EXECUTIVE SUMMARY

In the wake of goals articulated by Governor David Ige, as well as a two-day conference focusing on school empowerment, HEPC is analyzing several key policy documents to determine how each might inhibit or enhance greater autonomy at the school level. The purpose of HEPC’s analysis is to ask the question: If state decision makers wanted to remove barriers to school level empowerment, and significantly decentralize decision making, what laws, policies, rules, agreements or internal procedures directly impact school empowerment and might justify closer review? As second in a series relating to school empowerment, HEPC examines selected articles of two important collective bargaining agreements (CBAs): one for teachers negotiated with the Hawai‘i State Teachers Association (HSTA) - (bargaining unit 5); and one with the Hawai‘i Government Employees Association (HGEA) for the principals and educational officers (bargaining unit 6).

Analysis of CBAs through the lens of school level empowerment is not intended as a critique of collective bargaining, nor of appropriate state level controls or standards. The purpose is to illuminate how extensively, perhaps without full awareness, parties to negotiations tend to trust only higher levels of decision making and power. Rather than powers and rights of the Employer vs. the Union, this analysis is more focused on the distribution of power and autonomy at various levels within the realm of the Employer and the Union.

HSTA Unit 5 Contract

HEPC selected seven (7) Articles in the most recent contract that illustrate and define where power is exercised and how. These are:

- **ARTICLE 4 – ASSOCIATION RIGHTS**
  Specifically, the establishment of Association Policy Committees (APCs) with no mention of the School Community Councils (SCCs);
- **ARTICLE 5 – GRIEVANCE PROCEDURE**
  Specifically, the removal of the school administration early in the process, and the tendency to emphasize differences between school managers and the faculty;
- **ARTICLE 6 – TEACHING CONDITIONS AND HOURS**
  Specifically, the creation of a Class Size Committee only at the state level;
- **ARTICLE 7 – ASSIGNMENTS AND TRANSFERS**
  Specifically, official recognition of a state level created school code of procedures;
- **ARTICLE 8 – TEACHER PERFORMANCE**
Specifically, academic freedom defined within the standards or curricula dictates and testing directives of the state system;

- **ARTICLE 15 – DEPARTMENT AND GRADE LEVEL CHAIRPERSONS**
  Specifically, the removal of school level powers to organize departmental and grade level leadership.

**HGEA Unit 6 Contract for Educational Officers**

HEPC was able to obtain a copy of the Master Unit 6 Agreement for July 1, 2007 – June 30, 2009. The substance of the non-cost provisions has not changed appreciably in subsequent adjustments. Unlike the HSTA CBA, the HGEA agreement includes more items that appear to delegate some power or decision making to the school level. HEPC has selected eight (8) Articles in the agreement that illuminate distribution of powers, namely:

- **ARTICLE 4 - MAINTENANCE OF RIGHTS BENEFITS AND PRIVILEGES**
  Specifically, the deference to the School Code and the right of the Board of Education to amend the Code and the power of the Board of Education to unilaterally amend it;

- **ARTICLE 6 - RIGHTS OF THE EMPLOYER**
  Specifically, the right of the Board to control virtually all personnel actions, including the right to discipline any staff at a school;

- **ARTICLE 9 – FACULTY AND STAFF**
  Specifically, the rights of principals to select grade level and department chairs, schedule meetings, etc., which could be seen in contrast to the HSTA CBA;

- **ARTICLE 10 – STUDENTS**
  Specifically, that principals have the right to determine the assignment of students;

- **ARTICLE 11 – APPOINTMENTS**
  Specifically, *apriori* state level determination of how vacancies shall be filled;

- **ARTICLE 15 – GREIVANCE PROCEDURES**
  Specifically, similar to that of the HSTA CBA, grievance procedures quickly shift out of the school level to district and state arbitrations;

- **ARTICLE 17 – EDUCATIONAL OFFICERS GOVERNANCE**
  Specifically, the requirement that Educational Officers (EO) be “involved in decisions which impact their functions and responsibilities;

- **ARTICLE 20 PROFESSIONAL IMPROVEMENT**
  Specifically, approval of any professional improvement leaves must work its way all the way to the State Board of Education for approval. In addition, the CBA requires the BOE to grant a minimum of seven leaves per school year.

**GENERAL CONCLUSIONS**

Both the HSTA and HGEA contracts include significant examples where negotiators determined that important decisions would not be made at the school level. The HSTA contract takes more of a “top down” DOE approach, while the HGEA Unit 6 contract is a little more balanced. In part, these two agreements send mixed messages. Principals have some authority, but very little when it comes to management of HSTA teachers. A future school empowerment agenda should consider negotiation of supplemental amendments to these agreements.
BACKGROUND

In the wake of goals articulated by Governor David Ige, as well as a two-day conference focusing on school empowerment sponsored by the Educational Institute of Hawai’i, HEPC began an initial review of the Board of Education’s existing and proposed policy revisions. HEPC found that there were significant indications of a continued preference for decision-making above the school level. HEPC analyzed policies adopted by the state board of education that related to decision making at the school, complex area, district, and state levels. (See: HEPC’s School Empowerment Policy Brief)

The HEPC analysis asks: If policy makers want to remove barriers to school level empowerment, and significantly decentralize decision making, what laws, policies, rules, agreements or internal procedures directly impact school empowerment and might justify closer review?

