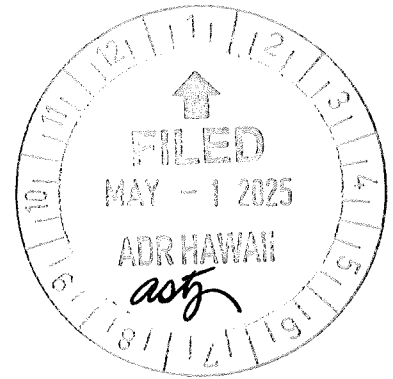


Thomas E. Crowley, III 1753-0  
 Dillingham Transportation Building  
 735 Bishop Street, Suite 205  
 Honolulu, Hawaii 96813  
 Telephone: (808) 531-6789



ARBITRATOR

BEFORE ARBITRATOR  
 THOMAS E. CROWLEY  
 STATE OF HAWAII

HAWAII STATE TEACHER ASSOCIATION,	)	Class Grievance on Behalf of All BU 05
	)	Employees in DOE's Office of
Union,	)	Information Technology Services (OITS)
	)	RE: Recognition of HSTA Association
and	)	Policy Committee (APC) in OITS
	)	
DEPARTMENT OF EDUCATION, STATE OF HAWAII,	)	<b>DECISION, ORDER, AND</b>
	)	<b>ARBITRATION AWARD;</b>
Employer.	)	CERTIFICATE OF SERVICE
	)	

**DECISION, ORDER, AND ARBITRATION AWARD**

**I. Introduction**

The undersigned arbitrator was mutually selected by the parties to arbitrate the above-captioned Class Grievance ("Class Grievance"). HSTA UniServ Director Justin Jansen represented the HAWAII STATE TEACHER ASSOCIATION ("HSTA" or "Union") and all BU 05 Employees in the DOE's Office of Information Technology Services OITS ("Class Grievants"). Deputy Attorney General James E. Halvorson, Esq. represented the DEPARTMENT OF EDUCATION, STATE OF HAWAII ("DOE" or "Employer"). The parties were afforded a full and fair opportunity to present evidence and submit arguments regarding the Class Grievance.

## II. The gravamen of the Class Grievance

The gravamen of the Class Grievance alleged the DOE violated HRS § 89-9(c),<sup>1</sup> Article IV.J of the BU 05 Collective Bargaining Agreement (CBA),<sup>2</sup> and longstanding past practice<sup>3</sup> when the DOE failed to recognize the HSTA's Association Policy Committee (APC) representatives for purposes of meetings to discuss matters affecting teachers working in the DOE's Office of Information Technology Services (OITS).<sup>4</sup>

The DOE's position is:

- While OITS leadership has allowed HSTA's presence at OITS meetings upon request, this accommodation is not to be considered an expansion to the definition of a "school."
- Article IV.J specifically provides "In each school, an Association Policy Committee (APC) will be recognized by the Employer."

---

<sup>1</sup> HRS § 89-9(c) (Scope of negotiations; consultation) provides:

(c) Except as otherwise provided in this chapter, all matters affecting employee relations, including those that are, or may be, the subject of a rule adopted by the employer or any director, shall be subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations.

<sup>2</sup> Article IV.J (Association Policy Committee) of the BU-05 CBA provides in part:

In each school, an Association Policy Committee (APC) will be recognized by the Employer. This committee may consist of not more than four (4) teachers from that school. ...

The principal will meet and discuss with the committee such topics as the following: excursion procedures, student rules, activity policies, monitors, extracurricular policies, intraschool communications, school forms, fund raising projects and matters which may be subject to discussion under Section 89(c), HRS.

Meetings and committee activities will be conducted in such a manner that they will not interfere with classroom instruction.

<sup>3</sup> Union Post-Hearing Brief at 2.

<sup>4</sup> Union Exhibit ("U-") U-1 (12/1/23 Class Grievance).

- “School” is defined by the Merriam-Webster Dictionary as “a place or establishment for teaching and learning.”

- OITS is not a “school.”
- Therefore the DOE is not required to recognize the APC at OITS.<sup>5</sup>

### **III. Issues to be arbitrated and the burden of proof**

#### **A. The issues to be arbitrated in this Class Grievance are.<sup>6</sup>**

1. Did the Employer violate Articles IV (Association Rights), XXIV (Miscellaneous), and/or XXV (Maintenance of Benefits) of the BU 05 Collective Bargaining Agreement when it allegedly failed to recognize Association Policy Committee representatives of HSTA for purposes of meeting to discuss matters affecting teachers working in the DOE Office of Information Technology Services?
2. If so, what are the remedies?

#### **B. Burden of proof**

The Union has the burden of proof for this Class Grievance. The quantum of proof is the preponderance of the evidence.

### **IV. Procedural Background**

#### **December 1, 2023: Step 1 Grievance**

On December 1, 2023, the HSTA filed its Step 1 Grievance,<sup>7</sup> which stated in part:

The employer violated the collective bargaining agreement (CBA) when it failed to recognize Association Policy Committee (APC) representatives of HSTA for purposes of meeting to discuss matters affecting teachers working in OITS.

---

<sup>5</sup> Employer’s Exhibit (“E-”) E-B (March 7, 2024 Step 1 denial) at 005; February 19, 2025 Hearing Transcript (“Tr.”) at 124-125.

<sup>6</sup> Tr. at 5-6; U-2.

<sup>7</sup> U-1.

The HSTA alleged the DOE violated the following Articles in the CBA: Article IV - Association Rights; Article XXIV - Miscellaneous; Article XXV - Maintenance of Benefits. The Union's requested remedies include that the Employer follow Article IV of the CBA and recognize the HSTA Association Policy Committee at OITS.

**March 7, 2024: Denial of Step 1 Grievance**

On February 22, 2024, the Step 1 meeting was conducted, attended by DOE Assistant Superintendent Michael Otsuji, DOE Office of Talent Management State Personal Regional Officer Teri Sakanashi, State Office Teacher (SOT) John Roland as designated Class Grievant, and HSTA Uniserve Director Justin Jansen.<sup>8</sup>

On March 7, 2024, DOE Assistant Superintendent Michael Otsuji denied the HSTA's Step 1 Grievance.<sup>9</sup>

**June 7, 2024: Denial of Step 2 Grievance**

On March 8, 2024, the HSTA filed its Step 2 Grievance, which in substance mirrored its Step 1 Grievance.<sup>10</sup> On May 2, 2024, the Step 2 meeting was conducted, attended by DOE Personal Specialist Nicole Nitta, State Office Teacher (SOT) John Roland as designated Class Grievant, and HSTA Uniserve Director Justin Jansen.<sup>11</sup>

On June 7, 2024, the DOE Superintendent's Designated Representative Nicole Nitta denied the HSTA's Step 2 Grievance.<sup>12</sup>

---

<sup>8</sup> U-13 at 000163.

<sup>9</sup> U-13 at 000163-000167

<sup>10</sup> U-2.

<sup>11</sup> U-14 at 000169.

<sup>12</sup> U-14 at 000169-000174.

**June 12, 2024: The Union’s notice to proceed to arbitration**

On June 12, 2024, the Union provided notice of its request for arbitration of the Class Grievance, pursuant to Article V.I of the CBA.<sup>13</sup> On September 19, 2024, this arbitrator was notified of his selection as arbitrator of the Class Grievance. On October 2, 2024, the arbitrator submitted Scheduling Order No. 1, which designated February 19, 2025 as the date for the arbitration hearing.<sup>14</sup>

**October 10, 2024: Notice that the Employer is not challenging arbitrability**

On October 10, 2024, on behalf of the Employer, Mr. Halvorson emailed the arbitrator, copied to the Union, reporting that the Employer is not challenging the arbitrability of the Class Grievance. Accordingly, this arbitration has jurisdiction over the Class Grievance.

**February 19, 2025: the arbitration hearing**

The arbitration hearing was conducted on February 19, 2025 in Honolulu, Hawaii.

The following witnesses testified at the hearing:

- Beverly Ikalani, HSTA UniServe Director
- Michael Depoe, DOE resource teacher in the Kauai District Office
- John Roldan, State Office Teacher with the DOE Office of Information Technology Services
- Teri Sakanashi, Human Resource Regional Officer, DOE Office of Talent Management

Subject to the weight the arbitrator gave them, the following exhibits were received in evidence:

---

<sup>13</sup> U-3.

<sup>14</sup> Tr. at 5.

- Employer Exhibit ("E-"): E-A through E-F.
- Union Exhibits ("U-"): U-1 through U-23.

**V. Standards of Review**

**HRS § 89-9(c), Scope of negotiations; consultation**

(c) Except as otherwise provided in this chapter, all matters affecting employee relations, including those that are, or may be, the subject of a rule adopted by the employer or any director, shall be subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations.

**Relevant Provisions of the BU 05 Collective Bargaining Agreement**

The sections of the BU 05 CBA involved in this Class Grievance are Articles I, IV, V, XXIV, and XXV. Relevant excerpts from these Articles are set forth below.

**Article I.B - Recognition**, provides in relevant part:

...  
 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 Hawaii State Department of Education (DOE) ... pursuant to ... 89-10.55, HRS.

...  
 It is understood that references to teachers shall include all bargaining unit members unless specifically noted otherwise.

**Article IV – Association Rights**

Section B, Association Representatives:

Association Representatives will be permitted to transact official Association business with individual teachers on school property at reasonable times, provided permission is secured from the principal or designee.

Section C, Equipment and Facilities:

The Association school representative shall be granted, upon request when not otherwise in use, the reasonable use of school copying and communication equipment; however, school business shall have priority. Such equipment shall not be removed from the school premises by the Association Representative.

