

DISPUTE PREVENTION & RESOLUTION, INC.
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Judge Karl Sakamoto (Ret.)
Arbitrator

THE ARBITRATION TRIBUNAL OF
DISPUTE PREVENTION & RESOLUTION, INC.

In the Matter of the Arbitration
between,

HAWAII GOVERNMENT
EMPLOYEE ASSOCIATION,
AFSCME, LOCAL 152 AFL-CIO on
behalf of ALL AFFECTED
BARGAINING UNIT EMPLOYEES
Claimant,

vs.

COUNTY OF MAUI,
Respondent.

) DPR NO. 21-0367-A
)
) ARBITRATOR'S FINDINGS OF
) FACT, CONCLUSIONS OF LAW,
) ORDER AND PARTIAL AWARD;
) CERTIFICATE OF SERVICE
)
) Arbitrator: Judge Karl K. Sakamoto
) (Ret.)
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**ARBITRATOR'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

I. STATEMENT OF THE CASE

This grievance came before this Arbitrator in an arbitration hearing, which was held between September 27, 2021 – October 1, 2021. The moving party, Hawaii Government Employees Association (“HGEA” or “Union”), asserted claims of violations of Articles 2, 3, 4, and 5, of the Bargaining Units (“BUs”) 2, 3, 4, 13, and 14 Collective Bargaining Agreements (“CBAs”), and Article 20 of the BUs 3, 4, and 13 CBAs, Article 22 of the BU 2 CBA, and Article 30 of the BU 14 CBA. The parties filed their briefs regarding the term “temporary” as defined and applied in Article 20 of the BUs 3, 4, and 13 CBAs, Article 22 of the BU 2 CBA, and Article 30 of the BU 14 CBA, and their Findings of Fact and Conclusions of Law on January 7, 2021.

Having reviewed the transcripts, evidence, and parties’ submissions, this Arbitrator now makes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

If it should be determined that any of these Findings of Fact should have been set forth as Conclusions of Law, then they will be deemed as such, likewise if any Conclusion of Law should have been set forth as Finding of Fact, then it will be deemed as such.

Parties

Randy Perreira is the Executive Director (“Executive Director Perreira”) of HGEA. Ex. JT-1 099; JT-2 096; JT-3 093; JT-4 101; JT-5 107. As Executive

Director of HGEA, Executive Director Perreira represents COM EEs organized into Bargaining Units 2, 3, 4, 13, and 14, among others. See Id.

Michael Victorino is the Mayor (“Mayor Victorino”) of County of Maui (“COM” or “Employer”). Tr. at 10-18; 11, lines 4-7. He has held that position since January 2019. Id.

Sananda “Sandy” Baz (“Managing Director Baz” or “Baz”) is the Managing Director of the COM’s Department of Management. Tr. at 366, lines 13-25; 367, line 1. He has held that position since January 2019. Id.

Alton Watanabe (“Watanabe”) was a Human Resources Specialist employed by the COM’s Department of Personnel Services. Tr. at 525, line 25; 526, lines 1-7. One of Watanabe’s supervisors was Personnel Director David Underwood (“Personnel Director Underwood” or “Underwood”). Tr. at 526, lines 8-11.

Underwood is the Personnel Director of the COM’s Department of Personnel. Tr. at 153, lines 20-5; 154, lines 1-5. He has held that position since July 2016. Id. In his role as Personnel Director, Underwood has acted as Mayor Victorino’s representative in negotiations with COM EEs, including those represented by the Union. Tr. at 154, lines 3-5; 155, lines 18-25; 156, lines 1-4, 18-20; 157, lines 3-13.

Mayor Victorino and Underwood’s testimony and statements are binding upon the COM.

Bargaining Unit Contract of Parties

The issues in this Arbitration are issues of Contract.

Underwood estimates that there are around 940 HGEA employees (“EEs”) that are organized into Bargaining Units (“BUs”) 2, 3, 4, 13, and 14, all of whom, unless otherwise stated, have been in service with the COM since at least March 4, 2020. Tr. at 255, lines 5-8. See Tr. at 15, lines 18-20. BU 14 has since split into two (2) separate BUs, BUs 14 and 15. See Tr. at 15, lines 18-25; 877, 18-25; 878, line 1.

The Union presented twelve of these COM EEs at this arbitration hearing. Tr. at 319, 718, 901. Their experiences are representative of their job classification. Tr. at 454-488; 495-501; 505-518; 721-742; 753-794; 797-818; 827-842; 844-855; 865-873; 876-894; 903-919; 921-945.

The BUs 2, 3, 4, 13, and 14 CBAs codify the EEs’ rights and Employer’s responsibilities related to wages, hours, and other conditions of work. See Ex. JT-1 001-106; JT-2 001-112; JT-3 001-109; JT-4 001-108; JT-5 001-114. Every article contained therein codifies a condition of wages, hours, or other conditions of work. Id. The COM found the EEs’ rights and Employer’s responsibilities contained therein to be acceptable. See Tr. at 160, lines, 23-5, 161, lines 1-6.

Mayor Victorino and Underwood were signatories to the BUs 2, 3, 4, 13, and 14 CBAs on behalf of the COM, and Executive Director Perreira was the sole signatory on behalf of the Union. Ex. JT-1 099; JT-2 096; JT-3 093; JT-4 101; JT-5 107.

Mayor Victorino and Underwood uniformly confirmed that, as a signatory, the Mayor, on behalf of the COM, is bound to follow the terms and conditions therein. Tr. at 18, lines 21-5; 161, lines 7-12.

Underwood acknowledged that, among other things, any rights and benefits provided by the Hawaii Revised Statutes (“HRS”) are included in Article 3 of each of the respective aforementioned CBAs. See Tr. at 172, lines 16-23. All other articles of the respective aforementioned CBAs pertain to rights and benefits that are not provided by the HRS. See Id.

Among other rights and responsibilities, the aforementioned CBAs include articles that describe the circumstances that trigger a COM responsibility to award a Temporary Hazard Pay (“THP”) wage differential to qualifying COM EEs. Ex. JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3. The relevant articles are Article 20 of the BUs 2, 3, and 4 CBAs, Article 22 of the BU 2 CBA, and Article 30 of the BU 14 CBA. Ex. JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3. The term “hazard” is not defined therein. JT-1 048-9; JT-2 046-8;

JT-3 044-6; JT-4 050-1; JT-5 061-3. Tr. at 121, at 6-18. See Ex. JT-1 001-106; JT-2 001-112; JT-3 001-109; JT-4 001-108; JT-5 001-114.

The purpose of the pay differential is to ensure that COM EEs receive compensation when they are exposed to a condition of work that that is not taken into consideration in the assignment of the respective EE's class to a salary range. See Tr. at 185, lines 8-14.

Temporary Hazard Pay- Procedural

15. BU 02 (Article 22); BU 03 (Article 20); BU 04 (Article 20), BU 13 (Article 20); and BU 14, (Article 30) have identical provisions regarding Temporary Hazard Pay and state the following:

TEMPORARY HAZARD PAY

A. Award and Approval. Upon recommendation of a department head or the Union, the Personnel Director, in consultation with the Union, shall grant hazard pay to Employees who are temporarily exposed to unusually hazardous working conditions and where the following conditions are met (where the Union initiates a request, the request shall be addressed to the affected department head with a copy to the Personnel Director):

1. The exposure to unusually hazardous working conditions is temporary;
2. The degree of hazard is "Most Severe" or "Severe"; and
3. The unusually hazardous working conditions have not been considered in the assignment of the class to a salary range.

B. Hazard Pay Differentials. Hazard pay differentials shall be based on the minimum step of the Employee's salary range and shall be prorated as follows:

1. Most Severe--twenty-five percent (25%).
 - a. Exposure likely to result in serious incapacitation, long period of time lost, or possible loss of life.
 - b. Accidents occur frequently in spite of reasonable safety precautions.
 - c. Frequent exposure to hazard where failure to exercise extreme care and judgment might cause an accident which would result in total disability or fatality.
2. Severe--fifteen percent (15%).
 - a. Frequent injuries likely but serious accidents rare.
 - b. Exposure leads to possible eye injuries, loss of fingers, or serious burns.

- c. Might cause incapacitation.
- d. Moderate periods of compensable lost time result.

3. Any disagreement on the granting of Temporary Hazard Pay or the differential granted shall be subject to the grievance procedure and in accordance with Step 2 of Article 11, Grievance Procedure.

C. Computing Hazard Pay. The basic unit for computing such payments shall be the hour provided that:

- 1. A fraction of an hour shall be considered an hour;
- 2. A half day's pay at hazard rates shall be allowed for one (1) or more but less than four (4) hours of hazard work per day;
- 3. A full day's pay at hazard rates shall be allowed for four (4) or more hours of hazard work per day; and
- 4. This pay is in addition to any other rate that may apply to the job.

D. Duration of Hazard Pay Award. Such hazard pay award shall remain in effect for a period not to exceed six (6) months but may be renewed by the Personnel Director or the representative upon showing by the department head that the working conditions and duties remain the same.

E. Forms and Other Requirements.

Recommendations for hazard pay differentials shall be submitted on such forms and such manner as the Employer may require.

Personnel Director Underwood confirmed that pursuant to section A. of the respective articles, the THP process begins with a recommendation or request for award of THP wage differential. See Tr. at 217, lines 24-5; 218, lines 1-3.

Either a COM department head, or the Union may initiate the process by making a recommendation for THP. Ex. JT-1 048; JT-2 046; JT-3 044; JT-4 050; JT-5 061.

Where the Union makes the request, the request shall be addressed to the affected department head, and the Personnel Director shall be provided with a copy. Id. Recommendations for hazard pay differential shall be submitted on such forms and such manner as the Employer may require. Ex. JT-1 049; JT-2 045; JT-3 046; JT-4 051; JT-5 063.

Personnel Director Underwood acknowledges that, pursuant to E. of the respective articles, the forms submitted do not determine whether a temporary hazardous working condition exists. Tr. 281, lines 23-5; 282, line 1.

Pursuant to the plain text of the respective CBAs, the first step in the process of awarding THP wage differential is to determine whether there is a *temporary hazardous working condition*. Tr. at 215, lines 2-11; 216, lines 3-8. See Ex. JT-1 005; JT-2 005; JT-3 005; JT-4 004; JT-5 005. JT-5 061.

Underwood confirms that to qualify as Severe or Most Severe, the condition only needs to satisfy one of the listed definitions. Tr. at 189, lines 14-25; 190, lines 1-4. Not all three. Id.

Mayor Victorino and Personnel Director Underwood are signatories to the BUs 2, 3, 4, 13, and 14 CBAs. Ex. JT-1 099; JT-2 096; JT-3 093; JT-4 101; JT-5 107. As signatories to the BUs 2, 3, 4, 13, and 14 CBAs, Mayor Victorino and Personnel Director Underwood were asked to interpret Article 20.D. of the BUs 3, 4, and 13 CBAs, 22.D. of the BU2 CBA, and 30.D. of the BU 14 CBA at this arbitration hearing, and both agreed that, pursuant to the plain text of those articles, an award for THP wage differential can awarded by renewal, which Underwood erroneously referred to as “extension”, every six (6) months. Tr. at 147, lines 14-4.

Underwood concluded that the award for THP wage differential may continue indefinitely because, while “each one would have an end, but there’s no limit, no stated limit on extensions.” Tr. at 246, lines 22-5.; 247, lines 1-2.

Although THP wage differentials are awarded in increments that are limited to six

(6) months, the six (6) month increments can be renewed indefinitely. See Tr. at 280, lines 20-5; 281, lines 1-3.

COVID-19

On January 30, 2020, the World Health Organization (“WHO”) declared that the outbreak of a novel coronavirus identified as “2019-nCoV” (“COVID-19”) was cause for a Public Health Emergency of International Concern. See Ex. U-47 001-7.

On March 4, 2020, citing, among other things, the determinations by WHO and U.S.D.H.H.S., Governor Ige issued a proclamation wherein he stated for the first time that COVID-19 was of “of such character and magnitude to constitute an emergency or disaster as contemplated by sections 127A-2 and 127A-14, Hawaii revised statutes” and “the danger ... so significant so as to warrant preemptive and protective actions in order to provide for the health, safety, and welfare of the people and the State.” Ex. JT-6 001-2. The proclamation defined emergency as “any occurrence, or imminent threat thereof, which result or may result in substantial injury or harm to the population or substantial damage to or loss of property.” Ex. JT-6 002.

The proclamation also defined disaster as “any emergency, or imminent threat thereof, which results in or may likely result in loss of life ...” Id. Governor Ige acknowledged, among other things, that, as an emergency and disaster,

COVID-19 was “highly contagious”, “spreading from person-to-person”, and “expected to spread” despite efforts to contain it. He also acknowledged that exposure to COVID-19 had “proven to be fatal.” Ex. JT-6 001-2. “[T]his occurrence”, determined, designated, and proclaimed Governor Ige, “of a severe, sudden, and extraordinary event has the potential to cause damages, losses, and suffering of such character and magnitude to affect the health, welfare, and living conditions of a substantial number of persons ... this occurrence, or threat thereof, may likely result in substantial injury or harm to the population or may likely result in loss of life or property ...” Ex. JT-6 003. Governor Ige then proclaimed an emergency period which was to last from March 4, 2020 to April 29, 2020, or by a separate proclamation, whichever occurred first. Ex. JT-6 004, 7.

Mayor Victorino believed that all statements in Governor Ige’s March 4, 2020 proclamation were true, to the best of his knowledge, at the time. Tr. at 36, lines 15-25; 37, lines 1-4.

On March 4, 2020, Mayor Victorino also issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY PROCLAMATION” wherein he determined, designated, and proclaimed that there was an “imminent danger or threat of a state of emergency or disaster in all or any part of the County of Maui, as of the date and time of this proclamation; and ... employees of the county ... may be ordered and directed as I deem necessary to carry out emergency management functions under

Haw. Rev. Stat. chapter 127A...”. Ex. JT-30 001-3. Mayor Victorino cited HRS § 127A-14(b) as the authority for his determination and declaration. Ex. JT-30 002.

HRS § 127A-14(b) empowers Mayor Victorino to declare a state of emergency in the County of Maui, but only if he personally determines that an emergency or disaster exists or that there is an imminent danger or threat of emergency or disaster. Ex. JT-30 002. Mayor Victorino described this as a “Proclamation of Emergency or Disaster”. Ex. JT-30 003. Despite the absence of any cases of COVID-19 in the County of Maui at the time, Mayor Victorino confirmed that he found that there was an imminent danger or threat of the emergency or disaster as of March 4, 2020, giving rise to the declaration of a state of emergency. Id. Tr. at 33, lines 22-5; 40, line 25; 41, lines 1-12.

Emergency and Disaster are defined by HRS § 127A-2. Ex. U-1 001. HRS § 127A-2 defines emergency in relevant part, as being “any occurrence ...which may result in substantial injury or harm.” Id. HRS § 127A-2 defines disaster, in relevant part, as being “any emergency ... which [is] likely [to] result in loss of life” Id.

Even before a single case of COVID-19 was detected in the County of Maui, Mayor Victorino acknowledged that COVID-19 was a condition that may result in substantial injury or harm and was likely to result in loss of life. See Ex. JT-30 001-3. U-1 001. Mayor Victorino further determined that there was an emergency

condition, and that that emergency condition could be articulated as, among other things, “the potential effects of COVID-19 have created an imminent threat to life, health, and safety of residents ... (“the emergency condition”). Ex. JT-30 001-4. The Proclamation of Emergency or Disaster was scheduled to terminate upon either sixty (60) days after the date of issue or issue of a Declaration of Termination of Emergency. Ex. JT-30 003.

The proclamations issued by Governor Ige and Mayor Victorino are herein referred to jointly as the “March 4th Proclamations”. These proclamations, and all that follow, have the full force and effect of law. Tr. at 13, lines 10-25; 1-4; lines 14-21.

Mayor Victorino acknowledged that the state of emergency he declared has not ceased since March 4, 2020. Tr. at 60, lines 5-11.

On March 11, 2020, the WHO determined that COVID-19 was a *pandemic*. Ex. U-48 001-4. On March 11, President Donald Trump of the United States of America declared a national emergency in response to the COVID-19 *pandemic*. Ex. JT-7 001.

The Governor and Mayor Victorino issued numerous Proclamations and Orders relating to COVID-19. The Proclamations and Orders establish the

hazardous nature of COVID-19 and the hazardous work condition created for HGEA employees in this matter.¹

HGEA Ordered Into COVID- 19 Work Conditions

COM ordered HGEA essential workers to perform in work conditions with the risk of hazardous COVID-19 exposure.

Personnel Director Underwood acknowledges that all permanent working conditions of COM EEs are considered in the assignment of each respective class to its respective salary range. See Tr. 183, 13-9. According to Underwood, if a condition becomes permanent then the COM will change the classification to reflect that it is permanent. Tr. at 183, lines 1-19;185, lines 3-7.

The COM has not changed or attempted to change any job classification to designate COVID-19 as a permanent condition that has been taken into consideration in the assignment of any class to any salary range. Tr. at 188, lines 19-22.

COM ordered HGEA workers to work at their respective workplaces during the period of COVID- 19. On March 12, 2020, Mayor Vitorino issued Mayor's Directive 2020-2 wherein he directed the COM EEs in the Executive Branch to

¹ The Proclamations and Orders of the Governor and Mayor Victorino are included in these Findings of Fact and Conclusions of Law as encompassed in Index 1, attached herein.

ensure that “there shall be no curtailment of critical services and offices shall remain open to the public” JT-46 002. Healthy employees were asked to report to work and, if needed, work overtime. Ex. JT-46 001. Those who refused to comply with the directive would be considered insubordinate and faced disciplinary action accordingly. Ex. JT-46 002. It was recommended that COM EEs not come to work if they were sick, but those who were sick were not precluded from coming to work. Id.

Managing Director Baz stated that his understanding of Directive 2020-02 was that COM EEs identified as performing *essential services* were expected to work, and he identified and directed subordinate COM EEs in his department to report to work for that purpose. See Tr. at 366, lines 13-25; 367, line 1; 438, 21-5; 439, lines 1-25; 440, lines 1-2.

