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Attorneys for Complainant  
HSTA

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS  
ASSOCIATION (HSTA),

Complainant,

vs.

DAVID IGE, Governor, State of Hawaii,  
CHRISTINA M. KISHIMOTO,  
Superintendent, Department of Education,  
State of Hawaii, DEPARTMENT OF  
EDUCATION, State of Hawaii; BOARD OF  
EDUCATION, State of Hawaii,

Respondents.

HLRB NO.: \_\_\_\_\_

PROHIBITED PRACTICE  
COMPLAINT

**PROHIBITED PRACTICE COMPLAINT**

COMES NOW, Complainant HAWAII STATE TEACHERS ASSOCIATION  
("HSTA" or "Union"), and for a prohibited practice complaint against the above-identified  
Respondents, alleges and avers as follows:

## PARTIES

1. At all times relevant herein, HSTA was and is an employee organization as defined under Hawaii Revised Statutes (“HRS”) §89-2.
2. At all times relevant herein, HSTA was and is the certified exclusive representative and collective bargaining agent for all teachers and other personnel of the Department of Education (“DOE”) under the same pay schedule as that bargaining unit is defined under HRS §§89-2 and 89-6(a)(5),<sup>1</sup> and has been so recognized and certified by the Hawaii Labor Relations Board (“HLRB” or “Board”), and its predecessor the Hawaii Public Employment Relations Board pursuant to HRS §89-8.
3. At all times relevant herein, Respondent the Honorable David Ige (“Respondent Ige”) was and is the duly elected Governor of the State of Hawaii, and an employer or public employer as defined under HRS §89-2 and under the applicable collective bargaining agreement (“CBA”) covering the relevant periods herein.
4. Respondent Ige is vested with the executive power of the State of Hawaii and is responsible under the State Constitution “for the faithful execution of the laws” pursuant to Sections 1 and 5, Article V, of the Constitution of the State of Hawaii.
5. Respondent DOE, State of Hawaii (“Respondent DOE”) is a principal executive department of the State of Hawaii, charged with oversight of the statewide system of public

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<sup>1</sup> HSTA’s members include part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent within the State of Hawaii under bargaining unit 5, Multi-Track Year-Round School teachers, and charter school teachers. A Multi-Track Year-Round School is defined by Article XVIII of the Collective Bargaining Agreement as “a school operating year-round under two or more instructional tracks because its student enrollment exceeds or is soon expected to exceed design capacity by 20% or more.”

schools, and is a public employer as defined under HRS §89-2 and the applicable CBA.

6. Respondent Board of Education (“Respondent BOE”) is the executive head of Respondent DOE and is vested with the “power, as provided by law, to formulate statewide educational policy” pursuant to Section 3, Article IX of the Constitution of the State of Hawaii.

7. At all times relevant herein, Respondent Christina M. Kishimoto (“Respondent Kishimoto”) was and is the Superintendent of the DOE, State of Hawaii, and an employer or public employer as defined under HRS §89-2 and the applicable CBA.

8. Respondent Kishimoto is responsible for administering “programs of education and public instruction throughout the State, including education at the primary and secondary school levels, adult education, school library services, health education and instruction (not including dental health treatment transferred to the department of health), special education and Title I funded programs at the prekindergarten level, and such other programs as may be established by law” pursuant to “policies established by” Respondent BOE. HRS §26-12.

9. The Respondents are collectively referred to as the “Employer.”

### **SUMMARY OF ALLEGATIONS**

10. At all times relevant herein, HSTA and the Employer were and are parties to a valid, legal and enforceable CBA effective from 7/1/17 through 6/30/21.

11. The HSTA and the Employer are currently negotiating a successor contract to the CBA that expires on 6/30/21, wherein the parties are taking into consideration the effects of the COVID-19 outbreak on the State of Hawaii.

12. At all times relevant herein, the Employer also initiated discussions relating to reopening the current CBA to renegotiate provisions therein related to wages, hours, furloughs, working conditions and leave.

13. HRS §89-9(a) and (d) provide in pertinent part that neither the Employer nor the Union can “compel either party to agree to a proposal or make a concession” and the exercise of the employer’s rights delineated under HRS §89-9(d) “shall not be used to invalidate provisions of collective bargaining agreements in effect on and after June 30, 2007, and except as otherwise provided in this chapter, shall not preclude negotiations over the implementation of management decisions that affect terms and conditions of employment that are subject to collective bargaining.”

14. As part of the Union’s good faith duty in the negotiating process and its duty and responsibility to exercise due diligence on behalf of its members to determine whether reopening the existing CBA was appropriate and in the best interest of its members, HSTA requested additional information from the Employer.

15. In the midst of ongoing negotiations and the exchange of information relating to furloughs, the Employer blindsided the Union by announcing that furloughs would be unilaterally imposed and implemented on the Union.

16. On 12/9/20, Respondent Ige acknowledged during a public press conference that negotiations with HSTA were occurring and would continue, but nonetheless stated and ordered that furloughs would be imposed and that Respondent DOE was directed to implement its furlough plan effective 1/1/21.

17. Hawaii State Legislative leaders publicly questioned the legality of Governor Ige's plan to unilaterally impose and implement a furlough plan which effectively breaches and undermines the CBA in effect and binding on the parties.

18. Legislative leaders have stated that a furlough of the majority of state workers, including HSTA's members, was not yet necessary and that there were other reasonable economic alternatives and financial options to consider.

19. During his press conference, Respondent Ige threatened that if his furlough plan were not accepted by the public unions, he would be forced to layoff approximately 4,000 state workers.

20. Shortly thereafter, Respondent Kishimoto disclosed and communicated the DOE's furlough implementation plan directly with HSTA's members, to the exclusion of HSTA, and announced that the plan would go into effect on 1/1/21.

21. Neither Respondent Ige nor Respondent Kishimoto communicated or discussed the Employer's final furlough implementation plan in advance with HSTA. Instead, HSTA learned of the DOE's final furlough implementation plan for the first time from its members.

22. The Employer communicated directly with HSTA's members about the subject of ongoing negotiations and threatened layoffs if their Union did not accept their terms.

23. HSTA has attempted to continue negotiations with the Employer despite Respondent Kishimoto's announced plan to implement the DOE's final furlough plan effective 1/1/21.

24. Although Respondent Kishimoto and the DOE outwardly expressed an interest in furlough negotiations, their communications and actions speak to the contrary.

25. On 12/17/20, Respondent BOE held a meeting wherein several board members voiced concerns over the unilateral implementation of the furlough plan, urged Respondent Ige to rescind his decision and continue negotiations with the Union, and made clear that they did not agree to or sanction the furlough plan.

26. The Employer's conduct herein constitutes prohibited practices under HRS §89-13(a).

### **HAWAII COLLECTIVE BARGAINING LAWS**

27. The Hawaii Constitution, Article XIII, Section 2, grants HSTA the constitutional right to collective bargaining.

28. Article XIII, Section 2 of the Hawaii Constitution protects the ability of public unions "to engage in negotiations concerning core subjects such as wages, hours, and other conditions of employment." United Pub. Workers, AFSCME, Local 646, AFL-CIO v. Yogi, 101 Hawai'i 46, 53, 62 P.3d 189, 196 (2002).

29. A prohibited practice is any conduct or act that violates HRS Chapter 89, including the actions specified under HRS §89-13(a).

30. HRS §89-13(a) provides in relevant part that it is a prohibited practice for a public employer to wilfully:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;
- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;
- ...
- (7) Refuse or fail to comply with any provision of this chapter;
- (8) Violate the terms of a collective bargaining agreement;

HRS §89-13(a).

31. The Hawaii Legislature has declared under HRS §89-1(a):

...that joint decision-making is the modern way of administering government. Where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work; to provide a rational method for dealing with disputes and work stoppages; and to maintain a favorable political and social environment.

32. The Legislature has further declared under HRS §89-1(b) “that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.”

33. Pursuant to HRS §89-3, “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.”

34. HRS §89-9(a) provides:

The employer and the exclusive representative 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, hours, the amounts of contributions by the State and respective counties to the Hawaii employer-union health benefits trust fund to the extent allowed in subsection (e), and other terms and conditions of employment** which are subject to collective bargaining and which are to be **embodied in a written agreement** as specified in section 89-10, but such obligation does not compel either party to agree to a proposal or make a concession.

