

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS
ASSOCIATION,

Petitioner,

and

VALERIE BIVEN; FELICIA FRIEND-
BETLACH; DIANE SCHWARTZ;
WILLIAM SCHWARTZ; KRIS YOAKUM;
LINDA LINGLE, Governor, State of Hawaii;
BOARD OF EDUCATION, Department of
Education, State of Hawaii; PATRICIA
HAMAMOTO, Superintendent, Department
of Education, State of Hawaii, and MARIE
LADERTA, Chief Negotiator, Office of
Collective Bargaining, State of Hawaii,

Intervenors.

CASE NO. DR-05-99

ORDER NO. 2542

ORDER DENYING HSTA'S MOTION
TO STRIKE PETITION FOR
INTERVENTION AND/OR DENY
INTERVENTION DATED AUGUST 4,
2008; AND GRANTING PETITIONS
FOR INTERVENTION

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FOR INTERVENTION AND/OR DENY INTERVENTION DATED
AUGUST 4, 2008; AND GRANTING PETITIONS FOR INTERVENTION

On July 18, 2008, Petitioner HAWAII STATE TEACHERS ASSOCIATION (HSTA or Union) filed a Petition for Declaratory Ruling (Declaratory Ruling Petition) with the Hawaii Labor Relations Board (Board) to determine the lawful scope of bargaining under applicable state and federal statutes and rules relating to random or (suspicionless) alcohol and drug testing. The HSTA alleges that it is the exclusive bargaining representative of Unit 05 members currently engaged in negotiations with the BOARD OF EDUCATION, State of Hawaii (BOE) over drug and alcohol testing procedures under Appendix II of the 2007-2009 collective bargaining agreement (Agreement). The HSTA contends that in light of information provided by the BOE in negotiations, it submits that the matter is an illegal subject of bargaining.

On July 22, 2008, the Board issued a Notice of Filing of Petition for Declaratory Ruling; Notice of Deadline for Filing Petitions for Intervention; and Notice of Board Conference which set August 4, 2008 as the deadline to file any petitions for intervention.

On August 4, 2008, VALERIE BIVEN, FELICIA FRIEND-BETLACH, DIANE SCHWARTZ, WILLIAM SCHWARTZ and KRIS YOAKUM (collectively, Employees), by and through their counsel, filed a Petition for Intervention (Employee's Petition) with the Board in this matter. The Employees allege that they are Unit 05 members subject to the Agreement and are not adequately represented by the HSTA in this matter as they disagree with and oppose the HSTA's Declaratory Ruling Petition contending, inter alia, that the HSTA is improperly asking the Board to issue a declaratory ruling on a purely constitutional question which is outside the Board's jurisdiction. The Employees also contend that the question presented is speculative and hypothetical because there appears to be no funding to implement a random drug testing program. The Employees contend that a decision by the Board on constitutional grounds creates a risk that the State or HSTA will assert that the Employees are prejudiced in their ability to have a court decide their constitutional rights and further, that a Board decision in this proceeding may allow the State or HSTA to violate their constitutional rights. The Employees moreover contend that no other party appears to have an interest in making these arguments to the Board.

Also on August 4, 2008, LINDA LINGLE, Governor, State of Hawaii (LINGLE); BOE; PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawaii (HAMAMOTO), and MARIE LADERTA, Chief Negotiator, Office of Collective Bargaining, State of Hawaii (LADERTA) (collectively, State or Employer) filed a Petition for Intervention (State's Petition) with the Board. The State alleges that pursuant to Hawaii Revised Statutes (HRS) § 89-6(d)(3), the "Employer" consists of the Governor, the BOE and Superintendent of Education for purposes of negotiating the Unit 05 agreement. The State also alleges that HRS § 89A-2(2) and (3) provides that the Office of Collective Bargaining assists the governor in formulating management's philosophy for bargaining as well as planning bargaining strategies and conducts negotiations with the employee organization and has a direct interest in the subject matter of the instant Declaratory Ruling Petition. The State contends that the HSTA is improperly utilizing this petition process to adjudicate the constitutionality of Appendix II of the Agreement and is misstating what was negotiated. The State also contends that the Board lacks subject matter jurisdiction over constitutional questions and that the HSTA's position indicates that the Union negotiated and ratified the Agreement in bad faith.

On August 5, 2008, the HSTA filed a Motion to Strike Petition for Intervention and/or to Deny Intervention (Motion to Strike) by the State Petitioners. The HSTA contends that the State's Petition fails to comply with the Hawaii Administrative Rules (HAR) § 12-42-8(g)(14) by not providing the necessary information pursuant to HAR § 12-42-8(g)(14)(B)(i) through (ix) as required and the State's allegations are not reasonably pertinent to the issues already presented without unduly broadening them. The HSTA contends, inter alia, that the State's Petition does not specify the nature and extent of the interest of the distinct petitioners; does not adequately provide the basic information required on the Declaratory Ruling Petition; and the State's participation will

unduly broaden the issues herein by introducing allegations and contentions similar to those in Case No. CU-05-267 presently pending before the Board.

Based on the record and a review of the Employees' Petition, the Board finds that the petition is timely and the Employees have alleged sufficient interests which could be impacted by a Board decision in this case. Accordingly, the Board grants the Employees' Petition pursuant to HAR §§ 12-42-8(g)(14) and 12-42-9(e). Similarly, the Board recognizes that the State filed a timely Petition for Intervention and finds that the Petition adequately establishes that LINGLE, the BOE and HAMAMOTO as statutory public employers for the purposes of negotiating the Unit 05 Agreement and LADERTA as the State's Chief Negotiator have sufficient interests which may be impacted by a Board decision in this case sufficient to warrant their intervention. The concerns which the HSTA raises in its Motion to Strike regarding the distinction of interests between the State's named Petitioners and the undue broadening of the issues presented in this Declaratory Ruling Petition does not affect the State Petitioners' interest in this proceeding and can be addressed during the Board conference scheduled on August 8, 2008. Accordingly, the Board denies the HSTA's Motion to Strike and grants the State's Petition.

DATED: Honolulu, Hawaii, August 8, 2008.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Copies sent to:

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- Richard H. Thomason, Deputy Attorney General