

# SUNSHINE LAW MEETING



# HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

## NOTICE OF MEETING OF THE HAWAI'I STATE ETHICS COMMISSION

### Commissioners:

Wesley Fong, Chair

Beverley Tobias, Vice-Chair • Robert Hong • Cynthia Thielen • Roderick Becker

Date: December 18, 2024

Time: 9:00 a.m.

Location: Zoom Videoconference or Phone:

Videoconference: [Join Zoom Meeting](https://us06web.zoom.us/j/82361703649?pwd=Nw5t7FeHrtMyPRas6naooR19BrRGh4.1)  
<https://us06web.zoom.us/j/82361703649?pwd=Nw5t7FeHrtMyPRas6naooR19BrRGh4.1>

Phone: [+1 \(669\) 444-9171](tel:+16694449171) or [+1 \(669\) 900-6833](tel:+16699006833)

Phone passcode: 421780

Meeting ID: 823 6170 3649

Passcode: c4jfPd

### Public Meeting Location:

Hawai'i State Ethics Commission Conference Room  
1001 Bishop Street  
American Savings Bank Tower, Suite 970  
Honolulu, Hawai'i 96813

Pursuant to Hawai'i Revised Statutes section 92-3.7, the State Ethics Commission will meet remotely using interactive conference technology. The public may either attend the meeting in person, at the public meeting location above, or participate remotely by using the above Zoom meeting information. If participating remotely, please mute your phone/device except while testifying. If the Commission's videoconference connection is lost during the meeting, please visit the Commission's website ([www.ethics.hawaii.gov](http://www.ethics.hawaii.gov)) for more information, including reconnection information.

Public meeting materials for this meeting are available on the Commission's website at: [www.ethics.hawaii.gov](http://www.ethics.hawaii.gov).

## AGENDA

### CALL TO ORDER

I. Consideration and Approval of the Minutes of the November 20, 2024 Meeting

*Attachment 1: Sunshine Law Meeting Minutes of the November 20, 2024, Hawai'i State Ethics Commission Meeting*

II. Directors' Report

1. Education / Training Report

*Attachment 1: 2024 Training Schedule*

2. Guidance and Assignment Statistics – November 2024

*Attachment 2: 2024 Guidance and Assignment Statistics / Website Traffic*

3. Miscellaneous Office Projects / Updates

III. Discussion of Media Reports Concerning Ethics or the Ethics Commission Since the Last Meeting

IV. Summary and Discussion of the 2024 Council on Governmental Ethics Laws Conference

V. Discussion of Ethics Oversight of the Judicial Branch

*Proposed rules are available at: <https://www.courts.state.hi.us/wp-content/uploads/2024/10/2024.10.25-MemoCCRO-RSCH-8-15-FDS-RCJC-for-posting-1.pdf>*

VI. Proposed Legislation

*Attachment 1: Legislative Calendar*

Discussion and decision-making on a proposed bill to establish a streamlined enforcement mechanism for addressing low-level or straightforward violations of ethics and lobbying codes, aiming to enhance compliance and efficiency in case resolution

*Attachment 2: Relating to Administrative Fines*

*Discussion and decision-making on a proposed bill to clarify jurisdiction over enforcing the existing prohibition on lobbyists' campaign contributions during the legislative session, ensuring consistent application of the law.*

*Attachment 3: Relating to Lobbyist Contributions*

VII. *Akana v. Hawai'i State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA); Akana v. Hawai'i State Ethics Commission, Civil No. 19-1-0379-03 (JHA); State of Hawai'i, Ethics Commission v. Rowena Akana, Civil No. 20-1-0453 (BIA)*

Discussion of case status.

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys and/or the Department of the Attorney General on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

VIII. University of Hawai'i Professional Assembly v. Board of Regents of the University of Hawai'i, S.P. No.: 1CSP-23-0000959

Attachment 1: 24-12-06 [61] Hawai'i State Ethics Commission's Amicus Brief

Attachment 2: 24-12-06 [63] Hawai'i State Teachers Association's Amicus Brief

Attachment 3: 24-12-09 [65] Hawai'i Government Employees Association's Amicus Brief

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys and/or the Department of the Attorney General on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

IX. Adjournment

Public Testimony

Anyone wishing to testify may do so during the meeting or may submit written testimony in advance of the meeting by email ([info.ethics@hawaii.gov](mailto:info.ethics@hawaii.gov)), facsimile (fax) (808-587-0470), or U.S. postal mail (State Ethics Commission, 1001 Bishop Street, American Savings Bank Tower, Suite 970, Honolulu, Hawai'i 96813). Public testimony must be related to an item on the agenda, and the testifier must identify the item to be addressed by the testimony. Pursuant to Hawai'i Revised Statutes section 92-3 and Hawai'i Administrative Rules section 21-1-6(c), oral testimony is limited to three minutes per testifier per agenda item, subject to the reasonable discretion of the Chair.

Auxiliary Aid or Accommodation Due to a Disability

If you require an auxiliary aid or accommodation due to a disability, please contact the State Ethics Commission at (808) 587-0460 or email the Commission at [info.ethics@hawaii.gov](mailto:info.ethics@hawaii.gov) as soon as possible, preferably at least 48 hours prior to the meeting. Last-minute requests will be accepted but may be impossible to fill.

Upon request, this notice is available in alternate/accessibile formats.

SUNSHINE LAW MEETING  
AGENDA ITEM I

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE  
NOVEMBER 20, 2024 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the November 20, 2024  
Hawai'i State Ethics Commission Meeting

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAI'I STATE ETHICS COMMISSION

STATE OF HAWAI'I

Date: November 20, 2024

Time: 9:00 a.m.

Location: Hybrid meeting held via Zoom video and audio conference

Recorded video available at  
[https://ethics.hawaii.gov/category/commissionmeetings/comm\\_videos/](https://ethics.hawaii.gov/category/commissionmeetings/comm_videos/)

Public Meeting Location

Hawai'i State Ethics Commission Conference Room  
1001 Bishop Street  
American Savings Bank Tower, Suite 970  
Honolulu, Hawai'i 96813

Present: State Ethics Commission Members

- Wesley F. Fong, Chair (present in the conference room)
- T Beverly Cobias, Vice Chair (via video conference)
- Robert Hong, Commissioner (via video conference)
- Cynthia Thielen, Commissioner (via video conference)
- Roderick Becker, Commissioner (present in the conference room)

State Ethics Commission Staff

- Robert D. Harris, Executive Director (present in conference room)
- Kee M. Campbell, Enforcement Director (via video conference)
- Bonita Y.M. Chang, Compliance Director (via video conference)
- Nancy C. Neuffer, Staff Attorney (via video conference)
- Jennifer M. Yamanuha, Staff Attorney (via video conference)
- Jodi L. K. Yi, Staff Attorney (via video conference)
- Patrick W.C. Lui, Computer Specialist (via video conference)
- Jared Elster, Investigator (via video conference)
- Barbara A. Gash, Investigatory Analyst (via video conference)
- Myles A. Yamamoto, Administrative Assistant (present in the conference room)

1 Members of the Public

2  
3 Candice Park, Deputy Attorney General  
4 Ashley Mizuo  
5  
6

7 **CALL TO ORDER (0:05)**

8  
9 Chair Fong called the meeting to order at 9:00 a.m. Chair Fong, Vice Chair Tobias,  
10 Commissioner Thielen, Commissioner Becker, Commissioner Hong and Commission staff  
11 were present as indicated above. All Commissioners and staff participating via video or  
12 audio conference confirmed no one was in the room with them at their respective remote  
13 locations.  
14

15  
16 **Agenda Item No. I: Consideration and Approval of the Minutes of the October 16, 2024**  
17 **Meeting (1:21)**

18  
19 Executive Director Robert Harris corrected: Commissioner Hong was absent at the  
20 October 16, 2024 meeting.  
21

22 Vice Chair Tobias made, and Commissioner Thielen seconded, a motion to approve  
23 the October 16, 2024 meeting minutes as corrected. The motion carried (Commissioners  
24 Fong, Tobias, Thielen, and Becker voted in the affirmative, with Hong excused).  
25

26  
27 **Agenda Item No. II: Directors' Report (2:35)**

28  
29 Compliance Director Bonita Chang reported staff is working on updating the  
30 lobbyist and live training curriculum to reflect changes in the laws. She reported that a live  
31 training was conducted for new legislators by Executive Director Robert Harris. She noted  
32 that there are upcoming continuing legal education trainings in December. Director Chang  
33 reported that live training for the lobbyist law will be held on December 5, with additional  
34 trainings scheduled for January. A separate training session for the lobbying e-filing system  
35 will be held on December 6. Staff is updating e-filing information in anticipation of the  
36 Legislature's filing deadlines in January, and new lobbying bill reporting requirements that  
37 will take effect on January 1st.  
38

39 Director Chang reported that commendation emails with a message from Chair  
40 Fong were sent out to the boards and agencies. Staff also reached out to low-performing  
41 boards and agencies. Some of the issues faced by certain agencies and boards may be  
42 due to administrative challenges during the on-boarding process for new employees. In  
43 other cases, there may be discrepancies between the data shown due to lateral transfers  
44 between agencies.



1  
2 Vice Chair Tobias thanked and commended Director Chang and the staff for their  
3 hard work.

4  
5 Enforcement Director Kee Campbell reported that for October, 45 new matters  
6 were opened, and 42 matters were closed.

7  
8 Chair Fong asked if the increase in training completions leads to a rise in  
9 enforcement cases. Director Campbell agreed that this was the case.

10  
11 Executive Director Robert Harris reported that staff has launched a new case  
12 management system. He commended Computer Specialist Patrick Liu for all his hard work  
13 in moving files from the old system and managing the transition. Director Harris noted that  
14 the new system gives staff more capacity, especially in remote work. In addition, the public  
15 can receive greater transparency about the Commission's advice, training, and  
16 enforcement statistics.

17  
18  
19 **Agenda Item No. III: Discussion of Media Reports Concerning Ethics or the Ethics**  
20 **Commission Since the Last Meeting (9:40)**

21  
22 Executive Director Robert Harris reported on items of note from recent media  
23 reports:

- 24  
25 • An editorial suggests using surplus funds to pay for reforms, especially increasing  
26 the budgets for the Campaign Spending Commission.
- 27 • A report about issues with the water commissioner
- 28 • A report related to campaigning inside of state offices.
- 29 • A report pertaining to the passage of funding for staff at the Maui Board of Ethics.

30 Chair Fong noted that he and Director Harris provided testimony in support of  
31 funding staff for the Maui Board of Ethics. He was pleased that the measure passed.

32  
33  
34 **Agenda Item No. IV: Discussion of Ethics Oversight over the Judicial Branch (12:29)**

35  
36 Staff Attorney Jennifer Yamanuha reported that the Judiciary has developed a set of  
37 proposed revisions to the Judicial Rules of Conduct. She noted that the proposed rules are  
38 available for public review and comment, and that staff is drafting preliminary comments  
39 to submit on behalf of the Commission. Attorney Yamanuha stated that staff will work with  
40 Chair Fong to finalize.

1 Chair Fong expressed his gratitude to the Judiciary for developing the rules. He  
2 noted that he was debating whether to hold a special commission meeting to discuss the  
3 rules. Executive Director Harris said that any special meeting would be subject to the  
4 Sunshine Law.

5  
6 Chair Fong advised the commissioners to review the proposed rules and provide  
7 and comments to Director Harris. The comments will be discussed with the judiciary's  
8 attorneys.

9  
10 Director Harris said that the Judiciary was responsive to developing rules and  
11 making the process open to the public.

12  
13  
14 **Agenda Item No. V: Request for Information from the National Conference of State**  
15 **Legislatures Regarding State-Level Restrictions on High-Level Government Employees**  
16 **Participating in Political Fundraising (17:07)**

17  
18 Executive Director Robert Harris said that at the request of Commissioner Thielen,  
19 staff reviewed Kentucky and Ohio Laws related to restrictions on high-level government  
20 employees participating in political fundraising. He reported that upon review, the laws  
21 targeted employees who did not hold positions of authority. Accordingly, these laws may  
22 not address the concerns raised by Commissioner Thielen.

23  
24 Noting the concerns raised by Commissioner Thielen, staff recommends continuing to  
25 support the efforts of the Campaign Spending Commission to ban contributions by  
26 contractors. Additionally, staff recommends the following changes to the fair treatment  
27 rules:

- 28  
29
- 30 • Prohibiting Legislative Employees from using their positions to solicit contributions  
from contractors or vendors.
  - 31 • Prohibiting Legislative Employees from discriminating against individuals for their  
32 political beliefs.

33 Commissioner Thielen asked if these rule changes would have barred previously  
34 discussed political fundraising events attended by contractors and staff. Director Harris  
35 replied that such an event would have been barred under the proposed rule changes.

36  
37 Commissioner Thielen asked what the timeline would be for the implementation of  
38 new rule changes. Director Harris replied that the process for implementing new rules is as  
39 follows:

- 40
- 41 • Review of proposed rules by the attorney general.

- 1 • Public hearing on proposed rules.
- 2 • Vote on rules by the Commission.
- 3 • Approval by the Governor.

4 Director Harris noted that staff has already initiated the process of updating the  
5 Commission’s rules and is halfway through making draft revisions. He estimated that it  
6 may take six months to one year for the rulemaking process.

7  
8  
9 **Agenda Item No. VI: Administrative Rules (25:29)**

10  
11 Executive Director Robert Harris outlines the proposed changes to Chapter 7  
12 related to gifts and fair treatment. He noted that the guiding principle of the gift rules is  
13 whether or not a reasonable person would construe the gift as an attempt to reward or  
14 influence a government official. He noted that in 2020, the commission adopted a three-  
15 part test to determine whether a gift is acceptable. The three parts are 1) who is giving the  
16 gift, 2) the relative value of the gift, and 3) what, if any, benefit is there to the state. He  
17 noted that there has been criticism that the lines between acceptable and unacceptable  
18 gifts are blurry. Director Harris stated that the revisions intend to create brighter lines of  
19 what is permissible and what is not.

20  
21 The first revision expands the definition of a prohibited source to include individuals  
22 regulated by an agency or employee and government contractors.

23  
24 The next revision defines protocol gifts. The revision is part of an exception that is  
25 being made. It defines a protocol gift as something given to the state that may be  
26 historically or culturally significant. The intent of the gift is to be a part of the state’s history.

27  
28 Chair Fong asked about the use of \$5 as a nominal amount. Director Harris replied  
29 that \$5 was used as an example of something considered nominal in value.

30  
31 The next revision lays out the parameters under which an employee or official may  
32 accept an invitation to a “widely attended event”. The revision defines a “widely attended  
33 event” as open to the public or an organization’s general membership. The complimentary  
34 tickets would have to be provided by the event sponsor. The revision also defines an event  
35 cost of \$100 or less as acceptable. Invitations to events that cost more than \$100 would  
36 not be acceptable.

37  
38 Vice Chair Tobias asked if the prohibition would extend to invitations where an  
39 official is requested to be a guest speaker. Director Harris replied that in all cases, the  
40 three-part test still applies. He noted that this revision sets clearer bright lines as to what  
41 is an acceptable event for an official to attend. He said that if there are questions, officials  
42 can always consult with the Commission for guidance.

1  
2 Commissioner Hong asked how this would be implemented. Director Harris replied  
3 that the hope would be that organizers would proactively work with the Commission to  
4 ensure that inviting officials would be acceptable.  
5

6 Commissioner Hong asked what the consequences would be for violating this  
7 protocol. Director Harris replied that the easiest way to resolve this would be for the official  
8 to pay for the value. He also noted that the Commission could bring an enforcement  
9 action.  
10

11 Commissioner Becker asked how the three-part test applies to fundraisers. Director  
12 Harris replied that there have been occasions when legislators have been allowed to  
13 attend such events. He noted that the revision is an attempt to create a line so legislators  
14 and organizations can determine whether an invitation is appropriate.  
15

16 The next revision addresses protocol gifts. The rule would require that the recipient  
17 contact the state archives and maintain the protocol gift as directed by the Archivist.  
18

19 Chair Fong asked what would happen if an official received a high-priced bottle of  
20 liquor as a gift. Director Harris replied with the example of the Mayor of Chicago, who had  
21 to pay the city for the item's value. He noted that there may be outliers, but the intent is to  
22 force a conversation and provide a mechanism for the archivist to address protocol gifts.  
23

24 A new section was drafted to allow fellow employees to give their coworkers gifts of  
25 a modest value for special occasions.  
26

27 A new section was drafted regarding attendance at an organization's general  
28 meeting and the acceptance of refreshments. The new section allows the acceptance of  
29 refreshments of a nominal value.  
30

31 Commissioner Becker asked if the new section defines a "General Meeting".  
32 Director Harris replied that the current draft does not define a "General Meeting", but that  
33 is something staff should consider.  
34

35 A new section would require employees to provide documentation that they paid  
36 for their meal portion or gift if participating in a broader group.  
37

38 Commissioner Becker asked if the ideal resolution for situations where a lobbyist  
39 takes a group of legislators to lunch would be for each legislator to retain a record showing  
40 they paid or reimbursed the cost for their portion of the lunch, such that it can be shown  
41 the lunch was not a gift. Director Harris agreed and noted the example of an electronic  
42 receipt or check return in the proposed rule.  
43

1 The next revision would require notification to the commission of the type and  
2 duration of fundraising administratively authorized on state time and/or using state  
3 resources.

4  
5 A new section outlining social media rules related to fair treatment provisions was  
6 drafted. Chair Fong asked for examples of issues. Director Harris replied that an example  
7 would be if a legislator sought to use his/her official Facebook account to endorse a  
8 political candidate or business. Staff Attorney Nancy Neuffer added that officials have  
9 made personal social media posts standing in front of or otherwise using the state seal or  
10 in official areas such as offices, etc.

11  
12 Chair Fong asked about using the state capitol for campaign purposes. Director  
13 Harris replied that as long as the areas are publicly accessible, such activity is allowed. It  
14 would be a violation to use non-public areas.

15  
16 Commissioner Hong asked how the rule would be enforced. Director Harris replied  
17 that some enforcement actions have already been brought under similar interpretations of  
18 the fair treatment section of the code. Additionally, staff provided guidance regarding  
19 social media use where the situation may have been questionable. He noted that  
20 additional enforcement actions may be taken in the future.

21  
22 The next revision clarifies that if an individual speaks or performs other services off  
23 state time and not using state resources, they are allowed to accept an honorarium.  
24 Director Harris noted that this revision comes from a situation connected to the University  
25 of Hawai'i. Commissioner Becker asked if an individual traveling for the state could accept  
26 an honorarium. Director Harris replied that the individual would not be allowed to receive  
27 the honorarium. He noted that public filers generally may not accept honoraria related to  
28 their state positions under the proposed rule. Additionally, Enforcement Director Kee  
29 Campbell pointed out that the honorarium could be given to the state as a whole.

30  
31 Chair Fong asked if this rule would apply to the Judiciary. Director Harris replied that  
32 it would apply to judicial employees but not judges and justices.

33  
34  
35 **Agenda Item No. VII: Proposed Fiscal Year 2025-26 Budget (1:05:21)**

36  
37 Executive Director Robert Harris summarized the proposed Fiscal Year 2025-26  
38 budget. He reported that the overall budget would be decreased by 2.1%. The significant  
39 decreases are in telephone and internet service and consulting expenses. Director Harris  
40 also noted that copier costs have been eliminated. Director Harris explained that there are  
41 proposed increases in travel and the modernization of the training curriculum. The  
42 increased travel would provide opportunities to attend more conferences and training  
43 events. Chair Fong commended the staff for cutting costs. He asked Director Harris if he

1 was comfortable with the budget decrease. Director Harris replied that he is comfortable  
2 with the proposed budget amounts.

3  
4 Commissioner Becker concurred with Chair Fong that the staff did a good job  
5 cutting costs. He asked if the budget could be submitted directly to the legislature.  
6 Director Harris replied that the Commission's budget is part of the legislative budget.  
7

8 Commissioner Becker asked about staff salaries. Director Harris replied that the  
9 legislature sets salary increases based on what is negotiated by the executive branch.  
10

11  
12 **Agenda Item No. VIII: Proposed Legislation (1:10:53)**

13  
14 Executive Director Robert Harris summarized proposed legislation the Commission  
15 would like to introduce in the 2025 legislative session. The proposed bill is a reintroduction  
16 of legislation that failed to pass in the previous session. The proposal would expand the  
17 definition of lobbyists to include high-level officers and directors, officers and directors of  
18 organizations who lobby, as well as contractors.  
19

20 Commissioner Thielen made, and Vice Chair Tobias seconded, a motion to approve  
21 the proposed legislation. The motion carried (Commissioners Fong, Tobias, Thielen, Hong,  
22 and Becker voted in the affirmative).  
23

24  
25 **Agenda Item No. IX: Meeting Calendar (1:13:28)**

26  
27 Executive Director Robert Harris summarized the proposed 2025 Commission  
28 Meeting Calendar. He noted that the schedule would remain the same, with the  
29 Commission meeting on the third Wednesday of the month at 9:00 AM. There were no  
30 objections to keeping the meeting schedule.  
31

32  
33 **Agenda Item No. X: Akana v. Hawai'i State Ethics Commission and Daniel Gluck, Civil**  
34 **No. 18-1-1019-06 (JHA); Akana v. Hawai'i State Ethics Commission, Civil No. 19-1-**  
35 **0379-03 (JHA); State of Hawai'i, Ethics Commission v. Rowena Akana, Civil No. 20-1-**  
36 **0453 (BIA) (1:14:33)**

37  
38 Executive Director Robert Harris reported that there is no update.  
39

1 **Agenda Item No. XI: University of Hawai'i Professional Assembly v. Board of Regents**  
2 **of the University of Hawai'i, S.P. No.: 1CSP-23-0000959 (1:15:11)**

3  
4 Executive Director Robert Harris reported that staff are proceeding with the  
5 submission of an amicus brief. There were no questions.  
6

7  
8 **Agenda Item No. XII: Adjournment of Sunshine Law Meeting (1:15:50)**  
9

10 At approximately 10:16 a.m., Commissioner Hong motioned to adjourn the meeting,  
11 and Commissioner Thielen seconded. The motion carried (Commissioners Fong, Tobias,  
12 Thielen, Hong, and Becker voted in the affirmative).  
13

14 The meeting was adjourned at 10:17 a.m.

15  
16 Minutes approved on \_\_\_\_.

DRAFT

SUNSHINE MEETING  
AGENDA ITEM II

DIRECTORS' REPORT  
December 18, 2024

**1. Education / Training Report**

*Attachment 1: 2024 Training Schedule*

**2. Guidance and Assignment Statistics – November 2024**

*Attachment 2: 2024 Guidance and Assignment Statistics / Website Traffic*

**3. Miscellaneous Office Projects / Updates**



<b>HAWAII STATE ETHICS COMMISSION</b>			
<b>2024 EDUCATION PROGRAM</b>			
<b>(Ethics Workshops and Presentations)</b>			
<b>DATE</b>	<b>PRESENTATIONS</b>	<b>IN PERSON PARTICIPANTS</b>	<b>WEBINAR PARTICIPANTS</b>
1/4/2024	WEBINAR: Lobbyists Law Training	0	50
1/10/2024	WEBINAR: Lobbyists Law Training	0	48
1/18/2024	WEBINAR: General Ethics Training	0	8
1/19/2024	IN PERSON: Training Refresher, Capitol, House Members	51	0
2/6/2024	WEBINAR: Training Refresher, DOH, Kauai	0	13
2/8/2024	<del>WEBINAR: Ethics for Board and Commission Members</del> (CANCELLED)	0	0
3/6/2024	WEBINAR: General Ethics Training	0	7
4/16/2024	WEBINAR: General Ethics Training, Charter Schools	0	64
5/2/2024	WEBINAR: General Ethics Training	0	8
5/13/2024	WEBINAR: Training Refresher, FESTPAC	0	12
6/20/2024	<del>WEBINAR: Training Refresher, Agribusiness Development Corporation</del> (CANCELLED)	0	0
6/24/2024	IN PERSON: Ethics for Board and Commission Members, Hawai'i Workforce Development Council	80	0
7/10/2024	IN PERSON: Ethics for Board and Commission Members, Land Use Commission	10	2
7/24/2024	WEBINAR: General Ethics Training	0	13
8/8/2024	WEBINAR: Ethics for Board and Commission Members	0	15
9/26/2024	WEBINAR: General Ethics Training	0	19
10/23/2024	WEBINAR: Ethics for Board and Commission Members	0	8
11/4/2024	WEBINAR: West Hawai'i Explorations Academy	0	29
11/7/2024	WEBINAR: General Ethics Training	0	9

**HAWAII STATE ETHICS COMMISSION**

**2024 EDUCATION PROGRAM**

**(Ethics Workshops and Presentations)**

<b>DATE</b>	<b>PRESENTATIONS</b>	<b>IN PERSON PARTICIPANTS</b>	<b>WEBINAR PARTICIPANTS</b>
11/8/2024	IN PERSON: Ethics for New House Members	10	0
11/26/2024	WEBINAR: Ethics for State Government Attorneys, Office of the Attorney General	0	116
12/3/2024	WEBINAR: Ethics for State Government Attorneys	0	64
12/5/2024	WEBINAR: Lobbyists Law Training	0	38
12/6/2024	WEBINAR: Lobbying E-Filing	0	17
<b>TOTAL</b>	<b>24 Presentations</b>	<b>151 participants</b>	<b>540 participants</b>

2024	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
<b>Training statistics</b>													
# of In-Person Trainings	1	0	0	0	0	1	1	1	0	0	1	0	5
# of People Trained In Person	51	0	0	0	0	80	10	16	0	0	10	0	167
# of On-Line Trainings (Self-Directed)	958	707	487	450	423	938	2,393	6,225	1,280	673	546		15,080
# of Lobbyists Law Trainings	186	52	29	17	17	5	7	8	11	12	57		401
# of Training Webinars	3	1	1	1	2	0	1	1	1	1	3	3	18
# of Participants in Training Webinars	106	13	7	64	20	0	15	15	19	8	154	119	540
<b>Attorney of the Day</b>	118	89	94	97	97	97	108	79	91	72	61		1003
<b>New assignments</b>													
Advisory Opinion	0	0	0	0	0	0	0	0	0	1	0		1
Complaint	67	25	39	25	26	27	34	27	43	45	37		395
Gifts/Invitations/Travel	21	24	30	24	27	39	33	28	33	19	10		288
Guidance	2	0	2	1	3	1	0	3	2	5	0		19
Judicial Selection Comm'n	6	0	5	4	1	2	3	4	1	3	1		30
Training Request	0	0	0	0	0	0	0	0	0	8	10		18
Record Request	1	1	0	0	1	0	0	1	0	1	0		5
Project/Other	6	1	1	4	1	2	3	1	4	7	1		31
<b>Total</b>	103	51	77	58	59	71	73	64	83	89	59	0	787
<b>Closed Assignments</b>													
Advisory Opinion	0	0	0	1	0	0	0	0	1	0	0		2
Complaint	67	26	26	33	22	38	41	17	46	43	32		391
Gifts/Invitations/Travel	21	22	35	24	25	37	35	23	40	19	11		292
Guidance	1	3	0	0	3	1	2	1	1	4	1		17
Judicial Selection Comm'n	7	0	4	5	1	2	2	3	2	3	1		30
Training Request	0	0	0	0	0	0	0	0	0	1	3		4
Record Request	1	1	0	0	1	0	0	1	0	1	0		5
Project/Other	2	2	2	2	4	2	1	2	3	8	0		28
<b>Total</b>	99	54	67	65	56	80	81	47	93	79	48	0	769
<b>Anti-Fraud</b>	2	5	5	3	4	4	6	6	4	7	6		52

SUNSHINE LAW MEETING  
AGENDA ITEM III

DISCUSSION OF MEDIA REPORTS CONCERNING ETHICS OR THE ETHICS COMMISSION  
SINCE THE LAST MEETING

No attachments.