HRS §89-9(a)(emphasis added).

35. The Hawaii Supreme Court has stated:

Law on collective bargaining in public employment, without ambiguity, clearly **requires both the public employer and the exclusive representative of the public employees to bargain (negotiate) collectively in good faith**. The need for good faith bargaining or negotiation is fundamental in bringing to fruition the legislatively declared policy ‘to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.’

Bd. of Ed. v. Hawaii Pub. Employment Relations Bd., 56 Haw. 85, 87, 528 P.2d 809, 811

(1974)(emphasis added).

36. Under HRS §89-14, the HLRB has “exclusive original jurisdiction over any controversy concerning prohibited practices.” See In re United Pub. Workers, AFSCME, Local 646, AFL-CIO, Union, 131 Haw. 142, 144, 315 P.3d 768, 770 (Ct. App. 2013), as corrected (Feb. 21, 2014).



37. The HLRB has broad authority and the jurisdiction to adjudicate prohibited practice complaints in their entirety. HRS §89-5(i)(4) provides that the Board’s powers and functions include the authority to “Conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such actions with respect thereto as it deems necessary and proper[.]” HRS §89-5(i)(4); In re Hawai‘i Gov’t Emps. Ass’n, Local 152, 116 Haw. 73, 97, 170 P.3d 324, 348 (2007) (“The legislature delegated to the HLRB exclusive original jurisdiction over controversies surrounding prohibited practices including ‘those powers which are reasonably necessary’ to make its jurisdiction effective.”)

38. The HLRB’s jurisdiction as it relates to prohibited practice complaints under HRS §89-13(a) includes jurisdiction to determine whether conduct that also violates the provisions of an existing CBA constitutes a prohibited practice.

39. The Hawaii Intermediate Court of Appeals (“ICA”) has explained:

... the Board had jurisdiction to declare whether the particular action presented in the petition might constitute a prohibited practice, because the Board has the authority to take action with respect to prohibited practices. While noting the limited effect of such a ruling, the supreme court viewed this action as being within the jurisdiction of the Board, regardless of whether the same question was or was not subject to arbitration, and regardless of whether the Board’s ruling might or might not have been significant to the outcome of the arbitration.

In re United Pub. Workers, AFSCME, Local 646, AFL-CIO, Union, 131 Hawai‘i 142, 152, 315

P.3d 768, 778 (Ct. App. 2013), as corrected (Feb. 21, 2014).

40. The Hawaii Supreme Court has held:

The **wilful failure of an employer to observe the terms of a collective bargaining agreement is defined by §89-13(a)(8) as a prohibited practice**, with respect to which §89-5(b)(4) empowers the Board, upon complaints by employers, employees and employee organizations, to “take such actions with respect thereto as it deems necessary and proper.” Since the meaning and effect

of a provision of a collective bargaining agreement must be determined by the Board in the course of determining whether an employer is in violation of the agreement and is engaging in a prohibited practice, the meaning and effect of the agreement between C&C and UPW was a question which related to an action which the Board might take in the exercise of its powers.

...

The declaratory ruling granted upon C&C's petition, therefore, expressed the Board's opinion that a violation of the seniority clause of the agreement by C&C would constitute a prohibited practice under s 89-13. We think **it is not arguable that any collective bargaining agreement could deprive the Board of its statutory authority to take action with respect to prohibited practices, although the terms of existing agreements might well be relevant to the determination whether a prohibited practice existed. If the Board had jurisdiction to take action with respect to a prohibited practice, it had jurisdiction to declare what would constitute a prohibited practice.** The arguments advanced with respect to the effect of the arbitration provision, therefore, were for the consideration of the Board in arriving at its ruling and were not relevant to the question whether the Board had jurisdiction of C&C's petition.

Fasi v. State Pub. Employment Relations Bd., 60 Haw. 436, 443-45, 591 P.2d 113, 117-118

(1979) (emphasis added).

41. Furthermore:

...the HLRB had jurisdiction to declare whether the factual circumstances presented to it on the ... Amended Petition would constitute a prohibited practice. As the supreme court observed in *Fasi*, any effect of such a ruling is necessarily limited to those particular factual circumstances, and the HLRB's jurisdiction to decide whether a particular action constitutes a prohibited practice is not affected by the fact that the propriety of the same underlying action might also be decided in an arbitration or other forum. *Fasi*, 60 Haw. at 445, 591 P.2d at 118.

In re United Pub. Workers, 131 Haw. at 152-53, 315 P.3d at 778-79.

### **COLLECTIVE BARGAINING AGREEMENT**

42. At all times relevant herein, the HSTA and the Respondents were and are parties to a CBA which contains various contracted terms, provisions and contractual agreements.

43. The current CBA went into effect on 7/1/17 and expires on 6/30/21.

44. Article 1.B. of the CBA provides:

Pursuant to certification by the Hawaii Labor Relations Board in Case Number 1, the Employer recognizes the Association for the purpose of collective bargaining pursuant to the Hawaii Public Employment Act, as the exclusive representative of a unit consisting of teachers and other personnel of the Department of Education (DOE) under the same salary schedule, pursuant to Section 302A-624, HRS.

45. Article XX of the CBA pertains to Salaries and Article XII pertains to Leaves.

### **COVID-19 OUTBREAK AND HEALTH EMERGENCY**

46. On 3/4/20, Respondent Ige issued an emergency proclamation for the State of Hawaii wherein he proclaimed that the COVID-19 was a health emergency and as such, he enacted his emergency powers pursuant to HRS §127A to provide for the health, safety, and welfare of the people of the State of Hawaii.

47. Respondent Ige supplemented his emergency proclamation at least 17 times.

### **FURLOUGH NEGOTIATIONS**

48. On 4/8/20, Respondent Ige and other members of the Governor's administration informed several public unions, including HSTA, that they were considering furloughs to address an anticipated drop in State revenues.

49. The Employer did not present a proposed furlough implementation plan at that time.

50. On 4/14/20, representatives of several public unions, including HSTA, met with members of Respondent Ige's administration who informed the unions that the Employer was considering implementing a 20% pay cut to the existing CBA as early as 5/1/20, and that the Employer would follow up with the unions to further discuss and negotiate a proposed plan.

51. The Employer did not present a proposed furlough implementation plan at that time.

52. On 4/16/20, Ryker Wada, a representative of the Employer's negotiating team, informed HSTA that the proposed 20% pay cut under consideration would be delayed to June 2020.

53. On 4/29/20, HSTA demanded negotiations pursuant to HRS §89-9 regarding the State's proposed plan to reopen and amend the existing CBA relating to wages, hours and working conditions affecting BU5 employees.

54. The Employer did not present a proposed furlough implementation plan during that time.

55. On 9/21/20, the Employer briefed various public unions, including HSTA, on COVID-19's impact on the State's General Fund Financial Plan, which included but was not limited to the following:

- a. The State was expecting a \$2.1 billion revenue shortfall for fiscal year 2020 and 2021.
- b. 4 years of furloughs for fiscal year 2021 through 2024 were necessary to repay the State's \$750 million loan.
- c. Future federal assistance is uncertain and is dependent on outcome of upcoming elections.

56. On 9/25/20, the Employer requested that HSTA "bargain in good faith" regarding its proposal to reopen the existing CBA and implementing a furlough plan.

57. The Employer also for the first time provided HSTA with a proposed furlough plan which was entitled, “MEMORANDUM OF AGREEMENT BARGAINING UNIT 05 EFFECTIVE DECEMBER 1, 2020 TO JUNE 30, 2024”.

58. The Employer’s memorandum of agreement (“MOA”) proposal, which appeared to extend the existing CBA for four (4) years, had not been raised by the Employer during negotiations and called into question the propriety of such a MOA proposal that would expire on an even year (2024) and avert the ratification requirements under HRS §89-10.

59. Employer’s MOA proposed that HSTA and the Employer agree to a “salary reduction” wherein BU5 employees would be placed on Directed Leave Without Pay (“DLWOP”) from “zero (0) to eighty-six (86) days with a corresponding pay adjustment for each day of DLWOP, as determined by the following: • The superintendent of the Department of Education [Respondent Kishimoto]; and • The board of education. The above listed individual or entities will develop the scheduled for DLWOP” which “shall be implemented for all entities for the period December 1, 2020 through June 30, 2024.”<sup>2</sup>

60. The State’s September 2020 proposed MOA further offered to bestow Respondents Kishimoto and BOE with “the discretion” on all “[o]ther issues pertaining to implementing DLWOP[.]”

