

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
Local 646, AFL-CIO,

Petitioner,

and

PATRICIA HAMAMOTO, Superintendent,
Department of Education, State of Hawaii;
RESHELA DUPUIS, Director, Charter
School Administrative Office; WENDY W.
LAGARETA, Director, Wai'alaie Elementary
School; and MARIE LADERTA, Chief
Negotiator, Office of Collective Bargaining,
State of Hawaii,

Intervenors.

CASE NO. DR-01-95

ORDER NO. 2585

ORDER DENYING IN PART AND
GRANTING IN PART
INTERVENORS' MOTION TO
DISMISS AND/OR FOR SUMMARY
JUDGMENT; FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECLARATORY ORDER

ORDER DENYING IN PART AND GRANTING IN PART INTERVENORS'
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT;
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECLARATORY ORDER

On March 7, 2008, Petitioner UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW), by and through its counsel, filed a Petition for Declaratory Ruling (Petition) and a Memorandum of Points and Authorities in Support of the Petition for Declaratory Ruling (Memorandum) with the Hawaii Labor Relations Board (Board). The UPW requests a declaratory order pursuant to Hawaii Revised Statutes (HRS) § 91-8, and Hawaii Administrative Rules (HAR) § 12-42-9(a) as follows:

- a. The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,]¹ rests exclusively with the UPW, Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to

¹The Board believes the UPW inadvertently stated "2008" rather than "2009" in this paragraph of the Petition; nevertheless, the Board's ruling here would not be affected by either date.

Section 89-10.55, (b) (sic), HRS, and in accordance with Section 89-6 (d), HRS.

- b. Local school boards of charter schools may not repudiate the terms of said unit 1 master agreement or the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to Section 89-6(e), HRS.
- c. Although local school boards of charter schools may negotiate memorandum of agreement or supplemental agreements that apply only to employees of their particular school under Section 89-10.55(c), HRS, such agreements may not be inconsistent (or in conflict) with the master unit 1 agreement entered pursuant to Section 89-6(d), HRS, or prior memoranda of agreement or supplemental agreements entered by and between the UPW, the State of Hawaii, and the Department of Education entered pursuant to Section 89-6(e), HRS.

On March 25, 2008, petitions for intervention were filed by the following: PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawaii (Hamamoto); RESHELA DUPUIS, Director, Charter School Administrative Office (DuPuis); WENDY W. LAGARETA, Director, Wai'ala'e Elementary School (Lagareta); and MARIE LADERTA, Chief Negotiator, Office of Collective Bargaining, State of Hawaii (Laderta) (collectively Intervenors).

On April 8, 2008, the Board granted the respective Intervenors' petitions for intervention.

On May 27, 2008, Intervenors filed a Motion to Dismiss and/or for Summary Judgment (Motion to Dismiss and/or for Summary Judgment), and on June 26, 2008, the UPW filed its Memorandum in Opposition to the Motion to Dismiss and/or for Summary Judgment.

On July 10, 2008, the Board held a hearing on Intervenors' Motion to Dismiss and/or for Summary Judgment.

After careful consideration of the record and arguments presented, the Board denies in part Intervenors' Motion to Dismiss and issues the following Findings of Fact, Conclusions of Law, and Declaratory Order.

4. The Office of Collective Bargaining and Managed Competition (OCB) is within the office of the governor, and assists the governor in negotiations between the State and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment. HRS § 89A-1(a). In addition to other duties, the OCB assists the governor in formulating management's philosophy for public collective bargaining as well as planning strategies, conducts negotiations with the exclusive representatives of each employee organization and designates employer spokespersons for each negotiation. HRS § 89A-2.
5. Intervenor Laderta is the Chief Negotiator for the OCB, and heads the OCB. HRS § 89A-1(b).
6. The Department of Education, State of Hawaii (DOE), is headed by an executive board, the Board of Education (BOE). HRS § 26-12.
7. The Superintendent of the DOE administers programs of education and public instruction throughout the State, including education at the preschool, primary, and secondary levels, adult education, school library services, health education and instruction, and such other programs as may be established by law, under the policy direction of the BOE. HRS § 26-12.
8. Intervenor Hamamoto is the Superintendent of the DOE.
9. In the State of Hawaii, a charter school is a public school that comes into existence through a contract with the BOE. The charter – or contract – establishes the framework within which the charter school operates and provides financial and other public support for the school. See Legislative Reference Bureau, On the Level? Policy, Law, and Charter School Movement, p. 6 (2002).
10. Charter schools have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management. See HRS § 302B-1.

another, supplemental agreements that apply to their respective employees; provided that any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement and shall not require ratification by employees in the bargaining unit.

