STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of THE EDUCATIONAL LABORATORY: A HAWAII NEW CENTURY PUBLIC CHARTER SCHOOL ("ULS") LOCAL SCHOOL BOARD ("LSB"), Complainant, and HAWAII STATE TEACHERS ASSOCIATION, Respondent.	CASE NO. CU-05-305 ORDER NO. 2948 ORDER DENYING RESPONDENT'S MOTION TO DISMISS COMPLAINT; GRANTING COMPLAINANT LOCAL SCHOOL BOARD'S MOTION TO STAY GRIEVANCE/ARBITRATION PROCEEDINGS IN HSTA GRIEVANCE #OC-11-23; DENYING HSTA'S REQUEST TO SCHEDULE HEARING ON PROHIBITED PRACTICE COMPLAINT; GRANTING IN PART AND DENYING IN PART COMPLAINANT THE EDUCATION LABORATORY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS COMPLAINT; DENYING HSTA'S MOTION TO STAY PROCEEDINGS UNTIL REVIEW BY HAWAII SUPREME COURT OF SPECIAL PROCEEDINGS IS COMPLETED; GRANTING COMPLAINANT THE EDUCATIONAL LABORATORY'S MOTION TO STRIKE UNTIMELY ANSWER TO PROHIBITED PRACTICE COMPLAINT FILED SEPTEMBER 23, 2013; AND DENYING HSTA'S REQUEST TO FILE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH BRIEF NOW SCHEDULED TO BE FILED ON OR BY OCTOBER 21, 2013

ORDER DENYING RESPONDENT'S MOTION TO DISMISS COMPLAINT; GRANTING COMPLAINANT LOCAL SCHOOL BOARD'S MOTION TO STAY GRIEVANCE/ARBITRATION PROCEEDINGS IN HSTA GRIEVANCE #OC-11-23; DENYING HSTA'S REQUEST TO SCHEDULE HEARING ON PROHIBITED PRACTICE COMPLAINT; GRANTING IN PART AND DENYING IN PART COMPLAINANT THE EDUCATION LABORATORY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS COMPLAINT; DENYING HSTA'S MOTION TO STAY PROCEEDINGS UNTIL REVIEW BY HAWAII SUPREME COURT OF SPECIAL PROCEEDINGS IS COMPLETED; GRANTING COMPLAINANT THE EDUCATIONAL LABORATORY'S MOTION TO STRIKE UNTIMELY ANSWER TO PROHIBITED PRACTICE COMPLAINT FILED SEPTEMBER 23, 2013; AND DENYING HSTA'S REQUEST TO FILE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH BRIEF NOW SCHEDULED TO BE FILED ON OR BY OCTOBER 21, 2013

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Complaint

On April 28, 2011, Complainant THE EDUCATIONAL LABORATORY: A HAWAII NEW CENTURY PUBLIC CHARTER SCHOOL ("ULS") LOCAL SCHOOL BOARD ("LSB") (Complainant or Employer) filed a prohibited practice complaint (Complaint) against Respondent HAWAII STATE TEACHERS ASSOCIATION (Respondent or HSTA), alleging, *inter alia*, that the parties engaged in negotiations over a Supplement Agreement, which is a supplement to the 2009-2011 Unit 5 Master Agreement, and reached a tentative agreement on May 21, 2010, on the proposals that were to be included in the Supplemental Agreement, including but not limited to HSTA's salary placement proposal. The Complaint alleges that HSTA's salary placement proposal dated May 21, 2010, referred to an "Exhibit 1" although there was no "Exhibit 1" attached to the tentative agreement that was initialed and dated by the parties, nor had one been submitted by HSTA to the Complainant's negotiations committee for review, comment, and bargaining. The Complaint alleges that the only salary schedule that was discussed, deliberated, and agreed upon by the parties during negotiations was a document entitled "Teachers' Gross Annual Salary Schedule" (a copy of which was attached as Exhibit "N" to the Complaint), and that Complainant presented Unit 5 faculty members of HSTA with employment contracts that listed their annual salaries consistent with Exhibit "N." The Complaint further alleges that on October 29, 2010, HSTA submitted to Complainant for the first time an "Exhibit 1," relating to salary placement and "red circling" (a copy of which was attached as Exhibit "P" to the Complaint).

The Complaint alleges that Complainant disagreed that the "Exhibit 1" referred to in the May 21, 2010, salary placement proposal was Exhibit "P," and on November 9, 2010, referred

HSTA to Exhibit "N." HSTA was not in agreement, and on November 12, 2010, stated that a meeting would be held to discuss the dispute. The parties met on November 18, 2010, to discuss the dispute, but there was no agreement by the parties after the conclusion of the meeting. On December 2, 2010, Complainant again notified HSTA that they are not in agreement regarding Exhibit 1, and that at no time during negotiations did HSTA present Exhibit P (a copy of the purported Exhibit 1) as a proposal to be part of the Supplemental Agreement. On December 17, 2010, HSTA notified Complainant that it did not agree, and requested reconsideration of Complainant's position. On January 3, 2011, Complainant rejected HSTA's request for reconsideration, and demanded further negotiations over this matter. On January 7, 2011, HSTA notified Complainant that it has not reconsidered its position but was willing to meet and discuss the matter before taking any further action. On January 21, 2011, the parties met to discuss the salary placement dispute. On March 7, 2011, HSTA informed Complainant of its desire to convene a bargaining sub-committee to review teacher data for the purpose of salary placement. On March 24, 2011, Complainant notified HSTA that it disputed the convening of an ad-hoc subcommittee, did not consent to negotiate the subject of "full-time ULS service" and still disputed the validity of Exhibit 1. On March 24, 2011, HSTA notified Complainant that it saw no purpose to meet and further discuss the salary placement dispute. On April 13, 2011, HSTA filed a class grievance, in contravention of Hawaii Revised Statutes (HRS) § 10.8(a)(1)[i], to "force the ULS to accept [HSTA's] unilaterally created version of Exhibit 1[.]"