As second in a series relating to school empowerment, or lack thereof, HEPC’s policy analysis examined some features of two important CBAs: one for teachers negotiated with the HSTA (bargaining unit 5); and one with the HGEA for the principals and educational officers (bargaining unit 6).

**Relevance:** One important point to note for both agreements is that these are not between a school community and the state, or between a school and a union. These are master agreements that apply to all teachers, principals and EOs, negotiated between state level officials and high-level union officials. Individual schools have no say in these negotiations. Therefore, the very process of negotiating master agreements is in itself inconsistent with individual school empowerment. By contrast, Hawai’i charter schools may negotiate supplemental agreements to the master, with power to alter both cost and non-cost items. Sometimes this is called two-tier bargaining.

**The HSTA CONTRACT**

HEPC reviewed the most recent HSTA agreement in effect from July 1, 2013 – June 30, 2017. This is a very detailed document that not only covers broad areas such as limits on the work day, salary schedule and a grievance process, but also prescribes detailed processes and policies at the school level such as the use of equipment, the size of the bulletin boards, chalkboards and whiteboards, mail boxes and even requiring “typewritten lesson plans.”

In general, the HSTA Contract seeks to prevent or minimize circumstances in which individual teachers and school faculties are not treated fairly or taken advantage of by administrators. It also ensures that it is the Association (HSTA) that is the primary agent and voice of teachers, not the teachers themselves, and not a school council or any other group of teachers at a school.

HEPC selected seven (7) provisions of the contract that explicitly limit school level autonomy, or are indicative of how the overall decision-making system operates.
ARTICLE 4 – ASSOCIATION RIGHTS

School Community Councils (SCC) vs. The Association Policy Committee (APC).
In a previous review of BOE policies, HEPC took note of the SCCs, and the fact that the policies explicitly indicated that these are not empowered to govern anything at the school level (See SCC functions and Links from the HIDOE Web Page).

The functions of the SCC are to:
- Review the academic and financial plan and either recommend revisions of the plans to the principal, or recommend the plans for approval by the complex area superintendent; ensure that the school’s Academic and Financial Plan is aligned with the educational accountability system;
- Participate in the selection and evaluation of the principal; provide opportunities for input and collaboration;
- Recommend to the principal the school’s repair and maintenance needs; recommend, develop, amend, or approve school-level policies and rules;
- Request waivers from state agency policies, rules, procedures, and exceptions to collective bargaining agreements, if such exceptions or waivers will improve student achievement.

By contrast, the HSTA master agreement makes no mention of the SCCs, which are made up of stakeholders from school administration, faculty, students, and parents. Instead, under ARTICLE 4 – ASSOCIATION RIGHTS, item J, we find the establishment of the Association Policy Committee. Specifically:

In each school, an Association Policy Committee (APC) will be recognized by the Employer. This committee may consist of not more than four (4) teachers from that school. For a school with more than fifty (50) faculty members, the committee may consist of not more than six (6) members from that school.

The principal will meet and discuss with the committee such topics as the following: excursion procedures, student rules, activity policies, monitors, extracurricular policies, intra-school communications, school forms, fund raising projects and matters which may be subject to discussion under Section 89 –(C).

Meetings and committee activities will be conducted in such a manner that they will not interfere with classroom instruction.

Relevance: This provision illustrates that neither the Employer nor the Association was willing to defer to the school leadership or the SCC in terms of the composition or number of members of an APC, or even the items to be discussed. Stakeholders such as other non-instructional staff, parents, students or community members are not included in the APC.
ARTICLE 5 – GRIEVANCE PROCEDURE

HEPC notes that in the initial handling of disputes that may involve provisions of the CBA, there is language that appears to encourage resolution at the school level: Section E: “Any teacher or the Association, in cases of an Association grievance, may institute a grievance by notifying the principal or immediate supervisor of such and shall meet with the principal or immediate supervisor on an informal basis for the purpose of discussion and attempting to settle the matter.” However, failure to come to agreement quickly shifts the process above the school.

