STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of STEPHANIE STUCKY, Complainant, and BOARD OF EDUCATION, State of Hawaii; MARY COCHRAN, in her capacity as a member of the Board of Education, State of Hawaii; DEPARTMENT OF EDUCATION, State of Hawaii; DONNA WHITFORD, in her capacity as District Superintendent, Department of Education, State of Hawaii, Respondents.	CASE NO. CE-05-551 DECISION NO. 450 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On January 21, 2004, Complainant STEPHANIE STUCKY (Complainant or STUCKY), by and through counsel, filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against Respondents BOARD OF EDUCATION (BOE), State of Hawaii (SOH); MARY COCHRAN (COCHRAN), in her capacity as a BOE Member, SOH; DEPARTMENT OF EDUCATION (DOE), State of Hawaii; and DONNA WHITFORD (WHITFORD), in her capacity as District Superintendent, DOE, SOH, (collectively Respondents or Employer) alleging violations of Hawaii Revised Statutes (HRS) §§ 89-13(a)(1), (2) and (7), by directly dealing with STUCKY after the settlement of a grievance reached between STUCKY and the Hawaii State Teachers Association (HSTA or Union) and the Employer.

On January 30, 2004, Respondents filed Respondents' Motion to Dismiss Prohibited Practice Complaint on the grounds that Complainant has failed to exhaust her contractual remedies.

On February 9, 2004, STUCKY filed a Memorandum in Opposition to Respondents' Motion to Dismiss Prohibited Practice Complaint. The memorandum states that the Board should retain jurisdiction over this matter because: (1) the allegations involve statutory rather than contractual violations, (2) there are allegations that Grievance No. M 04-06 is not being properly processed, and (3) there is a divergence of positions between Complainant and HSTA as evidenced by the prohibited practice complaint filed in Case No. CU-05-227.

On February 13, 2004, the Board heard oral arguments on Respondents' motion to dismiss. Rather than decline jurisdiction, the Board allowed Complainant to choose to pursue the allegations of a contract violation through the contractual grievance procedure, or pursue the allegations of a statutory violation under HRS Chapter 89 and amend the instant complaint to include the violation of the collective bargaining agreement.

On March, 4, 2004, STUCKY filed an Amended Prohibited Practice Complaint to include the violation of the collective bargaining agreement under HRS§§ 89-13(a)(8) based on the withdrawal of Grievance No. M 04-06 by letter dated February 27, 2004.

On March 9, 2004, Respondents filed Respondents' Motion to Dismiss Amended Prohibited Practice Complaint or in the Alternative for Particularization of the Complaint on the grounds that: the Unit 05 Agreement covers this matter; the withdrawal of the grievance does not convey jurisdiction to the Board; and the amended complaint is vague and fails to provide Respondents with sufficient information to understand the nature of the complaint.

On March 17, 2004, STUCKY filed a Memorandum in Opposition to Respondents' Motion to Dismiss Amended Prohibited Practice Complaint or in the Alternative for Particularization of the Complaint. The opposition states that the Board had already ruled that it would dismiss Respondents' motion if Complainant withdrew her grievance, and gave Complainant leave to amend her complaint. Further, if the Board should permit Respondents to challenge jurisdiction again under a "failure to exhaust administrative remedies" theory, the motion should be denied since the Board retains concurrent jurisdiction as addressed in a previous decision. Complainant also submits that the complaint as filed is sufficient under Board rules and provides Respondents with fair notice of the claim and the ground upon which it rests.

On May 10, 2004, after hearing oral arguments, the Board denied Respondents' motions to dismiss and for particularization, respectively. Subsequently, the Board held a prehearing conference on May 27, 2004, and set the case for hearing on June 2, 2004. At the request of the HSTA, the hearing date was continued to June 29, 2004.

On June 29, 2004, the Board held an evidentiary hearing. The parties were afforded full opportunity to present evidence and arguments, and submit proposed Findings of Fact and Conclusions of Law. Based on the entire record, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. STUCKY was for all relevant times, a DOE teacher employed by the BOE, SOH and a public employee within the meaning of HRS § 89-2.

2. Respondents BOE, COCHRAN, DOE, and WHITFORD were for all relevant times, the public employer or representatives of the public employer within the meaning of HRS § 89-2.

3. HSTA, was for all relevant times, the exclusive representative of DOE teachers in bargaining unit 05 (BU 05), as defined in HRS § 89-2.