The Complaint further alleges that HSTA's unilateral creation and distribution of its own version of Exhibit 1 without properly bargaining constitutes: (1) an improper interference with and coercion of ULS employees in the exercise of rights guaranteed under HRS chapter 89; (2) an improper interference with the Unit 5 faculty members' employment contracts which list annual salaries for the 2010-2011 academic year consistent with Exhibit N; and (3) a failure to bargain in good faith. The Complaint also alleges that HSTA's refusal to recommence bargaining over the content of Exhibit 1 for Appendix XIV constitutes a refusal to bargain in good faith over wages and terms and conditions of employment. The Complaint alleges prohibited practices pursuant to HRS § 89-13(b)(1) and (2).[ii]

The Complaint further alleges that HSTA's attempt to unilaterally increase the wages of faculty members beyond what was bargained for violates HRS § 89-9[iii], and that HSTA's attempt to use the grievance process to reform the Supplemental Agreement also violates HRS § 89-10.8(a)(1). The Complaint alleges prohibited practices pursuant to HRS § 89-13(b)(4)[iv].

The Complaint further alleges that HSTA's attempt to reform and/or modify the express terms and conditions of the Supplemental Agreement constitutes a repudiation of that agreement, and that HSTA's unilateral creation and distribution of its own version of the Agreement violates the Agreement's Article XXIII – Entirety Clause of the Supplemental Agreement.[v] The Complaint alleges prohibited practices pursuant to HRS § 89-13(b)(5)[vi].

On May 2, 2011, the Board sent to Respondent a NOTICE TO RESPONDENT OF PROHIBITED PRACTICE COMPLAINT (Notice), with a copy of the Complaint attached, and directed Respondent to "file with this Board the original and five (5) copies of your answer to the Prohibited Practice Complaint, with proof of service upon Complainant, no later than 4:30 p.m. of the tenth day after service of the complaint. If you fail to timely file and serve an answer, such failure may constitute an admission of the material facts alleged in the complaint and a waiver of a hearing." On May 3, 2011, the Board sent an ERRATA TO NOTICE TO RESPONDENT OF PROHIBITED PRACTICE COMPLAINT, DATED MAY 2, 2011, to correct the erroneous case number contained in the Notice.

B. HSTA's Motion to Dismiss Complaint

On May 12, 2011, HSTA filed a MOTION TO DISMISS COMPLAINT,[vii] asserting that the Complaint is barred by the statute of limitations set forth in HRS § 377-9(l); the Complaint is beyond the subject matter jurisdiction of the Board; and the Complaint fails to state a claim for relief under HRS chapter 89 and the public policy which strongly favors the arbitration of disputes arising from collective bargaining agreements. HSTA asserts: (1) that the Employer was aware on or about October 29, 2010, of HSTA's intent to use Exhibit 1 as the chart referenced in Appendix XIV of the Supplemental Agreement; (2) that the Employer received a copy of Exhibit 1 in the course of negotiations, creating an arbitrable issue of the application of Appendix XIV vis-à-vis Exhibit 1; (3) that interpretation of Appendix XIV with reference to Exhibit 1 is a matter for an arbitrator and is outside the subject matter jurisdiction of the Board and is governed by HRS chapter 658A; (4) that HRS § 89-10.8 directs the parties to enter into written agreements setting forth a grievance procedure culminating in a final and binding decision to be invoked in the interpretation or application of a written agreement applicable here and the exclusion is narrowly applied and inapplicable; (5) that the presence of a grievance procedure in the Supplemental Agreement and a dispute arising over the interpretation or application of that agreement satisfies HSTA's duty to bargain, if any such bargain exists, where the issue arises mid-term in the agreement over terms previously negotiated and incorporated into the agreement; and (6) that the Complaint fails to state a claim for relief where the Employer lacks standing to assert the rights of the employees with respect to interference or coercion of those rights.

On May 19, 2011, Complainant filed COMPLAINANT LOCAL SCHOOL BOARD'S OPPOSITION TO HSTA'S MOTION TO DISMISS FILED MAY 12, 2011, asserting: (1) the Complaint has two different catalysts – first, HSTA's attempt to force a contract provision affecting wages and benefits upon Complainant that had never been distributed to the school's negotiators during bargaining, much less agreed to by them, and second, HSTA's improper use of the grievance procedure in violation of HRS § 89-10.8(a)(1), both of which are timely; (2) that

HSTA's refusal to bargain was not immediately clear to Complainant due to HSTA's offer to meet "in the spirit of collaborative labor relations" to resolve the dispute, and that HSTA's March 24, 2011, email was HSTA's first refusal to participate in any further bargaining over the disputed Exhibit 1; (3) that contrary to HSTA's assertion, there is genuine dispute of fact over whether the Employer received a copy of Exhibit 1 in the course of negotiations; (4) that the dispute is not over "interpretation" of Exhibit 1, but rather whether Exhibit 1 was negotiated at all, and that there is a duty to bargain mid-term over mandatory terms that were not negotiated at the time agreement was reached; (5) that the Board has exclusive original jurisdiction over the question of whether the terms of Exhibit 1 constitute subjects of mandatory bargaining under HRS chapter 89, and if so, whether HSTA violated its statutory duty to bargain in good faith when it walked away from the bargaining table; (6) the Board has exclusive, original jurisdiction over the question of whether HSTA's grievance is in direct violation of HRS § 89-10.8; and (7) the school has standing to protect its employees.

C. Complainant's Motion to Stay Grievance/
Arbitration Proceedings in HSTA Grievance #OC-11-24

On July 13, 2011, Complainant filed COMPLAINANT LOCAL SCHOOL BOARD'S MOTION TO STAY GRIEVANCE/ARBITRATION PROCEEDINGS IN HSTA GRIEVANCE #OC-11-24, requesting that the Board stay the grievance, and asserting that the controversy at issue, namely, the efficacy of what HSTA claims is Exhibit 1, is the same in both the Grievance and the Complaint, and that neither an arbitrator not the Circuit Court can adjudicate the predicate question of whether the Grievance is invalid pursuant to HRS § 89-10.8; rather, that the Board has exclusive original jurisdiction to decide the issue.

On July 20, 2011, HSTA filed HSTA'S MEMORANDUM IN OPPOSITION TO COMPLAINANT LOCAL SCHOOL BOARD'S MOTION TO STAY GRIEVANCE/ARBITRATION PROCEEDINGS IN HSTA GRIEVANCE #OC-11-24 FILED ON JULY 13, 2011, asserting the Board has no authority to stay arbitral proceedings for the purpose of depriving one of the parties of a statutory right to arbitration under HRS chapter 658A; an order to stay arbitration would be contrary to the underlying purpose of HRS § 89-10.8, which mandates final and binding decision over disputes relating to the interpretation and application of an agreement; there is no administrative rule which authorizes a stay of arbitration by the Board; and the Employer waived any claim the grievance should not be pursued.

