

1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

April 6, 2010

Honorable Calvin K. Y. Say
Speaker of the House
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

Wii Okabe
President
Karolyn Mossman
Vice President
Joan Kamila Lewis
Secretary-Treasurer
Alvin Nagasako
Executive Director

Dear Speaker Say:

Re: Supplemental Agreement between the Hawaii State Teachers Association and the Board of Education Addressing Furloughs

On March 23, 2010, we briefed the House and Senate leadership teams on the supplemental agreement between the Hawaii State Teachers Association (HSTA) and the Board of Education (BOE) addressing furloughs. Since that day, there have been many public and private statements by the Governor, legislators and other parties that give us reason to believe that certain aspects of the agreement and the options available to the legislature may need clarification and/or explanation. The purpose of this letter is to set the record straight.

The over-arching purpose and motivation for both the HSTA and the BOE was, and is to restore the full school year for students. The parties also agreed that any such restoration must provide for a quality educational experience on all school days. The HSTA, on behalf of our members, made serious compromises to reach this agreement.

Attached is the most recent draft of the supplemental agreement which is the same as posted on the HSTA member web site. This draft contains the terms agreed upon by the HSTA and the BOE negotiating teams, approved by the HSTA Board of Directors, and approved by a majority vote of the members of bargaining unit 5.

Terms

Based on inquires and press reports, it appears that the following items may have been misunderstood or not understood.

- 1) The agreement was negotiated under the terms of HRS 89-6(e). Under this section of the law, the Board of Education is the employer.
- 2) If one year of the agreement is funded, but the other year is not funded, the terms for the year that is funded will be implemented. For instance, for

various reasons, it might happen that funding would not be appropriated and released for the current school year, but that funding would be appropriated for the next school year. If this happened, the four remaining furlough Fridays scheduled for the current year would go on as scheduled. However, next year all student furlough days would be eliminated, as the proposed supplemental agreement would be implemented only for that year.

- 3) The agreement covers all members of bargaining unit 5. HSTA did not and would not agree to any proposal that treats some members of the bargaining unit differently than other bargaining unit members.
- 4) The agreement provides that it is subject to the Board of Education reaching "corresponding agreements" with exclusive representatives of other affected bargaining units. The HSTA recognizes that we cannot negotiate for other bargaining units. Our negotiating team insisted that all school level personnel and services be provided on all student school days. In particular, we require that administrative support and services related to health and safety be provided by the Department of Education (DOE). BOE/DOE negotiators indicated that to provide the needed services, they would need to have agreements with the other unions.
- 5) For the next school year, all student days are restored. This is accomplished by funding eleven (11) teacher work days, and the remaining six (6) furlough days will be taken on non-instructional days.

Funding

Since the DOE does not have sufficient funds on hand or appropriated to fund the agreement, the agreement addresses the amounts and process for obtaining sufficient funds.

- 1) The agreement provides for approximate amounts of \$24.5 million for the current year and \$67.5 million for the next school year. These amounts were determined by the DOE, which estimates that restoration of one furlough day costs \$6.1 million. The HSTA has reviewed the estimates provided by the DOE, but does not have the resources to verify the amounts in detail.
- 2) The aforementioned amounts include all DOE personnel. As indicated in item 4 of "terms," above, the total personnel involved ultimately will be determined by the agreements reached between the BOE and other unions.
- 3) The HSTA recognizes that after scrutiny by legislative staff and determination of what amounts (such as certain fringe benefit costs) may be already covered by budgetary provisions or other appropriations, the specific amounts needed to fund the agreement may be adjusted.

- 4) The agreement has a provision that the BOE may declare it null and void if the DOE budget does not meet minimum requirements. The purpose of this provision is to prevent a "rob Peter to pay Paul" approach to funding the agreement. Neither the HSTA nor the BOE want to end furlough Fridays by increasing class size and/or eliminating hundreds (or more) teaching positions.
- 5) The agreement recognizes practical dates for appropriating (Legislature) and releasing (Governor) funding for this year and next. For the current year, since the next furlough day is scheduled for April 23, the date for funding to be determined is April 21. For next year, the date is July 8, in order to allow for the full legislative process to be completed and to provide notice of the school calendar to families and employees before the school year starts at the end of July.

Legislature

As with any collective bargaining agreement, whether it is a master agreement or supplemental agreement, HSTA recognizes that it is up to the Legislature whether to appropriate the necessary funds. The proposed supplemental agreement is structured to enable the Legislature to make the appropriate policy and financial decisions.

- 1) The Senate passed SB 2124, appropriating funds from the Hurricane Relief Fund provided that a collective bargaining agreement be reached that includes restoration of student days and the conversion of non-instructional days to furlough days on a 2 for 1 basis. For next school year, the agreement actually is better than the 2:1 ratio (11:6). The overall agreement comes close to the Senate goal (15:7), as there is only one non-instructional day remaining in the current school year. The HSTA appreciates the initiative taken by the Senate in providing for this funding mechanism.
- 2) The House Finance Committee approved SB 2124 with amendments, so the measure is headed for conference committee. The House version of the bill deletes specific references to dollar amounts and days; and it deletes the provision that requires that the collective bargaining agreement convert non-instructional days in the 2 for 1 ratio. The HSTA appreciates the sensitivity of the Finance Committee to the collective bargaining process.
- 3) HSTA testimony before the House Finance Committee is enclosed. That testimony clearly states the HSTA position related to funding of this agreement. We believe that SB 2124 provides the best legislative vehicle for funding the proposed supplemental agreement.
- 4) Upon reviewing SB 2124 SD 2 HD 1 and the corresponding Finance Committee report, the HSTA was pleased to find no mention of an ultimatum for the HSTA to negotiate with the Governor. We were perplexed at media

reports that the House leadership is demanding that the HSTA negotiate with the Governor, since negotiations with the legitimate employer under 89-6(e), the BOE, have been completed. The HSTA will not re-negotiate the supplemental agreement with the Governor.

