

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. R-10-19
	)	
HAWAII TEAMSTERS & ALLIED	)	DECISION NO. 254
WORKERS, LOCAL 996, INTER-	)	
NATIONAL BROTHERHOOD OF	)	FINDINGS OF FACT, CONCLU-
TEAMSTERS,	)	SIONS OF LAW AND DIRECTION
	)	OF ELECTION
Petitioner,	)	
	)	
and	)	
	)	
JOHN WAIHEE, Governor of the	)	
State of Hawaii, and FRANK F.	)	
FASI, Mayor of the City and	)	
County of Honolulu,	)	
	)	
Employers,	)	
	)	
and	)	
	)	
UNITED PUBLIC WORKERS, AFSCME,	)	
LOCAL 646, AFL-CIO,	)	
	)	
Exclusive	)	
Representative-	)	
Intervenor.	)	
	)	

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FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND DIRECTION OF ELECTION

On April 3, 1987, Petitioner HAWAII TEAMSTERS & ALLIED WORKERS, LOCAL 996, INTERNATIONAL BROTHERHOOD OF TEAMSTERS [hereinafter referred to as TEAMSTERS], filed a Petition for Certification with the Hawaii Labor Relations Board [hereinafter referred to as Board] seeking to be certified as the exclusive representative for bargaining unit 10, Nonprofessional hospital and institutional workers.

On April 9, 1987, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO [hereinafter referred to as UPW], filed a Motion to Intervene into these proceedings. The motion was granted on April 28, 1987.

#### FINDINGS OF FACT

The TEAMSTERS are an employee organization as defined by Section 89-2, Hawaii Revised Statutes [hereinafter referred to as HRS].

JOHN WAIHEE is the Governor of the State of Hawaii and FRANK F. FASI is the Mayor of the City and County of Honolulu and are public employers as defined by Section 89-2, HRS, of employees in bargaining unit 10.

Unit 10 is an appropriate bargaining unit composed of nonprofessional hospital and institutional workers as defined by Sections 89-2 and 89-6, HRS, and is comprised of approximately 2,000 employees.

The UPW is an employee organization as defined by Section 89-2, HRS, and was certified by the Hawaii Public Employment Relations Board as the exclusive bargaining representative for employees in Unit 10 on February 11, 1972 and has represented Unit 10 employees to the present.

At the time of the filing of the TEAMSTERS' petition, a valid collective bargaining agreement was in force and effect for the appropriate bargaining unit. The term of the agreement was July 1, 1985 to June 30, 1987.

The TEAMSTERS' petition was supported by a showing of interest of at least thirty (30) percent of the employees in the appropriate bargaining unit.

On April 27, 1987, the Board issued a Notice of Pending Certification.

On May 1, 1987, a Notice of Board Conference was sent to the parties.

UPW filed a Motion to Disqualify Teamsters in Representational Proceedings on May 21, 1987. The Motion to Disqualify is based on the argument that the TEAMSTERS cannot be:

a representative of public employees,  
[because] the Teamsters does not have as its primary purpose representational interests in behalf of Unit 10 employees. Instead, the Teamsters suffer a disqualifying conflict of interest which precludes it from being an exclusive bargaining representative under HRS Chapter 89.

Memorandum in Support of Motion to Disqualify filed on May 21, 1987 [hereinafter referred to as Disqualification Memo] at 2. This conflict of interest is based on the case of Bausch & Lomb Optical Co., 108 NLRB No. 213, 34 LRRM 1222, [hereinafter referred to as Bausch & Lomb argument]. The UPW argues that the disqualifying conflict of interest is:

[t]he business interest which Art Rutledge and the Teamsters have in the Waikiki Marine Hotel. . . which may lead to the subordination of the interests of Unit 10 employees if the Teamsters prevail and become the exclusive bargaining representative. An organization with such dual capacity (i.e. one which advocates for a convention center at Fort DeRussy to increase the value of a hotel it owns and one which seeks to represent employees in Unit 10) cannot be tolerated.

Disqualification Memo at 11; Tr. of June 4, 1987 Hearing, [hereinafter referred to as 6/4] at pp. 92-93.