11. A local school board is the autonomous governing body of a charter school that receives the charter and is responsible for the financial and academic viability of the charter school and implementation of the charter, possesses the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws, and has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of its employees. See HRS § 302B-7(c).
12. There is a Charter School Administrative Office administered by an executive director. The executive director is responsible for the internal organization, operation, and management of the charter school system, including, among other duties, preparing and executing the budget for the charter schools, complying with applicable state laws related to the administration of the charter schools, and representing charter schools and the charter school system in communications with the board, the governor, and the legislature. HRS § 302B-8.
13. The executive director, upon request by one or more charter schools, assists in the negotiation of a CBA with the exclusive representative of its employees. HRS § 302B-8(b)(15).
14. Intervenor DuPuis was, for all relevant times, the executive director of the charter schools administrative office.
15. Wai`alae Elementary School is a public charter school. Wai`alae Elementary School was a party to a grievance filed by the UPW involving an MOA between the UPW, the DOE, and Wai`alae Elementary School, entered into on March 3, 2004, and signed by Intervenor Hamamoto, the Director of the UPW, and the Chair of the Wai`alae Charter School Board.
16. Intervenor Lagareta is the Director of Wai`alae Elementary School.
17. In 1999, the Legislature passed Act 62, the purpose of which was to “increase the flexibility and autonomy at the school level by allowing existing public schools and new schools to be designated as new century charter schools. These new century charter schools shall have a local school board as a governing body, and shall operate independent educational programs from those provided by the department of education statewide.” (1999 Haw. Sess. Laws, Act 62, § 1).

18. Act 62 further provided in relevant part:

Schools designated as new century charter schools shall be exempt from all applicable state laws, except those regarding:

(1) Collective bargaining under chapter 89; provided that:

(A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decision-making;

(B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items; [and]

* * *

(D) These agreements may differ from the master contracts[.]

1999 Haw. Sess. Laws, Act 62, § 2.

19. The portion of Act 62 cited above was codified as HRS § 302A-1184.
20. HRS § 302A-1184 was repealed in 2006. 2006 Haw. Sess. Laws, Act 298, § 3.
21. Prior to the repeal of HRS § 302A-1184, the UPW negotiated an MOA with the State of Hawaii and the DOE on July 1, 2000. The MOA required the charter schools to comply with the requirements of the Unit 01 CBA, and to negotiate supplemental agreements through the OCB. The UPW asserts that the MOA was extended by the parties since July 21, 2000.
22. In 2006, the year HRS § 302A-1184 was repealed, the Legislature enacted HRS § 302B-9, which provides in relevant part:

Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
 - (A) The exclusive representatives as defined in chapter 89 and the local school board of the charter school may enter into supplemental agreements that contain cost and noncost items to facilitate decentralized decision-making;
 - (B) The agreements shall be funded from the current allocation or other sources of revenue received by the charter school; provided that collective bargaining increases for employees shall be allocated by the department of budget and finance to the charter school administrative office for distribution to charter schools; and
 - (C) These supplemental agreements may differ from the master contracts negotiated with the department[.]

HRS § 302B-9(a); 2006 Haw. Sess. Laws, Act 298, § 2.

23. In 2006, the Legislature also enacted HRS § 89-10.55, which provides in relevant part:

For the purpose of negotiating a collective bargaining agreement for charter school employees who are assigned to an appropriate bargaining unit, the employer shall be determined as provided in section 89-6(d).⁵

⁵For Unit 01, HRS § 89-6(d) provides that the “employer” shall be the governor (with six votes) and the mayors, the chief justice, and the Hawaii health systems corporation board (with one vote each) if they have employees in that bargaining unit.