SUNSHINE LAW MEETING  
AGENDA ITEM IV

SUMMARY AND DISCUSSION OF THE 2024 COUNCIL ON GOVERNMENTAL ETHICS LAWS  
CONFERENCE

No attachments.

SUNSHINE LAW MEETING  
AGENDA ITEM V

DISCUSSION OF ETHICS OVERSIGHT OVER THE JUDICIAL BRANCH

Attachment 1: Proposed rules are available at: <https://www.courts.state.hi.us/wp-content/uploads/2024/10/2024.10.25-MemoCCRO-RSCH-8-15-FDS-RCJC-for-posting-1.pdf>

SUNSHINE LAW MEETING  
AGENDA ITEM VI

PROPOSED LEGISLATION

*Attachment 1: Legislative Calendar*

Discussion and decision-making on a proposed bill to establish a streamlined enforcement mechanism for addressing low-level or straightforward violations of ethics and lobbying codes, aiming to enhance compliance and efficiency in case resolution

*Attachment 2: Relating to Administrative Fines*

Discussion and decision-making on a proposed bill to clarify jurisdiction over enforcing the existing prohibition on lobbyists' campaign contributions during the legislative session, ensuring consistent application of the law.

*Attachment 3: Relating to Lobbyist Contributions*

# 2025 LEGISLATIVE TIMETABLE

JANUARY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1 NEW YEAR'S DAY	2	3	4
5	6	7	8	9	10	11	
12	13	14	15 OPENING DAY	16	17 Non-Admin Bill Package Cutoff & Grants/Subsidies Cutoff	18	
19	20 DR. MARTIN LUTHER KING, JR. DAY	21 State of the State Address & Admin Bill Package Cutoff	22 RECESS #1	23 State of the Judiciary Address & Bill Intro Cutoff	24 RECESS #2	25	
26	27	28	29	30	31		

FEBRUARY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
							1
2	3	4	5	6	7	8	
9	10	11	12	13	14	15	
16	17 PRESIDENTS' DAY	18	19	20 Mandatory 5-Day Recess Begins	21	22	
23	24	25	26 Last Day of Mandatory 5-Day Recess	27	28	29 First Decking (Bills)	30

MARCH	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
							1
2	3 RECESS #3	4	5 RECESS #4	6 First Crossover (Bills)	7 Substantive Reso Cutoff	8	
9	10 Budget Decking	11	12 Budget Crossover	13	14	15	
16	17	18	19	20	21	22	
23	24	25	26 KUHIO DAY	27	28	29	
30	31						

APRIL	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	3 First Crossover (Concurrent Resos)	4 Second Decking (Bills)	5
6	7 RECESS #5	8	9 RECESS #6	10 Second Crossover (Bills) & Disagree	11	12	
13	14	15	16	17 Constitutional Amendments	18 GOOD FRIDAY	19	
20	21 Second Crossover (Concurrent Resos)	22	23	24 Final Decking (Non-Fiscal Bills)	25 Final Decking (Fiscal Bills)	26	
27	28 RECESS #7	29 RECESS #8	30				

MAY	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1 RECESS #9	2 ADJOURNMENT SINE DIE	3

*Ronald D. Kouchi*

Ronald D. Kouchi  
President of the Senate

11/25/24  
Date

*Nadine K. Nakamura*

Nadine K. Nakamura  
Speaker of the House

11/25/24  
Date



## 2025 LEGISLATIVE TIMETABLE

<u>DATE</u>	<u>LEG. DAY</u>	<u>DEADLINE OR EVENT</u>
Jan. 15 <sup>th</sup> (Wed)	1 <sup>st</sup>	Opening Day.
Jan. 17 <sup>th</sup> (Fri)	3 <sup>rd</sup>	Last day to introduce all packages of bills except for the administration's (State Executive Branch). Last day for organizations to submit grant and subsidy requests to the Legislature.
Jan. 21 <sup>st</sup> (Tue)	4 <sup>th</sup>	State of the State Address. Last day to introduce the administration's package of bills (State Executive Branch).
Jan. 22 <sup>nd</sup> (Wed)		One-day recess.
Jan. 23 <sup>rd</sup> (Thur)	5 <sup>th</sup>	State of the Judiciary Address. Last day for bill introductions.
Jan. 24 <sup>th</sup> (Fri)		One-day recess.
Feb. 20 <sup>th</sup> (Thur) through Feb. 26 <sup>th</sup> (Wed)		Mandatory 5-day recess.
Feb. 28 <sup>th</sup> (Fri)	24 <sup>th</sup>	Filing deadline for First Decking. Last day to deck non-budget bills for Third Reading in the originating body.
March 3 <sup>rd</sup> (Mon)		One-day recess.
March 5 <sup>th</sup> (Wed)		One-day recess.
March 6 <sup>th</sup> (Thur)	26 <sup>th</sup>	First Crossover for bills. Last day for Third Reading of bills in the originating body.
March 7 <sup>th</sup> (Fri)	27 <sup>th</sup>	Last day to introduce substantive resolutions.
March 10 <sup>th</sup> (Mon)	28 <sup>th</sup>	Filing deadline for budget bills.
March 12 <sup>th</sup> (Wed)	30 <sup>th</sup>	Budget Crossover. Last day for Third Reading of budget bills in the originating body.
April 3 <sup>rd</sup> (Thur)	45 <sup>th</sup>	First Crossover for concurrent resolutions. Last day to pass concurrent resolutions to the non-originating body.
April 4 <sup>th</sup> (Fri)	46 <sup>th</sup>	Filing deadline for Second Decking. Last day to deck bills that were amended by the receiving (non-originating) body.
April 7 <sup>th</sup> (Mon)		One-day recess.
April 9 <sup>th</sup> (Wed)		One-day recess.
April 10 <sup>th</sup> (Thur)	48 <sup>th</sup>	Second Crossover for bills. Last day for Third Reading of bills that were amended by the receiving (non-originating) body.
April 17 <sup>th</sup> (Thur)	53 <sup>rd</sup>	Disagree. Last day to disagree with the other body's drafts of bills. Deadline for transmittal of final form of Constitutional Amendments to the Governor.
April 21 <sup>st</sup> (Mon)	54 <sup>th</sup>	Second Crossover for concurrent resolutions. Last day to pass concurrent resolutions that were amended by the receiving (non-originating) body.
April 24 <sup>th</sup> (Thur)	57 <sup>th</sup>	Last day to file non-fiscal bills to deck for Final Reading.
April 25 <sup>th</sup> (Fri)	58 <sup>th</sup>	Last day to file fiscal bills to deck for Final Reading.
April 28 <sup>th</sup> (Mon)		One-day recess.
April 29 <sup>th</sup> (Tues)		One-day recess.
May 1 <sup>st</sup> (Thurs)		One-day recess.
May 2 <sup>nd</sup> (Fri)	60 <sup>th</sup>	Adjournment Sine Die.



\_\_\_\_\_  
Ronald D. Kouchi  
President of the Senate

\_\_\_\_\_  
11/25/24

Date



\_\_\_\_\_  
Nadine K. Nakamura  
Speaker of the House

\_\_\_\_\_  
11/25/24

Date

HOUSE OF REPRESENTATIVES  
THIRTY-SECOND LEGISLATURE, 2025  
STATE OF HAWAII

H.B. NO.

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## A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE FINES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that it is in the public  
2 interest to have an efficient and timely resolution of ethics and  
3 lobbying cases. Timely resolution of matters before the ethics  
4 commission promotes the fair adjudication of rights and public  
5 transparency. This Act aims to provide greater uniformity,  
6 flexibility, and efficiency in assessing administrative fines  
7 related to violations of the State Ethics Code and Lobbyist law.

8           SECTION 2. Section 84-17(1), Hawaii Revised Statutes, is  
9 amended as follows: "~~(1) [If notice and order of an~~  
10 ~~administrative fine has been issued pursuant to this section,~~  
11 ~~the order shall become final on the twentieth day after it is~~  
12 ~~served upon the alleged violator, unless the alleged violator~~  
13 ~~submits a written request for a hearing before the state ethics~~  
14 ~~commission on or before the twentieth day. After conducting a~~  
15 ~~hearing pursuant to chapter 91, the state ethics commission may~~  
16 ~~affirm, modify, or rescind the order as appropriate. The state~~  
17 ~~ethics commission may file with the circuit court of the first~~

# H.B. NO.

1  ~~circuit any order the commission has issued pursuant to this~~  
2  ~~section for the purpose of confirming the order as a final~~  
3  ~~judgment that shall have the same force and effect and shall be~~  
4  ~~enforceable and collectable as other judgments issued by the~~  
5  ~~circuit courts; provided that there shall be no appeal from the~~  
6  ~~judgment.] Administrative fines assessed pursuant to this  
7 section may be enforced using the procedure in Section 84-  
8 31(g)."~~

9 SECTION 3. Section 84-31, Hawaii Revised Statutes, is  
10 amended by adding a new Section 84-31(g) as follows: "(g)  
11 Notwithstanding the above procedures, for any violation of this  
12 chapter with a proposed administrative penalty of less than  
13 \$1,000, the state ethics commission may issue a notice and order  
14 of administrative fine describing the violation and assessing an  
15 administrative fine. The order shall become final on the  
16 twentieth day after it is served upon the alleged violator,  
17 unless the alleged violator submits a written request for a  
18 hearing before the state ethics commission on or before the  
19 twentieth day. After conducting a hearing pursuant to chapter  
20 91, the state ethics commission may affirm, modify, or rescind  
21 the order as appropriate. The state ethics commission may file  
22 with the circuit court of the first circuit any order the

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1 commission has issued pursuant to this section for the purpose  
2 of confirming the order as a final judgment that shall have the  
3 same force and effect and shall be enforceable and collectable  
4 as other judgments issued by the circuit courts; provided that  
5 there shall be no appeal from the judgment. "

6 SECTION 4. Section 84-39, Hawaii Revised Statutes, is  
7 amended as follows: "**§84-39 Administrative fines.**

8 (a) Where an administrative fine has not been established  
9 for a violation of this chapter, any person, including a  
10 legislator or employee, who violates this chapter shall be  
11 subject to an administrative fine imposed by the state ethics  
12 commission that shall not exceed \$5,000 for each violation. All  
13 fines collected under this section shall be deposited in the  
14 general fund.

15 (b) No fine shall be assessed under this section unless:

16 (1) The state ethics commission convenes a hearing in accordance  
17 with section 84-31 and chapter 91 and a decision has been  
18 rendered by the commission; ~~or~~ (2) The state ethics commission  
19 and respondent agree to resolve any charge of an alleged  
20 violation prior to completion of the contested case process and  
21 the resolution includes payment of an administrative fine or  
22 restitution, or both; or (3) The state ethics commission issues

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1 a notice and order of administrative fine pursuant to section  
2 84-31(g)."

3 SECTION 5. Section 97-6, Hawaii Revised Statutes, is  
4 amended by adding a new Section 97-6(g) as follows: "(g)  
5 Notwithstanding the above procedures, for any violation of this  
6 chapter with a proposed administrative penalty of less than  
7 \$1,000, the state ethics commission may issue a notice and order  
8 of administrative fine describing the violation and assessing an  
9 administrative fine. The order shall become final on the  
10 twentieth day after it is served upon the alleged violator,  
11 unless the alleged violator submits a written request for a  
12 hearing before the state ethics commission on or before the  
13 twentieth day. After conducting a hearing pursuant to chapter  
14 91, the state ethics commission may affirm, modify, or rescind  
15 the order as appropriate. The state ethics commission may file  
16 with the circuit court of the first circuit any order the  
17 commission has issued pursuant to this section for the purpose  
18 of confirming the order as a final judgment that shall have the  
19 same force and effect and shall be enforceable and collectable  
20 as other judgments issued by the circuit courts; provided that  
21 there shall be no appeal from the judgment. "

# H.B. NO.

1 SECTION 6. Section 97-7, Hawaii Revised Statutes, Hawaii  
2 Revised Statutes, is amended as follows: "§97-7 Penalties;  
3 administrative fines-.

4 (a) Any person or entity that:

5 (1) Negligently fails to file any statement or report  
6 required by this chapter;

7 (2) Negligently files a statement or report containing  
8 false information or material omission of any fact;

9 (3) Engages in activities prohibited by section 97-5;

10 (4) Fails to provide information required by section 97-2,  
11 including documentation confirming completion of the mandatory  
12 lobbyist training course, or 97-3; or

13 (5) Makes a gift in violation of section 97-5.5; shall be  
14 subject to an administrative fine imposed by the state ethics  
15 commission that shall not exceed \$5,000 for each violation of  
16 this chapter. All fines collected under this section shall be  
17 deposited into the general fund.

18 (b) No fine shall be assessed unless the state ethics  
19 commission:

20 (1) Convenes a hearing in accordance with section 97-6(c)  
21 and chapter 91 and renders a decision; [~~or~~]

22 (2) Together with the alleged violator, agrees to resolve

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1 any alleged violation before the completion of the contested  
 2 case process; provided that the resolution includes payment of  
 3 an administrative fine or restitution, or both[-]; or

4 (3) The state ethics commission issues a notice and order  
 5 of administrative fine pursuant to section 97-6(g)."

6 SECTION 5. This Act does not affect rights and duties that  
 7 matured, penalties that were incurred, and proceedings that were  
 8 begun before its effective date.

9 SECTION 6. If any provision of this Act, or the application  
 10 thereof to any person or circumstance, is held invalid, the  
 11 invalidity does not affect other provisions or applications of  
 12 the Act that can be given effect without the invalid provision or  
 13 application, and the provisions of this Act are severable.

14 SECTION 7. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect upon approval.

17

INTRODUCED BY: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
THIRTY-SECOND LEGISLATURE, 2025  
STATE OF HAWAII

H.B. NO.

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## A BILL FOR AN ACT

RELATING TO LOBBYIST CONTRIBUTIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. This bill clarifies administrative oversight of  
2 statutory restrictions relating to prohibited lobbyist  
3 contributions enacted in Act 128, Session Laws of Hawaii 2023.  
4 Act 128 left concurrent administrative oversight to the campaign  
5 spending and state ethics commissions.

6           For purposes of administrative efficiency and streamlining  
7 of function, this bill clarifies that with respect to the  
8 statutory provisions created and amended by Act 128, the  
9 campaign spending commission shall have oversight of elected  
10 officials, candidates, candidate committees, and others required  
11 to file an organizational report with the campaign spending  
12 commission, and the ethics board or commission having  
13 jurisdiction over the lobbyist shall have oversight of  
14 lobbyists.

15           This bill further clarifies that the regular or special  
16 sessions in which lobbyist contributions are prohibited are



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1 periods during which both houses of the legislature are in  
2 session.

3 SECTION 2. Section 11-365, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **§11-365. Contributions and expenditures by lobbyists**  
6 **prohibited during legislative session.** (a) During any regular  
7 session or special session of both houses of the state  
8 legislature, including any extension of any regular session or  
9 special session and any legislative recess days, holidays, and  
10 weekends, and for five calendar days before and after a session,  
11 no lobbyist shall make, or promise to make at a later time, any  
12 contributions or expenditures to or on behalf of an elected  
13 official, candidate, candidate committee, or any other  
14 individual required to file an organizational report pursuant to  
15 section 11-321. No elected official, candidate, candidate  
16 committee, or other individual required to file an  
17 organizational report pursuant to section 11-321 shall accept,  
18 or agree to accept at a later time, any contribution from a  
19 lobbyist during the specified period under this subsection. Any  
20 contribution prohibited by this subsection shall escheat to the  
21 Hawaii election campaign fund. A lobbyist alleged to have made

# H.B. NO.

1 a prohibited contribution to an elected official, candidate,  
2 candidate committee, or any other individual required to file an  
3 organizational report pursuant to section 11-321, in violation  
4 of this section shall be administratively referred by the  
5 executive director to the ethics board or commission having  
6 jurisdiction over the lobbyist.

7 (b) For the purposes of this section:

8 "Elected official" has the same meaning as in section 11-  
9 342.

10 "Lobbyist" means any person actively registered as a  
11 lobbyist with a state or county ethics board or commission.

12 SECTION 3. Section 97-5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 **§97-5 Restricted activities.** (a) No lobbyist shall  
15 accept or agree to accept any payment in any way contingent upon  
16 the defeat, enactment, or outcome of any proposed legislative or  
17 administrative action. During any regular session or special  
18 session of the state legislature, including any extension of any  
19 regular session or special session and any legislative recess  
20 days, holidays, and weekends, and for five calendar days before  
21 and after a session, no lobbyist shall make, or promise to make

# H.B. NO.

1 at a later time, any contributions or expenditures to or on  
2 behalf of an elected official, candidate, candidate committee,  
3 or any other individual required to file an organizational  
4 report pursuant to section 11-321.

5 ~~\_\_\_\_\_ (b) For the purposes of this section, "elected official"~~  
6 ~~has the same meaning as in section 11-342.~~

7 \_\_\_\_\_ (b) An elected official, candidate, candidate committee, or  
8 any other individual required to file an organizational report  
9 pursuant to section 11-321, alleged to have received a  
10 prohibited contribution in violation of this section, shall be  
11 administratively referred by the state ethics commission  
12 executive director to the campaign spending commission.

13 \_\_\_\_\_ (c) Any contribution prohibited by this subsection may  
14 escheat, as directed by the campaign spending commission, to the  
15 Hawaii election campaign fund.

16 \_\_\_\_\_ (d) For the purposes of this section, "elected official" has  
17 the same meaning as in section 11-342.

18 \_\_\_\_\_ "Session" means a period in which both legislative houses  
19 are in session."

20

# H.B. NO.

1           SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 5. If any provision of this Act, or the  
5 application thereof to any person or circumstance, is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act that can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

10          SECTION 6. New statutory material is underscored.

11          SECTION 7. This Act shall take effect upon approval.

12

INTRODUCED BY: \_\_\_\_\_

SUNSHINE LAW MEETING  
AGENDA ITEM VII

AKANA v. HAWAII STATE ETHICS COMMISSION AND DANIEL GLUCK,  
CIVIL NO. 18-1-1019-06 (JHA); AKANA v. HAWAII STATE ETHICS COMMISSION, CIVIL NO.  
19-1-0379-03 (JHA); STATE OF HAWAII, ETHICS COMMISSION v. ROWENA AKANA, CIVIL  
NO. 20-1-0453 (BIA)

Discussion of case status.

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

No attachments.

SUNSHINE LAW MEETING  
AGENDA ITEM VIII

UNIVERSITY OF HAWAI'I PROFESSIONAL ASSEMBLY V. BOARD OF REGENTS OF THE  
UNIVERSITY OF HAWAI'I, S.P. NO.: 1CSP-23-0000959

Discussion of the case status and filing of an amicus brief by the Hawai'i State Ethics  
Commission.

The Hawai'i State Ethics Commission may convene an executive session pursuant to  
Hawai'i Revised Statutes section 92-5(a)(4) to consult with the Commission's attorneys  
and/or the Department of the Attorney General on questions and issues pertaining to the  
Commission's powers, duties, privileges, immunities, and liabilities.

- Attachment 1: 24-12-06 [61] Hawai'i State Ethics Commission's Amicus Brief
- Attachment 2: 24-12-06 [63] Hawai'i State Teachers Association's Amicus Brief
- Attachment 3: 24-12-09 [65] Hawai'i Government Employees Association's Amicus  
Brief

**Electronically Filed  
Intermediate Court of Appeals  
CAAP-24-0000278  
06-DEC-2024  
10:53 AM  
Dkt. 61 BAM**

CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

UNIVERSITY OF HAWAII  
PROFESSIONAL ASSEMBLY,

Petitioner-Appellee,

v.

BOARD OF REGENTS OF THE  
UNIVERSITY OF HAWAII,

Respondent-Appellant.

Case No. 1CSP-23-0000959

Appeal from (1) Findings of Fact, Conclusions of Law, and Order Granting Petitioner University of Hawaii Professional Assembly's Motion to Confirm Arbitration Decision, filed on January 16, 2024, (2) Findings of Fact, Conclusions of Law, and Order Denying Respondent Board of Regents of the University of Hawaii's Counter Motion to Vacate Arbitration Award, filed on January 16, 2024, and (3) Judgment, filed on March 11, 2024

Circuit Court of the First Circuit

The Honorable Dean E. Ochiai

**AMICUS CURIAE BRIEF OF  
THE HAWAII STATE ETHICS COMMISSION**

**CERTIFICATE OF SERVICE**

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**AMICUS CURIAE BRIEF OF  
THE HAWAI‘I STATE ETHICS COMMISSION**

The Hawai‘i State Ethics Commission (the Commission) respectfully submits this amicus curiae brief to emphasize two points of agreement with Appellant Board of Regents of the University of Hawai‘i (the University). First, the State of Hawai‘i has an explicit, well-defined, and dominant public policy that government employees must act with personal integrity and conduct themselves in accordance with the highest ethical standards. And second, the Commission is a State agency, not a court.

**I. STATEMENT OF THE CASE**

Article XIV of the Hawai‘i Constitution expresses the “belief” of “[t]he people of Hawaii . . . that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.” “To keep faith with this belief,” Article XIV requires that appointed and elected officers and employees of the State and its political subdivisions be subject to codes of ethics administered by ethics commissions. Certain specified provisions are required to be included in each ethics code, including a provision on “use of position[.]” Haw. Const. art. XIV.

Pursuant to this constitutional mandate, the Legislature adopted the State Ethics Code, HRS Chapter 84. “Employees of the University of Hawai‘i are state employees” subject to the State Ethics Code. AG Op. No. 15-2 (Nov. 19, 2015). The Fair Treatment Law, HRS § 84-13, is part of the State Ethics Code and provides in part that a state employee shall not “use or attempt to use the . . . employee’s official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others[.]”

In November 2021, Sarita Rai, the director of the University’s Study Abroad Center (SAC), admitted to violating the Fair Treatment Law “by using, and/or authorizing the use of” University funds “on approximately two dozen occasions between 2015 and 2018 to purchase food and alcohol, totaling \$4,305.14, for herself and others.” CC Dkt. 15 at 24, 28, 30 (Ex. A to University’s Counter Mot. to Vacate Arbitration Award); *see* CC Dkt. 33 at 3 (Ex. 9 to UHPA’s Opp’n to University’s Counter Mot. to Vacate Arbitration Award) (declaration made by Rai during arbitration, stating that her “agreement to the Settlement Agreement . . . was an admission that under Chapter 84 as interpreted by the Ethics Commission that [she] violated HRS § 84-13(a)”).

According to her admitted statement of facts, Rai had access to a bank account into which the SAC deposited payments made by University students to purchase International Student

Identity Cards, and out of which the SAC purchased such cards in bulk. CC Dkt. 15 at 24–26. Because the amount paid by students slightly exceeded the per-card cost to the SAC, and because hundreds of cards were purchased each year, the account accrued thousands of dollars during Rai’s tenure as director. *Id.* at 25–26. Rai erroneously believed that the excess funds in the account were private funds, and used them to reimburse food and alcohol purchases for meetings and holiday luncheons. *Id.* at 26–28. However, the funds were not personal. *Id.* at 28. They belonged to University, as Rai acknowledged during the University’s separate investigation of her. *Id.*; see CC Dkt. 33 at 2 (declaration made by Rai during arbitration, “reaffirm[ing] [her] statement of facts to be true and correct”).

The Commission fined Rai \$5,500 for her admitted violation of the State Ethics Code. CC Dkt. 15 at 30. It rejected Rai’s contention that her expenditure of University funds was warranted by discussions of SAC programs and networking that occurred at the holiday luncheons because State officials’ use of public funds on “parties, holiday events, and/or social gatherings for themselves” is against the law. *Id.*; see HRS § 84-13(a).

The University’s collective bargaining agreement (CBA) with Appellee University of Hawaii Professional Assembly (UHPA) provides that the University must “provide legal counsel for a Faculty Member upon request” when:

- a. The Faculty Member is sued for actions taken by the Faculty Member in the course of the Faculty Member’s employment and within the scope of the Faculty Member’s duties and responsibilities;
- b. The Faculty Member must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Faculty Member’s duties and responsibilities;
- c. The Faculty Member must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Faculty Member’s duties and responsibilities; and
- d. The Faculty Member is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Faculty Member’s duties and responsibilities.

CC Dkt. 5 at 8 (Ex. 4 to UHPA’s Mot. to Confirm Arbitration Decision). After the Commission began investigating Rai’s violation of the State Ethics Code, and again when it charged her with a violation, Rai submitted requests for the University to provide her with legal representation, neither of which were granted. CC Dkt. 3 at 8–9 (Ex. 2 to UHPA’s Mot. to Confirm Arbitration Decision).

Pursuant to the CBA, UHPA filed grievances against the University which were ultimately submitted to arbitration in 2022. *Id.* at 9–10.

The Arbitrator concluded that Rai was entitled to legal representation under the CBA. *Id.* at 31. Among other things, the Arbitrator concluded that the Commission is a “court” for purposes of the CBA, that the Commission had “sued” Rai, that Rai was “deposed” when she was interviewed by the Commission’s Executive Director, and that Rai’s “ethics violations were within the course of her employment and within the scope of her duties and responsibilities[.]” *Id.* at 23–30.

The Circuit Court of the First Circuit denied the University’s motion to vacate the arbitration award and granted UHPA’s motion to confirm it. CC Dkt. 46, 48 (Orders).

## II. ARGUMENT

### A. Hawai‘i has a strong public policy favoring ethical behavior.

The University is correct that the State of Hawai‘i has an explicit, well-defined, and dominant public policy that government employees must act with personal integrity and conduct themselves in accordance with the highest ethical standards. *See* OB at 13, 19; RB at 1–4.

