STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Complainant, and GLENN OKIMOTO, Former Comptroller, Department of Accounting and General Services, State of Hawaii; MARY ALICE EVANS, Comptroller, Department of Accounting and General Services, State of Hawaii; DIANNE MATSUURA, Personnel Officer, Department of Accounting and General Services, State of Hawaii; JAMES RICHARDSON, Administrator, Central Services Division, Department of Accounting and General Services, State of Hawaii; and DONALD INOUYE, Manager, Physical Plant Operations and Maintenance Program, Department of Accounting and General Services, State of Hawaii, Respondents.	CASE NO. CE-01-515 (On Remand) DECISION NO. 443A AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 13, 2004, the First Circuit Court in Civil No. 03-1-1797-09 (SSM) ordered a remand of an appeal filed from Decision No. 443 by above-named Respondents GLENN OKIMOTO, MARY ALICE EVANS, DIANNE MATSUURA, JAMES RICHARDSON, and DONALD INOUYE (collectively State or Employer). The remand order states in relevant part as follows:

> In Conclusions of Law No. 2, the Board concludes that because "the conduct ran into the limitations period and was akin to a continuing violation where each occurrence represented a new, contestable violation." In Order No. 2, the Board orders Respondents "to negotiate other appropriate remedial and corrective relief to make the affected Unit 01 employees whole." In the Court's view, the Order is vague as

to whether the Board is ordering Respondents to negotiate for violations occurring more than 90 days before the September 23, 2002 Prohibited Practices Complaint, which could raise statute of limitations issues if the Board is treating each occurrence as a "new, contestable violation."

Therefore, it is hereby ordered, adjudged and decreed that this case be remanded to the Hawaii Labor Relations Board for further proceedings to clarify the foregoing issue.

On March 12, 2004 and June 28, 2004, the Board held status conferences on the instant case. The parties were requested to submit supplemental memoranda by July 27, 2004 on the remanded issues. Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a supplemental memorandum of fact and law on July 27, 2004. The State did not submit a written memorandum. The Board heard oral argument on August 6, 2004.

Thereafter, on August 9, 2004, the UPW filed Proposed Findings of Fact, Conclusions of Law, and Order on Remand. On September 10, 2004, Respondents filed a Statement of Objections to UPW's Proposed Findings of Fact, Conclusions of Law, and Order on Remand with the Board.

Based upon a review of the entire record, testimony and argument, the Board makes the following additional Findings of Fact, and hereby amends the Discussion at pp. 23-24, the Conclusions of Law No. 2, and Order No. 2 in Decision No. 443, dated August 4, 2003:

FINDINGS OF FACT

62. From on or about February 2002 to July 2002 RICHARDSON unilaterally implemented a whole school renovation pilot project. The pilot project involved unilateral changes in hours of work and work schedules of bargaining unit 01 employees. RICHARDSON formulated the pilot project in part to independently determine whether the changes in terms and conditions of work for Unit 01 employees would adversely affect the productivity of repair and maintenance crews during school hours as had previously been assumed.

63. RICHARDSON informed MATSUURA and OKIMOTO of his plans regarding the whole school renovation pilot project. MATSUURA considered a policy altering hours of work to be a change in conditions of work. OKIMOTO instructed RICHARDSON "to involve the union" before implementing the changes. RICHARDSON, however, failed to notify the

Union of any of the changes before, during, or after the whole school renovation pilot project.

64. From February 2002 through October 2002 RICHARDSON unilaterally and without notification, consultation, or bargaining with the UPW (a) changed the start time from 9:30 a.m. to 8:00 a.m., (b) increased the work day from 8 hours to 9.5 hours, (c) modified the work week from 5 days a week to seven days a week, and (d) increased the work load of the employees in the repair and maintenance crews engaged in renovating public schools.

65. At the conclusion of the pilot project in July 2002 RICHARDSON determined that a change in the hours of work and work schedule would result in greater productivity in the repair and maintenance crews. On August 9, 2002 a letter proposing a change in work hours and work schedules was sent to the union. The Union responded with a request for information about the impact of the proposed changes. In his response to the Union RICHARDSON chose to conceal any reference to the pilot project and did not inform the Union of the unilateral changes which he had already implemented in the start time, the work day and the work week.

66. Absent notification of the aforementioned changes from RICHARDSON, MATSUURA or OKIMOTO, the Union did not actually know of the unilateral modifications in start time, work day, work week, and workload for bargaining unit 01 employees until after the prohibited practice complaint was filed on September 23, 2002. In fact, the disclosure of RICHARDSON's unilateral course of conduct was first discovered during RICHARDSON's testimony as a witness in these proceedings on and after November 18, 2002.

67. At no time prior to the filing of the complaint on September 23, 2002 did the Union know or should have known of the unilateral changes made by RICHARDSON from February 2002 through October 2002, which constituted a wilful violation of Sections 1.05 and 25.01 of the Unit 01 collective bargaining agreement (and thus a prohibited practice) by the Employer.

DISCUSSION

Second, Respondents assert that the claim regarding changes in start time, work day, work week, and workload made during and after the whole school pilot project are untimely because the pilot was initiated in February 2002 and the complaint was not filed until September 2, 2002, long after the 90-day statute of limitations expired. Hawaii Administrative Rules (HAR) § 12-42-42(a) identifies the limitations period applicable to the filing of prohibited practice complaints under HRS § 89-13. It provides as follows:

> A complaint that any public employer, public employee, or employee organization has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed ... withing ninety days of the alleged violation.

See also HRS 377-9(l).

The statute of limitations for a prohibited (or unfair labor) practice complaint does not begin to run until the aggrieved party knew or should have known that his statutory rights were violated. David Santos v. State of Hawaii, Department of Transportation, 1 HPERB 669, 681 (1977) (90-day statute triggered when complainant was notified of the promotion of another employee); Alvis W. Fitzgerald v. George R. Ariyoshi, 3 HLRB 186, 198 (1983) (90-day statute of limitations was triggered on the effective date of the discharge, not the date the letter of discharge was received by complainant.) See also, Stone Board Yard v. HLRB, 75 F.2d 441, 445 (9th Cir. 1983); Peerless Roofing Co. v. NLRB, 641 F.2d 734, 736 (9th Cir. 1981); Metromedia, Inc., KMBC TV v. N.L.R.B., 586 F.2d 1182, 1189 (9th Cir. 1978)

Where the nature of the prohibited (or unfair labor) practice pertains to a failure to bargain by the employer, the statute of limitations is not triggered until the employer provides notice to the union that it intends to implement unilateral action (and thus has no intention to negotiate the change). Hawaii Government Employees Association, Local 152, AFSCME, AFL-CIO v. Frank F. Fasi, 1 HPERB 641, 645-46 (1977). See also NLRB v. Walker Const. Co., 928 F.2d 695, 696 (5th Cir. 1991); Ruline Nursery Co. v. Agricultural Labor Relations Board, 169 Cal.App.3d 247, 265. The notice of the violation must be "clear and unequivocal." NLRB v. Public Service Electric & Gas Co., 157 F.3f 222, 227 (3d Cir. 1998).

No notice of the unilateral changes to the start time, work day, work week, and workload during and after the whole school renovation pilot project was ever provided to the union by the employer in the instant case. Since the UPW did not have actual (or constructive) knowledge of the violation of HRS § 89-13(a)(8) based on the Employer's wilful violations of Sections 1.05 and 25.01 of the Unit 01 collective bargaining agreement prior to the filing of the September 23, 2002 prohibited practice complaint, the claim is not time-barred.

CONCLUSION OF LAW

2. The Board has jurisdiction over a complaint for prohibited practices filed within 90 days of its "occurrence" under HRS § 377-9(l). A complaint is timely if it is filed within 90 days of an "alleged violation" of HRS § 89-13(a)(8) under HAR § 12-42-42(a). The statute of limitations is triggered when complainant knew or should have known of the

specific prohibited practice claim or claims in question. The claim the Employer violated HRS § 89-13(a)(8) by their wilful violation of Sections 1.05 and 25.01 of the Unit 01 agreement was not time-barred, because the UPW did not have actual or constructive knowledge of the unilateral changes RICHARDSON made to the start time, work day, work week, and workload during and after the whole school renovation pilot project prior to September 23, 2002 when the complaint was filed with the Board. All other prohibited practice claims as alleged in the September 23, 2002 complaint were timely as well.

ORDER

2. Respondents are ordered to negotiate other appropriate remedial and corrective relief to make the affected Unit 01 employees whole, including but not limited to back pay for employees resulting from the unilateral changes RICHARDSON made to the start time, work day, work week, and work load for the period from June 25, 2002 and thereafter due to the whole school renovation pilot project.[1] The failure to negotiate in good faith with the Union will be grounds for an award of attorney's fees and compensation for loss of overtime or other appropriate relief as determined by the Board.

DATED: Honolulu, Hawaii, June 30, 2006.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Herbert R. Takahashi, Esq.
James E. Halvorson, Deputy Attorney General
Joyce Najita, IRC

[1]The Board here departs from the UPW's Proposed Findings of Fact, Conclusions of Law, and Order on Remand filed on August 9, 2004 to clarify the Board's remedial order to reflect that the Board intended that any remedy awarded would be calculated beginning 90 days preceding the filing of the instant complaint.

