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Case No. CE-05-852

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STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

HAWAII STATE TEACHERS)	CASE NO. CE-05-852
ASSOCIATION,)	
)	STIPULATION FOR STAY OF
Complainant,)	PROCEEDINGS; ORDER
)	EXHIBIT "A"
vs.)	
)	ORDER NO. 3058
STATE OF HAWAII BOARD OF)	
EDUCATION, Department of)	
Education, and KATHRYN)	
MATAYOSHI, Superintendent,)	
Department of Education,)	
State of Hawaii,)	
)	
Respondents.)	
)	

STIPULATION FOR STAY OF PROCEEDINGS

IT IS HEREBY STIPULATED BY AND BETWEEN Complainant
HAWAII STATE TEACHERS ASSOCIATION (HSTA) and Respondents,
STATE OF HAWAII BOARD OF EDUCATION and KATHRYN MATAYOSHI,
Superintendent, Department of Education, State of Hawaii
(collectively "Respondents"), by and through their

attorneys, Colleen W. Hanabusa for the HSTA and Russell A. Suzuki and Jeffrey A. Keating, Deputy Attorneys General, for the Respondents as follows:

WHEREAS, on March 23, 2015, the HSTA filed a prohibited practice complaint before the Hawaii Labor Relations Board against Respondents regarding the use of teachers' mailboxes in the upcoming elections where ballots are to be transmitted on April 13, 2015 and with voting closing on April 24, 2015; and

WHEREAS, in a letter dated March 12, 2015 (See, Exhibit "A"), from Mr. Leslie H. Kondo, Executive Director of the State Ethics Commission, to Superintendent Kathryn S. Matayoshi, Mr. Kondo informed the Superintendent that "[b]ased on the information that we received, it is our opinion that the teacher's intended use of the school mailboxes as a means to distribute his HSTA-related campaign materials is inappropriate and would violate the State Ethics Code. More specifically, we believe that the teacher's campaign for HSTA elected office constitutes a "private business" activity, and accordingly, he cannot use school resources for that purpose. We also advise that the State Ethics Code similarly prohibits school administrators from allowing the teacher's 'campaign' from using the school mailboxes and other resources to distribute campaign

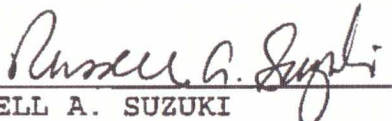
material even if requested by "campaign workers" who are not school employees;" and

WHEREAS, it is the intention of the parties to seek clarification and/or reconsideration of the letter with the State Ethics Commission; and


WHEREAS, it is the contention of the parties that it would be prudent for the Hawaii Labor Relations Board to stay the proceedings before it until the State Ethics Commission reconsiders, clarifies or confirms the letter of its Executive Director and issues a final agency decision.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, pursuant to Hawaii Revised Statutes section 91-9(d), that the proceedings before the Hawaii Labor Relations Board be stayed, including the filing of an answer by Respondents, until the Hawaii State Ethics Commission reconsiders, clarifies or confirms the letter of its Executive Director and issues a final agency decision and either party moves for the proceedings to be resumed.

DATED: Honolulu, Hawai'i, April 1, 2015



RUSSELL A. SUZUKI
JEFFREY A. KEATING
Deputy Attorneys General
Attorney for Respondents



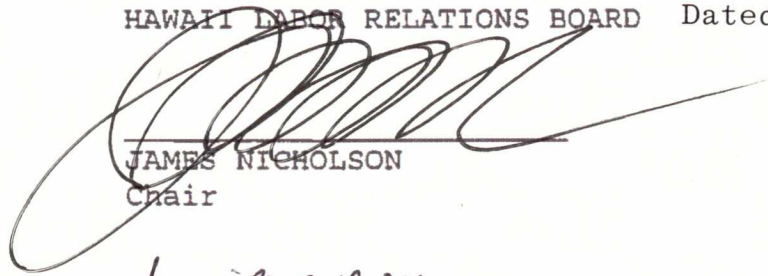
COLLEEN W. HANABUSA
Attorney for Complainant

APPROVED AND SO ORDERED:

