STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO, Complainant, and LINDA LINGLE, Governor, State of Hawaii; KATHLEEN N.A. WATANABE, Director, Department of Human Resources Development, State of Hawaii; and DEPARTMENT OF HUMAN SERVICES, State of Hawaii, Respondents.	CASE NOS.: CE-02-569a CE-03-569b CE-04-569c CE-09-569d CE-13-569e DECISION NO. 468 FINAL DECISION ADOPTING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINAL DECISION ADOPTING PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On May 21, 2007, the Hawaii Labor Relations Board ("Board") filed its Proposed Findings of Fact, Conclusions of Law and Order ("Proposed Decision") in this matter. As the time limit for the filing of exceptions to the Proposed Decision has passed without exceptions being filed by any party, the Board hereby adopts the Proposed Decision and dismisses the instant complaint.

DATED: Honolulu, Hawaii, June 13, 2007.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

EMORY J. SPRINGER, Member

SARAH R. HIRAKAMI, Member

Copies sent to:

Peter Liholiho Trask, Esq.
Jeffrey A. Keating, Deputy Attorney General

STATE OF HAWAII

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In the Matter of HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO, Complainant, and LINDA LINGLE, Governor, State of Hawaii; KATHLEEN N.A. WATANABE, Director, Department of Human Resources Development, State of Hawaii; and DEPARTMENT OF HUMAN SERVICES, State of Hawaii, Respondents.	CASE NOS.: CE-02-569a CE-03-569b CE-04-569c CE-09-569d CE-13-569e PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On July 12, 2004, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO ("HGEA" or "Union") filed a prohibited practice complaint with the Hawaii Labor Relations Board ("Board") against LINDA LINGLE, Governor, State of Hawaii; KATHLEEN N.A. WATANABE ("WATANABE"), Director, Department of Human Resources Development ("DHRD"), and the DEPARTMENT OF HUMAN SERVICES, State of Hawaii ("DHS") (collectively "Respondents" or "Employer") alleging Respondents unilaterally implemented changes to existing terms and conditions of employment covered by Units 02, 03, 04, 09, and 13 collective bargaining agreements when they implemented a policy to deprive exempt employees from negotiated rights, benefits and protections granted to them under their respective agreements by converting these employees to "at-will" employees without consultation and/or mutual consent of the HGEA in violation fo Hawaii Revised Statutes ("HRS") §§ 89-13(a)(5), (7), and (8).

On July 23, 2004, Respondents filed a motion to dismiss because the complaint is time-barred, Complainant failed to exhaust contractual remedies, and the complaint fails to state a claim for relief. On September 9, 2004, the Board conducted a hearing on the motion to dismiss and, after hearing argument of counsel, a Board majority denied Respondents' motion on the grounds that 1) there were material issues of fact regarding the State's satisfaction of its obligation to bargain or consult regarding the implementation of the

policies; 2) there was an open question of law regarding the receipt of the consultation request by the union triggering the union's obligation to complain of any contractual or statutory violations; and 3) there were colorable statutory claims which were within the exclusive jurisdiction of the Board so that deferral to the arbitration process is inappropriate.

On October 28, 2004, the Board conducted a prehearing conference and conducted a hearing on the merits on November 22, and 23, 2004.

Based on a thorough review of the evidence and arguments presented, the Board, pursuant to HRS § 91-11,[1] hereby issues the following proposed Findings of Fact, Conclusions of Law and Order dismissing the complaint.

PROPOSED FINDINGS OF FACT

1. The HGEA was, for all relevant times, an employee organization and the exclusive representative, within the meaning of HRS § 89-2, of the employees of the State of Hawaii included in bargaining units 02, 03, 04, 09, and 13.

2. LINDA LINGLE was, for all relevant times, the Governor of the State of Hawaii and the public employer, within the meaning of HRS § 89-2, of employees of the State of Hawaii. WATANABE was, for all relevant times, the Director of Human Resources Development, State of Hawaii and represented the public employer in dealing with State employees, and is therefore a public employer within the meaning of HRS § 89-2. DHS was, for all relevant times, an agency of the State of Hawaii, and represented the public

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[1]HRS § 91-11 provides as follows:

> Examination of evidence by agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

While Board members Springer and Hirakami did not participate in the hearings in this case, they have reviewed the entire record, including the pleadings, transcripts, and exhibits filed herein.

employer for DHS employees and is therefore a public employer within the meaning of HRS § 89-2.