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Complainant, and GLENN OKIMOTO, Former Comptroller, Department of Accounting and General Services, State of Hawaii; MARY ALICE EVANS, Comptroller, Department of Accounting and General Services, State of Hawaii; DIANNE MATSUURA, Personnel Officer, Department of Accounting and General Services, State of Hawaii; JAMES RICHARDSON, Administrator, Central Services Division, Department of Accounting and General Services, State of Hawaii; and DONALD INOUYE, Manager, Physical Plant Operations and Maintenance Program, Department of Accounting and General Services, State of Hawaii, Respondents.	CASE NO. CE-01-515 DECISION NO. 443 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On September 23, 2002, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW, Complainant, or Union) filed the instant prohibited practice complaint with the Hawaii Labor Relations Board (Board) against GLENN OKIMOTO, former Comptroller of the Department of Accounting and General Services (DAGS), State of Hawaii (OKIMOTO); MARY ALICE EVANS, former Comptroller, DAGS, State of Hawaii (EVANS); DIANNE MATSUURA, personnel officer of DAGS, State of Hawaii (MATSUURA); JAMES RICHARDSON, administrator of the Central Services Division, DAGS, State of Hawaii (RICHARDSON), and DON INOUYE, manager of the Physical Plant Operations and Maintenance Program of DAGS, State of Hawaii (INOUYE) (collectively State, Employer, or Respondents). In its complaint the Union asserts that the Respondents violated Hawaii Revised Statutes (HRS) § 89-13(a)(1),(2),(7) and (8).

The Board conducted evidentiary hearings on the complaint on November 18, 19, 20 and 27, 2002.

On January 14, 2003 a hearing was held on the UPW's motion to amend the complaint. The Board announced its inclination to deny the motion finding the "originally filed complaint as incorporating the substantive revisions identified in the amended complaint." On February 18, 2003 Respondents filed a motion to dismiss the complaint contending that the complaint is time-barred and that the Union failed to exhaust contractual remedies. On March 4, 2003 the Board indicated that it was inclined to deny the motion and would incorporate its findings and conclusions (without further briefing on the points raised by the parties in connection with said motion) in its final decision.

Based upon a review of the entire record, testimony, and arguments, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The UPW is an employee organization within the meaning of HRS § 89-2 and the exclusive representative of employees included in Unit 01 (blue-collar nonsupervisory employees).

2. OKIMOTO was, for all times relevant, a former Comptroller, DAGS, State of Hawaii, representing the Governor, State of Hawaii with respect to the Unit 01 employees in DAGS and is deemed to be a public employer within the meaning of HRS § 89-2.

3. EVANS was, for all times relevant, a former Comptroller, DAGS, State of Hawaii, representing the Governor, State of Hawaii with respect to the Unit 01 employees in DAGS and is deemed to be a public employer within the meaning of HRS § 89-2.

4. MATSUURA is the Personnel Officer, DAGS, State of Hawaii, representing the Governor, State of Hawaii and the Comptroller with respect to the Unit 01 employees in DAGS, and is deemed to be a public employer within the meaning of HRS § 89-2.

5. RICHARDSON is the Chief of the Central Services Division, DAGS, State of Hawaii, representing the Governor, State of Hawaii and the Comptroller with respect to the Unit 01 employees in DAGS, and is deemed to be a public employer within the meaning of HRS § 89-2.

6. INOUYE is the Manager, Physical Plant Operations and Maintenance Program, DAGS, State of Hawaii, representing the Governor, State of Hawaii and the Comptroller with respect to the Unit 01 employees in DAGS, and is deemed to be a public employer within the meaning of HRS § 89-2.

7. The UPW was certified as the exclusive bargaining representative of blue collar nonsupervisory employees in Unit 01 on October 20, 1971.

8. Unit 01 is composed of approximately 8,830 employees as of June 17, 2002. There are currently more than 200 employees of the Central Services Division of DAGS who are in the bargaining unit. From July 1, 1972 to the present the UPW and the State of Hawaii have negotiated and entered 13 successive collective bargaining agreements for Unit 01 employees on a multi-employer basis. All of the agreements impose mutual obligations on the employer and Union related to union recognition in Section 1, union stewards and union representatives in Section 5, prior rights in Section 14.01, hours of work in Section 25, overtime and compensatory time off in Section 26, working conditions and safety in Section 46, and joint committees in Section 53.

9. At all relevant times, the Unit 01 agreement has remained in full force and effect.

10. At approximately 8:30 a.m. on April 5, 2002, Ernest Bautista (Bautista) was found hanging in the DAGS warehouse at the Central District Baseyard adjoining Alvah Scott Elementary School. The baseyard was Mr. Bautista's primary jobsite and the staging area for his and other DAGS Repair and Maintenance (R&M) crews assigned to the Central District. Mr. Bautista had apparently chosen to hang himself there.

11. At the time of his suicide, Mr. Bautista was a foreman and had routinely been working seven days a week from 8:00 a.m. until 6:00 p.m. He had been working this schedule for the previous four months in the Department's whole school renovation pilot project. He performed the critical role of planning for and having materials delivered to school sites where renovations were being performed by R&M crews.

DAGS' Initial Response

12. Upon learning of the apparent suicide, DAGS management descended on the Central Baseyard while Mr. Bautista's body was taken to nearby Pali Momi Hospital. Management representatives included the then-Comptroller, OKIMOTO, his then-Deputy EVANS, the DAGS personnel officer, MATSUURA, the officer responsible for employee safety and collective bargaining compliance, and RICHARDSON, the Division Chief of Central Services, who was the ultimate supervisor of Mr. Bautista and his co-workers, and had de facto absolute operational authority over every element of the whole school renovation pilot project.

13. That day OKIMOTO met with Central District Baseyard employees to facilitate employee assistance grief counseling. Within a day or two he returned and invited the baseyard to express their feelings regarding the tragedy. Some employees identified job stress as a possible contributing source of the tragedy. Sources of stress on the job that were identified included workload, hours of work, and difficulty ordering supplies. OKIMOTO told them he would try to make changes to alleviate stress on the job.

14. Shortly thereafter, OKIMOTO convened a meeting of his top management employees, including RICHARDSON, MATSUURA and EVANS. At that meeting he conveyed his intention to pursue changes and do what could be done to alleviate employee stress. To that end, he ordered MATSUURA and her personnel department to go to every baseyard and conduct an investigation to determine the causes of job stress to prevent tragedies like that of Mr. Bautista. OKIMOTO also let it be known that he wanted RICHARDSON to do whatever was possible to mitigate identified sources of employee stress.

15. In late April and early May, MATSUURA and members of her staff conducted meetings at each of the five baseyards to hear employee concerns. RICHARDSON was not invited to attend the meetings because MATSUURA felt that he would be a subject of concerns and that his attendance would inhibit candor. After the meetings MATSUURA advised RICHARDSON of the voiced concerns. Although OKIMOTO has no recollection of being briefed, MATSUURA claims to have similarly briefed him. MATSUURA's "investigation" did not include any inquiry into Mr. Bautista's hours, workload or concerns. And although she recognizes that the workplace suicide might have been intended to send management a message, she could draw no conclusions. No meaningful remedial activity has been identified. Affected employees' exclusive representatives were never advised by management of the suicide, the ordered investigation, or intended remedial actions.

16. Although she proclaims an intention to do so, MATSUURA has never produced a written report of her investigation or its results. She also claims to have reached no conclusions regarding sources of employee stress or any methods of mitigation. There are however typewritten notes, prepared by her or her subordinates, which summarize the voiced concerns. The summary headings of these notes including, "Work hours," "Overtime," "Workload," and "Communication/Stressful Situations" reflect the categories of management's alleged wrongful conduct in this case.

Work hours and Workload

17. Section 1.05 of the Unit 01 agreement provides:

> **SECTION 1. RECOGNITION.**
>
> **1.05 CONSULT OR MUTUAL CONSENT.**
>
> The Employer shall consult the Union when formulating and implementing personnel policies, practices and any matter affecting working conditions. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

18. Section 25.01 of the Unit 01 agreement provides:

> **SECTION 25. HOURS OF WORK.**
>
> **25.01**
>
> Present practices pertaining to hours of work during the work day and the work week shall be continued for the duration of this Agreement, provided however, that where changes are required the Employer shall notify the Union thirty (30) days prior to the tentative implementation date of the anticipated change in order to afford the Union an opportunity to negotiate with the Employer in reference to the change.

19. The negotiated hours of work of R&M personnel were a matter of continuing concern. Prior to 1996, they shared assigned hours from 7 a.m. to 3:30 p.m. for five working days with other members of Central Services. However, in 1995 then-Comptroller Sam Callejo commenced negotiations with the UPW to shift R&M working hours to 9:30 a.m. to 6:00 p.m. The reason given for the proposed change in working hours was that, as government employees responsible for school R&M, the working hours would lessen the disruption of schools, a concern that allegedly had been voiced by school administrators.

20. Neither R&M personnel nor the Union wanted the change. But because then existing State budgetary constraints raised the possibility of privatization or layoffs, the Union agreed to a temporary change. The change was memorialized in DAGS' requested memoranda of agreement (MOA) that were negotiated and renewed annually between 1996 and 2002. RICHARDSON

took part in each negotiation and was the exclusive point of contact for DAGS in the last extension.

21. The contractually negotiated hours of work in effect at the time of Mr. Bautista's death was therefore 9:30 a.m. to 6:00 p.m. But these were not the hours that Mr. Bautista was working. He was working from 8:00 a.m. until 6:00 p.m. seven days a week.