HRS § 89-10.55(b); 2006 Haw. Sess. Laws, Act 298, § 5. The agreements negotiated pursuant to this provision are hereinafter referred to as “master agreements.”

24. Additionally, HRS § 89-10.55(c) provides:

For the purpose of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the employer shall mean the local school board, subject to the conditions and requirements contained in the applicable sections of this chapter governing any memorandum of agreement or supplemental agreement.

25. Pursuant to HRS § 89-10.55(b), the UPW and the employer group defined by HRS § 89-6(d) negotiated a Unit 01 Master Agreement covering the period from July 1, 2007, through June 30, 2009.

26. By letter dated December 12, 2007, addressed to Laderta, the UPW requested negotiations with the State of Hawaii, Department of Education, and charter schools to ensure compliance with the Unit 01 Master Agreement and the provisions of HRS chapter 89.

27. By letter dated January 12, 2008, Laderta responded to the UPW’s letter, stating that HRS § 89-6(d) does not require the OCB to handle negotiation of supplemental agreements and, rather, by statute it is up to each of the local school boards to determine for themselves who shall represent them in this regard. Laderta referred the UPW to the Charter Schools Administrative Office.

28. On March 7, 2008, the UPW filed the present Petition and its Memorandum with the Board. The UPW requested a declaratory order pursuant to HRS § 91-8, and HAR § 12-42-9(a) as follows:

a. The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2009[,] rests exclusively with the UPW, Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to Section 89-10.55, (b) (sic), HRS, and in accordance with Section 89-6 (d), HRS[;]

b. Local school boards of charter schools may not repudiate the terms of said unit 1 master agreement or

the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to Section 89-6(e), HRS[; and]

- c. Although local school boards of charter schools may negotiate memorandum of agreement or supplemental agreements that apply only to employees of their particular school under Section 89-10.55(c), HRS, such agreements may not be inconsistent (or in conflict) with the master unit 1 agreement entered pursuant to Section 89-6(d), HRS, or prior memoranda of agreement or supplemental agreements entered by and between the UPW, the State of Hawaii, and the Department of Education entered pursuant to Section 89-6(e), HRS.
29. On March 25, 2008, petitions for intervention were filed by the Intervenors. On April 8, 2008, the Board granted the Intervenors' petitions for intervention.
 30. On May 27, 2008, Intervenors filed their Motion to Dismiss and/or for Summary Judgment. Intervenors argue that issue a and part of issue b have been resolved through agreement of the parties and thus no controversy exists over these issues; further, that the remainder of issue b and issue c are purely questions of law and not fact such that summary disposition is appropriate.
 31. On June 26, 2008, the UPW filed its Memorandum in Opposition to the Motion to Dismiss and/or for Summary Judgment. The UPW argues that agreement of the parties at this time does not negate a need for a declaratory ruling from the Board on recurring questions involving the statutory language at issue here; that Intervenors misconstrued the relevance of prior MOAs and supplemental agreements; that summary judgment standards are inapplicable to petitions for declaratory rulings; and that the process of collective bargaining under chapters 89 and 89A does not give unrestricted authority for local school boards to the exclusion of the BOE and the OCB.
 32. On July 10, 2008, the Board held a hearing on Intervenors' Motion to Dismiss and/or for Summary Judgment.
 33. After careful consideration of the record and arguments presented, the Board denies in part Intervenors' Motion to Dismiss and/or for Summary Judgment. The Board finds that it has jurisdiction to address the three

issues presented by the UPW in its Petition, involving interpretation of certain provisions in HRS chapter 89; further, that because of confusion in the past over the subject matter of the Petition and the risk of future dispute, as well as the existing dispute involving issues b and c raised in the Petition, the Board finds that a declaratory ruling on the issues is warranted.

CONCLUSIONS OF LAW AND DISCUSSION

1. The Board has jurisdiction over this petition pursuant to HRS §§ 89-5(b)(5) and 91-8, and HAR § 12-42-9.
2. HAR § 12-42-9, governing declaratory rulings by the Board, provides in part:
 - (a) Any public employee, employee organization, public employer, or interested person or organization may petition the board for a declaratory order as to the applicability of any statutory provision or of any rule or order of the board.

