. On August 21, 2000 Nakaya faxed his letter of non-renewal dated August 17, 2000 to Alfiler who hand delivered it to WEISS. WEISS received Nakaya's letter of non-renewal even before hearing officially from the DOE that Kawamoto had approved her five-month leave of absence.

We are most convinced of BRATT's retaliatory intent because of her response when Alfiler called to let her know she talked to Nakaya who would be sending a letter to WEISS. BRATT jokingly said, "put your bullet proof vest on when you go over there." This is not the response of someone whose intentions are innocent and not retaliatory. BRATT knew what WEISS' reaction would be to receiving Nakaya's letter. If BRATT had truly meant for WEISS to move in with a roommate or have Alfiler and Nakaya pursue other options in housing arrangements in order to free up WEISS' three-bedroom cottage, it was not communicated to Alfiler or Nakaya either before or after the letter of non-renewal was sent. Why? Because it's not what BRATT intended. BRATT accomplished precisely what she had intended through Nakaya's letter of non-renewal.

Legitimate, Non-Discriminatory Reasons

Shifting the burden to BRATT, we conclude there has been no showing of any legitimate, non-discriminatory reasons for instigating WEISS' removal from teacher housing. BRATT contends "there was a need for housing for new teachers" and she believed she "might lose potential teachers, if they could not secure housing." However, BRATT could show no basis in fact for such a belief. As it turned out, BRATT was able to hire new teachers and, the Michaelis couple in particular, never submitted an application for teacher housing.

Moreover, BRATT provided no proof that she would have taken the same action, had WEISS not been engaged in protected activity. On the contrary, even though the DOE has a three-year occupancy rule in order to give priority to new incoming teachers, it is not uniformly or automatically enforced. If the DOE had enforced its three-year occupancy rule uniformly to teachers like WEISS with leases beyond three years, then arguably it would serve as a legitimate, non-discriminatory reason. However, no such evidence was presented.

The DOE had not enforced the three-year occupancy rule. There was unrebutted testimony that other teachers besides WEISS were residing at the cottages beyond three years. And although all leases expire each year, WEISS was the only tenant to receive a letter of non-renewal from Nakaya.

WEISS proved that she received a letter of non-renewal and notice to vacate because she was pursuing her prohibited practice complaint before the Board where she testified about her grievances and had subpoenaed BRATT. BRATT's actions were

triggered by the fact that WEISS was taking leave for one semester to pursue her prohibited practice. By not teaching for a semester, BRATT believed WEISS would not be entitled to remain in teacher housing and so informed Alfiler and Nakaya.

The record shows that BRATT wanted WEISS out of her teacher housing because WEISS had testified about grievances over employment actions taken by BRATT, and subpoenaed BRATT in her prohibited practice complaint filed against the union.

For the reasons stated above, we conclude BRATT acted in wilful violation of HRS § 89-13(a)(4).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this complaint pursuant to HRS §§ 89-5 and 89-13.

2. Under HRS § 89-13(a)(4), an employer commits a prohibited practice by retaliating against an employee engaging in protected activity under HRS Chapter 89 such as giving testimony about grievances filed against employment actions taken by the employer and subpoenaing the employer in a prohibited practice complaint filed before the Board.

3. Complainant was engaged in protected activity and suffered adverse action at the hands of her Employer when she received the August 17, 2000 letter of non-renewal and notice to vacate.

4. Complainant established by a preponderance of the evidence that her Employer retaliated against WEISS for engaging in protected activity by singling WEISS out to receive a letter of non-renewal of her lease for teacher housing when BRATT called Alfiler to inform her that WEISS would not be teaching for a semester and that she wanted WEISS out of teacher housing.

5. Complainant has shown by a preponderance of evidence that BRATT's phone call to Alfiler and Nakaya's letter of non-renewal to WEISS was unlawfully motivated. BRATT intended Nakaya to send WEISS a letter of non-renewal and notice to vacate because WEISS would not be teaching for a semester to pursue, inter alia, her prohibited practice complaint.

6. BRATT's conduct constitutes a conscious, knowing and deliberate retaliation against WEISS for testifying about her grievances involving the Employer and subpoenaing her Employer to testify before this Board in wilful violation of HRS § 89-13(a)(4).

7. The Board accepts Respondent's Conclusions of Law #1 and 2 and rejects Respondent's Conclusion of Law #3 in its entirety.

8. The Board accepts Complainant's Conclusions of Law #1, 2, 4 and rejects Complainant's Conclusions of Law #3, 5-21.

ORDER

1. The Employer is ordered to cease and desist from committing the instant prohibited practice by retaliating against Complainant for engaging in protected activity and otherwise exercising her rights under HRS Chapter 89.

2. The Employer is ordered to cease and desist from altering Complainant's eligibility or priority for teacher housing for three years commencing with the date of this decision provided Complainant continues to be a DOE employee. After the three years expire, Complainant shall continue to be eligible for teacher housing, unless or until the Employer uniformly applies its three-year occupancy rule in a nondiscriminatory manner.

3. The Employer shall immediately post copies of this decision in conspicuous places at its work sites where employees of bargaining Unit 05 assemble and congregate, and on the DOE website, for a period of 60 days from the initial date of posting.

4. The Employer shall notify the Board of the steps taken by the Employer to comply herewith within 30 days of receipt of this order.

DATED: Honolulu, Hawaii, August 10, 2001.

HAWAII LABOR RELATIONS BOARD

CHESTER C. KUNITAKE, Member

KATHLEEN RACUYA-MARKRICH, Member

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