On August 10, 2011, Complainant filed COMPLAINANT LOCAL SCHOOL BOARDS'S REPLY TO HSTA'S OPPOSITION TO MOTION TO STAY GRIEVANCE/ARBITRATION PROCEEDINGS IN HSTA GRIEVANCE #OC-11-24, asserting that only the Board is vested with original, exclusive jurisdiction to determine whether a party has engaged in prohibited practices and thus is the first tribunal to adjudicate disputes

over whether a certain act or omission by a public union or public employer violates HRS chapter 89, and that only the Board can issue declaratory and injunctive relief as to both of those legal questions; and, only the Board can rule that HSTA's grievance is invalid because it is in violation of HRS § 89-10.8 and that HSTA's consequent demand for arbitration of said invalid grievance is null and void.

D. Hearing on Motion to Dismiss Complaint and Motion to Stay

On August 12, 2011, the Board heard oral argument on HSTA's Motion to Dismiss Complaint and Complainant's Motion to Stay Grievance/Arbitration Proceedings in HSTA Grievance #OC-11-24. With respect to the Motion to Dismiss Complaint, the Board orally ruled that it denied the motion to dismiss; with respect to the Motion to Stay Grievance/Arbitration Proceedings in HSTA Grievance #OC-11-24, the Board took the matter under advisement.

E. HSTA's Request to Schedule Hearing on Prohibited Practice Complaint

On November 10, 2011, HSTA filed HSTA'S REQUEST TO SCHEDULE HEARING ON PROHIBITED PRACTICE COMPLAINT, requesting that "the Board set for hearing the prohibited practice complaint," and asserting in an accompanying affidavit that, "[t]he Board denied HSTA's motion to dismiss and took under advisement the Local School Board's motion to stay grievance/arbitration proceedings," and that, "[a]s the parties have not waived the time in which to hold a hearing on a complaint, HSTA requests that the Board notice a status conference for the purpose of scheduling trial dates to hear the merits of the Employer's prohibited practice complaint."

F. Complainant's Motion for Partial Summary Judgment

On July 23, 2013, Complainant filed COMPLAINANT THE EDUCATION LABORATORY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS COMPLAINT, asserting that it is entitled to judgment as a matter of law as to claims that HSTA violated: (1) HRS § 89-13(b)(2) and (4) when it refused to negotiate in good faith over the terms of Exhibit 1 of the 2009 Supplemental Agreement it negotiated with the Complainant; and (2) HRS §§ 89-10.8(a)(1) and 89-13(b)(4) by improperly attempting to grieve a bargaining dispute over the terms of said Exhibit 1. Complainant did not seek summary judgment with respect to alleged prohibited practices pursuant to HRS § 89-13(b)(1) and (5). Complainant asserts there are no issues of material fact in dispute with respect to: (1) the terms of Exhibit 1 were never properly negotiated by the parties; (2) HSTA refused to return to the bargaining table to duly negotiate the terms of Exhibit 1 when the fact was pointed out to the Union by the School; and (3) HSTA filed a grievance attempting to grieve, not negotiate, the bargaining dispute.

On August 27, 2013, HSTA filed HSTA'S MEMORANDUM IN OPPOSITION TO COMPLAINANT THE EDUCATION LABORATORY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS COMPLAINT, asserting that there are disputed facts regarding whether Exhibit 1 was negotiated and whether the Employer knew about and understood Exhibit 1, and that there are material facts in dispute as to whether any of the HSTA's conduct was willful, which is a requirement for a finding of a prohibited practice. On August 28, 2013, HSTA filed its ERRATA TO HSTA'S MEMORANDUM IN OPPOSITION TO COMPLAINANT THE EDUCATION LABORATORY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS COMPLAINT, to correct its conclusion to, "the Board is respectfully requested to deny the Employer's motion for partial summary judgment and if the motion to stay is not granted, to proceed to schedule a hearing on the merits to resolve as soon as possible the teachers [sic] rights to adjustments in their salary based on step movement negotiate on their behalf by HSTA."

On September 5, 2013, Complainant filed COMPLAINANT THE EDUCATION LABORATORY'S REPLY TO HSTA'S OPPOSITION TO COMPLAINANTS' [sic] MOTION FOR PARTIAL SUMMARY JUDGMENT, asserting that HSTA's declarations are insufficient to create a cognizable disputed issue of material fact regarding bargaining over the terms of Exhibit 1, regarding HSTA's bad faith refusal to return to the bargaining table, and regarding HSTA's bad faith reliance on the grievance procedure.

G. HSTA's Motion to Stay Proceedings until Review by Hawaii Supreme Court of Special Proceedings Is Completed

On August 14, 2013, HSTA filed HSTA'S MOTION TO STAY PROCEEDINGS UNTIL REVIEW BY HAWAII SUPREME COURT OF SPECIAL PROCEEDINGS IS COMPLETED, asserting that when the Employer refused to select an arbitrator in the related grievance, HSTA filed a motion to compel arbitration in circuit court. The circuit court denied the motion to compel arbitration, and HSTA appealed. On April 15, 2013, the Intermediate Court of Appeals (ICA) issued its decision affirming the circuit court's decision, holding in part that "an arbitrator cannot determine whether there has been a violation of the Supplemental Agreement without first considering whether the initial terms, specifically the contents of Exhibit 1, had ever been properly negotiated in the first place." The ICA further held that the Board has exclusive original jurisdiction over the issues raised in the Complaint, and applied the primary jurisdiction doctrine because the motion to compel "implicates technical and policy issues within [the Board's jurisdiction] with statutory and comprehensive regulatory authority." Further, that "compelling arbitration likely would have produced conflicting or redundant judgments and wasted effort and expense[,]" while the Board's resolution of the statutory claims will not require the Board to adjudicate the interpretation or application of the terms. Judgment was entered by

the ICA on May 17, 2013. On July 16, 2013, HSTA filed an application for writ of certiorari for review of the ICA's decision by the Hawaii Supreme Court.