“Public policy may . . . derive from numerous sources including constitutional provisions, statutory provisions, or the common law.” *Yin v. Aguiar*, 146 Hawai‘i 254, 270, 463 P.3d 911, 927 (2020); *see In re State of Haw. Org. of Police Officers (SHOPO)*, 135 Hawai‘i 456, 465, 353 P.3d 998, 1007 (2015) (internal quotation marks omitted) (quoting *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62 (2000)) (“[A]n explicit, well defined, and dominant public policy . . . is ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.”); *Gonsalves v. Nissan Motor Corp. in Haw., Ltd.*, 100 Hawai‘i 149, 165, 58 P.3d 1196, 1212 (2002) (internal citations and footnote omitted) (“[T]his court cannot condone the violation of constitutional and statutory rights, or the shirking of a legal duty, simply because it is cloaked in a promise.”).

All three sources of public policy identified in *Yin*—constitutional provisions, statutory provisions, and the common law—support the existence of the public policy asserted by the University. *See* 146 Hawai‘i at 270, 463 P.3d at 927. First, and most importantly, the Hawai‘i Constitution expressly provides that State employees “must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.” Haw. Const. art. XIV. This language was added by the Constitutional Convention

of 1978 “as a policy statement . . . intend[ed] to convey that high standards of ethical conduct are to be expected from public officers and employees, and that ethics codes are mandated to promote such standards.” Stand. Comm. Rep. No. 26, in 1 Proceedings of the Constitutional Convention of Hawaii of 1978, at 566 (1980) (emphasis added); see OB at 13–14.

One commentator has noted that “constitutional regulation of ethics” remains “unusual” among the states, but that “it may be one of the most effective checks on ethical misconduct by government officials.” Bennett Gershman, *Constitutionalizing Ethics*, 38 Pace L. Rev. 40, 53 (2017). “Several states have ‘constitutionalized’ their code of ethics,” *id.*, and at least one has held that the presence of a constitutional ethics provision is evidence of a public policy requiring ethical conduct by government officials, see *Evans v. Okla. Emp’t Sec. Comm’n*, 246 P.3d 467, 473 n.43 (Okla. Civ. App. 2010) (recognizing “a strong state public policy in limiting the potentially negative effects of public officials with conflicts of interest[,]” as evidenced by a mandate in the Oklahoma Constitution requiring its ethics commission to promulgate rules of ethical conduct for state officers and employees).

Second, the public policy is supported by statutory law: the State Ethics Code. HRS Chapter 84 “prescribe[s] a code of ethics for elected officers and public employees of the State as mandated by the people of the State of Hawaii in the Hawaii constitution, article XIV[.]” HRS Ch. 84, Preamble. Its first section provides that it is to be “liberally construed to promote high standards of ethical conduct in state government.” HRS § 84-1. A contract, or an interpretation of a contract, that conflicts with a statute like the State Ethics Code violates public policy. See *SHOPO*, 135 Hawai‘i at 465, 353 P.3d at 1007 (considering whether an arbitrator’s award “violates public policy with regard to the merit principles as set forth in HRS § 76-1 and the authorized scope of negotiations of collective bargaining agreements as expressed in HRS § 89-9(d)"); *Gepaya v. State Farm Mut. Auto. Ins. Co.*, 94 Hawai‘i 362, 365–66, 14 P.3d 1043, 1046–47 (2000) (quoting *Inlandboatmen’s Union of the Pac., Haw. Region v. Sause Bros., Inc.*, 77 Hawai‘i 187, 194, 881 P.2d 1255, 1262 (App. 1994)) (concluding that an arbitrator’s award “is not ‘clearly’ violative of public policy since the arbitrator did not decide the application of HRS § 431:10C-301.5"); *Inlandboatmen’s Union*, 77 Hawai‘i at 196, 881 P.2d at 1264 (holding that “the record is insufficient to establish a conflict between the arbitrator’s finding three and 48 U.S.C. § 8104(d)").

Third and finally, the public policy is supported by common law. “Hawaii established what is generally considered to be the first comprehensive state ethics code in the nation in 1967.” Stand.



Comm. Rep. No. 26, at 565. But a half century before that, the Territorial Supreme Court held that “contracts entered into by an officer or agent of the public which naturally tend to induce such officer or agent to become remiss in his duty to the public” should be “unhesitatingly pronounce[d] illegal and void, as being contrary to public policy[.]” *Miehlstein v. King Mkt. Co.*, 24 Haw. 540, 544 (Haw. Terr. 1918) (quoting 2 *Elliott on Contracts* § 706 (1913)).

In *Miehlstein*, a corporation employed Honolulu’s building and plumbing inspector to plan and superintend the remodeling of the corporation’s market building—work that included the addition of sinks, drains, pipes, and sewer connections. *Id.* at 541–42. The inspector later sued for payment, but the circuit court granted the corporation a directed verdict on the ground that the inspector’s employment contract was illegal. *Id.* at 540–41.

The Supreme Court affirmed. *Id.* at 545. It was “the official duty of the building inspector” to determine whether “the repair or construction of buildings” was “proper” and in compliance with various ordinances. *Id.* at 543–44. Because performance of his contract with the corporation “might be inimical to the faithful and conscientious discharge of his official duties” and “inconsistent and conflicting with his obligation to the public,” the Supreme Court held that the agreement was “illegal even without being prohibited by statute”—although the inspector was also specifically prohibited by ordinance from doing any plumbing work during his term in office. *Id.* at 542–44. As a matter of Hawai‘i contract law, the Supreme Court stated that “[t]here is neither a more wholesome nor a sounder rule of law than that which requires public officers to keep themselves in such a position as that nothing shall tempt them to swerve from the straight line of official duty.” *Id.* at 545 (quoting *Stropes v. Bd. of Comm’rs of Greene Cty.*, 72 Ind. 42, 43 (1880)).

The common law of contracts in numerous other states similarly recognizes a public policy compelling ethical behavior by public officials. *See, e.g., Kroenlein v. Eddington*, 35 P.3d 1207, 1216 (Wyo. 2001) (“[P]ublic policy generally prohibits identified conflicts of interest on any matter that may undermine public confidence in the integrity of public officials.”); *Driscoll v. Burlington-Bristol Bridge Co.*, 86 A.2d 201, 221 (N.J. 1952) (“[Public officers] must be impervious to corrupting influences and they must transact their business frankly and openly in the light of public scrutiny . . . . When public officials do not so conduct themselves [,] . . . the transactions which they have entered into are contrary to public policy, illegal and should be set aside to the fullest extent possible consistent with protecting the rights of innocent parties.”); *Sch.*

*Dist. No. 98 of Adams Cty. v. Pomponi*, 247 P. 1056, 1058 (Colo. 1926) (“[P]ublic policy . . . prohibits public officers contracting with themselves and for their own benefit.”).

Relatedly, as a matter of public policy, Hawai‘i law disfavors contracts that waive liability for willful misconduct or allow conduct below the acceptable standard of care. *Yin*, 146 Hawai‘i at 269–70, 463 P.3d at 926–27; *Narayan v. Ritz-Carlton Dev. Co.*, 140 Hawai‘i 343, 352, 400 P.3d 544, 553 (2017).<sup>1</sup>

**B. The Hawai‘i State Ethics Commission is not a court.**

The University is also correct that the Commission is not a court. *See* OB at 26–27. The Arbitrator’s conclusion to the contrary was the result of deeply misguided reasoning.

“The judicial power of the State” is vested “in one supreme court, one intermediate appellate court, circuit courts, district courts and in such other courts as the legislature may from time to time establish.” Haw. Const. art. VI, § 1. These bodies are referred to as “courts” in the Hawai‘i Constitution, the Hawaii Revised Statutes (including in Division 4, entitled “Courts and Judicial Proceedings”), and in the various Hawai‘i Rules of Court. As a matter of Hawai‘i law, there is no confusion about what a court is.

The Commission is not a court. It is, as its name suggests, a commission. HRS § 84-21(a). According to the Commission’s own governing statute and the Hawai‘i Administrative Procedure Act, a commission is a State agency. HRS §§ 84-3, 91-1. No statute refers to the Commission as a court, and no actual Hawai‘i court has ever referred to the Commission as a court. As with most other administrative agencies, if someone is unhappy with a decision of the Commission, they can

<sup>1</sup> UHPA argues that there is no “explicit law or legal precedent prohibiting the use of public funds to defend a public employee accused of violating the ethics code.” AB at 18. This argument considers public policy at too high a level of specificity. Clearly, if there were a statute expressly providing that public funds could not be used (or were required to be used) to defend a public employee in a proceeding before the Commission, that would control over the language of the CBA and resolve the dispute in this case. *See SHOPO v. Soc’y of Prof’l Journalists-Univ. of Haw. Chapter*, 83 Hawai‘i 378, 404–05, 927 P.2d 386, 412–13 (1996) (Statutes cannot “be avoided or contradicted by private contractual agreement reached by collective bargaining.”). But an interpretation of a contract may be “void as against public policy” if it is “contrary to a substantial public interest,” even if it is not explicitly “violative of a statute[.]” *Yin*, 146 Hawai‘i at 270, 463 P.3d at 927 (quoting *Fujimoto v. Au*, 95 Hawai‘i 116, 156, 19 P.3d 699, 739 (2001)); *see In re Haw. State Teachers Ass’n*, 140 Hawai‘i 381, 400, 400 P.3d 582, 601 (2017) (emphasis added) (“The public policy exception is applicable only in cases where enforcing an arbitration award or contract would involve illegality *or* violate public policy.”).

seek judicial review of that decision from the courts. *See Boyd v. Haw. State Ethics Comm’n*, 138 Hawai‘i 218, 223–24, 378 P.3d 934, 939–40 (2016). The line between agencies and courts is clearly drawn and widely understood; it is a basic principle of administrative law. The University and UHPA—two sophisticated parties, one of which is itself a State agency—presumably understood the elementary idea that courts are different from agencies when they negotiated their CBA.

The Arbitrator nonetheless reached the conclusion that the Commission is a court by following a tortured chain of logic, as follows. *Black’s Law Dictionary* defines a “court” as “[a] tribunal constituted to administer justice; esp[ecially], a governmental body organized for public administration of justice at the time and place prescribed by law, usu[ally] consisting of one or more judges who sit to adjudicate disputes[.]” CC Dkt. 3 at 23 (Ex. 2 to UHPA’s Mot. to Confirm Arbitration Decision) (emphasis omitted). Because the Commission “is a governmental body organized for public administration of justice[.]” it must be a court. *Id.* at 23–24. Even though the “presiding official is not a judge, but the Executive Director of the [Commission,]” that does not change the conclusion because the *Black’s* definition recognizes that a court “might have a presiding official who is not a judge.” *Id.*

The Arbitrator made numerous missteps. First, he made a logical error. Even if every court could accurately be described as “a governmental body organized for public administration of justice,” that does not mean that every entity that can be so described is necessarily a court. “This type of inference is an example of affirming the consequent, a classic form of invalid reasoning.” *In re Stewart Foods, Inc.*, 64 F.3d 141, 145 n.3 (4th Cir. 1995). To give a different example, the dictionary defines “table” as “a piece of furniture consisting of a smooth flat slab fixed on legs[.]” *Table*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/table>. Even if that definition applies to all tables, it does not make a barstool—a piece of furniture consisting of a smooth flat slab fixed on legs—a table.

Second, even if it were somehow authoritative, *Black’s* definition of “court” is a poor fit for the Commission. The Commission is certainly a government body, and in some capacities could fairly be described as a tribunal, but it does not “administer justice” or “adjudicate disputes” in the same sense that a court does. Courts resolve legal disputes of all kinds that are brought before them by parties. The Commission, on the other hand, “administer[s]” the State Ethics Code, Haw. Const. art. XIV, by investigating and charging violations, and also by providing advice, adopting rules, and conducting trainings, HRS §§ 84-31, 84-43. Its obligations are thus far narrower (because they

are limited to the administration of a single chapter of the Hawaii Revised Statutes) and far broader (because they include investigating, charging, advising, training, and making substantive rules) than a court's. The Arbitrator acknowledged in a footnote that not all tribunals are courts and that the Commission has powers that courts do not ("investigative powers" and "the power to charge public employees with ethical violations"), CC Dkt. 3 at 23 n.4, but nonetheless failed to back down from his conclusion.

What's more, the Commission does not "consist of one or more judges." It consists of five commissioners appointed by the Governor. HRS § 84-21(a). A person is qualified to serve on the Commission if they are a citizen of the United States and a resident of the State. *Id.* Unlike judges, commissioners are not required to have law licenses. *See* Haw. Const. art. VI, § 3. In fact, it would be unlawful for a judge to be a member of the Commission. HRS § 84-21(a) ("Members of the commission shall hold no other public office."). Even though *Black's* says that a court is usually made up of judges—and even though every court in Hawai'i is—the Arbitrator still concluded that the Commission is a court, with the Executive Director as its "presiding official[.]" CC Dkt. 3 at 23–24. But even this is wrong: the Executive Director does not preside over the Commission; he is its employee. HRS § 84-35.

In deciding that the Commission is a court, the Arbitrator ignored his own admonition, based on Hawai'i contract law, that contract terms should be "interpreted according to their plain, ordinary, and accepted sense in common speech." *Id.* at 20. The Commission's members, employees, and regulated parties understand that the Commission is not a court, and it is highly doubtful the University and UHPA thought otherwise when they executed the CBA.

The Arbitrator's incorrect classification of the Commission led him—by his own admission—to confusing results. He ran into trouble immediately when he tried to determine whether Rai had been "sued." *Black's* defines to "sue" as "[t]o initiate a lawsuit against (another party)" and defines a "suit" as a "proceeding by a party or parties against another in a court of law[.]" that is, as "courtroom proceedings before a judge, as opposed to a dispute before some other type of tribunal." *Id.* at 24–25 (emphasis omitted). Rather than reconsider his conclusion that the Commission is a court, and not some other type of tribunal, the Arbitrator instead rejected *Black's* definition of "sue" as inconsistent with its definition of "court," which he had decided includes administrative agencies. *Id.* at 26. He then adopted the *Merriam-Webster Dictionary* definition of "sue": "[t]o seek justice or right by bringing legal action[.]" *Id.* at 26–27. This seems

to run into the same problem, because an “action” is the same thing as a “suit.” *Id.* at 24. The Arbitrator nonetheless decided that the Commission “sued” Rai when it filed a charge against her, even as he recognized that a charge is not the same thing as a complaint. *Id.* at 27 & n.7.<sup>2</sup>

Because the Arbitrator had now concluded that the Commission is a court and that an administrative proceeding is a lawsuit, he had no problem determining that Rai had been both a “defendant” and a “witness” without considering what those words usually mean. *Id.* at 27–28. He also concluded that the Executive Director’s interview of Rai was a “deposition,” which *Black’s* defines as “[a] witness’s out-of-court testimony that is reduced to writing, (usu[ally] by a court-reporter) for later use in court or for discovery purposes.” *Id.* at 28. To the Arbitrator, the Commission’s investigation of Rai apparently constituted “discovery[.]” even though discovery typically takes place after a suit is initiated and involves the mutual exchange of information between parties. *Id.* at 29; *see* HRCP Rule 26. And the Commission’s “use[.]” of Rai’s testimony “to initiate a . . . charge against her” apparently constituted “use in court” even though deposition or other testimony is not usually required to initiate a court proceeding and is not a prerequisite for the Commission to bring a charge. CC Dkt. 3 at 28–29; HRS § 84-31(a)(8); HAR § 21-5-2.

Finally, the Arbitrator, based on his own review of the evidence, determined that all of Rai’s conduct was within the course and scope of her employment. CC Dkt. 3 at 29–31. But Rai’s conduct violated her employer’s own policies and the State Ethics Code. CC Dkt. 15 at 28–30 (Ex. A to University’s Counter Mot. to Vacate Arbitration Award). Rai has admitted that. *Id.* It logically cannot be the case that a public employee’s use of her official position to “secure or grant *unwarranted* privileges, exemptions, advantages, contracts, or treatment,” HRS § 84-13 (emphasis added), is “the kind” of work the employee “is employed to perform[.]” *Wong-Leong v. Hawaiian Indep. Refinery, Inc.*, 76 Hawai‘i 433, 438, 879 P.2d 538, 543 (1994) (quoting *Henderson v. Prof’l Coatings Corp.*, 72 Haw. 387, 392, 819 P.2d 84, 88 (1991)); *see City & Cty. of Honolulu v. Honolulu Police Comm’n*, 152 Hawai‘i 268, 280, 526 P.3d 245, 257 (2023) (police chief’s “duties did not include overseeing a criminal conspiracy to hide his and his wife’s misappropriation of funds belonging to others” and he was therefore not covered by a statute requiring counties to represent and defend police officers prosecuted for acts done in the performance of their duties).

<sup>2</sup> This determination also means that, under the Arbitrator’s definitions, a “court” “sued” an individual, even though that’s not the function of courts in the American legal system.

In fact, the Arbitrator made numerous efforts to downplay Rai's violation. His decision employed an argument that the Commission itself had expressly rejected: that Rai's expenditure of funds was warranted because it facilitated discussions and networking that benefitted the University. CC Dkts. 3 at 30–31, 15 at 30. He also found that the beneficiaries of Rai's expenditures were the SAC's guests, visitors, and faculty, and that Rai "received no personal gain" from them. CC Dkt. 3 at 30–31; *see also* CC Dkt. 4 at 15 n.1 (Ex. 3 to UHPA's Mot. to Confirm Arbitration Decision) (Arbitrator opining that "[t]he ethics violations committed by Dr. Rai were unusual" because they benefitted the University and its students while Rai "received little or no gain"). But again, Rai *admitted* that she violated the Fair Treatment Law by purchasing food and alcohol "*for herself and others.*" CC Dkt. 15 at 30 (emphasis added).<sup>3</sup> The Arbitrator also excused Rai's conduct by saying that she "may not have gotten proper fiscal training[.]" that her "actions were based upon negligence[.]" that she lacked "any wrongful, fraudulent, or deceitful intent[.]" and that she did not commit "serious misconduct." CC Dkt. 3 at 30–31. Rai could have contested the Commission's charge and presented these arguments, but she instead chose to resolve it and admit to violating the Fair Treatment Law. It was neither necessary nor appropriate for the Arbitrator to second-guess the charge against Rai. These issues were appropriately adjudicated by the agency charged by law with administering the State Ethics Code.<sup>4</sup>

### III. CONCLUSION

In reviewing the Circuit Court's orders and judgment, this Court should hold that, as a matter of Hawai'i law, there is an explicit, well-defined, and dominant public policy that

<sup>3</sup> Rai would have still violated the law if she made the purchases exclusively for other people. *See* HRS § 84-13(a).

<sup>4</sup> Similarly, UHPA now argues that Rai's settlement with the Commission was "not an admission that she abused her position" and suggests that Rai settled due to "the structural circumstances of contesting a charge" before the Commission as well as the Commission's "interpretation of HRS [§] 84-13(a)" in previous proceedings. AB at 32. Once again, to resolve the Commission's charge against her, Rai "*admit[ted]* that she violated the Fair Treatment law, HRS § 84-13(a)[.]" CC Dkt. 15 at 30 (emphasis added); CC Dkt. 33 at 3 (Ex. 9 to UHPA's Opp'n to University's Counter Mot. to Vacate Arbitration Award). If she wished to contest the Commission's process for establishing violations of the State Ethics Code, or its legal interpretations, she could have done so as provided for in HRS § 84-31(c), and could have appealed any adverse decision to the courts.

government employees must act with personal integrity and conduct themselves in accordance with the highest ethical standards, and that the Commission is an agency, not a court.

DATED: Honolulu, Hawai'i, December 6, 2024.

*/s/ Thomas J. Hughes*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served electronically via JEFS or conventionally via U.S. Mail on the following parties:

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DATED: Honolulu, Hawai'i, December 6, 2024.

*/s/ Thomas J. Hughes*

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CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

**Electronically Filed  
Intermediate Court of Appeals**

**CAAP-24-0000278**

**06-DEC-2024**

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**Dkt. 63-BAM**

In the Matter of the Arbitration Between

UNIVERSITY OF HAWAII  
PROFESSIONAL ASSEMBLY,

Petitioner-Appellee,

and

BOARD OF REGENTS OF THE  
UNIVERSITY OF HAWAII,

Respondent-Appellant,

CASE NO. 1CSP-23-0000959  
(Special Proceeding)

BOARD OF REGENTS OF THE  
UNIVERSITY OF HAWAII'S APPEAL  
FROM:

1) FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER  
GRANTING PETITIONER UNIVERSITY  
OF HAWAII PROFESSIONAL  
ASSEMBLY'S MOTION TO CONFIRM  
ARBITRATION AWARD FILED  
OCTOBER 16, 2023, FILED JANUARY  
16, 2024;

2) FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER  
DENYING RESPONDENT BOARD OF  
REGENTS OF THE UNIVERSITY OF  
HAWAII'S COUNTER MOTION TO  
VACATE ARBITRATION AWARD  
FILED ON NOVEMBER 7, 2023, FILED  
JANUARY 16, 2024; AND

3) JUDGMENT, FILED MARCH 11, 2024

FIRST CIRCUIT COURT

HONORABLE DEAN E. OCHIAI

BRIEF OF HAWAII STATE TEACHERS ASSOCIATION AS AMICUS CURIAE IN  
SUPPORT OF PETITIONER-APPELLEE UNIVERSITY OF HAWAII PROFESSIONAL  
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**BRIEF OF HAWAII STATE TEACHERS ASSOCIATION AS AMICUS CURIAE IN  
SUPPORT OF PETITIONER-APPELLEE  
UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY**

**I. INTEREST OF AMICUS CURIAE**

*Amicus curiae* Hawai'i State Teachers Association ("HSTA") is the exclusive representative of all the public employees included in Bargaining Unit 5 as defined by Hawai'i Revised Statutes ("HRS") § 89-2.<sup>1</sup> The HSTA represents more than 13,000 public school teachers statewide. As one of 15 bargaining units designated by HRS § 89-6, the HSTA is subject to the jurisdiction of the Hawai'i Labor Relations Board ("HLRB") for all matters arising under HRS chapter 89. Furthermore, as the state affiliate of the National Education Association, the HSTA represents and supports teachers in collective bargaining, as well as with legislative and professional development issues.<sup>2</sup>

The HSTA has no direct financial interest in the parties to this matter or in the outcome of this case. The HSTA's interest in this case is in the Arbitrator's ruling concerning Appellant

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<sup>1</sup> "Exclusive representative" means "the employee organization certified by the board under section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership." HRS § 89-2.

<sup>2</sup> The HSTA's articles of incorporation state its purposes to be:

1. To serve as an employee organization within the meaning of Chapter 89, Hawai'i Revised Statutes, and the exclusive representative of teachers and other personnel of the department of education for the purpose of collective bargaining.
2. To promote and fulfill the specific objectives and goals of an affiliate association of the National Education Association of the United States (NEA) as set forth in Section 1 of the NEA Bylaws.
3. To serve as a "labor organization" within the meaning of Chapter 377, Hawai'i Revised Statutes, and 29 U.S.C. § 151 for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.
4. To promote and protect the constitutional rights of public and private employees in Hawai'i.

University of Hawai`i Board of Regents' ("Employer") obligation to provide legal representation to a public employee based on contractual terms set forth in the University of Hawai`i Professional Assembly's ("UHPA") collective bargaining agreements ("CBA"). The HSTA's CBA has a legal representation provision that has a substantially similar effect and application as UHPA's. Unlike other labor job classifications, teachers more consistently interact with minors and the public, which increases the chances of unfounded allegations being made against them. These allegations, whether criminal, civil or administrative in nature are all potentially damaging to a teacher's freedom, livelihood and reputation. Legal representation provisions like the ones found in the CBAs of UHPA and the HSTA are important because they prevent public employees accused of wrongdoing committed within the course and scope of their employment from choosing between depleting their hard-earned finances for legal advocacy or folding to the accuser simply because they do not have the means to defend themselves.

The HSTA has an acute interest in this Court's analysis of the limited public policy exception to the general deference afforded to arbitration awards vis-à-vis the subject arbitration award's finding that the Employer breached the CBA when it refused to provide legal representation to one of its public employees, Dr. Sarita Rai, in connection with a matter before the Hawai`i State Ethics Commission ("Commission"). The HSTA respectfully submits that the Circuit Court correctly concluded that the Employer failed to identify a well-defined, dominant public policy and even so, there was no clear conflict between the so-called public policies and the Arbitration Award. As explained further herein, the Employer attempts to advance an expansive public policy exception to the limited grounds for vacatur of arbitration awards that is not only contrary to established Hawai`i law, but if adopted, may set potentially dangerous precedent eroding the peace and finality in the labor context that is afforded by the policy of

general deference to arbitration awards.

## II. JUDICIAL REVIEW

The Hawai'i Supreme Court has set out the applicable standards for judicial review of an arbitration award as follows:

**Judicial review of an arbitration award is limited to the statutory grounds** for confirmation, vacatur, modification, and correction. See HRS § 658A-28(a)(3)-(5) (Supp. 2001). **Review of a motion to vacate an arbitration award “does not involve review of an arbitrator’s findings of fact or conclusions of law.”** Nordic[ PCL Const., Inc. v. LPIHGC, LLC], 136 Hawai'i [29, ]42, 358 P.3d [1, ]14 [(2015)]. **“Rather, it involves review of a circuit court’s factual findings and conclusions of law as to whether the statutorily outlined grounds for vacatur exist.” Id.**

We review a circuit court’s findings of fact under the clearly erroneous standard. [Noel ]Madamba[ Contracting LLC v. Romero], 137 Hawai'i [1, ]8, 364 P.3d [518, ]525 [(2015)]. ... We review a circuit court’s conclusions of law de novo under the right/wrong standard. Nordic, 136 Hawai'i at 41, 358 P.3d at 13 (quoting Daiichi[ Hawai'i Real Estate Corp. v. Lichter], 103 Hawai'i [325, ]336, 82 P.3d [411, ]422[ (2003)]). Where a conclusion of law presents a mixed question of law and fact, we review this conclusion under the clearly erroneous standard. Madamba, 137 Hawai'i at 8, 364 P.3d at 525 (citing Estate of Klink ex rel. Klink v. State, 113 Hawai'i 332, 351, 152 P.3d 504, 523 (2007)). A mixed question of law and fact is a conclusion “dependent upon the facts and circumstances of the particular case.” Price v. Zoning Bd. of Appeals, 77 Hawai'i 168, 172, 883 P.2d 629, 633 (1994).

Narayan v. Ass'n of Apartment Owners of Kapalua Bay Condo., 140 Hawai'i 75, 83, 398 P.3d 664, 672 (2017) (emphases added).