On March 16, 2020, Governor Ige issued a Proclamation entitled “Supplementary Proclamation” wherein he, among other things, affirmed his previous determination that “an emergency or disaster as contemplated by sections 127A-2 and 127A-14, Hawaii Revised Statutes (HRS) continues in the state of Hawaii...” Ex. JT-7 001, 7. He then declared that a disaster emergency relief period shall exist that date through May 15, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-7 007.

Mayor Victorino accepted that he was bound by Governor Ige’s March 16, 2020 Proclamation. Tr. at 45, lines 15-21. Mayor Victorino agreed with Governor Ige’s determination that the arising of ten (10) cases between March 4, 2020 and March 12, 2020 was sufficient to declare a statewide emergency. Tr. at 46, lines 23-5; 47, lines 1-2. See Ex. JT-6 001-7. 001; JT-7 001.

On March 19, 2020, Mayor Victorino issued a Mayor’s Directive 2020-3 wherein he, among other things, directed “Executive Department and Agency Heads” to uniformly implement and effectuate his directive throughout the COM’s Executive Branch that “[a]ll necessary services *must* [emphasis added] continue ... Hours that the public can access County offices shall be from 8:30 am to 3:30 pm.” Ex. JT-47 003. Healthy employees were asked to report to work and, if needed, work overtime. Ex. JT-47 001. Employees who refused to comply with the directive would be considered insubordinate and faced disciplinary action accordingly. Ex. JT-47 002. It was recommended again that COM EEs not come to work if they were sick, but those who were sick still were not precluded from coming to work. Id.

On March 20, 2020, Mayor Victorino issued a directive entitled “COVID-19 EMERGENCY CLOSURE OF COUNTY OFFICES” where he **directed** all COM EEs to close all COM offices to the public, effective March 23, 2020. Ex. JT-48 001.

On March 22, 2020, Mayor Victorino issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY RULES, AMENDED MARCH 22, 2020” wherein he ordered all people presently in the COM to “stay at home or in place of lodging ...” Ex. JT-31 001. The reason for the order, according to Mayor Victorino, was that “the virus that causes Coronavirus 2019 Disease (‘COVID-19’) is easily transmitted, especially in group settings ... the dangerous conditions caused by the risk of the rapid spread of the virus and the need to protect residents and visitors to Maui County. Ex. JT-31 001.

Although “dangerous conditions” were declared, those performing “certain *essential activities* [emphasis added] ...” were exempted from the order and were not expected to “stay home or in place of lodging ...” *Id.* *Essential activities* included “performing work related to operation of an essential business or essential government function”. Ex. JT-31 002. Operation of Essential Business included essential infrastructure, including operation of public transportation and utilities ... [and] [c]onstruction and maintenance, public and private ...” *Id.* Government functions included “all services needed to ensure the continuing operation of the government agencies and provide for the health, safety, and welfare of the public.” Ex. JT-31 003.

The rules went on to specify that “all first responders, emergency management personnel, emergency dispatchers, and law enforcement personnel, as

well as others working to support essential government or essential business functions are categorically exempt from these rules.” Ex. JT-31 005-6. Those who failed to comply with the proclamation faced a misdemeanor charge, and upon conviction, a fine of \$5,000 or imprisonment of more than year, or both. Ex. JT-31 001.

All COM EEs, unless otherwise stated, were among those performing *essential governments functions*. Ex. JT-31 001-6; JT-46 001-3. These COM EEs were **directed** by COM to come to work. Ex. JT-46 001-3. See Ex. Tr. at 439, lines 6-8. Those that did not comply with the directive faced disciplinary action. Ex. JT-002. Their presence was deemed so essential that even those that were sick were not automatically precluded from coming into work. JT-46 001.

On March 23, 2020, all COM offices were supposed to be closed to the public pursuant to Mayor Victorino’s March 20, 2020 directive. See Ex. JT-48 001.

On April 2, 2020, Mayor Victorino issued Mayor’s Directive 2020-7 to all Executive Department and Agency Heads wherein he indicated that COM EEs would be tasked with managing instances wherein a COM EE tests positive for COVID-19. See Ex. JT-51 002. These tasks could include mitigation measures that included, but were not limited to, cleaning and disinfecting the work area of a

COM EE who has tested positive for COVID-19 in their absence. See Ex. JT-51 002.

Personnel Director Underwood acknowledged that COVID-19 is a hazard. Tr. at 197, lines 20-5; 198, lines 3-8.

The HGEA employees faced the likely risk of COVID- 19 virus exposure when COM ordered the essential workers to return to their respective workplace during the relevant times of this arbitration issue.

HGEA COVID-19 Working Conditions

County Employee Gail Cravalho, a **Lead Legal Clerk IV** in the Department of the Prosecuting Attorney held that position since June of 2017 and was employed at the Office of the Prosecuting Attorney since November 2012.

Cravalho worked in proximity to one to three other clerks and five attorneys. She indicated that the attorneys had offices and she worked in a cubicle. Cravalho stated that she was instructed that she was to report for work during the pandemic.

Initially Cravalho was on a rotating basis with other employees sanitizing high-touch areas of her office every two hours. She was also working from home part of the time and in the office three days per week. Most of the time the attorneys did not work in the office but instead opted to work from home.

Cravalho testified that Personal Protective Equipment “PPE”s were in short supply in the beginning of COVID and she was provided with hand sanitizer, gloves, and masks when they became available. Cravalho was afraid because her office remained open despite the numbers of positive COVID-19 cases on Maui being the highest in the State. She was fearful of contracting and spreading COVID-19. She expressed fear of the unknown regarding COVID-19.

Cravalho smoked during her workday in the presence of other employees, removing her mask to do so. She brought her school aged child into the workplace twice per week in the afternoons. She felt that there was more exposure to her daughter at school than at Cravalho’s office and that her daughter had a greater chance of getting COVID-19 in the school rather than at Cravalho’s office.

Cravalho also stated that she was more concerned about COVID-19 in her workplace than outside of work. Cravalho noted that employees as well as Maui Police Department Personnel entered through the rear door of the building near Cravalho’s work area. Cravalho acknowledged that she felt better about her working conditions when the Employer implemented cleaning and sanitizing protocols in her office and mask wearing requirements.

Cravalho tried not go out unless she absolutely had to although she admitted to have gone to restaurants twice to dine and to attending a funeral with approximately fifty people. She felt safer after having received the COVID-19

vaccine. Cravalho indicated that a co-worker contracted COVID-19 and had been in the office, but Ms. Cravalho did not get COVID-19.

County Employee Sherman Baisa, **Storekeeper I** with the Department of Water Supply worked in that position for approximately three to four months and as a HGEA worker. Baisa dealt with fellow employees and vendors who retrieve parts and/or deliver parts to Baisa in a warehouse. He is exposed to others in the workplace and to what his fellow employees are exposed to.

County Employee Donna Nunes, a **Clerk in the Rental Assistance Program of the Department of Housing and Human Concerns** for almost thirty years. When the pandemic started in March 2020, her office was closed until June 15, 2020. She was placed on a rotational schedule in three teams, where she would work between one to two days per week in the office and then telework from home. In June 2020 two teams were made. The office was opened on June 15, 2020, and by April 5, 2021 the office was fully staffed.

Nunes testified that she fears people that come into her office. She acknowledged that the County provided sanitizers, masks, plexiglass barriers. Nunes came into contact with approximately four people per day at work. Nunes stated that to her knowledge, nobody that worked in her section contracted COVID-19.

Nunes testified that she feels at greater risk in her workplace because people have called and told her that they tested positive for COVID-19 at work. Nunes works with others in the workplace and is exposed to members of the public.

County Employee, Hollie Dalapo, **Golf Course Operations Clerk** at the Waiehu Golf Course, Department of Parks and Recreation is a “starter” and a member of BU 3. She has been a starter since November 2018. She said she has been a BU 3 chair for two terms and is currently the chair for the Political Action Committee for Maui and a Union Steward.

Dalapo indicated that initially, employees brought in their own wipes to wipe down counters and any ID or credit cards. Later, employees were provided masks and were given hand sanitizers but since she did not like the smell of the sanitizer, she opted to bring her own. While not initially provided, wipes and sprays were subsequently provided to the workers by the Employer.

The Employer instructed workers to only have one person at the window and to practice six-foot social distancing at the golf course workplace. Masks and gloves were required to deal with the public. Waiehu Golf Course was closed from March 23, 2020 but she was instructed to come to work to marshal and ensure people did not come onto the golf course. The Waiehu Golf Course reopened on May 1, 2020 and has remained open since then.

When the golf course reopened in May 2020 approximately 150 people a day golfed, and that at the time of the arbitration there were on average 355 golfers per day. Dalapo would come into contact with the golfers and members of the public while in the office processing their IDs and receiving their payments by credit card.

Dalapo stated that she had a screen made to cover their office window so that people could not stick their head into the window to talk to them. Dalapo's boyfriend made the screen so that items such as identification cards and receipts could be passed through an opening under the screen. Dalapo said a plexiglass barrier was not given to her or offered.

Dalapo described her office work area as an approximately 20 by 20 room (unit of measurements were unspecified) which at times would have four people in it. Dalapo indicated that as a Marshal, she would drive around the course alone on a golf cart and talk to the golfers to keep them moving or ensure they follow the rules such as to not touch the flag poles and to limit their groups to four per tee time.

Dalapo indicated that before masks were optional outdoors, she ensured that golfers were always wearing a mask. Masks are required around the clubhouse where golfers go for their golf cart assignments, and social distancing is to be practiced. Golf carts are sanitized by wiping them down. The golf course has many signs that tell golfers not to gather. She felt that the policy of cleaning and the use of PPE has been effective.

Dalapo had concerns regarding contracting COVID-19 from particular golfers that indicated that their families had COVID-19. She also has the same concerns at work and outside of work regarding COVID-19.

County Employee Randy Yamashita, an employee in the **Enforcement Division of the Department of Parks and Recreation as a Parks Security Officer I** is a member of HGEA BU 3. Yamashita had been in the same position for approximately three years.

Yamashita testified that throughout the pandemic, he had to still enforce the rules and regulations of the parks. Yamashita was unsure the time period in which the parks were closed but he said he thought they were closed early on and then reopened a couple of months prior to the arbitration. Although the parks were closed, people were still going to them, and that prior to COVID-19 approximately 2500 people per day would be at Kanaha Beach Park, and after COVID-19 that dropped to approximately 200.

Yamashita had to deal with the public and they would cough around him, but that he wore his mask at all times. COM policy was that only one person could ride in a County vehicle at a time, and while initially he had to respond alone, additional staff later allowed them to work in pairs with use of their respective separate vehicles. At times because of COVID-19 concerns at work, he would double up on gloves and masks. He was provided with masks, but also had his own. He

disinfected himself before he got in the truck and when he got out of the truck and disinfected the truck itself.

Yamashita would leave his uniform outside of his house in a bucket and let it sit because he did not want to bring COVID-19 into his home. He said at the time, it was unknown how COVID-19 was transmitted between people. For a time, parks had shortened hours, but had recently returned to regular hours. The public orders limited gathering size at funeral homes indoors, led to people having celebration of life gatherings at the parks with hundreds of people present, and he would have to step into the middle of it and ask people to separate.

Yamashita stated that around January of 2021 through approximately June 2021 he was on light duty working in the office and was not out in the field. While working in the office, Yamashita testified that he had contact with co-workers and approximately forty to fifty people from the public per week. Usually, Yamashita would be in an office with two other people in order to maintain a distance of six feet. Yamashita stated that he felt slightly safer from COVID-19 while working in the office, rather than working outdoors.

Yamashita was fearful of COVID-19 because he is heavier and has asthma. He stated that although he is vaccinated, he felt that no matter the precautions taken, such as masks, people were still contracting COVID-19. Yamashita did not want to take COVID-19 home to his family and to his parents. Yamashita lives on a farm

which is isolated and that he does go out to get groceries. Yamashita stated that he didn't feel that the precautions he was taking at work such as social distancing, not having more than one person in the vehicle (if possible), sanitizing, wearing of masks were helpful in mitigating his exposure to COVID-19, but he would still practice those measures even if not required to by the County.

County Employee Estrellita Araga-Ehara was employed as a **Front Office Clerk** for eight years, and as a **Motor Vehicle License Examiner** for six years with the Department of Motor Vehicles, County of Maui and was a member of HGEA BU 3.

In March 2020, her office was closed to the public until May 2020. She went to work with four other employees in Kihei because she was required to and her assignment was to catch up on paperwork. From March 2020 through May 2020 there were no road tests Araga-Ehara had to perform.

In the beginning of the pandemic, no PPE was provided so she used her own. When the office was reopened, Araga-Ehara indicated that not all of counters had plexiglass barriers installed on them. Some of the counters did not have plexiglass barriers installed for approximately three weeks. When the office reopened in May 2020, Araga-Ehara had direct contact with the general public who did not maintain six-foot distancing. During this time in May of 2020, the office required the general

public to wear masks for interactions. After a month, a sign was put up stating what types of masks were allowed.

In August of 2020, Araga-Ehara was instructed by her office that modified skills tests to licensed drivers was to be implemented where she would observe applicants from outside the vehicle while they completed four skills. She would have to provide applicants instructions, answer questions and then observe and score the applicant. At times Araga-Ehara would be within six feet of the applicant. By this point, Araga-Ehara was provided a full gown PPE, gloves and masks.

In August 2020, plexiglass had been installed on all of the counters. Araga-Ehara would have to reach over the plexiglass in order to take the temperature of the applicant which would bring the person closer than six feet to her. Araga-Ehara opted to not use the full gown because she felt it was too hot for her to do so in Kihei. On average 150-250 people were serviced per day at the Kihei office by herself and four other HGEA employees.

On July 19, 2020 when Araga-Ehara returned from a vacation, and road testing for motor vehicle licensing had resumed after consultation with HGEA. Applicants were required to sanitize their vehicles while Araga-Ehara observed. Araga-Ehara would place a plastic sheet on the seat of the car and all windows would be required to be down and remain down during the road test. While in the vehicle Araga-Ehara would be within six-feet of the applicant. No plexiglass or other

protection was provided or ordered by office policy to separate the tested driver and the HGEA worker. The motor vehicle enclosed both the public applicant and the HGEA worker.

On July 7, 2020, while Araga-Ehara was out of the office, a customer came in and disclosed that she was under a doctor's care for COVID-19. The office was closed for a day and reopened after cleaning on July 9, 2020. Araga-Ehara was compensated for the day the office was closed and she did not need to report to work.

Araga-Ehara noted that her job description already contemplates that her position is a hazardous position due to the driving aspect of the job. Araga-Ehara testified that what PPE she used was up to her.

County Employee Dan Takamura, **cashier at the Central Maui Landfill, Department of Environmental Management** worked for the County for 30 years. For twenty of those years at the Central Maui Landfill, Takamura worked in various capacities as a spotter, operator, manager or supervisor, and now as a cashier for two years. Takamura was a member of HGEA, but he was not sure what BU he belonged to. He worked with two other people in the scale house and thought that the three people that worked in the office were also HGEA members but he was unsure.

During the pandemic daily numbers of people going to the landfill rose to approximately 700 per day and he would have contact with many of these people. He indicated that in the beginning of the pandemic, he was not given masks or hand

sanitizers for approximately one month. At times, he said that at the start of the pandemic when masks ran out, he used face coverings such as ski masks. Takamura had face to face contact with his co-workers and at some point two of his co-workers who did not report to work explained that they had COVID.

County Employee Sybil Lopez, **Molokai Planner** was a seven-year County employee. For six of the years she has worked for the County, Ms. Lopez has been the Molokai Planner (Planner IV). She was one of two Planning Department staff members on Molokai – herself and one clerical person. She said other people from various Departments work in the building that she works in.

Lopez's position is employed in a Maui position, but she resides on Moloka'i. When the pandemic was declared, she returned to her home on Moloka'i. Lopez's office was closed in March, April and May of 2020, and was allowed to work from home during that period. Lopez traveled to Maui for work for a short period of time where she had to work in the Maui office seven days per month in January and February of 2021.

In the beginning of the pandemic, Lopez reported that PPE was scarce, and it took a couple of weeks to get the supplies.

Lopez' job position involved work with others and contact during travel with members of the public on occasion.

County Employee Leon Burgos is a **Purchasing Technician** who is the manager and supervisor of five warehouses. He supervises one employee. Mr. Burgos testified that he is a member of BU 3. He interacted with approximately 20 pipefitters and an unspecified number of vendors daily. He was in charge of finding PPE for the Department of Water Supply, which he could not find until approximately April 2020, a month after the start of the pandemic. By June 2020, he said more of the PPE was available and by the end of summer, he could find everything that was needed. Mr. Burgos worked with approximately eight HGEA members.

County Employee Howard MacPherson, **Ocean Safety Officer II** with the Department of Fire and Public Safety had been in the position of Ocean Safety Officer II for five or six years. He previously was a pool guard with the County of Maui. His total employment with the County was approximately eight to nine years. MacPherson was formerly a member of BU 14, but believed that he was now a member of BU 15. He did not specify when he stopped being a BU 14 member.

MacPherson was assigned to Kamaole Beach Park II in Kihei from March 2020 until the arbitration. He is sometimes there alone, but normally is with another guard. At the beginning of the pandemic, the County closed the beach parks. He said the water was always accessible to the public, but the County parks were closed. During the first few months of the pandemic, MacPherson said that the rules

regarding the parks were changing constantly with regard to the beach parks. He was required to report to work throughout the pandemic on his normal schedule.

He is trained as an EMR first responder and as an EMT. As the Ocean Safety Officer II, he is an EMR first responder. Part of his job duties are to: assist the public in any emergencies in his general area; conduct beach and ocean rescues; assist with vessels or boats, kayaks or floatation devices; as well as to assist the public on the sand in the beach park and on the adjacent road. MacPherson stated that he administers resuscitation for anyone that may have cardiac arrest which would entail physical contact with the person he is trying to assist. He said he may also use an artificial external defibrillator or AED to shock a person to achieve normal heart rhythm which would also entail having physical contact with the person.