61. On 9/30/20, HSTA responded to the Employer’s request to bargain and “one of the various proposals the Employer [has] under consideration to address revenue shortfall.”

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<sup>2</sup> HRS §89-10 requires that a CBA expire by mutual agreement on June 30<sup>th</sup> of an odd-numbered year. See HRS §89-10(c).

62. In its 9/30/20 response letter, HSTA presented several questions and made a request for additional information to “better understand the [Employer’s] proposal”, including the following:

- a. We note that such a proposed MOA would extend beyond the term of the applicable collective bargaining agreement, which is set to expire June 30, 2021. The duration of the Employer’s proposed MOA contradicts the position that the employer has insisted on for years in regards to any MOA and/or Memorandum of Understanding (MOU). The Employer has consistently maintained that the duration identified in any new or renewed MOU and/or MOA cannot extend beyond the term of the applicable master collective bargaining agreement. This position is further supported by HRS §89-6(e) and §89-10. It is alarming that the Employer is now willing to change its own established rules and protocols at the cost of teachers’ financial well-being.
- b. The proposal appears to be applicable to all of BU05, however a number of BU05 are employed by public charter schools (PCS), for which the superintendent has no authority over operations and employee relations. Is the Employer proposing to exempt PCS employees from this proposal? Please provide clarification.
- c. The Employer additionally proposes “up to eighty-six (86) days, with a corresponding pay adjustment for each day of DLWOP.” We have already seen a reduction of nine student instructional days due to the impacts of COVID-19 on the reopening of schools. The number of DLWOP days proposed will affect student’s instructional days, yet the Employer provides no reference or explanation regarding the requirements of student instruction under HRS §302A-251 School Year; student hours.
- d. [U]nder the proposed MOA Bargaining Unit 05, Effective December 1, 2020 to June 30, 2024, Section II. Directed Leave Without Pay (DLWOP), it refers to an attached DLWOP Implementation Plan (See Exhibit 1). No such Exhibit 1 was provided under your proposal of September 25, 2020.
- e. [C]ould you please provide the HSTA with any records or information you have which substantiates your claim of a \$2.1 billion revenue shortfall for Fiscal Biennium 2019-2021 and your analysis on how furloughs will address this concern. Could you also provide your analysis on any alternative proposals that you are considering or have considered to address the revenue shortfall?

63. On 10/2/20, the Employer responded that it would prefer responding to HSTA's questions and concerns "by meeting" and that "[t]his MOA was sent with the understanding that **through negotiations**, the MOA could be modified and tailored to fit each jurisdiction and bargaining unit. Our hope and request is to engage in negotiations with HSTA and we believe the ability to meet to ask questions and provide responses to be an integral part of the negotiation process." (emphasis added).

64. On 10/6/20, HSTA responded that the issues presented by the Employer were "serious and complex" and that it requested additional information about the Employer's proposal and request to reopen the existing CBA before meeting to "help HSTA better understand the specific proposals under consideration, and assess what, if any, negotiations are appropriate at this time."

65. On 10/6/20, the HSTA reiterated its request for the following information from the Employer which it had yet to provide:

- a. Please provide details and clarification regarding the proposal's potential impact on public charter school (PCS) bargaining unit 05 employees. Will the proposal exempt or include PCS employees?
- b. The Employer's proposal for "up to eighty-six (86) days, with a corresponding pay adjustment for each day of DLWOP" could and/or will affect student's instructional days. Please provide reference and/or an explanation regarding the Employer's intent and impact to student instruction under HRS §302A-251 School Year; student hours.
- c. Please provide a copy of Exhibit 1 DLWOP Implementation Plan, as referenced (previously not provided) in the Employer's September 25, 2020 proposal.

- d. Please provide the HSTA with any records or information you have which substantiates your claim of a \$2.1 billion revenue shortfall for Fiscal Biennium 2019-2021 and your analysis on how furloughs will address this concern. Please also provide your analysis on any alternative proposals that you are considering or have considered to address the revenue shortfall?

66. On 10/9/20, the Employer provided additional information to the Union in furtherance of the negotiation process, including the following:

- a. The Employer's proposal does not include or affect public charter school bargaining unit 05 employees.
- b. It could not respond to HSTA's question about the DLWOP because the "Department of Education is currently working on their furlough implementation plan. Once the plan has been shared with the Board of Education, it will be forwarded to you for your consideration."
- c. It attached its DLWOP implementation plan, which was referenced but not previously attached to the Employer's 9/25/2020 proposal.
- d. It attached the Council of Revenue reports for March, May and September of 2020.

67. The proposed DLWOP implementation plan for HSTA BU5 provided that it would go into effect on "December 1, 2020" and would place "Bargaining Unit 5 employees on a Directed Leave Without Pay (DLWOP). For the purposes of this plan, DLWOP is defined as the placement of an Employee temporarily and involuntarily on a non-pay and non-duty status because of lack of funds" and "applies to all Employees who are included and excluded from HSTA Bargaining Unit 5."

68. The proposed DLWOP implementation plan further provided:

- 1. DLWOP days shall be effectuated by placement of Employees on a non-pay, non-duty status with a corresponding pay adjustment by means of a mandatory salary waiver equivalent to the number of days of DLWOP.



2. From December 1, 2020 to June 30, 2024 the Employer may implement the DLWOP plan subject to the following terms and conditions:

a. DLWOP in itself shall not cause or deem to cause:

(1) A break in service;

(2) A change in the amount of vacation or sick leave earned by the Employee;

(3) A decrease in the Employee's creditable service for purposes of computing retention points and service anniversary dates;

(4) Any change in the Employee's salary rate; and

(5) A change in any right, privilege or benefit that the Employee is entitled to or would have been entitled to by law but for the DLWOP.

b. All Employees may be placed on DLWOP for a total of up to eighty-six (86) days effective December 1, 2020 through June 30, 2024.

c. Effective December 1, 2020, the compensation of all affected Employees shall be adjusted, in even increments, each pay period to account for a total of up to one (1) DLWOP day for each pay period beginning December 1, 2020 through June 30, 2024.

d. Full-time Employee's pay will be adjusted one eight-hour day for each DLWOP day. Part-time Employee's pay will be adjusted in accordance with the appropriate full-time equivalency.

e. Employees shall not be permitted to substitute vacation, sick, compensatory time-off, or any paid leave for the DLWOP day(s).

f. Sick leave, vacation leave, overtime pay, temporary assignment, and leave without pay will be calculated at the applicable salary schedule rate.

g. When an Employee is required to report to work on the Employee's scheduled DLWOP day off, the Employee shall be paid overtime. In addition, the DLWOP day shall not be rescheduled to a later day.

3. A Department Head or designee shall determine when Employees are to take DLWOP days based on operational needs.

4. The DLWOP plan shall not cause the salary schedules to be adjusted. However, the amount of the salary reduction shall be based on the applicable salary schedule.

5. The Union and Employer shall meet to jointly resolve unanticipated concerns related to the implementation of this plan.

69. The Employer also attached the 3/13/20, 5/25/20 and 9/9/20 reports from the Council on Revenues to its 10/9/20 letter, which showed a loss of revenue in 2020 and 2021 but an exponential rebound in revenue in 2022 and thereafter.

70. The attached Council on Revenues reports provided the following:

a. 3/13/20 Council on Revenues report:

“[L]owered its forecast for the growth of the State General Fund tax revenue in fiscal year (FY) from 4/1% to 3/8%” and “the FY 2021 forecast from 4/0% to 0.0% in an expectation of an economic downturn”, “raised the forecast for FY 2022 to 5.0% and forecasted that General Fund growth would be 4/0% for FY 2023-2026, assuming that the effects of the COVID-19 virus would not be long-term.”