3. In 2000, certain personnel statutes and laws were repealed by Act 253, the Civil Service Reform Act, requiring DHRD to draft and implement personnel policies and procedures ("P&P") for State employees. Transcript ("Tr.") 11/23/04, pp. 7-8.

4. DHRD Director WATANABE tasked her Deputy Director Janice Kemp ("Kemp") to coordinate the drafting of the P&Ps with the assistance of WATANABE's Special Assistant and various division chiefs. Id., p. 11. Thirty three P&Ps were promulgated. Tr. 11/23/04, p. 9.

5. Kemp was also the lead to consult and/or negotiate with the unions over the P&Ps. Id., p. 83. The consultation process involved providing notice to the unions of the proposed policy, giving the unions the opportunity for meaningful feedback, affording a reasonable time to respond, and consideration of the feedback. Id., pp. 16-17. If comments were not received, the policy would be implemented. Id., p. 22. If DHRD disagreed with the union's comments, DHRD would inform the union of that fact and would inform the union of the policy and the proposed effective date inviting comments. Id., p. 12. Any late comments would be considered for future amendments. Id., p. 22.

6. Kemp distributed the draft policies to the unions in different phases involving different functions and gave the unions the opportunity to provide comments. Id., p. 83.

7. The Exempt Service P&P provides that appointments to exempt positions shall not exceed the duration of the period for which funds have been appropriated. Resp. G. As to Job tenure, exempt employees are considered to be "at will" employees and may be terminated at any time, subject to all applicable contractual provisions and federal and State employment laws. Id. The P&P also provides that upon hiring and at each appointment extension, exempt employees shall be clearly informed of their status as "at will" employees by providing such notice in writing. Id.

8. The purpose of the Exempt Service P&P was to clarify to either incoming or new exempt employees or those being reappointed that they are appointed under HRS § 76-16, do not build tenure with the State, and that there is an end date to the appointment. Tr. 11/23/04, pp. 28-29. The P&P does not deprive or remove any protections or benefits as it is clearly subject to the applicable collective bargaining agreements and executive orders. Id.

9. By letters dated June 10, 2003, WATANABE transmitted three sets of P&Ps to Russell Okata ("Okata"), HGEA's Executive Director, and any questions on the P&Ps were to be directed to Kemp. Respondents' ("Resp.") Exs. A-1, A-4, and A-7. Id. The first set of P&Ps transmitted pursuant to Article 4, Personnel Policy Changes, of the various contracts for notification and sharing concerned Medical/Physical, Mental Examination Policy; Types of Appointments to Civil Service Positions; Competitive Recruitment for Civil Service Positions; Certification of Eligibles for Civil Service Positions; Administrative Review of Initial Pricing Actions of Civil Service Classes; and Effective Dates of Classification Actions.[2] Id.

10. The second set of P&Ps sent by letter dated June 10, 2003, to Okata concerned Hiring Rates/Recruitment and Appointment Above the Minimum Pay Rate for Civil Service Positions; New Probation Period Policy; Recruitment Incentives for Civil Service Positions; Shortage Category for Civil Service Positions and Employees, and Accidental Injury Leave. Resp. Ex. A-4. These P&Ps were transmitted pursuant to Article 4 of the various contracts, but offered to solicit feedback and "consult" with the HGEA regarding the adoption of the P&Ps. Id. Questions were to be directed to Kemp and WATANABE requested written comments no later than June 30, 2003.[3] Id.

11. The third set of P&Ps sent by letter dated June 10, 2003, from WATANABE to Okata concerned Placement of Disabled Civil Service Employees Not Covered by the Return to Work Priority Program; Internal Vacancy Announcement Policy for Civil Service Positions, and Return to Work Priority Program Procedures. Resp. Ex. A-7. WATANABE indicated that mutual agreement was sought for these P&Ps and requested written contact by June 30, 2003, or it would be assumed that the Union concurred with the P&Ps. Id.

12. Also by letters dated June 10, 2003, WATANABE transmitted copies of the P&Ps to Elizabeth Clancey, International Union Area Director, AFSCME and Andre Lennon, President, PEMAH, for their respective review and comment. Resp. Exs. A-10 and A-11.