The Fire Department modified MacPherson's protocols to wear more PPE including masks, face shields, N95 respirators, and gown. He was instructed that he is to don while providing life saving measures but that he is not to stop providing life saving measure to don his gown. Wearing gear is difficult due to the outdoor environment with high winds and other issues and only possible if he has a partner present. MacPherson indicated that some of the PPE cannot be used during an ocean rescue.

Pandemic policies did not exist prior to the pandemic so they have been evolving. Early in the pandemic, MacPherson had one N95 mask issued for

emergencies but was not using it in the tower while his partner was present. On April 9, 2020, he received one surgical mask to use in the tower in the presence of his partner. This mask had to be reused so he purchased his own surgical masks for an unspecified period.

While working during the pandemic, MacPherson had contact with the public as the beach park opened in phases. He would talk to the public and help them understand what was going on and provide education regarding people needing to follow the rules and what the current rules were. MacPherson said the public restroom facilities were closed for a couple of months before portable toilets were installed and he wasn't sure where the unsheltered were using the facilities. In the beginning of the pandemic, MacPherson stated that there were fewer visitors in the park, but locals were using the park to exercise. When the parks reopened, the numbers of users were larger than pre-pandemic levels.

MacPherson testified that he was involved in Unit 14 contract negotiations and that for the 2019 to 2021 CBAs, the Temporary Hazard Pay article was one that was brought up in arbitration that was to be addressed. MacPherson stated that his salary range does have hazardous conditions in it and that his contract has a clause in it for extenuating circumstances but that his salary did not include COVID-19.

County Employee Amy Fuqua, a **Driver's Examiner** at the Lahaina Satellite Office of the Department of Motor Vehicles began her employment in March of

2017. She had been at the Lahaina Satellite Office for approximately four and a half years.

Fuqua testified that she felt the County did not have a good plan in place or communication for a few days after the pandemic was declared. Her office closed for a while and then reopened, but the office did not have plexiglass in place and did not have an abundance of gloves and masks. She said that she provided her own masks because she was only given one at work.

Fuqua testified that her office reopened in May 2020 and at that time she was sent to the park in Kihei to administer driver's licensing tests in August 2020. Even when her office was closed to the public, she still reported to work with co-workers and received documents from the main office to process. In both the Kihei and Lahaina locations, she had to get within six feet of people.

From August 2020 until June of 2021, modified driver's license examinations were in place. She was provided a hazmat suit but sad that it was too big, so she did not use it. In June of 2021, enclosed motor vehicle licensing examinations with the public began again. Temporal thermometers were used to check applicant's temperatures.

At one point, the Lahaina office was closed because a worker had come into close contact with someone outside of work and had tested positive for COVID-19. Fuqua stated she was not notified for three or four days of the positive worker, and

the office remained closed from around December 14, 2020, until Christmas. She did not contract COVID-19 at this time. While she was at home when the office was closed in December 2020, Ms. Fuqua was being compensated.

Former County Employee Natasha U'i Kalani, **Recreation Leader III**, Parks and Recreation for five and a half years was a member of BU 13. Kalani's workplace was located at Kaunakakai Gym Molokai. Kalani stated that at the beginning of the pandemic there was a shortage of PPE and she received a one-ounce bottle of hand sanitizer, with a five ounce bottle a month later. She testified that the Employer sent her limited N95 masks that were put it aside. She testified that many employees had cloth masks.

Kalani supervised four staff members and that they were all essential workers. The gym was closed to the public, but they still reported to work. Kalani described her workspace as being her own individual office next to a larger workspace where there were four desks that were able to be spaced at least six feet apart. She stated that when they made videos, they came within three feet of one another and would have to pass next to each other within six feet in order to get to the restroom.

Kalani reported that she voluntarily worked at the Moloka'i airport during the pandemic for seven and a half months as a screener for 1.5 times her normal pay. Kalani noted that she also helped at the COVID-19 testing site at Mitchell Pauole Center- setting up, cleaning up, monitoring the drive through, directing the elderly,

putting away the cones, tables, and tents, and picking up trash. Kalani testified that she was concerned at work because she didn't know if people visiting or stopping by were sick and in the community. Kalani stated that at these times, she did not know if people she was walking past had COVID-19.

Kalani stated that she was on leave in December 2020 and January 2021 and that she took off once or twice a week in April and May of 2021 to care for her children. Kalani stated that she was concerned that she did not know where co-workers went or who they were with outside of work.

Underwood acknowledged that the COM viewed COVID-19 as a *temporary* hazard at the time of his denial of the Union's request on June 16, 2020. Tr. at 243, lines 17-25; 244, lines 1-12. By this time, the COM had been aware of the hazard for nearly four (4) months. Id.

The possibility of contracting COVID-19 exists on all three islands that constitute the County of Maui. Tr. at 191, lines 12-4.

Exposure to COVID-19 may result in incapacitation and hospitalization. Tr. at 190, lines 17-21; 191, lines 24-5; 192, lines 1-4.

Exposure to COVID-19 may result in moderate periods of time lost. Tr. at 190, lines 5-8. People that tested positive and have been required to stay home for periods of time. Tr. at 190, lines 9-12.

The exposure to COVID-19 may result in loss of life. Tr. at 56, lines 1-3; 191, lines 20-3.

COM EEs were required to come to work and the risk of exposure to COVID-19 came from that directive. Tr. at 195, lines 21-4. See Tr. at 196, lines 12-21.

COM's placement of employees in an office which requires contact with the public posed a greater potential for exposure to COVID-19, than working solely with co-workers. Tr. at 192, lines 11-5.

COM's order to have HGEA workers work in their respective offices has the increased risk of COVID infection from co-workers as compared to workers allowed to telework. COM was aware of the potential for someone to contract COVID-19 outside of the workplace and then bring it into the workplace because they are reporting for work. Tr. at 196, lines 15-21.

HGEA workers that work with co-workers and the public have an increased potential for exposure to COVID-19 compared to workers that are teleworking. Tr. at 192, lines 16-9.

The workers working from home can control the nature and extent of exposure to COVID- 19 during work. To the extent COM controls the teleworkers work environment to other co-workers, or to the public, the workers may be entitled to THP.

Due to COM directives and orders, HGEA workers were frequently exposed to members of the public, in some cases 25-45 members of the public a day, and, in at least two cases, upwards of 300 and 700 per day, respectively. Ex. U-56 001, 3, 5; U-57 001-2. Tr. at 499, lines 1-4. 13-8; 496, lines 18-23; 497, lines 2-16; 506, lines 21-3; 508, lines 17-25; 512, lines 6-12; 723, lines 20-5; 724, lines 1-10; 830, lines 7-13.

COM EEs were often assigned to screen members of the public that visited COM facilities. Tr. at 458, lines 106. See Ex. JT-61 001. This screening took place inside of COM facilities. Tr. at 458, lines 106.

COM EEs were frequently required to go within six (6) feet of public visitors to their facilities in order to do their jobs. Tr. at 909, lines 23-5. While at work, COM EEs also handled mail and documents that were previously handled by members of the public and/or their colleagues. Ex. U-57 002. Tr. at 506, lines 24-5; 507, line 1; 514, lines 19-22; 904, lines 13-15; 907, 15-25; 908, lines 1-12; 910, lines 1-3. See U-21 003.

COM EEs were exposed to colleagues at work. See Ex. U-56 002, 4, 6; U-57 002. Tr. at 459, lines 13-15; 460, lines 13-6; 511, lines 23-5; 512, lines 1-5. On occasion, COM EEs were exposed to colleagues who were exposed to the public. Tr. at 485, lines 15-17; 496, lines 18-23.

Some COM EEs were temporarily relieved of exposure to the public in the early spring of 2020, however, many COM facilities never actually closed to the public, despite Mayor Victorino’s proclamation and directive otherwise. Ex. JT-48 001. See Tr. at 756, lines 8-25; 757, lines 1-25; 758, lines 1-15; 761, lines 7-21; 828, lines 20-4; 868, lines 2-6; 891, lines 18-25; 891, lines 1-23.

Despite official closures, many COM facilities, such as beach parks, parts supply depots, and dump sites continued to see members of the public. Tr. at 756, lines 8-25; 757, lines 1-25; 758, lines 1-15; 761, lines 7-21; 828, lines 20-4; 868, lines 2-6; 891, lines 1-25. Other COM offices, such as COM Departments of Motor Vehicles (“DMVs”), reopened and resumed contact with the public in May 2020. Tr. at 800, lines 6-13. See Tr. at 9-6, lines 14-7. The COM has since been identified as having the highest per capita positivity rate of any county in the State of Hawaii. Ex. U-37 001-3; U-44 001-3.

Mayor Victorino and Underwood acknowledged that, while the COM attempted to mitigate exposure to COVID-19 using PPE, distancing, and sanitizers, the COM did not eliminate the hazard of COVID-19 in the workplace. Tr. at 59, lines 1-14; 67, lines 18-23; 68, lines 23-5; 69, lines 1-9; 197, lines 1-2, 4-9, 14-25. See Tr. 198, lines 3-8.

PPE also has not always been available, and even where it was available, COM EEs have contracted COVID-19 despite using PPE. Tr. at 200, lines 10-25;

201, lines 1-16, 23-5; 202, lines 1-4. COM EEs started testing positive for COVID-19 and its variants in 2020, and they have continued to test positive into 2021. Ex. U-17 001-3; U-18 001-3; U-19 001-3; U-20 001; U-30 001.

Mayor Victorino acknowledged that there was an outbreak on Lanai in late October 2020. Tr. at 95, lines 1-3. See Tr. at 94, lines 18-25. Mayor Victorino confirmed that the infection count there increased from four (4) to at least 79 cases in just six (6) days. Tr. at 94, lines 22-5. Commenting on the Lanai outbreak, Mayor Victorino acknowledged that Maui District health officer Dr. Lorrin Pang said, “it’s scary how fast this thing goes.” Ex. U-28 005.

On December 17, 2020, COM DMV closed its Lahaina Branch to the public after an employee tested positive for COVID-19. Ex. U-17 001-3.

On December 31, 2020, Mayor Victorino issued directive 2020-18 wherein he directed that COM EEs shall continue to be used as screeners at Molokai Airport. Ex. JT-61 001.

Mayor Victorino acknowledged that on February 25, 2021, Maui County was recognized as Hawaii’s “[n]ew COVID-19 [h]ot [s]pot.” Ex. U-36 001. Tr. at 99, lines 17-25; 100, lines 1-3. The County of Maui averaged nearly 20 cases a day during the previous week, and the County of Maui’s seven-day positivity rate is not 4.33% compared to the state’s overall seven-day positivity rate of 1.2%. Ex. U-36 001. Tr. at 1010, lines 2-8. Maui County was the state’s leader in per capita

infections at the beginning of the pandemic a year ago ... Mayor Victorino was “very concerned about the increase in coronavirus cases...” Ex. U-36 001. Tr. at 101, lines 17-22.

On or around March 1, 2021, COM DMV closed its Lahaina Branch to the public for a second time after an employee tested positive for COVID-19. Ex. U-18 001-3. This COM EE tested positive for COVID-19 despite use of protocols intended to mitigate the severity of the exposure COM EEs faced. See Ex. U-18 003.

On March 31, 2021, a COM EE employed by the Treasury Division tested positive for COVID-19. Ex. U-19 001-2.

On April 9, 2021, Mayor Victorino imposed a curfew on Maui County to curb the spread of COVID-19 and ordered that only two members of each household could leave their homes at any given time to conduct essential activities. U-24 001. “These are difficult times ... and we’re doing everything in our power to stop the spread of COVID-19”, said Mayor Victorino. Id.

On May 7, 2021, Mayor Victorino issued Mayor’s Directive 2021-2 wherein, for the first time, he directed all Executive Department and Agency Heads to ensure that no symptomatic COM EEs be at work. Ex. JT-63 001-3.

On May 7, 2020, Mayor Victorino issued Mayor’s Directive 2021-3 wherein, for the first time, he reiterated his recommendation that all healthy

employees come to work, and directed that “[a]ll essential services must continue...” Ex. JT-64 001-2. Mayor Victorino acknowledged that a facially healthy person can still be an asymptomatic carrier of COVID-19. Tr. at 113, lines 23-5; 114, 1-2.

On August 2, 2021, The Maui News reported that Mayor Victorino asked state officials to delay the return of students to public school classrooms, citing new Centers for Disease Control and Prevention data showing that the DELTA variant ‘*can spread as easily as chickenpox.*’” Ex. U-41 001.

On August 10, 2021, Mayor Victorino issued Mayor’s Directive 2021-7 directing all COM EEs to show proof of vaccination or be subject to periodic testing. Ex. JT-68 001-2. On August 20, 2021, Mayor Victorino issued a follow-up memo wherein he attempted to justify the vaccination requirement by saying that “a strong response is necessary ... the Delta variant has caused a significant increase in cases statewide and here within Maui County ... This situation affects all of us, both within our work lives and at home. Our kupuna are no longer the only ones at risk.” Ex. JT-69 001.

According to Mayor Victorino, the *Delta* variant of COVID-19 has increased the number of infections. Tr. at 79, lines 2-5.

Mayor Victorino acknowledged that exposure to COVID-19 can lead to loss of life. Tr. at 56, lines 103. Indeed, according to Mayor Victorino, nine (9) people have died from exposure to COVID-19 in the COM. Tr. at 56, lines 1-3.

A vaccine has been made available, but even the vaccinated can test positive for COVID-19 if they are exposed to it one of its variants. Tr. at 79, lines 2-10.

Previous variants of COVID-19, such as the *California* variant, have been introduced to the state, but the *Delta* variant has been deadlier than the initial iteration of COVID-19 because the *Delta* variant has been responsible for more deaths. Tr. at 133, lines 4-10. Thus, while COVID-19 was already acknowledged be likely to result in loss of life, the Delta variant of COVID-19 is more likely than COVID-19 to result in loss of life. Ex. JT-6 003; JT-7 001; JT-19 001-2; JT-20 001-2; JT-21 001-2; JT-22 001-2; JT-23 001-2; JT-24 001-2; JT-25 001-2; JT-29 001; JT-34 001-3,10; JT-35 001-3,11; JT-36 001-4; JT-37 001-2,12; JT-38 001-13; JT-39 001; JT-40 001; JT-41 001-2,4; JT-42 001,14; JT-42 001,14; JT-44 002. U-1 001; U-22 001. Tr. at 36, lines 15-25; 37, lines 1-4; 45, lines 15-21; 56, lines 1-3. See JT-7 007; JT-16 028; JT-17 002-3; JT-18 031; JT-19 032; JT-21 033; JT-22 001-2; JT-23 035; JT-23 035; JT-25 035; JT-28 035; JT-32 001-3; JT-33 001-3; JT-41 004; JT-42 014; JT-44 003. U-1 001-3; U-2 001-2; U-3 001; U-4 001-8; U-5 001-4; U-6 001; U-7 001. Tr. at 56, 103; 79, lines 2-10.

On or around August 18, 2021, a COM EE employed by the Department of Finance at the New Service Center tested positive for COVID-19. Ex. U-20 001-2.

On August 24, 2021, the spread of the *Delta* variant prompted Mayor Victorino to suggest a “21-day break period for non-essential activities” Tr. at 104, lines 10-3. He made this suggestion because the *Delta* variant was surging throughout the County of Maui. Tr. at 104, lines 14-5.

COVID-19 and its variants are a hazard. Tr. at 68, lines 23-5; 69, lines 1; 197, lines 20-5; 198, lines 3-8.

Temporary Hazard Requests From Maui County Departments

On June 4, 2020, a COM department head of Housing and Human Concerns submitted written recommendations for THP to Personnel Director Underwood. Ex. U-56 001-6. Tr. at 173, lines 8-23. The job classifications of Bargaining Unit 03 listed as exposed to unusually hazardous conditions were: **Nutrition Program Aide; Senior Services Program Assistant I; Senior Services Program Assistant II; Senior Services Transit Aide I; Senior Services Transit Aide II.** The department head specifically identified exposure to the COVID-19 virus as a hazard and hazardous condition. *Id.* The department head acknowledged that exposure to COVID-19 could lead to what effectively amounted to severe injury, loss of life, or lost time, saying that exposure to COVID-19 was likely to result in “weeks of lost time at work, as well as prolonged illness which could have resulted

in hospitalization and even death.” Ex. U-56 001-6. The department head also acknowledged use of PPE, but admitted that, even with PPE, the hazardous condition could not be reduced or controlled. Ex. U-56-002, 4, 6. See Ex. U-56-001-6.

The department head acknowledged that COVID-19 was not a hazard that was not taken into consideration in assignment of the class. U-56 001-6. The department head acknowledged that exposure to COVID-19 was temporary. Id. All of the recommendations were affirmed by each direct supervisor and each department’s respective Division Chief, Departmental Personnel Officer, and the department’s Director. Ex. U-56 001-6; U-57 001-2.

Personnel Director Underwood received those recommendations from the County department. Tr. at 173, lines 8-23. He acknowledges that these are recommendations for THP submitted by department heads. Tr. at 336, line 25; 337, lines 1-4. He also acknowledges that he was aware that he had a duty to consult with the Union upon receipt of any recommendation for THP submitted by any COM department head. Tr. at 337, lines 5-11.

COM failed to consult with the Union upon receipt of the recommendations from THP submitted by COM department heads on June 4th and 22nd, 2020. Tr. at 337, line 12-4; 345, lines 8-10; 350, lines 1-3. Underwood indicated that he intends

to consult with the Union only upon the Arbitrator's order. See Tr. at 352, lines 11-25; 354, lines 6-18.