“The Council acknowledged the large amount of uncertainty surrounding the impacts of the virus, particularly for how long the virus will pose a major health risk and whether there will be material secondary effects on the global economy. Members said that they will revisit the forecast in the May meeting when they have more information on the progression and implications of the virus. The Council noted that there is normally a six-month lag between changes in economic performance and state tax collections.”

b. 5/25/20 Council on Revenues report:

“The Council lowered its forecast to -7.0% for fiscal year (FY) 2020 and -12.0% in FY 2021 in light of the economic downturn prompted by the COVID-19 virus. The Council expects a rebound in revenues of 12.0% in FY 2022 and a growth rate of 3.0% for FYs 2023-2026.”

“The Council also discussed the infectiousness, modes of transmission, and possible vaccines and treatments for the COVID-19 virus, and assumed in its analysis that a vaccine or effective treatment against the disease would be made

available during the FY 2022 period, which would encourage more tourists to fly to Hawaii since they would feel more comfortable flying with less exposure to disease when making long airplane trips to Hawaii.”

“The Council will have a better understanding of these risks when they meet for the next General Fund meeting in early September 2020.”

c. 9/9/20 Council on Revenues report:

“The Council changed its forecast to -11.0% from -12.0% for fiscal year (FY) 2021. The Council lowered its forecast for FY 2022 from 12.0% to 8.5%. The Council forecasted that General Fund revenues will grow by 6.0% in FY 2023, 4.0% in FY 2024, and 3.0% for FY 2025-2027.”

“The Council acknowledged the great amount of uncertainty surrounding the forecast figures for FY 2021 and FY 2022. The Council’s forecast of 8.5% for FY 2022 resulted in a split 4-3 vote, with the minority stating that the growth rate was likely to be higher.”

71. On 10/29/20, the Employer provided HSTA with a PowerPoint Presentation entitled “COVID-19 Impact on the State’s General Fund Financial Plan (Updated), Union Briefing October 20” and stated, “We look forward to meeting with you and your negotiating team on 11/5/2020.”

72. The PowerPoint Presentation reiterated the State’s expectation of a \$2.1B revenue shortfall from fiscal years 2020 and 2021, that “Future Federal assistance is uncertain and is dependent on outcome of upcoming elections” and that the “Furloughs extend for 4-years in order to pay back \$750M working capital borrowing.”

73. Upon information and belief, Employer believed that future federal assistance was more likely if Former Vice-President Joseph Biden was elected President of the United States.

74. Since the Employer’s presentation, Former Vice-President Biden has become President-Elect Biden and will be sworn in as the 46<sup>th</sup> President of the United States on 1/20/21.

75. On 11/5/20, HSTA and the Employer group, which included representatives from Respondents DOE and BOE, participated in an informational meeting after which HSTA was asked to put its questions in writing.

76. During the informational meeting, the HSTA presented possible cost saving alternatives which the Employer also asked the Union to put into writing.

77. During the same 11/5/20 meeting, Respondent DOE presented the concept of a “Furlough Implementation Plan” wherein furloughs would be implemented on “on non-student days, holidays, vacation, and intersession days” for a total of 6 days for 10-month employees and 10 days for 12-month employees.

78. On 11/9/20 and unbeknownst to the HSTA, Respondent Kishimoto had already formulated and finalized the DOE’s “phase one” furlough implementation plan that called for furloughed days starting January 2021 through June 2021, which is when the existing CBA would expire. The plan called for six (6) furlough days for 10-month employees and 10 furlough days for 12-month employees.

79. On 11/11/20, pursuant to the Employer’s request that HSTA send the Employer its list of potential cost-saving alternatives to furloughs and the questions it presented during the 11/5/20 meeting, HSTA provided the following questions in writing to the Employer:

General Questions

1. Communication received from the state uses both the term “furlough” and “directed leave without pay” (DLWOP). Is there any difference? Please explain.
2. Outside of salary savings, how much money does the state (department of education and public charter schools) save for each day of non-instructional day furlough and instructional day furlough?

### Loss of instructional time

3. How would the department of education address loss of instructional days (state law requires 180 days).
4. How would the department of education address compensatory time for SPED students for lost instructional days from employee furloughs?

### Public Charter Schools

5. Please explain how public charter schools would be impacted by both across the board cuts and/or furloughs? The employer indicated that a proportional reduction would occur, please provide details on how the cut would be calculated.
6. How would furloughs be implemented for public charter schools?
7. How will public charter school employees, whose salaries are paid for by the department of education or other means (i.e. federal grants) be treated if furloughs occur?

### B&F – State’s Fiscal Status

Ryker Wada indicated that “labor savings are a last resort”. With that concept in mind, HSTA has the following questions in relation to other possible options to avoid furloughs.

8. What metrics if any are being considered to determine if salary savings from state employees would no longer be needed/continue?
9. Would the state consider sweeping special funds to avoid furloughs? From auditor’s report: “More than \$483 million in excess moneys may be available to be transferred from 57 special and revolving fund accounts to the General Fund without adversely affecting programs.”  
[https://files.hawaii.gov/auditor/Reports/2020/20-08.pdf?fbclid=IwAR0HLB1Dk\\_foCU4b47eYmb4bmI3pwbz5JFttK3aTqj1Ckj9mgbIOZcJcVDw](https://files.hawaii.gov/auditor/Reports/2020/20-08.pdf?fbclid=IwAR0HLB1Dk_foCU4b47eYmb4bmI3pwbz5JFttK3aTqj1Ckj9mgbIOZcJcVDw)

If this is not a viable option, please explain.

10. Can the state borrow 600 million more before reaching the debt limit?  
Reference: <https://budget.hawaii.gov/wp-content/uploads/2019/11/2019-Debt-Limit-Stmt-Conformed-Sig.pdf>

If this is not a viable option, please explain.

11. Can the state sell maturity taxable state bonds for a term up to 20 years?

If this is not a viable option, please explain.

A. What would the annual cost be for \$311 million at current bond rates over 20 years?

B. What would it be if Hawaii's bond rating decreased?

12. Would the governor consider the following ways to pay for bonds? Please explain.

A. An increase in the General Excise and Use Tax.

UHERO suggests that a cut of 20% to State salaries would lead to a drop in GDP of \$3.3 billion over the 2020-2022 period. This reflects a spending "multiplier" of 1.5—that is the likelihood that every \$1 reduction in State salary outlays results in a \$1.50 reduction in overall economic activity here. UHERO suggests, "A temporary future increase in the General Excise & Use tax is an obvious candidate for revenues to service refinanced bonds." <https://uhero.hawaii.edu/tap-fed-lending-facilities-to-support-local-economy/>

B. Adjusting the recapture rate for those earning over \$100,000.

The State Revenue Commission stated "Phasing in the rate recapture between \$100,000 and \$150,000 could be designed to subject those with income between \$100,000 and \$100,000 to 20 percent of the recapture, \$110,000-\$120,000 to 40 percent, \$120,000-\$130,000 to 60 percent, \$130,000-\$140,000 to 80 percent, and \$140,000-\$150,000 to 100 percent.

Using this methodology, the project team estimates that the impact of the initiative in 2014 (the last year for which detailed DoTax data is available) would have been \$161 million. Using actual (2015 and 2016) and Council on Revenues-projected (2017-2023) annual individual income tax increases, it is estimated that the initiative could generate upwards of \$200 million annually.

These estimates are significant but reasonable, given that filers making over \$100,000 account for approximately half of all taxable income. Based

on these assumptions, the proposal would raise the effective tax rate for \$100,000+ filers by an average of 1 percent of income.”

[https://files.hawaii.gov/tax/stats/trc/docs2017/sup\\_171108/PFM\\_Hawaii\\_Final\\_Report\\_110817.pdf](https://files.hawaii.gov/tax/stats/trc/docs2017/sup_171108/PFM_Hawaii_Final_Report_110817.pdf)

C. Moving the cost of county services to the county. For example, EMS is 61 million a year.

D. Not providing TAT to the counties. Normally, approximately 100 million of TAT goes to the counties.

E. Other progressive taxes; such as closing the capital gains loophole (\$100 million), taxing REITS (\$60 million), recapture corporate tax break (\$103 million)? <https://www.hibudget.org/blog/eight-progressive-ways-to-raise-revenue-hawaii-covid-19>

80. On 11/13/20, HSTA sent a follow-up communication reiterating its prior requests and asked for supplemental information regarding the Employer’s proposal to negotiate furlough savings “to further assist the HSTA with reviewing your proposal to negotiate furloughs.” The questions were as follows:

1. Please provide clarification regarding the November 5 economic projection presentation. The slide deck indicates a “working capital sale” of \$750 million dollars.

a. Please confirm what bond(s) have been issued/purchased on the public market, including date of sale and the amount.

b. Please confirm the terms of the bond(s) including duration, interest and repayment terms.