...

The faculty association in each school may hold meetings in each school.

#### Section D, Bulletin Board:

The Association shall have in each school, where bulletin board space exists, the exclusive use of the staff bulletin board which shall be at least 3 x 4 feet in area.

#### Section E, Use of Mail Boxes and Bulletin Boards:

The Association shall have the right to use school mailboxes.

#### Section J, Association Policy Committee (APC):

In each school, an Association Policy Committee (APC) will be recognized by the Employer. This committee may consist of not more than four (4) teachers from that school. ...

The principal will meet and discuss with the committee such topics as the following: excursion procedures, student rules, activity policies, monitors, extracurricular policies, intraschool communications, school forms, fund raising projects and matters which may be subject to discussion under Section 89(c), HRS.

Meetings and committee activities will be conducted in such a manner that they will not interfere with classroom instruction.

#### Section N, Association Faculty Representative:

The Association will furnish in writing to the Superintendent a list of the authorized faculty representatives in each school where a representative has been appointed and maintain its currency.

### **Article V, Grievance Procedure**

...

#### Section D, Association Representative - Right to Present a Grievance:

Upon selection and certification by the Association, the Board shall recognize an Association grievance representative in each school on the following ratio: one (1) Association grievance representative for each

school with up to one hundred (100) members of the bargaining unit; two (2) Association grievance representatives for schools with over one hundred (100) members of the bargaining unit.

#### Section I, Arbitration

...  
(1) ... In making a decision on a case, the arbitrator shall not have the authority to consider any facts not in evidence, nor shall the arbitrator add to, subtract from, delete, or in any way amend or modify any term or condition of the Collective Bargaining Agreement. The arbitrator's decision shall be in writing and shall contain the rationale supporting the decision. The decision will be final and binding on the parties.

...  
(7) The Arbitrator shall not consider different allegations than those presented at the Step 1 and Step 2 meeting.

#### Section J.

The Employer acknowledges the right of the Association's grievance representative to represent the grievant at any level if so requested by the grievant.

Article VI, Teaching Conditions and Hours, Section M, Teacher Travel, provides in part:

Schedules of teachers who are assigned to more than one school shall be arranged so that no teacher shall be required to engage in an unreasonable amount of interschool travel.

Article XXIV, "Miscellaneous," provides in pertinent part:

...  
C. Except where contrary to law, this Agreement shall supersede any rules, regulations or practices of the employer which shall be contrary to or inconsistent with this Agreement.

Article XXV, "Maintenance of Benefits," provides in pertinent part:

A. Except as modified herein, teachers shall retain all rights, benefits and privileges pertaining to their conditions of employment contained in the Standard Practices at the time of the execution of this Agreement.

## VI. The Union's arguments

In summary, the Union argues: the DOE violated HRS § 89-9(c), Article IV.J

of the BU 05 Collective Bargaining Agreement (CBA), and longstanding past practice when the DOE failed to recognize the HSTA's Association Policy Committee (APC) representatives for purpose of meeting to discuss matters affecting teachers working in the DOE's Office of Information Technology Services (OITS).

The Union's arguments are stated in its presentation at the Steps 1 and 2 meetings, the testimonies of SOT/OITS John Roldan, DOE resource teacher Michael Depoe, and HSTA UniServe Director Beverly Ikalani at the arbitration hearing, and the Union's Post-Hearing Brief.

### **The Union's arguments at the Steps 1 and 2 meetings**

At the Steps 1 and 2 meetings, in addition to other arguments, Mr. Jansen referenced:<sup>15</sup>

- Seven (7) Article IV provisions which reference the Union's rights in "schools" that apply not only to HSTA members at schools, but also apply to State Office Teachers at State Offices such as OITS.
- Article V, Section D, which provides for a HSTA grievance representative "in each school," has consistently been interpreted as including a grievance representative for HSTA members in office settings.
- Article VI, Section M, Teacher Travel, which uses the word "school," but also applies to teachers in office settings.
- A 2010 Memorandum of Understanding between the DOE and HSTA re: Staff Reductions for SOTs, which explicitly classified OITS and other state offices as "schools."

---

<sup>15</sup> Mr. Jansen's statements were summarized in the DOE's denials of the Steps 1 and 2 Grievances.

The specifics of the Union's above arguments are discussed below in the arbitrator's determination of the Class Grievance.

**The testimonies of SOT John Roldan, DOE resource teacher Michael Depoe, and HSTA UniServe Director Beverly Ikalani**

SOT John Roldan, who is also an elected APC member at OITS, testified:

- The OITS uses the APC structure to address scheduling, curriculum, and working conditions.

- The impact on the SOTs of DOE's refusal to recognize APC:<sup>16</sup>

... [W]e would lose our ... right to [provide] input on any kind of workplace decisions regarding ... duties or any kind of changes to our roles ... . That's on the work side. On the human side, ... disappointment and morale will also be affected ... .

- Common topics at APC meetings:<sup>17</sup>

[G]oing over the employee evaluation system that all teachers go through, PD credits, forming classification. ... Updates on RT [Resource Teacher] positions in our office is always on the agenda. We want to recognize ... the work that resource teachers do in our office. And there's been a history of reduction in force of resource teachers and replacing them with educational officers ... .

- Uncertainty due to not being formally recognized as APC:<sup>18</sup>

[B]ecause we're not recognized as APC, we're not sure ... what kind of outcome we can get from [meetings], but we do bring up the issues so the director is aware of what we would be talking about if this was an official APC recognized group.

- He is not confident the current meetings with the director will continue, because:<sup>19</sup>

---

<sup>16</sup> Tr. at 104.

<sup>17</sup> Tr. at 101.

<sup>18</sup> Tr. at 101-102.

<sup>19</sup> Tr. at 103.

[I]f they don't recognize the APC, there's no contractual right that they need to continue doing that. And if we have a different director, that ... he or she would follow the practice of ... our current director.

SOT Michael Depoe, who is also an elected APC member at the Kauai District Office, testified:

- He works in an office setting, not a traditional school.<sup>20</sup>
- His APC continues to meet with administration under the BU 05

APC structure:<sup>21</sup>

We periodically will schedule meetings to talk to the Complex Area Superintendent. ... [W]e also communicate with all of our members that are at the district office, ... mostly resource teachers. ... and if there's any questions, concerns, ... having to do with relations, communication, then they ... relay that to us and [we] would talk about it at the [APC] meeting.

HSTA UniServe Director Beverly Ikalani testified regarding the history of APC recognition:<sup>22</sup>

... [W]hen this issue first came to light for HSTA, I really had to question what was ... the issue? ... I don't understand why it's become a dispute because ... past practice has always been when we have Unit 05 members at any given school or site or state office, that they're going to have representation so that they get their issues resolved at the lowest possible level.

The specifics of the above testimonies are discussed below in the arbitrator's determination of the Class Grievance.

**The Union's Post-Hearing Brief: the DOE violated HRS § 89-9(c), Article IV.J of the BU 05 CBA, and longstanding past practice**

The Union argues the following:

---

<sup>20</sup> Tr. at 70.

<sup>21</sup> Tr. at 70-71.

<sup>22</sup> Tr. at 50.

- HRS § 89-9(c) requires DOE to engage with HSTA at all worksites, and mandates that the DOE consult with HSTA on matters affecting employee relations. Without APC recognition, OITA teachers are denied a guaranteed, protected process for such consultation. Meetings at management’s discretion do not meet this legal requirement.<sup>23</sup>

- Article IV of the CBA defines Association rights, including the establishment of an APC. The APC is the formal, exclusive representative body through which HSTA and the DOE engage on workplace issues. The BU 05 CBA contractual language supports the broad interpretation of “school” in Article IV.J. Provisions in the CBA that use the word “school” have always been applied to State Office settings. The DOE’s refusal to recognize the OITS APC is a direct violation of this obligation. If the DOE is not recognizing the APC at OITS, then their obligation, under § 89-9(c), to consult and confer with HSTA prior to changing rules or policies has not been and continues to not be met.<sup>24</sup>

- Past practice confirms APC rights for OITS teachers. The DOE has recognized State Office APCs for years, including recognizing APCs at State Offices, including OITS. The unchallenged, multi-year recognition of State Office APCs – including formal training, consultation, and representation – clearly constitutes binding past practice. Only recently has this changed, without any explanation or negotiation. This change contradicts decades of consistent practice. The DOE’s sudden refusal to recognize APC at OITS is arbitrary, unsupported, and harmful. More alarmingly, the

---

<sup>23</sup> Union Post-Hearing Brief at 7.

<sup>24</sup> Union Post-Hearing Brief at 6.

DOE's narrow interpretation of the word "school" risks undermining contractual rights for hundreds of teachers across the State who do not work in traditional school buildings.<sup>25</sup>

The Union requests the arbitrator to sustain the Class Grievance; direct the DOE to formally recognize the OITS APC; and affirm that all teachers, regardless of worksite, are entitled to the same representation rights under the CBA.<sup>26</sup>

## **VII. The DOE's arguments**

The DOE's arguments are stated in its Steps 1 and 2 denials of the Class Grievance, the testimony of DOE HR Regional Director Teri Sakanashi, and the DOE's Post-Hearing Brief.