On June 22, 2020, Personnel Director Underwood received another recommendation for THP from a COM department head of the Finance Department. Ex. U-56, U-57 001-2. Tr. at 173, lines 8-23; 361, lines 9-13. Underwood acknowledges that this recommendation for THP was submitted by a department head. Tr. at 336, line 25; 337, lines 1-4. This department head was the most recent in growing number of COM department heads felt that their employees should receive THP for that exposure to COVID-19. See Ex. U-56 001-6; U-57 001-2. Tr. at 173, lines 8-23. The Bargaining Unit 03 job classifications listed as exposed to unusually hazardous conditions were: **Clerk II; Office Operations Assistant II; Secretary I; Information and Publicity Technician.**

The COM department head specifically identified exposure to the COVID-19 virus as a hazard and hazardous condition. Ex. U-57 001-2. This department head did not assert that the hazardous condition was permanent, and he did not deny that it was temporary. See U-57 001-2. This department head also acknowledged use of PPE, but admitted that, even with PPE, the hazardous condition could not be reduced or controlled. Ex. U-57 002. See Ex. U-57 001-2. This department head did not assert that the unusually hazardous working condition was taken into consideration in assignment of any class, and he also did

not deny that it was not taken into consideration in assignment of any class. See Ex. U-57 001-2. The department head did not deny that exposure to the usually hazardous working condition was temporary. See U-57 001-2. He also did not assert that it was permanent. Id.

The department head recommended 25% differential for exposure to the COVID-19 virus. Id. 25% differential refers to the Most Severe category of exposure to the unusually hazardous working condition as described in article pertaining to award of the THP wage differential contained in each respective CBA. See Ex. U-57 00-1. JT-1 048-9; JT-2 047; JT-3 045; JT-4 050-1; JT-5 062. Like the previous recommendations, this recommendation was affirmed by each direct supervisor and each department's respective Division Chief and Departmental Personnel Officer. Ex. U-56 001-6; U-57, lines 1-2.

Personnel Director Underwood acknowledged that he is required to review the recommendations and make a decision. Tr. at 175, lines 19-21. He also acknowledges that he was aware that he had a duty to consult with the Union upon receipt of any recommendation for THP submitted by any COM department head, which includes this recommendation. Tr. at 337, lines 5-11. He acknowledged that he did not consult with the Union upon receipt of the recommendation for THP submitted by the COM department head on June 22, 2020, nor did he consult with the Union on the recommendations submitted on June 4, 2020. Tr. at 337, line 12-

4; 345, lines 8-10; 350, lines 1-3. He claims that he has not responded or made a decision regarding any of recommendations he received from COM department heads on June 4 and June 22, 2020. Tr. at 351, lines 11-6.

The Department of Housing and Human Concerns in the Division of Senior Services prepared a Request for Temporary Hazard Pay for its Bargaining Unit 13 workers. The request noted, “Heightened risk of exposure to Covid- 19 virus on a daily basis...Staff was also exposed to conditions in high foot traffic establishments such as grocery stores, food vendors, banks, gas facilities, doctor’s offices, etc.” U-56.

The listed job classifications that were exposed to unusually hazardous conditions were: **Senior Services Program Specialist III; Senior Services Program Specialist IV; and Accountant III.**

Division Chief Ruth Griffith as the Senior Services Administrator recommendations reflected the following, “Hazard conditions were severe in that employees were required to have exposure to upwards of 50 individuals per day in order to meet essential needs of high risk, vulnerable population,...Working during the pandemic increased employee’s risk of contracting the disease, which would have resulted in weeks of lost time at work, as well as prolonged illness which could have resulted in hospitalization and even death. These conditions are

temporary, the hazard is severe, and the unusual conditions and risk are not within the assignment of the class. Therefore, recommendation is to grant hazard pay.”

The Department Personnel Officer recommended the hazard pay. The Department Director concurred and signed the Request.

On June 1, 2020, the Department of Finance, Division of DMVL submitted a Request for Temporary Hazard Pay for Kahului Service Center. The description of the hazard was, “Possible exposure to COVID- 19 virus from the public as well as contaminated documents and money received by our division. Employees in the Most Severe category- 25%.”

The job classifications listed as exposed to unusually hazardous conditions were: **DMVL Service Representative II; and DMVL Service Representative III.** The Division Chief signed the request.

Grievance History

On March 31, 2020, the Union submitted memos articulating requests for THP to all known department heads in the COM, including Personnel Director Underwood, wherein it requested award of THP wage differential for all qualified COM EEs. Ex. U-9 001-17. JT-70 001.

It was standard practice for the Union to submit a memo to the Personnel Director whenever it made a request for THP. Tr. at 187, lines 18-20; 219, lines 13-5; 272, lines 21-3.

Underwood confirmed that all departments received many of these requests for THP by March 31, 2021. Tr. at 174, lines 22-5; 175, lines 1-2. Underwood claims that he didn't see or doesn't recall seeing many of the other requests. Tr. at 166, line 25; 167, lines 1-4; 11-25; 168, lines 7-11, 17-21; 169, lines 14-8; 170, 3-6, 12-16, 24-5; 171-1-3. Despite not seeing many of the other requests, the Division Head of the COM informed Underwood of what he thought the Union sought. Tr. at 171, lines 12-5.

Personnel Director Underwood was aware that he had a duty to consult with the Union upon receipt of a request for THP. Tr. at 288, lines 16-8. Underwood admits that, while he did contact MID Chief Rust after he received the memo containing the request for THP, this call was not a consultation, and he did not engage further discussions MID Chief Rust about the request. Tr. at 181, lines 15-22.

The COM failed to consult with HGEA as required by their contract, including BU 02 (Article 22); BU 03 (Article 20); BU 04 (Article 20), BU 13 (Article 20); and BU 14, (Article 30).

COM unilaterally modified or nullified Article 20 of the BUs 3, 4, and 13 CBAs, Article 22 of the BU 2 CBA, and Article 30 of the BU 14 CBA as it failed to consult and obtain HGEA's mutual consent.

On April 7, 2020, Personnel Director Underwood, on behalf of the COM, responded to the Union's requests for THP by requiring the Union to submit the requests on a THP request form. Ex. JT-71 001. It was new form. Tr. at 187, lines 17-8; 272, lines 14-25; 273, lines 1-2. The form did not exist prior to the Union's April 7, 2020 request for THP. Tr. at 218, lines 15-22.

The form was in direct response to the Union's April 7, 2020 request for THP. Tr. at 218, lines 23-5; 219, line 1; 272, lines 14-25; 273, lines 1-2. The bottom of the form allows for either a supervisor or Union Agent to sign and submit the form. Ex. JT-71 002.

The BUs 2, 3, 4, 13, and 14 CBAs contain a duty to consult with the Union prior to effecting changes in any major policy affecting Employee relations. JT-1 004; JT-2 004; JT-3 004; JT-4 003-4; JT-5 004.

As a signatory to each of those CBAs, COM was aware of this duty. Tr. at 219, lines 16-9. See Ex. JT-1 099; JT-2 096; JT-3 093; JT-4 101; JT-5 107.

Underwood acknowledged and was aware that he had a duty to consult on the content of the form prior to implementation. Tr. at 219, lines 16-9. The Union also reminded him of his duty to consult on the content of the forms. Tr. at 219, lines 16-9; 220, lines 2-12.

Underwood did not consult with the Union about the content of the form because he felt that responding to the THP request was "very time critical." Tr. at

219, lines 5-8. See Tr. at 219, lines 20-2. Underwood still has not consulted the Union regarding the content of the form. Tr. at 219, lines 20-2; 220, lines 2-12.

MID Chief Rust agreed to temporarily use the new form with the understanding that the COM would develop and consult on a permanent form. Id. MID Chief Rust again reiterated her request for consultation on the form. Id. The COM still has not consulted on content of the form. Id.

On April 22, 2020, the Union submitted its THP recommendation/request to Personnel Director Underwood on the new form, as required by the COM. Ex. JT-72 001-2. The THP request was submitted on behalf of all COM EEs organized into BUs 2, 3, 4, 13, and 14. Ex. JT-72 001-2.

Personnel Director Underwood reviewed the Union's April 22, 2020 THP request, but he did not feel he had enough information to determine whether award of a THP wage differential was warranted. Tr. at 265, lines 6-14. Underwood had the duty to consult with HGEA to obtain the necessary information to make a determination whether to award THP.

Personnel Director Underwood conferred with other jurisdictions in Hawaii about the THP requests. Tr. at 163, lines 10-5, 22-5; 164, lines 1-12. Personnel Director Underwood's recollection is that some told him that they had denied the requests and that others had not yet decided how to respond. See Tr. at 164, lines 19-5; 165, lines 1-11.

On May 1, 2020, Mayor Victorino issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY PROCLAMATION” wherein he proclaimed, determined, declared, and found, among other things, that “there is imminent danger of a state of emergency in all or any portion of the County of Maui, as of the date and time of this Proclamation ...” Ex. JT-32 001-3. Mayor Victorino further proclaimed that “there have been 116 reported cases in the County of Maui and 618 in the State of Hawaii, and cumulative effects of the Emergency Condition may create a public calamity in the County of Maui...” Ex. JT-32 002. The rules would remain in effect until either sixty (60) days after the date of the Proclamation or when they are repealed by issue of a subsequent Proclamation or issuance or a Declaration of Termination of Emergency, whichever occurred first. Ex. JT-32 004.

On May 1, 2020, Mayor Victorino issued Directive 2020-09 entitled “COVID-19 Related Employee Health and Safety” to all Executive Department and Agency Heads wherein he directed the recipients to do the following, among other things, in relevant part:

All essential services must continue ... All departments are to immediately determine essential services and key personnel. ... [G]overnment employees shall fall into 4 categories: 1. Essential-function employees who must report to work, unless they are able to telework; 2. Essential function employees

who may telework ... It is recommended that those that fall into Group 1 shall report to work as directed by their supervisor.

Ex. JT-53 002-3. See Ex. JT-53 001-3.

On May 1, 2020, Mayor Victorino issued Directive 2020-10 entitled “Protocol for Positive COVID-19 Test Result for Employee” to all Executive Department and Agency Heads wherein he indicated that reiterated that COM EEs would be tasked with managing instances wherein a COM EE tests positive for COVID-19. See Ex. JT-54 002. These tasks could include mitigation measures that included, but were not limited to, cleaning and disinfecting the work area of a COM EE who has tested positive for COVID-19 in their absence. See Ex. JT-54 002. These duties remained largely same as those imposed in Mayor’s Directive 2020-7. Ex. JT-51 001.

The COM order for HGEA workers to work at their respective workplaces during the COVID- 19 pandemic created two general categories of workers. One group of workers were allowed to stay at home to telework. The second group of HGEA workers were mandated to work at their respective workplaces.

Grievance Denial

On June 16, 2020, Director Underwood issued a response on behalf of all department heads in the COM that received the Union’s requests. Tr. at 174, lines 3-6. The COM denied the Union’s request for award of a THP wage differential on

the grounds that the COM did “not believe that HGEA employees who were designated to perform essential functions were temporarily exposed to unusually hazardous working conditions.”. Ex. U-11 001. This was a denial of THP for all employees organized into BUs represented by HGEA, including, but not limited to, BUs 2, 3, 4, 13, and 14 who were performing essential functions. See Tr. at 207, lines 16-23; 211, lines 7-12; 351, lines 23-5; 352, lines 1-4.

Personnel Director Underwood didn’t feel he had enough information when he issued his June 16, 2020 response. Tr. at 211, lines 17-20, 23. He acknowledged that the COM would have the most accurate records of who reported for work and who did not during the period at issue. Tr. at 212, lines 4-10. Not the Union. Tr. at 212, lines 16-8. He did not ask the Union to provide more information prior to issuing the denial response. Tr. at 211, lines 24-5; 212, line 1.

The COM did not fulfill its duty to consult with HGEA pursuant to BU 02 (Article 22); BU 03 (Article 20); BU 04 (Article 20), BU 13 (Article 20); and BU 14, (Article 30) to obtain the full and complete information necessary to determine if it had to grant the requests from HGEA workers for THP.

According to Personnel Director Underwood, his response was based on Watanabe’s recommendation to deny the request for THP. Tr. at 221, line 25; 222, lines 1-4. See Tr. at 202, lines 11-7. Watanabe did not believe that HGEA members were entitled to THP. Tr. at 222, lines 18-22. He came to this conclusion

because, as of the date of the alleged inquiry, to his knowledge, no COM EEs were known to have contracted COVID-19 at work. Id. Underwood acknowledged that he was aware that some COM EEs had been exposed to COVID-19 and came to work. Tr. at 202, lines 18-21.

On October 1, 2020, the Union held a Step 2 meeting with Step 2 Designee Watanabe. See Ex. JT-71 001-2. Watanabe was assigned to handle the Step 2 Grievance filed by HGEA regarding the denial of the request for Temporary Hazard Pay. He requested HGEA Maui Division Chief Toni Rust to be more specific in the Step 2 grievance because the remedy requested was so broad by requesting Temporary Hazard Pay to all employees in all the units.

MID Chief Rust argued broadly that the COM had violated the articles of the CBAs alleged in the amended Step 2 grievance, which included the COM's decision to award a THP differential to COM EEs. Tr. at 580, lines 17-25; 581, lines 1-3. Toni Rust, is HGEA Maui Island Division Chief

According to Watanabe, his only responsibility as Step 2 designee was to determine whether to grant or deny the grievance. Id. In his mind, he did not have the responsibility to make an evaluation whether COM EEs qualified for THP. Tr. at 561, lines 19-24. He then drafted his response to the Step 2 grievance. Tr. at 553, lines 19-24.

Watanabe indicated that he did consider that employees were in contact with co-workers. At the time, he stated that there were no County employees that tested positive due to workplace and that employees had tested positive, but it was based on travel or community spread, not work.

Watanabe would have considered requests if he knew that manager(s) had recommended Temporary Hazard Pay. Watanabe felt that some employees may be eligible for Temporary Hazard Pay. Watanabe testified that HGEA did not provide information on any other jurisdictions that may have granted Temporary Hazard Pay and that he looked at the Step 2 Grievance as one that needed to be granted or denied because it was a class grievance.

Watanabe considered the existence of COVID-19 in the community when making his recommendation. He stated that he was not compelled to make the recommendation to grant the Step 2 Grievance as it was too broad a grievance to grant the remedy for all employees.

The COM listed three (3) reasons that it concluded “that HGEA employees who were designated to perform essential functions were not temporarily exposed to unusually hazardous working conditions.” Ex. U-11 001. First, according to Underwood, “Employees were provided personal protective equipment appropriate for their positions and work assignments, including face masks, gloves, gowns, hand sanitizer, and soap. Employees were also allowed to use their own face masks

if they chose.” Id. Second, “[m]easures were taken to provide for social distancing in the workplace. These measures may have involved staggering work shifts to reduce the number of people reporting to a work site, allowing employees to perform work remotely, closing County operations to the public, closing parks and community centers, and limiting the number of employees in a vehicle.” Id. Third, and finally, cleaning supplies were readily available to disinfect and clean workstations and work areas. All County of Maui departments are following directives by the Department of Health, Mayor, and the CDC.” Id.

On June 18, 2020, the Union appealed the June 16, 2020 denial by filing a Step 2 grievance. Ex. U-73 001-2. The grievance was addressed to the Step 2 designee, Personnel Director Underwood. Id. Personnel Director Underwood assigned Watanabe to act as his Step 2 designee. Tr. at 221, lines 10-7; 221, lines 22-4. Watanabe was the same individual who had previously recommended that Underwood deny the Union’s request for the THP wage differential. Tr. at 221, line 25; 222, lines 1-4.

On October 1, 2020, the Union amended its Step 2 grievance. Ex. JT-74 001-2.

Personnel Director Underwood claims that he did not review Watanabe’s draft before it was sent to Mayor Victorino. Tr. at 223, lines 10-3. Watanabe never discussed the Step 2 Grievance with Mayor Victorino. Tr. at 554, lines 9-11.

Mayor Victorino then signed the Step 2 response denying the grievance Step 2 and sent it to the Union. Ex. JT-75 002.

On November 6, 2020, Mayor Victorino denied the Union's grievance at Step 2 on behalf of the COM. Ex. JT-75 002. Mayor Victorino acknowledges that at this time, liquor control officers, maintenance crews, EEs of the Department of Water, and EEs of Department of Public Works were performing their essential duties in public. Tr. at 88, lines 19-25; 89, lines 1-13.

The Department of Personnel Services and Corporation Counsel advised Mayor Victorino to deny the grievance at Step 2, and he followed their advice. Tr. at 83, lines 17-25; 84, lines 5-9.

COM had the duty to obtain the information to render a decision, not HGEA. COM could request the information it needed to render its' decision from HGEA in the process of consultation.

COM could not reject a request for temporary hazard pay on the basis that it did not have sufficient information as it had the duty to consult with HGEA to obtain the information it believed was necessary to render a decision on the merits.

III. CONCLUSIONS OF LAW

The issue before the Arbitrator is whether the Union has met its burden of showing by preponderance of the evidence that the COM contractually violated

Articles 2, 3, 4 and 5 of the BUs 2, 3, 4, 13, and 14 CBAs, and Articles 20 of the BUs 3, 4, and 13 CBA, 22 of the BU 2 CBA, and 30 of the BU 14 CBA.

When the parties enter a contract to resolve their disputes by arbitration, the arbitrator has the power to decide any questions of contract interpretation, including historical fact or general law necessary, in the arbitrator's understanding of the case, to reach a decision. See Article 10 G. 1. & 2 of the BU 14 CBA; Kendall Mills, 8 LA 306, 309 (Lane, 1947); Borg-Warner Corp., 3 LA 423, 428-29 (Gilden, 1944); Garrett, "The Interpretive Process: Myths and Reality." Proceedings of the 38th Annual Meeting of NAA, 121, 143 (BNA Books, 1986).

A de-novo review of the totality of the circumstances and evidence is required, and the award must draw its essence from the collective bargaining agreement. See, *Hawaii Teamsters, Local 996 v. United Parcel Service*, 241 F.3D 1177, 1180-1181 (9th Cir. 2001); *United Paperworks International Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987).

