

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS
ASSOCIATION,

Complainant(s),

and

DAVID Y. IGE, Governor, State of Hawai'i;
BOARD OF EDUCATION, State of Hawai'i;
KEITH Y. HAYASHI, Interim
Superintendent, Department of Education,
State of Hawai'i; and DEPARTMENT OF
EDUCATION, State of Hawai'i,

Respondent(s).

CASE NO(S). 21-CE-05-961

ORDER NO. 3822

ORDER HOLDING CASE IN ABEYANCE

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Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA) filed a prohibited practice complaint (Complaint) with the Hawai'i Labor Relations Board (Board) alleging, among other things, that Respondents DAVID Y. IGE, Governor, State of Hawai'i (Governor); BOARD OF EDUCATION, State of Hawai'i (BOE); KEITH Y. HAYASHI, Interim Superintendent, Department of Education (Hayashi); and DEPARTMENT OF EDUCATION, State of Hawai'i (DOE and, collectively with the Governor, BOE, and Hayashi, Respondents) committed a prohibited practice under Hawai'i Revised Statutes (HRS) § 89-13(a)(8), by wilfully violating the bargaining unit 5 (BU 5) collective bargaining agreement (CBA) by refusing to follow the grievance process.

The parties have stipulated to most of the relevant facts in this case. Essentially, HSTA filed two class grievances, and DOE responded to those grievances by saying that it would take no further action on the grievances due to the Governor's emergency proclamation. HSTA submitted demands for arbitration on those class grievances, and rather than proceed to selecting an arbitrator, DOE reiterated its position of taking no further action. HSTA did not file a grievance on Respondents' alleged failure to follow the grievance process, and claims, among

other things, that filing a grievance on this alleged failure to follow the grievance process would be futile.

Hawai‘i has a long-held policy of encouraging arbitration as a means of settling disputes. *See e.g., Mars Constr. v. Tropical Enterprises*, 51 Haw. 322, 334, 460 P.2d 317, 318-19 (1969). Among other things, issues of compliance with the grievance procedure is a matter that must be addressed by an arbitrator, not by the Board or a court. *Bronster v. United Pub. Workers, Local 646*, 90 Hawai‘i 9, 16, 975 P.2d 766, 773 (1999). The scope and application of the underlying CBA are, therefore, questions that must be addressed by an arbitrator. *Id.*

Based on this policy and the Court’s rulings, the Board has consistently held that after a notice of intent to arbitrate has been sent, the Board defers to the arbitrator’s jurisdiction. *See, e.g., Haw. Gov’t Employees. Ass’n, AFSCME, Local 152, AFL-CIO v. DOE and Kishimoto*, Board Case No. 20-CE-06-949, Order No. 3784 (July 26, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/07/Order-No.-3784.pdf>).

HSTA has requested a list of arbitrators for the class grievances, which the Board has provided. At this point, the parties may proceed to arbitration through the striking of names from this list or otherwise agreeing on an arbitrator. If Respondents fail to participate in selecting an arbitrator, HSTA has options to seek to compel Respondents to pick an arbitrator and proceed to arbitration.

The Hawai‘i Supreme Court (Court) has found that HRS Chapter 658A, the Uniform Arbitration Act, applies to public sector collective bargaining agreements (CBAs). *Haw. State Tchrs. Ass’n v. Univ. Lab. Sch.*, 132 Hawai‘i 426, 432, 322 P.3d 966, 972 (2014). Therefore, HSTA could choose to file a motion to compel arbitration under HRS § 658A-7. Nothing in the BU 5 CBA requires HSTA to utilize HRS Chapter 658A; however, if HSTA chooses not to utilize HRS Chapter 658A, this does not remove the issue from the arbitrator’s jurisdiction.

Respondents have argued that the arbitration provision of the BU 5 CBA has been suspended by the Governor’s emergency proclamations for the purposes of dealing with the class grievances. However, the provisions of the Governor’s Emergency Proclamation Related to COVID-19, issued on November 29, 2021, that apply to a suspension of any part of HRS Chapter 89 expired on January 15, 2022.

Accordingly, the Board will hold this case in abeyance pending the outcome of arbitration proceedings. The Board further orders the parties to submit status reports as to the progress of arbitration.

DATED: Honolulu, Hawai'i, _____ January 25, 2022 _____.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Keani Alapa, Esq.

Richard Thomason, Deputy Attorney General

HSTA v. IGE, et al.

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