### **Denial of Step 1 Class Grievance**

On March 7, 2024, DOE Assistant Superintendent Michael Otsuji<sup>27</sup> denied the HSTA's Step 1 Grievance, stating in part:

There is no dispute that the use of the word "school" is referenced in the various parts of the contract and that State Office Teachers are covered by the BU 05 CBA. However, for this particular section of Article IV.J., it specifically refers to "teachers assigned to schools," responsibilities of the principal, and activities that are applicable to school setting topics. In good faith and as acknowledged by the grievant in the [Step 1] meeting, OITS leadership has supported and provided the OITS SOTs with the opportunity to have a designated BU 05 employee representative at meetings, routine employee driven meetings to raise any issues and concerns, ability to provide feedback on issues, and also the opportunity to collaboratively resolve any issues. Further, the OITS leadership team has allowed and granted HSTA's presence at meetings upon request, opportunities to meet with their members to discuss union business and/or concerns, and allows employees to address directly with their supervisors similar to any office dynamics that may not be applicable to counterparts in schools. This structure is not specifically labeled as "APC" but it allows

---

<sup>25</sup> Union Post-Hearing Brief at 7 and 8.

<sup>26</sup> Union Post-Hearing Brief at 8.

<sup>27</sup> DOE Assistant Superintendent Michael Otsuji did not testify at the 2/19/25 arbitration hearing.

the OITS SOTs flexibility, democracy and preserves their rights as a BU05 member, contrary to the CBA language which distinguishes circumstances surrounding schools, particularly Article IV (J). However, these accommodations are not to be considered concessions or expansions to the definition of a school. Merriam-Webster Dictionary defines “school” as “a place or establishment for teaching and learning.” Had the parties to the collective bargaining agreement intended for “school” to be defined by other than by its usual and common definition, the parties could have easily included a different meaning to the word “school.” The parties did not do so.

### **Denial of Step 2 Grievance**

On June 7, 2024, the DOE Superintendent’s Designated Representative Nicole Nitta<sup>28</sup> denied the HSTA’s Step 2 Grievance, stating in part:<sup>29</sup>

In response to the assertions made by the HSTA,<sup>30</sup> the Department acknowledges that the BU 05 CBA applies to OITS SOTs, and the term “school” is referenced throughout the CBA. Based on the information obtained, it is the Department’s position that the OITS leadership ensures that the OITS SOTs have access to a level of participation in discussions that are provided to their school-level counterparts, as outlined in Article IV, Section J, the only difference being the “APC” label.<sup>31</sup>

Article IV, Section J clearly states, “The **principal** will meet and discuss with the committee such topics as the following: excursion procedures, student rules, activity policies, monitors extracurricular policies, intraschool communications, school forms, fundraising projects and matters which may be subject to discussion under Section 89-9(c), HRS [emphasis added]. Article IV, Section J, explicitly pertains to the Principal meeting and discussing the above-referenced school topics (e.g., excursion procedures, student rules, activity policies, monitors extracurricular policies, intraschool communications, school forms, fundraising project, etc.) with the APC, which is not applicable to the OITS SOTs. Furthermore, Article IV, Section J clearly states, “Meetings and committee

---

<sup>28</sup> DOE Superintendent’s Designated Representative Nicole Nitta did not testify at the 2/19/25 arbitration hearing.

<sup>29</sup> U-14, the 6/7/24 Step 2 Denial.

<sup>30</sup> At the Step 2 meeting, Mr. Jansen asserted numerous examples in the BU 05 CBA which reference the Union’s rights in “schools” that apply not only to HSTA members at schools, but also to State Office Teachers at State Offices such as OITS.

<sup>31</sup> U-14 at 000172.

activities will be conducted in such a manner that they will not interfere with **classroom instruction**,” [emphasis added], which is also not applicable to the OITS SOTs.<sup>32</sup>

It is noted that although it's the Department's position that Article IV, Section J identifies the rights of school-level teachers – as it makes reference to the Principal and specifically identifies various school-related topics, - the OITS leadership team has allowed for collaborative discussion with the OITS SOTs, thereby providing them the opportunity to discuss matters subject to Section 89-9(c), HRS. This position is supported by SOT Roldan's confirmation that the OITS leadership has supported and permitted the OITS SOTs to have BU05 employee representatives at employee-driven meetings. These employee-driven meetings allow the OITS SOTs to voice concerns, provide feedback and input, collaborate, and resolve issues. The OITS leadership has also allowed HSTA to be present at meetings upon request to meet with its members to discuss union business and concerns. Further, you confirmed that you had arranged meetings with the OITS SOTs during their lunch break to discuss union business.<sup>33</sup>

...

You argued that in the [2010 Memorandum of Understanding between the Department of Education and Hawaii State Teacher's Association (Clarification of Staff Reductions for State Office Teachers) (“MOU re: Staff Reductions for SOTs”)],<sup>34</sup> the Department agreed that the state offices shall be considered a school. Although your argument is that in this MOU the Department agreed to recognize state offices as schools, it is the Department's position that the agreement was to recognize state offices as schools for the limited purpose of Staff Reductions.<sup>35</sup>

...

It is the Department's position that the OITS leadership has allowed for collaborative discussion with the OITS SOTs, thereby providing them the opportunity to discuss matters subject to Section 89-9(c), HRS, with the only difference being that they are not labeled as an APC.<sup>36</sup>

### **The testimony of DOE HR Regional Director Teri Sakanashi**

---

<sup>32</sup> U-14 at 000172.

<sup>33</sup> U-14 at 000172.

<sup>34</sup> U-12 is the MOU re: Staff Reductions for SOTs.

<sup>35</sup> U-14 at 000173.

<sup>36</sup> U-14 at 000174.

The DOE called one witness to testify, Teri Sakanashi, who is the Human Resources Regional Officer for state offices in the DOE. The specifics of her testimony are discussed below in the arbitrator's determination of the Class Grievance.

### **The DOE's Post-Hearing Brief**

The DOE's Post Hearing Brief argues:<sup>37</sup>

... [The BU 06 CBA] clearly states the APCs only apply to schools. HSTA's argument that a 2010 Memorandum of Understanding ("MOU") states that state offices would be considered as schools but that was not for the purpose of APCs but only for the case of staff reductions.

...

The HSTA employees in the state office OITS have all the benefits of having an APC just without the title. To grant this grievance is not only a contravention of the plain language of the APC in the contract it is unnecessary.

...

[T]his is a poor way to address the concern the HSTA apparently has with APCs not being recognized in state offices. The HSTA also presented testimony concerning extension of APCs to complex areas. The OITS has a number of resource teachers assigned but some state offices only have one or two so it would make no sense for there to be an APC in an office with only one resource teacher. Testimony of Teri Sakanishi, Pg. 120.

It is undisputed that HSTA has not made a proposal to the employer to address this issue, but it would make far more sense to address it in consultation or negotiations than through arbitration.

In summary, the resource teachers have the benefits of an APC, just without the title, and arbitration is a poor way to address the broader concerns.

## **VIII. The arbitrator's determination of the Class Grievance**

After carefully reviewing the exhibits, the testimonies of the witnesses, and the arguments of the parties, the arbitrator makes the following determination of the Class Grievance.

### **A. Jurisdiction and the scope of the arbitrator's authority**

---

<sup>37</sup> Union's Post Hearing Brief at 2-3.

## 1. Jurisdiction

The arbitrator has jurisdiction over this Class Grievance pursuant to Article V – Grievance Procedure, Section I - Arbitration, of the BU 05 CBA. Arbitrability is not disputed with respect to this BU 05 Class Grievance.

## 2. The remedies in this Class Grievance are limited to the Class Grievants at the DOE's Office of Information Technology (OITS)

In making this Decision, Order, and Arbitration Award, the arbitrator recognizes that the scope of his authority is defined by: Article V, Section I, Paragraphs 1 through 7 of the BU 05 CBA; the allegations presented at the Step 1 and Step 2 meetings; and the issues to be arbitrated.

Article V, Section I, Paragraphs 1 and 7 provide:

### Section I, Arbitration

...

(1) ... In making a decision on a case, the arbitrator shall not have the authority to consider any facts not in evidence, nor shall the arbitrator add to, subtract from, delete, or in any way amend or modify any term or condition of the Collective Bargaining Agreement. The arbitrator's decision shall be in writing and shall contain the rationale supporting the decision. The decision will be final and binding on the parties.

...

(7) The Arbitrator shall not consider different allegations than those presented at the Step 1 and Step 2 meeting.

The allegations in the Step 1 Grievance<sup>38</sup> and Step 2 Grievance<sup>39</sup> mirror each other, and state in part:

Name of Grievant: HSTA

School/Office: OITS

---

<sup>38</sup> U-1.

<sup>39</sup> U-2.

Statement of the Grievance:

The employer violated the collective bargaining agreement (CBA) when it failed to recognize Association Policy Committee (APC) representatives of HSTA for purposes of meeting to discuss matters affecting teachers working in OITS.

Specific term or provision of the Agreement allegedly violated:

Article IV - Association Rights  
Article XXIV – Miscellaneous  
Article XXV - Maintenance of Benefits.

The Union's requested remedies include:

The Employer will follow Article IV of the CBA and recognize the HSTA Association Policy Committee at the Office of Information Technology Services (OITS).

Based on the above, the issues to be arbitrated in this Class Grievance are:<sup>40</sup>

1. Did the Employer violate Articles IV (Association Rights), XXIV (Miscellaneous), and/or XXV (Maintenance of Benefits) of the BU 05 Collective Bargaining Agreement when it allegedly failed to recognize Association Policy Committee representatives of HSTA for purposes of meeting to discuss matters affecting teachers working in the DOE Office of Information Technology Services?
2. If so, what are the remedies?

Based on the above, the remedies for this Class Grievance are limited to the Class Grievants at the DOE Office of Information Technology Services.

**B. The Class Grievance is sustained.**

For the following reasons, the arbitrator the arbitrator sustains the BU 05 Class Grievance.