On August 21, 2013, Complainant filed COMPLAINANT'S OPPOSITION TO RESPONDENT'S MOTION TO STAY PROCEEDINGS PENDING [sic] REVIEW BY HAWAII SUPREME COURT OF SPECIAL PROCEEDINGS IS COMPLETED FILED AUGUST 14, 2013, asserting that no matter what happens with HSTA's appeal, the Board is the only tribunal which has original, exclusive subject matter jurisdiction to adjudicate the School's statutory claims pursuant to HRS §89-14, and that no arbitrator has jurisdiction to adjudicate whether a party has violated its statutory duties to bargain in good faith, or whether a grievance violates labor laws.

On August 28, 2013, HSTA filed HSTA'S NOTICE OF SUBMISSION OF EXHIBIT 27 IN SUPPORT OF ITS MOTION TO STAY PROCEEDINGS UNTIL REVIEW BY HAWAII SUPREME COURT OF SPECIAL PROCEEDINGS IS COMPLETED, FILED AUGUST 14, 2013, attaching a copy of Exhibit 27 which is a copy of the Hawaii Supreme Court's Order Accepting Application for Writ of Certiorari in CAAP-12-0000295, S.P. No. 11-1-0411, Hawaii State Teachers Association v. University Laboratory School, Education Laboratory Public Charter School Local School Board (Grievance OC-11-24).

On September 5, 2013, HSTA filed HSTA'S REPLY IN SUPPORT OF ITS MOTION TO STAY PROCEEDINGS UNTIL REVIEW BY HAWAII SUPREME COURT OF SPECIAL PROCEEDINGS IS COMPLETED, asserting that the motion to stay provides prudent exercise of the Board's use of its time because if the Hawaii Supreme Court does find the Employer is compelled to arbitrate the dispute, the factual findings of the arbitrator will directly assist the Board in its review of whether HSTA violated HRS chapter 89 as alleged in the Complaint.

H. Hearing on Complainant's Motion for Partial Summary Judgment and HSTA's Motion to Stay Proceedings until Review by Hawaii Supreme Court of Special Proceedings is Completed

On September 20, 2013, the Board heard oral argument on Complainant's Motion for Partial Summary Judgment, and on HSTA's Motion to Stay Proceedings Until Review by the Hawaii Supreme Court of Special Proceedings is Completed.

The Board orally ruled that HSTA failed to file an answer to the Complaint, despite the Board's denial of HSTA's Motion to Dismiss Complaint following oral argument on August 12, 2011. HSTA argued that the time to file runs from the issuance of a written, not oral, order, but cited no authority for it; Complainant argued that historically, a party must answer within ten days of notice of the decision, pursuant to Hawaii Rules of Civil Procedure (HRCP).

The Board held that Hawaii Administrative Rules (HAR) § 12-42-45(g) provides, "[i]f the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing." The Board also denied HSTA's motion for stay because the failure to file an answer constitutes an admission of material facts and waiver of hearing, and accordingly, there is no reason for a stay as the Board does not need the expertise or ruling of an arbitrator where the facts in the Complaint are deemed true; and further, the Board has its own expertise over negotiation disputes and complaints involving the failure to bargain.

The parties were ordered to submit proposed conclusions of law and legal arguments in support of their positions.

I. HSTA's Answer to Complaint and Complainant's Motion to Strike Answer

On September 23, 2013, HSTA filed HSTA'S ANSWER TO COMPLAINT, pursuant to HAR § 12-42-45.

On September 25, 2013, Complainant filed COMPLAINANT THE EDUCATION LABORATORY'S MOTION TO STRIKE UNTIMELY ANSWER TO PROHIBITED PRACTICE COMPLAINT FILED SEPTEMBER 23, 2013, asserting that the Board already orally ruled on this issue, that HSTA failed to file a timely answer as required by HAR § 12-42-8(a), and HSTA did not request leave to file a late answer, nor did the Board give the union leave to do so.

On October 2, 2013, HSTA filed RESPONDENT HSTA'S OPPOSITION TO COMPLAINANT THE EDUCATION LABORATORY'S MOTION TO STRIKE UNTIMELY ANSWER TO PROHIBITED PRACTICE COMPLAINT FILED SEPTEMBER 23, 2013, asserting (1) the Board's statement at the August 12, 2011, oral argument on the motion to dismiss that an order would issue suspended the time to file an answer or otherwise warranted allowing HSTA to file its answer on September 23, 2013; (2) the Board abused its discretion in the oral ruling that all material facts are deemed admitted for the lack of any answer filed by HSTA when an extension of time to file the answer was warranted; and (3) striking the answer is highly prejudicial and in the absence of any showing of prejudice to the employer that HSTA was entitled to file the answer to facilitate the litigation. HSTA cited to HRCP Rules 6 and 12; HAR §§ 12-42-8, 12-42-45, and 12-42-50; United Public Workers, AFSCME, Local 646, AFL-CIO v. Benjamin Cayetano, CE-01-378, Order No. 2014; and various case citations for legal support.

On October 4, 2013, Complainant filed COMPLAINANT'S REPLY TO HSTA'S OPPOSITION TO MOTION TO STRIKE ITS UNTIMELY ANSWER, asserting HSTA misstates the Board's rules; fails to address the unambiguous wording of HRCP Rule 12(a)(3)(A); fails to apprise the Board of legal precedent which is directly on point; wrongly claims there has been no material delay; and fails to address the fact that the Board already ruled the answer is untimely.

J. HSTA's Request to File Proposed Findings of Fact and Conclusions of Law with Brief Now Scheduled to be Filed on or by October 21, 2013

On September 26, 2013, HSTA filed HSTA'S REQUEST TO FILE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH BRIEF NOW SCHEDULED TO BE FILED ON OR BY OCTOBER 21, 2013, pursuant to HAR § 12-4-8(17)(B).

II. LEGAL STANDARDS

A. Motions to Dismiss

In considering a motion to dismiss, the Board's consideration is strictly limited to the allegations of the Complaint, which are deemed to be true. See County of Kauai v. Baptiste, 115 Hawai'i 15, 24, 165 P.3d 916, 925 (2007) (citing In re Estate of Rogers, 103 Hawai'i 275, 280-81, 82 P.3d 1190, 1195-96 (2003), *reconsideration denied*, 115 Hawai'i 231, 116 P.3d 991. Dismissal is improper unless it appears beyond doubt that the complainant can prove no set of facts in support of the claim which would entitle the complainant to relief. Id.