Governor

The HSTA urges the Legislature to resist efforts by the Governor to sabotage the proposed supplemental agreement as she did the agreement reached in December that would have addressed furlough days for the whole second semester of the current school year.

- 1) As discussed elsewhere in this letter, the Governor is not the employer under HRS 89-6(e).
- 2) The Governor successfully interfered with the December agreement, but the HSTA is holding her accountable for her behavior before the Hawaii Labor Relations Board.
- 3) The Governor's only official roles in the current process are to (a) sign (or veto) the budget and/or appropriation bills, and (b) release (or not) funds that are duly appropriated (if necessary, including a budget over-ride).
- 4) If the Legislature fails to act on the funding measure, we will never find out what the Governor actually will do with regard to a veto or release of funds. The HSTA believes the Governor eventually may be persuaded by nearly unanimous public sentiment that furlough Fridays must end.
- 5) The Governor has set an inappropriate and irrelevant condition on legislative action by insisting that funding of a furlough agreement be tied to her version of a proposed Constitutional amendment. As many in the community have noted, students' education should never be held hostage to the political agenda of a governor or anybody else.
- 6) The members of the Legislature have had their own experiences with this Governor. She has announced proposals in the press before presenting them to you—just as she has done with the HSTA and other unions. She has shown both a lack of understanding and a disregard for the legislative process, just as she has done with the collective bargaining process. She has shown a willingness to hold the public interests hostage to her own political agenda on other issues, just as she is doing with furloughs.
- 7) Together, and with the overwhelming support of the public, the HSTA, the BOE, and this Legislature can hold the Governor accountable.

Flexibility

While the negotiations process has been completed, the proposed supplemental agreement does provide for flexibility in several areas.

- 1) If there is not sufficient time to address the current year, and/or if there are not sufficient funds to address both years, the Legislature could approve funding only for the next school year.
- 2) The proposed funding amounts are based on a DOE estimate of \$6.1 million per day to restore furlough days. Further scrutiny may result in a reduction in this amount.
- 3) The BOE negotiations with other unions have not yet been finalized, so the restoration of furlough days for other units is still an open question.
- 4) The provision that the BOE may terminate the agreement if funding would undermine the DOE budget is a contingency that could be resolved between the BOE (as the employer) and the Legislature.
- 5) The HSTA is open to other suggestions for implementation, so long as they do not require changing, amending, or re-negotiating the agreement itself.

Alternatives

Part of the process of consideration of the proposed supplemental agreement is the consideration of alternatives to approval of funding the agreement.

- 1) One option is to leave the status quo in place, with students out of school four more days this year and 17 days next year. The HSTA does not believe anyone wants this to happen. Certainly, the teachers have demonstrated by a margin of 85% that they want to be back in the classrooms with their students.
- 2) As mentioned under "flexibility," the Legislature could fund next year, but not this year. The HSTA believes it would be best to address the remainder of this year, as well as next year.
- 3) Even if this agreement is not funded, funds could be provided to the DOE to reduce furlough days. The DOE then could "call back" teachers for the number of days for which sufficient funds are available. As with the current agreement, the HSTA would insist that the DOE provide for administrative support and for services relating to the health and safety of students and teachers. Also, any call back of teachers would need to include all bargaining unit 5 employees and would not involve converting non-instructional days to furlough days.

Honorable Calvin K. Y. Say

April 6, 2010

Page 6

- 4) If this agreement were funded by the Legislature but were held up by the Governor's refusal to release funds, it might be possible for the next Governor to act within the agreement and the appropriation to save the second half of next school year for the students. The BOE chair has even suggested scheduling all furlough days for next year during second semester, to give the new Governor the opportunity to act.
- 5) There may be other alternatives or variations on those presented here. The HSTA believes that the best approach is to fund the proposed supplemental agreement.

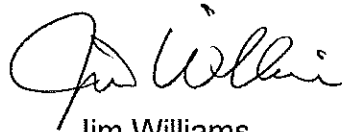
In conclusion, we hope this letter helps conferees and leadership in their consideration of funding the proposed supplemental agreement. We are available at your convenience to discuss the agreement, the contents of this letter, and other related issues of concern to the Legislature in your deliberations. Students need to be in school and teachers want to be there teaching them.

Thank you for your consideration of our views on this important matter.

Sincerely,



Wil Okabe
President



Jim Williams
Chief Negotiator

Enclosures

Copy:

Blake K. Oshiro, House Majority Leader
Roy M. Takumi, Chair, House Education Committee
Marcus R. Oshiro, Chair, House Finance Committee
Karl Rhoads, Chair, House Labor and Public Employment Committee
Members of the House of Representatives
Garrett Toguchi, BOE Chairman
John Penebacker, BOE member
Kathryn Matayoshi, DOE Interim Superintendent