4. For all relevant times, the Respondents and the HSTA were parties to a Collective Bargaining Agreement (Contract) which contains a grievance procedure culminating in arbitration.

5. On or about May 13, 2003, STUCKY filed a grievance with Respondents in accordance with the BU 05 Contract for improperly denying her the second band line teaching position in violation of the Contract and pursuant to a prior arbitration decision by Walter Ikeda, dated November 23, 1999. The grievance was filed at Step 2, the DOE Superintendent's level, after no decision was received at Step 1, the DOE District Superintendent's level, within the time lines of the Contract.

6. At Step 2, STUCKY was represented by Eric Nagamine (Nagamine), an HSTA UniServ Director. On or about October 9, 2003, Nagamine met with representatives of the DOE, Emiko Sugino (Sugino) and Susan LaVine (LaVine), to discuss resolution of the grievance at Step 2. STUCKY attended by telephone. The Step 2 meeting resulted in a settlement agreement to resolve the grievance by placing STUCKY in the second band line teaching position that included two 7th grade and one 8th grade band classes being taught by Lori Kaneshiro (Kaneshiro), the incumbent teacher with less seniority than STUCKY, to take effect at the start of the second quarter on October 27, 2003.

7. On or about October 23, 2003, the DOE sent a copy of the written settlement agreement to District Superintendent WHITFORD and the Catherine Kilborn (Kilborn), Principal of Iao School, who understood that the settlement agreement was to be implemented on Monday, October 27, 2003.

8. According to Kilborn, implementing the settlement agreement required more than simply switching teaching assignments between STUCKY and Kaneshiro. Based on past experience, Kilborn knew that STUCKY and Band Teacher Noel Kuraya (Kuraya) could not teach band using the team approach that Kaneshiro and Kuraya had in place for the entire 7th and 8th grade band classes. In the past, STUCKY and Kuraya had tried to team teach band but had disagreements in front of students, which Kilborn was appointed to mediate. According to Kilborn, the experience was not "positive" for either the teachers and the students, due to differences in teaching philosophy and incompatible personalities.[1] For this

[1]STUCKY previously filed a police complaint against Kuraya.

reason, to implement the settlement agreement, Kilborn planned to separate about 20 students from Kuraya's band classes for STUCKY to teach in a separate practice room from the band room used jointly by Kuraya and Kaneshiro.

9. On October 24, 2003, Kilborn contacted WHITFORD[2] for help in implementing the change in teaching assignments relating to the second band line that needed to take place on October 27, 2003 because many parents and students of the 8th grade band class became emotionally upset when told on October 23, 2004, about the split band classes and change of teacher from Kaneshiro to STUCKY.

10. After speaking with Kilborn, WHITFORD contacted COCHRAN, and invited her to Iao School on October 24, 2003.[3] COCHRAN, is a member of the BOE, and former HSTA Uniserv agent, who had also been STUCKY's attorney in a civil lawsuit. She withdrew as STUCKY's counsel when she was elected to the BOE to avoid a possible conflict of interest. COCHRAN is also a former HSTA UniServ Director of eleven years. Both COCHRAN and STUCKY testified that they were friends.

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[2]See, Transcript (Tr.) dated June 29, 2004, pp. 161-62. WHITFORD testified as follows:

> . . . .Cathy Kilborn had called me the afternoon of the 23rd and had told me that she had announced to the eighth grade class that there were going to have to be some changes, and she was not quite prepared for the emotional outbreak, so to speak, that the kids had had. And she had already started to receive phone calls, and she was kind of worried about that. We didn't know what was going to happen, whether the press was going to be there or, you know what I mean, how much publicity this was going to get.
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> The band, you've got to understand, the band program at Iao is a very popular program throughout the district. And Mr. Kuraya is a much beloved band teacher, so we weren't sure what kind of press was going to happen, and I immediately became concerned about Stephanie, like I said, because she's a friend. So I did tell Cathy that I would come down and we would see what we could do to try and make the transition as smooth as possible for everyone, but to make sure that the settlement agreement was implemented as it was stated.

[3]See Tr. pp. 162-63.