22. These extended hours were a byproduct of a $640 million (Mil) backlog in public school repairs that existed in 2001. Prior to that time, legislative appropriations for school repair had been as low as $10 Mil. The funded repairs were divided between private contractors and R&M personnel with about 80 to 90 percent (%) of the jobs performed by the private contractors. In 2001, the legislature appropriated $120 Mil for school repairs but no additional R&M personnel.

23. In the aftermath of the September 11, 2001 terrorist attack on the World Trade Center the legislature increased the capital improvement budget of the state significantly at a special session. In Act 318, 2001 Session Laws of Hawaii, DAGS received substantial amounts of funding for the whole school renovation project, and the stepped up repair of public schools became a major priority for OKIMOTO and RICHARDSON. Taking into account such factors as the amount of funding, the work capacity of public employee work crews, and concerns expressed by DOE regarding the turnaround time, the top management at DAGS decided to establish a pilot project for the repair of 40 schools, six of which would be renovated by public employees and 34 by private employees. The completion of four classrooms per week was arrived at as a goal for the R&M crews. The renovations started off with the immediate infusion of $60 Mil in early 2002. OKIMOTO authorized the use of as much overtime as needed to get the job done. RICHARDSON exercised de facto operational control over all aspects of implementation.

24. In order to implement the pilot project RICHARDSON unilaterally changed the hours of work of bargaining unit 01 employees in R&M crews starting in February 2002. Under the existing written agreement with UPW the "temporary" work hours for employees in R&M crews were set at 9:30 a.m. to 6:00 p.m. With the pilot project, 50 % of each of the R&M crews began work at 8:00 a.m. and continued to work to 6:00 p.m. for a 9.5 hour work day. The employees were paid for voluntary pre-shift overtime for the period 8:00 a.m. to 9:30 a.m. to get "maximum" production. RICHARDSON told MATSUURA about the change associated with the use of pre-shift overtime,

and explained that the object was to get more work done.[1] A similar explanation was provided to OKIMOTO, who approved of the change in hours and authorized as much overtime as needed.

25. According to RICHARDSON the changes in hours of work began in earnest in February 2002 when the R&M crews were engaged in total classroom renovations with a goal of completing four classrooms in a week. Employees began working 9.5 hours a day, seven days a week. The 9.5 hours of work continued into weekends, non-stop. The change in workload was monitored by Bautista who kept a record for all work crews under the pilot project. Bautista was also responsible for coordinating the delivery of materials onto the various school sites. Affected workers' unions were neither notified nor consulted regarding the change in schedule.

26. The weekend and pre-shift overtime work was not mandatory. Employees were not required to commit to overtime attendance and could work only the regularly scheduled hours without administrative consequence. However, for at least three reasons many if not most of the R&M workers worked the extended schedule. First, the available overtime represented an economic windfall that would enable them to more than double their regular pay. Second, the administration's goal of four classrooms renovated per week, which was based on the extended hours, meant nonparticipation threatened falling behind schedule. And third, demonstrating the efficiency of government worker renovation might make further such opportunities available, and stave off threats of privatization.

27. This third factor, demonstrating government work efficiency vis-a-vis private contracting, was instrumental in RICHARDSON's development of the pilot. Funding for R&M work assigned to public employees gradually increased from 1995 to the present from 5% to 10% to 20% of the overall appropriation. RICHARDSON began a comparative study of costs for "in house" work (which was performed by public employees from Central Services) versus contracted-out work (which was performed by private employees under

---

[1]When questioned about her awareness of the changes in hours by Board members MATSUURA acknowledged knowing of the change to pre-shift overtime, the 9.5 hours of work per day, and the change in start time. (Tr. pp. 804, 807-08). She considered a policy altering hours of work to be a change in conditions of employment. (Tr. pp. 804-05). She admitted that a change in start time could not be done unilaterally and that any change from 9:30 a.m. to 8:30 a.m. required negotiations with the Union. (Tr. p. 830). Nevertheless, there was no notification to the Union by Respondents. (Tr. pp. 750-51). MATSUURA considered the change in hours a "management right," because the employer (according to her) has the absolute right to determine when [overtime] is "available." (Tr. p. 806).

contract with Public Works) starting in the year 2000. His data revealed that in house work resulted in cost savings of $3 Mil in 2001 and $4 Mil in 2002, and that anywhere from 20% to 50% savings were being realized per project with the use of public employees. Paying public employees for overtime work (at $22.50 per hour) was cheaper than paying private construction employees on a straight time basis (at $34 per hour for the lowest paid laborer).

28. The results of the pilot school renovation program reflect similar efficiencies.

The reported results for comparable jobs were as follows:

Roosevelt High School - Contractor
Contractor - Per, Inc.
Construction Period: April - October 2002 (approximately 6 months)
Cost - $2.2 million for 77 classrooms, 2 portables and 7 total buildings

Radford High School - In-House
Contractor - Completed by Central Services in-house trade crew
Construction Period: March - November 15, 2002 (approximately 7-1/2 months)
Cost - $2.09 million for 85 classrooms, 11 portables and 13 buildings (*including the cafeteria and administration buildings*)

Comment - Central Services is approximately $110,000 lower in overall costs.

Niu Valley Intermediate School - Contractor
Contractor - Maryl Pacific
Construction Period: June - November 2002 (5-1/2 months)
Cost - $1.746 million for 41 classrooms and 10 buildings.

Jarrett Middle School - In-house
Contractor - Completed by Central Services in-house trade crews
Construction Period: February - June 2002 (5-1/2 months)

Cost - $1.49 million for 38 classrooms and 7 buildings (*including refinishing of shelving in classrooms, administration, music and cafeteria renovations*)

Comment: Central Services is approximately $250,000 lower in overall costs.

Union's Ex. 62. Notwithstanding other costs, Mr. Bautista and his brethren did their jobs.

29. In addition to demonstrating the relative efficiency of R&M work, RICHARDSON testified that he concluded early in the pilot that the earlier 8 a.m. start time (as opposed to the contractually negotiated 9:30 start time) was not only more efficient but did not hinder the operations of schools as had been feared. Therefore he had made an independent decision prior to Mr. Bautista's death to continue the early start hours in the subsequent phases of the project and to seek a contractual adjustment to the negotiated hours of work to incorporate an earlier start time.

30. Coincidentally, after OKIMOTO offered Mr. Bautista's coworkers to contact him regarding sources of stress, R&M employee James Wataru (Wataru) called OKIMOTO to request a reversion to the original hours of work. Wataru told him that the negotiated 9:30 - 6:00 scheduled times contributed to worker stress in that it took away worker flexibility and family time. Even though Mr. Bautista and his co-workers had been in fact working the vastly expanded schedule of the pilot project, OKIMOTO, to do what he could to lessen employee stress, concluded that the hours needed to be changed to whatever the employees wanted. The UPW was not informed of either RICHARDSON's or OKIMOTO's conclusions in this regard.

31. At about this time, early April 2002, RICHARDSON composed and conducted a survey of Central Services employees about preferred hours of operation. Neither the survey nor its results were made part of the record. But RICHARDSON says that the results were inconclusive because that did not reflect a consensus regarding precise times.

32. Within two months after Mr. Bautista's death, around June 2002, OKIMOTO met with RICHARDSON and after reviewing survey results directed RICHARDSON to change the hours to whatever the employees wanted. He further directed RICHARDSON to involve the unions in the changes and was advised in return that changes previously took a long time because of the Union.

33. The affected unions were not subsequently contacted. Instead, under the auspices of an employee advisory committee that RICHARDSON had established, organized and chaired, RICHARDSON authored, distributed and collected another employee survey which, inter alia, offered alternative official hours of work for R&M, including a reversion to the original hours, and included a requirement that the survey be signed by each participating employee. On August 2, 2002 the advisory committee met to tally the results of the survey. They were tallied, summarized and returned to RICHARDSON. A majority of the employees favored reversion to the original hours.

34. Promptly after the count, RICHARDSON told the committee he would approve both changes and it was a "done deal." According to RICHARDSON, he had the power to make the decision for management, and since a majority of employees wanted the change, management agreed even before any notification was given to the Union that the hours would be changed. Wataru, who was a member of the advisory committee and who favored the change in hours, describes what impression management left with employees who served on the committee.

> Q. After the tally was taken on the change in start time, what, if anything, did Mr. Richardson say about management's decision on the change in hours?
> A. Are you referring to --
> Q. At the advisory meeting when --
> A. As soon as we counted the votes?
> Q. Right after you tallied the votes, what did he say?
> A. That he would approve the change.
> Q. You mean for management he was going to approve the change?
> A. Yes.
> Q. So it was a done deal as far as management was concerned?
> A. Yeah, as far as we understood it was.
> Q. That's what he led you to believe?
> A. Yes.
> Q. And were you pleased with that action that he announced?
> A. Very much. (Emphasis added).
>
> Tr. pp. 552-53.

35. On August 9, 2002 a letter was sent to the UPW proposing to revoke the supplemental agreement dated March 1, 2002. RICHARDSON provided a

copy of the letter to members of the advisory committee, even though no "cc's" were indicated in the letter itself. There was no mention in the August 9, 2002 letter to the Union of the surveys, advisory committee, or any commitment that had been made to employees. The Union responded to the August 9, 2002 letter on August 15, 2002, with a request for information. On August 30, 2002 then Comptroller EVANS, having succeeded OKIMOTO, provided the information to the Union, a copy of which was provided to members of the advisory committee and posted on the employee bulletin boards by management. In anticipation of a change, management planned a party for September 4, 2002. Employees were told by managers that the matter was up to the Union now.