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[2]Similar letters were sent to Guy Tajiri ("Tajiri"), Business Manager, Hawaii Fire Fighters Association ("HFFA"), and Peter Trask ("Trask"), State Director, United Public Workers ("UPW"). Resp. Exs. A-2 and A-3.

[3]Similar letters were sent to Trask and Tajiri. Resp. Exs. A-8 and A-9.

13. By letter dated August 18, 2003, WATANABE transmitted to Okata and others, 12 P&Ps considered Phase 1 Policies, which became effective August 11, 2003. Resp. Ex. B. These concerned Effective Dates of Classification Actions; Hiring Rates/Recruitment & Appointment Above Minimum Pay Rates for Civil Service Positions; Shortage Category for Civil Service Positions; Administrative Review of Initial Pricing of Civil Service Classes; Types of Appointments; Competitive Recruitment for Civil Service Positions; Placement of Disabled Civil Service Employees with Environmental Non-Work Related Injuries or Illnesses; Certification of Eligibles for Civil Service Positions; Medical, Physical, and Mental Health Requirements for Civil Service Employees, New Probation Period; and Return to Work Priority Program. Id.

14. By letter dated August 19, 2003, WATANABE transmitted four P&Ps to Okata for consultation regarding Separation from Service; Temporary Reallocation of Civil Service Positions; Administrative Review of Classification Actions for Civil Service Positions; and Training and Employee Development. Resp. Ex. C. WATANABE requested receipt of written comments by September 8, 2003.[4] Id. As there was a meeting scheduled with Noel Ono ("Ono") of HGEA and Carolee C. Kubo ("Kubo"), Union Agent, HGEA Managerial and Confidential Employees Chapter ("MCEC"), on the Phase 2 policies on August 19, 2003, the four documents were hand-delivered to Ono. Tr. 11/23/04, pp. 78-79.

15. By letter dated September 10, 2003, WATANABE transmitted the Exempt Service P&P to Okata for consultation along with seven other P&Ps concerning Medical, Physical and Mental Health Requirements for Exempt Employees; Internal Vacancy Announcements for Civil Service Positions; Official Personnel Folder; Performance Incentives; General Responsibilities for Administration of Personnel Programs; Employment-Related Personnel Files, and Student Intern Program.[5] Resp. Ex. D. WATANABE requested receipt of written comments by October 6, 2003.[6] Id.

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[4]Similar letters for consultation were sent to Tajiri and Trask; letters requesting comments were sent to Ho (formerly Clancey) and Lennon. Resp. Exhibits C-2, C-3, C-4, and C-5.

[5]Judith Yokoyama, Secretary to the Deputy Director Kemp, personally copied and mailed the correspondence and the P&Ps to the unions and none of them were returned as undeliverable. Tr. 11/23/04, pp. 101-04.

[6]Similar letters for consultation were sent to Tajiri and Trask; letters requesting comments were sent to Ho and Lennon. Resp. Exs. D-2, D-3, D-4, and D-5.

16. By letter dated September 29, 2003, Kubo wrote to WATANABE with comments on the September 10, 2003, transmittal of policies on behalf of excluded employees.[7] Resp. Ex. E.

17. By letter dated October 15, 2003, WATANABE responded to Kubo's questions and comments. Resp. Ex. F.

18. By letter dated November 26, 2003, DHRD transmitted a set of P&Ps to Okata and the other employee organization heads, representing Phases 1, 2 and 3 P&Ps. Resp. Ex. G. The instant Exempt Service P&P, Policy No. 1000.001, was included in Phase 3. Id. Attachments to the Exempt Service P&P included Attachment A, Application for Exempt Employment, Attachment B, Suitability Questionnaire, and Attachment C, Sample Written Notice of "At Will" Status. Id.

19. Kemp did not receive any comments or telephone calls from the HGEA indicating that there was a problem with any P&P.[8] Tr. 11/23/04, p. 87. Kemp met with Ono and Kubo on August 19, 2003, to discuss the Phase 2 policies, and no written comments were received from Ono. Id., pp. 81-82. In addition, in October 2003, Kemp met with Kubo and Dayton Nakanelua and Dean Arashiro from UPW on the Phase 3 policies.[9] Id. Even after the finalization of the P&Ps, Employer remained willing to enter into a dialogue with the unions to discuss the issues and modify the P&Ps, if necessary. Id., pp. 96, 98, 99.