1. **HRS § 89-9(c) requires the DOE to consult with HSTA prior to effecting changes in any major policy affecting employee relations**

---

<sup>40</sup> Tr. at 5-6; U-2.

HRS § 89-9(c), Scope of negotiations; consultation, provides:

(c) Except as otherwise provided in this chapter, all matters affecting employee relations, including those that are, or may be, the subject of a rule adopted by the employer or any director, shall be subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations.

§ 89-9(c) requires the DOE to consult with HSTA prior to effecting changes in any major policy affecting employee relations. Article IV. J expressly requires the DOE to discuss with the Association Policy Committee “matters which may be subject to discussion under Section 89(c), HRS.” § 89-9(c) is the statutory authority which mandates the DOE’s duty to consult about all matters affecting employee relations.

**2. “School,” in the context of BU 05 Article IV.J, includes non-traditional office settings where OITS State Office Teachers work**

Article IV.J, Association Policy Committee (APC), provides (Emphasis added):

In each school, an Association Policy Committee (APC) will be recognized by the Employer. This committee may consist of not more than four (4) teachers from that school. ...

The principal will meet and discuss with the committee such topics as the following: excursion procedures, student rules, activity policies, monitors, extracurricular policies, intraschool communications, school forms, fund raising projects **and matters which may be subject to discussion under Section 89(c), HRS.**

Meetings and committee activities will be conducted in such a manner that they will not interfere with classroom instruction.

The arbitrator finds and concludes that the DOE misinterprets Article IV.J because it fails to construe Section J as a whole, or in the context of other sections of Article IV,<sup>41</sup> or in relation to the entire BU 05 CBA, or in relation to past practice.

---

<sup>41</sup> U-4 at 00021-00025; Article IV, Sections A through O.

**a. The DOE fails to construe Article IV.J as a whole**

Article IV.J's reference to § 89-9(c) is not surplusage. The DOE interprets Article IV, Section J as requiring APCs "in each school," but not required in the OITS, because OITS is not a "school."<sup>42</sup> The arbitrator finds and concludes that the DOE misinterprets Article IV.J because it fails to construe Section J as a whole. Instead, the DOE narrowly focuses on the words "school" and "principal" in Section J, and does not address the existence, meaning, or effect of Section J's explicit requirement that topics for discussion with APCs include "matters which may be subject to discussion under Section 89(c), HRS."

Numerous arbitration decisions have invoked the principle that disputed portions of a collective bargaining agreement "must be read in light of the entire agreement."<sup>43</sup> Elkouri & Elkouri quote with approval the following three arbitration decisions regarding construing contract language as a whole:<sup>44</sup>

The primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties, and to interpret the meaning of a questioned word, or part, with regard to the connection in which it is used, the subject matter and its relation to all the other parts or provisions.

...

Sections or portions cannot be isolated from the rest of the agreement and given construction independently of the purpose and agreement of the parties as evidenced by the entire document. ... The meaning of each paragraph and each sentence must be determined in relation to the contract as a whole.

...

It is axiomatic in contract construction that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided

---

<sup>42</sup> U-14 at 000172.

<sup>43</sup> Elkouri & Elkouri, *How Arbitration Works* (8<sup>th</sup> Ed.) at 9-35.

<sup>44</sup> Elkouri & Elkouri, *How Arbitration Works* (8<sup>th</sup> Ed.) at 9-35.

because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect.

The DOE's interpretation would render meaningless Article IV.J's explicit requirement that an APC must be recognized for matters subject to HRS § 89(c). Although the list of other discussible topics (e.g., excursion procedures, student rules) in Section J may not necessarily apply to State Office Teachers (SOTs) in office settings, the explicit citation to § 89-9(c) requires management, regardless of whether teachers work at traditional schools or in non-traditional office settings, to meet and discuss with an APC any topic regarding contemplated changes in any major policy affecting employee relations.

The arbitrator reads the whole of Article IV.J as giving meaning to the recognition of APCs for matters subject to discussion with HSTA teachers, including § 89-9(c)-related matters subject to discussion with SOTS at OITS.<sup>45</sup> The arbitrator agrees with SOT John Roldan's testimony that "school" refers to a teacher's site of work, and "principal" refers to the person the teacher reports to, which in OITS' case is a director:<sup>46</sup>

Q. (By Mr. Jansen) ... [A]s an HSTA member and representative, can you describe your understanding of the term "school" and "principal" in both the [CBA] and the school code, and how it applies to you as a state office teacher?

A. My understanding is the school would be our site of work, and principal would refer to the person we directly report to, which in my case would be a director.

---

<sup>45</sup> The Restatement (Second) of Contracts comments:<sup>45</sup>

Meaning is inevitably dependent on context. A word changes meaning when it becomes part of a sentence, the sentence when it becomes part of a paragraph. A longer writing similarly affects the paragraph. Where the whole can be read to give significance to each part, that reading is preferred. ...

<sup>46</sup> Tr. at 111.

The arbitrator finds that read as a whole, the meaning of “school,” in the context of Article IV.J, changes from a narrow definition of “a place for teaching and learning” to include OITS office settings where § 89-9(c) matters are subject to discussion with an APC.

**b. The DOE fails to construe Section J in the context of other sections in Articles IV, V, and VI**

To construe Section J of Article IV as a whole includes giving effect to all clauses and words in Section J, the other sections in Article IV, and the entire BU 05 CBA. As Elkouri & Elkouri advised:<sup>47</sup>

The principle extends not only to entire clauses, but also to individual words. Ordinarily, all words used in an agreement should be given effect. The fact that a word is used indicates that the parties intended it to have some meaning, and it will not be declared surplusage if a reasonable meaning can be given to it consistent with the rest of the agreement. It is only when no reasonable meaning can be given to a word or clause, either from the context in which it is used or by examining the whole agreement, that it may be treated as surplusage and declared to be inoperative.

To construe Section J of Article IV as a whole includes giving effect to other sections in Article IV. The parties’ interpretation of the term “school” in other BU 05 provisions is also evidence of the parties’ “past practice.”<sup>48</sup>

At the Steps 1 and 2 meetings, in addition to other arguments, Mr. Jansen, on behalf of the Class Grievants, referenced numerous Articles IV, V and VI provisions which reference the Union’s rights in “schools” that apply not only to HSTA members at schools, but also apply to State Office Teachers at State Offices such as OITS:

---

<sup>47</sup> Elkouri & Elkouri, *How Arbitration Works* (8<sup>th</sup> Ed.) at 9-36.

<sup>48</sup> The parties’ past practice is further discussed in Section VIII.B.2.d below.

1) Article IV, Section B, Association Representatives:

Association Representatives will be permitted to transact official Association business with individual teachers on school property at reasonable times, provided permission is secured from the principal or designee.

Mr. Jansen stated that although Section B references "on school property," it is a contractual right also guaranteed to State Office Teachers (SOT).<sup>49</sup>

2) Article IV, Section C, Equipment and Facilities:

The Association school representative shall be granted, upon request when not otherwise in use, the reasonable use of school copying and communication equipment; however, school business shall have priority. Such equipment shall not be removed from the school premises by the Association Representative.

Mr. Jansen stated that HSTA representatives often use the Department's communication equipment to transmit important HSTA information, which is not limited to HSTA members at schools, despite the contract language only saying "school" and "school premises." Mr. Jansen stated the intent of the contract is not to create a tiered system of rights; instead, all HSTA members share the contractual rights.<sup>50</sup>

3) Article IV, Section C, Equipment and Facilities:

"The faculty association in each school may hold meetings in each school."

Mr. Jansen stated he organizes meetings with the OITS BU 05 members during lunch break to discuss HSTA business over pizza.

4) Article IV, Section D, Bulletin Board:

---

<sup>49</sup> U-14 at 000170.

<sup>50</sup> U-14 at 000170.

The Association shall have in each school, where bulletin board space exists, the exclusive use of the staff bulletin board which shall be at least 3 x 4 feet in area.

Mr. Jansen stated this is another example of the CBA using the term "school" which also applies to State Office BU 05 members. SOT Roldan confirmed that OITS has an old filing cabinet in their office, which they use as a bulletin board for HSTA information.<sup>51</sup>

5) Article IV, Section E, Use of Mail Boxes and Bulletin Boards:

"The Association shall have the right to use school mailboxes."

Mr. Jansen stated, despite the term "school" used in the contract, HSTA SOTs know they can post information on their bulletin board, and they can use their work email to share meeting notices, elections, appointments, and all the other terms listed in Section E. Mr. Jansen stated that if use of mail boxes and bulletin boards is only applicable to school-level members, then it would create a disparity in the awareness of important HSTA business for SOTs.<sup>52</sup>

6) Article IV, Section J, Association Policy Committee (APC):

In each school, an Association Policy Committee (APC) will be recognized by the Employer. This committee may consist of not more than four (4) teachers from that school. ...

The principal will meet and discuss with the committee such topics as the following: excursion procedures, student rules, activity policies, monitors, extracurricular policies, intraschool communications, school forms, fund raising projects and matters which may be subject to discussion under Section 89(c), HRS.

Meetings and committee activities will be conducted in such a manner that they will not interfere with classroom instruction.

---

<sup>51</sup> U-14 at 000170-000171.

<sup>52</sup> U-14 at 000171.