* * *

- (f) The board may, for good cause, refuse to issue a declaratory order.

Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.
- (3) The issuance of the declaratory order may adversely affect the interests of the board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.

- (4) The matter is not within the jurisdiction of the board.
 - (g) The board shall consider each petition submitted and, within a reasonable time after the submission thereof, either deny the petition in writing, stating its reason for such denial, or issue a declaratory order on the matters contained in the petition.
 - (h) Hearing:
 - (1) Although in the usual course of processing a petition for a declaratory ruling no formal hearing shall be granted to the petitioner, the board may, in its discretion, order such proceeding set down for hearing.
 - (2) Any petitioner who desires a hearing on a petition for declaratory ruling shall set forth in detail in a written request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda or legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts.
3. Summary judgment should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any (hereinafter, relevant materials), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. GECC Financial Corp. v. Jaffarian, 79 Hawai'i 516, 521, 904 P.2d 530, 535 (Haw. App. 1995), *aff'd* 80 Hawai'i 118, 905 P.2d 624. The burden is on the party moving for summary judgment to show the absence of any genuine issues as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. Id.
4. The Board found that it has jurisdiction to address the three issues presented by the UPW in its Petition; further, that because of confusion in the past

over the subject matter of the Petition⁶ and the risk of future dispute, as well as the existing dispute involving issues b and c raised in the Petition, the Board concludes that dismissal of the Petition is not warranted. Accordingly, the Board denies in part Intervenor's Motion to Dismiss and/or for Summary Judgment.

5. The Board rules do not provide for motions for summary judgment in the context of declaratory rulings. However, to the extent Intervenor argues the issues presented by the UPW are primarily legal in nature such that a hearing is not required, the Board agrees. While the Board may, in its discretion, order the proceeding set down for hearing, the Board concludes that the issues raised in the Petition are primarily legal in nature and the Board may issue the present declaratory ruling without hearing.

Further, the Board grants in part Intervenor's Motion to Dismiss and/or for Summary Judgment to the extent the Board agrees with Intervenor's argument that the Board should not rule upon non-statutory questions involving the interpretation, expiration, revocation, or extension of any MOAs or supplemental agreements attached to pleadings filed in this proceeding.

6. Issue a.

The UPW requests a ruling that:

The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,] rests exclusively with the UPW, Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to Section 89-10.55, (b) (sic), HRS, and in accordance with Section 89-6 (d), HRS.

7. Pursuant to HRS § 302B-9, charter schools are exempt from chapters 91 and 92 and all other state laws in conflict with chapter 302B, except those regarding, inter alia, collective bargaining under chapter 89, with some provisos.
8. With respect to Issue a, HRS § 89-10.55(b) provides:

⁶In its Petition, the UPW asserts that on or about January 15, 2008, various charter schools have contended that the Unit 01 master agreement is inapplicable to employees in charter schools without the consent of the local school boards of the affected charter school employees, and that confusion is further evidenced by an arbitration ruling involving Wai'ala'e Elementary School.

For the purpose of negotiating a collective bargaining agreement for charter school employees who are assigned to an appropriate bargaining unit, the employer shall be determined as provided in section 89-6(d).

9. In turn, HRS § 89-6(d) provides in relevant part:

For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:

- (1) For bargaining units (1), (2), (3), (4), (9), (10), and (13), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit[.]

10. Accordingly, HRS §§ 89-6(d) and 89-10.55(b), read together, provide that for purposes of negotiating a Unit 01 master agreement, the employer group consists of the Governor, the Mayors, the Chief Justice, and the Hawaii Health Systems Corporation (HHSC) Board.

11. HRS § 89-10.55 became effective on or about July 11, 2006 (see 2006 Haw. Sess. Laws, Act 298, §§ 5 and 25; and Gov. Msg. No. 856 of the 2006 legislative session); the statute was therefore likely in effect during the negotiations of the Unit 01 master agreement covering the period of July 1, 2007, through June 30, 2009.