Additionally, when considering a motion to dismiss, the Board may review any evidence, such as affidavit and testimony, to resolve factual disputes concerning the existence of jurisdiction. Yamane v. Pohlson, 111 Hawai'i 74, 81, 137 P.3d 980, 9987 (2006) (citing McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988); 5A C. Wright & A. Miller, Federal Practice and Procedure § 1350, at 213 (1990)).

B. Motions to Stay

The standard of review for determining whether a circuit court properly granted a motion to stay proceedings pending arbitration is *de novo*. Koolau Radiology, Inc. v. Queen's Medical Center, 73 Haw. 433, 439-40, 834 P.2d 1294, 1298 (1992). Generally, in deciding whether to grant a motion to stay proceedings pending arbitration, courts consider whether an arbitration agreement exists between the parties, and if so, whether the subject matter of the dispute is arbitrable under such agreement. Id. at 445, 834 P.2d at 1300.

C. Motions for Summary Judgment

With respect to the motion for summary judgment, the Hawaii Supreme Court articulated the well-established standards and burden of proof in Thomas v. Kidani, 126 Hawai'i 125, 129-130, 267 P.3d 1230, 1234-1235 (2011):

> Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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.

(Quoting Fujimoto v. Au, 95 Hawai'i 116, 136, 19 P.3d 699, 719 (2001)). A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Id. The court reviews the evidence in the light most favorable to the party opposing the motion for summary judgment. Id. at 137, 19 P.3d at 720.

The burden is on the party moving for summary judgment to show the absence of any genuine issue as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. This burden has two components. First, the moving party has the burden of producing support for its claim that: (1) no genuine issue of material fact exists with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions; and (2) based on the undisputed facts, it is entitled to summary judgment as a matter of law. Only when the moving party satisfies its initial burden of production does the burden shift to the non-moving party to respond to the motion for summary judgment and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial. Second, the moving party bears the ultimate burden of persuasion. This burden always remains with the moving party and requires the moving party to convince the court that no genuine issue of material fact exists and that the moving part is entitled to summary judgment as a matter of law. French v. Hawaii Pizza Hut, Inc., 105 Hawai'i 462, 470, 99 P.3d 1046, 1054 (2004) (internal quotes omitted).

D. Answers to Prohibited Practice Complaints

HAR § 12-42-45, which governs answers to prohibited practice complaints, provides in relevant part:

> (a) A respondent shall file a written answer to the complaint within ten days after service of the complaint. One copy of the answer shall be served on each party, and the original and five copies, with certificate of service on all parties, shall be filed with the board.

* * *

(g) If the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing.

E. Proposed Findings of Fact and Conclusion of Law

HAR § 12-42-8, which governs proceedings before the Board, provides in relevant part in paragraph (g), which specifically governs hearings, as follows:

(17) Argument, briefs, proposed findings:

(A) Any party shall be entitled, upon request made before the close of the hearing, to present oral argument.

(B) Any party shall be entitled, upon request made before the close of hearing, to file a brief or proposed findings of facts and conclusions of law, or both, within such time as may be fixed by the board, but not in excess of fifteen days from the close of the hearing.

(C) The board may direct oral argument or the filing of briefs or proposed findings of facts, conclusions of law, or both, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein.

* * *

(18) Decisions and orders of the board:

(A) Every decision and order rendered by the board shall be in writing or stated in the record and shall be accompanied by separate findings of facts and conclusions of law. If any party has filed proposed findings of fact, the board shall incorporate in its decision a ruling upon each proposed finding so presented. A certified copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed to each party

or his [or her] attorney or representative, and shall be released for public information.

III. DISCUSSION

A. HSTA's Motion to Dismiss Complaint

Pursuant to HRS § 377-9 (l), "[n]o complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence." This provision is made applicable to the filing of prohibited practice complaints by HRS § 89-14, which provides in relevant part that "[a]ny controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided in section 377-9[.]"

Complainant received a copy of the disputed Exhibit 1 on or about October 29, 2010. Respondent argues that the Complaint is therefore untimely. However, the Complaint alleges, *inter alia*, prohibited practices due to Respondent's alleged refusal to bargain in good faith, refusal to recommence bargaining over the content of Exhibit 1, and attempt to use the grievance process to reform the Supplemental Agreement.

For purposes of a motion to dismiss, the factual allegations in the Complaint are deemed to be true. The Complaint alleges, *inter alia*, that on January 3, 2011, Complainant demanded further negotiations over the disputed Exhibit 1, and that on January 7, 2011, HSTA notified Complainant that it has not reconsidered its position but was willing to meet and discuss the matter before taking any further action. On January 21, 2011, the parties met to discuss the salary placement dispute. On March 7, 2011, HSTA informed Complainant of its desire to convene a bargaining sub-committee to review teacher data for the purpose of salary placement. On March 24, 2011, Complainant notified HSTA that it disputed the convening of an ad-hoc subcommittee, did not consent to negotiate the subject of "full-time ULS service" and still disputed the validity of Exhibit 1. On March 24, 2011, HSTA notified Complainant that it saw no purpose to meet and further discuss the salary placement dispute. On April 13, 2011, HSTA filed a class grievance regarding the disputed Exhibit 1.

Based upon the allegations of the Complaint, the Board finds and concludes that the Complaint is timely with respect to the allegations of prohibited practices due to the alleged refusal to bargain in good faith and attempt to grieve Exhibit 1. As alleged in the Complaint, HSTA did not refuse to negotiate the dispute over Exhibit 1 until March 24, 2011; further, that the class grievance was filed on April 13, 2011. Accordingly, the Complaint is timely.