## III. ARGUMENT

The disputed CBA provision provides:

### D. Legal Representation

1. The Employer shall provide legal counsel for a Faculty Member upon request to the Office of the Vice President for Legal Affairs and University General Counsel when:

a. The Faculty Member is sued for actions taken by the Faculty Member in the course of the Faculty member’s employment and within the scope of the Faculty Member’s duties and

responsibilities;

b. The Faculty Member must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Faculty member's duties and responsibilities;

c. The Faculty Member must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Faculty Member's duties and responsibilities; and

d. The Faculty Member is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Faculty Member's duties and responsibilities.<sup>3</sup>

Following a hearing on the merits, by Decision and Award dated February 24, 2023 ("Arbitration Award"), the Arbitrator granted the grievance, finding that UHPA member Dr. Rai was entitled to legal representation from the Employer:

1. under CBA Article III.D.1.a. when the Commission sued her by filing a formal charge;
2. under Article III.D.1.b. when she appeared as a defendant in court (before the Commission);

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<sup>3</sup> The HSTA CBA contains a substantially similar provision, which states:

ARTICLE X - TEACHER PROTECTION

A. The Employer shall provide legal counsel for teachers who are sued for actions taken by them in the course of their employment and within the scope of their duties and responsibilities.

The teacher against whom such civil action or proceeding is brought shall deliver within five (5) calendar days after date of service or knowledge of service as determined by the Attorney General, all processes or complaints served upon him or an attested true copy thereof to the immediate supervisor who shall promptly furnish copies of pleadings and process therein to the Attorney General.

When the Employer has determined that a teacher is being sued for actions taken by the teacher in the course of employment and within the scope of duties and responsibilities as noted in Section A, paragraph 1 above, the Attorney General or designee will meet and explain legal procedures to the teacher.



3. under Article III.D.1.c. when she appeared as a witness against herself in court (before the Commission); and
4. under Article III.D.1.d. when she was deposed for purposes of preserving a discovery record that ultimately led to an ethics charge being filed against her.

Record on Appeal (“ROA”) at Dkt. 3.

The Arbitrator concluded that the Employer should have provided Dr. Rai with legal counsel after she submitted each of her two (2) legal services requests and by failing to do so, the Employer breached Article III.D. of the CBA. Id. The Arbitrator also found Dr. Rai’s actions were based upon “negligence and lack of training regarding fiscal policies. She did not have any wrongful, fraudulent, or deceitful intent to harm the University or violate University Policy.” Id. at 31.

Thereafter, by his Remedy and Final Decision and Award dated September 5, 2023, the Arbitrator awarded fees and costs to the Union but declined to rule on whether the Employer was required to indemnify Dr. Rai for the \$5,500 administrative penalty she apparently paid pursuant to a settlement agreement with the Commission. ROA at Dkt. 4. The Arbitrator reasoned that the penalty payment was beyond the scope of the issues stipulated into the arbitration. Id.

Thereafter, the UHPA sought to confirm the Arbitration Award and the Employer sought to vacate it by filing a motion to vacate based on, among other things, public policy grounds. ROA at Dkts. 1, 15. The Circuit Court rejected this public policy argument and refused to vacate the Award and instead confirmed it. ROA at Dkts. 46, 48. The HSTA respectfully submits that the Circuit Court’s ruling in this regard should be affirmed because the Employer has not identified a well-defined, dominant public policy and even so, there was no clear conflict between the so-called public policies and the Arbitration Award.

### A. Arbitration in the labor relations context.

The foundational policy favoring final and binding arbitration of union contract disputes is a bedrock of American and Hawai`i labor law. See e.g., *Judicial Review of Labor Arbitration Awards: Refining the Standard of Review*, WILLIAM MITCHELL LAW REVIEW (1985) Vol. 11:4, *available at* <http://open.mitchellhamline.edu/wmlr/vol11/iss4/4> (“Arbitration allows the parties to a collective bargaining agreement to resolve disputes during the term of the agreement without the disruption caused by strikes.[] The stability in labor relations due to arbitration has resulted in a strong public policy favoring arbitration.[]”). As the U.S. Supreme Court has repeatedly pointed out for more than 50 years,<sup>4</sup> the arbitral process enjoys presumptions both in favor of arbitrability of labor contract disputes and in favor of enforcement of awards, so long as such awards are within the authority the parties bestowed upon the arbitrator in agreeing to their contract. This standard, with its origins in federal law, has been adopted and applied to public employee labor contracts by many state courts, including Hawai`i. See *United Pub. Workers, AFSCME, Loc. 646, AFL-CIO v. Cnty. of Hawai`i-Holiday Pay (2003-022B)*, 125 Haw. 476, 487, 264 P.3d 655, 666 (App. 2011) (“Because County and UPW agreed under the CBA to have an arbitrator rather than a judge resolve disputes, ‘it is the arbitrator’s view of the facts and of the meaning of the contract that [County and UPW] have agreed to accept.’ United Paperworkers Int’l Union, 484 U.S. at 37–38, 108 S.Ct. at 370.”). Indeed, Hawai`i courts have established the following policies limiting judicial review of arbitration awards:

First, because of the legislative policy to encourage arbitration and thereby discourage litigation, **arbitrators have broad discretion in resolving the dispute. Upon submission of an issue, the arbitrator has authority to**

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<sup>4</sup> See e.g., *United Steelworkers v. American Manufacturing Company*, 363 U.S. 564 (1960), *United Steelworkers v. Warrior and Gulf Navigation*, 363 U.S. 574 (1960) and *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

**determine the entire question, including the legal construction of terms of a contract or lease, as well as the disputed facts. In fact, where the parties agree to arbitrate, they thereby assume all the hazards of the arbitration process, including the risk that the arbitrators may make mistakes in the application of law and in their findings of fact.**

Second, correlatively, **judicial review of an arbitration award is confined to the strictest possible limits.** An arbitration award may be vacated only on the four grounds specified in HRS § 658-9 and modified and corrected only on the three grounds specified in HRS § 658-10. **Moreover, the courts have no business weighing the merits of the award.**

Third, HRS §§ 658-9 and -10 also restrict the authority of appellate courts to review judgments entered by circuit courts confirming or vacating the arbitration awards.

Schmidt v. Pac. Benefit Servs., Inc., 113 Hawai`i 161, 165-66, 150 P.3d 810, 814-15 (2006) (citations omitted) (emphases added); see also Matter of Hawai`i State Teachers Ass'n, 140 Hawai`i 381, 391, 400 P.3d 582, 592 (2017). In addition, this Court has explained:

**Even if the Arbitrator applied the law incorrectly, when parties agree to arbitrate, they “assume all the hazards of the arbitration process including the risk that the arbitrators may make mistakes in the application of law and in their findings of fact.”** *Tatibouet*, 99 Hawai`i at 233, 54 P.3d at 404 (internal quotation marks and citation omitted). **Where the arbitration award was made in good faith, [the Employer] is not “permitted to prove that the arbitrator [ ] decided wrong either as to the law or the facts of the case.”** *Id.* at 236, 54 P.3d at 407.

United Pub. Workers, AFSCME, Local 646, AFL-CIO v. Cnty. of Hawai`i-Holiday Pay (2003-022B), 125 Hawai`i 476, 486, 264 P.3d 655, 665 (App. 2011) (emphases added); see also Walden v. Flanigan, 119 Haw. 467, 198 P.3d 730 (App. 2009) (“It is well established that the Hawai`i Supreme Court has confined judicial review of arbitration awards to the strictest possible limits, to encourage arbitration and discourage litigation. The courts have no business weighing the merits of the arbitration award. Thus, we continue to abide by the general rule that an arbitration award, if made in good faith, is conclusive upon the parties.”) (internal citations, quotations and ellipses omitted).

**B. The public policy exception is a limited exception to the general deference afforded to arbitration awards.**

The U.S. Supreme Court and Hawai'i Supreme Court recognize a narrow public policy exception to the general deference afforded to arbitration awards. In United Pub. Workers, AFSCME, Loc. 646, AFL-CIO v. Cnty. of Hawai'i-Holiday Pay (2003-022B), 125 Haw. at 481, 264 P.3d at 660, this Court explained:

A court may not enforce any contract "that is contrary to public policy." Id. at 766, 103 S.Ct. at 2183. It follows that " [i]f the contract as interpreted [by an arbitrator] violates some explicit public policy, [the courts] are obliged to refrain from enforcing it." Id. Thus, **the United States Supreme Court has recognized a public policy exception to the general deference given arbitration awards.** United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 42-43, 108 S.Ct. 364, 373-74, 98 L.Ed.2d 286 (1987) (to refuse to enforce an arbitration award, the alleged violation of public policy must be clearly shown).

**[T]he public policy exception requires a court to determine that (1) the award would violate some explicit public policy that is well defined and dominant, and that is ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests, and (2) the violation of the public policy is clearly shown. Hence, a refusal to enforce an arbitration award must rest on more than speculation or assumption.**

Inlandboatmen's Union of the Pac., Hawai'i Region, Marine Div. of Int'l Longshoremen's & Warehousemen's Union v. Sause Bros., Inc., 77 Hawai'i 187, 193-94, 881 P.2d 1255, 1261-62 (App. 1994) (internal quotation marks, citations, ellipsis, and brackets in original omitted).

The required showing that an award clearly violates an explicit, well-defined and dominant public policy originates from the U.S. Supreme Court decisions in W.R. Grace & Co. v. Rubber Workers, 461 U.S. 757 (1983) and United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29 (1987). The Court's carefully articulated requirements of a well-defined and dominant public policy not ascertained from "general considerations of supposed public interests" evidence the Court's intention to limit the possibility of potentially intrusive and

otherwise baseless judicial review of arbitration awards under the guise of public policy violations. Significantly, the Hawai`i Supreme Court has adopted this exact standard. See e.g., In re Grievance Arb. Between State Org. of Police Officers, 135 Haw. 456, 465, 353 P.3d 998, 1007 (2015) (“This public policy exception is based on the exception recognized by the United States Supreme Court in United Paperworkers International Union v. Misco, Inc., 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987); see Inlandboatmen’s Union of the Pac., Hawai`i Region, Marine Div. of Int’l Longshoremen’s & Warehousemen’s Union v. Sause Bros., 77 Haw. 187, 194, 881 P.2d 1255, 1262 (App. 1994) (adopting the public policy exception of Misco and directing that the exception should be applied under the guidelines set forth in Misco”); Gepaya v. State Farm Mut. Auto. Ins. Co., 94 Haw. 362, 365, 14 P.3d 1043, 1046 (2000) (“Additionally, two judicially recognized exceptions to confirmation exist; . . . another, to allow vacation of an arbitration award clearly violative of public policy.”) (internal citations omitted).

Quoting the Supreme Court of the United States, this Court explained the public policy exception as follows:

A court’s refusal to enforce an arbitrator’s award ... because it is contrary to public policy is a specific application of the more general doctrine, rooted in the common law, that a court may refuse to enforce contracts that violate law or public policy. [The ‘public policy’ exception] derives from the basic notion that no court will lend its aid to one who founds a cause of action upon an immoral or illegal act, and is further justified by the observation that the public’s interests in confining the scope of private agreements to which it is not a party will go unrepresented unless the judiciary takes account of those interests when it considers whether to enforce such agreements.

Id. at 193, 881 P.2d at 1261 (quoting United Paperworkers Int’l Union v. Misco, Inc., 484 U.S. 29, 42, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987)). **The public policy exception is applicable only in cases where enforcing an arbitration award or contract would involve illegality or violate public policy.** SHOPO, 135 Hawai`i at 465-67, 353 P.3d at 1007-09; see also Inlandboatmen, 77 Hawai`i at 194, 881 P.2d at 1262 (providing examples of Hawai`i courts applying the public policy exception).

Matter of Hawai'i State Tchrs. Ass'n, 140 Haw. at 400, 400 P.3d at 601 (emphases added).

Indeed, also very aware and weary of the potential misuse of this narrow exception by parties unsatisfied with an arbitration award, this Court stated:

We are mindful that **the public policy exception does not otherwise sanction a broad judicial power to set aside arbitration awards as against public policy**, and that we do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts.

Sause Bros., 77 Haw. at 196, 881 P.2d at 1264 (internal citations and quotations omitted)

(emphases added). Thus, Hawai'i courts recognize the public policy exception as a very narrow exception to the general judicial deference afforded to arbitration awards and that in order for the public policy exception to apply, there must be an explicit, dominant and well-defined public policy and a showing that the arbitration award at issue clearly violates that public policy.

The relevant question is whether the Arbitration Award's conclusion that the Employer breached the CBA by failing to provide legal counsel to its public employee in a Commission proceeding violates an explicit, well-defined, and dominant public policy, as ascertained by reference to positive law and not from general considerations of supposed public interests. See E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17, 531 U.S. 57, 63 (2000) (explaining that the public policy exception is narrow and must satisfy the principles set forth in W.R. Grace and Misco). This inquiry has two (2) distinct parts. First, the Court must determine whether a well-defined and dominant public policy exists. If there is no such public policy, then the inquiry is over. If there is such a public policy, then the second and final question is whether the Arbitration Award creates an explicit conflict with that policy. Sause Bros., 77 Haw. at 193–94, 881 P.2d at 1261–62 (citing Misco); see also Walden, 119 Haw. 467, 198 P.3d 730. This Court has explained:

In cases where public policies were found to be sufficiently “explicit,” “well defined and dominant,” and “ascertained by reference to laws and legal precedents,” **the public policies involved were often based on explicit statutes or administrative rules.** See, e.g., Grievance Arbitration Between State of Hawai‘i Org. of Police Officers v. Hawai‘i County Police Dep’t, 101 Hawai‘i 11, 20, 61 P.3d 522, 531 (App. 2002) (Public policy exception established where “[t]he command of HRS § 89–9(d) is explicit and unambiguous. And it is dominant, as HRS chapter 89 is no less than the legislature’s paradigm for all collective bargaining agreements.”). **Even in cases involving explicit statutes, we have held that the limited public policy exception was not established.** See, e.g., IUP, 77 Hawai‘i at 196, 881 P.2d at 1264 (internal quotation marks, citation, brackets, and ellipsis omitted) (Public policy exception not met where a party points the court to a specific statute, but “the violation of such a statute has not been clearly shown.”).

Walden, 119 Haw. 467, 198 P.3d 730 (emphases added).

**C. The Employer fails to identify any explicit, well defined, and dominant public policy against requiring a public employer to provide legal counsel to a public employee for his/her defense in matters before the State Ethics Commission.**

On appeal to this Court, the Employer argues that the Circuit Court erred in not finding that the Arbitration Award violates public policy and cannot be enforced. In particular, it is the Employer’s contention that the Award’s finding that the Employer breached the CBA by refusing to provide Dr. Rai with legal representation before the Commission violates public policy. OB at 19. For the reasons expressed herein, this argument should be rejected.

In support of this argument, the University asserts various public policies set forth in the Hawai‘i Constitution, the State Ethics Code, the Ethics Commission’s administrative rules and in the Hawai‘i Supreme Court decision of City and County of Honolulu v. Honolulu Police Commission, 152 Hawai‘i 268, 526 P.3d 245 (2023). As explained below, none of these supposed public policies are explicit, well defined and dominant nor does the Award clearly violate them. The Circuit Court’s ruling in this regard must be affirmed.

## 1. Haw. Const. Art. XIV and State Ethics Code

First, the Employer argues that the Arbitration Award violates a public policy that “public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.” The Employer argues that this policy can be gleaned from Haw. Const. Art. XIV and various statutory provisions of the Hawai`i State Ethics Code. Haw. Const. Art XIV states:

The people of Hawai`i believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government. To keep faith with this belief, the legislature, each political subdivision and the constitutional convention shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of the boards, commissions and other bodies.

Each code of ethics shall be administered by a separate ethics commission, except the code of ethics adopted by the constitutional convention which shall be administered by the state ethics commission. The members of ethics commissions shall be prohibited from taking an active part in political management or in political campaigns. Ethics commissioners shall be selected in a manner which assures their independence and impartiality.

Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, use of position, contracts with government agencies, post-employment, financial disclosure and lobbyist registration and restriction. The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

The Employer also referenced various provisions of HRS chapter 84, the Hawai`i State Ethics Code, including HRS § 84-1, -2, -10 through -19, -21 and -31(a)(4). OB at 14-16. The

Employer reasons that if it is required to provide and defend a public employee’s violation of the



State Ethics Code, such violation no longer concerns the “personal integrity of each individual” in government and this practice would decrease, rather than enhance, public trust and confidence in government officials. OB at 11-16, 19.

As an initial matter, it is difficult to overlook how the Employer’s logic assumes the guilt of a public employee accused of an ethics violation, making him/her undeserving of defense counsel under the CBA. Putting that aside, even assuming that the constitutional provision and statutes referenced by the Employer establish a well-defined and dominant public policy (i.e., that “public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.”), which is doubtful and the HSTA does not concede, the Arbitration Award’s ruling that the Employer breached the CBA by failing to provide legal counsel to Dr. Rai for her defense against ethics commission accusations does not clearly run afoul of this supposed public policy. Notably here, it is not the public employee’s alleged conduct being weighed as violative of public policy. Rather, it is the Arbitration Award itself. Sause Bros., 77 Hawai‘i at 193-9, 881 P.2d at 1261-62 (noting that the Court must determine if the award violates public policy). And even if it were relevant, the Arbitrator found that Dr. Rai’s actions were based upon “negligence and lack of training regarding fiscal policies. She did not have any wrongful, fraudulent, or deceitful intent to harm the University or violate University Policy.” Dkt. 3 at 31. The HSTA submits that this is exactly the type of case where obligating the Employer, per the terms of a CBA, to provide counsel to defend an employee (where said employee was not properly trained and lacked any ill intent to violate policy) would be appropriate and would further, rather than inhibit or violate, the public interest and public policy. This argument should be rejected.

## 2. Ethics Commission's Administrative Rules

The Employer next turns to the Ethics Commission's administrative rules to argue that the Arbitration Award violates public policy because it is in "direct contradiction with the Ethics Commission's administrative rules." OB at 19. In particular, the Employer points to HAR § 21-5-2.5(a), which states: "A party, at the party's own expense, may be represented by legal counsel at any stage of the proceeding before the commission or hearing officer." As further support of this argument, the Employer also points to the administrative rule that acknowledges that a union representative may accompany and act in a representative capacity on behalf of a party. Haw. Admin. R. §§ 21-5-2.4(b), 21-5-2.6. OB at 19-20.

HAR § 21-5-2.5 states:

**§21-5-2.5 Legal counsel.** (a) A party, at the party's own expense, may be represented by legal counsel at any stage of the proceeding before the commission or hearing officer.

(b) Substitution of legal counsel shall be effective upon filing of a notice of the substitution by the party represented.

(c) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the commission or hearing officer and shall be subject to the guidelines of the Hawaii rules of professional conduct and other applicable law.

(d) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before the contested case hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown. [Eff NOV 28 2020 ]

(Auth: HRS §§84-31(a)(5), 91-2, 97-6(a)(5)) (Imp: HRS §§84-31, 91-2, 91-9, 97-6)

This administrative rule implements HRS § 84-31 and HRS § 97-6, both of which, among other things, state that all parties shall have the opportunity to be represented by counsel in proceedings before the Commission. See HRS § 84-31(c)(3); HRS § 97-6(c)(3). The administrative rule also implements HRS § 91-9, which notes that in contested case proceedings, parties must be notified that "any party may retain counsel if the party so desires." The plain

language of these statutes do not expressly prohibit the furnishing of legal counsel by anyone other than the party nor do they exhibit any supposed public policy against the same. Similarly, the Employer has not described any established history in the laws evidencing a public policy against obligating employers pursuant to a CBA to provide legal counsel to an employee for his/her defense in Commission proceedings. By contrast, in Jijun Yin v. Aguiar, 146 Haw. 254, 271, 463 P.3d 911, 928 (2020), the Hawai`i Supreme Court found that for more than 175 years, Hawai`i law has held livestock owners liable under specified circumstances for the damages caused by their trespassing livestock, with the law in Hawai`i providing greater statutory protections to cultivated land as time passed. Based on this, the Court concluded that “This established history of imposing liability on the livestock owners for their trespassing animals and providing greater statutory protections to cultivated land demonstrates a public policy in HRS Chapter 142 for holding livestock owners responsible for damages caused by their livestock.” Id. Here, there is no well-defined, dominant public policy set forth in the administrative rules prohibiting the furnishing of legal counsel by anyone other than the party. HAR § 21-5-2.5(a) gives effect to the statutory right of parties in the proceedings to have counsel set forth in HRS § 84-31(c)(3), § 97-6(c)(3) and § 91-9. In light of that, the specification set forth in HAR § 21-5-2.5(a) that counsel is “at the party’s own expense” should not be read to be a prohibition against furnishing of legal counsel by a person or entity other than the party pursuant to a contract. Rather, it more appropriately is a mere reflection of the nature of the proceeding: a civil administrative proceeding where counsel is not provided as of right under certain circumstances like a criminal proceeding. Finally, even if this were a dominant well-defined public policy, which it is not, there is no viable policy violation arising from an Employer providing legal counsel for an employee appearing before the Commission.

### 3. Dr. Rai's "admission"

The Employer also argues that Dr. Rai's "admission" that she violated ethics laws in and of itself violated public policy. OB at 20. Not only does this argument fail to identify a dominant, well defined public policy, but it should be disregarded at the outset because it is based upon the Resolution of Charge, which is not relevant to the issue of whether the CBA required the Employer to provide legal counsel to defend an employee in a Commission proceeding. The Employer essentially claims that it does not have an obligation to provide counsel to its employee by pointing to the outcome of the very proceeding that it refused to provide its employee with counsel. This argument is unavailing. The Resolution of Charge is also not relevant to whether the Arbitration Award violates public policy because it is not the public employee's alleged conduct being weighed as violative of public policy. Rather, it is the Arbitration Award itself. Sause Bros., 77 Hawai'i at 193-9, 881 P.2d at 1261-62 (noting that the Court must determine if the award violates public policy). Even if it were relevant, the Arbitrator found that Dr. Rai's actions were based upon "negligence and lack of training regarding fiscal policies. She did not have any wrongful, fraudulent, or deceitful intent to harm the University or violate University Policy." Dkt. 3 at 31.

### 4. City & County of Honolulu v. Honolulu Police Commission does not support vacating the arbitration award.

Finally, the Employer relies upon City and County of Honolulu v. Honolulu Police Commission, 152 Hawai'i 268, 526 P.3d 245 (2023) to argue that the Arbitration Award violates the "well-defined and dominant policy to refrain from using taxpayer dollars to fund public employees' legal representation, when the acts for which they are being 'sued' are outside the performance of their duties." OB at 22. The Employer further explains that ethics violations

are never within the duties and responsibilities of any state officer or employee, as such actions may result in termination and that providing taxpayer-funded legal representation to public officers or employees who violate the State Ethics Code does not in any way “benefit the public.” Id.

There are several significant differences between the Honolulu Police Commission case and the policies and circumstances involved here. In Honolulu Police Commission, Chief Louis Kealoha (“Kealoha”) sought a city-paid attorney to defend him against federal charges stemming from a 2017 federal grand jury indictment of Kealoha of a myriad of criminal offenses including bank fraud, identity theft, and obstruction of official proceeding. Id. at 271, 526 P.3d at 248. Kealoha, the Chief of the Honolulu Police Department at the time, conspired with police subordinates and his wife to discredit, intimidate, and ultimately frame the victim of his crimes. Id. at 272, 526 P.3d at 249. Kealoha’s actions did not benefit the public and were not within the scope of his duty. Honolulu Police Commission directly concerns statutory rights to counsel under HRS § 52D-8 and Rules of the Hawai‘i Police Commission (“RHPC”) Rule 11-1(e) and held that Kealoha was not entitled to city-funded representation.<sup>5</sup> The Employer’s obligation to

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<sup>5</sup> Pursuant to HRS § 52D-8, whenever a police officer is prosecuted for a crime or sued in a civil action for acts done in the performance of the officer’s duty, the police officer shall be represented and defended in criminal proceedings by an attorney to be paid in the county in which the officer is serving. RHPC Rule 11-1(e) states:

For purposes of this Rule 11, the following shall be considered by the Commission in determining whether “an act, for which the police officer is being prosecuted or sued, was done in the performance of the officer's duty”:

(i) whether the act was incident to required or authorized work-related activity;

(ii) whether the act was incident to a course of conduct taking place at a time that the officer was required to engage in the course of conduct by the nature of the officer's responsibilities as a police officer; and

furnish counsel to Dr. Rai was contractual, not statutory.

Here, Dr. Rai is a faculty member at the University of Hawai`i at Manoa and has served as the Director of the Study Abroad Center (“SAC”) since 1995. ROA Dkt. 3 at 5. The Commission investigated Dr. Rai for the use of a non-university bank account to benefit the SAC and University of Hawai`i students. Id. at 8-9. The University admitted that there was clearly no personal gain for Dr. Rai in using the ISIC funds and she may not have received sufficient training on the specific budget and fiscal policies. Id. at 7-8. Dr. Rai was not a police officer and thus, the statutory right to counsel and its requirements set forth in HRS § 52D-8 and RHPC Rule 11-1(e) are not applicable or instructive to this case, which involves the interpretation of the CBA between the University of Hawai`i and the UHPA and in particular, the obligations of the Employer pursuant to CBA Article III.D. Finally, the Arbitrator specifically found that Dr. Rai’s actions were within the course of her employment and within the scope of her duties and responsibilities as a faculty member and director of the SAC, contrary to the fundamental finding made by the Court in Honolulu Police Commission that Kealoha’s actions were not within the scope of his duty. ROA Dkt. 3 at 30. Thus, even if there was a well-defined public policy relevant here, which HSTA does not concede, the Arbitration Award does not run afoul of it.

**5. The Employer’s assertion that the Arbitration Award violates the public policy against state agency indemnification of public employees for their ethics violations has no merit.**

At pages 22-23, the Employer asserts that even though the Arbitrator did not rule on

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(iii) whether the act was incident to a course of conduct engaged in at a place that the officer was authorized to engage in it by the nature of the officer's responsibilities as a police officer.

Emphases added. Significantly here, nothing in the Honolulu Police Commission discusses public policy beyond the statutory confines of HRS § 52D-8 and RHPC Rule 11-1(e). The HSTA is not aware of any subsequent decisions that have extended or analogized HRS § 52D-8 to any other form of employment beyond police officers.

whether it was required to indemnify Dr. Rai for the administrative penalty, the public policy against state agency indemnification of public employees for their ethics violations is “still implicated” by the Arbitration Award. Assuming that said asserted public policy is well defined and dominant, which is doubtful, this Court should not accept the Employer’s invitation to vacate the Award on the grounds of an alleged potential future public policy violation. Here, the Employer clearly acknowledges that the Arbitration Award did not require indemnification of the employee’s administrative penalty. Thus, there can be no conflict between the Award and any supposed public policy. That in some future scenario such a payment may be required is just the type of speculation and assumption routinely rejected by our courts in efforts to vacate arbitration awards.

