

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-01-275
	)	
UNITED PUBLIC WORKERS, AFSCME,	)	ORDER NO. 1456
LOCAL 646, AFL-CIO,	)	
	)	ORDER GRANTING COMPLAINANT'S
Complainant,	)	MOTION FOR DEFERRAL TO
	)	ARBITRATION AWARDS, IN PART,
and	)	AND DISMISSING COMPLAINT
	)	
LINDA CROCKETT LINGLE, Mayor,	)	
County of Maui, CHARLES JENCKS,	)	
Director, Department of Public	)	
Works and Waste Management,	)	
County of Maui; DAVID GOODE,	)	
Deputy Director, Department of	)	
Public Works and Waste	)	
Management, County of Maui;	)	
RAYMOND Y. KOKUBUN, Director,	)	
Department of Personnel	)	
Services, County of Maui;	)	
KENNETH T. TAIRA, Deputy	)	
Director, Department of	)	
Personnel Services, County of	)	
Maui; and COUNTY OF MAUI,	)	
	)	
Respondents.	)	

ORDER GRANTING COMPLAINANT'S MOTION FOR DEFERRAL TO ARBITRATION AWARDS, IN PART, AND DISMISSING COMPLAINT

On March 6, 1997, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union), by and through its counsel, filed a motion for deferral to arbitration awards with the Hawaii Labor Relations Board (Board) in this case. Previously, the Board deferred the hearing on the merits of the instant complaint upon the above-named Respondents' motion, pending the resolution of five grievances through the grievance process. Subsequently, Arbitrator Walter Ikeda rendered two arbitration awards in those grievances

and the UPW moves to have the Board defer to the arbitration awards and order compliance with the awards.

Relying upon the National Labor Relations Board's (NLRB) ruling in Spielberg Mfg. Co., 112 NLRB 1080, 36 LRRM 1152 (1955), the UPW submits that the issues considered by the arbitrator parallel those raised in this prohibited practice complaint, that the awards were entered after full and fair hearings, and the parties agreed to be bound by the arbitrator's determination. In addition, the UPW submits that the rulings are consistent with Chapter 89, Hawaii Revised Statutes (HRS). Thus, the UPW contends that the Board should grant summary judgment in this case and order compliance with the decision insofar as the issues are covered in its complaint.

On March 17, 1997, the Board conducted a status conference by conference call in this matter. At that time counsel for Respondents disagreed with the characterization of the awards by the UPW and the Board requested supplemental memoranda from the parties addressing the issue of whether the Board was authorized to grant the relief requested by Complainant and to determine whether the complaint was moot.

On March 18, 1997, the UPW, by and through its counsel, filed a supplemental memorandum in support of its motion to defer to the arbitration awards. The UPW requests that the Board defer to the arbitral ruling, issue an order granting summary judgment in its favor, and require the Respondents to post a notice and cease and desist from not complying with the arbitral rulings. The UPW

contends that the issues are not moot and a remedial order should issue from the Board.

On March 25, 1997, Respondents, by and through their counsel, filed a memorandum in response to Complainant's motion to defer with the Board. The Respondents have no objection to the UPW's request to defer to the awards and to order the Respondents to comply with the awards. Respondents indicated that since the awards are final and binding, however, the issues in the prohibited practice complaints are moot and no further action is necessary. Respondents further clarified the record as to Arbitrator Ikeda's rulings.

Based upon the arguments presented and the record in this case, the Board grants the Complainant's motion to defer to the arbitration awards. However, the Board finds it more appropriate to dismiss the instant complaint rather than issue a summary judgment order based upon the Arbitrator's decisions.

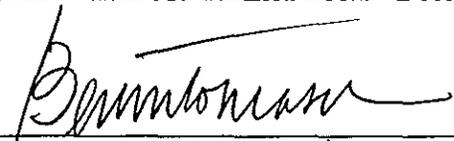
In the Spielberg case, the NLRB dismissed unfair labor practice charges brought against an employer where the company's refusal to reinstate four strikers accused of misconduct had been submitted to arbitration and an award was issued sustaining the company's position. The NLRB deferred to the arbitral finding that the refusals to reinstate were legitimately motivated:

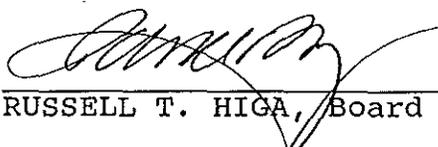
[T]he proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act. In these circumstances we believe that the desirable objective of encouraging the voluntary settlement of labor disputes will be best served by our recognition of the arbitrator's award.

In reviewing the application of the NLRB's policy in deferring to arbitration awards, the Board believes that the granting of summary judgment and further remedial relief is inappropriate here. The UPW represented to the Board that the proceedings have been fair, the Respondents and the Union agree that a final and binding award has been rendered, and the awards are not repugnant to Chapter 89, HRS. Thus, the awards are judicially enforceable. In addition, the Board's consideration of the merits of the case on UPW's motion for summary judgment would involve the relitigation of issues previously presented to and resolved by the Arbitrator which are now moot. Therefore, consistent with the policy to permit the parties to resolve their contractual disputes through their agreed upon arbitration procedure, the Board hereby defers to Arbitrator Ikeda's arbitration awards insofar as they resolve the issues before the Board in this complaint and further, hereby dismisses the instant complaint.

DATED: Honolulu, Hawaii, May 1, 1997.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
CHESTER C. KUNITAKE, Board Member

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and LINDA  
CROCKETT LINGLE, Mayor, County of Maui, et al.; CASE  
NO. CE-01-275  
ORDER NO. 1456  
ORDER GRANTING COMPLAINANT'S MOTION FOR DEFERRAL TO ARBITRATION  
AWARDS, IN PART, AND DISMISSING COMPLAINT

Copies sent to:

Howard M. Fukushima, Deputy Corporation Counsel  
Herbert R. Takahashi, Esq.  
Joyce Najita, IRC