

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

THE HAWAII STATE TEACHERS  
ASSOCIATION,

Petitioner,

and

STATE OF HAWAII, DEPARTMENT OF  
EDUCATION,

Intervenor.

CASE NO: DR-05-106

ORDER NO. 2974

ORDER GRANTING IN PART STATE OF  
HAWAII, DEPARTMENT OF  
EDUCATION'S PETITION FOR  
INTERVENTION

ORDER GRANTING IN PART STATE OF HAWAII,  
DEPARTMENT OF EDUCATION'S PETITION FOR INTERVENTION

On April 2, 2014, the HAWAII STATE TEACHERS ASSOCIATION, (Petitioner, HSTA) filed a Petition for Declaratory Ruling (Petition) with the Hawaii Labor Relations Board (Board). Petitioner alleges, *inter alia*, that on October 31, 2013, HSTA and the State of Hawaii, Department of Education (Employer) selected Martin Henner (Henner) as an arbitrator in class grievance #M 14-01 from a list provided by the Board. Henner is a qualified arbitrator pursuant to Section 89-5 (i) (6), Hawaii Revised Statutes (HRS). He was selected based on a resume and published fee schedule, which includes a postponement and cancellation charge of \$1,500 or \$750 (depending on how much advance notice is provided by the parties). Employer has refused to agree to a postponement and cancellation charge for Martin Henner. Arbitrator Henner has refused to proceed with the arbitral hearings in class grievance #M 14-01 until the dispute over arbitral fees and expenses has been resolved. Petitioner seeks a declaratory ruling and order that Henner's postponement and cancellation charge is a "fair and reasonable" "daily" rate at which he should be "compensated" under Section 89-5(i) (7), HRS, in class grievance #M 14-01, so the class grievance can be expeditiously heard and decided by Arbitrator Henner.

On April 3, 2014, the Board issued a NOTICE OF FILING OF PETITION FOR DECLARATORY RULING, which provided that interested persons wishing to intervene shall file a Petition for Intervention with the Board by April 25, 2014.

On April 9, 2014, 2014, STATE OF HAWAII, DEPARTMENT OF EDUCATION (DOE) filed a Petition for Intervention, asserting, *inter alia*, that DOE is the specific employer of the Unit 5 members allegedly covered by the grievance identified in HSTA's petition and as the

named employer in HSTA's grievance opposes cancellation fees in general. DOE considers cancellation fees as a penalty that inhibits the settlement of grievances, increases the expenses in public sector arbitrations and that the parties should not be precluded from objecting to an arbitrator's cancellation fees.

Based on a review of the Petition and Petition for Intervention, the Board finds that the DOE's interests may be affected by a Board ruling, and there are no other means to protect or existing parties to represent the Petitioner for Intervention's interests. However, pursuant to Hawaii Administrative Rules (HAR) §§ 12-42-8(g)(14) and 12-42-9(e), "[i]ntervention shall not be granted except on averments which are reasonably pertinent to the issues already presented but do not unduly broaden them."

Accordingly, the Board hereby grants DOE's petition for intervention for the limited purpose of determining the issue before the Board which is whether arbitrator Henner's postponement and cancellation charge is a "fair and reasonable" "daily" rate at which he should be "compensated" under Section 89-5(i) (7), HRS.

DATED: Honolulu, Hawaii, April 25, 2014.

HAWAII LABOR RELATIONS BOARD




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JAMES B. NICHOLSON, Chair



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SESNITA A.D. MOEPONO, Member



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ROCK B. LEY, Member

Copies to:

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