20. On June 28, 2004, Leon Noe, a Unit 13 HFDC architect, was asked to sign a DHS document entitled, "Notice of At Will Employment" ("Notice"). Union's Exhibit 1. The Notice contained the following language:

> The Department of Human Resources Development, Policies & Procedures Manual, 1000.001, requires that all exempt

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[7]While WATANABE considered Kubo's comments to represent HGEA's views (Tr. 11/23/04 pp. 22-23), Kemp was aware that Kubo represented the Managerial and Confidential Chapter of employees (Tr. 11/23/04 p. 85).

[8]Kemp did not view HGEA's lack of any response as extraordinary because the Union did not submit any written response to any P&P. Tr. 11/23/3, p. 87. Moreover, the Employer was unaware that the matter was not received by HGEA because Kubo responded and no correspondence was returned undeliverable.

[9]The UPW requested additional two-week increments to review the P&Ps which DHRD permitted, but the union did not submit substantive objections to the P&Ps. Id., p. 66.

employees upon hiring and at each appointment extension, be clearly informed of their status as "at will"employees.

The position that you are being appointed to is exempt from civil service. As such, you do not possess the same job security that civil service employees possess, subject to any collective bargaining agreement provisions (employees covered by collective bargaining) or executive order provisions, (employees excluded from collective bargaining.) As an "exempt" employee, your employment is considered to be "at will" which means that you may be discharged from your employment at any time at the prerogative of your appointing authority (department head) or your appointing authority's designee. This is true whether your appointment is for a stated duration or is for an indefinite period.

21. Upon learning that the DHS notice was part of a newly adopted policy of which they had no record, the HGEA filed this complaint alleging that DHS violated its duty to consult. According to Randy Perreira ("Perreira"), HGEA Deputy Director, the HGEA had no record of receiving the September 10, 2003 letter from WATANABE transmitting and requesting consultation on, inter alia, the P&P on Exempt Service. Tr. 11/22/04, pp. 34, 46. Whenever a request for consultation is received by the Union, the request is logged and a Field Services Officer coordinates the timetable with the agency and meets with employer representatives, and Perreira was unable to locate the correspondence in the log. Tr. 11/22/04, p. 14. Perreira moreover checked with the HGEA Field Services Officers who denied receiving the September 10, 2003, request for consultation. Tr. 11/22/04, p. 57. HGEA however, received the June, August, and November letters but did not receive the September 2003 letter requesting consultation on the Exempt Service P&P. Tr. 11/22/04 pp. 63-64.

22. Edwin Nose ("Nose"), DHS Personnel Officer, followed the P&P by requiring exempt DHS employees to execute the Notice of At Will employment. Tr. 11/22/04, p. 90. Nose confirmed that the department has not changed practices in dealing with exempt employees; the employees have not lost any rights or benefits; and there have been no changes in conditions of employment. Tr. 11/22/04; p. 99. While exempt employees do not possess the same job security as civil service employees, if they are included in the bargaining units, their rights remain subject to the collective bargaining agreement provisions. Tr. 11/22/04, p. 100. The fact that the employees are "at will" employees does not mean that the employer should be arbitrary, capricious or discriminatory in a discharge action. Tr. 11/22/04, p. 105.

23. The Board finds from the preponderance of evidence in the record that the Employer, through WATANABE promulgated P&Ps to replace the statutes that had been repealed by Act 253, SLH 2000. As part of the process, Kemp proceeded to consult and/or negotiate with affected unions on the P&Ps. The Board finds that Kemp distributed the P&Ps for the unions' review and comments, or consultation, or mutual agreement. The Exempt Service P&P, inter alia, requires the employer to inform an exempt appointee to be informed of his or her status as "at will" employee, subject to applicable contract provisions to the contrary, upon hiring and at each appointment extension. The P&P was part of the Phase 3 policies distributed on September 10, 2003, and as intended, does not diminish or reduce the rights of exempt bargaining unit members. The P&P provisions remain subject to applicable contract provisions and executive orders. Although the policy was sent to the HGEA in September for consultation, the HGEA did not receive the policy. The P&P was then distributed to the HGEA on or about November 26, 2003. The HGEA did not file the instant complaint alleging that the Employer failed to consult over the P&P, until after DHS required its employee to sign a Notice of At Will Employment.