Mr. Jansen stated:<sup>53</sup>

- The CBA is full of examples where the term “school” or “schools” are used, and the rights are granted to HSTA members in office settings. The contract uses the term “school” 381 times and “schools” plural 44 times.
- Even though the employer is correct, that the list of possible topics in Section J largely does not apply to HSTA members in office settings, that is not an exhaustive list, and HSTA State Office members absolutely are subject to the Employer’s policies.
- The purpose of the APC is to ensure that HSTA members have a voice and representation in creating, implementing, or changing Department policies that impact the working conditions. By denying HSTA SOTs this contractual right to have an APC, their voice was being taken away [from] mandatory consultation as provided in HRS § 89-9(c). The Department’s position is that teachers will only have their input considered at the Department’s discretion prior to making changes to any major policy affecting employee relations. While this may not be the feeling of the current Director at OITS, it leaves an open door for another Director to take this position.
- This contractual right is intended to increase collaboration and workplace democracy.
- The Department’s position suggests that because a member works in an office setting, their input is not as valued regarding policy as their school

---

<sup>53</sup> U-14 at 000171.

counterparts. This raises major concerns about what other contractual rights might be denied to HSTA members in an office setting.

(7) Article IV, Section N, Association Faculty Representative:

The Association will furnish in writing to the Superintendent a list of the authorized faculty representatives in each school where a representative has been appointed and maintain its currency.

Mr. Jansen stated, even though Section N provides "in each school," the HSTA list of Association Faculty Representatives includes representatives in State Offices where the representatives are elected.<sup>54</sup>

(8) Article V, Section D, Association Representative - Right to Present a Grievance:

Upon selection and certification by the Association, the Board shall recognize an Association grievance representative in each school on the following ratio: one (1) Association grievance representative for each school with up to one hundred (100) members of the bargaining unit; two (2) Association grievance representatives for schools with over one hundred (100) members of the bargaining unit.

Mr. Jansen stated that even though Section D provides for a HSTA grievance representative "in each school," Section D has consistently been interpreted as including a grievance representative for HSTA members in office settings. At OITS, SOT Roldan is not only the head faculty representative but also the grievance representative.<sup>55</sup>

(9) Article VI, Teaching Conditions and Hours, Section M, Teacher Travel, provides in part:

---

<sup>54</sup> U-14 at 000172.

<sup>55</sup> U-14 at 000173.

Schedules of teachers who are assigned to more than one school shall be arranged so that no teacher shall be required to engage in an unreasonable amount of interschool travel.

Mr. Jansen stated that even though Article VI, Section M, Teacher Travel, uses the word "school," teachers in office settings enjoy the same rights as teachers in schools.<sup>56</sup>

The arbitrator finds that the above sections in Articles IV, V, and VI are consistent with SOT John Roldan's testimony that, in Article IV.J, "school" refers to a teacher's site of work, and "principal" refers to the person the teacher reports to, which in OITS' case is a director.

**c. The DOE fails to construe Section J in the context of the entire BU 05 CBA**

To construe Section J of Article IV as a whole includes giving effect to the entire BU 05 CBA. In addition to the nine (9) examples above from Articles IV, V, and VI, two further examples support HSTA's position that "teachers" include State Office Teachers at OITS.

**(1) The DOE School Code regarding "sick leave" for teachers includes State Office Teachers**

Article XXV, "Maintenance of Benefits," provides in pertinent part:<sup>57</sup>

- A. Except as modified herein, teachers shall retain all rights, benefits and privileges pertaining to their conditions of employment contained in the Standard Practices at the time of the execution of this Agreement.

---

<sup>56</sup> U-13 at 000165; U-14 at 000172.

<sup>57</sup> U-4 at 00097.

“Standard Practices” is also known as the DOE’s School Code.<sup>58</sup> Paragraph L, Absence During Part of the School Day, in the DOE’s School Code Regulation No. 5404 regarding sick leave, provides:<sup>59</sup>

A teacher who leaves school because of illness may be considered present for the day after being on regular duty for at least three hours.

SOT John Roldan testified this sick leave provision applies to State Office Teachers in DOE office work sites as well as teachers in traditional schools:<sup>60</sup>

Q. (By Mr. Jansen) ... [D]oes this benefit and right [Paragraph L of School Code Regulation No. 5404] apply to you as state office teacher?

A. Yes, this applies to us as a state office teacher.

Q. ... In your experience, has the DOE ever argued that these provisions should only apply to traditional schools?

A. No, not in my experience.

The arbitral record indicates that DOE did not dispute that Paragraph L of School Code Regulation No. 5404 applies to State Office Teachers.

**(2) Article IV.J references “teachers” as the committee members for Association Policy Committees**

Article IV.J (Association Policy Committee) of the BU-05 CBA provides in part:

In each school, an Association Policy Committee (APC) will be recognized by the Employer. This may consist of not more than four (4) teachers from that school.

Article I, Recognition, of the BU 05 CBA provides that references to “teachers” include all bargaining unit members:<sup>61</sup>

---

<sup>58</sup> Tr. at 110.

<sup>59</sup> U-6 at 000145.

<sup>60</sup> Tr. at 110-111.

<sup>61</sup> U-4 at 00019.

It is understood that references to teachers shall include all bargaining unit members unless specifically noted otherwise.

Article IV.J does not provide that the reference to “teachers” excludes State Office Teachers at OITS.

The arbitrator finds that the interpretation of “teachers” in Paragraph L of School Code Regulation No. 5404 and Article I, Recognition is consistent with the interpretation that Article IV.J’s reference to “teachers” includes State Office Teachers at OITS.

**d. The DOE fails to construe Section J in the context of past practice**

At the Step 2 meeting and in its Post-Hearing Brief, the Union argued that the parties’ past practice confirms APC rights for OITS teachers.

The custom or past practice of parties is a widely used standard to interpret disputed contract language. Where past practice has established a meaning for language in the contract, the language will be presumed to have the meaning given it by that practice.<sup>62</sup> Elkouri & Elkouri advise that to establish a binding past practice as an implied term of the contract (Footnotes omitted):<sup>63</sup>

“[T]he way of operating must be so frequent and regular and repetitious so as to establish a mutual understanding that the way of operating will continue in the future.” Put somewhat differently, “the practice must be of sufficient generality and duration to imply acceptance of it as an authentic construction of the contract.” Accordingly, a single incident has been held insufficient to establish a “practice.”

The arbitrator finds that the parties’ past practice of interpreting “school” as including office work sites was of sufficient generality and duration to imply acceptance

---

<sup>62</sup> Elkouri & Elkouri, *How Arbitration Works*, (8<sup>th</sup> Ed.) at 12-21.

<sup>63</sup> Elkouri & Elkouri, *How Arbitration Works*, (8<sup>th</sup> Ed.) at 12-23.

of it as an authentic construction of the term “school” as also including DOE office work sites.

**(1) The testimony of HSTA UniServe Director Beverly Ikalani confirmed that past practice supports APC recognition at OITS**

At the arbitration hearing, Beverly Ikalani, formerly a DOE school teacher for 20 years and afterwards an HSTA Director for over 17 years,<sup>64</sup> confirmed that past practice and the consistent application of BU 05 CBA provisions support APC recognition at OITS. Ms. Ikalani testified:

Q. ... From a contractual standpoint, how does HSTA classify OITS as a work site under the Collective Bargaining Agreement? Does it classify it differently than a traditional school?

A. I don't see them any differently, because I'm of the belief that anywhere we have Unit 5 members, they're going to get representation and they are going to be organized. That was already an established practice before I came on board.<sup>65</sup>

...

Q. [O]ver your tenure, have you become familiar with how the term “school” is applied in various contexts within the Collective Bargaining Agreement?

A. ... I was trained that it could be a school, a site, an office, or a building, even though the contract only says “school.”<sup>66</sup>

...

Q. ... [E]ven though [Article IV, Section B, Association Representatives] says [Association representatives will be permitted to transact official Association business with individual teachers] on school property and that permission would be from the principal, would this apply to state office teachers and if so, how?

---

<sup>64</sup> Tr. at 13-15.

<sup>65</sup> Tr. at 19.

<sup>66</sup> Tr. at 21.

A. Yes, it would. ...When I would report to ... OITS, every time I signed in and they saw my badge and I said, "I'm here to meet with" ... the OITS teachers..., there was never a problem in me being allowed access to meet with them.<sup>67</sup>

...  
Q. Could you take a look at [Article IV] Section C, Equipment & Facilities, and Section [D], Bulletin Board. And can you talk about how this language would apply to state office teachers and the use of the word "school" in these provisions?

A. ... [E]very time I see "school," it is also defined as school/site. So all of the RTs, the resource teachers, state office teachers, they're all – also covered under this. And so they do have a right to use copying, any communication equipment. They could hold faculty or staff meetings at their site. I was invited to a lot of those staff meetings.<sup>68</sup>

...  
Q. ... [W]hy is it important that teachers in the state offices be afforded the same contractual rights as teachers in traditional school settings?

A. ... [E]very Unit 5 member ... is afforded all the rights and provisions that are in the Collective Bargaining Agreement, regardless of where their work location is.<sup>69</sup>

...  
Q. And do you happen to know when the [Article IV, Section J] APC language was added to the contract?

A. I believe it was in the early 2000s. ... I was on APC teams even prior to the early 2000s, because I started teaching in 1987.<sup>70</sup>

...  
Q. ... [If the DOE is] not recognizing elected Association Policy committee representatives and they're meeting to discuss matters under § 89-9(c), who are they meeting with if they're not meeting with reps? Is that problematic?

A. Yes, it can be problematic because if you have people that are meeting and have not been trained on how to be ... an APC team

---

<sup>67</sup> Tr. at 22-23.

<sup>68</sup> Tr. at 24.

<sup>69</sup> Tr. at 27.

<sup>70</sup> Tr. at 28.

member, they may have different interests at heart, or they may not be cognizant of what contractual provisions are being violated.<sup>71</sup>

Q. ... [C]an you talk about the difference between an elected rep acting as the exclusive representative for HSTA and ... a Bargaining Unit 5 member who has not been elected by their peers meeting to discuss topics under § 89-9(c)?