2. Please provide details as to how much money remains in the state reserves and/or special funds and if any of those monies will be used before imposing pay cuts? Please be specific and detailed.

3. Fitch and Standard & Poor’s reported that the State had “increased reserves” and a “strong financial position” in August 2020 after the State sold nearly \$1 billion of general obligation (GO) bonds. Has that position changed and if so, why and how?

4. What savings alternatives or options were or are being considered to generate other savings and/or mitigate the lost revenue to avoid furloughs? Please be specific, detailed and explain why an option was rejected if applicable.
5. If applicable, why are your proposed pay cuts being implemented against state personnel only?
6. Have legislative leaders been consulted regarding the furlough plan? If so, do they agree and support this option for cost savings?
7. How much of a pay cut, if any, will you be implementing for yourself and your administration?
8. What analysis has been conducted as to the potential economic impact to the State of Hawaii if state employees are furloughed two days a month for the next four years? If that analysis has been conducted, please provide us with that information.
9. What analysis has been conducted as to the potential financial harm to employees and their ability to pay their basic living expenses such as rent/mortgage, transportation, food, and utilities if employees are furloughed two days a month for the next four years?
10. What metrics if any, are being considered to determine if state employee pay cuts are no longer needed during the term of your proposed furlough plan?

81. Three (3) weeks later on 12/4/20, the Employer responded to HSTA’s 11/11/20 letter and the questions therein as follows:

- a. There is no difference between DLWOP and Furloughs.
- b. Outside of salary savings, Respondent DOE estimates that it will save “approximately \$300,000.00 per day from Student Transportation, and a savings of \$50,000.00 per day for utilities.” However, Respondent DOE “is not in possession of potential operational savings for Public Charter Schools (PCS).”
- c. Regarding the mandatory 180 instructional days for student, the Employer responded that it “believes” that Respondent BOE could waive that requirement through its inherent authority or “ under HRS section 302A-251’. “Alternatively, the Department could request that Governor David Y. Ige exercise his emergency executive powers to suspend the 180-day requirement in light of the COVID-19



pandemic as he did previously for the nine (9) instructional days lost at the start of the current school year, August 3-17, 2020.”

- d. Regarding compensatory time for SPED students for lost instructional days from furloughs, the Employer explained, “furloughs do not, necessarily discriminate against SPED students. The Department is in communication with the USDOE Office of Special Education Programs (OSEP) to clarify whether furloughs, in light of the financial crisis caused by the COVID-19 pandemic, constitute a change in program that would necessitate the convening of IEP meetings to make adjustments to IEPs, including the consideration of compensatory services.”
- e. Regarding charter schools, the Employer responded that “furlough savings reductions will be calculated for each charter school in the same manner that collective bargaining pay raises are calculated” and that each charter school would need to decide how it would comply with required budget reductions.
- f. In response to what metrics the Employer would use to determine if and when furloughs would be discontinued, the Employer explained that the “State’s fiscal situation will be monitored extensively over the financial planning period. As proposed in the Employer’s MOA, the Department of Budget and Finance will provide quarterly updates on the State’s fiscal situation following the Council on Revenues quarterly general fund forecasts and/or should the Federal government provide additional COVID-19 funding.”
- g. In response to whether the State could borrow another \$600 million, the Employer responded that the \$750 million it already borrowed is the maximum amount that could be borrowed to maintain its high bond rating.
- h. The Employer “strongly believes that it would be fiscally imprudent to borrow long term to pay for this year’s current operating expenses.”
- i. The debt service cost of a 20-year bond for \$311 million would be \$397,774,873 under the current ratings and \$403,913,885 based on lower ratings, which “assumes a 15-basis point increase in interest rates over the interest rates with the State’s current ratings.”
- j. Regarding HSTA’s proposed alternatives to furloughs, the Employer stated that adjusting the recapture rate for those earning over \$100,000 would result in increased tax burdens for Hawaii residents of relatively modest means, that Respondent Ige already “suspended county TAT distributions for FY21, and in general, that the “State is evaluating various revenue enhancement options to help address its fiscal situation.”

82. Also on 12/4/20, the Employer responded to HSTA’s 11/13/20 request for supplemental information as follows:

- a. “The State sold \$750 million of general obligation bonds (Series GA and GB) for working capital on October 29, 2020” with the following repayment terms:

Series GA (tax exempt)

Due: October 1, 2021; Principal Amount: \$147,555,000;

Interest rate: 5.000%; Yield: 0.250%.

Series GB (taxable)

Due: October 1, 2022; Principal Amount: \$150,000,000;

Interest Rate: 0.429%; Price: 100%.

Due: October 1, 2023; Principal Amount: \$150,000,000;

Interest Rate: 0.571%; Price: 100%.

Due: October 1, 2024; Principal Amount: \$150,000,000;

Interest Rate: 0.802%; Price: 100%.

Due: October 1, 2025; Principal Amount: \$150,000,000;

Interest Rate: 0.852%; Price: 100%.

- b. The Emergency Budget and Reserve Fund (rainy day fund) has a balance of \$63.1 million as of November 18, 2020 after \$345 million was transferred to the general fund. Regarding other special funds, the Employer explained, “We are currently in the process of working with legislative staff to identify potential “excess balances” that could be transferred to the general fund, and consequently, no amounts have been determined as yet.
- c. Moody’s Investor Service downgraded Hawai‘i’s GO bonds from Aa1 to Aa2 with a stable outlook on July 31, 2020, Fitch Ratings downgraded Hawai‘i’s GO bond rating from AA+ to AA with stable outlook on October 19, 2020, and Standard and Poors Global Ratings maintained Hawai‘i’s GO bond rating at “AA+” with a negative outlook on October 16, 2020.
- d. Regarding HSTA’s proposed cost saving alternatives to furloughs, the Employer responded that “the State is exploring numerous other options at this time” and that Respondent DOE “is undergoing programmatic reviews in addition to the proposed furlough savings.”
- e. The Counties are “not experiencing the dramatic drop off in revenues that the State is experiencing and is projected to experience in the coming years” and the Counties’ primary source of revenue (property tax) are not as volatile as the State’s (general excise and individual income taxes).

- f. “Legislative leadership has been consulted on the proposed furloughs” and Respondent Ige “is continuing to work with legislative leadership on this matter[.]”
- g. “The Cabinet and Executive Managerial workforce will be taking salary adjustments in line with salary adjustments and for the same periods proposed for the general workforce. The Superintendent and leadership team will align with the salary adjustments proposed for DOE employees.”
- h. In response to what analysis the State has conducted on potential economic impact to the State of Hawaii if furloughs are implemented, the Employer responded, “the State utilizes static estimates of costs and revenues.”
- i. In response to what analysis the State has conducted on the potential harm to employees and their ability to pay for basic needs if furloughs are implemented, the Employer responded that fiscal decision-making “involves a complex calculus of weighing and balancing unpleasant but necessary actions against the potential negative effects of those actions.”
- j. “[I]f conditions improve significantly sooner than expected appropriate adjustments can be made to the proposed furlough plan.”

83. On 12/4/20, the Honolulu Star Advertiser reported that Hawaii State

Representative and House Finance Committee Chair, Sylvia Luke, responded to reports that

Respondent Ige may impose a four-year furlough program as follows:

[That is] something that’s not well thought out because “legally that’s not possible.”

Not only do the worker unions need to approve such a step, but the furlough program can’t be longer than the term of a bargained contract, Luke said. “And I believe most of the contracts expire in June.”

Because state lawmakers do not have many details on how the governor intends to implement the reductions, Luke said, at this point “it’s been difficult for the Legislature to even look at different alternatives, because what he trying to implement is not possible under the current legal framework.”

84. On 12/4/20, KHON2 News also reported:

Gov. David Ige has told the unions he wants to furlough state workers two days per month for the next four years, which amounts to approximate [sic]10% pay cut. The chairwoman of the House Finance Committee says there are ways to put off the furloughs for at least a couple of years.