With respect to the arbitrability of the dispute and the Board's jurisdiction, there is genuine dispute of fact over whether the Employer received a copy of Exhibit 1 in the course of

negotiations. Moreover, the Board finds and concludes that the gravamen of the dispute over Exhibit 1 is not "interpretation" or "application" of Exhibit 1, but whether Exhibit 1 was properly negotiated at all. The Board, and not an arbitrator, has exclusive original jurisdiction over the question of whether the terms of Exhibit 1 constitute a subject of mandatory bargaining under HRS chapter 89, and if so, whether HSTA violated its statutory duty to bargain in good faith when it allegedly walked away from the bargaining table, as well as exclusive, original jurisdiction over the question of whether HSTA's grievance is in direct violation of HRS § 89-10.8. HRS § 89-14 provides in relevant part that "the board shall have exclusive original jurisdiction over such controversy [concerning prohibited practices.]"

In summary, the Board denies the Motion to Dismiss Complaint, as orally ruled on August 12, 2011.

B. Complainant's Motion to Stay Grievance/
Arbitration Proceedings in HSTA Grievance #OC-11-24

On April 13, 2011, Respondent filed a class grievance over the disputed Exhibit 1. On August 3, 2011, Respondent filed with the circuit court as a special proceeding a motion to compel arbitration of that grievance. On March 2, 2012, the circuit court entered its "Order Denying HSTA's Motion to Compel Arbitration Filed August 3, 2011" and entered its final "Final Judgment" on March 28, 2012. On March 29, 2012, HSTA filed an appeal to the Hawaii Intermediate Court of Appeals (ICA). As part of its discussion, the ICA stated in part:

> The existence of a grievance, however, is conditioned on a finding that the parties negotiated the terms of the initial Supplemental Agreement in good faith. HRS § 89-10.8(a)(1) ("A dispute over the terms of an initial or renewed agreement shall not constitute a grievance[.]"). Thus, an arbitrator cannot determine whether there has been a violation of the Supplemental Agreement without first considering whether the initial terms, specifically the contents of Exhibit 1, had ever been properly negotiated in the first place.
>
> Consequently, the issue which HSTA wishes to compel to arbitration is closely related to the issues raised in ULS's prohibited practice complaint. ULS's prohibited practice complaint alleges HSTA failed to bargain in good faith and requests an order declaring that Exhibit 1 was never properly negotiated. The complaint also challenges the validity of HSTA's grievance, alleging the grievance violates HRS § 89-10.8(a)(1) by

improperly attempting to give an arbitrator subject matter jurisdiction to adjudicate a bargaining dispute over terms that have not yet been negotiated into the Supplemental Agreement.

Pursuant to HRS § 89-14 (2012 Repl.), the HLRB has exclusive original jurisdiction over the issues raised in ULS's complaint. See also Hawai'i Gov't. Employees Ass'n, AFSCME Local 152, AFL-CIO v. Lingle, 124 Hawai'i 197, 204, 239 P.3d 1, 8 (2010) ("[T]he legislature clearly intended for the HLRB to have exclusive original jurisdiction over prohibited practice complaints[.]"). In this case, the HLRB has already chosen to exercise its exclusive jurisdiction over ULS's complaint, as indicated by its denial of HSTA's motion to dismiss the complaint.

* * *

Although HSTA correctly asserts that parallel proceedings may be pursued, under these circumstances, compelling arbitration likely would have produced conflicting or redundant judgments and wasted efforts and expense. On the other hand, the HLRB's resolution of ULS's statutory claims will not require the HLRB to adjudicate the interpretation or application of the terms. Furthermore, ULS does not dispute that if the HLRB decides that HSTA did not violate its statutory duties under HRS Chapter 89 and that the grievance is valid, any remaining issues would be subject to arbitration. Therefore, we agree with the circuit court's assessment that HSTA's motion to compel arbitration was premature.

Hawaii State Teachers Association v. University Laboratory School, 2013 Haw. App. LEXIS 201, 2013 WL 1578338 (Haw. Ct. App. April 15, 2013) (CAAP-12-0000295).

The Board agrees with, and hereby adopts, the findings and conclusions of the ICA as detailed in its discussion in CAAP-12-0000295. For the same reasons, the Board hereby grants Complainant's Motion to Stay Grievance/Arbitration Proceedings in HSTA Grievance #OC-11-24.

C. HSTA's Request to Schedule Hearing on Prohibited Practice Complaint

On November 10, 2011, HSTA filed HSTA'S REQUEST TO SCHEDULE HEARING ON PROHIBITED PRACTICE COMPLAINT, requesting that "the Board set for hearing the prohibited practice complaint," and asserting in an accompanying affidavit that, "[t]he Board denied HSTA's motion to dismiss and took under advisement the Local School Board's motion to stay grievance/arbitration proceedings," and that, "[a]s the parties have not waived the time in which to hold a hearing on a complaint, HSTA requests that the Board notice a status conference for the purpose of scheduling trial dates to hear the merits of the Employer's prohibited practice complaint.

On April 16, 2013, the Board sent out a Notice of Status Conference, notifying the parties that a status conference would be held on May 6, 2013. A status conference was subsequently held on May 6, 2013, at which the Board set deadlines for the filing on motions in this case, and scheduled the hearing on such motions.

On September 20, 2013, the Board heard oral argument on Complainant's Motion for Partial Summary Judgment, and on HSTA's Motion to Stay Proceedings until Review by the Hawaii Supreme Court of Special Proceedings is Completed. Following oral arguments, the Board orally ruled that HSTA failed to file an answer to the Complaint, despite the Board's denial of HSTA's Motion to Dismiss Complaint following oral argument on August 12, 2011. Pursuant to HAR § 12-42-45(g), "[i]f the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing." Accordingly, HSTA's Request to Schedule Hearing on Prohibited Practice Complaint is denied because the failure to file a timely answer to the Complaint constitutes a waiver of hearing.

D. Complainant's Motion for Partial Summary Judgment

Complainant asserts in its Motion for Partial Summary Judgment that it is entitled to judgment as a matter of law as to claims that HSTA violated: (1) HRS § 89-13(b)(2) and (4) when it refused to negotiate in good faith over the terms of Exhibit 1 of the 2009 Supplemental Agreement it negotiated with the Complainant; and (2) HRS §§ 89-10.8(a)(1) and 89-13(b)(4) by improperly attempting to grieve a bargaining dispute over the terms of said Exhibit 1. Complainant did not seek summary judgment with respect to alleged prohibited practices pursuant to HRS § 89-13(b)(1) and (5).

Following oral argument on September 20, 2013, the Board orally ruled that HSTA failed to file an answer to the Complaint, and pursuant to HAR § 12-42-45(g), "such failure shall constitute an admission of the material facts allege in the complaint and a waiver of hearing."