UPW also filed a Motion to Dismiss Teamsters' Petition, [hereinafter referred to as Motion to Dismiss] on May 21, 1987. The Motion to Dismiss was supplemented with a Memorandum in Support of Motion to Dismiss [hereinafter referred to as Dismissal Memo] on May 28, 1987. The basis of the Motion to Dismiss is that the collective bargaining agreement for the period of time July 1, 1987 to June 30, 1989 acted as a bar to an election under Section 89-7, HRS, and therefore the Board could not order an election. Dismissal Memo at 4-5.

On May 22, 1987, the Board sent to all parties a Notice of Hearing which set arguments on UPW's Motion to Disqualify and Motion to Dismiss to be heard on May 28, 1987 at 9:00 a.m.

On May 26, 1987, the UPW applied for Subpoena Duces Tecums from the Board. The Subpoena which is relevant to this decision sought production of some 56 items from Arthur Rutledge as President of the TEAMSTERS for the hearing scheduled on May 28, 1987.

The hearing scheduled on May 28, 1987 was convened but continued due to the request of the TEAMSTERS' attorney. UPW's attorney orally argued the contract bar doctrine at that time. Tr. 5/28.

On May 27 and June 3, 1987, the TEAMSTERS filed its Memorandum in Opposition to UPW's Motion to Disqualify.

On May 27 and June 3, 1987, Local 996 filed its Memorandum in Opposition to UPW's Motion to Dismiss.

On June 2, 1987, a Petition to Revoke Subpoena Duces Tecum [hereinafter referred to as Petition to Revoke] was filed as to the subpoena issued to Arthur Rutledge. The UPW filed its opposition to Motion to Revoke on June 4, 1987. A hearing was held on the Petition to Revoke on June 4, 1987 at 1:20 p.m. At this hearing, the TEAMSTERS argued that the subpoena was issued due to UPW's Bausch & Lomb argument and this argument is irrelevant and unsupportable in the representation of Unit 10. Tr. 6/4 at pp. 80 and 102. The Board ordered the TEAMSTERS to prepare a supplemental memo on each item listed in the subpoena and it was filed on June 8, 1987. The UPW filed its Reply to the supplemental memo on June 16, 1987.

On June 4, 1987, the hearing on the Motion to Dismiss Complaint was held. The TEAMSTERS argued that Section 89-7, HRS, was clear on its face. The statute requires only that the Petition be filed during the window period. A contrary holding would result in a situation where an election is forever barred as long as the incumbent union and the employer enter into collective bargaining agreements before the Board could order an election. Tr. 6/4 at pp. 4-7. The TEAMSTERS also supplemented its arguments in opposition to the Motion to Dismiss on June 23, 1987 to address the case of Ariyoshi v. Hawaii Public Employment Relations Board, 5 Hawaii App. 533 (1985) and distinguished this petition from the facts of the Ariyoshi matter.

On July 2, 1987, the majority of the Board agreed with the statutory interpretation of the TEAMSTERS and found that an

election can be properly directed by the Board and therefore denied UPW's Motion to Dismiss.

Also on July 2, 1987, the Board agreed with the TEAMSTERS and revoked the Subpoena Duces Tecum issued for Arthur Rutledge as to those items listed in paragraphs 2-56 of the Subpoena. (Only the items in paragraph 1 of the Subpoena were to be produced which were the TEAMSTERS' By-laws and Constitution.)

On July 10, 1987, the UPW filed a Notice of Appeal in the First Circuit Court from the Board's Order Denying the Motion to Dismiss. The Appeal was docketed as Civil No. 87-222107. The TEAMSTERS moved to dismiss the Notice of Appeal on July 27, 1987 and on July 30, 1987, the Honorable Robert G. Klein orally granted the TEAMSTERS' motion.

The UPW's Motion to Disqualify was set for hearing on August 25, 1987. At this hearing, it was agreed that the UPW and the TEAMSTERS would submit Proposed Findings of Fact and Conclusions of Law and the Board would issue a final order which would address all issues and motions filed by the parties. Tr. of August 25, 1987 [hereinafter referred to as 8/25] at p. 5.

