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October 8, 2021

Via Email
Brandon W. Lee
Labor Relations
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Hawaii State Department of Education
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Osa Tui, Jr.
President
Logan Okita
Vice President
Lisa Morrison
Secretary-Treasurer
Wilbert Holck
Executive Director

Certified Mail No. 7018 3090 0001 0880 5059
Return Receipt Requested

Dear Mr. Lee:

**RE: Hawaii State Teachers Association Class Grievances, Impacts of COVID-19
Response #O-22-04, COVID-19 Attestation Program #O-22-05**

As you are well aware, as the Employer and Employer's representative, you have asserted and maintained the position that the Hawaii Department of Education (HIDOE) need not address HSTA's grievances related to various COVID-19 issues. This position includes the Employer's failure to consistently implement health and safety guidelines which have created an unsafe working environment for HSTA's members, and the refusal to negotiate changes in working hours, working conditions, and the impacts of the various vaccine-related mandates that have been unilaterally imposed on our union members, although the applicable and existing collective bargaining agreement (CBA) requires the same.

In your Step 2 response to the above grievances, you state:

...that the Governor's Emergency Proclamation dated August 5, 2021, suspended the following provisions of law, but only as explicitly set forth below and as allowed by federal law, pursuant to section 127 A-13(a)(3): HRS section 89-9, scope of negotiations; consultation, section 89-10(d), written agreements; enforceability; cost items, and section 89-13, prohibited practices, evidence of bad faith, to the extent necessary to allow State and county departments, agencies, and other public entities to implement policies, practice, procedures, and to take other actions necessary to mitigate risks posed by COVID-19 and its variants, including but not limited to, imposition of requirements pertaining to or requiring employee testing. This suspension ensures government can provide essential services safely and is necessary for the execution of emergency functions. As such, we are taking no further action on this matter.

I assume you are aware, given your asserted position, HRS § 127A-13(a)(3) allows the Governor to “[s]uspend any law that impedes or tends to impede or be detrimental to the **expeditious and efficient** execution of, or to conflict with, emergency functions, including laws which by this chapter specifically are made applicable to emergency personnel[.]” (emphasis added).

To better understand your position, please explain how impact bargaining or the attempt to collectively negotiate those impacts in any way impedes, tends to impede, conflicts or is in any way detrimental to the expeditious and efficient execution of the State’s emergency functions relating to COVID-19. Is it also your position that the CBA has been suspended, and if so, is it your position that it has been suspended in its entirety or only select parts? If it is the latter, please state which terms of the CBA have been suspended. Would you also please cite for us the legal authority that suspended the applicable CBA or any terms or provisions contained therein, including the right to pursue a grievance as set forth in the CBA.

We request a response to the information requested above no later than Friday, October 15, 2021. This information is critical for HSTA to understand the specific basis and grounds to bypass collective negotiations, and your contention that “This suspension ensures government can provide essential services safely and **is necessary** for the execution of emergency functions,” given that neither you, nor the Employer has provided any of this information (emphasis added).

Sincerely,



Andrea Eshelman
Deputy Executive Director

CC: The Honorable David Y. Ige, Governor of the State of Hawaii
Ryker Wada, Director, Department of Human Resources Development
Catherine Payne, Chair, Board of Education
Keith Hayashi, Interim Superintendent, Department of Education
Phyllis Unebasami, Deputy Superintendent, Department of Education
Sean Bacon, Acting Asst. Superintendent, Office of Talent Management
Jarnett Lono, Personnel Director, Office of Talent Management
Wilbert Holck, Executive Director, HSTA