In the instant case, the Employer acted reasonably in attempting to consult with the Union - the notice was sufficiently detailed, included the Exempt Service P&P, and invited consultation. Unfortunately, the HGEA has no record of its receipt but the evidence indicates that the Employer sent the documents to the HGEA. In any event, the documents were distributed to the HGEA in November and with no further comments or objections from the HGEA. Moreover, the Employer representatives indicate their willingness to discuss any of the "finalized" P&Ps. Under these facts, the Board finds that the HGEA failed to prove that the Employer violated HRS §§ 89-13(a)(5), (7), and (8) by not consulting over the Exempt Service P&P prior to its promulgation and implementation.

DISCUSSION

The issue raised by the instant complaint is whether the Respondents wilfully violated HRS §§ 89-13(a)(5), (7), and (8)[10] by unilaterally implementing changes to existing

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[10]HRS §§ 89-13(a)(5), (7), and (8) provides in part as follows:

> Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:
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> * * *

terms and conditions of employment covered by Units 02, 03, 04, 09, and 13 collective bargaining agreements when they promulgated a policy which allegedly deprived exempt employees from negotiated rights, benefits and protections granted to them under their respective agreements by converting these employees to "at will" employees without consultation or mutual agreement?

Based on the record in this case, the Board finds that the Exempt Service P&P, as intended by Respondents, does not change the status of exempt employees included in collective bargaining units to at will employees because the employees remain subject to the applicable collective bargaining agreement provisions. Thus, notwithstanding the provision in the sample Notice of "At Will" Employment attached to the P&P stating that the employee is considered to be "at will" who can be discharged at any time at the prerogative of the appointing authority, applicable collective bargaining agreements may provide job security for the exempt employee in the proper case. Tr. 11/22/04, p. 105. While it appears that the P&P unilaterally changed existing terms and conditions of employment in the various HGEA collective bargaining agreements as contended by Complainant, the Board finds that the P&P does not change the status of the employee. Therefore, rather than negotiation, the Board finds and the parties agree that the matter was subject to consultation.

Duty to Consult

In Hawaii Nurses Association, 2 HPERB 218 (1979), the Board discussed the duty to consult provided in HRS § 89-9(c). The Board stated at 226:

> The primary reason for a consultation provision is to facilitate employee participation in joint decision making on substantial and critical matters affecting employee relations which are normally determined by management alone. Matters of consultation do not require a resolution of differences. "All that is required is that the employer inform the exclusive representative of the new or modified policy and that a dialogue as to the merits and disadvantages of the new or proposed policy or policy change take place." Cites omitted.

> (5) Refused to bargain collectively in good faith with the exclusive representative as required in section 89-9;
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> * * *
>
> (7) Refuse or fail to comply with any provision of this chapter;
>
> (8) Violate the terms of a collective bargaining agreement; .....

Consultation is not required for each and every employer action. However, consultation is required for major or "substantial and critical" matters affecting employee relations. Hawaii Firefighters Association, Local 1263, IAFF, AFL-CIO, 1 HPERB 650, 656-57 (1977). Here it is uncontested that the policy in question was a matter requiring consultation with the affected unions.

The standard of review by the Board on questions of consultation was recently expanded in decision No. 394, Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO, VI HLRB 1 (1978). In that decision the Board adopted as applicable to HRS § 89-9(c), the test crafted by Arbitrator Ted T. Tsukiyama in the Arbitration between the Department of Water, County of Kauai and United Public Workers, AFSCME, Local 646, AFL-CIO, (9/11/87). Arbitrator Tsukiyama stated:

> From the foregoing, the Arbitrator infers the requirement upon management "to consult" includes: (1) notice to the union, (2) of proposed personnel practices and policies of a major, substantial and critical nature, other than those requiring negotiations, (3) in reasonable completeness and detail, (4) requesting the opinion, advice or input of the Union thereto, (5) listening to, comparing views and deliberating together thereon (i.e., "meaningful dialog"), and (6) without requirement of either side to concede or agree on any differences or conflicts arising or resulting from such consultation.

In applying this test to the instant facts, the Board concludes that the Respondents did not violate their duty to consult with the HGEA regarding the adoption of the "at will" policy.

