

SUPPLEMENTAL AGREEMENT  
GRIEVANCE PROCEDURE RELATING TO ADVERSE ACTION FOR FAILURE TO MEET  
PERFORMANCE REQUIREMENTS  
BARGAINING UNIT 1

This SUPPLEMENTAL AGREEMENT is entered into this <sup>JMO</sup> 21<sup>st</sup> day of April ~~2008~~ <sup>2006</sup>, by and between the United Public Workers, hereinafter Union, on behalf of Employees in bargaining unit 1, and the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, the County of Kauai, and The Judiciary, hereinafter the Employer.

WHEREAS, Hawaii Revised Statutes (HRS) section 89-10.8 , which was created as a result of Act 253, SLH 2000, provides that the grievance procedure relative to adverse actions resulting from an employee's failure to meet performance requirements of the employee's position shall culminate in a final and binding decision by a performance judge;

NOW, THEREFORE, the Union and the Employer agree to the following Grievance Procedure Relating to Adverse Action for Failure to Meet Performance Requirements.

**SECTION 15A. GRIEVANCE PROCEDURE RELATING TO ADVERSE ACTION FOR FAILURE TO MEET PERFORMANCE REQUIREMENTS**

15A.01 PROCESS.

This grievance procedure shall be used whenever the Employer takes an adverse action against an Employee for failure to meet the performance requirements of the Employee's position. Only Employees in a civil service position who have successfully completed an initial probationary period shall be allowed to process a grievance relating to an adverse action for failure to meet performance requirements (See HRS 76-11, 76-27).

15A.02 DEFINITIONS.

15A.02.a. The term "performance requirements" shall include any qualification requirements for an employee's position, including licenses.

15A.02.b. The term "adverse action" as used in Section 15A.01 means a discharge or involuntary separation from service, an involuntary demotion, an involuntary transfer, a suspension without pay, or an involuntary reallocation downward because of substandard performance. The term "adverse action" does not include notices to improve performance, placement on a performance improvement period, or a return to an Employee's former position or comparable position whenever an Employee fails to successfully complete a new probationary period.

15A.03 GRIEVANCE WITHOUT UNION REPRESENTATION.

15A.03.a. An Employee may process a grievance and have the grievance heard without representation by the Union except as provided in Section 15A.15.

15A.03.b. No meeting shall be held to discuss the grievance without first making an attempt to arrange a mutually acceptable meeting time with the grieving party and the Union, provided that the meeting shall be held within the time limits as provided in Section 15A.

15A.03.c. No resolution of a grievance filed as provided in Section 15A.03 shall be made at any step of the grievance procedure which is inconsistent with this Agreement.

15A.04 REQUIREMENTS.

15A.04.a. A grievance not filed as provided in Section 15A. need not be considered by the Employer or Employer's designee.

15A.04.b. By mutual agreement between the Union and the Employer or Employer's designee any requirement of Section 15A. may be waived.

15A.05 FAILURE TO RESPOND.

In the event the Employer fails to respond within the time limits of any step of Section 15A. the grievance may be appealed to the next step.

15A.06 INFORMAL RESOLUTION.

A grievance shall, whenever possible, be discussed and resolved informally between the grieving party and/or the Union with the immediate supervisor.

15A.07 MEETING.

The grieving party and/or the Union representative shall contact the Department Head or Department Head's designee and schedule a meeting at Step 1 within thirteen (13) calendar days after the date the Step 1 grievance is filed. A Step 2 appeal shall not be filed without first meeting at Step 1. In the event a Step 2 appeal or grievance is filed, the grieving party and/or the Union representative shall contact the Employer or the Employer's designee and schedule a meeting at Step 2 within thirteen (13) calendar days after the date the Step 2 appeal or grievance is filed.

15A.08 INFORMATION.

The Employer or Employer's designee shall provide all information in the possession of the Employer which is needed by the grieving party and/or the Union to investigate and/or process a grievance as follows:

15A.08 a. Photocopy and give the material requested to the grieving party and/or the Union within fourteen (14) calendar days of the request; or

15A.08 b. Make the material requested available to the grieving party and/or the Union within fourteen (14) calendar days of the request for the purpose of photocopying or review for five (5) calendar days on the condition that the grieving party and/or the Union agrees to sign Exhibit 15.08 and be responsible for the material until it is returned.

15A.09 FORMAL GRIEVANCE.

In the event the grievance is not satisfactorily resolved on an informal basis, the grieving party and/or the Union may file a formal grievance by completing the grievance form provided by the Union.

15A.10 STEP I GRIEVANCE.

The grievance shall be filed with the department head or the department head's designee in writing within eighteen (18) calendar days after the effective date of the adverse action for failure to meet performance requirements.

15A.11 STEP I DECISION.