36. On or about September 4, 2002 the Union notified RICHARDSON that it wanted a stop work meeting of employees. RICHARDSON informed the advisory committee that the Union did not agree to change the hours and told employees that the new schedule was not going into effect "because of the Union." What RICHARDSON said led employees to believe that the Union was not representing their interest, and they became angry and upset with the UPW.

37. At the September 17, 2002 stop work meeting employees expressed anger and frustration with the Union. Soon after the stop work meeting Dwight Takeno (Takeno) of UPW called RICHARDSON to ask whether DAGS would provide a letter giving the Union assurances that the reversion to the original hours would not result in layoffs or contracting out.[2] RICHARDSON advised Takeno that he could not issue such letter, but would check with EVANS and get back to him. On the day after his conversation with Takeno, RICHARDSON discussed the matter with EVANS, and was told that she did not think the administration would be able to provide such a letter. RICHARDSON did not advise Takeno of EVANS' decision. At no time did RICHARDSON ever inform members of the advisory committee of what transpired between Takeno, himself, and EVANS following the stop work

---

[2]The call from Takeno was made at the direction of UPW's State Director Gary Rodrigues (Rodrigues) who authorized the change in hours, provided it would not affect what the Union believed to be prior commitments by DAGS on avoidance of layoffs and privatization. (Tr. pp. 352-53). Rodrigues had entered the original MOAs to change the hours knowing that employees were unhappy, because he believed it would avoid layoffs and privatization. (Tr. pp. 343-44). Rodrigues had been informed that the change was absolutely necessary to prevent interruptions in school operations. (Tr. p. 344). The Union would not have agreed to the original change without assurance that DAGS would not implement layoffs and would curtail privatization. (Tr. pp. 362-63, 379-80).

meeting. The employees were not advised that management had decided to keep the temporary hours in place to June 30, 2003.

38. On September 23, 2002, the UPW filed the instant complaint.

Overtime

39. RICHARDSON, MATSUURA and OKIMOTO all believed that decisions relating to overtime was a "management right" so that the making and implementation of such decisions need not be cleared with the unions.

40. RICHARDSON felt comfortable enough with his discretionary authority to make promises or threats to withhold overtime, the related prerogative to privatize, or other acts of management discretion, a regular part of his employee communications. MATSUURA's notes identifying employee concerns after Mr. Bautista's death, are studded with complaints of such threats:

Source and Date	Comments and Remarks
District managers 4/28/02 (Exh. 35-5)	"Employees are always threatened with privatization. (Too much of, "Don't like it, then leave.") (Exh. 35-6)
	"JR/Don need to be more in touch with employees. Need to be more compassionate towards employees." (Exh 35-6).
Leeward & Central Baseyard 5/9/02 (Exh. 36-1)	"During the Kalakaua Project, JR threatened the central district employees that if they took comp time, the overtime work would be stopped." (Exh. 36-1)
	"JR is not open-minded, threatens employees with privatization and the discontinuation of overtime." (Exh. 36-2)
	"RS's favorite saying is, "If you don't like it, there's the door." (Exh. 36-2).
Unit 2 supervisors 5/13/02 (Exh. 36-4).	"The threat of privatization is very stressful." (Exh. 36-5)
	"Management needs to show more compassion for the employees. Should get to know the employees. JR's favorite comment if you don't agree with him is "There's the door." (Exh. 36-6)

R & A, Clerical, Engineers, etc. 5/17/02 (Exh. 36-7)	"Don shows favoritism, greets only people he wants to. Those he doesn't like are talked down to like children." (Exh. 36-7)
	"Management retaliates against employees by putting them in the 'out group.'" (Exh. 36-8).
	"Although there is no rule against nepotism, while the CSD administrative, JR has hired his sister and her son-in-law. It doesn't look good." (Exh. 36-9)
Support and Honolulu District 5/24/02 (Exh. 36-10)	"Privatization is used as a threat." (Exh. 36-12)
	"JR told them if they don't want to change their work hours, the work force would be cut in half. In addition, he said "I don't care." The employees feel that informing employees they may be laid off is a serious matter, but for JR to do it in such an arrogant and callous manner is uncalled for." (Exh. 36-13)
	"The management style is one of intimidation and constant threats of privatization and layoffs." (Exh. 36-13)
Windward District 5/30/02 (Exh. 36-16)	"Although employees are told that overtime is voluntary, employee feels everyone must help because of the threat of downsizing." (Exh. 36-16)

Complainant UPW's Memorandum of Fact and Law pp. 35-36.

41. On the instant record, the epitome of such threats came when RICHARDSON, in writing, threatened a loss of overtime and contracting out of work if employees exercised their admitted contractual right to elect between payment and compensatory time as compensation for overtime. On October 15, 2002 RICHARDSON sent the following fax to Norman Nakamoto, District Manager of the Diamond Head baseyard.

> Norman, we have received the last D-55s for the last payroll period and there have been 10 workers that are requesting 384 hours of comp. time. In form (sic) them that the whole purpose was to give them the pay and not anymore (sic) comp. time. If this continues, then I will be forced to shut down all the overtime and begin to contract this work out. If they want to test me, just continue to request comp. time. JR. (Emphasis added).

Union's Ex. 56-1; Tr. p. 256.

42. A copy of the fax was posted on the bulletin board at the baseyard for all employees to see. The posted e-mail was perceived by those who read it as another in a series of threats directed at employees by RICHARDSON. RICHARDSON does not deny that the e-mail was in fact a threat to cut off overtime (Tr. p. 257), because employees were exercising their contractual right under Section 26.01 of the Unit 01 agreement to take compensatory time credit for overtime work in the whole school renovation program.[3]

43. MATSUURA, in addressing the compensatory time/pay issue discussed in RICHARDSON's fax said that it might have been in response to administration's concerns that some employees had exceeded the cap on accumulated compensatory time mandated by federal law.

44. As the following testimony indicates RICHARDSON's conduct was not limited to those who had exceeded any cap:

> Q. Yes, that threatening E-mail. Do you want to explain?
> A. Okay. Well, obviously I was kind of upset when the D-55s were coming in and they were asking for comp time. I mean that was their right to take comp time or pay. And we had met many, many times with the employees asking them to take the pay in lieu of comp time, because, well, like I had mentioned earlier in testimony, we couldn't see having them work, you know, an hour on Saturday, then we have to give them hour and a half on a weekday. I mean it's kind of counterproductive, especially these guys are racking up hundreds of hours of comp time. And basically we're saying, you know, we're doing this so that you can take care of your families. We understand that a lot of these people, because the pay wasn't that good, that they were looking for part-time jobs.
> Q. Yeah. If they take comp time, you get net loss.
> A. That's right, we have a net loss.
> Q. Net loss on productivity.
> A. So we kept talking to them, and all these D-55s were coming in.

---

[3]When confronted with the e-mail MATSUURA (reluctantly) concedes that it represents a "threat to stop overtime." (Tr. p. 789). EVANS, the comptroller at the time the e-mail was issued, readily testified "I call that a threat." (Tr. pp. 180-81).

Q. And you're under your whole school pressure, you got to spend the money, and if they take comp time you fall more behind schedule.
A. That's right.
Q. And you have a net loss in productivity and you get pukas in the teams?
A. Sure. And that's why the E-mail went out like that. But, you know, since we had talked to them at least once a year almost.
Q. But you knew that a comp time -- these are not limited to those who have maxed out, right? This is for everybody?
A. Well, this was primarily addressed to those guys that had 400, 500 hours. But this was for everybody.
Q. No, but the explanation you gave was an operational explanation. It's perfect sense.
A. Right.
Q. I mean overtime by those guys who maxed out, you know, wouldn't impact efficiency any more or less than the guys who didn't max out, right?
A. That's correct.
Q. Those considerations that you identify apply to everybody?
A. That's correct.
Q. Not just the maxed out. But you just said that you knew they had a contractual right to do that?
A. That's correct. (Emphasis added).

Tr. pp. 466-67.

45. Unfortunately, the October 15, 2002 e-mail may not have been simply a generalized or idle "threat" by RICHARDSON. On November 1, 2002 overtime work opportunity was reduced unilaterally from 9.5 hours per day to 8.0 hours.

46. Another complained of manipulation of overtime relates to a "mandatory day off." On August 13, 2002 RICHARDSON issued a memorandum announcing a "mandatory day off" one Sunday a month effective August 25, 2002.[4] This

[4]The mandatory days off, as it was actually implemented affected not just one Sunday (August 25, September 8, October 6, December 1, December 29, January 5), the policy change was applied to Saturdays (November 30, December 28, January 4) and holidays (November 28, December 25, and January 1). (Union's Ex. 44-1).

represented a change in working conditions which had been in existence for many years within DAGS. Historically, employees had grown accustomed to working on weekends, and it was not unusual for many of them to work seven days a week on an overtime basis. With the pilot project implemented in January 2002 a regular number (estimated at 40 to 50 employees) worked seven days a week, 9.5 hours pay day continuously. The mandatory day off adversely affected those who worked 9.5 hours per day, seven days a week and limited what overtime work opportunity was available during the month for those who selected Sundays, Saturdays, and holidays as their days to supplement their income. The decision to impose a mandatory day off was approved by OKIMOTO, without any bargaining with the Union.

