

HAWAII LABOR RELATIONS BOARD

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PROHIBITED PRACTICE COMPLAINT

CASE NO. CU-05-267

INSTRUCTIONS. Submit the original and five copies of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.

2. COMPLAINANT

- a. Name, address and telephone number.

Linda Lingle, Governor  
 State of Hawaii  
 Hawaii State Capitol  
 415 South Beretania Street  
 Honolulu, Hawaii 96813  
 Telephone: 586-0034

Marie Laderta, Chief Negotiator  
 Office of Collective Bargaining  
 235 South Beretania Street, 14<sup>th</sup> Floor  
 Honolulu, Hawaii 96813  
 Telephone: 587-1100

- b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

James E. Halvorson  
 Richard H. Thomason  
 Department of the Attorney General  
 235 South Beretania Street, 15<sup>th</sup> Floor  
 Honolulu, Hawaii 96813  
 Telephone: 587-2900

3. RESPONDENT (Public Employer and/or Employee Organization or its Agents Against Whom Complaint is Filed)

a. Name, address and telephone number.

Hawaii State Teachers Association  
1200 Ala Kapuna Street  
Honolulu, Hawaii 96819  
Telephone: 833-2711

b. Name, address and telephone number of the principal representative, if known, to whom correspondence is to be directed.

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4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

Teachers and personnel of Bargaining Unit 5.

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5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

1. Linda Lingle ("Governor Lingle") is Governor of the State of Hawaii and is a public employer within the meaning of section 89-2, HRS.
2. Marie C. Laderta is the chief negotiator for the State of Hawaii and head of the Office of Collective Bargaining, and as the representative of the Governor in dealing with public employees is an employer within the meaning of section 89-2, HRS.
3. The Hawaii State Teachers Association ("HSTA") is an employee organization within the meaning of Section 89-2, HRS.
4. HSTA was duly certified as the exclusive bargaining representative of teachers and other personnel of the Department of Education, State of Hawaii ("DOE"), in bargaining unit 5 as provided in Section 89-6, HRS.

5. Governor Lingle designated as a public employer for the purpose of negotiating a collective bargaining agreement for bargaining unit 5 employees under Section 89-6 (d)(3), HRS.
6. Section 89-9(a), HRS, specifies that "the employer and the exclusive representative [HSTA] shall meet at reasonable times, including meetings sufficiently in advance of the February 1 impasse date under section 89-11, and shall negotiate in good faith with respect to wages . . . and other terms and conditions of employment that are subject to collective bargaining. . . ."
7. Section 89-2, HRS, defines "wages" as including "the number of incremental and longevity steps, the number of pay ranges, and the movement between steps within the pay range and between the pay ranges on a pay schedule under a collective bargaining agreement."
8. Complainants and HSTA negotiated teacher wages, including step movements, for the 2007-2009 collective bargaining agreement. On April 14, 2007, a tentative agreement was reached regarding teacher salaries, including step movements. (Exhibit A).
9. In consideration for the concessions granted by Complainant to HSTA regarding teacher salaries and step movements, HSTA agreed to negotiate both "reasonable suspicion" and "random" drug and alcohol testing procedures applicable to "all" bargaining unit 5 employees.
10. The negotiations with HSTA resulted in a two-year collective bargaining agreement (2007-2009) effective July 1, 2007 ("CBA"). Unit 5 CBA, Article 1 (Exhibit B).
11. Pursuant to the terms of the CBA, the parties agreed that teachers will receive an across-the-board increase of 4% for the school year ("SY") 2007-08 and a 1 step movement effective the first day of the second semester of the 2007-08 SY. *Id.* at Article XVII, Section A & B. For the SY 2008-09, the parties agreed that teachers will receive another 4% across-the-board increase, but without any step movement. *Id.* at Article XVII C.
12. Attached as Appendix II to the CBA is that certain MEMORANDUM OF UNDERSTANDING BETWEEN STATE OF HAWAII BOARD OF EDUCATION AND HAWAII STATE TEACHERS ASSOCIATION (DRUG AND ALCOHOL TESTING), entered into on July 1, 2007 by and between the State of Hawaii, Board of Education and the HSTA which reads in pertinent part as follows:

Therefore, the Association and the Board of Education shall establish a reasonable suspicion and random Drug and Alcohol Testing (DAT) procedures applicable to all Bargaining Unit 5

employees that are intended to keep the workplace free from the hazards of the use of alcohol and controlled substances.

In addition, the Association and the Board of Education agree to negotiate reasonable suspicion and random Drug and Alcohol Testing procedures which shall comply with the U.S. Department of Transportation Rules on Drug and Alcohol Testing and/or State Department of Health Rules on Substance Abuse Testing, and implement such a plan no later than June 30, 2008.

13. As of July 17, 2008 HSTA has steadfastly refused to negotiate procedures for truly "random Drug and Alcohol Testing (DAT) procedures applicable to all Bargaining Unit 5 employees..." (Exhibit C).
14. By its above stated actions, as well as other acts to be established at the hearing, HSTA has willfully violated Section 89-13(b), HRS, as follows:
  - a. Refused to bargain in good faith with the public employer as required in section 89-9, HRS;
  - b. Refused or failed to comply with the provisions of sections 89-9 and 89-10, HRS;
  - c. Violated the terms of the Unit 5 collective bargaining agreement covering the period from July 1, 2007 to June 30, 2009, including but not limited to Articles V, XVII, and XXIII; and
  - d. Violated the MEMORANDUM OF UNDERSTANDING BETWEEN STATE OF HAWAII BOARD OF EDUCATION AND HAWAII STATE TEACHERS ASSOCIATION (DRUG AND ALCOHOL TESTING), entered into on July 1, 2007 by and between the State of Hawaii, Board of Education and the HSTA and attached as Appendix II to the above-referenced Unit 5 agreement.
15. Wherefore, the Complainants, in accordance with accordance with section 377-9(d), HRS, and section 12-42-50, HAR, hereby requests the Board rule that Respondent HSTA is in violation of Chapter 89, and order appropriate relief including but not limited to:
  - a. Declaratory relief in favor of Complainants;
  - b. A declaration that HSTA has failed to negotiate in good faith and has repudiated the unit 5 agreement and the "MEMORANDUM OF UNDERSTANDING BETWEEN STATE OF HAWAII BOARD OF