The decision of the department head or department head's designee shall be in writing and shall be transmitted to the grieving party and/or the Union within thirteen (13) calendar days after the date of the meeting at Step 1.

15A.12 STEP 2 APPEAL OR GRIEVANCE.

In the event the grievance is not resolved in Step 1, the grieving party and/or the Union may file a letter of appeal with the Employer or the Employer's designee specifying the reasons for the appeal together with a copy of the grievance and a copy of the Step 1 decision within nine (9) calendar days after receipt of the Step 1 decision.

15A.13 DIFFERENT ALLEGATIONS.

The Employer or Employer's designee need not consider a Step 2 grievance which encompasses different allegations than those alleged in Step 1.

15A.14 STEP 2 DECISION.

The decision of the Employer or Employer's designee shall be in writing and transmitted to the grieving party and/or the Union within nine (9) calendar days after the date of the meeting at Step 2.

15A.15 STEP 3 PERFORMANCE JUDGE.

In the event a grievance is not resolved in Step 2, and the Union desires to submit the grievance to a performance judge, the Union shall notify the Employer within thirty (30) calendar days after the receipt of the Step 2 decision. Selection of a performance judge shall be done following Section 15A.16.

1) Any grievance for which the Employer maintains that the adverse action against an employee was for a failure to meet the performance requirements of the employee's position must be processed in accordance with Section 15A.

2) Notwithstanding 1), if the Union alleges that the adverse action was not due to a failure to meet performance requirements but for disciplinary reasons without just and proper cause, the performance judge shall first proceed with a determination on the merits of the Employer's action under Section 15A.19. If the performance judge determines that the adverse action may be based on reasons other than a failure to meet performance requirements, the performance judge shall then determine, based on appropriate standards of review, whether the disciplinary action was with or without proper cause and render a final and binding decision.

15A.16 PERFORMANCE JUDGE.

The performance judge shall be a neutral third party selected from a list of individuals whom the Employer or Employer's designee and the Union have mutually agreed are eligible to serve as a performance judge for the duration of this Agreement.

15A.16.a. ESTABLISHMENT OF THE PERFORMANCE JUDGE LIST.

15A.16.a.1. The Employer or the Employer's designee and the Union shall establish a performance judge list of a mutually agreed upon number of individuals, not less than four (4) but not more than ten (10) individuals within thirty (30) calendar days after the effective date of this Agreement. The individuals on the performance judge list shall be mutually agreed to by the Employer and the Union.

15A.16.a.2. In the event the Employer and the Union fail to mutually agree as to the individuals who will be on the performance judge list, the list shall be established as follows:

15A.16.a.2.a. The Employer and the Union shall each submit the names of individuals eligible to serve as performance judges, in accordance with the number of individuals agreed to in Section 15A.16a. For example, if the agreed upon number of individuals is six (6), each party shall submit six names.

15A.16.a.2.b. The Employer and the Union shall, by lot, determine who shall have first choice in deleting a name from the list. Subsequent deletions shall be made by striking names from the list on an alternating basis until the agreed upon number of names remain. The remaining names shall constitute the performance judge list. (In our example, the remaining six names would constitute the performance judge list).

15A.16.b. SELECTION OF THE PERFORMANCE JUDGE.

The Union and the Employer or Employer's designee shall select a Performance Judge within fourteen (14) calendar days after the notice of intent to proceed to the Performance Judge as follows:

15A.16.b.1. From the list of Performance Judges by mutual agreement

15A.16.b.2. In the event the Employer or Employer's designee and the Union fail to select a Performance Judge by mutual agreement, the Performance Judge shall be selected as follows:

15A.16.b.2.a. The Union and the Employer or Employer's designee shall determine by lot who shall have first choice in deleting a name from the list of Performance Judges.

15A.16.b.2.b. Subsequent deletions shall be made by striking names from the list on an alternating basis, and the remaining name shall be designated the Performance Judge.

15A.17 ISSUES TO BE PRESENTED TO THE PERFORMANCE JUDGE.

15A.17.a. Within five (5) calendar days after the Performance Judge has been selected each party may submit a statement of its view as to the issue(s) to the Performance Judge with a copy to the other party.

15A.17.b. The Performance Judge shall determine the issue(s) at the hearing.

15A.17.c. The hearing shall commence within a reasonable period of time after the selection of the Performance Judge. If the hearing has not commenced within one hundred twenty (120) calendar days after the selection of the Performance Judge, the parties may mutually agree to an extension for a period of time not to exceed thirty (30) calendar days.

15A.18 JURISDICTION.

15A.18.a. A grievance may not be heard under this procedure unless it involves an adverse action for failure to meet performance requirements.

15A.18.b. In the event the Employer disputes the performance judge's jurisdiction over the grievance, the performance judge shall determine whether the grievance is properly before the performance judge prior to hearing the merits of the grievance. If the performance judge decides the grievance is not a proper subject under the performance judge's jurisdiction, the grievance shall be referred back to the parties without decision or recommendation on its merits.