Temporary Hazard Pay

The critical contractual language of the central issue of eligible temporary hazard pay is found in ARTICLE 22 - TEMPORARY HAZARD PAY², in pertinent part as follows:

A. Award and Approval. Upon recommendation of a department head or the Union, the Personnel Director, in consultation with the Union, shall grant hazard pay to Employees who are temporarily exposed to unusually

² Other relevant BU contractual language are as follows: "ARTICLE 2 [BUs 2, 3, 4, 13, and 14] – CONFLICT If there is any conflict between the provisions of this Agreement and any rules and regulations of any Civil Service or other personnel regulations applicable to Employees, or any contract between the Employer and the Employees, the terms of this Agreement shall prevail. Ex. JT-1 004; JT-2 004; JT-3 004; JT-4 003; JT-5 004; ARTICLE 3 [BUs 2, 3, 4, 13, and 14] - MAINTENANCE OF RIGHTS AND BENEFITS Except as modified herein, Employees shall retain all rights and benefits pertaining to their conditions of employment as contained in the departmental and Civil Services rules and regulations and Hawaii Revised Statutes at the time of the execution of this Agreement, but excluding matters which are not negotiable under Chapter 89, HRS. Ex. JT-1 004; JT-2 004; JT-3 004; JT-4 003; JT-5 004; ARTICLE 4 [BUs 2, 3, 4, 13, AND 14] – PERSONNEL POLICY CHANGES

A. All matters affecting Employee relations, including those that are, or may be, the subject of a regulation promulgated by the Employer or any Personnel Director, are subject to consultation with the Union. The Employer shall consult with the Union prior to effecting changes in any major policy affecting Employee relations.

B. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

Ex. JT-1 004; JT-2 004; JT-3 004; JT-4 003-4; JT-5 004.; ARTICLE 5 [BUs 2, 3, 4, 13, and 14]; RIGHTS OF THE EMPLOYER The Employer reserves and retains, solely and exclusive, all management rights, powers, and authority, including the right of management to manage, control, and direct its work forces and operations except as may be modified under this agreement. Ex. JT-1 005; JT-2 005; JT-3 005; JT-4 004; JT-5 005.

hazardous working conditions and where the following conditions are met (where the Union initiates a request the request shall be addressed to the affected department head with a copy to the Personnel Director):

1. The exposure to unusually hazardous working conditions is temporary.
2. The degree of hazard is “Most Severe” or “Severe”; and
3. The unusually hazardous working conditions have not been considered in the assignment of the class to a salary range.

Section A contains default contractual language to grant a temporary hazard pay recommendation when determining temporary hazard pay if the listed conditions are met. The contractual terms set forth that “[u]pon recommendation of a department head or the Union, **the Personnel Director**, in consultation with the Union, **shall grant** hazard pay to Employees...” (Emphasis added). The granting of mandated hazard pay to Employees is based on two factors. One factor is the Employee is “temporarily exposed to unusually hazardous working conditions.” The second factor involves the “following conditions are met: 1. The exposure to unusually hazardous working conditions is temporary. 2. The degree of hazard is “Most Severe” or “Severe”; and 3. The unusually hazardous working conditions have not been considered in the assignment of the class to a salary range.”

On June 16, 2020, the County’s primary and sole denial articulated that it did “not believe that HGEA employees who were designated to perform essential functions were temporarily exposed to unusually hazardous working conditions.”. Ex. U-11 001.” The County’s initial denials of HGEA requests for temporary hazard pay did not rely on nor assert that the degree of hazard was not “Most Severe” or “Severe.” COM did not rely on nor assert that the unusually hazardous working conditions have been considered in the assignment of the class to a salary range as contained in the second factor discussed above. Accordingly, the determination of this Arbitration focuses primarily on whether the HGEA employees were temporarily exposed to unusually hazardous working conditions.³

³ The Duration of Hazard Pay Award section is not determinative of whether COVID-19 is a temporary or permanent condition. Article 22, Section D reads: Duration of Hazard Pay Award. Such hazard pay award shall remain in effect for a period not to exceed six (6) months but may be renewed by the Personnel Director of the Director’s designated representative upon showing by the department head that the working conditions and duties remain the same. Ex. JT1. This section addresses the time period of applicable hazard pay, once a determination is made on the pay being qualified as arising from a temporary exposure to unusually hazardous working conditions. The pay award in effect for six months is subject to renewal for a period longer than six months.

Mayor Victorino and Personnel Director Underwood were signatories to the BUs 2, 3, 4, 13, and 14 CBAs. Ex. JT-1 099; JT-2 096; JT-3 093; JT-4 101; JT-5 107. Both agreed that, pursuant to the plain text of those articles, an award for THP wage differential can awarded by renewal. Tr. at 147, lines 14-4; 246, lines 22-5.; 247, lines 1-2. Underwood concluded that the award for THP wage differential may continue indefinitely because, “each one would have an end, but there’s no limit, no stated limit on extensions.” Tr. at 246, lines 22-5.; 247, lines 1-2.

The County’s argument that the risk of a COVID-19 pandemic was not contemplated by the contractual language for temporary hazard pay runs counter to the broad language of the paragraph. The THP section does not use limiting language for qualification to hazard pay. The section does not limit qualification to hazards that have been previously designated, or to pre-existing known hazards, or by hazards that were identified at the time of the drafting of the particular contract. The parties could adopt limiting language for only pre-existing conditions or known hazards but chose not to.

Contract terms are interpreted according to their plain, ordinary, and accepted sense in common speech. *Association of Seventh Day Adventists v. Wong*,

The duration of the pay award can range from short to indefinite. Tr. at 147, lines 14-4; 246, lines 22-5.; 247, lines 1-2. See Ex. JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3. As Mayor Victorino and Personnel Director Underwood confirmed above, the statutory law and CBAs enable award and renewal of an award of a THP wage differential for much longer periods –indefinitely in successive six (6) month increments or less. Ex. U-3 001; U-6 001. Tr. at 147, lines 14-4; 246, lines 22-5.; 247, lines 1-2.

The renewal process is in fact confirmed by the award and subsequent successive renewals they described that is in practice on Oahu at the City and County of Honolulu (“C&C of HNL”). See Exhibit “1”. The C&C of HNL regularly awards and renews awards of a THP wage differential to C&C of HNL EEs in six month increments for temporary exposure to hazardous working conditions. See *Id.* Awards for a THP wage differential for temporary exposure to nearly two-dozen distinct hazardous working conditions have been continuously renewed in six (6) month increments for ten (10) straight years or more without interruption. See *Id.* The duration of temporary hazard pay is subject to the prospective renewal of the parties’ upcoming BU contracts, generally occurring every 2 years.

130 Haw. 36, 305 P.3d 452, 461-62 (2013); *Cho Mark Oriental Food v. K & K International*, 73 Haw. 509, 520, 836 P.2d 1057, 1064 (1992). “Undefined terms are accorded their common meaning, which can be derived by reference to a dictionary.” *MEEMIC Insurance Co. v. Fortson*, 324 Mich. App 467, 481, 922 NW2d 154 (2018); see also, *Boeing v. Aetna*, 113 Wn.2d 869, 877, 584 P.2d 507 (1990) (Undefined terms in a contract must be given their "plain, ordinary, and popular" meaning). To determine the ordinary meaning of an undefined term, courts look to standard English language dictionaries.

Where terms are undefined, the court may resort to legal or other well-accepted dictionaries to determine their ordinary meaning. *Sierra Club v. Hawai`i Tourism Auth.*, 100 Hawai`i 242, 253, 59 P.3d 877, 888 (2002). A contract term is not ambiguous merely because it is undefined in the contract, nor does an ambiguity arise "because the parties can suggest creative possibilities for its meaning." *Chatham Corp. v. Dann Insurance*, 812 N.E.2d 483, 488 (Ill. App. 2004). If an undefined term has a "plain, ordinary, and popular meaning," there is no ambiguity, and the term should be enforced as written. *Id.* See also, *El Rincon Supportive Services Organization, Inc. v. First Nonprofit Mutual Insurance Co.*, 803 N.E.2d 532, 536 (Ill. App. 2004) ("An undefined [contract] term * * * is given its plain and ordinary meaning, which can be obtained from a dictionary").

Temporarily Exposed to Unusually Hazardous Working Conditions

In the determination of whether an HGEA worker should be granted temporary hazard pay under the totality of circumstances, the Arbitrator considers various factors which include but are not limited to:

1. The job classification, and job duties,
2. working in a situation of close contact to one or more person(s) (i.e. within 6 feet of another),
3. working with co-workers,
4. working in close contact with the public or non-employees,
5. performing duties in a work setting layout that placed the employee in close contact conditions to other persons,
6. the frequency and length of time of exposure to others,
7. working in an enclosed area with one or more persons,
8. working in an environment with inadequate reasonable personal protection equipment and/or policies,
9. ineffectiveness of PPE in the context of their job performance or duties,
10. working in a job position where the risk of COVID-19 prevents the full use and application of PPE,
11. compliance with governmental recommendations and orders related to mitigation,

- 12.the adequacy and effectiveness of PPE office policy
- 13.the office's reasonable and effective enforcement of its COVID- 19 policies
- 14.the worker's compliance with office PPE policy and use of PPE
- 15.expert opinions, including but not limited to physician or scientists, concerning mitigation or risks,
- 16.the severity of an exposure to COVID- 19,
- 17.the percentage of actual infection of workers in the job classification and of all HGEA workers,
- 18.the availability of alternative work environments, including working from home.

The severity of potential illness or death to workers from exposure to COVID- 19 is an important factor in determining the issue of temporary hazard pay. The risk of workers being exposed to this serious health hazard weighs heavily in the consideration of the various factors listed above. The lack of pervasiveness of actual infection, is outweighed by the severity of an actual infection. The risk of COVID- 19 exposure arises from working with co-workers, or members of the public. The risk of exposure to COVID- 19 cannot be eliminated in the workplace.

A. Temporarily Exposed

The HGEA employees were temporarily exposed with regard to the COVID-19 virus in the workplace. The use of the term *temporarily* in the contract is ambiguous. The term “temporarily” means “in a way that does not last long or forever.” Cambridge English Dictionary 2021. Black’s Law Dictionary 1441, 1464 (6th ed. 1990) defined *temporary* as follows: “That which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration. Opposite of *permanent*.” The Oxford Dictionary defines *temporary* as follows: “adj; lasting or intended to last or be used only for a short time; not *permanent*. ... OPPOSITE: *permanent*.”

The term temporarily as used in the contractual text at issue here is ambiguous. The Arbitrator looks at the parties’ actions or conduct in the application of the term “temporarily,” and the parties’ own application of the term to determine their meaning of the ambiguous term.

“Temporarily” is not permanent, or the opposite of permanent. The contract does address work conditions where an employee has an exposure that is not temporary but permanent. In this situation where permanency is an issue, the parties have contractually addressed how permanent exposures are determined by allowing that there should be an assignment of the class to a different salary range. See, ARTICLE 22 – TEMPORARY HAZARD PAY, Section 3.

An assignment of the class to a different salary range was not engaged in or commenced by the parties. COM did not initiate or attempt to initiate an assignment of any job class to a different salary range based on COVID- 19 virus being a permanent condition. The parties did not treat the COVID- 19 at issue as an issue of permanency requiring an assignment to a different salary range.

The County did not reject HGEA requests for temporary hazard pay on the basis that it would treat COVID- 19 condition as permanent and not temporary by assignment of the class to a salary range. Several COM departmental requests were made to have employees considered for temporary hazard pay. In each case, the County never took the position that COVID-19 was permanent and not temporary. COM failed to summarily reject or deny the departmental requests for temporary hazard pay. U Exhibit 56, 57.

Personnel Director Underwood acknowledges that all *permanent* working conditions of COM EEs are considered in the assignment of each respective job classification to its respective salary range. See Tr. 183, 13-9. According to Underwood, if a condition becomes *permanent* then the COM will change the job classification to reflect that it is *permanent*. Tr. at 183, lines 1-19;185, lines 3-7. As discussed above, the dictionaries define something that is *temporary* as being the opposite of something that is *permanent*. A condition is a *temporary* condition rather than a *permanent* condition if the COM have not changed the respective

COM's classification to reflect that the condition is *permanent*. See Tr. at 183, lines 1-19;185, lines 3-7.

Through the period of the arbitration hearing, COM did not change the job classification of any COM EE to designate COVID-19 or any variant as a *permanent* condition that has been taken into consideration in the assignment of any job classification to any salary range. Tr. at 188, lines 19-22.

COVID-19 and its variants are a *temporary* condition that is not considered a *permanent* condition for the purposes of HGEA qualifying for temporary hazard pay. The parties have treated the COVID-19 condition, contractually, as temporary, and not permanent.

The definition of “exposed” is “to put someone at risk from something harmful or unpleasant.” Cambridge English Dictionary 2021. It is undisputed that the order to have the County employees perform certain duties at their workplace exposed them to risks from the harmful COVID- 19 virus compared to workers allowed to work from home. The workers who work at home may choose the nature and extent of risk to a COVID- 19 exposure. An exposure in this context, is not the responsibility of COM, unless COM directed certain duties at home that involved work with others, and the public.

The workers ordered to work in their respective workplaces do not get to choose the nature and extent of risk to a COVID- 19 exposure. HGEA workers

may be put at risk by COM by being ordered to continue to work at their respective workplaces that are subject to risk of harm from COVID- 19.

Personnel Director Underwood acknowledged that placing employees in an office with contact to the general public poses a potential for exposure to COVID-19. Tr. at 192, lines 11-5. COM workers were exposed to colleagues at work. See Ex. U-56 002, 4, 6; U-57 002. Tr. at 459, lines 13-15; 460, lines 13-6; 511, lines 23-5; 512, lines 1-5. The exposure to co-workers are usually within closed rooms or building structures.

Personnel Director Underwood made the admission that he was aware of the potential for someone to contract COVID-19 outside of the workplace and then bring it into the workplace because they are reporting for work. Tr. at 196, lines 15-21. On occasion, COM EEs were exposed to colleagues who were exposed to the public. Tr. at 485, lines 15-17; 496, lines 18-23. The risk of exposure increases with the number of co-workers working within an enclosed space.

The workers that must work with the general public, have an increased potential for exposure to COVID-19. Tr. at 192, lines 16-9. While at work, COM EEs were frequently exposed to members of the public, in some situations 25-45 members of the public a day, and, in at least two cases, upwards of 300 and 700 per day, respectively. Ex. U-56 001, 3, 5; U-57 001-2. Tr. at 499, lines 1-4. 13-8;

496, lines 18-23; 497, lines 2-16; 506, lines 21-3; 508, lines 17-25; 512, lines 6-12; 723, lines 20-5; 724, lines 1-10; 830, lines 7-13. COM EEs were frequently required to go within six feet of public visitors to their facilities to do their jobs. Tr. at 909, lines 23-5.

Some COM EEs were assigned to screen members of the public that visited COM facilities. Tr. at 458, lines 106. See Ex. JT-61 001. This screening took place inside of COM facilities. Tr. at 458, lines 106. One notable example of this mandatory screening occurred in December 2020 where COM EEs acted as screeners at Molokai Airport. Ex. JT-61 001. While at work, COM EEs also handled mail and documents that were previously handled by members of the public and/or their colleagues. Ex. U-57 002. Tr. at 506, lines 24-5; 507, line 1; 514, lines 19-22; 904, lines 13-15; 907, 15-25; 908, lines 1-12; 910, lines 1-3. See U-21 003.

Some COM EEs were temporarily relieved of exposure to the public in the early spring of 2020, however, many COM facilities never actually closed to the public, despite Mayor Victorino's proclamation and directive otherwise. Ex. JT-48 001. See Tr. at 756, lines 8-25; 757, lines 1-25; 758, lines 1-15; 761, lines 7-21; 828, lines 20-4; 868, lines 2-6; 891, lines 18-25; 891, lines 1-23. Despite official closures, many COM facilities, such as beach parks, parts supply depots, and dump sites continued to see members of the public. Tr. at 756, lines 8-25; 757, lines 1-25;

758, lines 1-15; 761, lines 7-21; 828, lines 20-4; 868, lines 2-6; 891, lines 18-25; 891, lines 1-23.

Other COM offices, such as COM DMVs, reopened and resumed contact with the public in May 2020. Tr. at 800, lines 6-13. See Tr. 9-6, lines 14-7. The COM has since been identified as having the highest per capita positivity rate of any county in the SoH. Ex. U-37 001-3; U-44 001-3. A vaccine has been made available, but even the vaccinated can test positive for COVID-19 if they are exposed to it one of its variants. Tr. at 79, lines 2-10. Previous variants of COVID-19, such as the *California* variant, have been introduced to the state, but the *Delta* variant has been deadlier than the initial iteration of COVID-19 because the *Delta* variant has been responsible for more deaths. Tr. at 133, lines 4-10.

COM EEs began testing positive for COVID-19 and its variants in 2020 and have continued to test positive into 2021. Ex. U-17 001-3; U-18 001-3; U-19 001; U-20 001; Ex. U-30 001. COM EEs were directed to clean and disinfect the work area of a COM EE who has tested positive for COVID-19 in their absence. See Ex. JT-51 002; JT-54 002.

The parties' have interpreted the contractual language through their actions and decision-making to establish that the COVID-19 exposure is temporary for purposes of the current BU contract at issue.

B. Unusually Hazardous Working Conditions

COVID-19 in Hawaii presented an unusually hazardous working condition. The definition of “unusually” means “more than is usual or expected, or in a way that is not usual.” Cambridge English Dictionary (2021). “Hazardous” means “involving or exposing one to risk (as of loss or harm; bringing or involving the chance of loss or injury).” Meriam Webster Dictionary 2022.

The Proclamations of the Mayor of the City and County of Maui reflect and support the finding that COVID- 19 was more than usual or expected, as it led to a Proclamation to specifically address the health and safety risks to the people of the entire County of Maui. JT Exhibits 6-29; Index 1. The substance of the Proclamations established the pandemic as deadly and dangerous, and involved risks to the workers of the County. The COVID-19 virus is acknowledged as an “occurrence of severe, sudden, and extraordinary event has the potential to cause damages, losses and suffering of such character and magnitude to affect the health, welfare, and living conditions of a substantial number of persons...” JT 6. The COVID conditions were of “such magnitude to constitute an emergency or disaster as contemplated by sections 127A-2 and 127A-14, Hawaii Revised Statutes.”

