

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-10-332
UNITED PUBLIC WORKERS,	)	ORDER NO. 1406
AFSCME, LOCAL 646, AFL-CIO,	)	ORDER GRANTING COMPLAINANT
Complainant,	)	UPW'S MOTION FOR SUMMARY
and	)	JUDGMENT
BENJAMIN J. CAYETANO, Governor,	)	
State of Hawaii; GEORGE IRANON,	)	
Director, Department of Public	)	
Safety, State of Hawaii and	)	
EDWARD SHIMODA, Acting Warden,	)	
Women's Community Correctional	)	
Center, State of Hawaii,	)	
Respondents.	)	

ORDER GRANTING COMPLAINANT UPW'S MOTION FOR SUMMARY JUDGMENT

On November 26, 1996, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint against BENJAMIN J. CAYETANO, Governor, State of Hawaii; GEORGE IRANON, Director, Department of Public Safety, State of Hawaii and EDWIN SHIMODA, Acting Warden, Women's Community Correctional Center (WCCC), State of Hawaii (collectively, Respondents or Employer) with the Hawaii Labor Relations Board (Board). Complainant alleges that Respondents failed to provide any response to Complainant's request for information needed to investigate and process a grievance filed by Curtis Kim. Complainant contends that Respondents thereby breached their duty to bargain in good faith. Thus, Complainant contends that

Respondents wilfully violated §§ 89-9 and 89-13(a)(1), (5), (7), and (8), Hawaii Revised Statutes (HRS).

On December 23, 1996, Complainant filed a motion for summary judgment with the Board. The UPW contends that there are no genuine issues of material fact in dispute and that the Union is entitled to judgment as a matter of law since Respondents admit that the requested information was not provided within five (5) working days as required by § 15.09 of the Unit 10 agreement.

On January 3, 1997, Respondents filed their memorandum in opposition to Complainant's motion for summary judgment. Respondents admit that the requested information was not transmitted in a timely manner, but that Complainant failed to establish a wilful violation by Respondents.

On January 9, 1997, the Board conducted a hearing on the UPW's motion for summary judgment. After considering the evidence and arguments presented, the Board found that there were no genuine issues of material fact and that the UPW was entitled to judgment as a matter of law. The Board thereupon directed the UPW to submit a proposed order to the Board. On January 15, 1997, the UPW filed its proposed order with the Board. Thereafter, on January 24, 1997, Respondents filed a proposed order with the Board.

The Board accepts and incorporates the proposed findings and conclusions submitted by the parties which support the rationale of the instant order. The Board also rejects those findings and conclusions which do not support the Board's order. Accordingly, based upon a review of the evidence and arguments

presented the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The UPW is the exclusive bargaining representative, as defined in § 89-2, HRS, of employees of the State of Hawaii who are included in Unit 10.

BENJAMIN J. CAYETANO is the Governor of the State of Hawaii and is a public employer as defined in § 89-2, HRS.

GEORGE IRANON was for all times relevant, the Director of the Department of Public Safety, State of Hawaii and a representative of a public employer as defined in § 89-2, HRS.

EDWIN SHIMODA is Acting Warden at the WCCC, State of Hawaii and a representative of a public employer as defined in § 89-2, HRS.

The UPW and the State of Hawaii are parties to a collective bargaining agreement which covers all institutional, health, and correctional workers in Unit 10.

The UPW filed a grievance, dated November 8, 1996, with the Employer alleging violations of the Unit 10 agreement over the placement of Adult Correctional Officer Curtis Kim at the WCCC.

In connection with the investigation of the aforementioned grievance the UPW submitted a request for information to Respondent SHIMODA, dated November 8, 1996.

The request for information was made in accordance with § 15.09 of the Unit 10 agreement which states:

15.09 Any information in the possession of the Employer which is needed by the grieving party to investigate and process a grievance,

shall be photocopied and given to the grieving party within five (5) working days of the grieving party's request for such information, provided that the Employer shall have the option to (a) photocopy and give the material requested to the grieving party within the 5-working day period, or (b) make the material requested available to the grieving party within the 5-working day period for the purpose of photocopying or review by the grieving party for three (3) working days on the condition that the grieving party agrees to sign out and be fully responsible for the material until it is returned.

The Employer failed to reply to the grievance at Step 1 and the UPW filed a Step 2 appeal of the grievance dated November 19, 1996. The instant prohibited practice complaint was filed on November 26, 1996.

In a letter dated November 20, 1996, Malcolm Lee, Chief of Security, WCCC, responded to the UPW's information request. According to the UPW State Director, the information requested on November 8, 1996 was received by the Union on December 11, 1996.

#### DISCUSSION

The UPW contends that the Respondents violated §§ 89-13(a)(1), (5), (7), and (8), HRS, by failing or refusing to provide the Union with information to process the grievance as requested.

Section 89-13(a), HRS, provides in pertinent part:

§ 89-13 Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

\* \* \*

- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

\* \* \*

- (7) Refuse or fail to comply with any provision of this chapter;  
(8) Violate the terms of a collective bargaining agreement; . . .