47. RICHARDSON considered the mandatory day off action to be a "management right." (Tr. p. 471). MATSUURA considered the change a safety matter and a benefit to employees who needed stress relief. OKIMOTO maintained that he was simply trying to give the employees a break or relief in the aftermath of Bautista's suicide (to relieve stress). The mandatory day off decision was made before employees were asked in a survey how and when overtime would be cut.

Communication

48. After MATSUURA's baseyard meetings conducted in response to Mr. Bautista's death, DAGS retained the services of a consultant (Mr. Bagnola) to conduct a team building seminar which was held on July 10 and 11, 2002 at the Japanese Cultural Center of Hawaii. The training program was approved by OKIMOTO and included approximately 12 Unit 01 employees (who were working foremen). According to RICHARDSON, team building developed because there was "a lot of internal conflict within the work groups." There was no notification to the Union of the training sessions even though MATSUURA was apparently aware of the need to consult over training programs under Section 47 of the Unit 01 agreement. The training occurred during paid time for the employees and covered matters outside the specific work duties of the employees.

49. The consultant (Bagnola) who conducted "team building" was provided a copy of the notes of baseyard meetings by MATSUURA, and met with RICHARDSON after the team building seminars to discuss concerns regarding job stress raised by the employees. Bagnola and RICHARDSON discussed alternative ways to deal with the employee concerns.

50. It was at this point that RICHARDSON proposed the formation of an advisory committee, which Bagnola thought was a "good idea." OKIMOTO also

recalls telling RICHARDSON "it sounds like a good idea." RICHARDSON made the final decision to proceed with the formation and implementation of the advisory committee. The decision was announced in the Central Services' "Ohana News:"

> In an effort to improve communication within the Division, an advisory committee to management will be formed and will consist of volunteers from all programs. Volunteers are needed to facilitate communication between management and employees for various reasons such as planning special events, improving morale and to discuss various issues that arise in the course of work.
>
> The committee will meet periodically to discuss the aforementioned items and "hash out" possible solutions. Also, individuals may feel more comfortable sharing their concerns with a fellow employee, rather than speaking directly to management. Employees interested in serving on the advisory committee should contact Sheryle Higa at 831-6737 by June 28, 2002. (Emphasis added).

Union's Ex. 37-1. At no time prior to his decision to form the advisory committee did RICHARDSON contact or notify the Union about the matter.

51. RICHARDSON decided on the composition of the committee and informed his district managers to recruit "volunteers." On July 31, 2002 the committee was formed and consisted of 15 employees from Unit 01 (blue collar), three (3) employees from Unit 2 (blue collar supervisors), one employee from Unit 03 (white collar), and one employee from Unit 13 (professional and scientific). The selection of committee members had to be approved by RICHARDSON. At no time did RICHARDSON consult with the Union about the composition of the committee.

52. The advisory committee held its first meeting on August 2, 2002. One of the actions taken by the committee with the approval of RICHARDSON was to reorganize the safety committee (established under Section 46 of the Unit 01 contract) as a subcommittee of the advisory committee.

53. RICHARDSON described the nature of the change which he implemented as follows:

> Q. Wait a minute. Look at 40-2. Last sentence, first major paragraph: Finally, it was agreed that the health and

safety Committee would now become a subcommittee of the advisory committee with John Hargrove as chairman. So you empowered this advisory committee to have the authority to change a contractual committee known as the safety committee to now became (sic) a subcommittee of the advisory committee; am I correct?

A. That's correct.

Q. And you made that decision for management?

A. That's correct. But I wasn't aware that it was a contractual requirement.

Q. Oh, you had no idea that a safety committee existed under the contract?

A. Yeah, because --

Q. Is that what you're telling me?

A. Because when I went over there --

Q. Well, wait a minute.

A. Yeah, that's correct.

Q. That's correct?

A. That's correct.

Q. Oh. Now you know there's a safety committee?

A. Yeah.

Q. Oh, I see. Now, you know that all committees are supposed to be composed of an equal number of representatives from the Union, designated by the Union, selected by the Union, and an equal number from management?

A. That's correct.

Q. Now you know that?

A. Right.

Q. Well, this committee, this advisory committee was not 50/50, was it?

A. No, it was not.

Q. This safety subcommittee was not 50/50, was it?

A. No.

Q. And this safety committee which was created as a subcommittee of the advisory committee was your creation at the suggestion of the advisory committee?

A. That's correct. (Emphasis added.)

Tr. pp. 243-44. The reconstituted subcommittee met on August 19, 2002 and September 5, 2002. No Union representative was on the advisory committee or the subcommittee.

54. The advisory committee consisted of 21 members of whom 16 were employees of bargaining unit 01. Public employees (with employer approval) "participated" in the formation of the committee and were selected to act in a representative capacity for other employees in the baseyards and other work units. The employees participated in the various activities of the committee (and its subcommittees) including meetings and events which were held on August 2, 2002, August 19, 2002, August 20, 2002, August 26, 2002, September 5, 2002, September 10, 2002, and September 13, 2002.

55. The advisory committee's primary purpose was to deal with the public employer or "management." Specifically, the committee was created to deal with RICHARDSON, the division chief, and the Comptroller, to provide input and to suggest solutions to various workplace issues, including soliciting grievances and complaints from employees and to remedy them, change hours of work and to deal with workload issues. The committee was empowered and given the "clout" (Tr. pp. 282-83) to make proposals and discuss them with RICHARDSON.

56. According to RICHARDSON a "bi-lateral mechanism" was being implemented where proposals are made to management and management responds and establishes changes to conditions of work:

> Q. So not only was this committee going to come up with ideas that they would recommend to you and you would take management action on, it worked both ways. You also made proposals to them that they considered, approved, and that's how you got agreement. It worked both ways?
> A. Yeah.
> Q. Yeah. So this was a committee that had direct dealing powers with you?
> A. Sure.
> Q. Yeah. So you made proposals to them and they made proposals to you, and you negotiated it out?
> A. Uh-huh.
> Q. And reached agreement that way, correct?
> A. That's right.
> Q. What are you running here, a union with a management negotiating committee? Is that what this was? You were engaged in negotiations with your own employees, you know that?
> A. Well, I was listening to their concerns to try and decrease the amount of stress in the workplace.

Q. Yes. You were making proposals to them, they made some proposals to you, and you exchanged them and then you reached an [agreement] and then it reflected management's action, correct?

A. That's right. (Emphasis added).

Tr. pp. 293-94. It was through the foregoing process that various decisions were made to revert to the original hours of work to formulate which specific Sundays would be set for "mandatory days off," to re-organize the safety committee (under the contract) as a subcommittee of the advisory committee, to develop an open door policy which previously did not exist, and to proceed with a Mahalo party paid in part by the employer for loss time pay.

57. The advisory committee within DAGS is predominated by management. The structure and function of the committee was determined by RICHARDSON. The members of the committee were recruited through district managers during working hours. RICHARDSON had to approve the selection of committee members. Three members of the committee are supervisors who have the authority to effectively recommend discipline and discharge. Management pays committee members for the time they spend at committee meetings and events, pays for someone to prepare the minutes of meetings, and to prepare the Ohana News which reports on the activities of the committee. RICHARDSON drafted the agenda which set the issues to be discussed and addressed by the committee. He also determined that the first major activity of the committee would be, i.e., to count the "votes" on the employee surveys relating to changes in hours of work. The Mahalo party which was approved by the committee was paid in part through loss time pay by the employer.

58. It was management's decision to suspend meetings after the Union filed its prohibited practice complaint in this case.

Union Rights and Participation

59. Mr. Bautista was not a member of the UPW, the Complainant in this case. As a supervisor, he was a member of bargaining unit 02 whose exclusive representative is the Hawaii Government Employees Association (HGEA). The HGEA has filed no complaints regarding the instant circumstances.

60. The blue collar craftsmen Mr. Bautista supervised were UPW members in bargaining unit 01. They were thus affected and involved in the work and administrative circumstances leading up to and succeeding Mr. Bautista's suicide.

61. Notwithstanding MATSUURA's and RICHARDSON's admitted knowledge of obligations under the UPW collective bargaining agreement, except for the presence of one of the UPW stewards, Curtis Zane, at either a grief session or advisory committee meeting on May 2, 2002, and writing to seek the reversion of working hours on August 9, 2002, DAGS made no effort to advise, consult with, or negotiate with the UPW regarding the precipitating circumstances or its response to Mr. Bautista's death.

DISCUSSION

In its complaint, the UPW alleges that the State violated the provisions of HRS § 89-13(a)(1),(2),(7), and (8), which provide as follows:

> **§ 89-13 Prohibited practices; evidence of bad faith.**
> (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:
>
> (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
> (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
> * * *
> (7) Refuse or fail to comply with any provision of this chapter;
> (8) Violate the terms of a collective bargaining agreement;
> . . . .

The UPW essentially alleges that the State ignored and violated its obligations under HRS Chapter 89 and the collective bargaining agreement, that its conduct was inherently destructive of employee collective bargaining rights, and that it unlawfully dominated an employee organization.