Also, on August 25, 1987, the UPW filed a Motion for Disqualification of Mack H. Hamada and James K. Clark. It was agreed that the Board's prior rulings in other cases dealing with a similar Motion for Disqualification of the same Board members would be made part of the record. Tr. 8/25 at p. 4. The Motion for Disqualification is based upon the identical allegations as those set forth in Buddy H. Kimura, 4 HLRB \_\_\_\_ (1986) and Louis

Victorino, Case Nos. CE-01-96 and CU-01-49. UPW did not present any new arguments or evidence on August 25, 1987.

#### CONCLUSIONS OF LAW

On August 25, 1987, UPW filed a Motion for Disqualification of Mack H. Hamada and James K. Clark, alleging that the Board members are personally biased against top officials of the UPW. The motion is based upon events which occurred on or about February 18, 1986, approximately one and-one-half years ago and which the UPW claims clearly indicate that the Chairperson:

has pre-judged the issues which are before the Board. Chairman Hamada's feelings for Mr. Victorino over that of that of the UPW preclude an unbiased and non-prejudicial adjudication of this case. (See Memorandum in Support of Motion for Disqualification of Mack H. Hamada and James Clark, p. 3)

It is clear that the motion is identical, with minor modifications, to motions previously filed by the UPW and ruled upon by the Board in Louis Victorino, supra, and Buddy H. Kimura, supra. In the Victorino case, the Board orally denied UPW's motion for disqualification. The denial of the motion was appealed to the Fifth Circuit Court in Civil No. 860045 and the Honorable Kei Hirano dismissed the appeal on the basis that the Board's order was not a final order and not properly appealable.

In the Kimura case, the Board stated at pp. 3-4 of Decision No. 235:

At the opening of hearings on October 9, 1986, the UPW entered a Motion to Disqualify Board Members Mack H. Hamada and James K. Clark. The motion was based on a confrontation between Gary Rodrigues, Executive Director of the UPW, and Board Members Hamada

and Clark at the State Capitol on February 28, 1986. The UPW alleged that Chairperson Hamada addressed Rodrigues using a racial epithet and the UPW further alleged that Board Member Clark made verbal threats on Rodrigues' life. On the basis of these allegations, the UPW argues that Board Members Clark and Hamada harbor bias and prejudice against Gary Rodrigues and the UPW. The UPW argues that a fair hearing is required by law and by the principles of due process. The alleged bias and prejudice, the UPW argues, deprives the union of due process. Because of the alleged bias and prejudice, the UPW requested that Board Members Hamada and Clark recuse themselves and not hear the present case. Tr., pp. 4-7.

After deliberations on the motion, the Board denied the motion and proceeded to hear the case. Tr., p. 8. The Board now reiterates its oral decision stated at the hearing that it deemed Members Clark and Hamada fit to hear the instant case. After consideration of the arguments presented in favor of the motion, the Board has determined that there is no personal bias or hostility on the part of Mack Hamada or James Clark towards the union involved in this case or any of its officers that would affect the decision in this case. Likewise, there has been no prejudgment of any issues or facts in this case to warrant disqualification of any Board member. As in any other case, the Board is fully prepared to entertain the facts and arguments to be presented and render an impartial decision based on the merits of the case. Accordingly, the motion is denied.

After careful consideration of UPW's arguments, the Board rules that Chairperson Hamada and Board Member Clark do not suffer from personal bias or hostility towards the UPW or its officials which would affect a decision in this case. In this case, there has been no prejudgment of the issues or facts presented to warrant disqualification of any Board member. The record aptly demonstrates that the UPW has been afforded ample



opportunity to present its arguments and each of its arguments has been fairly and carefully considered. Since this is a representation case, the Board's interest is in resolving the pertinent legal and factual issues, and to conduct an election, if warranted, in a fair and impartial manner. Hence, the fate of the UPW and the final decision in this case will not be made by the Board or its individual members, but by the employees who the union presently represents. Collectively, they are the ultimate decision-makers as to whether the UPW should continue as their exclusive representative. Accordingly, the Board concludes that the subject motion is without merit and hereby denies the motion for disqualification of the named Board members.