#### **IV. CONCLUSION**

Without adherence to the intended limits of the public policy exception to the enforcement of arbitration awards, the doors will be opened to future courts second guessing the decision of an arbitrator. For the aforementioned reasons, Amicus HSTA respectfully requests that this Court affirm the Circuit Court’s ruling.

DATED: Honolulu, Hawai`i, December 6, 2024.

*/s/ Keani Alapa*

\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the HAWAII STATE TEACHERS' ASSOCIATION'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF, MEMORANDUM IN SUPPORT OF MOTION, AND EXHIBIT A, was duly served upon the following identified parties through JEFS on the date indicated below.

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NO. CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

**Electronically Filed**  
**Intermediate Court of Appeals**  
**CAAP-24-0000278**  
**09-DEC-2024**  
**01:58 PM**  
**Dkt. 65 BAM**

In the Matter of the  
Arbitration Between

UNIVERSITY OF HAWAII  
PROFESSIONAL ASSEMBLY,

Petitioner-Appellee,

vs.

BOARD OF REGENTS OF THE  
UNIVERSITY OF HAWAII,

Respondent-Appellant.

) CASE NO.: 10SP-23-0000959  
) (Special Proceeding)  
)

) BOARD OF REGENTS OF THE  
) UNIVERSITY OF HAWAII'S APPEAL  
) FROM:

) 1) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW, AND ORDER GRANTING  
) PETITIONER UNIVERSITY OF HAWAII  
) PROFESSIONAL ASSEMBLY'S MOTION  
) TO CONFIRM ARBITRATION AWARD  
) FILED ON OCTOBER 16, 2023, FILED  
) JANUARY 16, 2024;

) 2) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW, AND ORDER DENYING  
) RESPONDENT BOARD OF REGENTS OF  
) THE UNIVERSITY OF HAWAII'S  
) COUNTER MOTION TO VACATE  
) ARBITRATION AWARD FILED ON  
) NOVEMBER 7, 2023, FILED JANUARY 16,  
) 2024; and

) 3) JUDGMENT, FILED MARCH 11, 2024  
)  
) FIRST CIRCUIT COURT  
) HONORABLE DEAN E. OCHIAI  
)  
)  
)  
)  
)  
)  
)

**BRIEF OF HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME  
LOCAL 152, AFL-CIO AS AMICUS CURIAE IN SUPPORT OF  
PETITIONER-APPELLEE UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY**

**APPENDICES "1" THROUGH "3"**

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**BRIEF OF HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME  
LOCAL 152, AFL-CIO AS AMICUS CURIAE IN SUPPORT OF  
PETITIONER-APPELLEE UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY**

**I. INTEREST OF AMICUS CURIAE**

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO (“HGEA”) is Hawaii’s largest union with approximately 27,550 bargaining unit members statewide. Public state and county employees are divided into fifteen (15) collective bargaining units, and HGEA has exclusive representation of nine (9) of these units.

HGEA is the exclusive representative for: Bargaining Unit 2 - Supervisory employees in blue-collar positions; Bargaining Unit 3 - Non-supervisory employees in white-collar positions; Bargaining Unit 4 - Supervisory employees in white-collar positions; Bargaining Unit 6 - Educational officers; Bargaining Unit 8 - Administrative, professional and technical employees of the University of Hawaii and the community colleges; Bargaining Unit 9 - Registered professional nurses; Bargaining Unit 13 - Professional and scientific employees; Bargaining Unit 14 - Law enforcement officers; and Bargaining Unit 15 - Ocean safety and water safety officers. See § 89-6 of the Hawaii Revised Statutes (“HRS”). .

As the exclusive representative for Bargaining Units 2, 3, 4, 6, 8, 9, 13, 14 and 15, HGEA “shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees...” HRS §89-8(a).

The Collective Bargaining Agreement (“CBA”) for each of the nine (9) bargaining units that HGEA represents includes an article regarding when an Employer is required to provide legal counsel for an Employee who requests for legal representation. HGEA’s Article regarding legal representation for employees in bargaining units 2, 3, 4, 6, 8, 9, 13, 14 and 15 is essentially the same as the University of Hawaii Professional Assembly’s (“UHPA”) legal representation clause at issue in this appeal. See Appendix “1”.

HGEA's Article regarding legal representation for its bargaining unit employees provides:

**ARTICLE 17 - PERSONAL RIGHTS AND REPRESENTATION**

- E. The Employer shall provide legal counsel for an Employee upon request when:
  - 1. the Employee is sued for actions taken by the Employee in the course of the Employee's employment and within the scope of the Employees duties and responsibilities.
  - 2. the Employee must appear as defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.
  - 3. The Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.
  - 4. the Employee is required to give a deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

See Appendix "1".

UHPA's Legal Representation Article provides:

D. Legal Representation

- 1. The Employer shall provide legal counsel for a Faculty Member upon request to the Office of the Vice President for Legal Affairs and University General Counsel when:
  - a. The Faculty Member is sued for actions taken by the Faculty Member in the course of the Faculty Member's employment and within the scope of the Faculty Member's duties and responsibilities;
  - b. The Faculty Member must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Faculty Member's duties and responsibilities;

- c. The Faculty Member must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Faculty Member's duties and responsibilities; and
- d. The Faculty Member is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Faculty Member's duties and responsibilities.

Over the years, HGEA has pursued grievances on behalf of its bargaining unit members regarding the legal representation Article, and advocated strongly against Employer attempts to narrow the scope of their obligation to provide legal representation to employees accused of acts done in the course and scope of their employment and within the scope of their duties and responsibilities. Through these efforts, HGEA has obtained final and binding arbitration decisions where the Employer argued that the legal representation Article is only applicable to civil court proceedings and litigation. Arbitrators in HGEA grievance arbitration cases have found that HGEA's legal representation Article is not limited to just civil court proceedings, and may apply to administrative proceedings and criminal court proceedings.

HGEA's interest in this case is in protecting the integrity of the collective bargaining process, its rights, benefits, and interests as the exclusive representative for Bargaining Units 2, 3, 4, 6, 8, 9, 13, 14 and 15, and the rights, benefits, and interests of its 27,550 bargaining unit members in these units. These rights, benefits, and interests include conditions of employment that HGEA obtained for its bargaining unit members through collective bargaining, and final and binding arbitration decisions and awards that interpret these terms and conditions of employment in the respective CBAs.

Since the legal representation clauses of UHPA and HGEA contracts are very similar, any decision regarding the Arbitrator's ruling concerning the University of Hawai'i Board of Regents'



(“BOR”) obligation to provide legal representation pursuant to UHPA’s legal representation provision will surely affect how the legal representation provision in HGEA’s CBAs are interpreted and applied going forward, and final and binding arbitration decisions that HGEA obtained for its members through the grievance procedure that the parties collectively bargained for.

Job classifications within HGEA’s nine (9) different bargaining units are diverse and expansive, and exist within every government jurisdiction in Hawaii. They include positions that serve in a regulatory capacity (Liquor Control Investigators, Food & Drug Inspectors), health, safety and welfare (Registered Professional Nurses, School Health Aides, Social Workers), law enforcement (e.g., Harbor Police, Deputy Sheriffs), permitting and licensing (Drivers License Examiners, ), etc. HGEA members interface with the general public, food establishments, patients, students, parents, inmates, tourists and so much more, on a daily basis. The roles these employees serve in, and their respective duties and responsibilities, put them at a high risk of complaints being brought against them and their coworkers for actions taken in the course and scope of their employment and within the scope of their duties and responsibilities. When such complaints are brought, it is critical for employees to have legal representation to assist them in responding to such complaints in administrative proceedings like the Ethics Commission, Hawaii Labor Relations Board, and other non-court forums because such complaints put their professional licenses, certifications, employment, livelihood, and personal liability at risk, and subject them to criminal charges in these settings, and not just in court. The legal representation clause is an invaluable condition of employment that the unions and employers collectively bargained for. Without it, public servants would be forced to retain counsel at their own expense, subjecting them and their families to financial hardship and potential financial ruin, for matters arising out of the course and scope of their employment and within the scope of their duties and responsibilities. That is contrary

to the purpose of the constitutional right to collective bargaining, and not what the parties bargained for.

## II. STANDARD OF REVIEW

“[J]udicial review of an arbitration award is confined to ‘the strictest possible limits,’” and a court may only vacate an award on the grounds specified in HRS § 658A-23. *State of Hawai‘i Org. of Police Officers (SHOPO) v. County of Kaua‘i*, 135 Hawai‘i 456, 461, 353 P.3d 998, 1003 (2015) citing *Daiichi Haw. Real Estate Corp. v. Lichter*, 103 Hawai‘i 325, 336, 82 P.3d 411, 422 (2003). This standard applies to the circuit court and to the appellate courts. Id.

The circuit court’s “findings of fact will not be set aside unless they are clearly erroneous.” *SHOPO*, 135 Hawai‘i at 461, 353 P.3d at 1003, citing *Beneficial Haw., Inc. v. Casey*, 98 Hawai‘i 159, 167, 45 P.3d 359, 367 (2002).

A finding of fact is clearly erroneous when, despite evidence to support the finding, the appellate court is left with the definite and firm conviction in reviewing the entire evidence that a mistake has been committed. A finding of fact is also clearly erroneous when the record lacks substantial evidence to support the finding. We have defined ‘substantial evidence’ as credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

*SHOPO*, 135 Hawai‘i at 461-462, 353 P.3d at 1003-1004, citing *Daiichi*, 103 Hawai‘i at 337, 82 P.3d at 423 (citations omitted) (quoting *Beneficial Haw., Inc. v. Kida*, 96 Hawai‘i 289, 305, 30 P.3d 895, 911 (2001)) (internal quotation marks omitted). An appellate court reviews the circuit court’s conclusions of law under the right/wrong standard. Id.

### III. ARGUMENT

On August 23, 2024, Complainant-Appellant Board of Regents of the University of Hawai'i ("BOR") filed its Opening Brief. The BOR asserts that the Arbitration Award violates public policy and cannot be enforced. Opening Brief at 19. However, the public policy considerations invoked by the BOR fail to meet the strict standards for vacating arbitration awards on public policy grounds.

Hawai'i recognizes a "limited public policy exception to the general deference given arbitration awards." *Inlandboatmen's Union of the Pac. v. Sause Bros.*, 77 Hawai'i 187, 194, 881 P.2d 1255, 1262 (App. 1994).

In *Inlandboatmen's Union of the Pac. v. Sause Bros.*, 77 Hawai'i 187, 193-194, 881 P.2d 1255, 1261-1262 (App. 1994), the Hawaii Supreme Court adopted the following test for determining whether an arbitration award is subject to being vacated for violation of public policy. The test requires a court to determine that: (1) the award would violate some explicit public policy that is well-defined and dominant, and that is ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests, and (2) the violation of the public policy is clearly shown. *Id.*, citing *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987). Therefore, "[a] refusal to enforce an [arbitration] award must rest on more than speculation or assumption." *Id.* 484 U.S. at 44, 108 S.Ct. at 374, 98 L.Ed.2d at 302.

In *New York City Transit Authority v. Transport Workers Union of America, Local 100, AFL-CIO, et al.*, 99 N.Y.2d 1, 7, 780 N.E.2d 490, 750 N.Y.S.2d 805 (N.Y. 2002), the court noted:

Judicial restraint under the public policy exception is particularly appropriate in arbitrations pursuant to public employment collective bargaining agreements. In those instances, the Legislature in the Taylor Law explicitly adopted a countervailing policy "encouraging such public employers and such employee organizations to agree upon procedures for resolving disputes" (Civil Service Law § 200[c]), as a means of promoting harmonious relations between governmental employers and their employees, and preventing labor strife endangering uninterrupted governmental

operations...

(Emphasis added). The court also noted:

Additionally, in labor disputes, arbitrators are mutually chosen by labor and management because of their particular expertise and insight into the relationship, needs of the parties, conditions existing in the specific bargaining unit, and the parties “trust in [the arbitrator’s] personal judgment to bring to bear considerations which are not expressed in the contract \*\*\*. The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance because [the judge] cannot be similarly informed”

Id. (quoting from *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 US 574, 578 (1960)).

**A. The Hawaii Constitution and State Ethics Code Do Not Establish an Explicit, Well-Defined and Dominant Policy.**

The BOR asserts that the Hawai`i Constitution and State Ethics Code set forth an explicit, well-defined, and dominant policy that “public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.” Opening Brief at 19. The BOR contends that if the public employer is required to provide and defend the employee’s violation of the State Ethics Code, such violation no longer concerns the “personal integrity of each individual” in government. Opening Brief at 19.

This argument must be rejected. While the BOR cites to provisions from the Hawai`i Constitution and the State Ethics Code, they do not amount to an explicit, well-defined and dominant public policy. Moreover, the violation of such provisions has not been clearly shown. There must be more than “speculation or assumption”. There must be an “explicit conflict” between the Arbitrator’s award and the State Ethics Code or the Hawai`i Constitution, and that has not been shown.

**B. The State Ethics Commission’s Administrative Rules Do Not Establish an Explicit, Well-Defined and Dominant Policy.**

The BOR also argues that the Arbitration Award violates public policy because it is in direct

contradiction with the Ethics Commission’s administrative rules, which state: “A party, at the party’s own expense, may be represented by legal counsel at any stage of the proceeding before the commission or hearing officer.” HAR § 21-5-2.5(a). Opening Brief at 19-20. The BOR notes that the administrative rules also acknowledge that a union representative may accompany and act in a representative capacity on behalf of a party. HAR §§ 21-5-2.4(b), 21-5-2.6. The BOR argues that compliance with state agencies’ administrative rules is a well-defined and dominant public policy. Opening Brief at 20. The BOR further argues that since the public policy for public employees to pay for their own representation before the Ethics Commission through the Ethics Commission’s administrative rules is “well-defined and dominant”, the Arbitration Award violates such public policy by requiring the University of Hawaii (“University”) to fund such representation, and may be vacated on this basis alone. Opening Brief at 20.

This argument must be rejected. HAR § 21-5-2.5(a) provides “A party, at the party’s own expense, may be represented by legal counsel...”. (Emphasis added). What this provision means is that the Ethics Commission will not be providing an attorney for parties appearing before the Commission. Representation by legal counsel at a party’s own expense is an option. However, it is not a mandate. Union representation is also an option, not a mandate. The Ethics Commission’s administrative rules do not prohibit an employee from being represented by legal counsel that is paid for by the Employer or any other third-party. The State Ethics Code provides in pertinent part, that “[a]ll parties shall have the opportunity to:

- (1) Be heard;
- (2) Subpoena witnesses and require the production of any books or papers relative to the proceedings;
- (3) Be represented by counsel;** and
- (4) Have the right of cross-examination.

HRS § 89-31(c).

Based on the foregoing, an employee represented by legal counsel provided by the Employer at the Ethics Commission, pursuant to a CBAs legal representation provision does not violate HAR § 21-5-2.5(a). The State Ethics Commission’s administrative rules do not prohibit an employee from being represented by legal counsel from the Employer (in this case, the State) or paid for by the Employer (in this case, the State) if that is an employee’s collectively bargained right. Likewise, the State Ethics Commission’s administrative rules do not conflict with the legal representation provisions in the CBAs. However, if they did, the CBAs’ provisions would prevail.

For these reasons, the BOR’s argument that the Arbitration Award violates the well-defined and dominant policy for public employees to pay for their own legal representation before the Ethics Commission must be rejected.

**C. City & County of Honolulu v. Honolulu Police Commission Does Not Establish an Explicit, Well-Defined and Dominant Policy that the Arbitration Award Violated.**

The BOR argues that the Arbitration Award violates the public policy set forth in *City and County of Honolulu v. Honolulu Police Commission*, 152 Hawai’i 268, 526 P.3d 245 (2023). Opening Brief at 21. In that case, former Chief of Police Louis Kealoha requested legal representation to defend him against federal criminal charges pursuant to HRS § 52D-8. Under that statute, a police officer may request county-funded legal representation in criminal and civil proceedings for “acts done in the performance of the officer’s duty as a police officer.” HRS § 52D-8. The BOR argues that there is a well-defined and dominant policy to refrain from using taxpayer dollars to fund public employees’ legal representation, when the acts for which they are being “sued” are outside the performance of their duties. Opening Brief at 22.

However, *Honolulu Police Commission* is clearly distinguishable from the circumstances in this case. *Honolulu Police Commission* involved City paid legal representation arising out of a

statute, specifically, HRS § 52D-8. “Under the plain language of this statute, police officers are entitled to representation only ‘for acts done in the performance of the officer’s duty as a police officer[.]’” Whereas, the employee’s right to legal representation provided by the employer in the instant case is the product of collective bargaining and a mutually agreed upon CBA, consistent with the public policies set forth in HRS § 89-1, and HRS Chapter 89.

Additionally, in *Honolulu Police Commission*, the Court noted that there was nothing in the record before the Commission that indicated that former Chief of Police Louis Kealoha (“Kealoha”) was acting in any way to perform his duties as Chief of Police. *Honolulu Police Commission*, 152 Hawai‘i 268, 280, 526 P.3d 245, 257 (2023). “The criminal charges against Kealoha were extraordinary.” *Id.* at 280, 526 P.3d at 257. Therefore, Kealoha was not entitled to City paid legal representation because he did not meet the criteria of HRS § 52D-8. *Id.* Specifically, Kealoha did not establish that the acts her was charged with were done in the performance of his duties as Chief of Police. *Id.*

In contrast, the Arbitrator specifically found that the Grievant met the criteria of UHPA’s legal representation provision, including the fact that her ethics violations were within the course of her employment and within the scope of her duties and responsibilities as a Faculty Member and Director of the SAC. Dkt. 3 at 29-30. Relying on *Honolulu Police Commission*, and the alleged public policy “to refrain from using taxpayer dollars to fund public employees’ legal representation, when the acts for which they are being “sued” are outside the performance of their duties”, the BOR argues that “[v]iolations of the State Ethics Code are never within the duties and responsibilities of any state officer or employee, as such actions may result in termination.” Opening Brief at 22, citing HRS § 84-33. However, that is not consistent with the Court’s interpretation of the “broad language” in both HRS § 52D-8 and RHPC Rule 11-1(e) “entitling police officers to be represented

in most cases.” *Honolulu Police Commission*, 152 Hawai‘i at 280, 526 P.3d at 257. Indeed, the Court noted: “Even if acts purportedly exceeding a police officer’s duty as a police officer are alleged, such as use of unreasonable force or driving at excessive speeds to effectuate a legitimate arrest, representation should be available because the officer was initially acting to perform the officer’s duty as a police officer.” Id.

The BOR frames the public policy allegedly established by *City and County of Honolulu Police Commission* as one that is “against the use of taxpayer funds to defend public employees for actions performed outside their duties”. Opening Brief at 21. Even assuming for the sake of argument only that such a policy was established, for reasons discussed above the Arbitration Award did not violate such public policy because this case did not involve the use of taxpayer funds to defend Grievant for acts performed outside her duties, but rather for actions that were within the course and scope of her duties and responsibilities and consistent with the provisions of a valid CBA.

**D. Vacating this Arbitration Decision Would Undermine the Public Policy Favoring Collective Bargaining.**

UHPA argues that the BOR’s argument for vacating a properly decided Decision and Award pursuant to a collective bargaining agreement is contrary to the public policy favoring collective bargaining. UHPA’s Answering Brief at 21. UHPA also argues that through this appeal, “the BOR attempts to achieve through this Court what it could not achieve through collective bargaining.” Id. at 23. HGEA agrees.

**The Constitutional Right to Collective Bargaining**

Article XIII, § 2 of the Hawaii Constitution provides: “Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law.”

In *United Public Workers, AFSCME, Local 646, AFL-CIO v. Yogi*, 101 Hawai‘i 46, 53, 62



P.3d 189, 196 (2002), the Hawaii Supreme Court noted that the foremost intent of the framers in drafting this constitutional provision was “to improve the standard of living of public employees.” In *Malahoff v. Saito*, 111 Hawai`i 168, 140 P.3d 401 (2006), the Hawaii Supreme Court held that “*Yogi* stands for the proposition that the legislature has broad discretion in setting the parameters for collective bargaining as long as it does not impinge upon the constitutional rights of public employees to organize for the purpose of collective bargaining and to negotiate core subjects of collective bargaining, that is wages, hours, and conditions of employment.” 111 Hawai`i at 186, 140 P.3d at 419.

HRS § 89-1 provides in pertinent part:

(a) The legislature finds 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.

(b) The legislature declares 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. These policies are best effectuated by:

- (1) Recognizing the right of employees to organize for the purpose of collective bargaining;
- (2) Requiring public employees to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other conditions of employment, while, at the same time, maintaining the merit principle pursuant to section 76-1; and
- (3) Creating a labor relations board to administer the provisions of chapter 89 and 377.

(Emphasis added).

Consistent with the HRS § 89-1 and the public policies set forth therein, HGEA has been

negotiating collective bargaining agreements with public employers since 1972. The terms and conditions of collective bargaining agreements are enforced through a grievance procedure culminating in a final and binding arbitration. HRS § 89-10.8 provides in pertinent part:

(a) A public employer shall enter into written agreement with the exclusive representative setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement...The grievance procedure shall be valid and enforceable...

(Emphasis added). “The grievance procedure is . . . a part of the continuous collective bargaining process. It, rather than a strike, is the terminal point of disagreement.” *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. at 581. By executing a CBA that contains a provision for the arbitration of unresolved grievances, the parties bargain to resolve their disputes peacefully by an impartial third party for decision, thereby “promot[ing] harmonious and cooperative relations between government and its employees and [to] protect[ing] the public by assuring effective and orderly operations of government.” See HRS § 89-1.

One condition of employment that has been negotiated, mutually agreed to by HGEA and the Employer, and ratified by affected bargaining unit employees is the entitlement to legal representation provided by the Employer for acts taken in the course of employee’s employment and within the scope of their duties and responsibilities. Article 17 - **Personal Rights and Representation** of the HGEA CBAs provides in pertinent part:

**ARTICLE 17 - PERSONAL RIGHTS AND REPRESENTATION**

- E. The Employer shall provide legal counsel for an Employee upon request when:
  - 1. the Employee is sued for actions taken by the Employee in the course of the Employee’s employment and within the scope of the Employees duties and responsibilities.
  - 2. the Employee must appear as defendant or is subpoenaed to appear in court when sued for actions taken in the course of

employment and within the scope of the Employee's duties and responsibilities.

3. The Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.
4. the Employee is required to give a deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

The legal representation Article provides bargaining unit employees with an entitlement to legal representation from the Employer upon request in four situations. Like UHPA's CBA, the Article does not include any specific language that limits legal representation to proceedings in a court of law, or that prohibits legal representation in matters before the Ethics Commission or any other administrative agency. Like UHPA's CBA, HGEA's legal representation Article does not contain any specific definitions for terms used therein, or specify what dictionary(ies) must be used to interpret terms in the CBA.

Over the years, employers have argued that the legal representation Article does not apply to administrative proceedings. Arbitrators have found otherwise.

In *HGEA and City and County of Honolulu, Department of Planning and Permitting; Grievance of Wayne Fujimoto, Edward Koki and Roy Teramoto, BU 03* (Kang, 2008), three Bargaining Unit 3 employees were subpoenaed to testify as a witness before the Hawaii Labor Relations Board ("HLRB") in a matter involving a co-worker and the issue of a "past practice". See Appendix "2". The employees requested legal counsel under Article 17(E)(3) of the Unit 3 CBA. Article 17(E)(3) required the employer to provide legal counsel upon request when "the Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of

employment and within the scope of the Employee’s duties and responsibilities.” The employer, through a Deputy Corporation Counsel, met with the employees and informed them that the employer would represent them on issues relating to the course and scope of their employment but that they were free to retain personal counsel at their own expense if they believed they would be asked to testify about matters outside the course and scope of their employment. The Deputy Corporation Counsel told the employees that the issue of “past practice” was a matter outside the course and scope of their employment. The employees collectively retained outside counsel to represent them at the HLRB hearing. The employer denied the employees’ request for reimbursement of their attorneys’ fees. The arbitrator found that the Unit 3 CBA required the employer to provide legal representation to the employees.

The legal representation Article in the CBA is like an insurance policy for bargaining unit employees, providing legal representation for matters arising in the course of their employment and within the scope of their duties and responsibilities. Job classifications within HGEA’s nine (9) different bargaining units are diverse and expansive, and exist within every government jurisdiction<sup>1</sup> in Hawaii. They include positions that serve in a regulatory capacity (e.g., Liquor Control Investigators, Food & Drug Inspectors), health, safety and welfare (e.g., Registered Professional Nurses, School Health Aides, Social Workers, Water Safety Officers), law enforcement (e.g., Harbor Police, Deputy Sheriffs), permitting and licensing (e.g., Drivers License Examiners, Building Permit Examiners ), etc. HGEA members interface with the general public, food establishments, patients, students, parents, inmates, tourists and so much more, on a daily basis. The roles these employees

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<sup>1</sup>“Jurisdiction” means “the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, and the Hawaii health systems corporation.” HRS § 89-2.

serve in, and their respective duties and responsibilities, put them at a high risk of complaints being brought against them or their coworkers for actions taken in the course and scope of their employment and within the scope of their duties and responsibilities. When such complaints are brought for matters arising in the course of their employment and within the scope of their duties and responsibilities it is critical for employees to have legal representation to assist them in responding to such complaints in administrative proceedings like the Ethics Commission, Hawaii Labor Relations Board, and other non-court forums because such complaints put their professional licenses, certifications, employment, livelihood, and personal liability at risk, and subject them to potential criminal charges in these settings too, and not just in a court of law. The legal representation clause is an invaluable condition of employment that the unions, through negotiating teams made up of public employees in that bargaining unit, and employers collectively bargained for. Without it, public servants would be forced to retain counsel at their own expense, subjecting them and their families to personal, professional and financial hardship and potential ruin.

If the Union or Employer disagree with how a provision in a CBA is interpreted and/or applied, for policy reasons or otherwise, the proper avenue to address that dispute is through the collective bargaining process. If the dispute is not satisfactorily resolved through the grievance procedure, either party is free to propose changes to existing CBA provisions during negotiations. See HRS § 89-9, 89-10, 89-10.8. If the parties are unable to mutually agree to the proposed change(s), and it is important for one or both parties to resolve the dispute, the matter can be pursued to impasse<sup>2</sup> and resolved through interest arbitration (for HGEA bargaining units 2, 3, 4, 6, 8, 9, 13,

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<sup>2</sup>“Impasse” means “failure of a public employer and an exclusive representative to achieve agreement in the course of collective bargaining. It includes any declaration of an impasse under section 89-11.” HRS § 89-2.