Respondents' principal defenses are jurisdictional, and that their conduct was either an exercise of management rights or a compassionate response to address the stresses that may have contributed to, or arose out of, Mr. Bautista's suicide.

Work Hours and Workload

Contractually, hours of work for bargaining unit 01 employees are governed by Section 25.01 of the Unit 01 collective bargaining agreement which prohibits "for the duration of" the agreement a change in "present practices pertaining to hours of work during the work day and work week," unless the Employer notifies the Union 30 days in advance

of an "anticipated change in order to afford the Union an opportunity to negotiate with the employer in reference to the change." Also implicated is Section 1.05 which states in relevant portions: "[N]o changes in wages, hours or other conditions of work be made except by mutual consent of the parties."

The UPW alleges that DAGS' adoption of the 8:00 a.m. to 6:00 p.m. work schedule for the whole school pilot program violated these provisions. The contractually negotiated hours subject to the memorandum of agreement then in effect was 9:30 a.m. to 6:30 p.m. There was no notification to the Union, opportunity to negotiate, nor mutual consent for the change. Thus the Union contends the contract was violated.

Respondents raise multiple defenses to this charge. First, they argue that the Board should decline jurisdiction in deference to the contractual grievance process. Complainant can seek relief for alleged violations of the applicable collective bargaining agreement. Generally, such alleged violations are adjudicated through the bargaining agreement's grievance process. And Chapter 89 expressly authorizes parties to a collective bargaining agreement to establish a "grievance procedure culminating in a final and binding decision,...." (Emphasis added.) HRS § 89-10.8(a). Chapter 89, however, also provides the Board with jurisdiction over alleged contractual violations by either an employer or exclusive representatives via its authority to adjudicate prohibited practice complaints. HRS § 89-13(a)(8), HRS § 89-13(b)(5). This jurisdictional dilemma is usually resolved by the Board's deferral to the arbitration process.[5]

Thus the Board has deferred to the contractual grievance process[6] except where there exists countervailing policy considerations[7] or the Union's failure to satisfy its duty of fair representation effectively deprives the claimant access to the grievance process.[8]

It is true in the instant case that the alleged breaches of contract might be addressed through the grievance process. But the Board herein declines to defer jurisdiction because this case presents superceding policy considerations. The UPW alleges that

---

[5]"It shall be the policy of this Board to attempt to foster the peaceful settlement of disputes, where appropriate, and application by deferral of matters concerning contractual interpretation to the arbitration process agreed to by the parties." Hawaii State Teachers Association, 1 HPERB 253, 261 (1972) (HSTA).

[6]See, e.g., State of Hawaii Organization of Police Officers, 6 HLRB 25 (1998).

[7]See, e.g., HSTA, 1 HPERB at 264 (arbitration fruitless and parties waive arbitration); Hawaii State Teachers Association, 1 HPERB 442 (1974) (speed); and Hawaii Government Employees' Association, Local 152, HGEA, AFSCME, AFL-CIO, 1 HPERB 641 (1977) (subject not covered by contract).

[8]Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).

Respondents violated the contract as part of a plan or pattern which was systematically destructive of employee rights. If each violation were addressed through the grievance process, any such pattern of systematic derogation might proceed undetected. In addition, the UPW raises allegations of both contractual and statutory violations. While the grievance procedure is available to address the alleged contractual violations, the Board has exclusive jurisdiction over the alleged statutory violations. Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO, 6 HLRB 202, 205 (2001).

Second, Respondents assert that the complaints regarding the scheduling of the pilot program are untimely because the pilot was initiated in February 2002 and the complaint was not filed until September 23, 2002, long after the 90-day statute of limitations expired. Hawaii Administrative Rules (HAR) § 12-42-42(a) identifies the limitations period applicable to the filing of prohibited practices complaints under HRS. § 89-13.[9] It provides as follows:

> A complaint that any public employer, public employee, or employee organization has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed...within ninety days of the alleged violation.

The Board has construed the limitations period strictly and will not waive a defect of even a single day. Alvis W. Fitzgerald, 3 HPERB 186 (1983). The beginning of the limitations period does not depend upon actual knowledge of a wrongful act. Instead, the period begins to run when "an aggrieved party knew or should have known that his statutory rights were violated." Metromedia, Inc., KMBC TV v. N.L.R.B., 586 F.2d 1182, 1189 (8th Cir. 1978)

The State asserts that the UPW knew or should have known of the pilot schedule because it was common knowledge among bargaining unit members, stewards and agents. The Union claims that because it was never notified by the Employer of the changes in hours the limitations period could not have run because the knowledge of its members cannot be imputed to the Union.

The Board need not address whether the UPW knew or should have known about the schedule change in February 2002. Within this context, judgment as to initial knowledge is unnecessary because the complained of conduct incontestably ran into the limitations period. The violation was thus akin to a continuing violation in which each

---

[9]The limitations period is also prescribed by statute. HRS § 89-14 requires controversies "concerning prohibited practices ... be submitted ... in the same manner and with the same effect as provided in section 377-9; ...." HRS § 377-9(l) in turn provides that, "No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence."

occurrence of an initially wrongful act represents a new, contestable, violation. Cf., Local Lodge No. 1424 v. N.L.R.B., 362 U.S. 411, 422, 80 S.Ct. 822, 4 L.Ed.2d 832 (1960) ("It may be conceded that the continued enforcement, as well as the execution of this collective bargaining agreement constitutes an unfair labor practice, and that these two are logically separate violations, independent in the sense that they can be described in discrete terms.") Dismissal for timeliness is therefore not warranted.

And third, the State contends that because the pilot schedule was the product of the availability of voluntary overtime, it was not a proper subject of mandatory consultation or negotiation under the contract because the provision of overtime is a "management right."

In Decision No. 433, United Public Workers, AFSCME, Local 646, AFL-CIO, (March 15, 2002), the Board discussed the test applicable when the employer asserts a "management right" against a claim that a unilateral change in working conditions constitutes a mandatory subject of negotiation:

> The City argues that notwithstanding any argued contractual prohibitions, the proposed transfer constitutes an exercise of its statutorily protected management rights. The management rights upon which the City relies are identified in HRS § 89-9(d).[10]

---

[10]HRS § 89-9(d), provides, in part:

> The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principle or the principle of equal pay for equal work pursuant to section 76-1 or which would interfere with the rights and obligations of the public employer to:
>
> (1) Direct employees;
> (2) Determine qualifications, standards for work, the nature and contents of examinations;
> (3) Hire, promote, transfer, assign, and retain employees in positions;
> (4) Suspend, demote, discharge, or take other disciplinary action against employees for proper cause;
> (5) Relieve an employee from duties because of lack of work or other legitimate reason;
> (6) Maintain efficiency and productivity, including maximizing the use of advanced technology, in government operations;
> (7) Determine methods, means, and personnel by which the employer's operations are to be conducted; and

The UPW in its Memorandum of Fact and Law aptly summarizes the Board's assessment of apparent conflicts between the obligation to bargain under HRS § 89-9(a) and management rights under HRS § 89-9(d):

> The notion that "management rights" grants to employers certain absolute or exclusive authority has long been rejected in labor management relations. University of Hawaii Professional Assembly v. University of Hawaii, 66 Haw. 207, 211-12, 659 P.2d 717 (1983); Department of Education, 1 HPERB 311 (1973); Hawaii Firefighters Association, 2 HPERB 207 (1979); Elkouri & Elkouri, How Arbitration Works (5th Ed. 1997), pp. 661-79. Since its earliest decision the labor board has applied a "balancing test" to determine whether interference with "management rights" precludes negotiations on matters affecting "working conditions" under chapter 89, HRS. HSTA v. Department of Education, Decision No. 22, 1 HPERB 251, 266 (1972); See also, Linda Lingle v. UPW, 5 HLRB 650, 677 (1996). The board measures the impact on "employee rights" under § 89-9(a), HRS, and the impact on "management rights" under § 89-9(d), HRS, to determine whether bargaining on the subject matter is appropriate:
>
> Section 89-9(a), (c) and (d) must be considered in relationship to each other in

---

(8) Take such actions as may be necessary to carry out the missions of the employer in cases of emergencies.

The employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit; the suspension, demotion, discharge, or other disciplinary actions taken against employees within the bargaining unit; and the layoff of employees within the bargaining unit. Violations of the procedures so negotiated may be subject to the grievance procedure in the collective bargaining agreement.

determining the scope of bargaining. For if Section 89-9(a) were considered disjunctively, on the one hand, all matters affecting the terms and conditions of employment would be referred to the bargaining table, regardless of employer rights. On the other hand, Section 89-9(d), viewed in isolation, would preclude nearly every matter affecting terms and conditions of employment from the scope of bargaining. Surely neither interpretation was intended by the Legislature.

Bearing in mind that the Legislature intended Chapter 89 to be a positive piece of legislation establishing guidelines for joint-decision making over matters of wages, hours and working conditions, we are of the opinion that all matters affecting wages, hours and working conditions are negotiable and bargainable, subject only to the limitations set forth in Section 89-9(d).

As joint-decision making is the expressed policy of the Legislature, it is our opinion that all matters affecting wages, hours and conditions of employment, even those which may overlap with employer rights as enumerated in Section 89-9(d), are now shared rights up to the point where mutual determinations respecting such matters interfere with employer rights which, of necessity, cannot be relinquished because they are matters of policy "which are fundamental to the existence, direction and operation of the enterprise". West Hartford Educ. Assn. v. DeCourcy, 80 LRRM 2422-2429 (Conn. Sup. Ct. 1972). (Emphasis added).

