

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS  
ASSOCIATION,

Complainant,

and

NEIL ABERCROMBIE, Governor, State of  
Hawaii; KALBERT YOUNG, Director,  
Department of Budget and Finance, State of  
Hawaii; NEIL DIETZ, Chief Negotiator, Office  
of Collective Bargaining, State of Hawaii;  
KATHRYN MATAYOSHI, Superintendent,  
Department of Education, State of Hawaii;  
DONALD G. HORNER, Chairperson, Board of  
Education, State of Hawaii; and JAMES D.  
WILLIAMS, Member, Board of Education,  
Human Resources Committee, State of Hawaii.

Respondents,

and

UNIVERSITY OF HAWAII PROFESSIONAL  
ASSEMBLY,

Intervenor.

CASE NO. CE-05-781

ORDER NO. 2819

ORDER GRANTING IN PART AND  
DENYING IN PART RESPONDENTS'  
MOTION TO QUASH SUBPOENA  
DUCES TECUM ISSUED TO BRUCE A.  
COPPA, FILED ON AUGUST 15, 2011

ORDER GRANTING IN PART AND DENYING IN PART  
RESPONDENTS' MOTION TO QUASH SUBPOENA DUCES  
TECUM ISSUED TO BRUCE A. COPPA, FILED ON AUGUST 15, 2011

On August 9, 2011, Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA) filed an Application for Issuance of Subpoenas with the Hawaii Labor Relations Board (Board), including a subpoena duces tecum for Bruce A. Coppa (Coppa), Comptroller, Department of Accounting and General Services, State of Hawaii. The subpoena duces tecum included a request for the following:

1. A true and accurate copy of the payroll and other pay records and documents of bargaining unit 5 teachers and other personnel of the department of education which indicate the amounts by which the salaries or wages of all individuals have been reduced since July 1, 2011 to the

present and indicate with respect to each individual the following:

- a. Name:
- b. Position:
- c. Date of hire:
- d. Whether on a 12 month or 10 month schedule:
- e. The class from the teacher annual rate salary schedule:
- f. The salary level:
- g. The annual and monthly salary rate:
- h. The amount of reduction per month:
- i. The amount of reduction from July 1, 2011 to present.

2. A true and accurate copy of all payroll and other records and documents of bargaining unit 5 teachers and other personnel of the department of education which would indicate the amounts by which employee contributions for health benefits have been increased since July 1, 2011 to the present, and indicate with respect to each individual the following:

- a. Name:
- b. Position:
- c. Date of hire:
- d. The description the health plans enrolled in 2010 to present:
- e. The amount of the employee contribution per month from July 1, 2010 to February 28, 2011 per health plan:
- f. The amount of the employee contribution per month from March 1, 2011 to June 30, 2011 per health plan:
- g. The amount of the employee contribution per month from July 1, 2011 to present per health plan:
- h. A copy of a duly authorized and signed authorization to deduct from salaries employee contributions amounts for each individual for the period covering July 1, 2010 to the present.

3. A true and accurate copy of all notes, documents, records, and communications you received from representatives of the Department of Education or the Department of Budget and Finance regarding changes in salaries, wages, and employee contributions for health benefits for bargaining unit 5 employees to be made effective July 1, 2011.

4. Note: Please provide all documents which would indicate how, when, and through whom you were notified of the reductions in wages and salaries and the increases in employee contributions amounts for health benefit coverage.

On August 15, 2011, Respondents filed a Motion to Quash Subpoena Duces Tecum Issued to Respondent Bruce A. Coppa (Motion to Quash) with the Board. Respondents moved to quash the Subpoena Duces Tecum contending, *inter alia*, that Coppa is the Comptroller for the State of Hawaii and is a high ranking government official who should not be required to respond to a subpoena in the absence of compelling reasons; Respondents contend that the HSTA has not shown that the testimony is unavailable from a lesser ranking officer or that the information sought is not available through some other mechanism; the subpoenas were served two working days before Coppa was subpoenaed to attend the hearing; the request is burdensome because the nature and types of information sought include information concerning thousands of the HSTA members and teachers; the documents requested are duplicative of the documents requested of the Superintendent of the Department of Education (DOE) and that the information is derived from the DOE; and the information requested is already in the possession, custody and control of the HSTA as Hawaii Revised Statutes (HRS) § 89-16.6 provides the HSTA with the same information requested, such as the name, address, social security, bargaining unit, full time equivalence, basic rate of pay, etc. Accordingly, Respondents requested that the Board quash the subpoena duces tecum issued to Coppa.

