

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

| | | |
|--------------------------------|---|-----------------------------|
| In the Matter of |) | CASE NO. CU-01-95 |
| COUNTY OF HAWAII, |) | ORDER NO. 1022 |
| Complainant, |) | ORDER GRANTING RESPONDENTS' |
| and |) | MOTION TO DISMISS |
| UNITED PUBLIC WORKERS, AFSCME, |) | |
| LOCAL 646, AFL-CIO and GARY |) | |
| RODRIGUES, |) | |
| Respondents. |) | |

ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

On July 19, 1993, Complainant COUNTY OF HAWAII (COUNTY), by and through its attorneys, filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). Complainant alleges that it entered into a contract with Waste Management of Hawaii, Inc. (WMI) to construct and operate a new landfill in West Hawaii. Complainant contends that its decision is a non-negotiable matter under § 89-9(d), Hawaii Revised Statutes (HRS). Complainant alleges that the negotiations over the terms of the new collective bargaining agreement between the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) and the COUNTY have stalled because the UPW improperly conditioned continued negotiations on discussions over the landfill matter.

Complainant alleges that Respondents' unwarranted refusal to continue negotiations constitutes an unwarranted refusal to bargain in good faith and is violative of §§ 89-13(b)(2) and (4), HRS. Moreover, Complainant alleges that Respondents violated

their duty to bargain in good faith by improperly threatening to strike over the COUNTY's decision to enter into a contract with WMI.

On August 16, 1993, Respondents GARY RODRIGUES and UPW filed a motion to dismiss with the Board. Respondents argue, inter alia, that the Complainant lacks standing to bring a prohibited practice charge alleging a refusal to bargain in good faith in the multi-employer setting. Although Respondents recognize that Mayor Stephen Yamashiro (Yamashiro) of the COUNTY is a public employer within the meaning of § 89-2, HRS, Respondents contend that Yamashiro lacks standing to bring a bad faith bargaining charge unless he can show that he has the support of a majority of public employers who are engaged in the multi-employer bargaining under § 89-6(b), HRS.

The Board conducted a hearing on Respondents' motion to dismiss on September 13, 1993. All parties were represented by counsel who had full opportunity to present evidence and argument. In addition, Complainant, by and through its attorney, submitted a memorandum in opposition to Respondents' motion to dismiss. Thereafter, the Board scheduled a hearing on March 3, 1994 to take further evidence but later canceled the hearing. After considering the evidence and arguments presented, the Board dismisses the instant prohibited practice complaint.

Respondents claim that the COUNTY's complaint should be summarily dismissed because the COUNTY lacks standing to pursue the action without first obtaining the approval of a majority of the public employers and by failing to join the other public employers.

Complainant contends that nothing in § 89-13(b), HRS, requires that only a majority of public employers may bring a claim under § 89-13(b)(2), HRS. Moreover, Complainant argues that Respondents' theories are not supported by the case authorities which were cited in their memorandum.

Section 89-13(b), HRS, provides in relevant part:

It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

* * *

- (2) Refuse to bargain collectively in good faith with the public employer if it is an exclusive representative, as required in section 89-9;

* * *

- (4) Refuse or fail to comply with any provision of this chapter;

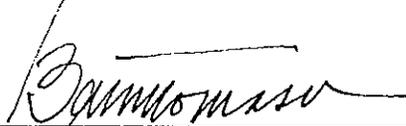
The duty to bargain in good faith on the part of the respective parties is set forth in § 89-9(a), HRS. The employer and the exclusive representative are required to negotiate in good faith with respect to wages, hours, and other conditions of employment. Complainant correctly states that the definition of "employer" or "public employer" in § 89-2, HRS, does not require a majority of the public employers to take action.

However, § 89-6(b), HRS, states that for the purpose of negotiations, the public employer of an appropriate bargaining unit is the governor and the mayors of the respective counties. That section further provides that the governor is accorded four votes while each mayor has one vote and any decision reached by the employer group requires a simple majority of the members.

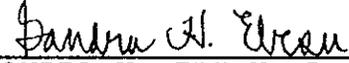
Considering § 89-13(b), HRS, in conjunction with § 89-6, HRS, the Board finds that the COUNTY lacks standing to maintain a refusal to bargain charge in the multi-employer bargaining setting. We note that the negotiations at issue here are the multi-employer negotiations for a successor Unit 1 collective bargaining agreement and this holding is limited to this context.

DATED: Honolulu, Hawaii, March 14, 1994.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGH, Board Member


SANDRA H. EBESU, Board Member

Copies sent to:

Herbert R. Takahashi, Esq.
Nadine Ando, Esq.
Joyce Najita, IRC