12. The Board therefore agrees with the UPW on Issue a, and concludes:

The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,] rests exclusively with the UPW, Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to Section 89-10.55, (b) (sic), HRS, and in accordance with Section 89-6 (d), HRS.

13. Ambiguity of statutory language.

The UPW notes that HRS § 302B-9(a)(1)(C) provides, “These supplemental agreements may differ from the master contracts negotiated with the department” (emphasis added), which apparently refers to the Department

of Education (see HRS § 302B-1, governing definitions of terms used in chapter 302B (“‘Department’ means the department of education”)).

However, as stated earlier, HRS §§ 89-6(d) and 89-10.55(b), read together, provide that for purposes of negotiating a Unit 01 master agreement, the employer group consists of the Governor, the Mayors, the Chief Justice, and the Hawaii Health Systems Corporation (HHSC) Board, and does not include the DOE as part of that employer group. The apparent ambiguity does not change the Board’s conclusions herein, as the Board believes the statutory provisions of chapter 89 (over which the Board has jurisdiction) are clear. The Board is of the opinion that HRS § 302B-9(a)(1)(C) is applicable to Unit 01 supplemental agreements, and that the language referring to “master contracts negotiated with the department” was perhaps unartfully drafted.⁷

14. The UPW further notes that there is apparent conflict between the language of HRS § 302B-9(a)(1)(C) and HRS § 89-10.55(d), which provides:

Negotiations over matters covered by this section shall be conducted between the employer and exclusive representative pursuant to this chapter (emphasis added).

Also, pursuant to HRS § 89-2, governing definitions of terms used in chapter 89, the “employer” in the case of the department of education is the BOE and any individual who represents the employer or acts in the employer’s interest in dealing with public employees.

However, the Board reads HRS § 89-10.55(d) in context with subsections (b) and (c). Subsection (b), read in conjunction with HRS § 89-6(d), makes it clear that for purposes of negotiating a Unit 01 master agreement, the employer group is the Governor, the Mayors, the Chief Justice, and the HHSC Board. On the other hand, subsection (c) provides that for purposes of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the “employer” shall mean the local school board.

⁷Even Units 05 and 06, which include teachers and educational officers, are negotiated by an employer group – the Governor with three votes, the BOE with two votes, and the Superintendent with one vote – and not “the department.”

Accordingly, the Board concludes that the definition of the term “employer” as used in HRS § 89-10.55, notwithstanding HRS § 89-2, depends on the type of negotiation – such as a master agreement, or a supplemental agreement or MOA applicable only to employees of a charter school – and the meaning of the term “employer” will be governed by the specific statutory provision (such as HRS §§ 89-10.55(b) and 89-6(d), or § 89-10.55(c) relevant to that type of negotiation.

15. Issue b.

The UPW requests a ruling that:

Local school boards of charter schools may not repudiate the terms of said unit 1 master agreement or the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to Section 89-6(e), HRS.

16. The term “repudiate” means to “put away, reject, disclaim, or renounce a right, duty, obligation, or privilege.” Black’s Law Dictionary 1467 (4th Ed. Rev. 1975).
17. A party may not repudiate the terms of a collective bargaining agreement which has been negotiated in accordance with the provisions of HRS chapter 89. See UPW and Jeremy Harris, 6 HLRB 13, 23 (1998).
18. With respect to Unit 01 master agreements, Intervenors agree with the UPW’s position that local schools boards may not repudiate the terms of master agreements negotiated by the employer group pursuant to HRS § 89-6(d). The Board concludes that local schools boards may not repudiate the terms of master agreements negotiated by the employer group pursuant to HRS § 89-6(d).
19. With respect to memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to HRS § 89-6(e), that statute provides:

In addition to a collective bargaining agreement under subsection (d), each employer may negotiate, independently

of one another, supplemental agreements that apply to their respective employees; provided that any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement and shall not require ratification by employees in the bargaining unit.

