

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-375
)	
UNITED PUBLIC WORKERS, AFSCME,)	ORDER NO. 1621
LOCAL 646, AFL-CIO,)	
)	ORDER GRANTING RESPONDENTS'
Complainant,)	MOTION TO DISMISS PRO-
)	HIBITED PRACTICE COMPLAINT
and)	
)	
BENJAMIN J. CAYETANO, Governor,)	
State of Hawaii; JAMES TAKUSHI,)	
Director, Department of Human)	
Resources Development, State of)	
Hawaii; and MARGERY S. BRONSTER,)	
Attorney General, State of)	
Hawaii,)	
)	
Respondents.)	

ORDER GRANTING RESPONDENTS' MOTION
TO DISMISS PROHIBITED PRACTICE COMPLAINT

On November 17, 1997, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union), by and through its attorney, filed a prohibited practice complaint against BENJAMIN J. CAYETANO, Governor, State of Hawaii; JAMES TAKUSHI, Director, Department of Human Resources Development, State of Hawaii; and MARGERY BRONSTER, Attorney General, State of Hawaii (collectively State Respondents or Employer) with the Hawaii Labor Relations Board (Board). The UPW alleged that by letter dated October 15, 1997, the UPW's counsel requested "all documents pertaining to any discipline given to David Victor (Victor) for his role in the incident that gave rise to" the James Tendo (Tendo) grievance. The UPW further alleged that Respondents have not or were unwilling to provide the information requested by the Union to process the grievance. Thus,

the UPW contended that the State Respondents wilfully violated §§ 89-13(a)(1), (7), and (8), Hawaii Revised Statutes (HRS).

On March 2, 1998, Respondents, by and through their attorneys, filed a motion to dismiss the prohibited practice complaint with the Board. Respondents contend that the UPW failed to state a claim for relief since there are no documents relating to any action taken against Victor. Respondents contend that the UPW was informed that Victor was orally counselled and that there were no documents regarding any disciplinary action taken against him. Moreover, the Union requested the documents to process the Tendo grievance which was arbitrated on January 27, 1998. Accordingly, Respondents contend that the instant complaint should be dismissed for failure to state a claim for relief.

The Union did not file a response to Respondents' motion to dismiss the complaint. On April 16, 1998, the Board held a hearing on the instant motion. At the hearing, the parties had full opportunity to present evidence and arguments to the Board.

The Employer argued that the complaint seeks the production of documents which do not exist and therefore should be dismissed. The Union contended that the complaint should not be dismissed because the Employer led the UPW to believe that Victor had been counselled or disciplined and the Union sought documentation of the discipline in order to settle the Tendo grievance. The Union contends that it would have accepted the settlement of the Tendo grievance if disciplinary action had been taken against Victor. The Union also contends that at the arbitration held on January 27, 1998, Victor's supervisor admitted

that Victor was not disciplined despite statements to the contrary in correspondence submitted to the Board that appropriate action had been taken against Victor.

After reviewing the record and the arguments of counsel, the Board hereby grants the instant motion to dismiss the prohibited practice complaint. The Union alleges in its complaint that the Employer failed or refused to produce documents requested pursuant to § 15.09 of the Unit 01 collective bargaining agreement (contract) necessary to process a grievance. The Board takes notice that § 15.09 of the applicable contract provides that:

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,

Here, the Employer asserts that it does not possess any documents which pertain to disciplinary action taken against Victor for the incident at issue. While the UPW contends that obtaining the documents was critical to settle the Tendo grievance, the Board notes that grievance was not settled and the arbitration hearing took place on January 27, 1998. Thus, based upon the record, the Board finds that the Employer does not possess any document memorializing any disciplinary action taken against Victor and there is nothing in the record to support a claim that any such record exists.

For this reason, the Board hereby grants Respondents' motion to dismiss the instant complaint.

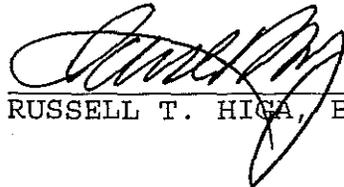
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and BENJAMIN J.
CAYETANO, et al.; CASE NO. CE-10-375
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COMPLAINT

DATED: Honolulu, Hawaii, May 8, 1998.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

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