

SETTLEMENT AGREEMENT

Temporary Hazard Pay

This SETTLEMENT AGREEMENT is made by and between the State of Hawai'i (hereinafter "Employer"), the Hawaii State Department of Education (hereinafter "Department"), and the Hawai'i Government Employees Association, Local 152, AFSCME, AFL-CIO (hereinafter "Union") on behalf of all affected employees in Bargaining Units 2, 3, 4, 9, and, 13 (hereinafter "Affected Employees"). The Affected Employees include employees of the Department in Bargaining Units 2, 3, 4, 9, and 13, as well as exempt employees who are not administratively assigned to a pay range, who are or who were employed by the Department during the period of March 4, 2020 to March 25, 2022.

WHEREAS, on September 23, 2020, the Union filed a Step 2 Class Grievance (DOE #21-03-010) on behalf of all affected Bargaining Unit employees employed by the Department, alleging violations of Collective Bargaining Agreement (CBA) Articles on Conflict, Maintenance of Rights and Benefits, Rights of the Employer, and Temporary Hazard Pay (THP). The Union claimed employees who were required to report to work were not awarded THP as entitled by their respective CBA;

WHEREAS, on November 13, 2020, the Department issued its response denying the grievance;

WHEREAS, on November 24, 2020, the Union filed its notice of intent to proceed to arbitration;

WHEREAS, on January 18, 2024, Arbitrator Thomas E. Crowley ("Arbitrator Crowley") issued his Decision, Order, and Second Partial Final Arbitration Award ("Arbitration Award"); and

WHEREAS, notwithstanding the January 18, 2024 Arbitration Award, the Parties desire to effect a full and final compromise and settlement of any and all matters, claims, and causes of action arising out of, or related to, the subject grievance. A mutually acceptable agreement to supplant the arbitration award has been fashioned. NOW THEREFORE, the Employer and the Union (hereinafter "Parties"), on behalf of all Affected Employees, hereto mutually agree to the following terms, conditions and mutual obligations:

1. Tier 1 - \$20,000 THP lump sum paid in one installment to all Affected Employees who were physically at work; provided that:

For Affected Employees who worked a 12-month work schedule, the number of days required is 375 days or more on and/or between March 4, 2020 through March 25, 2022.

For the Affected Employees who worked a 10-month work schedule, the number of days required is 300 days or more on and/or between March 4, 2020 through March 25, 2022.

Tier 2 - \$10,000 THP lump sum paid in one installment to:

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Affected Employees who worked a 12-month work schedule and were physically at work at least one day but less than 375 days on and/or between March 4, 2020 through March 25, 2022.

Affected Employees who worked a 10-month work schedule and were physically at work at least one day but less than 300 days on and/or between March 4, 2020 through March 25, 2022.

Affected Employees who did not physically report to work during the identified period would not be entitled to compensation.

2. For purposes of this Settlement Agreement, a "day" is counted if the Affected Employee physically reported to work on a scheduled work day during work hours, regardless of the duration at work.
3. The following shall not be counted toward the physically at work day requirement:
 - a. Vacation leave
 - b. Sick leave
 - c. Compensatory time off
 - d. Workers' compensation
 - e. Telework or work from home arrangements
 - f. Administrative leave with or without pay
 - g. Leave without pay
 - h. Families First Coronavirus Response Act leave
 - i. Family and Medical Leave Act leave
 - j. Overtime hours and other salary considerations, etc.
4. All Affected Employees will be required to complete and submit a form to self-assess and document their tier placement by November 27, 2024, subject to approval by the supervisor. In the event of a disagreement between the Affected Employee and supervisor regarding tier placement, the Affected Employee will have 30 calendar days to present information/documentation to substantiate their tier placement to the Office of Talent Management Assistant Superintendent or designee. The Office of Talent Management Assistant Superintendent or designee shall thereafter provide a response to the Affected Employee. In the event that there still is disagreement, the Union will have 30 calendar days from the date of the Office of Talent Management Assistant Superintendent's or designee's response, to present information/documentation to substantiate a different tier placement to a mutually agreed upon 3rd party for review and final decision making.
5. Affected Employees who are no longer employed are also eligible for the lump sum payments, provided they complete and submit the form required by the Employer by November 27, 2024.

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6. Affected Employees who were also employed by any State of Hawai'i executive branch department, the Hawai'i Health Systems Corporation, University of Hawai'i, and/or Judiciary, during the award period, may only receive a combined total of \$20,000 from the Department and any other employer listed in this paragraph. Affected Employees receiving disbursements by the Department and any of the other listed employers, will be subject to audit. If it is found that an Affected Employee received more than a combined total of \$20,000 from the Department and/or the above-mentioned employers, the employee shall reimburse the Department.
7. The Employer agrees to compensate Affected Employees in Tiers 1 and 2, subject to the Employer's ability to obtain funding in its entirety for this purpose from the legislature.
8. The THP will be paid as a lump sum in one (1) installment to each Affected Employee in Tiers 1 and 2, processed as a separate payment from the Affected Employee's bi-monthly check, via the payroll system. The payment will be no later than March 20, 2025. The Parties are aware that the Employees' Retirement System (ERS) requires the Employer to report such payout broken down by pay period.
9. The Employer shall withhold all taxes and retirement contributions required by law for the Affected Employees. Union dues will also be deducted from this payment. Affected Employees are responsible for all tax liabilities incurred as a result of this Settlement Agreement.
10. The Union agrees that the Employer has no control over ERS calculations and will not hold the Employer responsible for any actions taken by the ERS regarding Affected Employees' ERS retirement benefits. The Union understands that the ERS has informed the Employer that the lump sum payment is creditable as "compensation," only for employees who became an ERS member before July 1, 2012.
11. This Settlement Agreement shall be restricted in scope and application to the parameters of this class grievance and shall not be construed in any manner or form used as precedent in any other case or situation.
12. The Parties shall endeavor to jointly resolve any unanticipated issues that may arise regarding this Settlement Agreement.
13. Nothing contained in this Settlement Agreement shall be construed as an admission of liability or wrongdoing by any of the Parties.
14. Neither the Union nor the Affected Employees shall institute any further actions, including grievances or actions at law or in equity against the Employer, its officers, employees, or agents concerning the actions taken by the Employer as it relates to THP pay incurred on and/or between March 4,

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2020 and March 25, 2022.

15. Following the execution of the terms of this Settlement Agreement, the Union's class grievance filed on behalf of Affected Employees is considered fully resolved and there shall be no future claims for THP incurred on and/or between March 4, 2020 and March 25, 2022.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective on the date of the last signature.

STATE OF HAWAII

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION

Josh Green, M.D.
Governor of Hawai'i

Randy Perreira,
Executive Director

Date: _____

Date: _____

DEPARTMENT OF EDUCATION:

Keith T. Hayashi
Superintendent

Date: _____