With respect to the notice to the Union, the Board finds that the Employer's notice of the proposed policy was adequate. On September 10, 2003, the employer representatives forwarded packets addressed to Okata and his counterparts in the UPW, HFFA, AFSCME, and PEMAH. The first paragraph of the packet's cover letter contained the following invitation:

> Pursuant to Article 4, Personnel Policy Changes, of our respective collective bargaining agreements, we would like to take this opportunity to solicit your feedback and consult with Hawaii Government Employees Association regarding the proposed adoption of the following policies and procedures.

The subsequent list included "Exempt Service" and the enclosed documents included the policy in question. In addition, credible testimony was received from WATANABE, Kemp, and Judith Yokoyama regarding the document's preparation and

mailing and the Board finds that the package was prepared, addressed and mailed to Okata. The HGEA, however, contests receipt. Perreira, HGEA's Deputy Executive Director, testified that a thorough search was made of the logs kept to identify matters requiring consultation and the September 10, 2003, WATANABE letter was not found in the logs. He further testified that internal inquiries had been unable to document receipt. The HGEA further argues that the written acknowledgment of receipt received by WATANABE from Kubo on behalf of the excluded MCEC unit of AFSCME was not determinative of HGEA's receipt because Kubo was not an employee or agent of the Union. Be that as it may, even though Kubo's response may not be dispositive of HGEA's receipt, her location in the same building and response on behalf of her employer, AFSCME, a fellow addressee, support a finding that the Employer properly mailed the notice and Respondents cannot be held responsible for whatever mistakes of sorting or assignment that might have occurred at Complainant's address.

In the instant case, it is uncontested that the required consultation meeting never occurred. WATANABE and Kemp uncontestedly testified and the Board accordingly finds that:

1. WATANABE and her Deputy Kemp both understood and proceeded pursuant to their understanding that consultation with the affected unions was required to promulgate the P&Ps pursuant to Act 253 SLH 2000;

2. The UPW transmitted and had accommodated requests for a meeting to discuss the proposed policies and that the deadline for comment be extended;

3. The Respondents invited and remained open for comment upon the policies even after finalization in November in order to prepare for and discuss any proposed or necessary amendment; and

4. Except for the filing of the instant complaint, the HGEA never communicated any questions or concerns regarding the exempt employees' policy. This was confirmed in Perreira's testimony.

It therefore appears that Respondents invited, were open to and remain open to consultation but the Union has never asked to meet. On these facts, the Board cannot conclude that Respondents wilfully refused or failed to consult with the Union over the Exempt Service P&P. Accordingly, the Board dismisses the instant complaint.

As this complaint only addresses the sufficiency of consultation and does not address in any way its application or interpretation. If instances of application or interpretation allegedly violate any rights protected under Chapter 89, Complainant remains free to seek redress before the Board.

PROPOSED CONCLUSIONS OF LAW

1. The Board has jurisdiction over the instant complaint pursuant to HRS §§ 89-5 and 89-14.

2. An employer violates HRS § 89-13(a)(5) by wilfully refusing or failing to bargain in good faith with the exclusive representative as required in HRS § 89-9.

3. An employer violates HRS § 89-13(a)(7) by wilfully refusing or failing to comply with any provision of HRS Chapter 89.

4. An employer violates HRS § 89-13(a)(8) by wilfully violating the terms of a collective bargaining agreement.

5. Based upon the evidence in the record, the Board concludes that the Complainant failed to prove that the promulgation of the Exempt Service P&P constituted a change in the terms and conditions of employment for included exempt employees represented by the Union. The testimony presented established that the P&P provisions are subject to the applicable contract provisions and executive orders.

6. Based upon the evidence in the record, the Board concludes that Complainant failed to prove that the Respondents wilfully failed or refused to consult over the Exempt Service P&P.

PROPOSED ORDER

The Board hereby dismisses the instant complaint.

DATED: Honolulu, Hawaii, May 21, 2007.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

EMORY J. SPRINGER, Member

SARAH R. HIRAKAMI, Member

FILING OF EXCEPTIONS

Any party adversely affected by the Proposed Findings of Fact, Conclusions of Law and Order may file exceptions with the Board pursuant to HRS § 91-9, within ten days of the service of a certified copy of this document. The exceptions shall specify which proposed findings or conclusions are being excepted to with full citations to the factual and legal authorities therefore. A hearing for the presentation of oral arguments may be scheduled by the Board in its discretion. In such event, the parties will be so notified.

Copies sent to:

Peter Liholiho Trask, HGEA
Jeffrey A. Keating, Deputy Attorney General
Joyce Najita, IRC