STATE OF HAWAI‘I

HAWAI‘I LABOR RELATIONS BOARD

In the Matter of DONNA CAMPBELL, Complainant, and DEPARTMENT OF EDUCATION, State of Hawai‘i; and HAWAII STATE TEACHERS ASSOCIATION, Respondents.	CASE NOS. 23-CE-05-976 23-CU-05-400 DECISION NO. 526 FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER
In the Matter of DAVID REID, Complainant, and DEPARTMENT OF EDUCATION, State of Hawai‘i; and HAWAII STATE TEACHERS ASSOCIATION, Respondents.	CASE NOS. 23-CE-05-978 23-CU-05-398
In the Matter of CECILY THERESE BEST, Complainant, and DEPARTMENT OF EDUCATION, State of Hawai‘i; and HAWAII STATE TEACHERS ASSOCIATION, Respondents.	CASE NOS. 23-CE-05-979 23-CU-05-399

FINDING OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

I. Introduction and Statement of the Case

This consolidated case[1] arises from prohibited practice complaints[2] filed by Complainants DONNA CAMPBELL (Ms. Campbell), DAVID REID (Mr. Reid), and CECILY THERESE BEST (Ms. Best) (collectively, Complainants) against Respondent DEPARTMENT OF EDUCATION, State of Hawai‘i (DOE) and Respondent HAWAI‘I STATE TEACHERS ASSOCIATION (HSTA), alleging, among other things, that DOE committed prohibited practices by violating the terms of the bargaining unit 5 (BU 05) collective bargaining agreement (CBA) by failing to properly pay them for their years of service beginning with their November 18, 2022 paychecks in violation of Hawai‘i Revised Statutes (HRS) §§ 89-13(a)(5), (7), and (8), and that HSTA breached its duty of fair representation and committed prohibited practices under HRS § 89-13(b)(2) by failing to request negotiation under HRS § 89-9(a), (b), and (c) over a DOE repricing plan.

Following an initial hearing on dispositive motions, the Hawai‘i Labor Relations Board (Board) denied all motions for summary judgment because material facts were in dispute, but granted, in part, and denied, in part, HSTA's motion to dismiss. *See* Order No. 3983, Minute Order, dated August 15, 2023.

Specifically, the Board dismissed claims against HSTA under HRS § 89-13(b)(2) and claims against DOE[3] under HRS § 89-13(a)(5), due to lack of standing.

By order of the Board,[4] Complainants further amended their prohibited practice complaints to include additional claims that: (1) HSTA committed prohibited practices under HRS §§ 89-13(b)(1) and (4) and violated HRS §§ 89-3 and 89-8(a); and (2) DOE committed prohibited practices under HRS §§ 89-13(a)(1) and (7) and violated HRS § 89-3.

From January 22-26, 2024, the Board held hearings on the merits on Complainants' third amended prohibited practice complaints.[5]

The Board admitted Board Exhibit 1, Complainants renumbered Exhibits CU-01 through CU-22,[6] DOE Exhibits RE-1 to RE-8, and HSTA renumbered Exhibits RU-1 and RU-2[7] into the record and took judicial notice of Act 146, Session Laws of Hawaii (SLH) 2022 and Act 248, SLH 2022, including all versions of S.B. No. 2819 (2022) and H.B. No. 1600 (2022) and related committee reports and written testimony.

In their case against DOE, Complainants called HSTA Deputy Executive Director Andrea Eshelman (Ms. Eshelman), Mr. Reid, DOE Assistant Superintendent Sean Bacon (Mr. Bacon), Ms. Campbell, and Ms. Best as witnesses. DOE called Mr. Bacon, Mr. Reid,

Ms. Campbell, and Ms. Best as witnesses. In their case against HSTA, Complainants called Ms. Eshelman, Ms. Campbell, Ms. Best and Mr. Reid as witnesses.

Following Complainants' presentation of their case against HSTA, the Board granted HSTA's oral motion for directed verdict and denied Complainants and DOE's oral motions for directed verdict.[8]

Both Complainants and DOE chose to provide closing arguments and waive post-hearing briefs. Following closing arguments, the record in this case was closed.

During the course of the proceedings and after ruling on the parties' motions for directed verdict, the Board narrowed the remaining issues in this case to:

- Whether DOE committed prohibited practices by failing to comply with provisions of HRS § 89-9(f)(2) during the implementation of its repricing plan?