1 HPERB 251 at 266. In University of Hawaii Professional Assembly v. Tomasu, 79 Hawai`i 154, 161, 900 P.2d 161 (1995), this [sic] [the Supreme] Court gave its seal of approval to the balancing test as applied by the labor board.

See also, Complainant's UPW Memorandum of Fact and Law at pp. 60-61.

Thus the applicable test is a balancing of the purported fundamentality of the management right against impact on mandatory subjects of negotiation, "wages, hours, and working conditions." The provision of overtime is not identified as a management right in HRS § 89-9(d). The Board need not address whether that power would be incorporated in the statutorily enumerated management rights under other circumstances, because DAGS did not utilize overtime in such a fashion that would require a balancing of employer centrality and employee impact.

DAGS' manipulation of overtime during the school renovation pilot did not only impact bargained for "wages, hours, and working conditions," it was an intentional, successful, and unilateral redefinition of "wages, hours, and working conditions." New hours of operation, expectations of compensation, work tasks, work load, days off and anticipated performance were all imposed by management with no input for the workers or their exclusive representatives. If the clever manipulation of any management right to award overtime were to be found to outweigh such a draconian nullification of bargained for terms and conditions of employment, then that power, cleverly used, would rob the contract, and the statutory rights of the workers to organize and bargain, of any meaning at all.

The Board therefore concludes that any management right to award overtime does not, in the instant case, supercede the bargaining obligations imposed by Sections 25.01 and 1.05 of the Unit 01 agreement, and that the State violated both the agreement and HRS § 89-13(a)(8) by unilaterally adopting the conditions applied to the whole school renovation pilot project as they affected "wages, hours, and working conditions."

Mandatory Day-off

The UPW alleges that DAGS' imposition of a mandatory day-off, one day holiday or weekend day a month when overtime would not be available, similarly constituted a violation of sections 25.01 and 1.05 of the Unit 01 agreement, and HRS § 89-13(a)(8).

The State argues that it was not a violation because it was an exercise of the management right to award overtime and was also a compassionate gesture by OKIMOTO and RICHARDSON to relieve worker stress.

The Board concluded above that the manipulation of overtime in the whole school renovation pilot project was a prohibited practice insofar as it affected "wages, hours, and working conditions." The withdrawal of overtime opportunities one day a month was an, albeit late, part of that program. The policy thus falls within the scope of the previously identified violation.

Overtime

Section 26.01 of the contract affords employees the right to either pay or give compensatory time credit for overtime work performed as follows:

> **26.01 COMPENSATION OR CREDIT FOR OVERTIME WORK.**
>
> Employees are entitled to receive compensation or compensatory time credit because of overtime work as provided by Section 26.04 and 26.06.

UPW asserts that RICHARDSON's fax of October 15, 2002 threatening to shut down all overtime and contract the work out if workers requested compensatory time violated this provision. DAGS, while acknowledging a poor choice of words, claims that a violation does not lie because the warning was intended to prevent employees accumulating over 240 hours of compensatory time which is the cap established by federal law.

This defense is belied by RICHARDSON's own testimony:

> Q. Yes, that threatening E-mail. Do you want to explain?
> A. Okay. Well, obviously I was kind of upset when the D-55s were coming in and they were asking for comp time. I mean that was their right to take comp time or pay. And we had met many, many times with the employees asking them to take the pay in lieu of comp time, because, well, like I had mentioned earlier in testimony, we couldn't see having them work, you know, an hour on Saturday, then we have to give them hour and a half on a weekday. I mean it's kind of counterproductive, especially these guys are racking up hundreds of hours of comp time. And basically we're saying, you know, we're doing this so that you can take care of your families. We understand that a lot of these people, because the pay wasn't that good, that they were looking for part-time jobs.
>
> * * *
>
> Q. Those considerations that you identify apply to everybody?
> A. That's correct.
> Q. Not just the maxed out. But you just said that you knew they had a contractual right to do that?

A. That's correct.

Tr. pp. 466-67.

RICHARDSON was in charge of the project. His threats were not motivated or limited to considerations of federal law. He admitted knowledge of the contractual right to elect pay or compensatory time. There is no way that the Board could not find a violation here.

Safety Committee

Sections 46.06 and 46.07 of the Unit 01 collective bargaining agreement require "the department head or designee" to properly investigate "unsafe conditions" of work and to take "appropriate corrective action." Section 46.11 further requires a duly constituted safety committee to "review accidents and recommend corrective actions and preventive measures."

Section 46.11, Safety Committees, states in relevant portions:

> **46.11 a.1.b)** Each committee shall consist of not more than five (5) Employees selected by the Union and not more than five (5) representatives selected by the Employer.
>
> * * *
>
> **46.11 b.** **FUNCTION.**
>
> **46.11 b.1.** The function of the Safety Committee shall be to advise the Employer concerning occupational safety and health matters as follows:
>
> * * *
>
> **46.11 b.1.c)** Review accidents and recommend corrective actions and preventative measures.

The UPW asserts that management violated these contractual provisions and indeed, the plain and unequivocal language appears to have been ignored. Management claims to have begun an investigation but no conclusions were reached, a report was never completed, and no remedial action was undertaken. The contractually required safety committee was never consulted. And RICHARDSON unilaterally abrogated the contract by abolishing the safety committee and reconstituting it as a management dominated subcommittee of his advisory committee.

The State claims that any such violations were not wilful in that it engaged only in good faith attempts to address the Bautista tragedy. Respondents cannot claim ignorance

of the contract's requirements. MATSUURA had for more than a decade been responsible for contract compliance yet took sole custody of the investigation. RICHARDSON unilaterally dismantled the safety committee and thus presumably knew of its existence and genesis. This evidences at least the wilful ignoring of the collective bargaining agreement. A prohibited practice thus lies.

Advisory Committee

The UPW further asserts that DAGS' formation, administration and dominance of the advisory committee violated HRS§ 89-13(a)(2) which provides that an employer may not "dominate, interfere or assist in the formation, existence or administration of any employee organization."

The seminal case in this issue is Electromation, Inc. v. N.L.R.B., 35 F.3d 1148 (7th Cir. 1994), which interpreted and applied an almost identical prohibition contained in Section 8(a) of the National Labor Relations Act. The court framed the inquiry thusly:

> An allegation that Electromation has violated Section 8(a)(2) and (1) of the Act raises two distinct issues: first, whether the action committees in this case constituted "labor organizations" within the meaning of Section 2(5); and second, whether the employer dominated, influenced, or interfered with the formation or administration of the organization or contributed financial or other support to it, in violation of Section 8(a)(2) and (1) of the Act. Each issue will be examined in turn.

Id., at 1157-58. The Board concurs that this is the appropriate inquiry.

The Electromation court explicitly framed the test as to what constitutes a labor organization:

> Section 2(5) of the Act defines a labor organization as: any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. 29 U.S.C. § 152(5). Under this statutory definition, the action committees would constitute labor organizations if: (1) the Electromation employees participated in the committees; (2) the committees existed, at least in part, for the purpose of "dealing with" the employer; and (3) these

> dealings concerned "grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Id., at 1158.

Our statute substantively adopted the same definition[11] and the instant circumstance clearly satisfy the test. DAGS employees participated in the advisory committee; the committee was created to deal with the employer; and the dealings were to encompass grievances, compensation and conditions of work. The advisory committee was therefore a "labor organization" as defined in HRS § 89-2.

With regard to the second part of the test, it is undisputable that the Employer "dominated, influenced, or interfered with the formation or administration of the organization." RICHARDSON created the committee, had to approve of its membership, defined the committee's scope, wrote its agendas, and served as its first chairman.

Thus in the formation and management of the advisory committee DAGS violated HRS § 89-13(a)(2) and consequently committed a prohibited practice.

This is not to suggest every committee with employee representation would be similarly violative. As the court in Electromation was careful to point out:

> It is clear that a finding of a Section 8(a)(2) and (1) violation in this case does not foreclose the lawful use of legitimate employee participation organizations, especially those which are independent, which do not function in a representational capacity, and which focus solely on increasing company productivity, efficiency, and quality control, in appropriate settings. We agree with amici that the loss of these programs would not only be injurious to United States companies' ability to compete globally, but also that it would deprive employees of valuable mechanisms by which they can assist in the formation of a healthy and productive work environment. It is clear that

---

[11]HRS § 89-2 provides, in part, as follows:

> "Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment of public employees.

> today, in many cases, the interests of the employer and employee are not mutually exclusive.

Id., at 1157.

Here, the committee functioned in a representative capacity and did not "focus solely on increasing company productivity, efficiency, and quality control." The DAGS advisory committee was clearly an employer dominated impotent surrogate for lawful employee representation.

Inherently Destructive

Finally, the UPW asserts that the conduct engaged in by DAGS was "inherently destructive" of employee rights. Specifically the Union alleges the record establishes "systematic, overt, and pervasive effort by respondents (a) to undermine the union as the 'exclusive representative of all employees' as contemplated under § 89-8(a), HRS, and Sections 1.01 and 1.02 of the unit 1 agreement, (b) to repudiate bargaining obligations set forth in § 89-9 (a), HRS, by direct dealings with employees to change the terms and conditions of the unit 1 agreement, and (c) to disparage the union and lay false blame upon its officials over changes in hours of work which it knew employees were strongly in favor of." Complainant UPW's Memorandum of Fact and Law, p. 88.