In the instant case, Respondent SHIMODA received the Union's request for information in connection with the pending Kim grievance on or about November 8, 1996. Section 15.09 of the contract provides that the Employer must provide the information to the Union within five working days after receipt of the request, or in this case, by November 18, 1996. Although Lee's response to the Union's business agent was dated November 20, 1996, the Union received the information on December 11, 1996. Respondents provide no reason for failing to provide the information to the UPW within the time provided by the contract.

Respondents assert that there are a number of material facts in dispute, including but not limited to, the existence of a grievance, the date of receipt of any request for information, the date of response to any request for information and if any violation of the contract occurred, whether such violation was wilful. Respondents also submit that there may have been confusion in responding to the instant information request because of another pending grievance and information request involving Curtis Kim. Respondents thus contend that the Complainant failed to carry its burden of proof and that summary judgment is inappropriate on the record before the Board.

Based upon a review of the record and the arguments presented, the Board finds that there are no genuine issues of material fact in dispute in this case. Where a party demonstrates that there are no genuine issues of material fact and movant is entitled to judgment as a matter of law, summary judgment is appropriate. Reyes v. Kuboyama, 76 Haw. 137 (1994).

Here, the UPW requested information in connection with a pending grievance filed on behalf of Curtis Kim, Case No. MA 96/39, on or about November 8, 1996. Pursuant to § 15.09 of the Unit 10 contract, the Employer was required to provide the information to Union on or about November 18, 1996. The information requested was not submitted to the Union until December 11, 1996, subsequent to the filing of the Step 2 appeal of the grievance and the filing of the instant prohibited practice complaint. Respondents offer no facts justifying the delay in its response to the Union's request for information here. The Board further notes that the facts submitted by Respondents regarding Case No. MA 96/38 illustrates a further violation of § 15.09 of the contract by the Employer's failure to respond to that request for information within a timely manner.

The reasons for requiring the Employer to produce the information in a timely manner are clear. If the information provided is helpful, the Union will be able to use the information in its investigation and further processing of the grievance. If the information is damaging, the Union may reevaluate the claim and resolve the grievance or not pursue the grievance further. Here, the Employer's refusal to provide the information requested

prevented the Union from either course and therefore frustrated the grievance process. Thus, the Board finds based upon the evidence presented that the Employer violated the contract by not supplying the information requested within the applicable time frame.

In addition, the Board has previously recognized in State of Hawaii Organization of Police Officers, 3 HPERB 25 (1982), that the failure to provide information relevant to a grievance filed by the union constitutes a violation of the employer's duty to bargain in good faith. Thus, based upon the record, the Board concludes that the Employer also violated § 89-13(a)(5), HRS, by its failure to provide the information requested.

With respect to the issue of wilfulness, in United Public Workers, AFSCME, Local 646, AFL-CIO, 3 HPERB 507 (1984), the Board, while acknowledging its previous interpretation of "wilful" as meaning "conscious, knowing and deliberate intent to violate the provisions of Chapter 89, HRS" nevertheless stated that "wilfulness can be presumed where a violation occurs as a natural consequence of a party's actions." Id., at 514. Based upon the evidence before the Board, the Board finds that the natural consequence of the Employer's actions in failing to provide the information necessary to the grievance frustrated the grievance process. Thus, the Board finds that the Employer's action in this case was wilful.

Having found the foregoing prohibited practices, it is unnecessary for the Board to discuss the UPW's allegations of violations of §§ 89-13(a)(1) and (7), HRS, by the failure to provide the information requested.

In addition, the Union requests that the Board assess the Employer attorney's fees and costs for submitting a frivolous defense. However, after reviewing the record, the Board does not find the Employer's defense frivolous and therefore, the Board hereby denies the Union's request for fees and costs.

#### CONCLUSIONS OF LAW

The Board has jurisdiction over this complaint pursuant to §§ 89-5 and 89-14, HRS.

Respondents committed prohibited practices in violation of § 89-13(a)(8), when they wilfully violated § 15.09 of the Unit 10 contract by failing to provide information to the UPW as requested on November 8, 1996 within five working days.

As the duty to bargain in good faith encompasses the Employer's obligation to provide the Union with information relevant to a grievance, Respondents' failure to provide information to the UPW as requested violated § 89-13(a)(5), HRS.

#### ORDER

Based upon the foregoing, the Board hereby orders the following:

(1) Respondents shall cease and desist from committing prohibited practices and shall provide information requested by the Union within the time limits provided under relevant contract provisions.

(2) Respondents shall immediately post copies of this order in conspicuous places at its worksites where employees of the

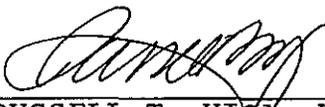
bargaining unit assemble and leave such copies posted for a period of 60 consecutive days from the initial date of posting.

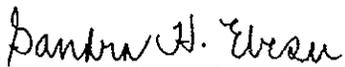
(3) Respondents shall notify the Board within 30 days of the receipt of this order of the steps taken to comply herewith.

DATED: Honolulu, Hawaii, January 27, 1997.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
SANDRA H. EBESU, Board Member

Copies sent to:

Herbert R. Takahashi, Esq.  
Colette Dhakhwa, Deputy Attorney General  
Joyce Najita, IRC