14 and 15, Hawaii Fire Fighters Association (HFFA) bargaining unit 11, State of Hawaii Organization of Police Officers (SHOPO) bargaining unit 11, ), or a strike<sup>3</sup> (for United Public Workers (UPW) bargaining Unit 1, Hawaii State Teachers Association (HSTA) Unit 5, and UHPA Unit 7). See HRS §§ 89-11. In *United Public Workers (UPW) v. City and County of Honolulu*, 131 Hawai'i 82, 315 P.3d 233 (App. 2011), the court noted that “**As part of the process of negotiating CBAs, employer personnel and senior management staff meet to discuss issues, create consensus positions in negotiating the new contracts, and determine the impact of arbitrator decisions in arbitrated cases.**” (Emphasis added).

Beginning in or around October 2004, the State of Hawaii and the Judiciary have negotiated and mutually agreed to Supplemental Agreements that revised the legal representation Articles for HGEA bargaining units 2, 4, 9 and 13 (and for HGEA bargaining unit 3 beginning in 2007) in accordance with HRS §§ 89-9 and 89-10. The parties to these Supplemental Agreements recognize that:

- **“from time to time, Employees are called upon to testify in court, both in criminal and civil proceedings, in a deposition, and/or in administrative hearings** concerning matters that arise in the course of employment and within the scope of the Employee’s duties and responsibilities;”
- “it is in the interest of the Employer and the Employee to testify in a manner that is both professional and effective;”

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<sup>3</sup>“Strike” means “a public employee’s refusal, in concerted action with others, to report for duty, or the employee’s wilful absence from the employee’s position, or the employee’s stoppage of work, or the employee’s abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; and except in the case of absences authorized by public employers, includes such refusal, absence, stoppage, or abstinence by any public employee out of sympathy or support for any other public employee who is on strike or because of the presence of any picket line maintained by any other public employee; provided that, nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.”

- “the key to professional and effective testimony is proper preparation and, on occasion, sound legal advice;”
- “in those matters where the Employee is being called as a witness by a government attorney it is the responsibility of that government attorney to properly prepare and advise the Employee witness;”
- “there are matters where the Employee must appear as a witness where there is no government attorney or the issues involved are beyond the interest or knowledge of the government attorney and assistance or advice is warranted from an appropriate deputy attorney general; and”
- “the determination of degree of legal support necessary in a particular case is the responsibility of the attorney general”.

Appendix “3” (Supplemental Agreements for Bargaining Unit 2) (Emphasis added).

Pursuant to these Supplemental Agreements, the Union HGEA and the Employer State of Hawaii and the Judiciary mutually agreed that the legal representation provision, Article 17, in the master CBAs for Units 2, 3, 4, 9 and 13 “shall be deleted in its entirety and replaced as follows” for the term of the corresponding master CBA:

- E. The Employer shall provide legal counsel or such other legal support as the attorney general or his designee deems appropriate under the circumstances for an Employee, upon the Employee’s request, when the Employee is sued, named as a party or required to testify in a proceeding on a matter arising in the course of employment and within the scope of the Employee’s duties and responsibilities. If an Employee has requested legal counsel and objects to the determination of the level of legal support provided, the Employee through his or her union representative may meet and confer, in person, by telephone or by video teleconference with the supervising deputy attorney general of the relevant division. If the Employee still has objections after the meeting with the relevant supervising deputy attorney general, the Employee may meet and confer with the Attorney General in person, by telephone, or video conference. In addition, the Employee’s required presence in any proceedings as a defendant, party or witness on a matter arising in the course of employment and within the scope of the Employee’s duties shall be considered work time, provided whenever an Employee’s required presence is on the Employee’s scheduled day off or holiday off, the Employee shall be guaranteed a minimum of two (2) hours overtime pay.

Id. The Supplemental Agreements replacing HGEA’s legal representation provisions (Article 17)

for employees in these bargaining units and who are employed with the State of Hawaii and the Judiciary supports HGEA's assertion that Article 17 of the CBA (which is virtually the same as UHPA's legal representation clause) is not limited to civil court proceedings and litigation, and that the proper avenue for resolving disputes over the interpretation or application of existing CBA provisions is through the collective bargaining process.

“In determining whether an arbitrator has exceeded his or her authority under the agreement, “there should be no ‘second guessing’ by the court” of the arbitrator’s interpretation of his or her authority so long as the arbitrator’s interpretation ‘could have rested on an interpretation and application of the agreement.’” *State of Hawai`i Org. of Police Officers (SHOPO) v. County of Kaua`i*, 135 Hawai`i 456, 463, 353 P.3d 998, 1005 (2015). “It is the arbitrator’s construction of the contract which was bargained for.” *Id.*, quoting *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S.Ct. 1358, 4 L.Ed.2d.1424 (1960) (alterations omitted). “Indeed, by giving the arbitrator the power to actually grant tenure or promotion, **the collective bargaining agreement is made that much more meaningful, since ‘the confidence of the workers in the equity of the agreement is strengthened when they know that any dispute over the meaning of the contract may be submitted to an impartial third party for decision.’”** *SHOPO*, 135 Hawai`I at 464, 353 P.3d at 1006. (Emphasis added).

The BOR argues that the Arbitrator exceeded the scope of his authority by relying on extrinsic aids like dictionaries to interpret undefined terms like “court” and “sue” in the legal representation provision. Opening Brief at 25-28. The BOR also argues that the Arbitrator exceeded his authority by considering “irrelevant and prejudicial” factors that do not apply to the course and scope test. Opening Brief at 28-30. Arguments about using the wrong dictionary or applying the wrong course and scope test do not give appropriate judicial deference to the Arbitrator’s



interpretation of the legal representation provision at issue. These arguments are disagreements with the Arbitrator's findings, and not evidence that the Arbitrator exceeded the scope of his authority as provided in the arbitration clause of the CBA. "Because the [parties] agreed under the CBA to have an arbitrator rather than a judge resolve disputes, 'it is the arbitrator's view of the facts and of the meaning of the contract that [the parties] have agreed to accept.'" *United Public Workers (UPW) v. City and County of Honolulu*, 131 Hawai'i 82, 315 P.3d 238 (App. 2011) citing *Misco*, 484 U.S. at 37-38, 108 S.Ct. at 370. "[C]ourts have no business overruling [the arbitrator] because their interpretation of the contract is different from his." *UPW*, 131 Hawai'i 82, 315 P.3d at 243.

#### **IV. CONCLUSION**

Based on the foregoing, HGEA respectfully requests that the Circuit Court's orders be affirmed.

DATED: Honolulu, Hawaii, December 9, 2024.

/s/ Debra A. Kagawa-Yogi

JAMES E.T. KOSHIBA  
JONATHAN E. SPIKER  
DEBRA A. KAGAWA-YOGI

Attorneys for  
HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME LOCAL 152,  
AFL-CIO

NO. CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

In the Matter of the	)	CASE NO.: 1CSP-23-0000959
Arbitration Between	)	(Special Proceeding)
	)	
UNIVERSITY OF HAWAI'I	)	
PROFESSIONAL ASSEMBLY,	)	
	)	
Petitioner-Appellee,	)	
	)	
vs.	)	
	)	
BOARD OF REGENTS OF THE	)	
UNIVERSITY OF HAWAI'I,	)	
	)	
Respondent-Appellant.	)	
_____	)	

**APPENDIX "1"**

BLUE-COLLAR SUPERVISORS



**A F S C M E**  
LOCAL 152, AFL-CIO

**UNIT 2 CONTRACT**  
JULY 1, 2021-JUNE 30, 2025

**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
**AFSCME LOCAL 152 • AFL-CIO**

## ARTICLE 18 - PERSONAL RIGHTS AND REPRESENTATION

A. The Employer shall not require Employees to transport government equipment in their private vehicles, if such Employees do not receive mileage allowance.

B. Upon the request of the Union, existing dress and personal appearance codes shall be reviewed by the Employer or designee and Union. The Employer or designee shall consult with the Union before establishing new dress and personal appearance codes.

C. Both parties agree that Employees shall not use their business addresses (place of employment) to receive personal mail; provided, however, if personal mail is sent to Employees' business addresses without their knowledge or consent, the Employer shall endeavor to forward such personal mail unopened.

D. The Employer shall provide Employees with supplies and equipment which are required in the performance of the Employee's official duties. Except in the case of negligence on the part of the Employee, when such equipment is stolen, lost, damaged and/or worn out it shall be repaired or replaced by the Employer.

E. The Employer shall provide legal counsel for an Employee upon request when:

1. The Employee is sued for actions taken by the Employee in the course of the Employee's employment and within the scope of the Employee's duties and responsibilities.

2. The Employee must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

3. The Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

4. The Employee is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

In addition, the Employee's required presence in any of the foregoing situations shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of three (3) hours straight time pay.

F. When grievances are filed against Employees of this unit for actions taken by them in the course of their employment and within the scope of their supervisory and/or managerial duties and responsibilities, the Employer shall provide them with necessary staff support and representation. When such assistance is requested by the Employee and the Employer fails to furnish such assistance, the Employee will not be penalized for any improper action taken.

G. The Employer shall provide Employees with advice and assistance in the interpretation and administration of collective bargaining contracts or agreements covering their subordinates. Whenever Employees perform or carry out their assigned supervisory and/or managerial duties and responsibilities, based on such advice and assistance, the Employer agrees to provide full support to the Employees should conflict or grievances arise.

H. The Employee shall have the right to refuse for good cause as determined by the Employer to work overtime, to accept a temporary assignment, and to perform any work not representative of the Employee's class.

I. If a judgment or court approved settlement is made against an Employee in a civil suit for actions taken by the Employee in the course of the Employee's employment and within the scope of the Employee's duties and responsibilities, the Employer agrees to do no more than submit to the Legislature or the County Council any judgment (or court approved settlement) against the Employee, with the Employer retaining the discretion of recommending or not recommending legislative approval.

J. Bill of Rights.

1. No Employee shall be required to sign a statement of complaint filed against the Employee.

2. If the Employer pursues an investigation based on such complaint, the Employee shall be advised of the seriousness of the complaint. The Employee will be informed of the complaint, and will be afforded an opportunity to respond to the complaint, and to furnish evidence in support of the Employee's case. The Employee shall have the right to be represented by the Union in presenting the Employee's case.

3. Before making a final decision, the Employer shall review and consider all available evidence and data, including factors supporting the Employee's position, whether or not the Employee offers such factors in the Employee's own defense.

4. If the complaint filed against the Employee results in disciplinary action, and the Union or Employee believes that the action taken is improper or

unjust, the Union or Employee shall have the right to process a grievance pursuant to Article 11, Grievance Procedure.

## ARTICLE 19 - UNIFORMS

### I. General Application

A. A uniform shall be defined as those items of distinctive clothing which are required by the Employer and which meet the following conditions:

1. Used to identify a specific group of Employees.
2. Shirt and/or trousers, blouse and/or skirt, dress or other clothing must be of the same design, color, cut, and style, and made of similar material for a specific group of Employees.

B. Uniform accessories which are required by the Employer shall be furnished by the Employer and shall remain the property of the Employer while in the custody of the Employee. Accessories include, but are not limited to, the following:

- |                    |                              |
|--------------------|------------------------------|
| 1. Sam Browne belt | 7. Hat                       |
| 2. Holster         | 8. Ammo pouch                |
| 3. Handcuffs       | 9. Name tag                  |
| 4. Handcuff case   | 10. Flashlight and batteries |
| 5. Patches         | 11. Whistle                  |
| 6. Badges          |                              |

C. The following items of apparel are not considered as part of a uniform:

1. Work clothing such as coveralls, aprons, smocks, etc.
2. Shoes, boots, socks, and ties. (Whenever the Employer requires the Employees to wear safety shoes or safety boots, the Employer shall provide such items.)
3. Shirts normally worn under a uniform coat or blouse. (Shirts of a distinctive uniform appearance normally worn as an outside garment in place of a uniform coat or blouse are considered as part of the uniform.)

### D. Damaged or Lost Uniforms.

1. If an Employee's uniform is destroyed or damaged while worn in the performance of duty and without negligence, the Employer shall either replace the item or items of uniform destroyed, or reimburse the Employee for the cost

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement.

STATE OF HAWAII

By: David Y. Ige  
Governor

Ryker Wada  
Chief Negotiator

CITY AND COUNTY OF HONOLULU

By: Rick Blangiardi  
Mayor

Nola Miyasaki

COUNTY OF HAWAII

By: Mitch Roth  
Mayor

Waylen Leopoldino

COUNTY OF MAUI

By: Michael Victorino  
Mayor

David Underwood

COUNTY OF KAUAI

By: Derrick Kawakami  
Mayor

Annette Anderson

HAWAII HEALTH SYSTEMS  
CORPORATION

By: Dr. Linda Rosen  
President & CEO

Juanita Lauti

JUDICIARY

By: Mark E. Recktenwald  
Chief Justice

Eric Tanigawa

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152, AFL-  
CIO

By: Randy Perreira  
Executive Director

Lance Kamisugi

Jason Locke

Edwin Soriano

Robert Diego

Anthony Cruz

WHITE-COLLAR EMPLOYEES



**A F S C M E**  
LOCAL 152, AFL-CIO

**UNIT 3 CONTRACT**  
JULY 1, 2021-JUNE 30, 2025

**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
**AFSCME LOCAL 152 • AFL-CIO**



## ARTICLE 17 - PERSONAL RIGHTS AND REPRESENTATION

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C. Both parties agree that Employees shall not use their business addresses (place of employment) to receive personal mail; provided, however, if personal mail is sent to Employees' business addresses without their knowledge or consent, the Employer shall endeavor to forward such personal mail unopened.

D. The Employer shall provide Employees with supplies and equipment which are required in the performance of the Employee's official duties. Except in the case of negligence on the part of the Employee, when such equipment is stolen, lost, damaged and/or worn out it shall be repaired or replaced by the Employer.

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3. The Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

4. The Employee is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

In addition, the Employee's required presence in any of the foregoing situations shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of three (3) hours straight time pay.

F. When grievances are filed against Employees of this unit for actions taken by them in the course of their employment and within the scope of their supervisory and/or managerial duties and responsibilities, the Employer shall provide them with necessary staff support and representation. When such assistance is requested by the Employee and the Employer fails to furnish such assistance, the Employee will not be penalized for any improper action taken.

G. The Employer shall provide Employees with advice and assistance in the interpretation and administration of collective bargaining contracts or agreements covering their subordinates. Whenever Employees perform or carry out their assigned supervisory and/or managerial duties and responsibilities, based on such advice and assistance, the Employer agrees to provide full support to the Employees should conflict or grievances arise.

H. The Employee shall have the right to refuse for good cause as determined by the Employer to work overtime, to accept a temporary assignment, and to perform any work not representative of the Employee's class.

I. If a judgment or court approved settlement is made against an Employee in a civil suit for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities, the Employer agrees to do no more than submit to the Legislature or the County Council any judgment (or court approved settlement) against the Employee, with the Employer retaining the discretion of recommending or not recommending legislative approval.

J. Bill of Rights.

1. No Employee shall be required to sign a statement of complaint filed against the Employee.

2. If the Employer pursues an investigation based on such complaint, the Employee shall be advised of the seriousness of the complaint. The Employee will be informed of the complaint, and will be afforded an opportunity to respond to the complaint, and to furnish evidence in support of the Employee's case. The Employee shall have the right to be represented by the Union in presenting the Employee's case.

3. Before making a final decision, the Employer shall review and consider all available evidence and data, including factors supporting the Employee's position, whether or not the Employee offers such factors in the Employee's own defense.

4. If the complaint filed against the Employee results in disciplinary action, and the Union or Employee believes that the action taken is improper or unjust, the Union or the Employee shall have the right to process a grievance pursuant to Article 11, Grievance Procedure.

## ARTICLE 18 - UNIFORMS AND EQUIPMENT

### I. General Application

A. A uniform shall be defined as those items of distinctive clothing which are required by the Employer and which meet the following conditions:

1. Used to identify a specific group of Employees.

2. Shirt and/or trousers, blouse and/or skirt, dress or other clothing must be of the same design, color, cut, and style, and made of similar material for a specific group of Employees.

B. Uniform accessories which are required by the Employer shall be furnished by the Employer and shall remain the property of the Employer while in the custody of the Employee. Accessories include, but are not limited to, the following:

- |                    |                              |
|--------------------|------------------------------|
| 1. Sam Browne belt | 7. Hat                       |
| 2. Holster         | 8. Ammo pouch                |
| 3. Handcuffs       | 9. Name tag                  |
| 4. Handcuff case   | 10. Flashlight and batteries |
| 5. Patches         | 11. Whistle                  |
| 6. Badges          |                              |

C. The Employer shall provide to Employees authorized and required to carry a firearm as part of their official duties while on duty status a weapons maintenance allowance for the proper care and maintenance of (1) Employer-issued weapons accessories and personal safety equipment, and (2) Employee-purchased supplemental weapons, including ammunition, approved by the Employer.

1. The weapons maintenance allowance shall be granted for each full month worked. It is provided that paid or unpaid leaves shall be considered as time worked, except that unpaid leaves, including suspensions, of five (5) or more days shall not be considered as time worked and the allowance shall be prorated accordingly for such month(s). It is further provided that the allowance shall be prorated when employment commences after the first day of a month or terminates before the last day of a month.

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement.

STATE OF HAWAI'I

By: David Y. Ige  
Governor

Ryker Wada  
Chief Negotiator

CITY AND COUNTY OF HONOLULU

By: Rick Blangiardi  
Mayor

Nola N. Miyasaki

COUNTY OF HAWAI'I

By: Mitch Roth  
Mayor

Waylen L.K. Leopoldino

COUNTY OF MAUI

By: Michael P. Victorino  
Mayor

David Underwood

COUNTY OF KAUA'I

By: Derek S.K. Kawakami  
Mayor

Annette L. Anderson

HAWAI'I HEALTH SYSTEMS CORPORATION

By: Dr. Linda Rosen  
President & CEO

Juanita Lauti

JUDICIARY

By: Mark E. Recktenwald  
Chief Justice

Eric Tanigawa

HAWAI'I GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO

By: Randy Perreira  
Executive Director

Joshua Bohnet

Ryvette Figueroa

Kelly Galdones

Jon Gasper

Patrick Henriques

Darleen Hoshida

Valerie Ann Hoffman

Cheryl Lee

Jon Maeda

Sandra Moses

Joni Nakamura

Suzanne Okino

Joy Ring-Gadow

Lakea Tjomsland

Vernon Verzon

WHITE-COLLAR SUPERVISORS



**A F S C M E**  
LOCAL 152, AFL-CIO

**UNIT 4 CONTRACT**  
JULY 1, 2021-JUNE 30, 2025

**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
**AFSCME LOCAL 152 • AFL-CIO**

C. Upon request of the Employee or the Union with consent of the Employee, derogatory material in an Employee's file shall be destroyed after two (2) years, unless the department head makes a determination of the current relevancy of such material. If the Employee or the Union upon consent of the Employee disputes the relevancy of such material, the department head shall attach reasons for relevancy to such material in writing. The Employee or the Union may again request destruction of such material after one (1) year.

D. All derogatory material shall be destroyed after five (5) years.

E. The employment history record shall not be destroyed.

F. The Employer may maintain more than one personnel file; however, one of these files shall include, but not be limited to, an Employee's personnel transaction records, derogatory materials, commendatory materials and performance evaluations. The Employer shall designate and inform the Union of the location of the file.

#### **ARTICLE 17 - PERSONAL RIGHTS AND REPRESENTATION**

A. The Employer shall not require Employees to transport government equipment in their private vehicles, if such Employees do not receive mileage allowance.

B. Upon the request of the Union, existing dress and personal appearance codes shall be reviewed by the Employer or designee and Union. The Employer or designee shall consult with the Union before establishing new dress and personal appearance codes.

C. Both parties agree that Employees shall not use their business addresses (place of employment) to receive personal mail; provided, however, if personal mail is sent to Employees' business addresses without their knowledge or consent, the Employer shall endeavor to forward such personal mail unopened.

D. The Employer shall provide Employees with supplies and equipment which are required in the performance of the Employee's official duties. Except in the case of negligence on the part of the Employee, when such equipment is stolen, lost, damaged and/or worn out it shall be repaired or replaced by the Employer.

E. The Employer shall provide legal counsel for an Employee upon request when:

1. the Employee is sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

2. the Employee must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

3. the Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

4. the Employee is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

In addition, the Employee's required presence in any of the foregoing situations shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of three (3) hours straight time pay.

F. When grievances are filed against Employees of this unit for actions taken by them in the course of their employment and within the scope of their supervisory and/or managerial duties and responsibilities, the Employer shall provide them with necessary staff support and representation. When such assistance is requested by the Employee and the Employer fails to furnish such assistance, the Employee will not be penalized for any improper action taken.

G. The Employer shall provide Employees with advice and assistance in the interpretation and administration of collective bargaining contracts or agreements covering their subordinates. Whenever Employees perform or carry out their assigned supervisory and/or managerial duties and responsibilities, based on such advice and assistance, the Employer agrees to provide full support to the Employees should conflict or grievances arise.

H. The Employee shall have the right to refuse for good cause as determined by the Employer to work overtime, to accept a temporary assignment, and to perform any work not representative of the Employee's class.

I. If a judgment or court approved settlement is made against an Employee in a civil suit for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities, the Employer agrees to do no more than submit to the Legislature or the County Council any judgment (or court approved settlement) against the Employee, with the

Employer retaining the discretion of recommending or not recommending legislative approval.

J. Bill of Rights.

1. No Employee shall be required to sign a statement of complaint filed against the Employee.

2. If the Employer pursues an investigation based on such complaint, the Employee shall be advised of the seriousness of the complaint. The Employee will be informed of the complaint, and will be afforded an opportunity to respond to the complaint, and to furnish evidence in support of the Employee's case. The Employee shall have the right to be represented by the Union in presenting the Employee's case.

3. Before making a final decision, the Employer shall review and consider all available evidence and data, including factors supporting the Employee's position, whether or not the Employee offers such factors in the Employee's own defense.

4. If the complaint filed against the Employee results in disciplinary action, and the Union or Employee believes that the action taken is improper or unjust, the Union or Employee shall have the right to process a grievance pursuant to Article 11, Grievance Procedure.

## ARTICLE 18 - UNIFORMS

I. General Application

A. A uniform shall be defined as those items of distinctive clothing which are required by the Employer and which meet the following conditions:

1. Used to identify a specific group of Employees.

2. Shirt and/or trousers, blouse and/or skirt, dress or other clothing must be of the same design, color, cut, and style, and made of similar material for a specific group of Employees.

B. Uniform accessories which are required by the Employer shall be furnished by the Employer and shall remain the property of the Employer while in the custody of the Employee. Accessories include, but are not limited to, the following:

- |                    |                              |
|--------------------|------------------------------|
| 1. Sam Browne belt | 7. Hat                       |
| 2. Holster         | 8. Ammo pouch                |
| 3. Handcuffs       | 9. Name tag                  |
| 4. Handcuff case   | 10. Flashlight and batteries |



IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement.

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CORPORATION

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JUDICIARY

By: Mark E. Recktenwald  
Chief Justice

Eric Tanigawa

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL- CIO

By: Randy Perreira  
Executive Director

Pamela Mitsumura

Sharon Char

Kepa Kekaulua

Leila Kim

David Neyer

EDUCATIONAL OFFICERS



**A F S C M E**  
LOCAL 152, AFL-CIO

**UNIT 6 CONTRACT**  
JULY 1, 2021-JUNE 30, 2025

**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
**AFSCME LOCAL 152 • AFL-CIO**

being altered by the exact number of calendar days absent.

E. On satisfactory completion of the educational officer's probationary period, an educational officer shall have tenure in any position in the same class and salary range or lower salary range upon reappointment and reporting to duty in a position in that same class and salary range or lower salary range. Educational officers with tenure shall not be suspended, demoted, discharged, or terminated without proper cause, provided, however, that the foregoing is not intended to interfere with the right of the Board to relieve employees from duties for lack of work or other legitimate reasons.

F. Only tenured educational officers, who have accepted appointive positions (Superintendent, Deputy Superintendent, Assistant Superintendent, District Superintendent, Deputy District Superintendent and Administrative Assistant) in which tenure is not earned, shall be entitled to return to educational officer positions for which they have tenure and/or qualify.

G. Educational officers shall not be eligible to apply for, request, or be considered for voluntary movement from one educational officer position to another during the educational officer's probationary period.

### **ARTICLE 13 - PERSONNEL INFORMATION**

A. An educational officer shall be permitted to examine the educational officer's personnel file and be given a copy of all materials placed in it. It is understood and agreed that there shall be one personnel file maintained at the school, at the district, and at the state office.

B. No material derogatory to an educational officer shall be placed in the educational officer's personnel file unless the educational officer has had an opportunity to read the material and an opportunity to sign it indicating the educational officer has read the material. The educational officer shall also be given an opportunity to attach explanatory remarks.

C. All derogatory material in an educational officer's file shall be destroyed after two (2) years, unless the educational officer's superior makes a determination of the current validity of such material. If the superior determines that the material is valid currently, it may remain in the file for another year and again reviewed. Any derogatory material more than five (5) years old must be destroyed.

### **ARTICLE 14 - REPRESENTATION**

A. The Board shall provide legal counsel for an educational officer upon request when:

1. The educational officer is sued for actions taken by the Employee in the

course of the Employee's employment and within the scope of the Employee's duties and responsibilities.

2. The educational officer must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

3. The educational officer must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

4. The educational officer is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

In addition, the educational officer's required presence in any of the foregoing situations during off duty hours shall be compensated in accordance with Article 25, Compensation.

B. The educational officer against whom such civil action or proceeding is brought shall deliver immediately after date of service all process or complaint served upon the Employee or an attested true copy thereof to the Employee's immediate supervisor who shall promptly furnish copies of documents therein to the Attorney General.

C. In the event the Employer decides not to provide legal counsel, the Employer shall provide the reasons for the denial in writing within 5 working days upon receipt of the written response from the Attorney General's Office.

D. When grievances are filed against educational officers for actions taken by them in the course of their employment and within the scope of their duties and responsibilities, the Board shall provide them with necessary staff support and representation. When such assistance is requested by the educational officer and the Board fails to furnish such assistance, the educational officer will not be penalized for any improper action taken. The educational officer may also request the presence of a Union representative who shall be allowed to attend any grievance hearing against the educational officer.