- Whether DOE committed prohibited practices by interfering, restraining, or coercing any employee in the exercise of rights guaranteed under HRS § 89-3?

Based upon review of the entire record in this case, the Board makes the following findings of fact and conclusions of law and order concluding that DOE committed prohibited practices under HRS §§ 89-13(a)(1) and (7) by violating HRS §§ 89-3 and 89-9(f)(2). *See* Order No. 4022, Minute Order, dated February 5, 2024.

Any finding of fact improperly listed as a conclusion of law is a finding of fact. Any conclusion of law improperly listed as a finding of fact is a conclusion of law.

II. Findings of Fact

At all relevant times, Ms. Campbell, Mr. Reid, and Ms. Best were employed[9] as teachers by DOE and were members of BU 05.[10]

HSTA is the exclusive representative[11] for BU 05.

DOE is a public employer[12] and part of the relevant employer group[13] for BU 05.

HSTA and the relevant employer group are parties to the BU 05 CBA.[14]

At all relevant times, Ms. Eshelman was the Deputy Executive Director and chief negotiator for HSTA.

Mr. Bacon was appointed DOE Assistant Superintendent, Office of Talent Management, in December 2022, after serving as Interim Assistant Superintendent since May 2021.

Mr. Reid and Ms. Best were each credited with six years of verified non-BU 05 service when they initially entered DOE service in 2017 and 2010, respectively.

Ms. Campbell, who was previously employed by DOE, was credited for her past DOE service and with six years of verified non-BU 5 service when she reentered DOE service in 2010.

On January 16, 2020, Christina M. Kishimoto (Dr. Kishimoto), then-DOE Superintendent of Education, presented to Catherine Payne, then-Chairperson of the State of Hawai‘i Board of Education, DOE's intent to conduct an Experimental Modernization Project (EMP), in accordance with HRS § 78-3.5, to provide extra compensation to licensed, tenured teachers to address equity and compression of salaries. In support of the recommendation, Dr Kishimoto argued, "we believe these pay adjustments will improve overall teacher retention, especially teachers who are 'home-grown,' and many of our most experienced teachers who may otherwise elect to leave teaching rather than remain." The desired effective date to implement compensation adjustments for certain eligible teachers under the EMP was the first day of the 2020-2021 school year.

In 2022, the Hawai‘i State Legislature (Legislature) repealed HRS §§ 302A-624(c) and 302A-627(a) through S.B. No. 2819, S.D. 2, H.D. 2, C.D. 1, which became Act 146, SLH 2022.[15] DOE supported the repeal of those statutory provisions.

Also, in 2022, the Legislature allocated $121,702,128 or so much thereof as may be necessary for fiscal year 2022-2023 for repricing and other cost items pursuant to HRS Chapter 89, through H.B. No. 1600, H.D. 1, S.D. 2, C.D. 1, which became Act 248, SLH 2022.

On October 6, 2022, DOE announced its plan to address equity and compression issues in teacher salaries through salary adjustments pursuant to the funding proviso in Act 248, SLH 2022. This "repricing plan" changed the metrics of how DOE paid teachers.

DOE's repricing plan was developed and implemented pursuant to HRS § 89-9(f)(2). As such, DOE consulted with HSTA regarding the repricing plan but did not negotiate with HSTA because the repricing plan was employer initiated and did not alter the applicable BU 05 salary schedule or the applicable BU 05 CBA.

The repricing plan involved a single class within BU 05 consisting of teachers, librarians, and counselors. Both Ms. Eshelman and Mr. Bacon participated in consultation over the repricing plan.

It is undisputed that only BU 05 service was considered in determining salary adjustments under DOE's repricing plan. Non-BU 05 service was not considered despite

HSTA's request that non-BU 05 service be included in determining salary adjustments under the repricing plan.

Under repricing, teachers who had between 0 and less than 2 years of BU 05 service were placed on step 5 of the salary schedule. For each additional two years of BU 05 service, a teacher was placed one step higher, up to a maximum step 14B for 22 years or more of BU 05 service.

Repricing was a one-time step adjustment for BU 05 teachers who were actively employed on the last teacher workday of the school year 2021-2022 and continued employment on the first teacher workday of the school year 2022-2023. Salary adjustments were meant to be permanent.