The Mayor of the County of Maui’s own proclamation, to promote and protect the public health, safety, and welfare of the Maui residents, declared and found that the COVID virus created “imminent danger or threat of a state of

emergency or disaster in all or any portion of the County of Maui.” JT 30. On March 22, 2020, the Mayor utilized H.R.S. Section 127A-25, to order that “the dangerous conditions caused by the risk of the rapid spread of the virus and the need to protect the residents and visitors to Maui County, staying at home or in a place of lodging is now mandated with the exception of conducting certain essential activities...” JT 31. The Mayor’s preventative measures to minimize the spread of COVID-19 within the County, its workplaces and its employees included his “[r]equest healthy employees to report to work...” See. JT 57. On June 23, 2020, the Mayor’s Directive related the following: “All departments are to immediately determine essential services and key personnel.” JT 57.

The actions taken by COM to address COVID- 19 establish that the COVID-19 risk is “more than is usual or expected,” and is hazardous. The actions undertaken by COM reflect that these unusually hazardous risks existed in HGEA workers’ workplace. Mayor Victorino and Underwood admit that, while the COM attempted to mitigate exposure to COVID-19 using PPE, distancing, and sanitizers, the COM did not eliminate the hazard of COVID-19 in the workplace. Tr. at 59, lines 1-14; 67, lines 18-23; 68, lines 23-5; 69, lines 1-9; 197, lines 1-2, 4-9, 14-25. See Tr. 198, lines 3-8.

Direct supervisors in two COM departments and those departments’ respective Division Chiefs, and Departmental Personnel Officers, also internally

acknowledged through their respective requests for temporary hazard pay that COVID-19 and its variants cannot be eliminated, reduced, or controlled by any method. Ex. U-56 002, 4, 6; U-57 002. Tr. at 341, lines 8-11. A COM department Director also internally admitted the same. Ex. U-56 002, 4, 6.

COVID-19 and its variants are a *hazard* that has been present in the workplace since March 4, 2020. The exposure to this hazard can be mitigated, but not eliminated. Ex. U-56 002, 4, 6; U-57 002. Tr. at 68, lines 23-5; 69, lines 1-9; 197, lines 20-5; 198, lines 3-8; 341, lines 8-11. Based on the foregoing admissions, there is no dispute among the signatories of the BUs 2, 3, 4, 13, and 14 CBAs and COM managerial staff that COVID-19 and its variants constitute a *hazard*, for the purposes of applying Articles 20 of the BUs 3, 4, and 13 CBAs, 22 of the BU 2 CBA, and 30 of the BU 14 CBA.

Personnel Director Underwood and Mayor Victorino acknowledged that COVID-19 is a hazard. Tr. at 68, lines 23-5; 69, line 1; 197, lines 20-5; 198, lines 3-8; 243, lines 17-25; 244, lines 7-12. Underwood acknowledged that the COM viewed COVID-19 as a temporary *hazard* at the time of his denial of the Union's request on June 16, 2020. Tr. at 243, lines 17-25; 244, lines 1-12. The Union, having submitted over a dozen requests for THP differential to that effect, also agree that COVID-19 and its variants are a hazard. Ex. U-9 001-17. JT-70 001; JT-72 001-2.

COM EEs were required to come to work and the directive subjected HGEA workers to COVID-19 exposure. Tr. at 195, lines 21-4. See 196, lines 12-21. The directive is a reference to the Mayor's Proclamation and Directives 2020-2, 3, 9, and 13, wherein COM EEs were identified as those performing *essential government functions*, and initially requested - then directed, through department heads, to come to work, whether healthy or sick, to perform those functions, and work overtime, if necessary in order to comply with Governor Victorino's directives "[a]ll essential services must continue...". See Ex. JT-31 001-6; JT-46 001-3; JT-47 001-3; JT-53 001-3; JT-57 001-3.

Managing Director Baz stated that, as a department head, his understanding of Directive 2020-02 was that COM EEs identified as performing essential services were expected to work, and he identified and directed subordinate COM EEs in his department to report to work for that purpose. See Tr. at 366, lines 13-25; 367, line 1; 438, 21-5; 439, lines 1-25; 440, lines 1-2. Those that did not comply with the directive faced disciplinary action. Ex. JT-002.

The existence of the risk of COVID-19 and its variants in the workplace constitute a *working condition*, because COVID-19 and its variants are conditions that are present in the workplace, and they are conditions that COM EEs were exposed to in the workplace because of COM's order that HGEA return to the workplace. JT-002. U-17 001-3; U-18 001-3; U-20 001; U-30 001. Tr. at 59, lines

1-14; 67, lines 18-23; 68, lines 23-5; 69, lines 1-9; 195, lines 21-4; 197, lines 1-2, 4-9, 14-25. See 196, lines 12-21. See Ex. JT-31 001-6; JT-46 001-3; JT-47 001-3; JT-53 001-3; JT-57 001-3; 198, lines 3-8; 366, lines 13-25; 367, line 1; 438, 21-5; 439, lines 1-25; 440, lines 1-2.

The measures by COM to mitigate the risks of danger to HGEA workers from COVID 19 reflect the unusually hazardous working conditions, as the measures are unprecedented, complex, and extensive. Mayor Victorino and Underwood acknowledge that, while the COM attempted to mitigate exposure to COVID-19 using PPE, distancing, and sanitizers, the COM did not eliminate the hazard of COVID-19 in the workplace. Tr. at 59, lines 1-14; 67, lines 18-23; 68, lines 23-5; 69, lines 1-9; 197, lines 1-2, 4-9, 14-25. See Tr. 198, lines 3-8.

The HGEA workers were exposed to the risks of unusually hazardous working conditions. Articles 20 of the BUs 3, 4, and 13 CBAs, 22 of the BU 2 CBA, and 30 of the BU 14 CBA; Ex. U-56 002, 4, 6; U57 001-2. COVID -19 presented a more than usual or expected danger, involving risk to HGEA employees' health.

As a result of COM orders, the HGEA workers in job classifications identified above, are temporarily exposed to unusually hazardous working conditions.

The 3 Conditions of Temporary Hazard Pay Are Met

The 3 conditions of temporary hazard pay have been met by HGEA: 1) the exposure to unusually hazardous working conditions are temporary; 2) the degree of hazard is Most Severe or Severe; and 3) the unusually hazardous working conditions have not been considered in the assignment of the class to a salary range.

1. Temporary

As discussed above, the COVID-19 exposure is an unusually hazardous working condition that is temporary.

2. Degree of Hazard Is Most Severe or Severe

HGEA has satisfied its burden of proof establishing that some of its class members as identified above and have testified have faced COVID exposure in the categories entitled Most Severe and Severe to move forward to the determination of damages, based on the provisions below:

A. Hazard Pay Differentials.

1. Most Severe – twenty-five percent (25%).

a. Exposure likely to result in serious incapacitation, long period of time lost, or possible loss of life.

b. Accidents occur frequently in spite of reasonable safety precautions.

c. Frequent exposure to hazard where failure to exercise extreme care and judgment might cause an accident which would result in total disability or fatality.

2. Severe – fifteen percent (15%)

a. Frequent injuries likely but serious accidents rare.

b. Exposure leads to possible eye injuries, loss of fingers, or serious burns.

c. Might cause incapacitation.

d. Moderate periods of compensable lost time result.

Ex. JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3.

a. Most Severe

HGEA has shown that job classifications of the above-identified class members qualify in the Most Severe designation. HGEA has sufficiently proven that in some job classifications, HGEA workers face: 1) an exposure likely to result in serious incapacitation, long period of time lost, or possible loss of life; or 2) frequent exposure to hazard where failure to exercise extreme care and judgment might cause an accident which would result in total disability or fatality.

When determining whether a worker has an exposure *likely* to result in serious incapacitation, long period of time lost, or possible loss of life, the critical word is defining “likely.” The definition of *likely* is having a high probability of occurring or being true: very probable. Meriam-Webster Dictionary 2022.

Probability means insofar as seems reasonably true, factual, or to be expected: without much doubt. Meriam-Webster Dictionary 2022.

HGEA workers that are directly exposed to members of the public as part of their job functions are exposures likely to result in serious incapacitation, long period of time lost, or possible loss of life. Their job duties involve the worker being within 6 feet of a member of the public, or touching or making physical contact with a member of the public. The use of PPE does not eliminate the risks of these types of exposures. PPE protection is not useful or used in these Most Severe categories.

Frequent means happening at short intervals: often repeated or occurring; acting or returning regularly or often. Meriam-Webster Dictionary 2022.

Exposure is to put someone at risk from something harmful or unpleasant. Meriam-Webster Dictionary 2022.

The COVID- 19 pandemic subjects specific HGEA workers to frequent exposure to a hazard where failure to exercise extreme care and judgment might cause an accident which would result in total disability or fatality. The workers are often situated in work conditions that are often subject to direct contact with members of the public, or to close contact in enclosed areas with members of the public. Due to the job requirements of being within 6 feet or making direct contact with a member of the public, frequent exposure to hazard where failure to exercise

extreme care and judgment might cause an accident which would result in total disability or fatality occurs. Each day at work these workers because of their job duties, face substantial risk of being in close contact or contact with members of the public. In these work situations PPE is ineffective or not adequately used to sufficiently eliminate the risk of total disability or fatality.

Mayor Victorino's proclamations and orders show that COVID-19 is likely to result in severe injury. Ex. JT-6 003; JT-7 001. See JT-7 007; JT-32 001-3; JT-16 028; JT-17 002-3; JT-18 031; JT-19 032; JT-21 033; JT-22 001-2; JT-23 035; JT-25 035; JT-28 035. U-1 001-3; U-2 001-2; U-3 001; U-4 001-8; U-5 001-4; U-6 001; U-7 001. Underwood admitted that exposure to COVID-19 may result in incapacitation and hospitalization. Tr. at 190, lines 17-21; 191, lines 24-5; 192, lines 1-4.

A direct supervisor in a COM department, and that department's respective Division Chief, Departmental Personnel Officer, and Director collectively made the admission in an internal recommendation to award THP wage differential that exposure to COVID-19 and its variants was likely to result in "prolonged illness which could have resulted in hospitalization...". Ex. U-56 001-6. Another direct supervisor in a COM department, and that department's respective Division Chief, collectively took the position that exposure was likely to result in serious incapacitation because they collectively recommended to Personnel Director

Underwood that their subordinate employees be awarded a THP wage differential as the Most Severe exposure rate. Ex. U-57 002.

Long period of time also is not defined. See JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3. However, Personnel Director Underwood and COM management personnel take the position that, in their opinions, the likely result of testing positive for COVID-19 is long period of time lost. See Ex. U-56 001-6; U-57 002. Tr. at 190, lines 5-12. Personnel Director Underwood also agreed that exposure to COVID-19 may result in moderate periods of time lost. Tr. at 190, lines 5-8. He acknowledged that there were people who tested positive and were required to stay home for periods of time. Tr. at 190, lines 9-12.

A direct supervisor in a COM department, and that department's respective Division Chief, Departmental Personnel Officer, and Director collectively conclude in an internal recommendation to award THP wage differential that the position that exposure was likely to result in "weeks of lost time at work, as well as prolonged illness". Ex. U-56 001-6. It can also be inferred that another direct supervisor in a COM department, and that department's respective Division Chief, Departmental Personnel Officer collectively took the position that exposure was likely to result in long period of time lost because they collectively recommended to Personnel Director Underwood that their subordinate employees be awarded a THP wage differential as the Most Severe exposure rate. Ex. U-57 002.

Possible loss of life is not defined. See JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3. Mayor Victorino's proclamations and orders establish that COVID-19 are likely to, and indeed have, resulted in loss of life. Ex. JT-6 003; JT-7 001; JT-19 001-2; JT-20 001-2; JT-21 001-2; JT-22 001-2; JT-23 001-2; JT-24 001-2; JT-25 001-2; JT-29 001; JT-34 001-3,10; JT-35 001-3,11; JT-36 001-4; JT-37 001-2,12; JT-38 001-13; JT-41 001,4; JT-42 001,14; JT-42 001,14. See JT-7 007; JT-32 001-3; JT-16 028; JT-17 002-3; JT-18 031; JT-19 032; JT-21 033; JT-22 001-2; JT-23 035; JT-23 035; JT-25 035; JT-28 035. U-1 001-3; U-2 001-2; U-3 001; U-4 001-8; U-5 001-4; U-6 001; U-7 001.

Underwood indicated that exposure to COVID-19, and its variants, are likely to lead to loss of life. Tr. at 191, lines 20-3. A direct supervisor in a COM department, and that department's respective Division Chief, Departmental Personnel Officer, and Director collectively stated in an internal recommendation to award THP wage differential that the position that exposure was likely to result in possible loss of life. Ex. U-56 001-6. It can also be inferred that another direct supervisor in a COM department, and that department's respective Division Chief, Departmental Personnel Officer collectively took the position that exposure was likely to result in possible loss of life because they collectively recommended to Personnel Director Underwood that their subordinate employees be awarded a THP wage differential as the Most Severe exposure rate. Ex. U-57 002.

Based on the totality of circumstances listed above, the job positions of Motor Vehicle License Examiner and Ocean Safety Officer are examples of Most Severe designations. The job classifications reflect exposure likely to result in serious incapacitation, long period of time lost, or possible loss of life, or frequent exposure to hazard where failure to exercise extreme care and judgment might cause an accident which would result in total disability or fatality.

The positions of Motor Vehicle License Examiner and Ocean Safety Officer are two examples that reflect the nature of job duties that were not subject to the use of reasonable and adequate personal protection equipment or COM policies that sufficiently avoid an exposure likely to result in serious incapacitation, long period of time lost, or possible loss of life; or a frequent exposure to hazard where failure to exercise extreme care and judgment might cause an accident which would result in total disability or fatality.

HGEA has sufficiently shown that these two job positions are Hazard Pay Differentials - Most Severe. COVID- 19 exposure is likely to result in serious incapacitation, long period of time lost, or possible loss of life for these 2 job classifications.

b. Severe

HGEA has proven that the class members testifying and identified above were qualified for the Severe designation for Temporary Hazard Pay. The relevant language reads:

Severe – fifteen percent (15%)

- a. Frequent injuries likely but serious accidents rare.
- b. Exposure leads to possible eye injuries, loss of fingers, or serious burns.
- c. Might cause incapacitation.
- d. Moderate periods of compensable lost time result.

Based on an examination of the totality of circumstances, the HGEA class members that testified have proven that their job classifications faced risks from COVID-19 in their workplace where they faced 2 of the listed factors- incapacitation, or moderate periods of compensable lost time.

Incapacitation means to deprive of capacity or natural power: disable. Meriam-Webster Dictionary 2022. COVID- 19 might cause workers to be disabled or deprive workers of the capacity to engage in normal daily functions. *Moderate* means tending toward the mean or average amount. Meriam-Webster Dictionary 2022. As discussed above, COVID can often cause moderate periods of compensable lost time because of exposure and illness.

HGEA has proven that COVID- 19 exposure might cause incapacitation in the job classifications of testifying HGEA members described above. The

institution of PPE policies and PPE reflect the acknowledged risk of incapacitation COM seeks to minimize. COVID- 19 exposure may involve lengthy absences, hospitalizations, serious illness, or death.

It is undisputed that illness from COVID exposure involves moderate periods of compensable lost time result. The severity of an exposure to COVID-19 illness leads to compensable lost time from work.

3. Working Conditions Not Considered in Assignment of the Class

As discussed above, it is undisputed that the unusually hazardous working conditions have not been considered in the assignment of the class to a salary range for the HGEA class members.

COM's Failure To Consult with HGEA

Article 4 of the BUs 2, 3, 4, 13, and 14 CBAs require the following, in relevant part:

A. All matters affecting Employee relations, including those that are, or may be, the subject of a regulation promulgated by the Employer or any Personnel Director, are subject to consultation with the Union. The Employer shall consult with the Union prior to effecting changes in any major policy affecting Employee relations.

B. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

Ex. JT-1 004; JT-2 004; JT-3 004; JT-4 003-4; JT-5 004.

COM failed to both consult and negotiate with the Union prior to effecting changes to Articles 20 of the BU 3, 4, and 13 CBAs, 22 of the BU 2 CBA, and 30 of the BU 14 CBA. The changes had the effect of modifying or nullifying the aforementioned articles.

COM Did Not Consult With HGEA To Deny THP Request

As discussed above, COM did not consult with HGEA fully and completely before it rendered a denial of HGEA's THP request. The consultation would have developed the details of the class, the identity of the class, the exact job classifications of all members of the class, the member's nature and extent of exposure to COVID-19 in the workplace, the use of PPE and policies of each workplace, the actual exposures of members in each job classification, and other factors discussed above.

COM's failure to contractually engage in a full and complete consultation with HGEA has harmed and affected HGEA's ability to identify:

1. the class members with specificity,
2. the job positions and duties of the class members,
3. the nature and extent of exposure the member faced with others,
4. the nature and extent of exposure to members of the public,

5. the nature and extent of PPE and PPE policy provided to the job position,
6. the Degree of Hazard,
7. the dates and hours of employment periods at issue,
8. and the specific details of their work environment involving a COVID-19 risk.
9. the recommendations from the departments

A full and complete consultation would have eliminated a decision based in part on a lack of information. HGEA did not refuse any COM request to consult not did it refuse to provide information requested by COM in a consultation. A discussion between parties during consultation would clarify the disputed issues for arbitration.

COM received recommendations from COM department heads and recommendations/requests from the Union but refused to act on a recommendation of a COM department head and denied a COM department head's recommendations and the Union's recommendations/requests, among other actions, as described above without full and complete consultation with HGEA. Ex. U-9 001-17; U-11 001-2; U-56 001-6; U-72 001-2. Tr. at 173, lines 8-23; 174, lines 3-6, 12-4; 265, lines 6-14. See Tr. at 166, line 25; 167, lines 1-4; 11-25; 168,

lines 7-11, 17-21; 169, lines 14-8; 170, 3-6, 12-16, 24-5; 171, lines 1-9; 175, lines 22-5; 176, line 1.

COM's failure to render a decision on the received recommendations from its own department heads failed to comply with its duties imposed by and in Articles 20 (BUs 3, 4, and 13), 22 (BU 2), and 30 (BU 14), and effectively and unilaterally modified or nullified those articles pertaining to a wage differential and other conditions of work prior to obtaining the Union's mutual consent to the changes. Ex. U-9 001-17; U-11 001-2; U-56 001-6; U-72 001-2. Tr. at 173, lines 8-23; 174, lines 3-6, 12-4; 265, lines 6-14. See Ex. JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3. Tr. at 166, line 25; 167, lines 1-4; 11-25; 168, lines 7-11, 17-21; 169, lines 14-8; 170, 3-6, 12-16, 24-5; 171, lines 1-9; 175, lines 22-5; 176, line 1; 337, line 12-4; 345, lines 8-10; 350, lines 1-3.