Relevance: Formal arbitrations further remove school leadership from addressing disputes. If a dispute is not resolved at the school level, and the Association believes there is a “violation, misinterpretation or misapplication” of the CBA, the focus quickly shifts above the school. Under Step 1, the grievance must be presented to the complex area superintendent within 20 days. Perhaps just as important, the decision making in a grievance may shift away from the Association itself to its attorneys, whose recommendations and actions can pit one teacher against another, or teachers against administrators in preparing written statements or providing testimony to an arbitrator. Arbitrations can negatively impact collaboration and cooperation in a school if they emphasize or enflame the gaps between principals and faculty.

ARTICLE 6 – TEACHING CONDITIONS AND HOURS

In addition to the APC at each school, the master agreement also establishes the Class Size Committee (A. 1.) at the state level, consisting of two representatives of the Employer and two from the Association. Here, there is no involvement of the schools in determining class sizes for all DOE schools in the system.

This is also the section where state level decision makers require teachers to prepare “legibly written or typewritten lesson plans.” This is just one example where the CBA imposes very specific behavior on not only the principals but the teachers as well.

Relevance: Three very different committees vie for influence – the SCC, the APC, and the Class Size Committee. Two of these were established via the collective bargaining agreements.

ARTICLE 7 – ASSIGNMENTS AND TRANSFERS

“Assignments and transfers shall be governed by this Article and by the policies, regulations and procedures as contained in the Standard Practice 5100 Series...” The Standard Practices is what is also known informally as the School Code, which is generally not available to the public. Various sections of the School Code are in hard copy binders in offices with a need to know basis. Within the School Code are a myriad HIDOE forms, with the various requirements for approvals, and the details of who and how must approve all administrative actions. Under Section H, Amendments and/or Modifications to Article VII, the HSTA CBA makes it clear that assignments and transfers will be controlled entirely by the Employer (the State DOE) and the Association. This section reinforces the statewide employment system in the HIDOE, as opposed to one in which individual schools have some degree of autonomy in the selection of teachers.
Relevance: Personnel assignment and transfer matters addressed at the state and systems level, with little or no role for individual schools. More importantly, the CBA specifically codifies a section of the School Code as the official procedures manual – a code created internally at the state level, and not available for public review, inspection, or input.

ARTICLE 8 – TEACHER PERFORMANCE

The evaluation system for teachers is a state-level negotiated process between the Employer and the Association. Individual schools had no formal say in development of this Article other than informal feedback that may have been solicited.

Section Q. Performance Judge, subsection 3 states: “The Employer and the Association shall jointly establish and mutually agree to a list of six (6) performance judges for the duration of this agreement.” The section continues with details of how a Performance Judge – who acts as an appellate judge when a teacher believes he or she has been wrongly evaluated – would be selected, and generally is very legalistic and similar to that of the selection of an arbitrator under a formal grievance.

Relevance: Neither individual schools nor their SCC members apparently have a role in the appeals process.

ARTICLE 13 – ACADEMIC FREEDOM

This Article grants teachers professional autonomy only within the context of state standards, a pre-selected curricula, text book or script. “Academic freedom shall be guaranteed to teachers and they shall be encouraged to study, investigate, present and interpret objectively facts and ideas concerning man, society, and physical and biological work, and other branches of learning subject to established courses of study.”

Relevance: This section respects the individual professionalism of each teacher, but only within established courses of study, and a myriad of other standards and academic prescriptions. It is similar to a constitutional provision with the phrase: as provided by law. Teaching to the test to the exclusion of other pedagogical strategies may well be imposed on teachers.

ARTICLE 15 – DEPARTMENT AND GRADE LEVEL CHAIRPERSONS

One apparent purpose of this section is to prevent a principal from arbitrarily assigning a teacher extra administrative duties of a department without alleviating that teacher from existing duties. However, the level of detail spelling out the duties of a departmental chair suggests that schools cannot be trusted to design and implement their own internal organizational structures.
Relevance: These provisions speak to a HIDOE culture, in which even the internal organization of a school – including how a school community might select and define grade or subject department leadership – is seen as only a statewide mandate. Neither the HIDOE nor the HSTA appears willing to provide flexibility to schools in matters of internal organization.

THE HGEA UNIT 6 CONTRACT

HEPC reviewed the Master Unit 6 Agreement for July 1, 2007 – June 30, 2009. The substance of the non-cost provisions has not changed appreciably in subsequent adjustments. Unlike the HSTA CBA, the HGEA agreement includes more items that appear to delegate some power or decision making to the school level. HEPC has selected eight (8) Articles in the agreement that illuminate distribution of powers, namely:

ARTICLE 4 - MAINTENANCE OF RIGHTS BENEFITS AND PRIVILEGES

This article includes the right of the Board to control virtually all personnel actions, including the right to discipline any staff at a school.

“A. Except as modified herein, educational officers shall retain all rights, benefits and privileges pertaining to their conditions of employment contained in the School Code or subsequent related procedures at the time of the execution of this Agreement.