On November 18, 2022, teachers received retroactive pay pursuant to the repricing plan, which was based on their BU 05 years of service. After the repricing process, teachers who had been credited with up to six years of non-BU 05 service in their placement on the salary schedule, including Ms. Campbell, Mr. Reid, and Ms. Best, did not move up the pay scale in tandem with their DOE counterparts.

III. Principles of Law

HRS § 89 -13

> **§ 89-13 Prohibited practices; evidence of bad faith.** (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:
>
> (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
>
> * * *
>
> (7) Refuse or fail to comply with any provision of this chapter[.]

HRS § 89-9(f)

> **§ 89-9 Scope of negotiations; consultation.**
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> * * *
>
> (f) The repricing of classes within an appropriate bargaining unit may be negotiated as follows:
>
> (1) At the request of the exclusive representative and at times allowed under the collective bargaining agreement, the employer shall negotiate the repricing of classes within the bargaining unit. The negotiated repricing actions that constitute cost items shall be subject to the requirements in section 89-10; and

(2) If repricing has not been negotiated under paragraph (1), the employer of each jurisdiction shall ensure establishment of procedures to periodically review, at least once in five years, unless otherwise agreed to by the parties, the repricing of classes within the bargaining unit. The repricing of classes based on the results of the periodic review shall be at the discretion of the employer. Any appropriations required to implement the repricing actions that are made at the employer's discretion shall not be construed as cost items.

HRS § 89-3

§89-3 Rights of employees. Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4.

IV. Discussion and Conclusions of Law

A. DOE Violated Provisions of HRS § 89-9(f)(2) During the Implementation of Its Repricing Plan

HRS § 89-9(f)(2) provides, in pertinent part, that if repricing has not been negotiated under HRS § 89-9(f)(1), the repricing of classes within an appropriate bargaining unit requires that the employer "ensure establishment of procedures to periodically review…the repricing of classes within in the bargaining unit" and that the "repricing of classes based on the results of the periodic review shall be at the discretion of the employer." *See* HRS § 89-9(f)(2), above.

There is no admissible evidence in the record to demonstrate that DOE had established procedures to periodically review the repricing of classes at the time of repricing.[16] Nor is there any admissible evidence to show that DOE conducted periodic review of the repricing of BU 05 employees. To the contrary, Mr. Bacon established through his testimony that DOE does not have any established written or memorialized procedures to periodically review the repricing of BU 05 employees under HRS § 89-9(f)(2) and instead relies on discussion and review of wages and salaries through the collective bargaining process.

Likewise, it was established through testimony that repricing concerned a single class,[17] that is, BU 05 employees. With that fact, there is no authority anywhere in HRS Chapter 89 that

allows an employer like DOE to carve out or exclude any member of the class that is being repriced.

Evidence adduced at hearing established that Complainants relied on DOE's inducement of providing credit for up to six years of verified non-BU 05 service in accepting employment, or in Ms. Campbell's case, reemployment, with DOE. There is no evidence that Complainants were ever informed that their six years of credited non-BU 05 service could be taken away or negated.

By refusing to consider non-BU 05 teaching experience in determining salary adjustments under the repricing plan, DOE effectively excluded Complainants from the class. If DOE is allowed to exclude members of a single class from repricing, this would establish precedent and present the opportunity for an employer to discriminate against members of a class on a whim when repricing under HRS § 89-9(f)(2). It could also result in the circumvention of collective bargaining.

The Board recognizes that this case presents an unusual situation where monies were allocated by the Legislature prior to any negotiation or consultation between DOE and HSTA, contrary to customary practice where funds are allocated only after collective bargaining has been completed. *See*, *e.g.*, Att. Gen. Op. 74-6 (Legislature has authority to enact pay raise legislation for a unit of employees, but it would be inconsistent with the overall intent and purpose of the collective bargaining law). It resulted in a "tail wagging the dog" scenario.

Nevertheless, the Board cannot, and indeed has no authority to, rewrite an existing statute. Rather, "[o]ur function is to interpret the statute [or statutory scheme] as it exists, not to indulge in judicial legislation in the guise of statutory construction." Territory of Hawaii v. Shinohara*,* 42 Haw. 29, 34 (Haw. Terr. 1957); Matter of Kanahele, 152 Haw. 501, 526 P. 3d 478 (2023). Further, "the Legislature is presumed to know the law when it enacts statutes, including this court's decisions, and agency interpretations." *See* Peer News LLC v. City & County of Honolulu, 138 Haw. 53, 69, 376 P.3d 1, 17 (2016).