A. ... The basic difference to me is these people don't have the information or the historical knowledge of why certain provisions were negotiated to begin with. And basically when we do train our reps, especially for APC, we always tell them that you cannot negotiate away anybody else's rights.

And so you need to be aware of what's in the contract and make sure you don't diminish what's in there, whereas if you just have a Bargaining Unit 5 member that wants to meet, they may not have ... all that knowledge and past experience. And so they could actually cause more problems in trying to problem solve when they're not an elected rep or recognized rep. And they're not seen as the exclusive representative.<sup>72</sup>

Q. ... [I]n your time at HSTA, has the Department of Education ever objected to the inclusion of APC representatives at state office work sites before this grievance?

A. No. I never had a problem. And I was in Honolulu for six years, and then again a couple more years after that, and never had a problem.<sup>73</sup>

Q. And have state office teachers previously exercised rights under the APC provision of the CBA?

A. Yes, they have.<sup>74</sup>

...

Q. Can you talk about the DOE's refusal to recognize an APC at OITS and how this is a departure from past practice?

A. ... [W]hen this issue first came to light for HSTA, I really had to question ... what was the issue? And ... I don't understand why it's

---

<sup>71</sup> Tr. at 42-43.

<sup>72</sup> Tr. at 43-44.

<sup>73</sup> Tr. at 49.

<sup>74</sup> Tr. at 49.

become a dispute because, again, past practice has always been when we have Unit 5 members at any given school or site or office, that they're going to have representation so that they can get their issues resolved at the lowest possible level.

...  
Q. ... In your opinion, what would the impact on OITS teachers be if they are continued to be denied the ability to form an APC?

A. ... [I]t will strip them of their contractual rights that they are afforded. ...

So when [state office teachers] see that there are problems or issues at their site, they do have the right to organize, collectively problem solve. And we've made no waiver exception ... at those sites.<sup>75</sup>

...  
Q. [Exhibit U-23 at page 000310] is actual APC minutes from a state office ... APC team?

A. [T]hat's the one I mentioned earlier.

...  
Q. And you never had anyone from the employer question the ability of these office teachers to have an APC, have APC meetings, etcetera?

A. No. Jeff Hoover and Sean Arai participated in the meeting, and it was never told to us that this was a problem that they do APC at their office.<sup>76</sup>

The arbitrator finds that Ms. Ikalani was credible in every respect.

- (2) A 2010 Memorandum of Understanding between the DOE and HSTA re: Staff Reductions for SOTs, which explicitly classified OITS and other state offices as "schools," supports the HSTA claim of past practice**

---

<sup>75</sup> Tr. at 56-57.

<sup>76</sup> Tr. at 61-62.

A 2010 Memorandum of Understanding between the DOE and HSTA re: Staff Reductions for SOTs, which explicitly classified OITS and other state offices as “schools,” supports the HSTA claim of past practice. The MOU<sup>77</sup> provided in part:<sup>78</sup>

WHEREAS, the State Office Teacher staff reductions is silent and is not specifically addressed in the current “2005 Staff Reduction Guidelines for Certificated Personnel” and Article VII –Assignments and Transfers, Section E. Staff Reductions;

...

NOW THEREFORE, the parties agree to the following:

1. It is understood by the parties that for the purpose of staff reduction of State Office Teachers, the “2005 Staff Reduction Guidelines for Certificated Personnel” and Article VII – Assignments and Transfers, Section E. Staff Reductions, shall be the governing documents for State Office Teacher staff reductions.
2. For purposes of State Office Teacher staff reductions, the State Offices shall be considered as a separate district.
3. Each State Office shall be considered as a school within the State Office District.
4. The following shall be the established schools within the State Office District:
  - a. Office of Information Technology Services (OITS);
  - ...

At the Step 2 meeting, Mr. Jansen stated the above Section 3 of the MOU re: Staff Reductions for SOTs explicitly classifies OITS and other state offices as “schools.” Mr. Jansen stated that while Sections 1, 2, 4, and 5 of the MOU state, “for the purpose of staff reduction,” Section 3 of the MOU does not include that limiting language. Mr.

---

<sup>77</sup> U-12 is the MOU re: Staff Reductions for SOTs.

<sup>78</sup> U-12 at 000159-000161.

Jansen stated the DOE therefore agreed that State Offices shall be considered a school.<sup>79</sup>

The arbitrator finds that the parties' past practice of interpreting the term "school" as including office work sites was of sufficient generality and duration to imply acceptance of it as an authentic construction of the term "school" in Article IV.J as also including DOE office work sites.

**e. The testimony of DOE HR Regional Director Teri Sakanashi was unpersuasive**

The DOE called one witness to testify, Teri Sakanashi, who, for the past two years,<sup>80</sup> has been the Human Resources Regional Officer for all state offices in the DOE Office of Talent Management.<sup>81</sup> For the reasons below, the arbitrator found Ms. Sakanashi's testimony unpersuasive.

- Ms. Sakanashi's duties include assisting Assistant Superintendents, like AS Michael Otsuji, to respond to grievances. Ms. Sakanashi provided research for Mr. Otsuji's written Step 1 denial in this Class Grievance. Ms. Sakanashi testified in part:<sup>82</sup>

So in my research, I found that when I had inquired with the subject matter experts in our negotiations office, there was no specific document or contract interpretation that spoke otherwise to what Article IV(J) had spoken to, as far as the definition of what a school is, specifically for this article ...

Ms. Sakanashi did not disclose the names of the subject matter experts, or their fields of specialized knowledge, or their qualifications as experts based on experience,

---

<sup>79</sup> U-14 at 000172-000173.

<sup>80</sup> TR. at 128-129.

<sup>81</sup> Tr. at 116.

<sup>82</sup> Tr. at 118.

training, or education, or their mode of analysis, or the trustworthiness and validity of their mode of analysis, or any documentation whatsoever of her communications with them, or the bases of their opinion, other than Ms. Sakanashi's statement that they found no document in their files defining what a school is.<sup>83</sup> Because these subject matter experts did not testify, no cross examination could be conducted regarding their qualifications, their mode of analysis, the records, if any, they reviewed, or the reasons for their opinion. Accordingly, the arbitrator found no weight could be given to Ms. Sakanashi's hearsay testimony regarding the opinion of subject matter experts.

- Ms. Sakanashi testified she advises administrators on the application of the CBA "through the guidance of subject matter experts," and she agrees with the Step 1 denial by AS Otsuji:<sup>84</sup>

Q. (By Mr. Jansen) Is it true that part of your responsibilities include advising administrators regarding the application of the Collective Bargaining Agreement?

A. Yes, through guidance of subject matter experts.

...

Q. (By Mr. Jansen) And is it correct you share [AS Otsuji's position he took for this grievance]?

A. Correct.

Because Ms. Sakanashi's position was based on the guidance of undisclosed subject matter experts, the arbitrator found no weight could be given to her testimony that she shared AS Otsuji's position that APC provisions in the CBA do not apply to OITS teachers.

---

<sup>83</sup> Tr. at 118-119.

<sup>84</sup> Tr. at 121-122, 124-125.

- Ms. Sakanashi testified she's "not sure" the DOE is opposed to something similar to an APC in non-school sites:<sup>85</sup>

Q. (By Mr. Halvorson) Is it fair to say the DOE's not necessarily opposed to having something similar to an APC in non-school sites or do you know?

A. I'm not sure because it would have to also include discussions with the other state offices and basically their structure. ...

Ms. Sakanashi testified she provided the advice to AS Michael Otsuji that the APC provisions in the CBA do not apply to OITS teachers.<sup>86</sup> Her testimony that she is not sure whether the DOE is opposed to something similar to APCs at non-school sites is, at a minimum, inconsistent with her advice to Mr. Otsuji and the DOE's Step 1 denial of the Class Grievance.

- Ms. Sakanashi testified she's "not sure" how many BU 05 members are in the OITS office:

Q. (By Mr. Halvorson) Do you know how many Bargaining Unit 5 members are in that [OITS] office, if you know?

A. I'm not sure because there – there are – the way that it's split up, to my – on the top of head, I think there's maybe like - some offices have, like, six in a branch. Another branch may have possibly four, some may have two. Yeah. So I think it's all spread out. So we would actually have to do like a data pull to see collaboratively. ...

It appears to the arbitrator that if Ms. Sakanashi is not sure how many BU 05 members are in OITS, Ms. Sakanashi's research regarding the Class Grievance was materially incomplete.

---

<sup>85</sup> Tr. at 119-120.

<sup>86</sup> Tr. at 122.

- Ms. Sakanashi testified her research of past practice included consulting “with other districts,” but she didn’t know that at the Kauai District office, they hold APC meetings and they have for years.<sup>87</sup>

Q. (By Mr. Jansen) And before you gave this guidance [to Mr. Otsuji that APC provisions in the CBA do not apply to OITS teachers], you did not review past practice regarding APC recognition at state offices, correct?

A. No. I did review policies and did consult with other districts.

...

Q (By Mr. Jansen) Isn’t it true that on Kauai, at the Kauai District office, which is an office setting, that they hold APC meetings and they have for years?

A. I wouldn’t know that because I don’t handle Kauai.

It appears to the arbitrator that if Ms. Sakanashi didn’t know that at the Kauai District Office, APC meetings have been held for years, her research regarding the Class Grievance was materially incomplete and her guidance to Mr. Otsuji omitted material information.