HRS § 89-6(d) provides the definition of “employer” for negotiating master agreements for various bargaining units. The local charter school boards and the DOE are not included in the employer group for Unit 01 bargaining under HRS § 89-6(d) (although the Superintendent of Education is included in the employer group for Units 05 and 06, governing teachers and educational officers, respectively). Additionally, HRS § 89-2 defines “employer” in the case of the DOE as the BOE and any individual who represents the employer or acts in the employer’s interest in dealing with public employees. It is possible that the Superintendent of the DOE enters into MOAs or supplemental agreements as an employer (for Units 05 and 06), or as the representative of an employer (for other bargaining units). For the reasons discussed below, following the enactment of HRS § 89-10.55, such MOAs or supplemental agreements would be applicable to employees of more than just the charter schools.

20. In short, the Board agrees with the UPW’s requested ruling that local school boards of charter schools may not repudiate such MOAs or supplemental agreements entered into by the UPW and the DOE pursuant to HRS § 89-6(e).
21. HRS § 89-6, cited in relevant part above, governs “[a]ppropriate bargaining units” for all public employees in the State. However, HRS § 89-10.55 is a more specific statute that governs “[c]harter school collective bargaining; bargaining unit; employer; [and] exclusive representative[.]”⁸ It expressly provides that:

For the purpose of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the employer shall mean the local school board, subject to the conditions and requirements

⁸If there is any conflict between two statutes, the more specific will control. See State v. Kamana`o, 118 Hawai`i 210, 217 n.14, 188 P.3d 724, 731 n.14 (2008).

contained in the applicable sections of this chapter governing any memorandum of agreement or supplemental agreement.

HRS § 89-10.55(c) (emphasis added). Accordingly, the Board concludes that following the 2006 enactment of HRS § 89-10.55, for purposes of negotiating MOAs and supplemental agreements applicable only to employees of a charter school, “employer” means the local school board affected by such agreement.⁹ A local charter school board is thus also bound by MOAs and supplemental agreements entered into by its own board pursuant to HRS § 89-10.55(c).

The Board’s conclusion is not inconsistent with the provisions of HRS §§ 89-6(d) and (e), for after July 11, 2006, HRS § 89-10.55(c) governs MOAs and supplemental agreements that are applicable only to employees of the charter schools, whereas HRS §§ 89-6(d) and (e) governs MOAs and supplemental agreements applicable to employees of more than just the charter schools – for example, an MOA that is applicable to all Unit 01 employees in the State.

22. Issue c.

The UPW requests a ruling that:

Although local school boards of charter schools may negotiate memorandum of agreement or supplemental agreements that apply only to employees of their particular school under Section 89-10.55(c), HRS, such agreements may not be inconsistent (or in conflict) with the master unit 1 agreement entered pursuant to Section 89-6(d), HRS, or prior memoranda of agreement or supplemental agreements entered by and between the UPW, the State of Hawaii, and the Department of Education entered pursuant to Section 89-6(e), HRS.

23. With respect to the first part of the requested ruling, “Although local school boards of charter schools may negotiate memorandum of agreement or

⁹Pursuant to HRS § 302B-8(b)(15), the executive director, upon request by one or more charter schools, may assist in the negotiation of a CBA with the exclusive representative of its employees.

supplemental agreements that apply only to employees of their particular school under Section 89-10.55(c), HRS,” the Board concludes that, absent express delegation by another local school board or statutory authority, local school boards may only negotiate on behalf of, and contractually bind, their own charter schools. However, the Board clarifies that more than one local school board may be involved in negotiations that affect more than one charter school. The Board notes that HRS § 302B-8(b)(15) provides that the Executive Director, “[u]pon request by one or more charter schools, assist[s] in the negotiation of a collective bargaining agreement with the exclusive representative of its employees.” It thus appears from the language of HRS § 302B-8(b)(15) that negotiations may involve “one or more” charter schools (however, as discussed earlier, the provisions of HRS § 89-10.55(c) would not apply to negotiations that affect employees of more than just the charter schools).

