

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Complainant(s),

and

DAVID Y. IGE, Governor, State of Hawaii;,
RICK BLANGIARDI, Mayor, City and
County of Honolulu; BOARD OF
EDUCATION, State of Hawaii; and KEITH
Y. HAYASHI, Interim Superintendent,
Department of Education, State of Hawaii,

Respondent(s).

CASE NO(S). 21-CE-02-962a
21-CE-03-962b
21-CE-04-962c
21-CE-06-962d
21-CE-09-962e
21-CE-13-962f
21-CE-14-962g
21-CE-15-962h

ORDER NO. 3827

ORDER HOLDING CASE IN ABEYANCE

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Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) filed a prohibited practice complaint (Complaint) with the Hawaii Labor Relations Board (Board) alleging, among other things, that Respondents DAVID Y. IGE, Governor, State of Hawaii (Governor); RICK BLANGIARDI, Mayor, City and County of Honolulu (Mayor Blangiardi); BOARD OF EDUCATION, State of Hawaii (BOE); and KEITH Y. HAYASHI, Interim Superintendent, Department of Education (Hayashi and, collectively with the Governor, Mayor Blangiardi, and BOE, Respondents) committed a prohibited practice under Hawaii Revised Statutes (HRS) § 89-13(a)(8), by wilfully violating the relevant collective bargaining agreements (CBAs) by refusing to follow the grievance process. HGEA further alleges that Respondents committed a prohibited practice under HRS § 89-13(a)(7) by wilfully violating HRS §§ 89-10.8 and 89-19.

According to the Complaint, HGEA filed class grievances, and Respondents responded to those grievances by saying that they would take no further action on the grievances due to the Governor's emergency proclamation. Further, HGEA asserts that it 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. HGEA represented to the Board at the hearing on the merits held on November 24, 2021, that it had requested that these class grievances proceed to arbitration.

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, Lcoal 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>).

HGEA has submitted notices of intent to arbitrate to the Respondents. At this point, the parties may proceed to arbitration through selecting an arbitrator and may request a list of arbitrators from the Board if necessary. If Respondents fail to participate in selecting an arbitrator, HGEA 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, HGEA could choose to file a motion to compel arbitration under HRS § 658A-7. Nothing in the relevant CBAs requires HGEA to utilize HRS Chapter 658A; however, if HGEA chooses not to utilize HRS Chapter 658A, this does not remove the issue from the arbitrator's jurisdiction.

Respondents have argued that the arbitration provisions of the CBAs have 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. The Governor's Emergency Proclamation Related to COVID-19 (Omicron Variant), issued on January 26, 2022 does not contain any suspension of any part of HRS Chapter 89.

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, _____ March 2, 2022 _____.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

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HGEA v. IGE, et al.

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