11. While COCHRAN denied having any knowledge about the settlement agreement until the start of the evidentiary hearing, WHITFORD testified that she had discussed the matter with COCHRAN on October 24, 2003 when she alerted her that parents were upset about the implementation of the agreement and would be calling both her and the Superintendent of Education. The Board credits the testimony of WHITFORD, to find that COCHRAN knew that the DOE had reached a settlement agreement to resolved a grievance with HSTA and STUCKY to place her in the second band line classes.[4]

12. On October 24, 2003 WHITFORD and COCHRAN in their official capacities as District Superintendent and BOE member, respectively, met with STUCKY at least three times in the morning to talk to her about the settlement agreement. The discussions became "heated" between COCHRAN and STUCKY over where exactly STUCKY could hold the band class. STUCKY insisted on holding the class in her music room, which was not soundproof and would disrupt surrounding classes. Kilborn's solution was a practice room located next to Kuraya's band room.[5]

13. COCHRAN understood that the second band line belonged to STUCKY, and that administratively, a decision could have been made to accommodate her. KILBORN was ready to implement the grievance settlement prior to WHITFORD's and COCHRAN's arrival at the school on October 24, 2003. The problem was the students' and parents' negative reactions to the changes to be made that were announced on October 23, 2003.

14. STUCKY and COCHRAN engaged in a verbal tug of war over holding the band classes in the music room versus a small practice room, that was frustrating for all involved. At one point, STUCKY suggested that she would be satisfied if Kuraya taught the entire 7th and 8th grade band classes, without Kaneshiro. COCHRAN and WHITFORD wasted no time getting Kuraya to agree to that teaching arrangement, and Kaneshiro understood that she could no longer take part in any band classes, but was free to work with the students outside of regular class time. As a result, WHITFORD, COCHRAN and STUCKY changed the settlement agreement as follows: Kuraya, would teach all band classes by himself, the second band position would be eliminated, Kaneshiro reassigned to other classes, and STUCKY would remain teaching her music classes.[6]

15. Nagamine was not present at any of the meetings when STUCKY, WHITFORD and COCHRAN changed the terms of the settlement agreement that had been

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[4]Id.

[5]See, Tr. pp. 165-70.

[6]Id.

made with the DOE's representatives Sugino and LaVine. Although, WHITFORD had called Nagamine first in the morning, and again after meeting with STUCKY, to be present at the school, he could not, and did not, arrive until after WHITFORD's second call.[7] Nagamine arrived at the school sometime around 1:00 p.m. where upon he found WHITFORD, COCHRAN, Kilborn and STUCKY, in Kilborn's office.

16. Upon his arrival, COCHRAN came straight up to Nagamine to announce that they had a settlement agreement. Nagamine was taken aback by COCHRAN because of the fact that he had a written settlement agreement, which the DOE was in the process of implementing on October 27, 2003. And, contrary to COCHRAN's testimony that she had no knowledge about the settlement agreement, Nagamine so advised COCHRAN.[8]

17. Nagamine then met with STUCKY alone, to "find out what's going on." Indeed, STUCKY confirmed that she had agreed to change the written settlement agreement to let Kuraya teach all the band classes without Kaneshiro or

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[7]See, Tr. p. 170.

[8]Nagamine testified as follows:

Q: Did you ever get to the school?
A: [By Nagamine] Yes, I did.
Q. What time?
A. I got there I believe about 1:00 or in or about that time period, p.m.
Q. And what happened when you got there at 1?
A. Well, when I got there, you know, my impression going there was that Ms. Whitford was trying to implement the settlement agreement, so all I know is she asked me to come. So as soon as I went there, Ms. Cochran, the Board of Education member was there, and she came straight to me telling me that we had a settlement agreement and we don't have to worry about the issue.

When she made that statement to me, I was rather taken aback because I understand that we had an agreement in writing. So I said, Mary, stop, I don't understand what you're talking about, but whatever you're saying goes against the settlement language that I currently have. And that could result in—and I don't know if I used the word prohibitive practice, but I did say that would be contrary to what my understanding is, so let's stop right there, I need to talk to my client to find out what's going on." See Tr. pp. 109-10.

STUCKY in the second band line position. After meeting in private with STUCKY, Nagamine informed the DOE that STUCKY was willing to go along with the changes being proposed instead of the written settlement agreement.[9]

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[9]Nagamine testified as follows:

Q: So you didn't first meet with Stephanie and then talk to Mary?
A: [By Nagamine] No.
Q. So what did you do next?
A. The next thing I wanted to do was find out from Stephanie what they were talking about. I think initially what happened was while Mary was talking to me and I made the statement to her, she made statements to me to suggest that Stephanie had accepted some other offer. So at the point that statement was made without me knowing exactly what the offer was, I said, hold it, I need to talk to my client to find out what's going on.