Order No. 3058

HAWAII LABOR RELATIONS BOARD

Dated: April 1, 2015



JAMES NICHOLSON
Chair



SESNITA A.D. MOEPOWO
Member



ROCK B. LEY
Member



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, AEB Tower 970 • Honolulu, Hawaii 96813

March 12, 2015

VIA EMAIL (Kathryn Matayoshi/SUPT/HIDOE@notes.k12.hi.us)

Kathryn S. Matayoshi
Superintendent
Department of Education
Queen Liliuokalani Building
1390 Miller Street
Honolulu, Hawaii 96813

Re: Use of School Resources by HSTA Candidates (GUIDE-15-00102)

Dear Superintendent Matayoshi:

We recently offered oral guidance to the Baldwin-Kekaulike-Maui Complex Area Superintendent's office that the State Ethics Code prohibits teachers from using school mailboxes to distribute their materials soliciting support relating to an upcoming Hawaii State Teachers Association ("HSTA") election. We understand that the Complex Area Superintendent's office conveyed our position to the Maui District principals. In the event that teachers in other complex areas may be using school mailboxes to distribute their HSTA-related campaign material, we are informing you of our advice and request that you disseminate the advice as you may deem necessary and appropriate.

We reviewed the part of the current collective bargaining agreement that allows HSTA access to certain school resources, including the right to use school mailboxes to distribute HSTA notices, announcements, and other HSTA-related materials, and the portion of the HSTA manual relating to the election of its officers.¹ The HSTA manual provides that "[c]ampaign materials may be placed into teachers' school boxes."² We also had a number of discussions with HSTA's representatives and with the teacher-candidate who apparently was seeking to distribute his campaign material in the Maui schools' mailboxes.

¹ 421: State Election Rules for HSTA Officers, NEA Director & Alternative Director, dated October 22, 2011.

² We note that the manual prohibits the use of school copying and communication equipment for campaigning; it prohibits the use of school email; it prohibits teachers from distributing campaign materials during school hours; it prohibits the use of HSTA resources.

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Exhibit "A"

Superintendent Matayoshi
March 12, 2015
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Neither the collective bargaining agreement³ nor the HSTA rules, however, create an exemption to or otherwise supersede state law. It is our position that state law cannot be "contracted away," including as part of a collective bargaining agreement.⁴

The State Ethics Code prohibits state employees, generally, from using their positions to secure for themselves or others "unwarranted" privileges or preferential treatment.⁵ The statute also specifically prohibits an employee from using state resources, which include state time, equipment and facilities, for private business purposes.⁶ The State Ethics Commission has construed "private business" to include political activities.

Based on the information that we received, it is our opinion that the teacher's intended use of the school mailboxes as a means to distribute his HSTA-related campaign materials is inappropriate and would violate the State Ethics Code. More specifically, we believe that the teacher's campaign for HSTA elected office constitutes a "private business" activity, and accordingly, he cannot use school resources for that purpose. We also advise that the State Ethics Code similarly prohibits school administrators from allowing the teacher's "campaign" from using the school mailboxes and other resources to distribute campaign material even if requested by "campaign workers" who are not school employees.

Lastly, in addition to use of the school mailbox, we advised the teacher-candidate that any other campaign-related activities must not be during the school day or in school facilities.

At her request, we are copying Susan Bitler, HSTA's Interim Deputy Executive Director, on this letter. During a discussion with Ms. Bitler, we told her that we intended to communicate with you, and she requested that we copy her on that letter.

If you have questions or would like to discuss this matter further, please contact us.

Very truly yours,



Leslie H. Kondo
Executive Director

cc: James E. Halvorson, Esq., Deputy Attorney General
Susan Bitler, Interim Deputy Executive Director, HSTA

³ We understood the inquiry from the Complex Area Superintendent's office to involve a teacher's campaign materials, and not material generated and/or distributed by HSTA. From our perspective, notwithstanding the teacher's belief to the contrary, the teacher-candidate is not HSTA.

⁴ We have concerns about the authority that allows HSTA to use the school mailboxes and other resources; however, the advice herein is limited to the individual HSTA member's use of the school resources.

⁵ HRS section 84-13.

⁶ HRS section 84-13(3).