24. With respect to the latter part of the requested ruling, “such agreements may not be inconsistent (or in conflict) with the master unit 1 agreement entered pursuant to Section 89-6(d), HRS, or prior memoranda of agreement or supplemental agreements entered by and between the UPW, the State of Hawaii, and the Department of Education entered pursuant to Section 89-6(e), HRS[,]” there are no statutory provisions expressly prohibiting MOAs or supplemental agreements that are inconsistent or in conflict with the master agreements or subsequent MOAs or supplemental agreements entered into by the UPW, the State of Hawaii, and the DOE.
25. HRS § 89-10.55(c) provides a limitation on the negotiation of an MOA or supplemental agreement in that such negotiations are “subject to the conditions and requirements contained in the applicable sections of this chapter [89] governing any memorandum of agreement or supplemental agreement.”
26. There are a few conditions and requirements contained in chapter 89 governing MOAs and supplemental agreements. For example, HRS § 89-6(e) provides that, “any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement” and “shall not require ratification by employees in the bargaining unit”; accordingly, an MOA or supplemental agreement negotiated pursuant to HRS § 89-10.55(c) would be subject to these conditions.
27. Additionally, the Board reviewed a supplemental agreement reached between a charter school and the Hawaii State Teachers Association

(HSTA) in Seminavage and Ka Waihone O Ka Na'auao, Case Nos. CE-05-648 and CU-05-260. In that case, the Board interpreted a supplemental agreement in light of the provisions of HRS § 89-10.8, which provides that a public employer shall enter into written agreement with the exclusive representative setting for a grievance procedure culminating in a final and binding decision to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. See Order No. 2502, Order Granting Respondent Department of Education, State of Hawaii's Motion to Dismiss; and Granting Respondents' Motion to Dismiss, 4/16/08.

28. However, as noted above, there are no statutory provisions expressly prohibiting MOAs or supplemental agreements that are inconsistent or in conflict with the master agreements or subsequent MOAs or supplemental agreements entered into by the UPW, the State of Hawaii, and the DOE. Rather, with respect to master agreements, HRS § 302B-9 provides in relevant part (emphasis added):

(a) Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

(1) Collective bargaining under chapter 89; provided that:

(A) The exclusive representatives as defined in chapter 89 and the local school board of the charter school may enter into supplemental agreements that contain cost and noncost items to facilitate decentralized decision-making; [and]

* * *

(C) These supplemental agreements may differ from the master contracts negotiated with the department¹⁰[.]

¹⁰As noted earlier, the Board is of the opinion that the use of the term "department" in this statute is likely the result of unartful drafting.

Accordingly, there is explicit statutory language providing that supplemental agreements negotiated by local school boards may differ from master agreements. The Board is of the opinion that HRS § 302B-9(a)(1)(C) is applicable to Unit 01 supplemental agreements, and that the language referring to “master contracts negotiated with the department” was perhaps unartfully drafted, as discussed earlier.

29. The UPW argues that charter schools may not negotiate MOAs or supplemental agreements that are inconsistent or in conflict with supplemental agreements or MOAs negotiated by the BOE pursuant to HRS § 89-6(e) which would contravene Article X, section 3 of the Hawaii State Constitution, which provides that “[t]he board of education shall have the power, as provided by law, to formulate statewide educational policy and appoint the superintendent of education as the chief executive officer of the public school system.” However, even if the Board had the authority to interpret this provision of the Hawaii State Constitution, the Board does not conclude that allowing charter schools to negotiate MOAs or supplemental agreements that are inconsistent with or in conflict with supplemental agreements or MOAs negotiated by the BOE would violate Art. X, sec. 3 of the Constitution.
30. The UPW also argues that a “supplemental agreement” may not subtract or deviate from a master agreement, citing to Black’s Law Dictionary 1480 (8th ed. 2004) (“supplemental” is defined as “supplying something additional; adding what is lacking”). The Board disagrees for two reasons: first, the express language of HRS § 302B-9(a)(1)(C) indicates the Legislature’s intent that “supplemental agreements” may differ from master agreements; and second, HRS § 89-10.55(c) contemplates both supplemental agreements and MOAs – it would be mere semantics to hold that a charter school may negotiate a memorandum of agreement that subtracts or deviates from a master agreement, but not a supplemental agreement that does so.
31. Accordingly, the Board concludes that, absent express delegation by another local school board or statutory or other authority, local school boards may only negotiate on behalf of, and contractually bind, their own charter schools. However, the Board clarifies that more than one local school board may be involved in negotiations that affect more than one charter school. Further, the Board concludes that MOAs or supplemental agreements so negotiated may be inconsistent or conflict with master agreements as well as supplemental agreements or MOAs negotiated pursuant to HRS § 89-6(e), subject to certain conditions and requirements

contained in chapter 89 governing any memorandum of agreement or supplemental agreement, as discussed earlier.