So my recollection is everybody vacated the principal's office. I closed the door, and I talked to Stephanie behind closed doors in the principal's office.

Q. What was the substance of the discussion?
A. I informed Stephanie this is what Ms. Cochran is telling me, and she has to understand if anything Ms. Cochran is saying has any truth to it, that she understands we do have a settlement agreement in writing. And if, in fact, there was a change, it would null and void the agreement, so in talking to her, I got the impression from her that she agreed to whatever, I don't know because I wasn't present at any discussions Ms. Stucky had, which I should have been, because I was her rep in this instance. But she gave me the impression that she was willing to go with whatever was discussed.
Q. So what happened after you talked to Ms. Stucky?
A. After I talked to Ms. Stucky, I had to be very clear with myself and with her as to exactly where we stood. We have an agreement that I brokered for her on behalf of the association, which was in writing currently, and my expectation it was to be implemented and that Donna indicated that's what she was trying to do that day, or was there some other agreement which I'm not familiar with or am not a party to that Ms. Stucky had agreed to or what happened.

So I got that cleared up. After I got clear that Ms. Stucky was willing to accept whatever the department and her discussed, I informed the department that it's my understanding after talking to my client that this is what she told

18. A few days later, STUCKY called Nagamine to tell him that she "felt coerced and badgered" into the changes to the original written settlement agreement because she was led to think that "somehow it was difficult to implement." STUCKY wanted the DOE to implement the written settlement agreement brokered by Nagamine and the Superintendent's designees on the grievance. As a consequence of this subsequent discussion with STUCKY, the HSTA filed another grievance based on the conduct of WHITFORD and COCHRAN on October 24, 2003, that changed the written settlement agreement brokered by Nagamine with the DOE (Grievance No. M 04-06).[10]

19. Subsequently, in an informal meeting with WHITFORD and STUCKY, Nagamine asked the DOE to implement the original written settlement agreement to resolve the Grievance No. M 04-06, but WHITFORD as Complex Area Superintendent refused.

20. On January 21, 2004, STUCKY filed the instant prohibited practice complaint alleging, that WHITFORD and COCHRAN's conduct on October 24, 2003, violated HRS §§ 89-3, 89-13(a)(1), (2) and (7), amended on March 4, 2004 to allege a violation of HRS § 89-13(a)(8).

21. The Board accepts Complainant's Proposed Findings of Fact Nos. 1 through 30, and Conclusions of Law, Nos. 1 through 16, filed on August 16, 2004. The Board rejects Respondents' Proposed Findings of Fact and Conclusions of Law, filed on August 17, 2004.

DISCUSSION

Jurisdiction

Initially, STUCKY's complaint filed on January 21, 2004, included only statutory violations alleging direct dealing under HRS § 89-13(a)(1), (2) and (7), that were based on the conduct of Respondents WHITFORD and COCHRAN on October 24, 2003, which in effect changed the written settlement agreement brokered by Nagamine with the DOE at Step 3 to resolve a grievance over her entitlement to teach a second band line. In addition to the prohibited practice complaint, STUCKY's union had also filed a grievance (Grievance No. M 04-06) based on the alleged direct dealing conduct of Respondents. Consequently, Respondents' relied on the exhaustion of remedies doctrine to urge the Board to voluntarily

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me, so if that is what has taken place, then so be it. See, Tr. pp. 110-12.

[10]See, Tr. pp. 112-13.

decline jurisdiction of the instant complaint, based on the fact that the HSTA had filed a grievance.[11]

Complainant urges against deferral because the complaint did not include a contractual violation under HRS § 89-13(a)(8), but was grounded solely on statutory violations. Indeed, the instant complaint alleged a violation of HRS § 89-13(a)(1), over which the Board has jurisdiction which is not referable to arbitration. See, e.g., Decision No. 48, Hawaii State Teachers Association 1 HPERB 442 (1974), where the Board retained jurisdiction over the merits of the case, because the complaint did not solely concern an alleged breach-of-contract, but also alleged violations of HRS § 89-13(a)(1). See also, Decision No. 73, Hawaii Government Employees Association, Local 152, 1 HPERB 641 (1977). Complainant also urges the Board to retain jurisdiction given allegations in the complaint that Grievance No. M 04-06 was not being properly processed; and there was a conflict of positions between Complainant and the HSTA as evidenced by STUCKY's filing of a prohibited practice complaint against the HSTA in Case No. CU-05-277, alleging a breach of duty of fair representation.