“B. Subject to the foregoing paragraph, nothing contained herein shall be interpreted as interfering with the Board’s right to make, amend, revise or delete any portion of the School Code or subsequent related procedures; provided, however, that the Union shall be consulted on any changes to be made.”

Relevance: Because the School Code contains forms and procedures identifying which higher level staff must approve various decisions, delegation of all School Code amendments to the State level has important implications for any school level autonomy. In addition, the Code is not posted on any web page for public review.

ARTICLE 6 - RIGHTS OF THE EMPLOYER

Constitutionally the Board of Education has certain obligations and powers, and this section reaffirms these. However, it also drills down to explicitly place authority of many management and personnel decisions at the Board level. Specifically, “…the right to hire direct, promote, transfer, assign, and retain employees in positions within the department and to suspect, demote, discharge, or take other disciplinary action against employees; the right to relieve employees from duties because of lack of work or for other legitimate reasons, the right to examine, select, certify, recruit, hire, evaluate, train, retain, promote, assign, or transfer employees; the right to utilize and direct the work force; the right to classify and reclassify positions, assign or reassign classes to pay scales; the right to discipline or discharge employees…” In other words, a principal at a school has very little power over her or his employees.
The Board of Education, as the employer, and the union could have, through negotiation, delegated powers to principals or SCCs at the school level. However, Article 6 makes it clear that educational leadership at the school does not include the kinds of supervision and management typically associated with administrative leadership in an agency or organization.

ARTICLE 9 – FACULTY AND STAFF

Specifically, the rights of principals to select grade levels and department chairs, schedule meetings, etc., which could be seen in contrast to the HSTA CBA. While Article 9 moves slightly in the direction of school level empowerment, this article also places “formulation of foundational staffing” at the Board level.

Relevance: This Article appears to say that no major staffing adjustments can be made at the school level.

ARTICLE 10 – STUDENTS

Specifically, principals have the right to determine the assignment of students.

Relevance: This Article is one of few instances where the principal has sole authority.

ARTICLE 11 – APPOINTMENTS

Specifically, there is a state level determination of how any vacancy shall be filled. This Article makes it clear that personnel actions are features of a statewide system that is created through negotiations of the master agreement. The level of details contained in the CBA for appointments is very prescriptive.

Relevance: Appointments are not controlled or influenced by the decisions of school levels leaders.

ARTICLE 15 – GREIVANCE PROCEDURES

Similar to that of the HSTA CBA, grievance procedures quickly shift out of the school level to district and state arbitrations.

Relevance: The ability to fully manage staff grievances or conflicts is reduced by the legalistic nature of the grievance process.

ARTICLE 17 – EDUCATIONAL OFFICERS GOVERNANCE

This Article does include the requirement that EOs be “involved in decisions which impact their functions and responsibilities.” However, in order to schedule union-management meetings devoted to EO issues, the Superintendent and District administrators must be involved.
Relevance: Both Employer and Union agree that independent discussions at the school level shall not be allowed.

ARTICLE 20 – PROFESSIONAL IMPROVEMENT

Approval of any professional improvement leaves must work its way all the way to the State Board of Education for approval. In addition, the CBA requires the BOE to grant a minimum of seven leaves per school year.

Relevance: Board of Education staff reports that they do not have a list of all the formal approvals that must come before the Board. Article 20 ensures that approval of each and every leave for professional development cannot be delegated to lower levels of the department.

OBSERVATIONS AND CONCLUSIONS

Hawai‘i has a statewide public education system, and with it comes centralized policy making, including the negotiation of master agreements with public unions. Within this legal context, the State and the unions have the power through collective bargaining to determine powers and duties of the Superintendent, the state level staff, district staff, and school administrators. Through this process, the following important policy decisions are made:

- the powers, duties and pre-emptive authority of district and complex area administrators;
- the powers and duties of a principal to provide both educational and administrative leadership;
- the powers and duties of various committees, such as School Community Councils, Association Policy Committees, and Class Size Committees;
- the direct involvement or pre-emptive authority of the state as Employer and the Union as representative in a myriad of issues;
- the option of allowing individual schools to negotiate supplemental agreements, as is done with charter schools;
- the transparency of procedural policy making, such as the creation and amendment of the School Code and how accessible it is to public scrutiny;
- the ability to make timely decisions;
- the amount of administrative paperwork required to consummate a decision; and
- the overall trust to be granted to a school level learning community.

A brief examination of selected Articles in two collective bargaining agreements finds that these agreements themselves can have profound impact on the educational and administrative functions of a public school. For the most part, the agreements place most important decision making well above the school level. Taken with the policies adopted by the BOE, they represent significant challenges for enhanced school empowerment. Should policy makers decide to move in the direction of more school level autonomy, supplemental amendments to these agreements could be considered.

Find more at our HEPC web page: http://manoa.hawaii.edu/hepc/