On August 23, 2011, Complainant filed a Memorandum in Opposition to Respondents' Motion to Quash Subpoena Duces Tecum Issued to Bruce A. Coppa with the Board. Complainant argued that Coppa's Motion to Quash has no merit because *inter alia*, Respondents failed to establish the existence of a privilege which precludes production of notes, records, documents based solely on the fact that Coppa is a high-ranking official; the testimony and documents requested are highly relevant to the issues on the extent of the change implemented by the employer and the remedy; the information requested is not already in the possession, custody, and control of the HSTA nor is it duplicative where the documents pertain to financial and accounting information and the Department of Accounting and General Services (DAGS) is the appropriate source; Respondents lack standing to assert objections to the subpoena duces tecum to Coppa, a non-party witness; the subpoena is not untimely; and quashing the subpoena duces tecum on the disputed items would violate the due process rights of Complainant in a contested case proceedings.

On August 25, 2011, the Board conducted a hearing on motions, including Respondents' Motion to Quash. The parties had full opportunity to present arguments on the instant motion and the Board took the matter under advisement.

Based upon a review of the record and consideration of the arguments presented, the Board makes the following order granting in part and denying in part Respondents' Motion to Quash.

In its Motion to Quash, Respondents contend that Coppa is a high-ranking government official who should not be required to respond to Complainant's subpoena absent compelling reasons. Further, Respondents contend that the HSTA has not shown that the testimony is unavailable from a lesser ranking officer or that the information sought is not available through some other mechanism.

Complainant contends that Coppa is the Comptroller for the State of Hawaii and is responsible for the accounting of salaries and wages paid to state employees. Complainant asserts that Coppa's testimony is relevant because he has knowledge on the amounts that the employer would be required to pay in the form of backpay which in turn would be a factor in the amount of a penalty the Board could award not to exceed \$10,000 per violation pursuant to HRS § 377-9, if HSTA prevails. Complainant asserts it seeks testimony from Coppa pertaining directly to the extent of the labor cost savings in the form of salary changes and the impact of changes in the health fund benefit contributions to the wages. Complainant contends that Coppa is the appropriate person to testify on the effect of the unilateral implementation in wages on the Unit 05 employees. Complainant also contends that Respondents have not asserted any recognized privilege as a basis to quash Coppa's subpoena duces tecum, citing Rule 501, Hawaii Rules of Evidence which states:

#### ARTICLE V.

#### PRIVILEGES

Rule 501 Privileges recognized only as provided. Except as otherwise required by the Constitution of the United States, the Constitution of the State of Hawaii, or provided by Act of Congress or Hawaii statute, and except as provided in these rules or in other rules adopted by the Supreme Court of the State of Hawaii, no person has a privilege to:

- (1) Refuse to be a witness; or
- (2) Refuse to disclose any matter; or
- (3) Refuse to produce any object or writing; or
- (4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

The Board agrees with Complainant that there is no privilege established by the U.S. or State Constitution, state statute or court rule which prevents Coppa from testifying before the Board in this matter because he is a high-ranking official. Thus, inasmuch as Coppa may have information relevant to this case, the Board denies Respondents' Motion to Quash the instant subpoena with respect to Coppa's appearance to testify before the Board.

Complainant objected to the motion to revoke filed by Respondents and not raised by Coppa personally. However, the Board finds that Coppa is the Comptroller for the

State of Hawaii and a public officer, and that Respondents may properly represent the State's or Coppa's interests in challenging the instant subpoena duces tecum.

The Board's administrative rules, specifically Hawaii Administrative Rules (HAR) § 12-42-8(g)(7), pertain to motions to revoke subpoenas but does not restrict the filing of a motion to quash the subpoena to the person being subpoenaed. HAR § 12-42-8(g)(7)(C) provides as follows:

- (C) Motion to revoke subpoenas:
  - (i) A motion to revoke a subpoena may be filed with the board not later than five days from the date of service of the subpoena.

\* \* \*

HAR § 12-42-8(g)(7)(D)(i) provides the bases for the Board to revoke a subpoena and provides as follows:

- (D) Ruling on motion to revoke:
  - (i) The board may revoke a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry, or hearing; that the subpoena does not describe with sufficient particularity the evidence sought or that the evidence sought from the witness is privileged under the law or the provisions of this chapter.
  - (ii) The board shall make a statement as to the basis for its ruling.

HRS § 28-1 provides that the attorney general appears for the State personally or by deputy in all cases in which the State may be a party or be interested in. HRS § 28-1 provides as follows:

§ 28-1 Appears for State. The attorney general shall appear for the State personally or by deputy, in all the courts of record, in all cases criminal or civil in which the State may be a party, or be interested, and may in like manner appear in the district courts in such cases.

HRS § 28-4 provides that the attorney general gives advice and counsel to other public officers and assists them and states as follows:

HRS § 28-4 Advises public officers. The attorney general shall, without charge, at all times when called upon, give advice and counsel to the heads of departments, district judges, and other public officers, in all matters connected with their public

duties, and otherwise aid and assist them in every way requisite to enable them to perform their duties faithfully.