"[T]he fundamental starting point for statutory interpretation is the language of the statute itself.... [O]ur foremost obligation [is] to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." Ito v. Invs. Equity Life Holding Co., 135 Haw. 49, 61, 346 P.3d 118, 130 (2015). Furthermore, "[s]tatutory construction dictates that an interpreting court should not fashion a construction of statutory text that effectively renders the statute a nullity or creates an absurd or unjust result." Richardson v. City & County of Honolulu*,* 76 Haw. 46, 60, 868 P.2d 1193, 1207, *reconsideration denied,* 76 Hawai`i 247, 871 P.2d 795 (1994).

While the Board understands and does not discourage DOE's decision to implement repricing under HRS § 89-9(f)(2), adherence to the plain and unambiguous language of the statute is required. *See* Twentieth Century Furniture v. Labor & Indus. Relations Appeal Bd.,

52 Haw. 577, 579-80, 482 P.2d 151, 152-53 (1971). Here, there was only one class to be repriced and that class should have included Complainants. Generally, the word "shall" as used in statutes is construed as imperative or mandatory. *See* Leslie v. Bd. of Appeals of County of Hawai'i, 109 Haw. 384, 393-94, 126 P.3d 1071, 1080-81 (2006); Coon v. City & County of Honolulu, 98 Haw. 233, 256, 47 P.3d 348, 371 (2002). Thus, the language of HRS § 89-9(f)(2) is imperative or mandatory. The Board declines to create an exception to the clear statutory requirements of HRS § 89-9(f)(2).

In interpreting a statute, the Board gives the operative words their common meaning, unless there is something in the statute requiring a different interpretation. Schmidt v. Bd. of Dirs. of Ass'n. of Apartment Owners of The Marco Polo Apartments, 73 Haw. 526, 532, 836 P.2d 479, 482 (1992); State v. Garcia, 9 Haw. App. 325, 328, 839 P.2d 530, 532 (1992). Departure from the literal construction of the statute would be justified only if such a result were absurd and unjust and obviously inconsistent with the purposes and policies of HRS Chapter 89. *See* Ross v. Stouffer Hotel Co. (Hawaii) Ltd., 76 Haw. 454, 461, 879 P.2d 1037, 1044 (1994); State v. Magoon, 75 Haw. 164, 178, 858 P.2d 712, 719-20, *reconsideration denied,* 75 Haw. 580, 861 P.2d 735 (1993). However, adherence to the plain language of HRS § 89-9(f)(2) produces an eminently sensible and just result that is consistent with the purposes of HRS Chapter 89.

It is clear to the Board that DOE's decision to effectively exclude certain members of the class from a "compression fix" through repricing contravened the statutory provision upon which it relied. Accordingly, the Board finds that DOE failed to comply with the provisions of HRS § 89-9(f)(2) in violation of HRS § 89-13(a)(7).

B. DOE Interfered, Restrained, or Coerced Employees in the Exercise of Rights Guaranteed Under HRS § 89-3

HRS § 89-13(a)(1) provides a broad prohibition on employer interference with employees' rights under HRS Chapter 89. Because DOE a committed prohibited practice under HRS § 89-13(a)(7) by violating HRS § 89-9(f)(2), the Board finds that DOE committed a derivative violation of HRS § 89-13(a)(1) by interfering with Complainants' rights under HRS § 89-3.

Specifically, the Board finds that DOE's unilateral, unauthorized decision to reprice only certain members of the class and exclude certain others in contravention of HRS § 89-9(f)(2), constituted an interference with Complainants' HRS § 89-3 rights.

C. DOE's Conduct was Willful

To determine whether DOE committed prohibited practices under HRS §§ 89-13(a)(1) and (7), the Board must determine whether DOE acted with the conscious, knowing, and

deliberate intent to violate the provisions of HRS Chapter 89. Hawaii Government Employees Association v. Casupang, 116 Haw. 73, 99, 170 P.3d 324, 350 (2007). A respondent's omission or failure to act may support a conclusion that there was some willful misconduct. Aio v. Hamada, 66 Haw. 401, 409 n. 8, 664 P.2d 727, 732 n. 8 (1983).

The Board finds the requisite willfulness in this case.

DOE acknowledges that it intentionally excluded Complainants' creditable non-BU 05 teaching service from its repricing plan. DOE's deliberate decision to exclude certain members of the class from repricing was made clear by its support for the repeal of HRS § 302A-627(a), which stood in the way of its plan. Mr. Bacon's testimony to the contrary is not credible and, in fact, contradicts DOE's official position taken before the Legislature.