“In our estimation, the furlough discussion is premature because where we actually see, in fact a more severe hit, would be in 2023,” said Rep. Sylvia Luke.

Luke says the state faces a budget shortfall of up to \$1.8 billion over the next two years. It would have been more, but the governor took out a \$750 million loan in November, 2020. She says the state can offset some of the shortfall by not filling positions left open by workers who retire, approximately 2,000 workers per year.

85. As HSTA continued to carefully consider the Employer’s responses and information provided pursuant to good faith negotiations, Respondent Ige held a press conference on 12/9/20 at which time he publicly announced his intention to unilaterally impose and implement his furlough plan effective 1/1/21 for most State Employees and that another furlough plan would be implemented for HSTA members effective 1/1/21.

86. Respondent Ige announced during his 12/9/20 press conference that the affected public unions must agree to his furlough plan or 4,000 public employees would be laid off.

87. Respondent Ige also conceded during his 12/9/20 press conference that negotiations with the unions were ongoing and would continue, but that his furlough plan would nevertheless be implemented as of 1/1/21.

88. Respondent Ige further announced during his 12/9/20 press conference:

- a. “We are projecting a \$1.4 billion shortfall for each of the next four fiscal years.”
- b. “I’m directing state agencies to prepare to furlough most state employees beginning January 1, 2021.”

- c. “Details on how agencies will implement the furloughs will be announced shortly. I will evaluate the need to continue the furlough on an ongoing basis.”
- d. “We will adjust as the economy recovers and tax revenues increases.”
- e. “The furlough will be rescinded as soon as it is no longer needed.”
- f. “The furlough will reduce employee pay about 9.2% while in effect.”
- g. “If the furlough is in effect for a year, it will decrease expenses of state government by about \$300 million.”
- h. “All public sector unions were brought into the discussion months ago and we’ve responded to their questions. We continue to work with them in good faith on the implementation of the furloughs. We hope that they will agree that the best path forward for all of us is to work together to serve the people and help revitalize our economy, hastening the day when the furloughs are not necessary.”
- i. “I have taken every action possible to avoid furloughs because I know how hard this will be for employees and their families.”
- j. “I recognize and deeply appreciate the sacrifices, dedication and the hard work of our public servants, they make me proud. This difficult step enables the majority to keep their jobs and to continue to the important public service they provide.”
- k. “I take this action with a heavy heart and I will rescind the furlough as soon as it is no longer needed.”
- l. “...the Department of Education and the University of Hawaii is part of the furloughs but they will be announcing the specific ways that they will be implementing the furloughs later on. As you know we are focus [sic] for public schools on ensuring that students get the instructional days that they need in order to be promoted to the next grade level.”
- m. “Well we did exercise every alternative that [the unions] had recommended.”
- n. “The Department of Education and the University of Hawaii is also implementing furloughs that would be effective January 1st, but as I said, you know because of their academic year and how that plays into their contracts. It might be presented in a little different schedule.”
- o. “...we will be taking the action that's necessary in order for us to implement the furloughs because we don't have the revenues to continue to employ all of the

state employees, and so that may require us exercising emergency authority and it really just depends on the specific actions taken.”

- p. “...we did estimate the number of jobs in order for us to get the budget reduction that we need, we would have to lay off more than 4,000 employees.”
- q. “You know, certainly as I said, if we did not do the furloughs and we had to implement a reduction in force, we estimate that we would have to lay off more than 4,000 employees to get the same annual savings that we would get from implementing the furlough for a 12-month period. Um, so certainly we would hope that people agree that implementing furloughs would be better than eliminating and laying off more than 4,000 employees.”

89. Later that day and in obvious response to Respondent Ige’s furlough announcement and his claim that Respondent DOE would announce its implementation plan, Respondent Kishimoto mass emailed HSTA’s members the following message:

Gov. David Ige this afternoon made an announcement about the state budget and plans to implement furloughs for most state employees, including the HIDEOE, beginning next month, January 2021.

The governor's Office of Collective Bargaining is the lead on these active negotiations; therefore, we do not have details of the specific impact to HIDEOE employees at this time.

We are anxious to get these details to you as soon as possible. We know these are challenging and uncertain times, and our employees need to understand the impact these labor cuts will have.

We will share updates as details become available. Thank you for your continued commitment to our public schools.

90. On 12/11/20, HSTA responded to the Employer’s 12/4/2020 letter as follows:

Thank you for your response dated December 4, 2020, to questions presented by Hawaii State Teachers Association (HSTA) at the November 4 informational meeting and in the additional follow-up letters sent November 11 and 13. As you know, we have been engaging in good faith discussions, so we were extremely surprised to hear that a decision had apparently already been made to unilaterally impose furloughs. We were led to believe that you were engaging in such discussions with us in good faith as well.

On Wednesday, December 9, the Governor announced plans to begin furloughing state workers on January 1, 2021. After the Governor's announcement, Superintendent Kishimoto sent an email to all employees indicating that "The governor's Office of Collective Bargaining is the lead on these active negotiations; therefore, we do not have details of the specific impact to HODOE employees at this time."

In addition, Superintendent Kishimoto sent a video message to all employees on Thursday, December 10, indicating that the Hawaii Department of Education (HODOE) furlough plan would not be the same as other state agencies. Kishimoto indicated that 10-month employees would have six (6) and 12-month employees with ten (10) furlough days.

Could you please explain by what authority the Governor is relying upon to unilaterally implement the furlough plan in the manner he discussed during his December 9, 2020 press conference. Moreover, as part of our continued good faith discussions, please provide your responses to the following questions which reiterate and expand on the information we requested previously and which is needed to properly consider and evaluate the proposals offered by the Employer.

1. The State's response indicated that the Board of Education has the authority to approve a waiver to the requirement of 180 instructional days a year. Please provide an update on the status of any such waiver or the Governor's plan to utilize his emergency powers to override the instructional day requirement.
2. Please provide an update on the status and impact of furlough days on special education services and what the USDOE has clarified regarding furloughs constituting a change in necessitating IEP meetings and compensatory services for students with special needs.
3. Public Charter Schools (PCS)
  - a. Please provide detailed information regarding how much the Public Charter Schools (PCS) weighted average per-pupil amount will be cut due to either furloughs and/or planned operating budget cuts. Please provide both the current FY 21 amounts and the planned FY 22 amounts per-pupil allocation.
  - b. Please provide further clarification regarding your response for PCS employees whose salaries are paid by the Hawaii Department of Education (HODOE). HSTA recognizes that the PCS determines employment decisions. However, it was not answered if the HODOE, who processes the

payroll for such positions, would or would not implement furlough cuts to said employees. For example, will a special education teacher who is employed by a PCS, and salary is paid for and processed entirely by the HIDOE be subject to the same furlough days and respective loss of salary as other HIDOE bargaining unit 05 employees. If not, how will the HIDOE process their payroll, will there be any reduction?

4. Has the State considered deficit spending in lieu of a balanced budget with the legislature's approval? If not, why not?

5. Governor Ige indicated that if the State does not implement furloughs, it would have to lay off more than 4,000 employees to achieve the same annual savings.

Please describe in detail how this amount was determined, and identify and specify the position the State is referring to, especially if they are bargaining unit 05 employees.

6. Please provide a complete list of all of the bargaining unit 05 employees who have been identified by the State who will be exempted from furloughs (including Department of Education (DOE) and Public Charter Schools (PCS)[)], please include worksite, position number, and name.

7. Positions Exempt from Furloughs

a. Will all positions with non-general fund sources be exempt from furloughs? If not, please describe in detail why not, identify which positions with non-general fund sources will not be exempt from furloughs, and who is/will be involved in deciding which positions with non-general fund sources will not be exempt from furloughs.

b. Can positions partially funded by non-general fund sources be exempt from furloughs or does the exemption only apply to positions wholly funded by non-general fund sources?

Please explain.

8. Governor Ige indicated that as soon as the economy recovers and tax revenues increase to a level needed to support the size of state government, then he will be able to end furloughs.

Please explain in detail what "size of government" is being referred to.



- a. Is the "size of government" being based on anything specific such as council on revenues projections?
- b. What is the proposed "size of government," especially related to public schools (HIDOE and PCS)?
- c. What benchmarks or criteria must be met for the Governor to determine the economic recovery and tax revenues are adequate to cease the furloughs (once implemented) for public schools?