As discussed above, COM had the responsibility of determining whether THP would be awarded. A fair and impartial decision must be based on COM's fulfillment of its duty to consult to have the full and complete facts obtained to render its decision. COM violated Article 4 of the BUs 2, 3, 4, 13, and 14 CBAs.

No Consult- Adding Form

Personnel Director Underwood was aware that he had a duty to consult with the Union prior to effecting changes to the THP request procedure, which included,

but were not limited to, the creation and contents of a novel THP differential recommendation/request form. Tr. at 219, lines 5-8. See Tr. at 219, lines 20-2. Article 20.A. of the BUs 3, 4, and 13 CBAs, Article 22.A. of the BU 2 CBA, and Article 30.A. of the BU 14 CBA state that recommendations for hazard pay differentials shall be submitted on such forms and such manner as the Employer may require. Ex. JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3.

Article 4.A. requires the COM to consult with the Union prior to effecting changes in any major policy affecting Employee relations, including creation of a THP wage differential recommendation form. Ex. JT-1 004; JT-2 004; JT-3 004; JT-4 003-4; JT-5 004. See Tr. at 219, lines 5-8. See Tr. at 219, lines 20-2.

Without waiving its right to consultation, MID Chief Rust agreed to temporarily use the novel THP differential recommendation/request form with the understanding that the COM would develop and consult on the creation and contents of a permanent THP differential recommendation/request form. Id.

COM department heads later submitted recommendations for the award of THP wage differential on those forms, showing that they were indeed given effect. Ex. U-56 001-6; U-57 001-2. Underwood did not consult with the Union prior to effecting those changes, and, to date, he has not consulted with the Union

regarding the newly created THP differential recommendation/request form. Tr. at 219, lines 5-8, 20-2; 220, lines 2-12. See Tr. at 219, lines 20-2.

COM unilaterally effected changes to Article 20 of the BUs 3, 4, and 13 CBAs, 22 of the BU 2 CBA, and 30 of the BU 14 CBA when it unilaterally eliminated the duty to award THP wage differential to qualifying COM EEs upon receipt of a recommendation or recommendation/request from a department head without notice or consultation from the Union. All articles contained in the BUs 2, 3, 4, 13, and 14 CBAs codify wages, hours, or other conditions of work. See Ex. JT-1 001-106; JT-2 001-112; JT-3 001-109; JT-4 001-108; JT-5 001-114.

The Employer cannot make changes in wages, hours or other conditions of work contained in the BUs 2, 3, 4, 13, or 14 CBAs except by mutual consent. Ex. JT-1 004; JT-2 004; JT-3 004; JT-4 003-4; JT-5 004. Articles 20 of the BUs 2, 3, and 13 CBAs, 22 of the BU 2 CBA, and 30 of the BU 14 CBA required the Employer to award a THP wage differential in consultation with the Union upon receipt of a recommendation of a COM department head or a recommendation/request by the Union to award THP to COM EEs. Ex. JT-1 048; JT-2 047; JT-3 044; JT-4 050; JT-5 061. COM deprived the HGEA the opportunity to gain THP, by failing to engage in a full and complete consultation with HGEA.

CONCLUSION

The Union has met its burden of proof, showing by a preponderance of the evidence that the COM contractually violated Articles 2, 3, ,4 and 5 of the BUs 2, 3, 4, 13, and 14 CBAs, and Articles 20 of the BUs 3, 4, and 13 CBA, 22 of the BU 2 CBAs, and 30 of the BU 14 CBA.

HGEA employees in job classifications identified and as testified above were temporarily exposed to unusually hazardous working conditions and met the conditions that: 1. The exposure to unusually hazardous working conditions is temporary; 2. The degree of hazard is “Most Severe” or “Severe”; and 3. The unusually hazardous working conditions have not been considered in the assignment of the class to a salary range.

HGEA has proven that the class members of the job classifications identified and as testified above are qualified for Temporary Hazard Pay, with a degree of hazard designated as Severe.

HGEA has proven that two of these job classifications, Ocean Safety Officer and Motor Vehicle Licensing Examiner, are in job positions that have a degree of hazard designated as Most Severe.

The form requests for THP from various COM Departments although persuasive, will still be subject to further testimony, if necessary, in a contested damages hearing.

ARBITRATOR'S ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that in accordance with the above Findings of Fact and Conclusions of Law, ORDERS:

1. COM is ORDERED to immediately, fully, and completely fulfill its duty of consultation with HGEA and undergo the analysis and detail of factors discussed herein in the preparation of further arbitration.
2. COM is ordered to conduct a full and complete consultation with HGEA consistent with the above-written decision.
3. The damages hearing shall be conducted for the determination of the days and hours of any contested hazard pay for the job classifications identified herein and that have been proven as identified above.
4. An arbitration hearing shall be conducted for any contested job classifications. The parties shall give written notice to the Arbitrator on or before 45 days from the date of this emailed Decision and Order to set a hearing date.

5. The further arbitration hearing shall address damages for the contested HGEA worker job classifications identified here.
6. In the bifurcated Arbitration, a case-by-case examination shall be undertaken to determine the nature and extent of a temporary hazard pay differential, including the days and hours of compensation, to be awarded for respective hazards designations, Severe or Most Severe for the respective job classifications that are contested and have not been identified above.

DATED: Honolulu, Hawaii, _____.

JUDGE KARL K. SAKAMOTO (Ret.)
Arbitrator

INDEX 1 – PROCLAMATIONS AND ORDERS

On March 21, 2020, Governor Ige issued a Proclamation entitled “Second Supplementary Proclamation” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State”. Ex. JT-8 001. He then declared a disaster emergency relief period shall

exist from the date of issue through May 20, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-8 002. Governor Ige’s proclamation no longer refers to the emergency or threat as *imminent*. Tr. at 49, lines 11-8. Rather, an emergency is declared. Tr. at 49, lines 16-8. See. Ex. JT-8 001-2. The threat is concrete as of March 21, 2020. Id.

Mayor Victorino asserts that he was bound by Governor Ige’s March 21, 2020 Proclamation. Tr. at 49, Lines 19-21.

On March 23, 2020, Governor Ige issued a Proclamation entitled “Third Supplementary Proclamation” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” and ordered all persons in within the State of Hawaii to stay at home or in their place of resident except as ... designated below...” Below, one category of those exempted from the order were those who performed “Work in essential ... operations”, which included work performed at Educational Institutions and performance of Government Functions. Ex. JT-9 001-3, 6. Those performing Government Functions at Education Institutions included, among others, “public ... pre-K12 schools, colleges, and universities – for the purpose of implementing appropriate learning measures, performing critical research, or performing

essential functions...” Ex. JT-9 003. Those performing government functions included first responders, emergency management personnel, emergency personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel ... and other governmental employees working for or to support essential ... operations.” Ex. JT-9 006. Those who failed to COMply with the proclamation faced a misdemeanor charge, and upon conviction, a fine of \$5,000 or imprisonment of more than year, or both. Ex. JT-9 008. Governor Ige further made clear that the proclamation would not “prohibit any person from performing or accessing essential government functions.” Ex. JT-9 006. He also declared that a disaster emergency relief period shall exist from the date of issue through April 30, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-9 007.

Mayor Victorino agreed with Governor Ige’s determination that 77 cases statewide was sufficient to declare a statewide emergency. Tr. at 51, lines 17-19.

On March 31, 2020, Governor Ige issued a Proclamation entitled “Fourth Supplementary Proclamation” wherein he, among other things, declared that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State”. Ex. JT-10 001. He also declared that a disaster emergency relief period shall exist from the date of

issue through April 30, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-10 001, 3.

Mayor Victorino agreed with Governor Ige's determination that 230 cases statewide was sufficient to declare a statewide emergency. Tr. at 51, lines 17-19.

On April 16, 2020, Governor Ige issued a Proclamation entitled "Fifth Supplementary Proclamation" wherein he determined, designated, and proclaimed, among other things, that "COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State". Ex. JT-11 001-2. He also acknowledged that "COVID-19 is spread primarily by respiratory droplets produced when an infected person coughs or sneezes and that droplets also can generated by talking, laughing, or exhaling." Ex. JT-11 001. He further declared that "a significant portion of persons with the coronavirus lack symptoms (identified as 'asymptomatic' and that even those who eventually develop symptoms (defined as 'pre-symptomatic') can transmit the virus to other persons before exhibiting symptoms" and that "the coronavirus can spread between persons interacting in close proximity, even those interacting in close proximity, even if those persons are not exhibiting symptoms." Ex. JT-11 001-2. Governor Ige further declared a disaster emergency relief period shall exist

from the date of issue through April 30, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-11 001-2, 7.

Mayor Victorino made the admission that exposure to COVID-19 can lead to loss of life. Tr, at 56, lines 103. Indeed, according to Mayor Victorino, nine (9) people have died from exposure to COVID-19 in the COM. Tr. at 56, lines 1-3.

On April 16, 2020, Governor Ige also issued four additional Proclamations entitled “SIXTH SUPPLEMENTARY PROCLAMATION AMENDING AND RESTATING PRIOR PROCLAMATIONS AND EXECUTIVE ORDERS RELATING TO THE COVID-19 EMERGENCY”, “SEVENTH EMERGENCY PROCLAMATION RELATED TO THE COVID-19 EMERGENCY”, “EIGHTH SUPPLEMENTARY PROCLAMATION RELATING TO THE COVID-19 EMERGENCY”, and “NINTH SUPPLEMENTARY PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, again, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” and incorporated all previous proclamations up to the Fifth Supplementary Proclamation into the Sixth, Seventh, and Eight supplementary proclamations, including the Fifth Supplementary Proclamation that declared an disaster emergency relief period which existed from the date of issue,

April 16, 2020 through April 30, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-11 001, 7; JT-12 001-2, 39; JT-13 001, 39; JT-14 001, 40; JT-15 001, 37.

On June 23, Mayor Victorino issued Mayor's Directive 2020-13 wherein he repeated his reCOMmendations and directives provided in Mayor's Directives 2020-2, 2020-3. and 2020-9. Ex. JT-57 001-3. See Ex. JT-46 001-3; JT-47 001-3; JT-53 001-3; JT-57 001-3. He closed the directive by reaffirming that "[a]ll essential services must continue..." Ex. JT-57 002.

On June 26, 2020, Mayor Victorino issued a Proclamation entitled "PUBLIC HEALTH EMRGENCY PROCLAMATION" wherein he proclaimed, determined, declared, and found, among other things, that "there is imminent danger of a state of emergency in all or any portion of the County of Maui, as of the date and time of this Proclamation ..." Ex. JT-33 001-3. Mayor Victorino further proclaimed that "there have been 122 reported cases in the County of Maui and 835 in the State of Hawaii, and cumulative effects of the Emergency Condition may create a public calamity in the County of Maui..." Ex. JT-33 002. The Proclamation would remain in effect until either sixty (60) days after the date of the Proclamation or when they are repealed by issue of a subsequent Proclamation or issuance or a Declaration of Termination of Emergency, whichever occurred first. Ex. JT-33 004. Governor Ige reviewed and signed the proclamation on June 27, 2020. Ex. JT-33 004.

On July 4, 2020, Mayor Victorino issued a Proclamation entitled “PUBLIC HEALTH RULES, AMENDED JULY 4, 2020” wherein he acknowledged that “[t]he virus that causes Coronavirus 2019 Disease (‘COVID-19’) is a novel severe acute respiratory illness with no known cure, no effective treatment, and no vaccine. Ex. JT-34 001. The virus is easily transmitted, including by individuals who are infected but showing no symptoms. As of July 2, 2020, there were more than 10 million cases and 500,000 deaths globally The United States has more than 2.7 million cases and 129,305 deaths ... Numbers in Hawaii have remained relatively low... with 999 cases and 19 deaths to date” Ex. JT-34 001-3. Mayor Victorino reaffirmed the definitions of Essential Activities and Government Functions, as previously defined in his March 22, 2020 Proclamation. Ex. JT-34 002-4. See Ex. JT-31 001-6. Mayor Victorino also used this Proclamation to suspend all County meetings or hearings and contested case hearings, and limit indoor gatherings to 10 persons. Ex. JT-34 004-5. The Proclamation also designated that beaches and County Parks would remain open to the public. Ex. JT-34 008. However, East Maui was closed to all traffic, with the exception of East Maui residents and those who provide for the health, safety, and welfare of the public or as allowed by written authority of the Mayor. Ex. JT-34 009. The Proclamation would remain in effect until either sixty (60) days after the date of the Proclamation or when they are repealed by issue of a subsequent Proclamation

or issuance or a Declaration of Termination of Emergency, whichever occurred first. JT-34 009. Governor Ige reviewed and signed the proclamation on June 27, 2020. Ex. JT-34 010.

On July 17, 2020, Governor Ige issued a Proclamation entitled “TENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-16 001-2. Governor Ige further declared a disaster emergency relief period shall exist from the date of issue through August 31, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-16 028.

On July 31, 2020, Mayor Victorino issued a Proclamation entitled “PUBLIC HEALTH RULES, AMENDED JULY 31, 2020” wherein he again acknowledged, among other things, that “[t]he virus that causes Coronavirus 2-019 Disease (‘COVID-19’) is a novel severe acute respiratory illness with no known cure, no effective treatment, and no vaccine. The virus is easily transmitted, including by individuals who are infected but showing no symptoms. As of July 30, 2020, there were more than 16 million cases and 662,095 deaths globally The United States has more than 4.4 million cases and 150,283 deaths ... Numbers in Hawaii have

remained relatively low... with 1,865 cases and 26 deaths to date” Ex. JT-35 001. Mayor Victorino once again reaffirmed the definitions of Essential Activities and Government Functions, as previously defined in his March 22, 2020 Proclamation. Ex. JT-35 002-4. See Ex. JT-31 001-6. All County meetings or hearings and contested case hearings remained suspended, and limit indoor gatherings continued to be limited to 10 persons. Ex. JT-35 005. Beaches and County Parks remained open to the public. Ex. JT-35 009. He then declared that the rules would take effect on July 31, 2020 at 12:01 a.m. and, upon that date, would repeal the Emergency Rules promulgated July 22, 2020. Ex. JT-35 010. The Emergency Rules would be repealed upon either issue of a subsequent proclamation or August 29, 2020, whichever occurred first. Ex. JT-35 010. Governor Ige reviewed and signed the proclamation on July 31, 2020. Ex. JT-35 011.

On August 6, 2020, Governor Ige issued a Proclamation entitled “ELEVENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY INTERISLAND TRAVEL QUARANTINE” wherein he determined, designated, and proclaimed, again that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-17 001. Governor Ige further declared

that the Interisland Travel Quarantine would continue for the duration of the disaster emergency relief period declared in “the Tenth Proclamation” which was declared to exist from July 17, 2020 through August 31, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-17 002-3. This action and the resulting disaster emergency relief period, were a response to what Governor Ige determined, designated, and proclaimed to be a “COMpelling need” to “mitigate the spread of COVID-19 between and among the islands of this State because, inter alia, this will help avoid overwhelming the healthcare systems in certain vulnerable areas of this State, including ... the Islands COMprising the Counties or Maui and Kalawao.” Tr. JT-17 001.

On August 20, 2020, Governor Ige issued a Proclamation entitled “TWELFTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-18 001-2. Governor Ige further declared a disaster emergency relief period shall exist from the date of issue through September 30, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-18 031.

On August 26, 2020, Mayor Victorino issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY PROCLAMATION” wherein he determined, designated, and proclaimed that there was an “imminent danger or threat of a state of emergency or disaster in all or any part of the County of Maui, as of the date and time of this proclamation; and ... employees of the county ... may be ordered and directed as I deem necessary to carry out emergency management functions under Haw. Rev. Stat. chapter 127A...”. Ex. JT-36 001. Mayor Victorino proclaimed that “In the State of Hawaii, the Department of Health reports nearly 7,000 total cases, 303 in Maui of County, with 49 deaths reported in the state.” Ex. JT-36 002. Nonetheless, it was Mayor Victorino’s determination that “the potential effects of COVID-19 have created an imminent threat to life, health, and safety of residents ... (‘the emergency condition’).” Ex. JT-36 002. 001-4. Mayor Victorino described this as a “Proclamation of Emergency or Disaster”. Ex. JT-36 004. The Proclamation of Emergency of Disaster was scheduled to terminate upon either sixty (60) days after the date of issue or issue of a Declaration of Termination of Emergency, whichever came first. Ex. JT-36 004. Governor Ige reviewed and signed this Proclamation on August 28, 2020. Id.

On August 26, 2020, Mayor Victorino also issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY RULES, AMENDED AUGUST 26, 2020” wherein he acknowledged, among other things, that “[t]he virus that causes

Coronavirus 2019 Disease (‘COVID-19’) is a novel severe acute respiratory illness with no known cure, no effective treatment, and no vaccine. The virus is easily transmitted, including by individuals who are infected but showing no symptoms. As of August 26, 2020, there were more than 24 million cases and 815,038 deaths globally The United States has more than 5.7 million cases and 177,759 deaths ... Numbers in Hawaii have remained relatively low, the number as a percentage of the population has risen. To date, there are more than 7,000 cases and 51 deaths statewide, with 331 cases in Maui County” Ex. JT-37 001. Mayor Victorino reaffirmed the definitions of Essential Activities and Government Functions, as previously defined in his March 22, 2020 Proclamation. Ex. JT-34 002-4. See Ex. JT-37 002-4. All County meetings or hearings and contested case hearings remained suspended, and indoor gatherings remained limited to 10 persons. Ex. JT-37 004-6. He then declared that the rules would take effect on August 27, 2020 at 12:01 a.m. and, upon that date, would repeal the Emergency Rules promulgated August 11, 2020. Ex. JT-37 011. The rules would be repealed upon either issue of a subsequent proclamation or October 29, 2020, whichever occurred first. Ex. JT-37 011. Governor Ige reviewed and signed the proclamation on August 28, 2020. Ex. JT-37 012.