According to Mr. Bacon, the decision to exclude non-BU 5 service from repricing was not necessarily a funding issue but more of a "compression fix" for employees who were employed with DOE from approximately 2008 to 2018 but did not receive pay increases. Notably, all three Complainants were employed by DOE during the time period identified by Mr. Bacon but did not receive pay increases as a result of the "compression fix" due to the discounting of their six years of non-BU 05 service. To add to this discrepancy, DOE specifically included credit for military service in determining salary adjustments under its "compression fix" repricing.

DOE's actions show a deliberate intent to disregard and minimize the HRS Chapter 89 rights of Complainants whose non-BU 05 service was initially acknowledged then abruptly ignored. Accordingly, the Board finds DOE's conduct in violating HRS § 89-9(f)(2) and interfering with Complainants' HRS § 89-3 rights was willful.

V. Order

Based on the above, the Board finds that DOE willfully committed prohibited practices under HRS § 89-13(a)(7) by violating HRS § 89-9(f)(2) and derivative prohibited practices under HRS § 89-13(a)(1) by interfering with HRS §§ 89-3 rights.

Accordingly, the Board orders:

1. DOE must cease and desist from violating the provisions of HRS § 89-9(f)(2);

2. DOE shall include Complainants' six years of verified non-BU 05 service credit in determining each of their appropriate salary adjustment (step) and retroactive pay under the repricing plan;

3. Within 60 days of this Order, DOE shall pay each of the Complainants their appropriate salary adjustment under the repricing plan retroactive to the first teacher workday of the 2022-2023 school year;

4. Within 60 days of this Order, or such time as the Board may allow for good cause shown, Complainants shall provide to the Board a request for any additional costs or fees incurred;

5. DOE must post copies of this Decision and Order for 60 consecutive days in places where notices to employees are customarily placed. In addition to physical posting of paper notices, notices must be distributed electronically, such as by posting on an intranet or an internet site or other means that DOE customarily uses to communicate with HSTA bargaining unit members; and

6. DOE shall notify the Board of the steps taken to comply with this Order within 90 days of receipt of this Decision and Order.

Any remaining motions or issues are moot or otherwise denied.

DATED: Honolulu, Hawai'i, October 25, 2024.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

STACY MONIZ, Member

Copies sent to:

Donna Campbell, Self-Represented Litigant
David Reid, Self-Represented Litigant
Cecily Therese Best, Self-Represented Litigant
Amanda L. Donlin, Deputy Attorney General, Attorney for Respondent DOE
James E. Halvorson, Deputy Attorney General, Attorney for Respondent DOE
Keani Alapa, Esq., Attorney for Respondent HSTA

[1] The Board consolidated individual prohibited practice cases filed by Ms. Campbell, Mr. Reid, and Ms. Best by Order No. 3976 issued on July 14, 2023.

[2] Complainants originally filed individual prohibited practice complaints against DOE only. *See* Prohibited Practice Complaints filed by Ms. Campbell, Mr. Reid, and Ms. Best on February 28, 2023, March 9, 2023, and March 13, 2023, respectively. Complainants subsequently filed individual first amended prohibited practice complaints to join HSTA as a Respondent. *See* Order Nos. 3973, 3974, and 3975, respectively, granting Mr. Reid, Ms. Campbell, and Ms. Best's individual motions for leave to file an amended complaint, issued on July 13, 2023; *see also* First Amended Prohibited Practice Complaints filed by Ms. Campbell, Mr. Reid, and Ms. Best on July 14, 2023, July 13, 2023, and July 14, 2023, respectively.

[3] Although DOE did not raise the issue as a motion to dismiss, individual employees do not have standing to bring claims under HRS § 89-13(a)(5). *See* Order No. 3983.

[4] Second amended prohibited practice complaints filed by Complainants pursuant to Order No. 3983 contained alterations not permitted by the Board. *See* Second Amended Prohibited Practice Complaints filed by Ms. Campbell, Mr. Reid, and Ms. Best on August 20, 2023, August 21, 2023, and August 21, 2023, respectively. Accordingly, the Board issued Order No. 3988, Minute Order, on September 12, 2023, ordering Complainants to each file third amended prohibited practice complaints, as directed. Additionally, the Board denied HSTA's motion to dismiss, filed on September 8, 2023, and HSTA's motion for summary judgment, filed on September 10, 2023, as moot.

