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2013 MAY 24 AM 8:59

HAWAII LABOR
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HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of

) Case No. CE-05-820

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)
) HAWAII STATE TEACHERS
) ASSOCIATION,

)
)
) Complainant,

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)
) and

)
)
) KATHRYN MATAYOSHI,
) Superintendent, Department of
) Education, State of Hawaii and
) ANNETTE L. ANDERSON,
) Negotiations Administrator,
) Department of Education, State of
) Hawaii (2012-018),

)
)
) Respondents.
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STIPULATION AND ORDER OF THE
PARTIES

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COMES NOW, Complainant, HAWAII STATE TEACHERS ASSOCIATION (“HSTA”), and Respondents KATHRYN MATAYOSHI, Superintendent, Department of Education, State of Hawaii and ANNETTE L. ANDERSON, Negotiations Administrator, Department of Education, State of Hawaii (jointly “EMPLOYER” or “RESPONDENTS”), by and through their undersigned counsel and hereby stipulate as follows:

WHEREAS, the Hawaii State Teachers Association (HSTA) is an employee organization within the meaning of Section 89-2, Hawaii Revised Statutes (HRS) and is the duly designated exclusive bargaining representative of employees in bargaining unit 5; and

WHEREAS, Kathryn Matayoshi (Matayoshi) is the Superintendent of Education of the Department of Education (DOE), State of Hawaii, and as a representative of the Board of Education is a public employer within the meaning of Section 89-2, HRS; and

WHEREAS, Annette L. Anderson (Anderson) is the Negotiations Administrator of the Department of Education (DOE), State of Hawaii, and as a representative of the Board of Education is a public employer within the meaning of Section 89-2, HRS; and

WHEREAS, on or about October 29, 2012, Ms. Anderson sent a “Consult and Confer Regarding Communication Pertaining to On-Line Learning Programs” to HSTA Executive Director Al Nagasako to seek review and comment on the DOE plans to

distribute to unit 5 teachers information on the various types of “Online Learning” and “Blended Learning” programs and to recruit employees who are bargaining unit 5 members to teach the “Online Learning” and “Blended Learning” programs; and

WHEREAS, on November 7, 2012 HSTA Negotiation Specialist Ray Camacho wrote to Ms. Anderson that the DOE’s “Online Learning” and “Blended Learning” programs represented mandatory subjects of bargaining and requested bargaining over both of these programs; and

WHEREAS, on January 24, 2013 Ms. Anderson wrote to Mr. Camacho and stated that the DOE did not agree that the “Online Learning” programs represented mandatory subjects of bargaining, that the DOE had demonstrated its willingness to consult and confer with HSTA regarding the DOE’s “Online Learning” programs, and that the DOE continues to engage in that process by providing the response to HSTA’s Request for Information; and

WHEREAS, on April 1, 2013 HSTA filed the above-numbered prohibited practice complaint and alleged that Respondents by their conduct have refused or failed to bargain in good faith and have refused or failed to comply with the provisions of Sections 89-6 (e), and 89-8 (a), HRS related to “Online Learning” and “Blended Learning”; and

WHEREAS, on April 26, 2013 the Respondents filed a Motion To Dismiss Prohibited Practice Complaint Filed April 1, 2013 and by stipulation the Employer withdrew without prejudice its Motion to Dismiss filed April 26, 2013; and

WHEREAS, on May 6, 2013 at the prehearing/settlement conference before the Hawaii Labor Relations Board (“HLRB” or “Board”), the Respondents clarified that with respect to “Blended Learning” programs, under the “Blended Learning” programs the unit 5 employees would be combining online delivery of education content with the classroom and live instructions during regularly scheduled DOE school hours and therefore the DOE agreed it had a duty to consult and or negotiate as applicable to the specific “Blended Learning” program; and

WHEREAS, the parties now wish to resolve the above-numbered prohibited practice complaint specific to the “Blended Learning” programs that were the subject of Ms. Anderson’s October 29, 2012 letter to HSTA;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED TO AS FOLLOWS:

1. The Department of Education, by and through its representatives the Respondents herein, agrees to consult and/or negotiate as appropriate under Chapter 89, Hawaii Revised Statutes (HRS), with HSTA the “Blended Learning” programs that are part of the subject of Respondent Annette L. Anderson’s October 29, 2012 letter to Al Nagasako, Executive Director of HSTA and that are a part of the basis for the complaint in the above-entitled matter.

2. By entering into this agreement neither party waives their right to challenge whether a specific “Blended Learning” program or sub part of that program requires consultation or negotiation. Such determination is not available at this time until

further details are fleshed out and shared between the parties on the specific "Blended Learning" programs.

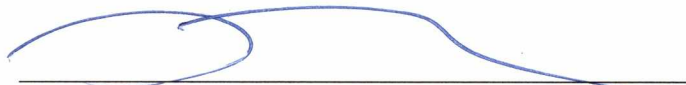
3. Upon the entry of this stipulation and order the HSTA will file with the HLRB, but no later than June 10, 2013 an amended complaint in the above-entitled matter excluding as a basis for the complaint the "Blended Learning" programs. The amended complaint will continue to relate to the "Online Learning" programs.

4. The time limits relevant to a new complaint will apply to the amended complaint, including but not limited to the 40-day time period in which the Board is to hear the amended complaint.

Dated: Honolulu, Hawaii, May 22, 2013.



REBECCA L. COVERT, ESQ.
Attorneys for Complainant



RICHARD H. THOMASON, ESQ.
Attorney for Respondents

APPROVED AND SO ORDERED:

ORDER NO. 2015

DATED: May 24, 2013


JAMES B. NICHOLSON, Chair
SESNITA MOEPONO, Member
ROCK LEY, Member