Accordingly, the Board finds and concludes that there are no material facts in dispute and therefore grants in part Complainant's Motion for Partial Summary Judgment, to the extent Complaint asserted that there are no material facts in dispute despite the arguments of Respondent and the declarations attached to Respondent's memorandum in opposition to the motion. The Board, however, ordered the parties to submit briefs on the parties' legal positions and conclusions of law regarding the alleged prohibited practices before it would rule on whether Complainant is entitled to judgment as a matter of law. Accordingly, the Board denies Complainant's Motion for Partial Summary Judgment with respect to legal conclusions, which will be addressed in a final decision and order on the Complaint.

E. HSTA's Motion to Stay Proceedings until Review by Hawaii Supreme Court of Special Proceedings Is Completed

The Board denies HSTA's motion to stay proceedings because the Board has exclusive original jurisdiction over the alleged prohibited practices in the Complaint pursuant to HRS § 89-14. See also Hawai'i Gov't. Employees Ass'n, AFSCME Local 152, AFL-CIO v. Lingle, 124 Hawai'i 197, 204, 239 P.3d 1, 8 (2010) ("[T]he legislature clearly intended for the HLRB to have exclusive original jurisdiction over prohibited practice complaints[.]"). Furthermore, the Board's resolution of Complainant's statutory claims will not require the Board to adjudicate the interpretation or application of the terms of the Supplemental Agreement (see the ICA's discussion in Hawaii State Teachers Association v. University Laboratory School, 2013 Haw. App. LEXIS 201, 2013 WL 1578338 (Haw. Ct. App. April 15, 2013) (CAAP-12-0000295)), and accordingly, the Board has jurisdiction over the Complaint regardless of how the Hawaii Supreme Court rules as a result of Respondent's Application for Writ of Certiorari. Finally, because a hearing on the Complaint is deemed waived, a final order on the Complaint may be issued by the Board before the arbitration (if one is so ordered by the courts) can occur.

F. Complainant's Motion to Strike HSTA's Untimely Answer

On May 2, 2011, the Board sent to Respondent a NOTICE TO RESPONDENT OF PROHIBITED PRACTICE COMPLAINT, with a copy of the Complaint attached, and directed Respondent to "file with this Board the original and five (5) copies of your answer to the Prohibited Practice Complaint, with proof of service upon Complainant, **no later than 4:30 p.m. of the tenth say after service of the complaint**" (emphasis added). Additionally, § 12-42-45 of the Board's administrative rules, which have the force and effect of law (State v. Kotis, 91 Hawai'i 319, 331, 984 P.2d 78, 90 (1990)), provides in relevant part (emphasis added):

(a) A respondent **shall file a written answer to the complaint within ten days after service of the complaint.** One copy of the answer shall be served on each

party, and the original and five copies, with certificate of service on all parties, shall be filed with the board.

However, Respondent did not file an answer until September 23, 2013. Instead, Respondent filed a Motion to Dismiss Complaint on May 12, 2011. The Motion to Dismiss Complaint did not cite to any legal authority under which, or pursuant to, it was being filed, and neither did the motion request an extension of the deadline to file an answer, nor notify the Board that Respondent planned to file an answer pursuant to the tolling provisions of HRCP Rule 12(a)(3)(A).

The Board has previously applied HRCP Rule 12(a)(3)(A) to motions to dismiss filed in lieu of answer. Assuming, *arguendo*, that Respondent's Motion to Dismiss Complaint triggered the tolling provisions of Rule 12(a)(3)(A) despite not citing to that rule or requesting such tolling, Respondent nevertheless has not cited to, and the Board is unaware of, any previous Board order where a respondent was permitted to file an answer more than two years after the Board denied a motion to dismiss. Respondent, in its opposition to Complainant's motion to strike untimely answer, cites to United Public Workers, AFSCME, Local 646, AFL-CIO v. Benjamin Cayetano, CE-01-378, Order No. 2014; however, in that case, the respondents were ordered to file an answer to the complaint within ten days after receipt of the Board's ruling denying the motion to dismiss, and thus Order No. 2014 supports the conclusion that answers must be filed within ten days after notice of the Board's ruling on a motion to dismiss filed in lieu of answer.

Respondent also relies on HRCP Rule 12(a)(3)(A). However, that rule provides, "if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action[.]" Accordingly, the rule does not state that a written order must be issued before the ten days begins to run; rather, the rule requires that an answer must be served within ten days "after notice" of the court's action. In the present case, Respondent had notice that the Board orally denied the Motion to Dismiss Complaint on August 12, 2011, as evidenced by HSTA's pleadings and the ICA's decision in CAAP-12-0000295, and HSTA's pleadings in the present case, including its November 10, 2011, Request to Schedule Hearing on Prohibited Practice Complaint ("[t]he Board denied HSTA's motion to dismiss and took under advisement the Local School Board's motion to stay grievance/arbitration proceedings").

HAR § 42-8(g)(18), provides that every decision and order rendered by the Board "shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law." In the present case, the Board's ruling on the Motion to Dismiss Complaint was stated on the record following oral argument on the motion on August 12, 2011. Furthermore, if Respondent expected the tolling of time to answer to run until a written order

was issued, it was incumbent on Respondent to make such a request to the Board *at that time*. Finally, Respondent's position would lead to an absurd result because there may be instances where the Board does not issue a written order on motions until it issues the final written decision and order.

HAR § 12-42-45(d) provides that "[i]n extraordinary circumstances as determined by the board, the board may extend the time within which the answer shall be filed." However, the Board finds Respondents' assumptions that (1) HRCP Rule 12(a)(3)(A) would automatically apply to the Motion to Dismiss Complaint despite not citing to the rule or requesting tolling; and (2) that the tolling would end only upon the issuance of a written order despite never making that assumption known to the Board, do not constitute extraordinary circumstances to extend the time to answer the Complaint. Furthermore, Respondent did not even request an extension pursuant to § 12-42-45(d) prior to filing the untimely Answer, despite notice of the Board's ruling at oral argument on September 20, 2013.

HAR § 12-42-45 further provides in relevant part:

> (g) If the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing.

Thus, the rule is clear as to the effect of failure to file a timely answer: such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing.