On September 22, 2020, Governor Ige issued a Proclamation entitled
“THIRTEENTH PROCLAMATION RELATED TO THE COVID-19

EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State.” Ex. JT-19 001-2. Governor Ige further determined, acknowledged, and declared that, as of September 21, 2020, the recorded number of cases and deaths had doubled since August 21, 2020, with more than 11,500 documented cases of COVID-19 in the State and 120 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency”, and that a disaster emergency relief period shall exist from the date of issue through October 31, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-19 032.

On October 1, 2020, Mayor Victorino also issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY RULES, AMENDED OCTOBER 1, 2020” wherein he acknowledged among other things, that “[t]he virus that causes Coronavirus 2019 Disease (‘COVID-19’) is a novel severe acute respiratory illness with no known cure, no effective treatment, and no vaccine. The virus is easily transmitted, including by individuals who are infected but showing no symptoms. As of September 30, 2020, there were more than 33.8 million cases and 1, 010,634

deaths globally The United States has more than 7.2 million cases and 206,402 deaths ... The total number of COVID-19 cases in Hawaii has more than doubled since August 21, 2020. To date, there are more than 12,515 cases and 139 deaths statewide, with 391 cases in Maui County” Ex. JT-38 001. Mayor Victorino reaffirmed the definitions of Essential Activities and Government Functions, as previously defined in his March 22, 2020 Proclamation. Ex. JT-34 002-4. See Ex. JT-38 002-4. All County meetings or hearings and contested case hearings remained suspended, and indoor gatherings remained limited to 10 persons. Ex. JT-38 004-6. Beaches and parks remained open. Ex. JT-38 009. He then declared that the rules would take effect on October 6, 2020 at 12:01 a.m. and, upon that date, would repeal the Emergency Rules promulgated August 27, 2020. Ex. JT-38 012. The rules would be repealed upon either issue of a subsequent proclamation or October 29, 2020, whichever occurred first. Id. Governor Ige reviewed and signed the proclamation on October 1, 2020. Ex. JT-38 013.

On or around October 6, 2020, Mayor Victorino issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY RULES, AMENDED OCTOBER 6, 2020” wherein he acknowledged, among other things, that “[t]he virus that causes Coronavirus 2019 Disease (‘COVID-19’) is a novel severe acute respiratory illness with no known cure, no effective treatment, and no vaccine. The virus is easily transmitted, including by individuals who are infected but showing no symptoms.

As of October 6, 2020, there were more than 35 million cases and 1,039,446 deaths globally The United States has more than 7.4 million cases and 209,560 deaths ... To date, there are more than 12,937 cases and 160 deaths statewide, with 397 cases in Maui County” Ex. JT-39 001. Mayor Victorino reaffirmed the definitions of Essential Activities and Government Functions, as previously defined in his March 22, 2020 Proclamation. Ex. JT-34 002-4. See Ex. JT-39 002-4. All County meetings or hearings and contested case hearings remained suspended, and indoor gatherings remained limited to 10 persons. Ex. JT-37 004-5. These Emergency Rules took effect on October 15, 2020 at 12:01 a.m., and upon taking effect, repealed Emergency Rules promulgated October 1, 2020. Ex. JT-39 014. These Emergency Rules were to be repealed and upon subsequent promulgation or termination of the Proclamation of Emergency for Maui County. Ex. JT-39 014.

On October 13, 2020, Governor Ige issued a Proclamation entitled “FOURTEENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-20 001-2. Governor Ige further determined, acknowledged, and declared that,

as of October 13, 2020, the recorded number of cases and deaths had continued to increase, with more than 13,500 documented cases of COVID-19 in the State and 173 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency” and declared that a disaster emergency relief period shall exist from the date of issue through November 30, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-20 033.

On or around October 13, 2020, Mayor Victorino also issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY RULES, AMENDED OCTOBER 13, 2020” wherein he acknowledged, among other things, that “[t]he virus that causes Coronavirus 2019 Disease (‘COVID-19’) is a novel severe acute respiratory illness with no known cure, no effective treatment, and no vaccine. The virus is easily transmitted, including by individuals who are infected but showing no symptoms. As of October 13, 2020, there were more than 37,704,153 million cases and 1,079,029 deaths globally” The United States has more than 7,787,548 million cases 214,446 deaths ... To date, these are more than 13,514 cases and 169 deaths statewide, with 397 cases in Maui County” Ex. JT-40 001. Mayor Victorino reaffirmed the definitions of Essential Activities and Government Functions, as first defined in his March 22, 2020 Proclamation. Ex. JT-40 002-4. See Ex. JT-37

002-4. All County meetings or hearings and contested case hearings remained suspended, and indoor gatherings remained limited to 10 persons. Ex. JT-40 004-5. Like the previous rules entitled “PUBLIC HEALTH EMERGENCY RULES, AMENDED OCTOBER 6, 2020” These Emergency Rules took effect on October 15, 2020 at 12:01 a.m., and repealed the Emergency Rules promulgated on October 1, 2020. Ex. JT-40 014. These Emergency Rules were repealed upon either subsequent promulgation or termination of Emergency for Maui County, whichever came first. Ex. JT-40 014.

On November 16, 2020, Governor Ige issued a Proclamation entitled “FIFTEENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-21 001-2. Governor Ige further determined, acknowledged, and declared that, as of November 16, 2020, the recorded number of cases and deaths had continued to increase, with more than 16,600 documented cases of COVID-19 in the State and 222 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency” and declared that a disaster

emergency relief period shall exist from the date of issue through November 30, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-21 033.

On October 23, 2020, Mayor Victorino issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY PROCLAMATION” wherein he determined, designated, and proclaimed that there was an “imminent danger or threat of a state of emergency or disaster in all or any part of the County of Maui, as of the date and time of this proclamation; and ... employees of the county ... may be ordered and directed as I deem necessary to carry out emergency management functions under Haw. Rev. Stat. chapter 127A...”. Ex. JT-41 002-3. Mayor Victorino proclaimed that “As of October 23, 2020, there were 41,570,883 million cases and 1,134,940 deaths globally The United States has more than 8,445,242 million cases and 223,437 deaths To date, there are 14,335 cases and 206 deaths in the State of Hawaii, with 435 cases in Maui County..., with the island of Lanai experiencing its first reported cases. Ex. JT-41 002. Accordingly, it was Mayor Victorino’s determination that “the potential effects of COVID-19 have created an imminent threat to life, health, and safety of residents ... (“the emergency condition”). Ex. JT-41 002. Mayor Victorino described this as a “Proclamation of Emergency or Disaster”. Ex. JT-41 004. He then declared that the Proclamation of Emergency would take effect on October 30, 2020 and, would either terminate sixty (60) days

after the date of issue or issue of a subsequent proclamation, whichever occurred first. Ex. JT-41 004. Governor Ige reviewed and signed the proclamation on October 27, 2020. Ex. JT-41 004.

On November 18, 2020, The Union notified the COM of its intent to arbitrate this grievance. Ex. JT-76 001.

On November 23, 2020, Governor Ige issued a Proclamation entitled “SIXTEENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-22 001-2. Governor Ige further determined, acknowledged, and declared that, as of November 23, 2020, the recorded number of cases and deaths had continued to increase, with more than 17,300 documented cases of COVID-19 in the State and 223 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency” and declared that a disaster emergency relief period shall exist from the date of issue through December 31, 2020, unless terminated by separate proclamation, whichever occurred first. Ex. JT-22 034.

On December 16, 2020, Governor Ige issued a Proclamation entitled “SEVENTEENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-23 001-2. Governor Ige further determined, acknowledged, and declared that, as of December 16, 2020, the recorded number of cases and deaths had continued to increase, with more than 19,500 documented cases of COVID-19 in the State and 278 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency” and declared that a disaster emergency relief period shall exist from the date of issue through February 14, 2021, unless terminated by separate proclamation, whichever occurred first. Ex. JT-23 001-2, 35.

On or around January 13, 2021, Mayor Victorino also issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY RULES, EFFECTIVE JANUARY 19, 2021” wherein he acknowledged, among other things, that “[t]he virus that causes Coronavirus 2019 Disease (‘COVID-19’) is a novel severe acute respiratory illness with no known cure, no effective treatment, and no vaccine. Ex. JT-42 001.

The virus is easily transmitted, including by individuals who are infected but showing no symptoms. As of January 13, 2021, there were 92,291,033 cases and 1,976,509 deaths globally, and the United States continues to record the highest numbers of cases, with 23,067,796 cases and 384,604 deaths To date, there are 23,733 cases and 312 deaths in the State of Hawaii, with 1,473 cases in Maui County. . . . Ex. JT-42 001. He then declared that the rules would take effect on January 19, 2021 at 12:01 a.m. and, upon that date, would repeal the Emergency Rules promulgated December 30, 2020. Id. The rules would be repealed upon either issue of a subsequent proclamation or termination of the Proclamation of Emergency for Maui County, whichever occurred first. Ex. JT-42 014. Governor Ige reviewed and signed the proclamation on January 14, 2020. Ex. JT-42 014.

On February 12, 2021, Governor Ige issued a Proclamation entitled “EIGHTEENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert . . . catastrophic impacts to the State” Ex. JT-24 001-2. Governor Ige further determined, acknowledged, and declared that, as of February 12, 2021, the recorded number of cases and deaths had continued to increase, with more than 26,700 documented cases of COVID-19 in the State and

425 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency” and declared that a disaster emergency relief period shall exist from the date of issue through April 13, 2021, unless terminated by separate proclamation, whichever occurred first. Ex. JT-23 035.

On April 9, 2021, Governor Ige issued a Proclamation entitled “NINETEENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-25 001-2. Governor Ige further determined, acknowledged, and declared that, as of April 9, 2020, the recorded number of cases and deaths had continued to increase, with more than 30,570 documented cases of COVID-19 in the State and 470 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency” and declared that a disaster emergency relief period shall exist from the date of issue through June 8, 2021,

unless terminated by separate proclamation, whichever occurred first. Ex. JT-25 035.

On May 7, 2021, Governor Ige issued a Proclamation entitled “TWENTIETH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY QUARANTINE FOR TRAVEL BETWEEN COUNTIES” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-26 001-2. Governor Ige further determined, acknowledged, and declared that, as of May 7, 2021, the recorded number of cases and deaths had continued to increase, with more than 33,000 documented cases of COVID-19 in the State and 486 deaths attributed to the disease. *Id.* Governor Ige further declared that this Proclamation shall continue for the duration of the disaster emergency period declared in the “Nineteenth Proclamation”, which previously declared that a disaster emergency relief period was declared to exist from the April 9, 2021 through June 8, 2021, unless terminated by separate proclamation, whichever occurred first. Ex. JT-26 004. See Ex. JT-25 035.

In mid to late May 2021, the Congress of the United States of America passed the American Rescue Plan Act (“ARPA”). See Ex. U-51 001-5; U-52 001-

39. Mayor Victorino was familiar with the ARPA. Tr. at 104, lines 21-3. ARPA approved the distribution of \$350 Billion United States Dollars in Fiscal Recovery Funds to, among others, eligible county governments. Ex. U-51 001. The Fiscal Recovery Funds are allocated to, among other things, enable county governments to pay Premium pay to their EEs who performed and are performing essential work during the COVID-19 public health emergency. U-54 001. See Ex. U-51 003. More specifically, 603(c)(1) provides that funds may be used to ... (respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers.” Ex. U-52 002. Mayor Victorino was aware of that. Tr. at 105, lines 5-9. The Department of the Treasury issued an Interim Final Rule providing guidance to recipient governments explaining how the Department of the Treasury will interpret the language in the act and administer the Fiscal Recovery Funds. Ex. U-51 001. The Interim Final Rule defines essential workers eligible for Premium pay as those who, among other things, do “work involving regular in-person interactions or regular physical handling of items that were also handled by others.” Ex. U-52 013. See Ex. U-51 013.

The Treasury encourages these Fiscal Recovery Funds to be used to provide retrospective Premium pay for essential work performed since the beginning of the pandemic, but the funds may also be used for prospective work performed during the health emergency. Ex. U-51 003. See Ex. U-52 012. The “Treasury defines

essential work eligible for premium pay as work involving regular in-person interactions or regular physical handling of items that were also handled by others.” Ex. U-51 003. The intent of the Fiscal Recovery Funds is to, among other things, “help respond to the needs of essential workers by allowing recipients to renumerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency.” Ex. U-52 0013. The COM is scheduled to receive a total of \$32,518,790.00 in Fiscal Recovery Funds. Ex. U-54 001. The \$32,518,790.00 is scheduled to be paid in two (2) tranches. Ex. U-51 002. The COM received the first tranche valued at around sixteen (16) million dollars in May 2021, but it hasn’t allocated those funds yet. Tr. at 311, lines 12-3; 314, lines 13-25; 315, lines 2-6. See Ex. U-54 001. The COM is scheduled to receive the second tranche in May 2022. Ex. U-54 001. The purpose of Premium pay, as described by the Interim Final Rules and AFRA, is substantially similar to the purpose of THP, as described by the BUs 2, 3, 4, 13, and 14 CBAs. See Ex. JT-1 048-9; JT-2 046-8; JT-3 044-6; JT-4 050-1; JT-5 061-3. U-52 0013. *For all intents and purposes, Premium pay is the functional equivalent of THP. See Id.* To date, the COM has not paid THP any of its EEs for exposure to COVID-19 and/or its variants. Tr. at 105, lines 18-21.

On May 25, 2021, Governor Ige issued a Proclamation entitled “AMENDMENT NINETEENTH PROCLAMATION RELATED TO THE

COVID-19 EMERGENCY” wherein he amended Exhibit I attached to the Nineteenth Proclamation entitled “Statewide Face Covering Requirement” to incorporate additional guidance received by the Centers for Disease Control and Prevention. Ex. JT-27 001. He further affirmed that the “Nineteenth Proclamation”, which previously declared that a disaster emergency relief period was declared to exist from the April 9, 2021 through June 8, 2021, unless terminated by separate proclamation, whichever occurred first, would remain in effect and terminate as described above. Ex. JT-27 001. See Ex. JT-25 035.

On June 7, 2021, Governor Ige issued a Proclamation entitled “TWENTY-FIRST PROCLAMATION RELATED TO THE COVID-19 EMERGENCY” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-28 001-2. Governor Ige further determined, acknowledged, and declared that, as of June 7, 2021, the recorded number of cases and deaths had continued to increase, with more than 36,600 documented cases of COVID-19 in the State and 505 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency” and declared that a disaster emergency relief

period shall exist from the date of issue through August 6, 2021, unless terminated by separate proclamation, whichever occurred first. Ex. JT-28 035.

On June 15, 2021, Mayor Victorino also issued Emergency Rules entitled “PUBLIC HEALTH EMERGENCY RULES, EFFECTIVE JUNE 15, 2021” wherein he acknowledged, among other things, that “[t]he virus that causes Coronavirus 2019 Disease (‘COVID-19’) is a novel severe acute respiratory illness with no known cure, no effective treatment, and no vaccine.” Ex. JT-43 001. The virus is easily transmitted, including by individuals who are infected but showing no symptoms. As of June 14, 2021, there were more than 167 million cases and nearly 3.5 million deaths globally, and the United States continues to record the highest numbers of cases, with 33,470,367 cases and nearly 600,000 deaths To date, there are 37,011 cases and 506 deaths in the State of Hawaii with 3,945 confirmed cases in Maui County, not including 843 cases classified as “probable” Id. All County meetings or hearings and contested case hearings remained suspended, and indoor gatherings remained limited to 10 persons. Ex. JT-43 004-6. Beaches and parks would remain open. Ex. JT-43 006. He then declared that the rules would take effect on June 16, 2021 at 12:01 a.m. and, upon that date, would repeal the Emergency Rules promulgated May 15, 2021. Ex. JT-43 009. The Emergency Rules would be repealed upon either issue of a subsequent proclamation or termination of the Proclamation of Emergency for Maui County,

whichever occurred first. Ex. JT-43 014. Governor Ige reviewed and signed the Proclamation on June 18, 2021. Ex. JT-43 014.

On July 7, 2021, Mayor Victorino issued a Proclamation entitled “PUBLIC HEALTH EMERGENCY RULES” wherein he proclaimed, determined, declared, and found, among other things, that “there is imminent danger of a state of emergency in all or any portion of the County of Maui, as of the date and time of this Proclamation ...” Ex. JT-44 003. Mayor Victorino further proclaimed, determined, declared, and found, among other things, that “as of July 7, 2021, there were nearly 185 million cases and nearly 4 million million [sic] deaths globally, and the United States continues to record the highest numbers of cases, with 33,758,758 cases and 606,121 deaths To date, there are 38,082 cases and 518 deaths in the State of Hawaii, with 4,903 cases in Maui County (confirmed and probable).” Ex. JT-44 002. The Proclamation of Emergency went into effect on July 11, 2021 and was to remain in effect until either sixty (60) days after the date of issue or issuance or a Declaration of Termination of Emergency, whichever occurred first. JT-44 003.

On August 5, 2021, Governor Ige issued a Proclamation entitled “EMERGENCY PROCLAMATION RELATED TO THE COVID-19 RESPONSE” wherein he determined, designated, and proclaimed, among other things, that “COVID-19 continues to endanger the health, safety, and welfare of

the people of Hawaii and a response requires the serious attention, effort, and sacrifice of all people in the State to avert ... catastrophic impacts to the State” Ex. JT-29 001. Governor Ige further determined, acknowledged, and declared that, “despite the success of our mitigation and vaccination efforts”, the recorded number of cases and deaths has continued to increase, with more than 44,617 documented cases of COVID-19 in the State and 538 deaths attributed to the disease. Id. Governor Ige further declared that this Proclamation superseded all prior proclamations issued by him related to what he acknowledged as the “COVID-19 emergency” and declared that a disaster emergency relief period shall exist from the date of issue through October 4, 2021, unless terminated by separate proclamation, whichever occurred first. Ex. JT-28 035.