The Board finds that the Respondents' alleged conduct gives rise to both contractual and statutory violations over which the Board has jurisdiction. Consequently, rather than defer the grievance/arbitration process, the Board allowed Complainant to choose to pursue the allegations of a contract violation through the contractual grievance procedure, or proceed before the Board under HRS Chapter 89 and amend the instant complaint to include the violation of the collective bargaining agreement. Complainant chose to pursue her complaint before the Board. Subsequently, the grievance was withdrawn, and the instant complaint amended to include a violation of the collective bargaining agreement under HRS § 89-13(a)(8).

Coercion and Direct Dealing

The gravamen of STUCKY'S complaint, is that after a written settlement agreement between the Union and DOE Employer had been reached to resolve her grievance over her right to teach the second band line to take effect on October 27, 2003, the District Superintendent and a Board of Education member, met with her directly, in the course of implementing the agreement without her Union agent who brokered the settlement agreement

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[11]Such voluntary declination of jurisdiction is akin to the requirement that parties exhaust contractual remedies before access is afforded the Board. The Hawaii Supreme Court in Santos v. State, Dept. of Transp., Kauai Div., 64 Haw. 648, 655, 646 P.2d 962 (1982) has stated that, "It is the general rule that before an individual can maintain an action against his employer, the individual must at least attempt to utilize the contract grievance procedures agreed upon by his employer and the [union]. (citation omitted) The rule is in keeping with the prevailing National Labor Relations policy and Hawaii policy favoring arbitration as a dispute settlement mechanism." (citations omitted). Application of this rule permits a voluntary declination of jurisdiction and has often been adopted and applied by this Board when a claimant has failed to fully exhaust available contractual remedies.

at Step 2 of the contractual grievance procedure, and pressured STUCKY into materially changing its terms.

The Board addressed a similar issue as STUCKY's claim that the Respondents improperly coerced her during the grievance process without the presence of her Union representative in Decision No. 377, State of Hawaii Organization of Police Officers (SHOPO), 5 HLRB 377 (1996). In that case, SHOPO alleged that two police sergeants approached two police officers and attempted to dissuade and discourage both officers from pursuing their grievances that they had filed based on improper transfers. The Board stated:

> Once an employee invokes his or her right to file a grievance through the Union, all further discussions and correspondence concerning the grievance should be directed to the exclusive representative. Any attempt by the employer to discuss the merits of, or motives behind, the grievance with the individual grievants, without due notice to the union is per se impermissible unless the grievant initiates the discussion. Thus the Board finds under the facts in this case that the Employer's discussions with the grievants which appear to be an interrogation of the employees, interfered with or restrained the officers's right to pursue their grievance. The employee's right to pursue their grievance without interference or harassment from the Employer is fundamental to Chapter 89, HRS. Hence the Board finds that the Employer violated Section 89-13(a)(1), HRS. [5 HLRB at 609.]

In the instant case, the Respondents knew that STUCKY was represented by her HSTA Union agent, Nagamine, in her grievance over the second band line. The Respondents were also aware that a settlement had been reached between the Superintendent's designee and the HSTA to resolve the grievance. There is no dispute that WHITFORD understood that the grievance settlement was at a higher level than that of the District Superintendent, when she was contacted by Principal Kilborn about concerns from unhappy parents and students who were affected by the change in teaching assignments as a result of the settlement. WHITFORD also admits that BOE member, COCHRAN, understood that the change in teaching assignments was based on the settlement of STUCKY's grievance. Nevertheless, on October 24, 2003, given concerns raised by students and parents, WHITFORD, joined by COCHRAN, held a series of meetings directly with STUCKY, to help Kilborn implement the settlement agreement by October 27, 2003, as agreed to by and between the Nagamine and the Superintendent of Education's designees on the grievance.