In the present case, as found above, the Board does not find extraordinary circumstances that warrants an extension of time to file an answer pursuant to § 12-42-45, and, at any rate, Respondent did not request such an extension prior to filing an answer more than two years after the Board's oral ruling on the Motion to Dismiss Complaint on August 12, 2011, and following the Board's oral ruling on September 30, 2013.

Furthermore, the Board has previously ruled that, where a respondent "d[oes] not timely file an answer in response to the Board's Notice" and "without justification failed to file a motion to extend the time to answer with the Board[,]" the failure to timely answer the complaint "constitutes an admission of the material facts alleged in the complaint and a waiver of hearing." (See Exhibit B-1 attached to Complainant's Reply to HSTA's Opposition to Motion to Strike Its Untimely Answer, Decision No. 469 in Case No. CE-01-532, United Public Workers v. William Takaba, et al.).

For the reasons discussed above, and for the reasons discussed in Complainant's Motion to Strike Untimely Answer to Prohibited Practice Complaint and its Reply to HSTA's

Opposition to that motion, with which the Board agrees, the Board grants Complainant's Motion to Strike Untimely Answer.

G. HSTA's Request to File Proposed Findings of Fact and Conclusions of Law with Brief Now Scheduled to be Filed on or by October 21, 2013

HAR § 12-42-8, which governs proceedings before the Board, provides in paragraph (g), which governs hearings, in relevant part:

> (17) Arguments, briefs, proposed findings:
>
> * * *
>
> (B) Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of facts and conclusions of law, or both, within such time as may be fixed by the board, but not in excess of fifteen days from the close of hearing.

The plain language of § 12-42-8(17)(B) requires requests to file proposed findings of facts to be "made before the close of hearing[.]" Here, Respondent's failure to file a timely answer is deemed a waiver of hearing pursuant to § 12-42-45(g), and thus § 12-42-8(17)(B) is not applicable. Furthermore, on September 20, 2013, the Board orally directed the parties to file legal briefs regarding the alleged prohibited practices in the Complaint; Respondent did not, at that time, request leave to file proposed findings of facts as well. Finally, § 12-42-8(17)(C) provides that the Board may direct "the filing of brief or proposed findings of facts, conclusions of law, or both, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein." Here, the Board deemed on September 20, 2013, that the filing of proposed findings of facts was not warranted.

Accordingly, Respondent's Request to File Proposed Findings of Facts and Conclusions of Law with Brief Now Scheduled to be Filed on or by October 21, 2013, is denied; however, as discussed above, the parties were permitted to submit legal memoranda as directed by the Board.

ORDER

For the reasons discussed above, the Board hereby makes the following order denying Respondent's Motion to Dismiss Complaint; granting Complainant Local School Board's Motion to Stay Grievance/Arbitration Proceedings in HSTA Grievance #OC-11-23; denying

HSTA's Request to Schedule Hearing on Prohibited Practice Complaint; Granting in Part and Denying in part Complainant The Education Laboratory's Motion for Partial Summary Judgment on Its Complaint; Denying HSTA's Motion to Stay Proceedings Until Review by Hawaii Supreme Court is Completed; granting Complainant The Educational Laboratory's Motion to Strike Untimely Answer to Prohibited Practice Complaint Filed September 23, 2013; and denying HSTA's Request to File Proposed Findings of Fact and Conclusions of Law with Brief Now Scheduled to Be Filed On or By October 21, 2013.

DATED: Honolulu, Hawaii, November 5, 2013.

HAWAII LABOR RELATIONS BOARD

JAMES B. NICHOLSON, Chair

SESNITA A.D. MOEPONO, Member

ROCK B. LEY, Member

Copies sent to:

Richard H. Thomason, Deputy Attorney General
Rebecca L. Covert, Esq.

[i] HRS § 89-10.8(a)(1) provides:

A public employer shall enter into written agreement with the exclusive representative setting forth 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. The grievance procedure shall be valid and enforceable and shall be consistent with the following:

(1) A dispute over the terms of an initial or renewed agreement shall not constitute a grievance[.]

[ii] HRS § 89-13(b)(1) and (2) provides:

It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9[.]

[iii] HRS § 89-9 governs the scope of negotiations and consultation, and provides in relevant part:

The employer and exclusive representative shall meet at reasonable times . . . and shall negotiate in good faith with respect to wages, hours, the amounts of contributions by the State and respective counties to the Hawaii employer-union health benefits trust fund to the extent allowed in subsection (e), and other terms and conditions of employment which are subject to collective bargaining and which are to be embodied in a written agreement as specified in section 89-10[.]

[iv] HRS § 89-13(b)(4) provides:

It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

* * *

(4) Refuse or fail to comply with any provision of this chapter[.]

[v] The Complaint alleges that Article XXIII – Entirety Clause of the Supplemental Agreement states:

This document contains the entire agreement between the parties and no other agreement, representation or understanding will be binding on the parties unless made in writing by mutual consent of both parties. Editorial revision in the ratification copy of this Master Agreement between the Board and Association may be made, provided that no items are substantially altered.

CU-05-305 – The Educational Laboratory: A Hawaii New Century Public Charter School Local School Board v. Hawaii State Teachers Association – Order No. 2948
Order Denying Respondent's Motion To Dismiss Complaint, Granting Complainant Local School Board's Motion to Stay Grievance/Arbitration Proceedings in HSTA Grievance # OC-11-23, Denying HSTA'S Request to Schedule Hearing on Prohibited Practice Complaint, Granting in Part and Denying in Part Complainant The Education Laboratory's Motion for Partial Summary Judgment, Denying HSTA's Motion to Stay Proceedings Until Review By Hawaii Supreme Court Of Special Proceeding Is Completed, Granting Complainant The Education Laboratory's Motion to Strike Untimely Answer to Prohibited Practice Complaint Filed September 23, 2013, and Denying HSTA's Request to File Proposed Findings of Fact and Conclusion of Law with Brief Now Scheduled to be Filed On Or By October 21, 2013.

[vi] HRS § 89-13(b)(5) provides:

> It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:
>
> * * *
>
> (5) Violate the terms of a collective bargaining agreement.

[vii] The Motion to Dismiss Complaint did not cite to any authority under, or pursuant to which, it was being filed.