[5] Ms. Campbell, Mr. Reid, and Ms. Best filed their third prohibited practice complaints with the Board on September 12, 2023, September 13, 2023, and September 15, 2023, respectively.

[6] At the pretrial conference on January 12, 2024, the Board accepted Complainants Exhibits CU-01 through CU-15 and CU-17 through CU-21, and Complainants withdrew their original Exhibit CU-16. Subsequently, Complainants proposed additional Exhibits CU-21 through CU-25. At the outset of day one of the hearing on the merits, the Board admitted Exhibits CU-22 and CU-25 and excluded Exhibits CU-21, CU-23, and CU-24 from the record. All admitted Complainants Exhibits were consecutively renumbered as Exhibits CU-01 through CU-22.

[7] At the pretrial conference on January 12, 2024, HSTA withdrew its proposed Exhibits RU-2 and RU-3. For the hearing on the merits, HSTA Exhibits RU-1 and RU-4, renumbered as RU-2, were admitted into the record.

[8] DOE originally made an oral motion for directed verdict following Complainants' presentation of their case against DOE. The Board denied DOE's initial motion for directed verdict on day two of the hearing on the merits and denied DOE's renewed motion for directed verdict on day five of the hearing on the merits.

[9] Ms. Campbell, Mr. Reid, and Ms. Best are public employees within the definition of HRS § 89-2, which defines "employee" or "public employee" as:

> "Employee" or "public employee" means any person employed by a public employer, except elected and appointed officials and other employees who are excluded from coverage in section [89-6(f)].

[10] **HRS § 89-6 Appropriate bargaining units.** (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

> ***

(5) Teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent[.]

[11] HRS § 89-2 defines "exclusive representative" as:

> "Exclusive representative" means the employee organization certified by the board under section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

[12] In this capacity, DOE is a public employer within the definition of HRS § 89-2, which defines "employer" or "public employer" as:

> "Employer" or "public employer" means the…the board of education in the case of the department of education…and any individual who represents one of these employers or acts in their interest in dealing with public employees.

[13] HRS § 89-6(d) defines the employer group for BU 05 as:

> (d) For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:
>
> ***
>
> (3) For bargaining units (5) and (6), the governor shall have three votes, the board of education shall have two votes, and the superintendent of education shall have one vote[.]
>
> ***

[14] In this case, the relevant BU 05 CBA is the Agreement Between the HSTA and State of Hawai'i, Board of Education, July 1, 2021 to June 30, 2023. *See* Board Exhibit 1.

[15] Act 146, SLH 2022 repealed HRS §§ 302A-624(c) and 302A-627(a), which read:

> **§302A-624 Teachers' salary schedule.**
>
> ***
>
> (c) A teacher shall be required to spend at least one year in Class III before going on to Class IV, at least one year in Class IV before going on to Class V, at least one year in Class V before going on to Class VI, and at least one year in Class VI before going on to Class VII.

and

> **§302A-627 Salary ratings of entering or reentering teachers; credit.** (a) Any teacher with more than one year of teaching experience, and so accredited by the [DOE], entering or reentering the service of the [DOE] shall have the teacher's salary rating determined by the personnel executive of the [DOE], any other law to the contrary notwithstanding, so that the salary rating shall be equal to the salary ratings held by incumbent teachers in the [DOE] with the identical number of years of experience.

[16] On day three of the hearing on the merits, the Board denied DOE's request to recall Mr. Bacon to testify about new information he acquired about procedures required under HRS § 89-9(f)(2) between day two and day three of the hearing. The Board noted that Mr. Bacon had already testified twice, including in DOE's case-in-chief, and it would be too prejudicial and unfair at that point to recall him. On day five of the hearing on the merits, the Board denied HSTA's oral request to take judicial notice of three unfiled and unauthenticated internal DOE documents provided by DOE to HSTA.

[17] HRS Chapter 89 does not provide a definition of "class." However, the Board is informed by the HRS Chapter 76, Civil Service Law, definition of "class," which provides:

> **§76-11 Definitions.** As used in this chapter, unless the context clearly requires otherwise:
>
> ***
>
> "Class" means a group of positions that reflect sufficiently similar duties and responsibilities such that the same title and the same pay range may apply to each position allocated to the class.