32. Summary. The Board concludes:

- a. The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,] rests exclusively with the UPW, the Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to Section 89-10.55 (b), HRS, and in accordance with Section 89-6 (d), HRS.
- b. Local school boards of charter schools may not repudiate the terms of said unit 1 master agreement or the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to Section 89-6(e), HRS.
- c. Absent express delegation by another local school board or statutory authority, local school boards may only negotiate on behalf of, and contractually bind, their own charter schools. However, the Board clarifies that more than one local school board may be involved in negotiations that affect more than one charter school (see HRS § 302B-8(b)(15)). Further, the Board concludes that MOAs or supplemental agreements so negotiated may be inconsistent or conflict with master agreements as well as supplemental agreements or MOAs negotiated pursuant to HRS § 89-6(e), subject to certain conditions and requirements contained in chapter 89 governing any memorandum of agreement or supplemental agreement, as discussed earlier.

The Board further clarifies that it identifies three types of negotiations at issue in this proceeding: master agreements; MOAs or supplemental agreements affecting employees of more than just charter schools; and MOAs or supplemental agreements affecting only employees of charter schools. For master agreements, negotiations shall be conducted by the employer group as provided for in HRS § 89-6(b); for MOAs and supplemental agreements affecting employees of more than just charter schools, negotiations shall be conducted as provided for in HRS § 89-6(e); and for MOAs and supplemental agreements affecting only employees of

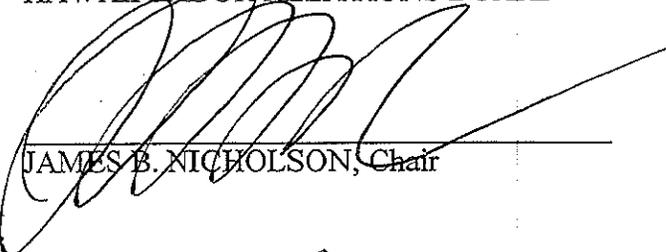
charter schools, negotiations shall be conducted as provided by HRS § 89-10.55(c).

DECLARATORY ORDER

- a. The authority to negotiate the terms and provisions of the master unit 1 agreement for the period covered by July 1, 2007[,] to June 30, 2008[,] rests exclusively with the UPW, the Governor, the mayors of the various counties, the chief justice, and the Hawaii Health Systems [Corporation] Board of Directors pursuant to HRS § 89-10.55, (b), and in accordance with HRS § 89-6 (d).
- b. Local school boards of charter schools may not repudiate the terms of said Unit 01 master agreement or the terms of the memoranda of agreement or supplemental agreements entered by and between the UPW and the Department of Education pursuant to HRS § 89-6(e).
- c. Absent express delegation by another local school board or statutory authority, local school boards may only negotiate on behalf of, and contractually bind, their own charter schools. However, the Board clarifies that more than one local school board may be involved in negotiations that affect more than one charter school (see HRS § 302B-8(b)(15)). Further, the Board concludes that MOAs or supplemental agreements so negotiated may be inconsistent or conflict with master agreements as well as supplemental agreements or MOAs negotiated pursuant to HRS § 89-6(e), subject to certain conditions and requirements contained in chapter 89 governing any memorandum of agreement or supplemental agreement, as discussed earlier.

DATED: Honolulu, Hawaii, February 2, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. PATRICIA
HAMAMOTO, Superintendent, Department of Education, State of Hawaii, et al.

CASE NO. DR-05-95

ORDER NO. 2585

ORDER DENYING IN PART AND GRANTING IN PART INTERVENORS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT; FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECLARATORY ORDER



SARAH R. HIRAKAMI, Member

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