#### 9. \$1.4 Billion Annual Shortfall

- a. Please clarify how the State came up with the amount of \$1.4 billion shortfall for each year over the next four years. This fact seems to be contradicted by the plan to reduce operating budget spending and personnel costs. If those are reduced then, the deficit should be decreasing.
- b. Governor Ige states that the \$1.4 billion shortfall is in reference to the current state budget and authorized size of government. Please explain, does authorized government include public schools? And what other parts of the government are considered "authorized."

Thank you for your time and attention to this request.

91. HSTA has not yet received a response to its 12/11/20 letter.

92. On 12/13/20, the Civil Beat Editorial Board and other media reporters interviewed

Respondent Ige and reported that the "Council on Revenues is figuring that tax collections are going to bounce by about \$500 million in the next fiscal year, which obviously implies there's going to be a big resurgence in tourism." However, Respondent Ige responded that despite that report, he is proceeding based on "our budget on their last projection" and finds it "very difficult...to see, you know, a \$500 million increase." He further explained that he will wait for the council's next projection, which is currently set for or around 1/7/21 shortly after he intends to implement furloughs, and "will be looking at that."

93. On 12/14/20, Respondent Kishimoto circumvented HSTA and communicated directly with HSTA’s members notifying them that the Employer’s furlough implementation plan “will begin on January 4, 2021”, and would include the following furloughed days:

<b>10-Month Employees</b> Six (6) Furlough Days:	<b>12-Month Employees</b> Ten (10) Furlough Days:
<ul style="list-style-type: none"> <li>● <b>January 4, 2021</b></li> <li>● <b>February 12, 2021</b></li> <li>● March 1, 2021*</li> <li>● March 22, 2021*</li> <li>● April 23, 2021*</li> <li>● June 1, 2021*</li> </ul>	<ul style="list-style-type: none"> <li>● <b>January 4, 2021</b></li> <li>● <b>February 12, 2021</b></li> <li>● March 1, 2021*</li> <li>● March 15, 2021*</li> <li>● March 22, 2021*</li> <li>● April 23, 2021*</li> <li>● June 1, 2021*</li> <li>● June 18, 2021*</li> <li>● June 25, 2021*</li> <li>● June 28, 2021*</li> </ul>

In addition, “Employees shall not be permitted to substitute vacation, sick, or any paid leaves for the furlough days. Any leave without pay taken during the 2020-2021 school year will result in a pay adjustment in summer pay for 10-month employees.”

94. In a question and answer form provided to HSTA’s members, the Employer confirmed, “Furloughs will result in a pay reduction, thus your annual average salary will be reduced.”

<http://www.hawaiipublicschools.org/ConnectWithUs/Organization/Offices/TalentManagement/Pages/furlough-faq.aspx>.

95. Respondent Kishimoto shared her furlough plan with HSTA’s members but did not provide a copy of HSTA.

96. On 12/15/20, the Honolulu Star Advertiser reported that Hawaii Senate President Ron Kouchi doubted furloughs would begin on 1/1/21, as announced by Respondent Ige, and

“expressed optimism Monday that there could be a combination of other ways to avoid furloughs for state workers, such as:

- A second round of federal COVID-19-related funding currently being negotiated in Congress that could help counties and states. Ige said last week that the current federal funding, which expires in two weeks, can be used only for COVID-19 costs and specifically prohibits it from being used to make up for budget shortfalls.
- The rollout of the new COVID-19 vaccine that could open up travel to the islands and fire up a Hawaii economy that was breaking records right before the pandemic hit.
- Freezing state jobs after employees retire. Ige previously announced that the state is freezing 3,000 “noncritical” job vacancies.
- The possibility of higher taxes on people who earn \$200,000 and more and rescinding unidentified tax exemptions.”

97. On 12/16/20, the Employer requested “to Meet and Discuss the Hawaii Department of Education Furlough Plan” with HSTA, which it already announced it was implementing.

98. On 12/17/20, Respondent BOE held a meeting wherein several board members voiced their concern over the furlough plan and the lack of communication about the plan with the BOE.

99. Several members of Respondent BOE urged Respondent Ige to withdraw his decision to unilaterally implement furloughs:

100. During the BOE’s meeting, Chairperson Catherine Payne stated in relevant part:

We have also received quite a bit of written testimony that is posted on our website. So, I encourage you to read it, it's well thought out and heartfelt and I sincerely appreciate all of the comments and remarks that were made.

I've been around a very long time in the department and I've been through the furloughs as a principal during the last time that they were imposed. This new round of furloughs and cuts to the budget are the latest blow to our system of public education.

...we really were moving in a position where improving teacher salaries became a real possibility and I know that support for the professionals who are working directly with the students has a direct impact on student achievement. We have not done enough of this, but we were working towards that.

The despair that is evident in the testimony of teachers comes through, and my heart breaks at the personal stories they shared, and as this plays out, the losses from our workforce will impact our students, especially our most vulnerable students whose parents do not have the resources to supplement the losses of services that have been provided by schools.

... It'll take probably a generation to recover if things go well. But it's a fact in our world that we pay for what we value.

101. Board Member Bruce Voss explained:

But circumstances have now changed, by all accounts, it appears very, very likely that Congress will include a large amount of money for education spending the upcoming stimulus bill that's going to be passed this weekend.

Given that we need to defuse the situation and reduce this anxiety among our teachers, staff and families. Respectfully, but **strongly urge the governor to immediately rescind this furlough directive to the Department of Education. So, the department and the board rep can resume mid-term bargaining with the unions, to see how this additional federal money could potentially minimize or eliminate furloughs or layoffs and preserve instructional days for students. At this point, need not and should not matter point, eventually.**

...

At least, I believe the governor should immediately rescind the furlough directive and enable, rather the department and more representative to resume mid-term bargaining.

With the kind of stress and anxiety that this is imposed, the reality is this is not going to be any negotiations to restore some of those instructional days and give recall the reason that we declined to cut the instructional days last July was there was a hope or belief that at least three and perhaps more of those instructional days could be restored.

If this furlough directive can be rescinded, and good faith negotiations can resume between the employer and the unions, I believe that a portion of those instructional days could be restored and that can only benefit our students, so again, I urge the governor to take that action to enable those days to be restored for [our students.]

(emphasis added).

102. Vice Chairperson Kenneth Uemura explained:

**The Board** that has oversight over the Department of Education **should have input to how this plan comes about.** So you know, I wanna get up to the bottom of this, but Chair, I'll leave it up to you, I mean, we would have a better sense of what's going on and it's because I'm speaking out of frustration. I just want to make sure that we all know what's happening. But the public knows what's happening, and I do agree with Bruce that you know governor, **the Board should send a letter from the Board to the Governor expressing our disappointment on how this thing was done. He should definitely rescind the furlough directive; I am in full support of this because the public needs to know that the Board is not in support of the furloughs.** The Board has had no influence.

(emphasis added).

103. Board Member Shanty Asher stated:

**I really, really hope that this furlough doesn't go through** because our kids have gone through so much and the teachers have stuck through with them all those times and now this? I don't know, so I just wanted to say that and I really really hope that there is a prioritization on education because after everything that has happened, it's our children that will be impacted by these decisions and they count on all of us to make those decisions for them.

104. Board Member Christine "Kili" Namau`u also voiced her concern:

I am a little frustrated with how this all came about. **You know the board was never, we were never a part of these discussions and I have concerns about that.** So I'm really looking forward to meeting with the governor and hopefully we'll have some dialogue here, **but the public does need to know that the Board of Education does not sanction these furloughs. We do not believe in them and we didn't have an opportunity to put any input into it.**

I realize that the governor has the authority to do what he needs to do because of the situation that we're in, emergency situations with the pandemic and

everything. However, I wish he could have shown a little bit more restraint when it came to the department. If he could have just waited to see, I'm hoping that we will get funding from the federal government and that this can go away sooner. If possible, will get that kind of support that the schools will need. The public schools will need, and I was just hoping he would have shown some restraint there.