Further, Nagamine was not present at any of the meetings when STUCKY, WHITFORD and COCHRAN changed the terms of the settlement agreement. COCHRAN, with her legal training and former employment as an HSTA Uniserv agent should have known

better. Indeed, COCHRAN testified that she had "no idea" about the grievance and agreement to resolve the matter. This claim was rebutted by WHITFORD and Nagamine.[12]

On October 24, 2004, WHITFORD and COCHRAN initiated discussions with STUCKY, and without Nagamine, as to where to hold the band classes. These discussions became heated because STUCKY wanted to conduct the band classes in her music room, rather than the practice room as planned by Kilborn. This argument over location eventually led to STUCKY capitulating with a suggestion that she would be satisfied if Kuraya taught the entire 7th and 8th grade band classes, without Kaneshiro. COCHRAN and WHITFORD wasted no time getting Kuraya to agree to that teaching arrangement, and Kaneshiro understood that she could no longer take part in any band classes, but was free to work with the students outside of regular class time.

In the Board's view, Respondents interfered with STUCKY's right to resolve the grievance over the second band line when they met with STUCKY in an attempt to appease students and parents, who were unhappy about the change of teachers. Under the guise of implementing a settlement agreement, Respondents applied enough pressure that resulted in the elimination of the second band classes for STUCKY without the presence or knowledge of her Union representative. Although WHITFORD acted properly by contacting Nagamine before going to the school, she was not clear in advising Nagamine that the meeting could result in changes to the settlement agreement. Moreover she should not have met with STUCKY to discuss and change the settlement agreement without the presence of Nagamine, no matter what the stated motives elaborated in her testimony. By the time Nagamine arrived, the damage had been done. Even though Nagamine had an opportunity to meet with STUCKY alone to find out what changes she had agreed to, the written settlement agreement, which he brokered with the DOE representatives, had been materially changed by WHITFORD and COCHRAN.

Furthermore, the BOARD is convinced that WHITFORD and COCHRAN's conduct was wilful.[13] This is based not only on WHITFORD and COCHRAN's knowledge of the written settlement agreement entered into by the DOE to resolve STUCKY's grievance, but more importantly on WHITFORD's refusal to resolve the subsequent grievance (M 04-06) filed by HSTA based on the direct dealing with STUCKY. Indeed, had WHITFORD agreed to implement the original written settlement agreement when subsequently proposed by

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[12]See, Tr. pp. 15, 110.

[13]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.

Nagamine after STUCKY had changed her mind, it would have served to cure her and COCHRAN's violative conduct.

Based on the entire record, the Board must conclude that Respondents violated the provisions of HRS Chapter 89 as alleged when they met with STUCKY without her Union representative resulting in a change to the settlement agreement of a grievance made at a level and step in the grievance procedure where they had no participation and was at a step and level higher than theirs.

The Board further orders as a remedy that the settlement agreement as originally drawn up by Nagamine and Sugino and Levine be implemented and the Respondents ordered to cease and desist from committing such prohibited practices in the future.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the instant complaint pursuant to HRS §§ 89-5 and 89-14.

2. An employer commits a prohibited practice under HRS § 89-13(a)(1) when it interferes, restrains, or coerces an employee in the exercise of any right guaranteed under Chapter 89.

3. An employer commits a prohibited practice under HRS § 89-13(a)(2) when it dominates, interferes, or assists in the formation, existence or administration of any employee organization.

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

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

6. Based on a preponderance of evidence, the Board concludes that Respondents are in wilful violation of HRS §§ 89-13(a)(1), (2), (7) and (8), by initiating discussions and directly dealing under the guise of implementing a settlement agreement with Complainant without her Union representative present. As a result, Respondents interfered with Complainant's rights to resolve her grievance in accordance with a written settlement agreement brokered by the Union and the DOE at a higher step and level in the grievance procedure where the DOE District Superintendent and Board of Education member had no participation.

ORDER

1. Respondents are ordered to cease and desist from interfering with the rights of Complainant by changing the terms of an agreement to resolve her grievance at Step 2 agreed to by the DOE Superintendent's designees and the Union.

2. Respondents are ordered to implement the October 23, 2003 settlement agreement as planned by Kilborn to take effect at the start of the second semester in 2005.

3. Respondents shall immediately post copies of this decision in conspicuous places at its work sites where employees of Unit 05 assemble and congregate, and on the Respondents' respective websites for a period of 60 days from the initial date of posting.

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

DATED: Honolulu, Hawaii, December 13, 2004.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

CHESTER C. KUNITAKE, Member

KATHLEEN RACUYA-MARKRICH, Member

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