E. The Board shall provide educational officers with advice and assistance in the interpretation and administration of collective bargaining contracts or agreements covering their subordinates. Whenever educational officers perform or carry out their assigned duties and responsibilities based on such advice and assistance, the Board agrees to provide full support to the educational officer should conflicts or grievances arise.

F. The Board shall inform the Union of any litigations or grievances filed

against an educational officer.

G. If a judgment or court approved settlement is made against an educational officer in a civil suit for actions taken by the Employee in the course of the Employee's employment and within the scope of the Employee's duties and responsibilities, the Board agrees to do no more than submit to the Legislature or the County Council any judgment (or court approved settlement) against the educational officer, with the Board retaining the discretion of recommending or not recommending legislative approval.

H. Bill of Rights.

1. The educational officer shall be informed of any complaint including repeated and anonymous complaints filed against the educational officer. The complaint shall be reported immediately to the educational officer by the supervisor receiving the complaint.

2. No Employee shall be required to sign a statement of complaint filed against the Employee.

3. If the Employer pursues an investigation based on such complaint, the Employee shall be advised of the complaint. The Employee will be informed of the complaint, and will be afforded an opportunity to respond to the complaint, and to furnish evidence in support of the Employee's case. The Employee shall have the right to be represented by the Union in presenting the Employee's case.

4. Before making a final decision, the Employer shall review and consider all available evidence and data, including factors supporting the Employee's position, whether or not the Employee offers such factors in the Employee's own defense.

I. The Union shall be sent by U.S. Postal Service or be informed that the following items may be picked up by the Union, as the items become available for distribution: one (1) copy each of the Board of Education's official agenda and minutes, and the Board's Personnel Committee's official agenda, minutes, and Committee's appointment recommendations. Educational officers being recommended for appointment shall be sent by U.S. Postal Service a notification of such appointment recommendation in conjunction with the appointment recommendation being submitted to the Board for action.

## **ARTICLE 15 - GRIEVANCE PROCEDURE**

A. The term "grievance" as used in this Agreement shall mean a complaint filed by a bargaining unit educational officer covered hereunder or on an educational officer's behalf by the Union alleging a violation concerning the interpretation or application of a specific provision of this Agreement occurring after its effective date. Any relevant information specifically identified by the grievant or the Union in the

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement.

STATE OF HAWAI'I

HAWAI'I GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME LOCAL  
152, AFL-CIO

By: David Y. Ige  
Its: Governor

By: Randy P. Perreira  
Its: Executive Director

Ryker Wada  
Chief Negotiator

Derek Minakami

BOARD OF EDUCATION

Kelcy Koga

By: Bruce D. Voss  
Its Chairperson

Wendy Matsuzaki

DEPARTMENT OF EDUCATION

Christopher K. Wilhelm

By: Keith T. Hayashi  
Its Superintendent

Corey Nakamura

Brett Tanaka

UNIVERSITY OF HAWAII  
ADMINISTRATIVE, PROFESSIONAL & TECHNICAL EMPLOYEES



**A F S C M E**  
LOCAL 152, AFL-CIO

**UNIT 8 CONTRACT**  
JULY 1, 2021-JUNE 30, 2025

**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
**AFSCME LOCAL 152 • AFL-CIO**

B. Protective Clothing and Safety Equipment and Tools.

1. Whenever the Employer requires that Employees wear protective clothing or use safety equipment and tools, the Employer shall provide and replace such items.

2. When an Employee performs work requiring the use of protective clothing and the Employee's garment is damaged because the protective clothing is inadequate, the Employer shall be responsible for reimbursing the reasonable value of the garment. The reasonable value shall be mutually agreed upon by the department head or designee and the affected Employee. Whenever such damage occurs, it shall be reported immediately to the supervisor.

C. Working Conditions.

1. Toilet facilities will be provided.

2. Clean, cool, potable drinking water shall be made accessible.

3. All office and work areas shall be provided with natural or mechanical systems of ventilation.

D. The Employer shall endeavor to provide security and protection for public Employees in offices where there have been experiences of frequent threats or violence.

## **ARTICLE 14 - PERSONAL RIGHTS AND REPRESENTATION**

A. Upon the request of the Union, existing dress and personal appearance codes shall be reviewed by the Employer or the designee and Union. The Employer or the designee shall consult with the Union before establishing new dress and personal appearance codes.

B. Both parties agree that Employees shall not use their business addresses (place of employment) to receive personal mail; provided, however, if personal mail is sent to Employees' business addresses without their knowledge or consent, the Employer shall endeavor to forward such personal mail unopened.

C. The Employer shall provide Employees with supplies and equipment, which are required in the performance of the Employee's official duties. Except in the case of negligence on the part of the Employee, when such equipment is stolen, lost, damaged and/or worn out it shall be repaired



or replaced by the Employer.

D. The Employer shall provide legal counsel for an Employee upon request when:

1. The Employee is sued for actions taken by the Employee in the course of the Employee's employment and within the scope of the Employee's duties and responsibilities.

2. The Employee must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

3. The Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

4. The Employee is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

In addition, the Employee's required presence in any of the foregoing situations shall be considered work time.

E. When grievances are filed against Employees of this unit for actions taken by them in the course of their employment and within the scope of their supervisory and/or managerial duties and responsibilities, the Employer shall provide them with necessary staff support and representation. When such assistance is requested by the Employee and the Employer fails to furnish such assistance, the Employee will not be penalized for any improper action taken.

F. The Employer shall provide Employees with advice and assistance in the interpretation and administration of collective bargaining contracts or agreements covering their subordinates. Whenever Employees perform or carry out their assigned supervisory and/or managerial duties and responsibilities, based on such advice and assistance, the Employer agrees to provide full support to the Employees should conflict or grievances arise.

G. The Employee shall have the right to refuse for good cause to work overtime, to accept temporary assignment, and to perform any work not representative of the Employee's class.

H. If a judgment or court approved settlement is made against an Employee in a civil suit for actions taken by the Employee in the course of the

Employee's employment and within the scope of the Employee's duties and responsibilities, the Employer agrees to do no more than submit to the Legislature or the County Council any judgment (or court approved settlement) against the Employee, with the Employer retaining the discretion of recommending or not recommending legislative approval.

I. The Employer shall not change the fund source nor reduce the FTE of a filled position funded from the general revenues of the State of Hawaii or from funds deemed by the University to be assured for an indefinite period of time without prior consultation with the Union. The Employee shall retain return rights back to the original fund source and FTE should such change be made.

J. The Employer shall provide access to the Employer's personnel policies and procedures to Employees.

K. Bill of Rights

1. No Employee shall be required to sign a statement of complaint filed against the Employee.

2. If the Employer pursues an investigation based on a complaint, the Employee shall be informed of the complaint, and shall be afforded an opportunity to respond to the complaint, and to furnish evidence in support of the Employee's case. The Employee shall have the right to be represented by the Union in presenting the Employee's case.

3. If the complaint filed against the Employee results in disciplinary action, and the Union or Employee believes that the action taken is improper or unjust, the Union or the Employee shall have the right to process a grievance pursuant to Article 17, Grievance Procedure.

## **ARTICLE 15 - PERSONNEL FILE**

A. The Employee shall, upon request and by appointment, be permitted to examine their personnel files. The Employee shall be given a copy of any material if it is to be used in connection with a grievance or personnel hearing.

B. No derogatory material shall be placed in the personnel file unless the Employee has had an opportunity to read the material and an opportunity to sign it indicating the Employee had read the material. The Employee shall also be given an opportunity to attach explanatory remarks.

C. All derogatory material in an Employee's file shall be destroyed

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement.

STATE OF HAWAII

HAWAI'I GOVERNMENT  
EMPLOYEES ASSOCIATION,  
AFSCME LOCAL 152, AFL-CIO

By: David Ige  
Its: Governor

By: Randy Perreira  
Its: Executive Director

Ryker Wada

Therese Nakadomari

UNIVERSITY OF HAWAI'I

Randolph G. Moore  
Its: Chair, BOR

Darren Higa

David Lassner  
Its: President

Kathlen Lee

Deanna Reece

Elwyn Watkins

Mark Yap

REGISTERED PROFESSIONAL NURSES



**A F S C M E**  
LOCAL 152, AFL-CIO

**UNIT 9 CONTRACT**  
JULY 1, 2021-JUNE 30, 2025

**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
**AFSCME LOCAL 152 • AFL-CIO**

## **ARTICLE 19 - PERSONNEL FILE**

A. An Employee shall, upon request and by appointment, be permitted to examine the Employee's entire personnel file. An Employee shall be given a copy of any material in the Employee's personnel file if it is to be used in connection with a grievance, personnel hearing, or other relevant situation.

B. No derogatory material shall be placed in the Employee's personnel file unless she has had an opportunity to read the material and an opportunity to sign it indicating she has read the material. The Employee shall also be given an opportunity to attach explanatory remarks.

C. Upon request of the Employee or the Union with consent of the Employee, derogatory material in an Employee's file shall be destroyed after two (2) years, unless the department head makes a determination of the current relevancy of such material. If the Employee or the Union upon consent of the Employee disputes the relevancy of such material, the department head shall attach her reasons for relevancy to such material in writing. The Employee or the Union may again request destruction of such derogatory material after one (1) year.

D. All derogatory material shall be destroyed after five (5) years.

E. The employment history record shall not be destroyed.

F. The Employer may maintain more than one personnel file; however, one of these files shall include, but not be limited to, an Employee's personnel transaction records, derogatory materials, commendatory materials and performance evaluation. The Employer shall designate and inform the Union of the location of the file.

## **ARTICLE 20 - PERSONAL RIGHTS AND REPRESENTATION**

A. The Employer shall not require Employees to transport government equipment in their private vehicles, if such Employees do not receive mileage allowance.

B. Upon the request of the Union, existing dress and personal appearance codes shall be reviewed by the Employer or the Employer's designee and Union. The Employer or the Employer's designee shall consult with the Union before establishing new dress and personal appearance codes.

C. Both parties agree that Employees shall not use their business

addresses (place of employment) to receive personal mail; provided, however, if personal mail is sent to Employee's business addresses without their knowledge or consent, the Employer shall endeavor to forward such personal mail unopened.

D. The Employer shall provide Employees with supplies and equipment which are required in the performance of the Employee's official duties. Except in the case of negligence on the part of the Employee, when such equipment is stolen, lost, damaged and/or worn out it shall be repaired or replaced by the Employer.

E. The Employer shall provide legal counsel for an Employee upon request when:

1. The Employee is sued for actions taken by the Employee in the course of employment and within the scope of the Employee's duties and responsibilities.

2. The Employee must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

3. The Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of her duties and responsibilities.

4. The Employee is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

The Employer shall provide a definitive response to the Employee who has submitted a request for legal counsel within a reasonable time of the receipt of the request.

In addition, the Employee's required presence in any of the foregoing situations shall be considered work time.

F. When grievances are filed against Employees of this unit for actions taken by them in the course of their employment and within the scope of their supervisory and/or managerial duties and responsibilities, the Employer shall provide them with necessary staff support and representation. When such assistance is requested by the Employee and the Employer, fails to furnish such assistance, the Employee will not be penalized for any improper action taken.

G. The Employer shall provide Employees with advice and assistance in the interpretation and administration of collective bargaining contracts or agreements covering their subordinates. Whenever Employees perform or carry out their assigned supervisory and/or managerial duties and responsibilities, based on such advice and assistance, the Employer agrees to provide full support to the Employees should conflict or grievances arise.

H. The Employee shall have the right to refuse for good cause as determined by the Employer to work overtime, to accept a temporary assignment, and to perform any work not representative of her class.

I. If a judgment or court approved settlement is made against an Employee in a civil suit for actions taken by her in the course of her employment and within the scope of her duties and responsibilities, the Employer agrees to do no more than submit to the Legislature or the County Council any judgment (or court approved settlement) against the Employee, with the Employer retaining the discretion of recommending or not recommending legislative approval.

#### J. Bill of Rights

As used herein, the term "complaint" refers to an allegation against an Employee which is made by an individual who is not employed within the same division. Whenever such a complaint is filed, the following shall be applicable:

1. No Employee shall be required to sign a statement of complaint filed against her.

2. If the Employer pursues an investigation based on such complaint, the Employee shall be advised of the seriousness of the complaint. The Employee will be informed of the complaint, and will be afforded an opportunity to respond to the complaint, and to furnish evidence in support of her case. The Employee shall have the right to be represented by the Union in presenting her case.

3. Before making a final decision, the Employer shall review and consider all available evidence and data, including factors supporting the Employee's position, whether or not she offers such factors in her own defense.

### **ARTICLE 21 - SAFETY AND HEALTH**

A. Safety and Health Requirements. The Employer shall conform to and comply with applicable regulations requiring safe, healthy, and sanitary

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement.

STATE OF HAWAI'I

By: David Y. Ige  
Its Governor

Ryker Wada

HAWAI'I HEALTH SYSTEMS  
CORPORATION

By: Linda Rosen  
President & CEO

Juanita Lauti

THE JUDICIARY

By: Mark E. Recktenwald  
Chief Justice

Eric Tanigawa

HAWAI'I GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152, AFL-  
CIO

By: Randy Perreira  
Its Executive Director

Stacie Aguinaldo

Josette Kawana

Kathy Komatsu

Justin Lam



PROFESSIONAL AND SCIENTIFIC  
EMPLOYEES



**A F S C M E**  
LOCAL 152, AFL-CIO

**UNIT 13 CONTRACT**  
JULY 1, 2021-JUNE 30, 2025

**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
**AFSCME LOCAL 152 • AFL-CIO**

and an opportunity to sign it indicating the Employee has read the material. The Employee shall also be given an opportunity to attach explanatory remarks.

C. Upon request of the Employee or the Union with consent of the Employee, derogatory material including any related explanatory remarks and rebuttals in an Employee's file shall be destroyed after two (2) years, unless the department head makes a determination of the current relevancy of such material. If the Employee or the Union, upon consent of the Employee, disputes the relevancy of such material, the department head shall attach the department head's reasons for relevancy to such material in writing. The Employee or the Union may again request destruction of such material after one (1) year.

D. All derogatory material shall be destroyed after five (5) years.

E. The employment history record shall not be destroyed.

F. The Employer may maintain more than one personnel file; however, one of these files shall include, but not be limited to, an Employee's personnel transaction records, derogatory materials, commendatory materials and performance evaluations. The Employer shall designate and inform the Union of the location of the file.

## **ARTICLE 17 - PERSONAL RIGHTS AND REPRESENTATION**

A. The Employer shall not require Employees to transport government equipment in their private vehicles, if such Employees do not receive mileage allowance.

B. Upon the request of the Union, existing dress and personal appearance codes shall be reviewed by the Employer or the Employer's designee and Union. The Employer or the Employer's designee shall consult with the Union before establishing new dress and personal appearance codes.

C. Both parties agree that Employees shall not use their business addresses (place of employment) to receive personal mail; provided, however, if personal mail is sent to Employees' business addresses without their knowledge or consent, the Employer shall endeavor to forward such personal mail unopened.

D. The Employer shall provide Employees with supplies and equipment which are required in the performance of the Employee's official duties. Except in the case of negligence on the part of the Employee, when such equipment is stolen, lost, damaged and/or worn out it shall be repaired or replaced by the Employer.

E. The Employer shall provide legal counsel for an Employee upon request when:

1. the Employee is sued for actions taken by the Employee in the course of the Employee's employment and within the scope of the Employee's duties and responsibilities.

2. the Employee must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

3. the Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

4. the Employee is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

In addition, the Employee's required presence in any of the foregoing situations shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of three (3) hours straight time pay.

F. When grievances are filed against Employees of this unit for actions taken by them in the course of their employment and within the scope of their supervisory and/or managerial duties and responsibilities, the Employer shall provide them with necessary staff support and representation. When such assistance is requested by the Employee and the Employer fails to furnish such assistance, the Employee will not be penalized for any improper action taken.

G. The Employer shall provide Employees with advice and assistance in the interpretation and administration of collective bargaining contracts or agreements covering their subordinates. Whenever Employees perform or carry out their assigned supervisory and/or managerial duties and responsibilities, based on such advice and assistance, the Employer agrees to provide full support to the Employees should conflict or grievances arise.

H. The Employee shall have the right to refuse for good cause as determined by the Employer to work overtime, to accept a temporary assignment, and to perform any work not representative of the Employee's class.

I. If a judgment or court approved settlement is made against an Employee in a civil suit for actions taken by him in the course of the

Employee's employment and within the scope of the Employee's duties and responsibilities, the Employer agrees to do no more than submit to the Legislature or the County Council any judgment (or court approved settlement) against the Employee, with the Employer retaining the discretion of recommending or not recommending legislative approval.

J. Bill of Rights.

As used herein, the term "complaint" refers to an allegation against an Employee which is made by an individual who is not employed within the same department. Whenever such a complaint is filed, the following shall be applicable:

1. No Employee shall be required to sign a statement of complaint filed against him.

2. If the Employer pursues an investigation based on such complaint, the Employee shall be advised of the seriousness of the complaint. The Employee will be informed of the complaint, and will be afforded an opportunity to respond to the complaint, and to furnish evidence in support of the Employee's case. The Employee shall have the right to be represented by the Union in presenting the Employee's case.

3. Before making a final decision, the Employer shall review and consider all available evidence and data, including factors supporting the Employee's position, whether or not the Employee offers such factors in the Employee's own defense.

## ARTICLE 18 - UNIFORMS

I. General Application

A. A uniform shall be defined as those items of distinctive clothing which are required by the Employer and which meet the following conditions:

1. Used to identify a specific group of Employees.

2. Shirt and/or trousers, blouse and/or skirt, dress or other clothing must be of the same design, color, cut, and style, and made of similar material for a specific group of Employees.

B. Uniform accessories which are required by the Employer shall be furnished by the Employer and shall remain the property of the Employer while in the custody of the Employee. Accessories include, but are not limited to, the following:

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement.

STATE OF HAWAII

By: David Y. Ige  
Governor

Ryker Wada  
Chief Negotiator

CITY AND COUNTY OF HONOLULU

By: Rick Blangiardi  
Mayor

Nola N. Miyasaki

COUNTY OF HAWAII

By: Mitch Roth  
Mayor

Waylen L.K. Leopoldino

COUNTY OF MAUI

By: Michael Victorino  
Mayor

David Underwood

COUNTY OF KAUAI

By: Derrick Kawakami  
Mayor

Annette Anderson

HAWAII HEALTH SYSTEMS  
CORPORATION

By: Dr. Linda Rosen  
President & CEO

Juanita Lauti

JUDICIARY

By: Mark E. Recktenwald  
Chief Justice

Eric Tanigawa

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO

By: Randy Perreira  
Executive Director

Jim Hayden

Ginet Hayes

Stacy Haitzuka

Denise Inouye

Jolly Iwata

Amanda Lowrey

Clifford Kalani Motta

Tracy Ober

Cheryl Pokipala

Muhammad A. Quadri

Kaloa Robinson

Holly Vogel

Nicole Wong

Bennett Yap

Earl Young

STATE LAW ENFORCEMENT OFFICERS



**A F S C M E**  
LOCAL 152, AFL-CIO

**UNIT 14 CONTRACT**  
JULY 1, 2021-JUNE 30, 2025



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
**AFSCME LOCAL 152 • AFL-CIO**

B. No derogatory material shall be placed in the Employee's personnel file unless the Employee has had an opportunity to read the material and an opportunity to sign it indicating the Employee had read the material. The Employee shall also be given an opportunity to attach explanatory remarks.

C. Upon request of the Employee or the Union with consent of the Employee, derogatory material in the Employee's file shall be destroyed after two (2) years, unless the department head makes a determination of the current relevancy of such material. If the Employee or the Union upon consent of the Employee disputes the relevancy of such material, the department head shall attach reasons for relevancy to such material in writing. The Employee or the Union may again request destruction of such material after one (1) year.

D. All derogatory material shall be destroyed after five (5) years.

E. The employment history record shall not be destroyed.

F. The Employer may maintain more than one personnel file; however, one of these files shall include, but not be limited to, an Employee's personnel transaction records, derogatory materials, commendatory materials and performance evaluations. The Employer shall designate and inform the Union of the location of the file.

## **ARTICLE 16 - PERSONAL RIGHTS AND REPRESENTATION**

A. The Employer shall not require Employees to transport government equipment in their private vehicles, if such Employees do not receive mileage allowance.

B. Upon the request of the Union, existing dress and personal appearance codes shall be reviewed by the Employer or designee and Union. The Employer or designee shall consult with the Union before establishing new dress and personal appearance codes.

C. Both parties agree that Employees shall not use their business addresses (place of employment) to receive personal mail; provided, however, if personal mail is sent to Employees' business addresses without their knowledge or consent, the Employer shall endeavor to forward such personal mail unopened.

D. The Employer shall provide Employees with supplies and equipment which are required in the performance of the Employee's official duties. Except in the case of negligence on the part of the Employee, when

such equipment is stolen, lost, damaged and/or worn out it shall be repaired or replaced by the Employer.

E. The Employer shall provide legal counsel for an Employee upon request when:

1. The Employee is sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

2. The Employee must appear as a defendant or is subpoenaed to appear in court when sued for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities.

3. The Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

4. The Employee is required to give deposition or answer interrogatories on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities.

In addition, the Employee's required presence in any of the foregoing situations shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of three (3) hours straight time pay.

F. When grievances are filed against Employees of this unit for actions taken by them in the course of their employment and within the scope of their supervisory and/or managerial duties and responsibilities, the Employer shall provide them with necessary staff support and representation. When such assistance is requested by the Employee and the Employer fails to furnish such assistance, the Employee will not be penalized for any improper action taken.

G. The Employer shall provide Employees with advice and assistance in the interpretation and administration of collective bargaining contracts or agreements covering their subordinates. Whenever Employees perform or carry out their assigned supervisory and/or managerial duties and responsibilities, based on such advice and assistance, the Employer agrees to provide full support to the Employees should conflict or grievances arise.

H. The Employee shall have the right to refuse for good cause as determined by the Employer to work overtime, to accept a temporary assignment, and to perform any work not representative of the Employee's class.



I. If a judgment or court approved settlement is made against an Employee in a civil suit for actions taken in the course of employment and within the scope of the Employee's duties and responsibilities, the Employer agrees to do no more than submit to the Legislature or the County Council any judgment (or court approved settlement) against the Employee, with the Employer retaining the discretion of recommending or not recommending legislative approval.

J. Bill of Rights.

1. No Employee shall be required to sign a statement of complaint filed against the Employee.

2. If the Employer pursues an investigation based on such complaint, the Employee shall be advised of the seriousness of the complaint. The Employee will be informed of the complaint, and will be afforded an opportunity to respond to the complaint, and to furnish evidence in support of the Employee's case. The Employee shall have the right to be represented by the Union in presenting the Employee's case.

3. Before making a final decision, the Employer shall review and consider all available evidence and data, including factors supporting the Employee's position, whether or not the Employee offers such factors in the Employee's own defense.

4. If the complaint filed against the Employee results in disciplinary action, and the Union or Employee believes that the action taken is improper or unjust, the Union or the Employee shall have the right to process a grievance pursuant to Article 10, Grievance Procedure.

## **ARTICLE 17 - TECHNOLOGICAL CHANGES**

A. The Employer and the Union recognize that changes in operations resulting from technological innovations may occur. When such changes occur, the Employer shall give first consideration to the utilization of affected Employees in the changed operations. In the event the affected Employees do not possess the requisite skills or knowledge to perform the required work in the new operation and such skills and knowledge can be acquired within a reasonable length of time, the Employer shall provide the necessary training to Employees during working hours and at the Employer's expense.

B. If the job of any Employee is eliminated because of the implementation of new technological innovations, the Employer shall, in the following order of priority: 1) place the Employee in a position comparable in

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this Agreement.

STATE OF HAWAII

By: David Y. Ige  
Governor

Ryker Wada  
Chief Negotiator

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152, AFL-  
CIO

By: Randy Perreira  
Executive Director

Charles Among, Jr.

Ralph Aguon

Leedo Anderson

Oladisun Tuyo-Scanlan, Jr.

Myron Widrig

NO. CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

In the Matter of the	)	CASE NO.: 1CSP-23-0000959
Arbitration Between	)	(Special Proceeding)
	)	
UNIVERSITY OF HAWAI'I	)	
PROFESSIONAL ASSEMBLY,	)	
	)	
Petitioner-Appellee,	)	
	)	
vs.	)	
	)	
BOARD OF REGENTS OF THE	)	
UNIVERSITY OF HAWAI'I,	)	
	)	
Respondent-Appellant.	)	
	)	
_____	)	

**APPENDIX "2"**

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BEFORE ARBITRATOR GAIL M. KANG

STATE OF HAWAII

In the Matter of the	)	Grievance of :
Arbitration Between:	)	Wayne Fujimoto
	)	Edward Koki
	)	Roy Teramoto
	)	Unit 03
	)	(Duty to provide counsel)
HAWAII GOVERNMENT EMPLOYEES	)	
ASSOCIATION, AFSCME, LOCAL 152,	)	
AFL-CIO on behalf of Grievant,	)	
	)	DECISION AND AWARD
	)	
Union,	)	
	)	
and	)	
	)	
CITY AND COUNTY OF HONOLULU,	)	
DEPARTMENT OF PLANNING AND	)	
PERMITTING	)	
Employer	)	
	)	
	)	

[2007-435 #367875]

**DECISION AND AWARD**

The undersigned arbitrator was jointly appointed by the parties to arbitrate the above-captioned grievance filed by the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (hereinafter, "Union") on behalf of Grievants WAYNE FUJIMOTO, EDWARD KOKI, and ROY TERAMOTO (hereinafter collectively, "Grievants") against the CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING AND PERMITTING (hereinafter, "Employer") for a determination of the issues set forth below.

The arbitration hearing was held on February 13, 2008 in Honolulu, Hawaii. The Grievants through the Union were represented by Charles A. Price, and the Employer was

represented by Deputy Corporation Counsel Paul K. Hoshino. The parties were afforded a full and fair opportunity to present evidence, examine witnesses, and offer argument at the hearing.

**A. ISSUE PRESENTED**

This grievance presents the issue of whether the Employer violated Article 17, ¶E.3 of the Unit 3 collective bargaining agreement by failing to provide legal representation to the Grievants when they were subpoenaed to testify before the Hawaii Labor Relations Board.

**B. REMEDY REQUESTED**

The Union seeks reimbursement in the amount of \$4,135.42, which was jointly incurred by the Grievants as attorneys' fees.