I think unfortunately the damage is done already with many of our teachers. If you can see the testimony from people from the teachers, this is hard times for them. **They have been struggling. They have always been struggling before the pandemic. The teachers have been struggling and we have asked enormous things from them to pivot, to create distance learning to, you know, we've had a lot of meetings since the middle of summer addressing a lot of their concerns.** Concerns on safety, concerns of PPEs, concerns on instructional time for them to learn distance learning, and this is another thing that we gotta just throw at them? That, oh by the way, yeah, there's some furloughs here now. The governor sees the department as being a little different, that's why he's only asking one day a month, instead of two days like other departments.

Yeah, the department is very, very different from other State departments. The Department of Education is our future. We're talking about our children here, and what happens to these children next year or even in the upcoming year? People, they're done. **The teachers are done. They're looking for jobs elsewhere. They're looking to move back to the mainland. They are figuring it out that we have not given them the ho`ihi, the respect, that we should all give them. How are we going to replace these high-quality teachers? How is that going to happen? It's not. It's not going to happen instantly for sure and**

I'm talking about as Catherine had shared earlier, this is the generation that we're talking about here. We need to look at education differently in this state and I'm just going to keep repeating this probably at every board meeting, the public and our legislators, everyone needs to take ownership of this. **This isn't something that we can just band aid with furloughs here and there. That's not going to do it.** We have to invest in our kids. We have to invest in public education. We have to do it and we have to take, I don't know, does it mean increasing taxes? Maybe that's what we have to do. I'm willing to do it. It's a hardship on all of us, but we have to start thinking about providing funding for the department in a different way.

I really hope that our legislators are hearing this and I really hope that they're thinking about things differently about how we can move forward and how we can make public education a priority, because what we spend on our kids now and invest in them now will save us millions and billions of dollars in the future,

because we will have a thriving economy from these students. Unless all kinds of other things that go bad in our society and we all know what those are, but **we need to support our students and the first thing we need to do is by supporting the teachers who are again the most important thing in our department, because they're there firsthand directly with these students.**

So, I'm so sorry these are disjointed comments that I have this mana`o here and there all over the place, but I just think that when **the Board of Education needs to be involved further to the governor,** we really need to look at this differently and hopefully we'll have these dialogues with him.

Three, I'm hoping and I am appealing to all those teachers out there who have heartfelt testimony, have given us heartfelt testimony that if you will reconsider and just stay the course and hopefully, hopefully the state, the people the public will be there to support you as well.

And four, that everyone takes ownership of this situation. Everyone the public needs to understand and I look forward to the January meeting when we're when we are going to see, from every school the exact impact that things are going to happen in the next fiscal year, and how that is going to determine the kinds of programs and teachers, and activities that we are going to provide for our children. I yield.

(emphasis added).

105. Likewise, Board Member Dwight Takeno explained:

I just wanted to make a comment that I share all the frustrations that had been shared by my board colleagues. You know we have been trying to communicate our desires and the outcomes we would have wanted to see since we board has been and the Department and everybody in this state and country has been dealing with this pandemic, but time and time again, **it seems as though we are in the blind and we get caught off guard by actions that's being taken without our knowledge, without our consent, or even our input, and this is just another example of many that has come forward during this period of time.**

Well, I see that this is largely import being asked by the governor. **The Superintendent,** through the testimonies we've heard, and the evidence that was provided in the testimonies clearly show that, **this is her plan and this was not shared with the board. So, with that, everything that has occurred today, there's one person who should take full responsibility, because again, we did not know anything and we are being provided with information that is always after the fact and after we could even understand what the plan is or even provide input and or comment to it so.**

**Again, I hold the leader accountable or what we're dealing with today, and I expect a lot more and a lot better.**

(emphasis added).

**THE EMPLOYER VIOLATED HRS CHAPTER 89**

106. The Employer has interfered, restrained, and coerced BU-5 members in the exercise of their collective bargaining rights guaranteed under HRS §89, including but not limited to the wages, hours, and working conditions that were negotiated and agreed to.

107. The Employer has dominated and interfered with the administration of the HSTA and the exercise of its collective bargaining rights.

108. The Employer has discriminated in regard to the terms and conditions of employment to discourage membership in the HSTA

109. The Employer has refused to bargain collectively in good faith with the HSTA as the exclusive representative regarding its proposal to reopen the existing CBA and its proposed furlough plan as required under HRS §89-9.

110. The Employer has refused and/or failed to comply with HRS Chapter 89, the relevant CBA, and HRS §396.

111. The Employer is in violation of the terms of the applicable CBA.

112. The Employer's refusal to bargain in good faith, its unilateral implementation of its furlough plan during ongoing negotiations, its direct communication with HSTA's members on the subject of negotiations and its threat of layoffs if furloughs are not agreed to, and its violation of the CBA, is evidence of Respondents' wilful, egregious, and blatant misconduct and actions which constitute a violation of HRS §89-13(a)(1)-(5), (7) and (8), including but not



limited to interfering, restraining and coercing HSTA's members from exercising their guaranteed rights under HRS §89 and the CBA, dominating and interfering with HSTA's formation, existence and administration of its employee organization, discriminating to discourage membership in HSTA's organization, discriminating against HSTA's members because they have joined and chosen to be represented by HSTA, refusing to bargain collectively in good faith with the HSTA, refusing to comply with the mandates of HRS 89, violating the CBA, and putting HSTA's members' well-being in jeopardy.

113. The Employer's unlawful and inappropriate conduct has a chilling effect on HSTA's members in the exercise of their union rights by creating fear and worry amongst HSTA's members.

114. The Employer wilfully and intentionally refused to negotiate with the HSTA and/or negotiated in bad faith regarding changes in its members' wages, hours, and working conditions.

115. The Employer wilfully and intentionally interfered with and restrained the employment and CBA rights of the HSTA members because of their membership and activities with the HSTA.

116. The Employer's conduct, actions and inactions constituted prohibited practices pursuant to HRS §89-13, and wilfully and intentionally violated the terms of the applicable CBA and the rights of HSTA's members.

WHEREFORE, Complainant HSTA respectfully requests that this Honorable Board grant appropriate relief and award damages in favor of Complainant and against the above-named Respondents, including, but not limited to, the following:

- a. That a declaratory order issue from the Board finding that:
  - i. The Respondents failed to negotiate in good faith and acted in bad faith;
  - ii. The Respondents violated HRS § 89-9(a) by attempting to compel HSTA to agree to its furlough plan;
  - iii. The Respondents violated HRS § 89-9(d) by attempting to exercise its management rights to invalidate provisions of an existing collective bargaining agreement that was and is still in effect;
  - iv. The Respondents committed a prohibited practice by communicating with HSTA's members on the subject of ongoing negotiations and by attempting to compel an agreement under the threat of layoffs.
- b. That a declaratory order issue from the Board finding that Respondents' conduct was a prohibited practice pursuant to HRS §89-13(a)(1)-(5), (7) and (8);
- c. That an order issue from the Board finding that Respondents have committed a prohibited practice pursuant to HRS §89-13(a)(1)-(5), (7) and (8);
- d. That an injunctive order issue from the Board prohibiting and enjoining Respondents from unilaterally implementing its furlough plan;
- e. That an order issue from the Board directing Respondents to post for publication, in all locations where HSTA members may review and gather, for 60 days, the decision of the Board finding that Respondents' committed prohibited practices pursuant to HRS §89-13(a)(1)-(5), (7) and (8), with proof of compliance being made to the Board and the HSTA;
- f. A cease and desist order prohibiting violations of HRS §89-13(a)(1)-(5), (7) and (8);
- g. Interlocutory relief prohibiting continuing violations by the Respondents of the contractual and collective bargaining rights of the public employees of BU-5;
- h. Make whole relief including, but not limited to, back pay, interest, costs and all reasonable attorney's fees incurred by the HSTA in bringing and prosecuting this complaint before the Board;
- i. That an order issue from the Board ordering Respondents to pay civil penalties of \$10,000.00 per violation for wilfully committing prohibited practices under HRS §89-13(a)(1)-(5), (7) and (8); and

- j. That an order issue from the Board against Respondents, and each of them, for such other and further relief as the Board deems appropriate and proper.

DATED: Honolulu, Hawaii, December 18, 2020.

*/s/ Keani Alapa*

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KEANI ALAPA

VLADIMIR P. DEVENS

Attorneys for Complainant

HSTA