

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of)	Case No.	CE-01-537a
)		CE-02-537b
United Public Workers,)		CE-03-537c
AFSCME, Local 646, AFL-CIO)		CE-04-537d
and Hawaii Government)		CE-06-537e
Employees Association,)		
AFSCME, Local 152, AFL-CIO,)		
)		
Complainants,)	STIPULATION AND ORDER	
)		
and)		
)		
Kathleen Watanabe, Director,)		
Department of Human Resources)		
Development, State of Hawaii)		
and Linda Lingle, Governor,)		
State of Hawaii; Patricia)		
Hamamoto, Superintendent,)		
Department of Education,)		
State of Hawaii; and Board or)		
Department of Education,)		
State of Hawaii (2003-020),)		
)		
Respondents.)		
)		

HAWAII LABOR RELATIONS BOARD

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STIPULATION AND ORDER

COME NOW the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW), the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA), Patricia Hamamoto, and the Board of Education (Employer), by and through their undersigned counsel and stipulate to the following in the above referenced case:

1. The UPW is an employee organization and the exclusive representative, as provided under HRS § 89-2, of employees in bargaining unit 01, non-supervisory employees in blue collar positions.

2. The HGEA is an employee organization and the exclusive representative, as provided under HRS § 89-2, of employees in bargaining units 02, supervisory employees in blue collar positions, 03, non-supervisory employees in white collar positions, and 04, supervisory employees in white collar positions.

3. Patricia Hamamoto, superintendent of the Department of Education, and the Board of Education are a public employer within the meaning of HRS § 89-2, and are hereafter referred to as "Employer."

4. The UPW, HGEA, and the State of Hawaii are at all times relevant herein parties to the collective bargaining agreements covering employees in bargaining unit 01, 02, 03, and 04.

5. Classified employees of the Department of Education (DOE) covered by these collective bargaining agreements have historically and customarily been part of the "merit" or "civil service" system of the State of Hawaii. There are approximately 150 classified positions of DOE which are in public charter schools and covered by such civil service system.

6. The collective bargaining agreements contain provisions for the maintenance of prior rights of employees pursuant to civil service statutes and rules, and require negotiations before changes in conditions of work may be implemented.

7. On or about June 9, 2003 the Department of Human Resources Development (DHRD) informed Employer of its position (and policy) that employees of public charter schools in the DOE "do not have civil service status" and are no longer part of the merit system.

8. On or about June 12, 2003 DHRD requested Employer to "convert all public charter school positions to reflect the fact that these positions do not have civil service status" by June 30, 2003, and thereafter informed Employer that DHRD would not provide "certified lists of eligible applicants" and "civil service appointments may not be made to fill public charter school positions."

9. On and after July 8, 2003 the aforementioned DHRD position, policy, and actions were communicated to public charter school administrators and employees.

10. As a direct consequence various public charter school employees (in order to preserve and maintain their civil service status, rights and benefits), initiated transfers and other changes in their terms and conditions of work.

11. As a further consequence on or about July 1, 2003 and thereafter, DOE failed to process for hiring approximately fifteen (15) or more public charter school employees in classified positions through the statewide merit system for compliance with civil service requirements, and as a result these employees are currently exempt from civil service coverage.

12. On or about January 13, 2004 public charter school employees were informed by Employer that the June 30, 2003 deadline for compliance with the DHRD position and policy had been extended to June 30, 2004, and that public charter school employees with civil service appointments would continue "with civil service status through June 30, 2004."

13. On or about March 5, 2004 Employer was informed by DHRD that the June 30, 2004 deadline could be extended to September 30, 2004.

14. Employer hereby stipulates and agrees to cease and desist from implementing the aforementioned DHRD position or policy regarding loss of civil service status for public charter school positions and employees, and to make whole all adversely employees (including but not limited to the restoration or return of said employees to their former public charter school positions without loss of rights, privileges, and benefits).


15. Within 30 days from the date of this Stipulation and Order Employer shall process all currently exempt public charter school employees in classified positions through the statewide merit system and restore them to civil service status. All classified positions in public charter schools shall be restored to the merit system within thirty days.


16. Within 30 days from the date of this Stipulation and Order Employer shall provide to UPW and HGEA a report of its compliance with the make whole provisions herein, and shall provide all public charter school employees a copy of this Stipulation and Order.

17. No changes in the terms and provisions of this Stipulation and Order shall be made, except by negotiations and mutual consent of the parties prompted by legislative clarifications hereafter to the public charter school laws or as a result of a final decision and order of the Hawaii Labor Relations Board (subject to judicial review) in this or other related proceedings.

17. In accordance with the terms and conditions herein Patricia Hamamoto and the Board of Education shall be dismissed as respondents in the above referenced case.


Dated: Honolulu, Hawaii, March 15, 2004.


Herbert R. Takahashi
Attorney for Complainants
United Public Workers, AFSCME,
Local 646, AFL-CIO and Hawaii
Government Employees
Association, AFSCME, Local
152, AFL-CIO

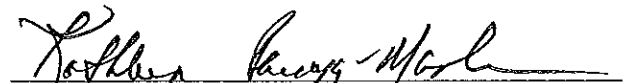

Kathryn-Jean Taniguchi
Deputy Attorney General
Attorney for Respondents
Patricia Hamamoto and Board
of Education

Approved and So Ordered:

ORDER NO. 2237


Brian K. Nakamura, Chair


Chester C. Kunitake, Member


Kathleen Racuya-Markrich, Member