- Ms. Sakanashi testified that the Step 1 denial letter by AS Otsuji was specifically Mr. Otsuji’s language, and she cannot say whether the DOE Superintendents share Mr. Otsuji’s position.<sup>88</sup>

Q. (By Mr. Jansen) Could you turn to [Exhibit U-13, page 0167] ... where it says, “However, these accommodations are not to be considered concessions or expansions to the definition of a school. Merriam-Webster Dictionary defines “school” as “a place or establishment for teaching and learning.” Had the parties to the collective bargaining agreement intended for “school” to be defined by other than by its usual and common definition, the parties could have easily included a different meaning to the word “school.” The parties did not do so.”

You helped in crafting that decision?

---

<sup>87</sup> Tr. at 122-124.

<sup>88</sup> Tr. at 124-125.

A. No. So that was specifically AS Otsuji's language.

Q. (By Mr. Jansen) Is it correct that that's the Employer's position in regard to this grievance?

A. That is AS Otsuji's position that he took for this grievance.

...

Q. (By Mr. Jansen) And is it correct that the Employer, the Department of Education Superintendents share that view as well?

A. I cannot speak on behalf of the Superintendents. That's not my – part of my job role.

DOE Assistant Superintendent Michael Otsuji did not testify at the 2/19/25 arbitration hearing. Because he did not testify, no cross examination could be conducted of him regarding his decision or his specific language. In addition, Ms. Sakanashi could not say whether the DOE Superintendents agree with Mr. Otsuji's position. Accordingly, the arbitrator gave limited weight to Mr. Otsuji's rationale for denying the Class Grievance.

- Notwithstanding Ms. Sakanashi's testimony that, in her research, she found no DOE document defining what a school is, she admitted that a number of BU 05 provisions using the term "school" also apply to state office teachers:<sup>89</sup>

Q. (By Mr. Jansen) Is it true that in [Article IV] Section E, Use of Mail Boxes and Bulletin Boards, the term "school" is used, but the rights described also apply to our state office teachers?

A. Yes, that's correct.

...

Q. (By Mr. Jansen) Even though the contract language [in Article VI] Section M [Teacher Travel] uses the term "school," state office teachers traveling from work site to work site are still guaranteed this contractual right; isn't that correct?

A. Yes, I believe so.

...

Q. (By Mr. Jansen) Do you understand this [Exhibit U-15, a 1/17/18 letter from HSTA to DOE Superintendent Kishimoto enclosing a

---

<sup>89</sup> Tr. at 125-129.

list of authorized HSTA faculty representatives pursuant to Article IV.N, Association Faculty Representative, and Article V.D, Association Representation – Right to Present a Grievance] to be the contractual obligation for HSTA to send a list of their faculty representatives to the Superintendent on an annual basis?

A. For – if it's pursuant to 4 N and ... 5 D.

Q. (By Mr. Jansen) So this letter and the contents within this letter are the contractual obligation of the HSTA to provide the Superintendent with a list of its faculty representatives, correct?

A. Yes, according to the letter.

...

Q (By Mr. Jansen) And is it true that OCISS, though it has changed its name since, is a state office?

A. Yes, that is a state office.

Q. (By Mr. Jansen) And the Office of the Superintendent is a state office?

A. Yes.

Q. (By Mr. Jansen) And OHR was at the time a state office?

A. Uh-huh.

Q. (By Mr. Jansen) And isn't it true that the Superintendent received the list of representatives clearly stating that there are policy committee members at these state offices?

A. Yes.

Q. (By Mr. Jansen) And did the DOE, in all the years that it received these lists, ever object to association policy members being representatives at the state offices?

A. That would be the subject matter expert who handles these listings to challenge, not in my position or role.

Q. (By Mr. Jansen) In your experience, have you ever heard of the DOE rejecting or not recognizing the policy committee members as representatives when the list is provided to the superintendent?

A. From the time I was in my position, I have not heard, - I've been two years into this position.

These admissions by Ms. Sakanashi are inconsistent, at a minimum, with her advice to AS Michael Otsuji that the APC provisions in the CBA do not apply to OITS teachers.

Based on the above, the arbitrator finds Ms. Sakanashi's testimony on behalf of DOE unpersuasive.

**f. The DOE Superintendent's Designated Representative, Nicole Nitta, who rendered the DOE's Step 2 denial, did not testify**

The arbitral evidence does not indicate that Ms. Sakanashi played any role in the DOE's Step 2 meeting or denial letter, which was written by the DOE Superintendent's Designated Representative Nicole Nitta. The rationale for the DOE's Step 2 denial was substantially similar to the rationale for the DOE's Step 1 denial. Ms. Nitta did not testify at the 2/19/25 arbitration hearing. Because she did not testify, no cross examination could be conducted of her regarding her decision or her Step 2 denial letter. Accordingly, the arbitrator gave limited weight to Ms. Nitta's rationale for denying the Class Grievance.

**C. APC representation at OITS meetings is mandatory, not discretionary**

The DOE argues that regardless of whether the word "school" includes the OITS worksite, the DOE did not violate Article IV.J because OITS leadership currently "allows" the HSTA to discuss HRS § 89-9(c) matters on behalf of OITS SOTS, so the OITS SOTS receive the same level of HSTA participation as provided to HSTA school-level counterparts, with the only difference being that the discussions with HSTA are not labeled as discussions with an APC label:

... [I]t is the Department's position that the OITS leadership ensures that the OITS SOTs have access to a level of participation in discussions that are provided to their school-level counterparts, as outlined in Article IV, Section J, the only difference being the "APC" label.<sup>90</sup>

... [A]lthough it's the Department's position that Article IV, Section J identified the rights of school-level teachers – as it makes reference to the Principal and specifically identifies various school-related topics – the OITS leadership has allowed for collaborative discussion with the OITS SOTs, thereby providing them with the opportunity to discuss matters subject to Section 89-9(c), HRS.<sup>91</sup>

... It is the Department's position that the OITS leadership has allowed for collaborative discussion with the OITS SOTs, thereby providing them the opportunity to discuss matters subject to Section 89-9(c), HRS, with the only difference being that they are not labeled as an APC.<sup>92</sup>

In other words, DOE makes a "no harm, no foul" argument, because OITS leadership believes it does not abuse its discretion. The DOE's Post Hearing Brief states:<sup>93</sup>

The HSTA employees in the state office OITS have all the benefits of having an APC just without the title. To grant this grievance is not only a contravention of the plain language of the APC in the contract it is unnecessary.

The arbitrator respectfully disagrees with the DOE's "no harm, no foul" argument. The difference between the rights of school-level teachers and OITS SOTs goes beyond labels. The substantive difference is that, at OITS meetings, the discussion of § 89-9(c) matters is subject to the *discretion* of OITS leadership, unlike at traditional school worksites, where the discussion with an APC of § 89-9(c) matters is *mandatory*.

---

<sup>90</sup> U-14 at 000172.

<sup>91</sup> U-14 at 000172.

<sup>92</sup> U-14 at 000174.

<sup>93</sup> Union's Post Hearing Brief at 2.

Discretion is defined as “individual choice or judgment.”<sup>94</sup> The DOE’s duty to bargain regarding § 89-9(c) matters is not subject to OITS leadership’s unilateral choice.

Recognition of an APC at OITS meetings with respect to discussion of § 89-9(c) matters is mandatory, not discretionary. As the Union stated:<sup>95</sup>

HRS § 89-9(c) mandates that the Employer consult with HSTA on matters affecting employee relations. Without APC recognition, OITS teachers are denied a guaranteed, protected process for such consultation. Meetings at management’s discretion do not meet this legal requirement.

Contrary to the DOE’s “no harm, no foul” argument, the “harm” is DOE’s unilateral decision that consultation with HSTA at OITS on matters affecting employee relations is subject to the DOE’s discretion, when such consultation is statutorily mandated. If consultation was subject to the DOE’s discretion, the DOE could at any time discontinue such consultation. As SOT John Roldan, who is also an elected APC member at OITS, testified, he is not confident the current meetings with the OITS director will continue, because:<sup>96</sup>

[I]f they don’t recognize the APC, there’s no contractual right that they need to continue doing that. And if we have a different director, that ... he or she would follow the practice of ... our current director.

Elkouri & Elkouri states:<sup>97</sup>

It is well settled that unilateral decisions made by an employer during the course of a collective bargaining relationship concerning matters that are mandatory subjects of bargaining are regarded as per se refusals to bargain.

---

<sup>94</sup> <https://www.merriam-webster.com/dictionary/discretion>

<sup>95</sup> Union Post-Hearing Brief at 7.

<sup>96</sup> Tr. at 103.

<sup>97</sup> Elkouri & Elkouri, *How Arbitration Works*, (8<sup>th</sup> Ed.) at 13-10.

Based on the above, the arbitrator finds and concludes that the OITS leadership's decision to deny APC representation at OITS meetings was an abuse of its discretion and a misinterpretation of Article IV.J, because recognition of an APC at OITS meetings with respect to discussion of § 89-9(c) matters is mandatory, not discretionary.

**D. Arbitration of the Class Grievance is authorized by the BU 05 CBA**

The DOE's Post Hearing Brief argues that arbitration "is a poor way to address the concern the HSTA apparently has with APCs not being recognized in state offices."<sup>98</sup> The arbitrator finds and concludes that this argument is not a basis for denying the Class Grievance for the following reasons:

- The DOE did not challenge the arbitrability of the Class Grievance.<sup>99</sup>

Arbitrator Crowley: ... I note that with respect to this class grievance, that the Employer is not challenging arbitrability. Is that correct, Jim?

Mr. Halvorson: That is correct.

The arbitrator has jurisdiction over this Class Grievance pursuant to Article V - Grievance Procedure, Section I - Arbitration, of the BU 05 CBA.