The factual record indeed supports the Union's allegations. DAGS actively undermined the Union on two occasions, i.e., RICHARDSON's ignoring OKIMOTO's direction that he involve the Union, and RICHARDSON's informing the advisory committee that the failure to revert work hours was the fault of the Union. But each of the already concluded prohibited practices, i.e., the unilateral change in hours, the threats regarding overtime compensation election, the ignoring of safety committee obligations, and the establishment and control of a management defined labor organization, can be added to the uncontested direct dealing, the implied threats of privatization, the express threats of reduced overtime, and the apparent atmosphere of intimidation and absolute control to paint a picture that can only lead the Board to conclude that management was not only denigrating its bargaining obligations but the value of the Union itself. Such conduct is indeed inherently destructive of employee rights and therefore violative of HRS § 89-9(a) and a prohibited practice pursuant to HRS § 89-13(a)(7) (refusal to comply with any provisions of Chapter 89).

Wilfulness

The State, in addition to raising the jurisdictional defenses discussed earlier, essentially argues that any possible violations were not wilful. The State argues that hours were changed in the good faith belief that overtime was an absolute management right and in order to maximize efficiency and employee opportunities; that the responses to

Mr. Bautista's suicide, including the formation of the advisory committee were motivated by compassion and the sincere desire to reduce employee stress; and that there was never any intent to violate the law or the collective bargaining agreement.

In Decision No. 374, United Public Workers, AFSCME, Local 646, AFL-CIO, 5 HLRB 570, 583-84 (1996) the Board discussed the element of "wilfulness:"

> ...[T]he Board, while acknowledging its previous interpretation of "wilful" as meaning "conscious, knowing, and deliberate intent to violate the provision of Chapter 89, HRS" nevertheless stated that "wilfulness can be presumed where a violation occurs as a natural consequence of a party's actions.

Thus no matter how benign, or benign sounding, the employers' motives, wilfulness can be presumed because of the effects of its actions. Having concluded that DAGS violated the collective bargaining agreement and statutory prohibitions guaranteeing employee rights to organize, the Board concludes that the presumption is appropriate.

The appropriateness of the application of this presumption is demonstrated by the Employer's response to what is arguably the most blatant violation. In admitted violation of contractual rights he knew to exist, RICHARDSON e-mailed the sincere threat of eliminated overtime if employees elected to take accrued overtime in compensatory time off.

DAGS seeks to excuse this thusly:

> While everyone agrees that Mr. Richardson should have used other language in communicating his views on taking compensatory time off, his motives were clearly to foster efficient operations in order to preserve and maximize work opportunities for in-house employees.

Respondents' Post-Hearing Brief, p. 14.

Mr. Bautista and his brethren have rights that deserve more than a clean heart, good intentions excuse.

CONCLUSIONS OF LAW

1. The Board has deferred to contractual violations to the contractual grievance process except where there exists countervailing policy considerations or the union has failed to satisfy its duty of fair representation thereby effectively depriving a claimant access to the grievance procedure. Here, the Board declines to defer this complaint to the grievance process because of

superceding policy considerations based on UPW's allegations that the contract violations were part of a pattern of personnel actions which was in systematic derogation of the employees' rights which may be undetectable if each violation were pursued separately through the grievance process. In addition, the UPW raises allegations of both contractual and statutory violations. While the grievance procedure is available to address the alleged contractual violations, the Board has exclusive jurisdiction over the alleged statutory violations.

2. The Board has no jurisdiction over complaints filed more than 90 days after the commission of the alleged prohibited practice. As the complained of conduct ran into the limitations period and was akin to a continuing violation where each occurrence represented a new, contestable violation, the Board accordingly concludes that it has jurisdiction over the instant complaint pursuant to HRS §§ 89-5 and 89-13.

3. An employer violates HRS § 89-13(a)(1) by interfering, restrain, or coerce any employee in the exercise of any right guaranteed under Chapter 89.

4. An employer violates HRS § 89-13(a)(2) by dominating, interfering, or assisting in the formation, existence, or administration of any employee organization.

5. An employer commits a prohibited practice in violation of HRS § 89-13(a)(7) when it fails to comply with any provision of Chapter 89.

6. An employer commits a prohibited practice in violation of HRS § 89-13(a)(8) when it violates the terms of a collective bargaining agreement.

7. Based on the preponderance of evidence, the Board concludes that Respondents violated Sections 1.05 and 25.01 of the Unit 01 agreement and thereby committed prohibited practices in wilful violation of HRS § 89-13(a)(8) by unilaterally adopting an 8:00 a.m. to 6:00 p.m. work schedule for the whole school pilot program. The contractually negotiated hours provided by an MOA in effect was 9:30 a.m. to 6:30 p.m.

8. Any management right to award overtime does not supercede the bargaining obligations imposed by sections 25.01 and 1.05 of the Unit 01 agreement. The Employer's unilateral manipulation of overtime during the school renovation pilot program impacted bargained for wages, hours, and working conditions and violated the agreement and HRS § 89-13(a)(8).

9. The Employer's imposition of a mandatory day-off, one day holiday or weekend day a month when overtime would not be available was part of the prohibited manipulation of overtime and therefore similarly violative of Sections 25.01 and 1.05 of the Unit 01 agreement and HRS § 89-13(a)(8).

10. The Board concludes that RICHARDSON violated Section 26.01 of the Unit 01 agreement and HRS § 89-13(a)(8) by threatening to shut down all overtime work and contract out work if employees requested compensatory time. RICHARDSON thereby also interfered with the rights of employees in violation of HRS § 89-13(a)(1).

11. The Board concludes that the Employer violated Sections 46.06, 46.07 and 46.11 and HRS § 89-13(a)(8) by abrogating the responsibilities of and effectively abolishing the safety committee provided for in the Unit 01 agreement.

12. The Board concludes that the advisory committee created by the Employer to deal with grievances, compensation, and conditions of work was a labor organization as defined in HRS § 89-2. Thus, DAGS' formation, administration, and dominance of the advisory committee violated HRS § 89-13(a)(2) which prohibits an employer from dominating, interfering, or assisting in the formation, existence, or administration of any employee organization.

13. The Board concludes based on the record that the Employer's conduct was inherently destructive of employee rights as it undermined its bargaining obligations with the Union and ignored the Union's role as the exclusive representative of the bargaining unit. Here, in addition to unilaterally effecting a change in hours, threatening the employees regarding overtime or compensatory time-off, ignoring the safety committee, establishing and controlling a management defined labor organization, the Employer dealt directly with employees, impliedly threatened privatization, expressly threatened reduced overtime and created an atmosphere of intimidation which violated HRS § 89-9(a) and HRS § 89-13(a)(7).

14. The Board concludes that the Employer's actions are presumed to be wilful as the violations occurred as a natural consequence of the Employer's actions.

ORDER

1. Respondents are ordered to cease and desist from committing the instant prohibited practices by unilaterally changing working conditions, i.e., hours of work, without negotiating with the Union.

2. Respondents are ordered to negotiate other appropriate remedial and corrective relief to make the affected Unit 01 employees whole. The failure to negotiate in good faith with the Union will be grounds for an award of attorney's fees and compensation for loss of overtime or other appropriate relief as determined by the Board.

3. Respondents are ordered to disestablish the DAGS advisory committee and its various subcommittees.

4. Respondents are ordered to cease and desist from (1) undermining the Union as the exclusive representative of employees, (2) repudiating its bargaining obligations as set forth in HRS § 89-9(a) by direct dealing with employees to change wages, hours, and other terms and conditions of employment, and (3) disparaging the Union and laying false blame on Union officials for not reverting the hours of work.

5. Respondents are ordered to cease and desist from making threats of loss of overtime or contracting out to affected Unit 01 employees.

6. Respondents are ordered to cease and desist from implementing a cap on compensatory time credit without negotiations and mutual consent from the UPW. Respondents are also enjoined from enforcing any individual agreement it entered with employees which interferes with the choice of employees authorized by Section 26.01 and from threatening employees with the loss of overtime and contracting out for submission of claims for compensatory time credits for overtime work.

7. Respondent MATSUURA is ordered to finalize a written report on contributing factors leading to the incident of April 5, 2002 and submit it to the Unit 01 safety committee for review and submission of recommendations for corrective action and preventive measure and to the Comptroller.

8. Respondents are ordered to cease and desist from interfering with the role of Union stewards and representatives under Section 5.03 "to discuss and resolve complaints and grievances, and from interfering with the role of the safety committee to investigate, review and submit recommendations for corrective action and preventive measures when accidents occur on the job" as contemplated under Section 46.11.

9. Respondents shall immediately post copies of this decision in conspicuous places at its work sites where employees of Unit 01 assemble and congregate, and on the Respondents' respective websites for a period of 60 days from the initial date of posting.

10. Respondents shall notify the Board of the steps taken to comply herewith within 30 days of receipt of this order.

DATED: Honolulu, Hawaii, August 4, 2003.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

CHESTER C. KUNITAKE, Member

KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Herbert R. Takahashi, Esq.
Daniel A. Morris, Deputy Attorney General
Joyce Najita, IRC
William Puette, CLEAR
State Archives
Publications Distribution Center
University of Hawaii Library
Richardson School of Law Library
Library of Congress