**C. FINDINGS OF FACT**

This grievance involves the Employer's duty to provide legal representation to the Grievants who were subpoenaed to testify as witnesses before the Hawaii Labor Relations Board in a matter involving a co-worker and the issue of a "past practice". The following are the Arbitrator's findings of facts based upon the credible evidence presented:

1. Earl Shiraki, a former Electrical Inspector, employed by the City and County of Honolulu, Department of Planning and Permitting, was terminated for, *inter alia*, playing golf during work hours. In addition to his termination, he faced possible criminal prosecution for theft.
2. Earl Shiraki filed a Duty of Fair Representation Complaint with the Hawaii Labor Relations Board ("HLRB") in which he maintained that he worked through lunch and breaks and therefore was permitted to leave work before the end of the 8-hour day. Shiraki

sought to establish his conduct as a "past practice" and, to that end, subpoenaed the three Grievants as witnesses.

3. At the time of the alleged violation, Grievants were employed by the City and County of Honolulu, Department of Planning and Permitting, and within the provisions of the Unit 3 Collective Bargaining Agreement.

4. The Collective Bargaining Agreement requires the Employer to provide legal representation under the following circumstances:

E. The Employer shall provide legal counsel for an Employee upon request when:

1. \* \* \*

2. \* \* \*

3. The Employee must appear as a witness or is subpoenaed to appear in court on a matter arising in the course and scope of employment and within the scope of the Employee's duties and responsibilities.

4. \* \* \*

*See Agreement, Article 17 §E3.*

5. Grievants were subpoenaed to testify as witnesses on behalf of Earl Shiraki at a hearing before the Hawaii Labor Relations Board.

6. Grievants anticipated being asked about their own conduct of working through breaks in order to leave before the work day was over.

7. Grievants, through their Union, asked the Employer to provide them with legal representation because they had been subpoenaed to testify in a job-related proceeding and on a job-related matter.

8. The Employer, through a Deputy Corporation Counsel, met with the Grievants and informed them that the Employer would represent them only on issues relating to the course and scope of their employment, but they were otherwise free to retain personal counsel at their own expense if they believed they would be asked to testify about matters outside the course and scope of their employment.

9. The Deputy Corporation Counsel informed them that the working-through-lunch-and-breaks-to-leave-early (hereinafter, "past practice") was a matter outside the course and scope of their employment.

10. Based on that understanding, Grievants asked for separate, independent counsel because of the Employer's conflict of interest in representing them.

11. The Employer's Deputy Corporation Counsel represented the Grievants at the hearing until they claimed a conflict of interest on grounds that their testimony on whether they engaged in conduct similar to Earl Shiraki (i.e., working-through-breaks) potentially subjected them to discipline as well to criminal prosecution for theft.

12. Grievants collectively retained attorney Steven T. Brittain to represent them in their personal capacities and, specifically, with regard to possible criminal exposure.

13. Grievants' personal counsel was present during the Hawaii Labor Relations Board hearing and appears to have counseled them during the course of the hearing when a

Grievant invoked his right against self incrimination in response to a question about whether he had ever engaged in working-through-breaks-and-leaving-early.

14. Attorney Steven T. Brittain charged the Grievants a total of \$4,135.42 for his services.

15. The Employer denied reimbursement, in essence, because Steven Brittain represented the Grievants on matters that were not within the course and scope of their employment and, also, because the proceeding was not deemed an appearance "in court" as provided by the Collective Bargaining Agreement, Article 17.

**D. DECISION AND RATIONALE**

The Employer contends, in summary, that working-through-breaks-and-leaving-early was not an established practice and therefore Earl Shiraki's conduct, which was at issue in the hearing, was not within the course and scope of employment. Further, because the issue was not within the course and scope, the collective bargaining agreement did not require the Employer to provide the Grievants with legal representation at the hearing.

The Union, on the other hand, contends in summary that since the working-through-breaks-and-leaving-early conduct may or may not have been an established practice at the time of the hearing *and* was the very issue to be decided, the Employer was obligated to provide legal representation in the event that the Board determined the conduct was an established practice.

The evidence critical to a determination of this grievance is not in dispute. Under the specific circumstances presented here, I find that the Employer was obligated to provide legal representation to the Grievants for the following reasons:



The Employer agreed to provide the Grievants with a defense on matters that were within the course and scope of their employment but, conversely, not for matters outside. The Employer categorized the “Past Practice” issue as a matter that was outside the course and scope. Based on the Employer’s position, Grievants felt compelled to retain personal counsel because the “Past Practice” issue was to be a focal point of the hearing.

The Employer provided legal representation to the Grievants at the hearing through its Deputy Corporation Counsel. At the point that a Grievant was asked whether he had engaged in the working-through-breaks-and-leaving-early conduct, the Grievant conferred with his personal counsel, Steven Brittain, and responded by invoking his right against self-incrimination. It is unclear whether the Employer’s Deputy Corporation Counsel would have continued to counsel the Grievants in response to that question.

First, the contractual duty to defend generally is determined by the terms of the contract from which it arises. Looking to insurance contract law for guidance by analogy, when the duty to defend exists, the insurer has a duty to accept the defense of the entire suit even though some of the claims or issues fall outside of coverage. *First Insurance Company of Hawaii, Inc. v. State of Hawaii*, 66 Haw. 413, 417; 665 P.2d 648 (1983). In essence, the insurer cannot pick and choose or defend on some but not all of the claims. Once the duty exists, the insurer must defend the insured on *all* claims whether the claims are within the terms of coverage or not.

Applying that law, the Employer here was correct in advising the Grievants that it would provide them with legal representation but that they were free to retain personal counsel at their own expense for matters outside the course and scope. The Grievants,

however, retained personal counsel because (a) the Employer viewed the “Past Practice” issue as a matter outside the course and scope, (b) they expected to be asked about the “Past Practice” issue, and therefore (c) anticipated that the Employer would not represent them on that issue in light of the Employer’s position. If the Employer provided legal representation, it was contractually obligated to represent them on *all* matters.

Second, Hawaii has construed the duty to defend in insurance agreements to arise whenever the “*possibility* of coverage exists” or “whenever there is the mere potential for coverage.” *Sentinel Insurance v. First Insurance of Hawaii*, 76 Haw. 277, 287; 875 P.2d 894, amended on recon. 76 Haw. 453, 879 P.2d 558 (1994). “This possibility may be remote, but if it exists[,] the [insurer] owes the insured a defense.” *Sentinel*, 76 Haw at 387.

The inquiry before the Labor Relations board focused on whether the working-through-breaks-and-leaving-early conduct<sup>1</sup> amounted to a “past practice”. Applying insurance law, if there was a possibility that the conduct was a “past practice” and consequently within the course and scope as argued, then the Employer was obligated to represent Grievants on that issue as well.

Setting insurance law aside, it is clear however that Grievants were subpoenaed on a matter arising from their employment, their duties, and responsibilities. As such, the HLRB inquiry was to involve and did involve work-related testimony. Stated differently, “but for” their jobs, Grievants would not have been witnesses. The Employer’s interpretation of the “course and scope” requirement in Article 17, therefore, may have been a little too narrow for just the specific circumstances of this grievance.

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<sup>1</sup> No determination is made in this decision as to whether the conduct is or is not an established practice.


Third, the Grievants' attendance at the hearing was an appearance "in court" for purposes of Collective Bargaining Agreement, Article 17. Their appearances were pursuant to subpoena, not voluntary.

**E. DECISION & AWARD**

I find that the Collective Bargaining Agreement required the Employer to provide legal representation to the Grievants under the very specific circumstances presented in this grievance. This decision is limited to the exact circumstances of this grievance.

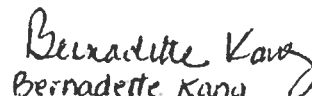
The Employer, therefore, shall reimburse the Grievants the amount of the attorney's fees they incurred, \$4,135.42, as a result of their appearance before the Hawaii Labor Relations Board in response to a subpoena.

DATED: Honolulu, Hawaii on May 7, 2008.

  
\_\_\_\_\_  
GAIL M. KANG  
Arbitrator

STATE OF HAWAII )  
 ) SS  
CITY AND COUNTY OF HONOLULU )

On this 7<sup>th</sup> day of May, 2008, before me personally appeared GAIL M. KANG, known to me as the person who executed this instrument and who acknowledged that she executed the same as her free act and deed.

  
\_\_\_\_\_  
Bernadette Kang  
Notary Public, State of Hawaii  
My commission expires: 7/6/2011

-----  
*In the Matter of the Arbitration Between  
HGEA/ AFSCME, Local 152, AFL-CIO: Grievance of Wayne Fujimoto, Edward Koki, Roy Teramoto*  
Arbitration Decision & Award

NO. CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

In the Matter of the	)	CASE NO.: 1CSP-23-0000959
Arbitration Between	)	(Special Proceeding)
	)	
UNIVERSITY OF HAWAI'I	)	
PROFESSIONAL ASSEMBLY,	)	
	)	
Petitioner-Appellee,	)	
	)	
vs.	)	
	)	
BOARD OF REGENTS OF THE	)	
UNIVERSITY OF HAWAI'I,	)	
	)	
Respondent-Appellant.	)	
	)	
_____	)	

**APPENDIX "3"**

This SUPPLEMENTAL AGREEMENT is entered into this 20<sup>th</sup> day of October, 2004 by and between the State of Hawaii and the Hawaii State Judiciary (hereafter "Employer") and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (hereafter "Union") on behalf of employees in Bargaining Unit 2.

WHEREAS, from time to time, Employees are called upon to testify in court, both in criminal and civil proceedings, in a deposition, and/or in administrative hearings concerning matters that arise in the course of employment and within the scope of the Employee's duties and responsibilities;

WHEREAS, it is in the interest of both the Employer and the Employee to testify in a manner that is both professional and effective;

WHEREAS, it is recognized that the key to professional and effective testimony is proper preparation and, on occasion, sound legal advice;

WHEREAS, it is recognized that in those matters where the Employee is being called as a witness by a government attorney it is the responsibility of that government attorney to properly prepare and advise the Employee witness;

WHEREAS, it also recognized that there are matters where the employee must appear as a witness where there is no government attorney or the issues involved are beyond the interest or knowledge of the government attorney and assistance or advice is warranted from an appropriate deputy attorney general; and

WHEREAS, the determination of the degree of legal support necessary in a particular case is the responsibility of the attorney general;

NOW THEREFORE, the UNION and the EMPLOYER mutually agree that ARTICLE 18 E of the Unit 2 collective bargaining agreement shall be deleted in its entirety and replaced as follows:

- E. The Employer shall provide legal counsel or such other legal support as the attorney general or his designee deems appropriate under the circumstances for an Employee upon request when the Employee is sued, named as a party, or required to testify in a proceeding on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities. If an Employee has requested legal counsel and objects to the determination of the level of legal support provided, the Employee, through his union representative, may meet and confer, in person, by telephone or by video teleconference, with the supervising deputy attorney general of the relevant division. If the Employee still has objections after meeting with the relevant supervising deputy attorney general, the Employee may meet and confer with the Attorney General himself, in person, by telephone or video teleconference. In addition, the Employee's required presence in any proceeding as a defendant, party or witness on a matter

arising in the course of employment and within the scope of the Employee's duties shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of two (2) hours overtime pay.

This Supplemental Agreement shall be effective from the date of execution noted above and shall continue for the duration of the Unit 2 collective bargaining agreement, unless either of the parties terminates the Supplemental Agreement by giving thirty (30) days notice.

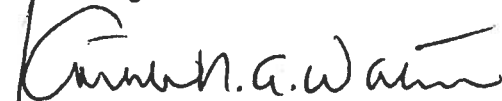
IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this SUPPLEMENTAL AGREEMENT on the day and year first written above.

FOR THE EMPLOYER  
STATE OF HAWAII  
HAWAII STATE JUDICIARY

FOR THE UNION



Ken Taira  
Chief Negotiator

  
Executive Director

Kathleen N. A. Watanabe  
Director, Department of Human  
Resources Development



Thomas R. Keller  
Administrative Director of Courts

APPROVAL AS TO FORM AND SUBSTANCE



Mark J. Bennett  
Attorney General

This SUPPLEMENTAL AGREEMENT is entered into this 20th day of October, 2004 by and between the State of Hawaii and the Hawaii State Judiciary (hereafter "Employer") and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (hereafter "Union") on behalf of employees in Bargaining Unit 4.

WHEREAS, from time to time, Employees are called upon to testify in court, both in criminal and civil proceedings, in a deposition, and/or in administrative hearings concerning matters that arise in the course of employment and within the scope of the Employee's duties and responsibilities;

WHEREAS, it is in the interest of both the Employer and the Employee to testify in a manner that is both professional and effective;

WHEREAS, it is recognized that the key to professional and effective testimony is proper preparation and, on occasion, sound legal advice;

WHEREAS, it is recognized that in those matters where the Employee is being called as a witness by a government attorney it is the responsibility of that government attorney to properly prepare and advise the Employee witness;

WHEREAS, it also recognized that there are matters where the employee must appear as a witness where there is no government attorney or the issues involved are beyond the interest or knowledge of the government attorney and assistance or advice is warranted from an appropriate deputy attorney general; and

WHEREAS, the determination of the degree of legal support necessary in a particular case is the responsibility of the attorney general;

NOW THEREFORE, the UNION and the EMPLOYER mutually agree that ARTICLE 17 E of the Unit 4 collective bargaining agreement shall be deleted in its entirety and replaced as follows:

- E. The Employer shall provide legal counsel or such other legal support as the attorney general or his designee deems appropriate under the circumstances for an Employee upon request when the Employee is sued, named as a party, or required to testify in a proceeding on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities. If an Employee has requested legal counsel and objects to the determination of the level of legal support provided, the Employee, through his union representative, may meet and confer, in person, by telephone or by video teleconference, with the supervising deputy attorney general of the relevant division. If the Employee still has objections after meeting with the relevant supervising deputy attorney general, the Employee may meet and confer with the Attorney General himself, in person, by telephone or video teleconference. In addition, the Employee's required presence in any proceeding as a defendant, party or witness on a matter

arising in the course of employment and within the scope of the Employee's duties shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of two (2) hours overtime pay.

This Supplemental Agreement shall be effective from the date of execution noted above and shall continue for the duration of the Unit 4 collective bargaining agreement, unless either of the parties terminates the Supplemental Agreement by giving thirty (30) days notice.

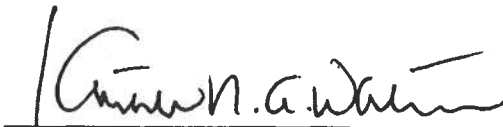
IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this SUPPLEMENTAL AGREEMENT on the day and year first written above.

FOR THE EMPLOYER  
STATE OF HAWAII  
HAWAII STATE JUDICIARY

FOR THE UNION



Ken Taira  
Chief Negotiator

  
Executive Director

Kathleen N. A. Watanabe  
Director, Department of Human  
Resources Development



Thomas R. Keller  
Administrative Director of courts

APPROVAL AS TO FORM AND SUBSTANCE



Mark J. Bennett  
Attorney General



This SUPPLEMENTAL AGREEMENT is entered into this 20<sup>th</sup> day of October, 2004 by and between the State of Hawaii and the Hawaii State Judiciary (hereafter "Employer") and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (hereafter "Union") on behalf of employees in Bargaining Unit 9.

WHEREAS, from time to time, Employees are called upon to testify in court, both in criminal and civil proceedings, in a deposition, and/or in administrative hearings concerning matters that arise in the course of employment and within the scope of the Employee's duties and responsibilities;

WHEREAS, it is in the interest of both the Employer and the Employee to testify in a manner that is both professional and effective;

WHEREAS, it is recognized that the key to professional and effective testimony is proper preparation and, on occasion, sound legal advice;

WHEREAS, it is recognized that in those matters where the Employee is being called as a witness by a government attorney it is the responsibility of that government attorney to properly prepare and advise the Employee witness;

WHEREAS, it also recognized that there are matters where the employee must appear as a witness where there is no government attorney or the issues involved are beyond the interest or knowledge of the government attorney and assistance or advice is warranted from an appropriate deputy attorney general; and

WHEREAS, the determination of the degree of legal support necessary in a particular case is the responsibility of the attorney general;

NOW THEREFORE, the UNION and the EMPLOYER mutually agree that ARTICLE 20 E of the Unit 9 collective bargaining agreement shall be deleted in its entirety and replaced as follows:

- E. The Employer shall provide legal counsel or such other legal support as the attorney general or his designee deems appropriate under the circumstances for an Employee upon request when the Employee is sued, named as a party, or required to testify in a proceeding on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities. If an Employee has requested legal counsel and objects to the determination of the level of legal support provided, the Employee, through his union representative, may meet and confer, in person, by telephone or by video teleconference, with the supervising deputy attorney general of the relevant division. If the Employee still has objections after meeting with the relevant supervising deputy attorney general, the Employee may meet and confer with the Attorney General himself, in person, by telephone or video teleconference. In addition, the Employee's required presence in any proceeding as a defendant, party or witness on a matter

arising in the course of employment and within the scope of the Employee's duties shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of two (2) hours overtime pay.

This Supplemental Agreement shall be effective from the date of execution noted above and shall continue for the duration of the Unit 9 collective bargaining agreement, unless either of the parties terminates the Supplemental Agreement by giving thirty (30) days notice.

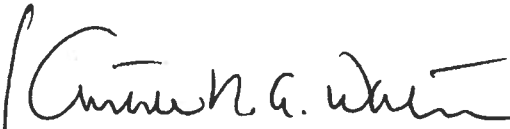
IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this SUPPLEMENTAL AGREEMENT on the day and year first written above.

FOR THE EMPLOYER  
STATE OF HAWAII  
HAWAII STATE JUDICIARY

FOR THE UNION



Ken Taira  
Chief Negotiator

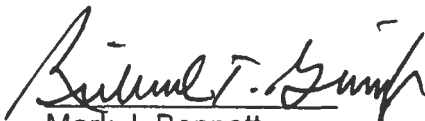
  
Executive Director

Kathleen N. A. Watanabe  
Director, Department of Human  
Resources Development



Thomas R. Keller  
Administrative Director of courts

APPROVAL AS TO FORM AND SUBSTANCE



Mark J. Bennett  
Attorney General

This SUPPLEMENTAL AGREEMENT is entered into this 20<sup>th</sup> day of October, 2004 by and between the State of Hawaii and the Hawaii State Judiciary (hereafter "Employer") and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (hereafter "Union") on behalf of employees in Bargaining Unit 13.

WHEREAS, from time to time, Employees are called upon to testify in court, both in criminal and civil proceedings, in a deposition, and/or in administrative hearings concerning matters that arise in the course of employment and within the scope of the Employee's duties and responsibilities;

WHEREAS, it is in the interest of both the Employer and the Employee to testify in a manner that is both professional and effective;

WHEREAS, it is recognized that the key to professional and effective testimony is proper preparation and, on occasion, sound legal advice;

WHEREAS, it is recognized that in those matters where the Employee is being called as a witness by a government attorney it is the responsibility of that government attorney to properly prepare and advise the Employee witness;

WHEREAS, it also recognized that there are matters where the employee must appear as a witness where there is no government attorney or the issues involved are beyond the interest or knowledge of the government attorney and assistance or advice is warranted from an appropriate deputy attorney general; and

WHEREAS, the determination of the degree of legal support necessary in a particular case is the responsibility of the attorney general;

NOW THEREFORE, the UNION and the EMPLOYER mutually agree that ARTICLE 17 E of the Unit 13 collective bargaining agreement shall be deleted in its entirety and replaced as follows:

- E. The Employer shall provide legal counsel or such other legal support as the attorney general or his designee deems appropriate under the circumstances for an Employee upon request when the Employee is sued, named as a party, or required to testify in a proceeding on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities. If an Employee has requested legal counsel and objects to the determination of the level of legal support provided, the Employee, through his union representative, may meet and confer, in person, by telephone or by video teleconference, with the supervising deputy attorney general of the relevant division. If the Employee still has objections after meeting with the relevant supervising deputy attorney general, the Employee may meet and confer with the Attorney General himself, in person, by telephone or video teleconference. In addition, the Employee's required presence in any proceeding as a defendant, party or witness on a matter

arising in the course of employment and within the scope of the Employee's duties shall be considered work time, provided, whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of two (2) hours overtime pay.

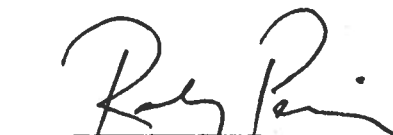
This Supplemental Agreement shall be effective from the date of execution noted above and shall continue for the duration of the Unit 13 collective bargaining agreement, unless either of the parties terminates the Supplemental Agreement by giving thirty (30) days notice.

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have executed this SUPPLEMENTAL AGREEMENT on the day and year first written above.

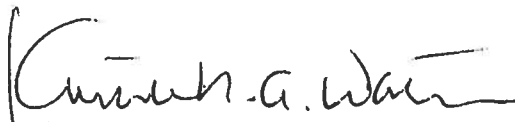
FOR THE EMPLOYER  
STATE OF HAWAII  
HAWAII STATE JUDICIARY

FOR THE UNION

  
Ken Taira

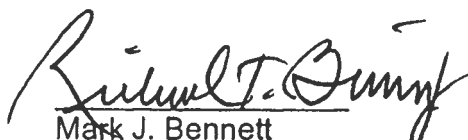
  
for Executive Director

Chief Negotiator

  
Kathleen N. A. Watanabe  
Director, Department of Human  
Resources Development

  
Thomas R. Keller  
Administrative Director of courts

APPROVAL AS TO FORM AND SUBSTANCE

  
Mark J. Bennett  
Attorney General

**SUPPLEMENTAL AGREEMENT**  
**ARTICLE 17 - Personal Rights and Representation**  
**LEGAL REPRESENTATION**  
**Bargaining Unit 3**

This SUPPLEMENTAL AGREEMENT is entered into this 26<sup>th</sup> day of July, 2007 by and between the State of Hawaii and the Judiciary, hereafter "Employer" and the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO, hereafter "UNION" on behalf of Employees in Bargaining Unit 3.

WHEREAS, from time to time, Employees are called upon to testify in court, both in criminal and civil proceedings, in a deposition, and/or in administrative hearings concerning matters that arise in the course of employment and within the scope of the Employee's duties and responsibilities;

WHEREAS, it is in the interest of the Employer and the Employee to testify in a manner that is both professional and effective;

WHEREAS, it is recognized that the key to professional and effective testimony is proper preparation and, on occasion, sound legal advice;

WHEREAS, it is recognized that in those matters where the Employee is being called as a witness by a government attorney it is the responsibility of that government attorney to properly prepare and advise the Employee witness;

WHEREAS, it is also recognized that there are matters where the Employee must appear as a witness where there is no government attorney or the issues involved are beyond the interest or knowledge of the government attorney and assistance or advice is warranted from an appropriate deputy attorney general; and

WHEREAS, the determination of the degree of legal support necessary in a particular case is the responsibility of the attorney general;

NOW THEREFORE, the UNION and the EMPLOYER mutually agree that Article 17, Paragraph E of the Unit 3 collective bargaining agreement shall be deleted in its entirety and replaced as follows:

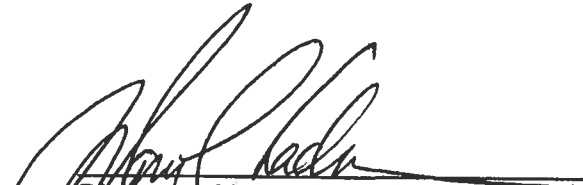
E. The Employer shall provide legal counsel or such other legal support as the attorney general or his designee deems appropriate under the circumstances for an Employee, upon the Employee's request, when the Employee is sued, named as a party or required to testify in a proceeding on a matter arising in the course of employment and within the scope of the Employee's duties and responsibilities. If an Employee has requested legal counsel and objects to the determination of the level of legal support provided, the Employee through his or her union representative may meet and confer, in person, by telephone or by video teleconference with the supervising deputy attorney general of the relevant division. If the Employee still has objections after

the meeting with the relevant supervising deputy attorney general, the Employee may meet and confer with the Attorney General in person, by telephone or video conference. In addition, the Employee's required presence in any proceeding as a defendant, party or witness on a matter arising in the course of employment and within the scope of the Employee's duties shall be considered work time, provided whenever an Employee's required presence is on the Employee's scheduled day off or holiday off, the Employee shall be guaranteed a minimum of two (2) hours overtime pay.


This SUPPLEMENTAL AGREEMENT shall be effective from the date of execution noted above and shall continue for the duration of the Unit 3 master collective bargaining agreement, unless either of the parties terminates the SUPPLEMENTAL AGREEMENT by giving thirty (30) days written notice.

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives have executed this SUPPLEMENTAL AGREEMENT on the day and year first written above.

FOR THE EMPLOYER:  
State of Hawaii

  
\_\_\_\_\_  
Director of Human Resources  
Development; and  
Chief Negotiator, Office of Collective  
Bargaining


FOR THE UNION:  
Hawaii Government Employees  
Association

  
\_\_\_\_\_  
Executive Director

Judiciary

  
\_\_\_\_\_  
Administrative Director of the Courts

APPROVAL AS TO FORM AND SUBSTANCE:

  
\_\_\_\_\_  
Attorney General

NO. CAAP-24-0000278

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

In the Matter of the	)	CASE NO.: 1CSP-23-0000959
Arbitration Between	)	(Special Proceeding)
	)	
UNIVERSITY OF HAWAI'I	)	
PROFESSIONAL ASSEMBLY,	)	<b>CERTIFICATE OF SERVICE</b>
	)	
Petitioner-Appellee,	)	
	)	
vs.	)	
	)	
BOARD OF REGENTS OF THE	)	
UNIVERSITY OF HAWAI'I,	)	
	)	
Respondent-Appellant.	)	
	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was duly served upon the following via electronic filing through [efiling@courts.hawaii.gov](mailto:efiling@courts.hawaii.gov) at the Judiciary Electronic File and Service System on the date indicated below:

WADE C. ZUKERAN, ESQ.  
Gill, Zukeran & Sgan  
Finance Factors Center  
1164 Bishop Street, Suite 801  
Honolulu, Hawaii 96813

Attorney for Petitioner-Appellee  
UNIVERSITY OF HAWAI'I PROFESSIONAL ASSEMBLY

CARRIE K.S. OKINAGA  
University General Counsel  
ELISABETH A. K. CONTRADES  
JUSTIN M. LUNEY  
Associate General Counsels  
University of Hawai'i  
2444 Dole Street, Bachman Hall 101  
Honolulu, Hawaii 96822.

Attorneys for Respondent-Appellant  
BOARD OF REGENTS OF THE  
UNIVERSITY OF HAWAII

DATED: Honolulu, Hawaii, December 9, 2024.

/s/ Debra A. Kagawa-Yogi  
JAMES E.T. KOSHIBA  
JONATHAN E. SPIKER  
DEBRA A. KAGAWA-YOGI

Attorneys for  
HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME LOCAL 152, AFL-CIO