15A.19 AWARD.

15A.19.a. The Performance Judge shall render the award in writing no later than thirty (30) calendar days after the conclusion of the hearing(s) and submission of briefs provided, however, the submission of briefs may be waived by mutual agreement between the Union and the Employer.

15A.19.b. The award of the Performance Judge shall be final and binding provided, the award is within the scope of the Performance Judge's authority as described below:

15A.19.b. 1. The Performance Judge shall not have the power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement.

15A.19.b.2. The Performance Judge's authority shall be limited to deciding whether the Employer's action meets the conditions prescribed below in reaching a decision:

15A.19.b.2.a) The evaluation process and its consequences were discussed with the Employee.

15A.19.b.2.b) The Employee was made aware of the Employee's current job description and job-related performance requirements.

15A.19.b.2.c) The evaluation procedures were observed, including providing the Employee the opportunity to meet, discuss and rebut the performance evaluation and apprising the Employee of the consequences of failure to meet performance requirements.

15A.19.b.2.d) The evaluation was fair and objective.

15A.19.b.2.e) The Employee was provided performance feedback during the evaluation period and, as appropriate, the Employee was offered in-service remedial training in order for the Employee to improve and meet performance requirements.

15A.19.b.2.f) The evaluation was applied without discrimination.

15A.19.b.2.g) Prior to the end of the evaluation period that the Employee is being considered for discharge due to failure to meet performance requirements the feasibility of transferring or demoting the Employee to another position for which the Employee qualifies was considered. (See HRS 76-41)

15A.19.b.3. If the Union alleges that the adverse action was not due to a failure to meet performance requirements but for disciplinary reasons without just and proper cause, the performance judges shall first proceed with a determination on the merits of the Employer's action under Section 15A.19. If the performance judge determines that the adverse action may be based on reasons other than a failure to meet performance requirements, the performance judge shall then determine, based on appropriate standards of review, whether the disciplinary action was with or without proper cause and render a final and binding decision.

15A.19.c. The Performance Judge shall not consider any alleged violations or charges other than those presented at Step 1 and 2.

15A.20. FEES.

The fees of the Performance Judge, the cost of transcription and other necessary general costs, shall be shared equally by the Employer and the Union. Each party will pay the cost of presenting its own case and the cost of any transcript that it requests.

15A.21. TIME OFF TO TESTIFY.

The grieving party and Employees shall be permitted time off with pay to testify in grievance meetings and performance judge hearings.

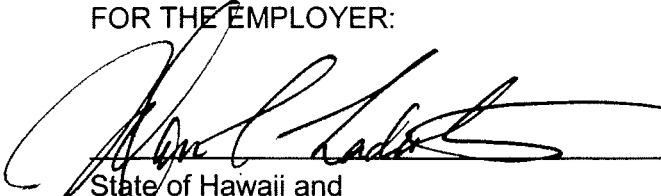


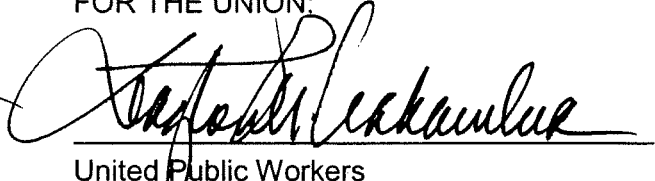
This SUPPLEMENTAL AGREEMENT shall be effective on the first day set forth above and shall continue in effect until June 30, 2007, provided that either party may terminate this agreement by providing the other party with thirty days written notice.


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

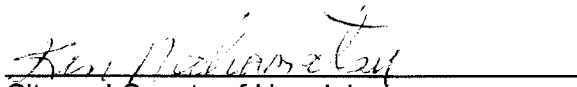
FOR THE EMPLOYER:

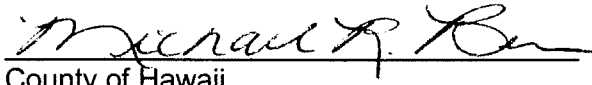
FOR THE UNION:

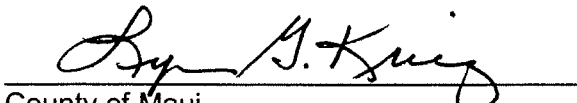
  
\_\_\_\_\_  
State of Hawaii and  
Office of Collective Bargaining

  
\_\_\_\_\_  
United Public Workers

  
\_\_\_\_\_  
The Judiciary

  
\_\_\_\_\_  
City and County of Honolulu

  
\_\_\_\_\_  
County of Hawaii

  
\_\_\_\_\_  
County of Maui

  
\_\_\_\_\_  
County of Kauai

APPROVED AS TO FORM:

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