Pursuant to the foregoing provisions, Respondents' counsel may represent the State's or Coppa's interests in moving to quash the subpoena duces tecum at issue. The fact that Coppa is a non-party does not detract from the fact that he is a public officer of the State of Hawaii and his interests as well as the State's interests are entitled to representation by the Attorney General's office on his behalf or on behalf of Respondents. In the instant motion, Respondents challenge the subpoena duces tecum issued to Coppa arguing, *inter alia*, that the DOE is the more appropriate agency to obtain the records and that the HSTA made an identical request for records from the Superintendent of Education. Thus, the Board sees no distinction in this case between Coppa's interests and Respondents' interests and concludes that Respondents have standing to challenge Coppa's subpoena duces tecum.

With respect to Items 1 and 2 of the subpoena duces tecum, Respondents contend that the items are overly burdensome to produce and duplicative of the materials requested in the subpoena duces tecum to Respondent KATHRYN MATAYOSHI (Matayoshi). Complainant contends that the matters requested are relevant to the issue of damages in the presentation of its case and that Coppa has custody of the information as the agency he directs issues the State payroll. As Complainant has the ultimate burden of proving Respondents committed prohibited practices by their actions which resulted in damages to Complainant in this case, the Board finds that the records are relevant on the face of HSTA's request. However, Complainant requested the information for individual "Unit 05 members and other personnel of the Department of Education" [emphasis added], which includes the approximate 12,500 Unit 05 members represented by the HSTA, and extends to other DOE employees who are represented by the United Public Workers, the Hawaii Government Employees Association, or are excluded from collective bargaining. The Board finds the information pertaining to the "other personnel of the Department of Education" to be irrelevant to the issue of damages to the Unit 05 members and grants the Motion to Quash with respect to the non-Unit 05 employees of the DOE.

Also with respect to Respondents' contention that HSTA's subpoena request is overly burdensome, the Board notes that Items 1 and 2 of the subpoena duces tecum require the production of a large number of records, especially in response to Item 2 which requests records from July 1, 2010 to the present for each Unit 05 employee which could potentially total well over 150,000 documents. The Board is concerned with the administrative burden and costs to Coppa and his agency in complying with Items 1 and 2 of the subpoena duces tecum and orders that the costs for the records and the time for production of the records, including the time for gathering, copying, and attendant computer costs, be borne by the HSTA. Moreover, the Board is seriously concerned with the confidential nature of the information requested by the HSTA, including social security numbers, or other personally identifying information, and the private medical information of the Unit 05 members, and further orders that the HSTA is responsible for the safeguarding of the information produced, including the redaction of confidential information and

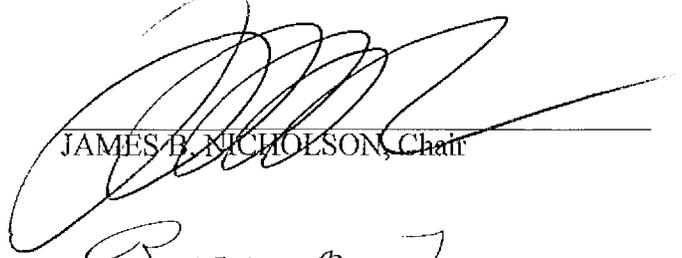
compliance with all applicable medical privacy laws, state and federal. In addition, the Board orders that the HSTA shall obtain signed releases from employees, including non-HSTA Unit 05 members, that are required under applicable laws. Lastly, the Board is concerned with the storage of the possibly voluminous records requested and the Board directs that Coppa and the HSTA to cooperatively work together to provide the documents to the HSTA, and not the Board, at a mutually agreeable place and time, as soon as practicable.

With respect to Items 3 and 4 of the subpoena duces tecum, the Board finds these matters are not protected by a privilege and should be produced.

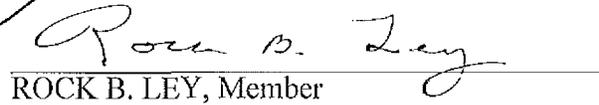
Accordingly, the Board grants in part and denies in part Respondents' Motion to Quash.

DATED: Honolulu, Hawaii, September 21, 2011

HAWAII LABOR RELATIONS BOARD

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JAMES B. NICHOLSON, Chair

A handwritten signature in black ink, appearing to read 'Rock B. Ley', is written over a horizontal line.

ROCK B. LEY, Member

Copies sent to:

Herbert R. Takahashi, Esq.  
James E. Halvorson, Deputy Attorney General  
Thomas Anthony Gill, Esq.

