

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-01-323
	)	
UNITED PUBLIC WORKERS, AFSCME,	)	ORDER NO. 1457
LOCAL 646, AFL-CIO,	)	
	)	ORDER GRANTING RESPONDENTS'
Complainant,	)	MOTION TO DISMISS PROHIBITED
	)	PRACTICE COMPLAINT
and	)	
	)	
JEREMY HARRIS, Mayor, City and	)	
County of Honolulu; CYNTHIA	)	
BOND, Director, Department of	)	
Personnel, City and County of	)	
Honolulu; and DAROLYN LENDIO,	)	
Corporation Counsel, Department	)	
of the Corporation Counsel,	)	
City and County of Honolulu,	)	
	)	
Respondents.	)	
	)	

ORDER GRANTING RESPONDENTS' MOTION  
TO DISMISS PROHIBITED PRACTICE COMPLAINT

On November 13, 1996, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). The complaint alleges that Respondents JEREMY HARRIS, Mayor, City and County of Honolulu; CYNTHIA BOND, Director, Department of Personnel, City and County of Honolulu; and DAROLYN LENDIO, Corporation Counsel, Department of the Corporation Counsel, City and County of Honolulu (collectively Employer), refused and/or failed to select an arbitrator in a timely manner on the grievance of Michael Talalotu (Talalotu), thereby violating § 15.22 of the Unit 01 Collective Bargaining Agreement (contract), and §§ 89-13(a)(1), (7) and (8), Hawaii Revised Statutes (HRS).

On December 19, 1996, the Employer filed a Motion to Dismiss the instant complaint. The Employer argues that the UPW accepted one of Respondents' proposed choices for arbitrator in the Talalotu grievance, thus the issue of selection of arbitrator is moot leaving no outstanding issues for the Board to resolve.

On December 26, 1996 the UPW filed a Memorandum in Opposition to Respondents' motion. The UPW contends that there are remedial issues (i.e., relating to a cease and desist order and an award of attorney's fees and costs) left for Board determination.

On December 30, 1996, the Board held a hearing on the motion to dismiss. Based upon a thorough review of the record and the arguments presented, the Board makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

The UPW is the exclusive representative, as defined in § 89-2, HRS, of employees of the City and County of Honolulu who are included in bargaining unit 01.

JEREMY HARRIS is the Mayor of the City and County of Honolulu and is a public employer as defined in § 89-2, HRS.

CYNTHIA BOND (Bond) was, at all times relevant, the Director of the Department of Personnel for the City and County of Honolulu, and a representative of a public employer as defined in § 89-2, HRS.

DAROLYN LENDIO (Lendio) was, at all times relevant, the Corporation Counsel for the City and County of Honolulu and a representative of a public employer as defined in § 89-2, HRS.

The UPW and the City and County of Honolulu are parties to a collective bargaining agreement which covers all employees in bargaining unit 01.

Section 15 of the contract sets forth the grievance procedure, and § 15.22 of the contract, pertaining to arbitration provides, in pertinent part:

15.22 STEP 4. ARBITRATION. If the matter is not satisfactorily settled at Step 3, and the Union desires to proceed with arbitration, it shall serve written notice on the Employer or his representative of its desire to arbitrate within thirty (30) calendar days of the receipt of the decision of the Employer or his designated representative.

Within ten (10) calendar days after the receipt of the notice of arbitration by the Employer, the parties shall meet to select an arbitrator as provided in Section 15.24.  
[Emphasis added.]

On or about July 24, 1996, a grievance was filed by UPW contesting the suspension of Talalotu. By letter dated September 24, 1996, the UPW informed Bond that it was submitting the grievance to arbitration and requested that the Employer contact David Hagino (Hagino) regarding the selection of an arbitrator pursuant to § 15.22 of the Unit 01 Agreement. By letter dated September 28, 1996 from Hagino to Bond, Hagino reiterated that he would represent the Union in the arbitration.

By memorandum dated October 3, 1996, Bond requested that Lendio's office represent the Employer in the arbitration case. Bond also requested that the assigned attorney contact Ms. Lissa Lau (Lau) to initiate selection of an arbitrator.

On October 9, 1996, Lendio assigned the arbitration case to Deputy Corporation Counsel W. Anthony Aguinaldo (Aguinaldo).

On or about October 24, 1996 Hagino telephoned Lau regarding the Talalotu arbitration. Lau informed Hagino that Aguinaldo was assigned to the case.

On November 13, 1996, the instant complaint was filed.

By letter dated November 20, 1996, Aguinaldo wrote to Hagino about his attempt to call him.

By letter dated December 4, 1996 Hagino suggested three arbitrators for consideration by Aguinaldo.

By letter dated December 6, 1996, postmarked December 12, 1996, Aguinaldo responded to Hagino and transmitted his proposed list of three arbitrators.

By letter dated December 12, 1996, Hagino sent a follow-up letter to Aguinaldo, regarding his December 4, 1996 letter.

By letter dated December 13, 1996, Hagino agreed to the selection of Jim Nicholson as arbitrator for the Talalotu arbitration.

#### DISCUSSION

In Decision No. 374, United Public Workers, AFSCME, Local 646, AFL-CIO, 5 HLRB 570 (1996) in Case Nos.: CE-10-254; CE-10-255; CE-10-256; CE-10-257; CE-10-258; CE-10-259; CE-10-261; CE-10-262; and CE-10-263, the Board heard and decided cases involving identical issues as in the instant case. The Board determined that in each of those cases, the employer's representative committed prohibited practices because of the failure to meet with the union within ten calendar days to select

an arbitrator "as required by the clear and unambiguous contract terms."

In Decision No. 374, the Board also determined that at a minimum, the contract requires that a representative from the employer contact the union's counsel to discuss the selection of an arbitrator. The Board further determined that the grievance procedure which culminates in final and binding arbitration provides for an efficient and informal process for resolving contractual disputes and, delays, where strict timeliness are prescribed, serve only to frustrate this process.

In the instant case, while the Board's determinations in Decision No. 374 are still controlling precedent, the Board finds that the selection of the arbitrator renders the case moot.

In Application of Thomas, 73 Haw. 223 (1992), the Hawaii Supreme Court recognized that as a general rule, the courts will not decide abstract propositions of law or moot cases. However, the Court also recognized an exception to the general rule in cases involving legal issues which are capable of repetition yet evading review. In Decision No. 374, the Board determined that those cases involved conduct which was repetitious and fell within the exception to the mootness doctrine since the eventual selection of the arbitrator would effectively moot the legal issues without permitting the Board or the courts to determine whether the employer violated the provisions of the contract by not meeting to select an arbitrator within ten days.

Thus, while the Board dismisses the instant case based on mootness, further violations of the provisions of § 15.22 of the Agreement will warrant the Board's finding of prohibited practices.

CONCLUSIONS OF LAW

The Employer's failure or refusal to meet with the Union to select an arbitrator within ten calendar days from the date arbitration is requested constitutes a violation of the contract and a prohibited practice.

The selection of the arbitrator in this case renders the complaint moot.

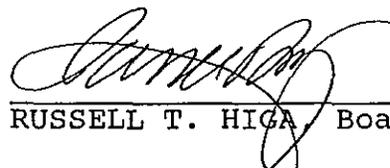
ORDER

The instant prohibited practice complaint is hereby dismissed.

DATED: Honolulu, Hawaii, May 1, 1997.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
CHESTER C. KUNITAKE, Board Member

Copies sent to:

David M. Hagino, Esq.  
W. Anthony Aguinaldo, Deputy Corporation Counsel  
Joyce Najita, IRC