- Article V, Grievance Procedure, Section A, Definition, defines the term "grievance:"<sup>100</sup>

Any claim by the Association or a teacher that there has been a violation, misinterpretation or misapplication of a specific term or terms of this Agreement shall be a grievance.

The Step 1 Grievance and Step 2 Grievance herein stated in part:<sup>101</sup>

---

<sup>98</sup> Union's Post Hearing Brief at 2-3.

<sup>99</sup> Tr. at 5.

<sup>100</sup> U-4 at 00025.

<sup>101</sup> U-1 at 003.

The employer violated the collective bargaining agreement (CBA) when it failed to recognize Association Policy Committee (APC) representatives of HSTA for purposes of meeting to discuss matters affecting teachers working in OITS.

Specific term or provision of the Agreement allegedly violated:  
Article IV – Association Rights  
Article XXIV – Miscellaneous  
Article XXV – Maintenance of Benefits

The HSTA's Step 1 Grievance is a claim by the Association that there has been a violation of specific terms of the BU 05 CBA. The arbitrator finds the Step 1 Grievance is a "grievance" as defined by Article V.A.

- The arbitrator respectfully disagrees with the DOE's Post-Hearing Brief stating, "It is undisputed that HSTA has not made a proposal to address this issue ..."

- The arbitrator agrees with the HSTA's position that the DOE has recognized State Office APCs for years, that this recognition constitutes past practice, and that the DOE's recent change is inconsistent with this past practice. The arbitral evidence indicates that the term "school" included both traditional schools and office settings was indeed the past practice at DOE.<sup>102</sup> Because this was the past practice, there was no reason for HSTA to propose changing it.

- Article V, Grievance Procedure, Section G, Step 1, provides in part:  
  - (3) The ... Assistant Superintendent in the case of State Office Teachers shall hold a meeting ..., for the purpose of obtaining evidence pertaining to the grievance and for the purpose of attempting to settle the matter. ...

---

<sup>102</sup> See Also: Exhibits U-15 (1/17/18 & 9/18/23 HSTA letters to Superintendent, providing lists of Authorized Faculty Representatives), 16 (9/28/23 OITS School Election Certification Form), 17 (OITS RT Meeting with Director – Meeting Minutes), 18 (J. Roldan email with OITS Director K. Shigeta), 19 (3/31/23 Kauai District Office (KDO) School Selection Certification Form; 20 (KDO APC Meeting Minutes), 21 (February 2024 KDO APC email with C. Bailey, secretary to CAS Kauai Complex Area Office) 22 (May 2024 KDO APC email with C. Bailey), and 23 (HSTA UniServ Director Beverly Ikalani APC Notes).

The arbitrator finds that the HSTA's presentation at the Step 1 meeting, in addition to providing evidence regarding the Class Grievance, constituted a proposal to DOE to address and resolve this issue.

Moreover, the DOE's Step 1 denial letter acknowledges that at the Step 1 meeting, Mr. Jansen asserted that "in the informal meetings [he] asked if the denial for members to have an APC was due to the contractual language that refers to schools and the list of topics and [he] was told that it is a combination of both."<sup>103</sup> The arbitrator finds that this was part of an attempt to address the APC issue.

In addition, on October 26, 2023 SOT John Roldan emailed Kimberly Shigeta, the then-Interim Director of OITS, stating:<sup>104</sup>

On behalf of the RTs [Resource Teachers], we would like to start scheduling regular Association Policy Committee (APC) meetings with you. Currently, the APC consists of myself, Kimo, and Zach.

Currently, we have one agenda item of RT Positions (please see attached).

On October 31, 2023, Interim Director Shigeta emailed SOT Roldan, stating:<sup>105</sup>

After your initial email last week, I reached out to OTM to get guidance on the specific protocols I should be aware of regarding an APC meeting since I haven't participated in one before.

Our State PRO has informed me that according to the contract, APC is not applicable to State Office-level staff and is for school level employees only. I'm more than happy to meet with you to discuss your concerns, but I think an important part of our initial meeting is going to be establishing a common understanding of how we'd like to handle these discussions, since the APC-specific format doesn't apply.

---

<sup>103</sup> U-13 at 000165.

<sup>104</sup> U-18 at 000273.

<sup>105</sup> U-18 at 000272.

On November 2, 2023, a “meeting” was conducted.<sup>106</sup> The Minutes from the 11/2/23 meeting stated in part: “Concern over State PRO saying ‘APC’ not being applicable needs to be resolved; however both RTs [Resource Teachers] and EOs [Educational Officers] agreed that we can continue to meet to discuss concerns.”<sup>107</sup> The arbitrator finds that the 11/2/23 meeting was a further attempt to address and consult regarding the APC issue.

- Article V, Grievance Procedure, Section I, Arbitration, provides in part:<sup>108</sup>

If a claim made by the Association ... has not been satisfactorily resolved, the Association may present a request for arbitration of the grievance.

...  
(1) ... The arbitrator’s decision will be final and binding on the parties.

The arbitrator finds that the HSTA was authorized pursuant to Article V, Grievance Procedure, Section I, to request binding arbitration to resolve this Class Grievance.

Based on the above, the arbitrator finds and concludes that the DOE’s argument that arbitration “is a poor way to address the concern the HSTA apparently has with APCs not being recognized in state offices” is not a basis for denying the Class Grievance.

## **IX. Decision, Order, and Arbitration Award**

With respect to this Class Grievance, the Arbitrator decides and orders as follows:

1. Jurisdiction. The arbitrator has jurisdiction over this Class Grievance pursuant to Article V - Grievance Procedure, Section I - Arbitration, of the BU 05 CBA.

---

<sup>106</sup> U-18 at 000272.

<sup>107</sup> U-17 at 000269.

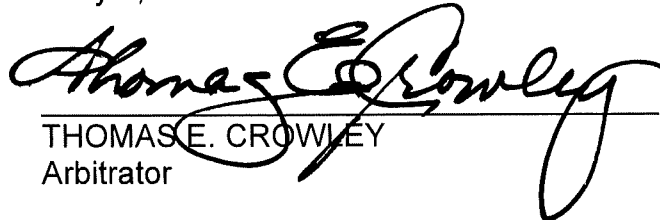
<sup>108</sup> U-4 at 00029.

- a. Arbitrability is not disputed with respect to the BU 05 Class Grievance.
  - b. The remedies for this Class Grievance are limited to the Class Grievants at the DOE Office of Information Technology Services.
2. The arbitrator finds and concludes:
  - a. HRS § 89-9(c) requires the DOE to consult with HSTA prior to effecting changes in any major policy affecting employee relations.
  - b. The term “school,” in the context of BU 05 Article IV.J, includes non-traditional office settings where OITS State Office Teachers work.
  - c. APC representation at OITS meetings is mandatory, not discretionary.
  - d. Arbitration of this Class Grievance is authorized by the BU 05 CBA.
3. Consistent with the above findings and conclusions, the BU 05 Class Grievance is sustained.
4. Pursuant to Section J of Article IV of the BU 05 CBA, the OITS Director shall recognize the HSTA’s Association Policy Committee (APC) representatives for purposes of meetings to discuss matters affecting teachers working in the DOE’s Office of Information Technology Services (OITS), including matters which may be subject to discussion under Section 89(c), HRS.
5. This Decision, Order, and Arbitration Award obviates additional determinations of whether the Employer also violated Article XXIV.C (Miscellaneous) and Article XXV (Maintenance of Benefits) in the BU 05 CBA.
6. This Decision, Order, and Arbitration Award is in full and final

determination of all claims by the Union in this Class Grievance.

7. The arbitrator shall retain jurisdiction for thirty days from May 1, 2025 to clarify any questions about this Order, Decision, and Arbitration Award.

DATED: Honolulu, Hawaii: May 1, 2025.

  
THOMAS E. CROWLEY  
Arbitrator

BEFORE ARBITRATOR  
THOMAS E. CROWLEY  
STATE OF HAWAII

HAWAII STATE TEACHER ASSOCIATION,	)	Class Grievance on Behalf of All BU 05
	)	Employees in DOE's Office of
Union	)	Information Technology Services (OITS)
	)	RE: Recognition of HSTA Association
and	)	Policy Committee (APC) in OITS
	)	
DEPARTMENT OF EDUCATION, STATE OF HAWAII,	)	CERTIFICATE OF SERVICE
	)	
Employer.	)	
_____	)	

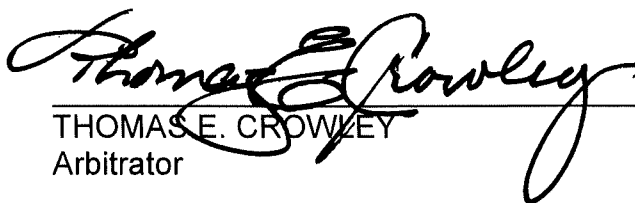
**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2025, a true and accurate copy of the Decision, Order, and Arbitration Award was duly mailed and emailed to the parties listed below at their last known address as follows:

Justin Jensen  
*HSTA UniServ Director*  
1200 Ala Kapuna Street,  
Honolulu, HI 96819  
Email: [jjansen@hsta.org](mailto:jjansen@hsta.org)

James E. Halvorson, Esq.  
Deputy Atty. General  
235 Beretania Street, Fl. 15  
Honolulu, Hawaii 96813  
Email: [James.E.Halvorson@hawaii.gov](mailto:James.E.Halvorson@hawaii.gov)

Dated: Honolulu, Hawaii, May 1, 2025.

  
THOMAS E. CROWLEY  
Arbitrator