With regard to the Motion to Disqualify Teamsters in Representational Proceedings, the UPW argues that the TEAMSTERS' alleged interest in the Waikiki Marina Hotel would result in the subordination of the interests of Unit 10 members. The UPW's argument is based upon a decision of the National Labor Relations board in Bausch & Lomb Optical Co., 108 NLRB No. 213, 34 LRRM 1222. The UPW contends that the TEAMSTERS suffer from a disqualifying conflict of interest because its business interest precludes it from having the single minded purpose of protecting and advancing the interest of public employees. The UPW posits that the alleged business interest would be furthered by the establishment of a nearby convention center. The UPW suggests that the interest of the Unit 10 membership will be compromised in negotiations in order to further the alleged business interest.

The Bausch & Lomb case speaks to the union's roles as a business competitor of the employer and in representing bargaining unit employees at negotiations as creating a conflict of interest. Here, the bargaining unit consists of nonprofessional hospital and institutional workers and the Employers are the Governor of the State of Hawaii and the Mayor of the City and County of Honolulu. Even if the UPW's allegations of business ownership were true, as a matter of law, UPW's arguments are unconvincing. In no way can we perceive that a business interest in a hotel approaches the Employers' operations of hospital and penal institutions and the provision of emergency paramedical services. In the same way, we are not persuaded by the UPW's contentions that the TEAMSTERS are not an "employee organization" within the meaning of Section 89-2, HRS. Hence, the Board finds the UPW's Motion to Disqualify Teamsters in Representational Proceedings to be without merit and is denied.

On July 2, 1987, the Board issued an Order Denying UPW's Motion to Dismiss Teamsters' Petition. That order indicated that a majority of the Board agreed with the statutory interpretation of the TEAMSTERS as the TEAMSTERS' petition was properly filed within the applicable time frame. One Board member dissented and indicated that he was persuaded by the UPW's arguments.

Section 89-7, HRS, provides, in part:

No election shall be directed by the board in any appropriate bargaining unit within which (1) a valid election has been held in the preceding twelve months; or (2) a collective bargaining agreement is in force

and effect, except upon a petition as provided herein not more than ninety days, but not less than sixty days, prior to the expiration of the agreement. [Emphasis added.]

Administrative Rules Sections 12-42-22(b)(2) provides:

Where there is a collective bargaining agreement in current effect, a petition for determination, selection, or decertification shall be filed not more than ninety nor less than sixty days prior to the expiration of the agreement.

The majority of this Board found this statutory language and interpretative rule to be clear and unambiguous. The TEAMSTERS' petition in this case was filed with the Board on April 3, 1987 which is within the "window period" recognized by the foregoing statutory provision. The relevant contract in existence at the critical time of reference, the filing of the petition, expired on June 30, 1987. A contract entered into subsequently cannot act as a bar to the conduct of a representation election if the petition was timely filed. The majority of the Board was persuaded by the TEAMSTERS' argument that recognition of a contract bar in this case would effectively preclude representation challenges ad infinitum if a contract is entered into prior to the expiration of the previous contract. Hence, the majority of the Board denied UPW's motion to dismiss.

In view of the foregoing rulings and, pursuant to Administrative Rules Section 12-42-23(c), based upon the requisite finding of a valid showing of interest of at least thirty percent of the employees in the bargaining unit, the Board hereby makes the following order.

## DIRECTION OF ELECTION

Pursuant to the petition filed by the TEAMSTERS, the Board, having ascertained that there is a question concerning the representation of Unit 10 employees, the existing optional appropriate bargaining unit of nonprofessional hospital and institutional workers, for the purposes of collective bargaining, hereby directs that an election be conducted under the following terms:

1. SECRET BALLOT ELECTION. An election by secret ballot shall be held, under the supervision of the Board, among the employees in Unit 10. The election shall be conducted on the dates and at the times and places indicated in section 11 below to determine whether a majority of the employees in Unit 10 desires to be represented, for purposes of collective bargaining, by the TEAMSTERS or the UPW or whether they desire no representation.

2. UNIT COMPOSITION. Unit 10 includes all employees classified as supervisory and nonsupervisory Nonprofessional Hospital and Institutional Workers, including:

All supervisory and nonsupervisory hospital and institutional workers, including Licensed Practical Nurses, Adult Corrections Officers II through Lieutenants, Houseparents, Juvenile Detention Officers, Paramedical Assistants, School Dormitory Attendants, Morgue Attendants, Central Supply Aides, Respiratory Therapy Technicians III's, IV's and V's, Occupational Therapy Assistants, Youth Corrections Officers, Institution Sewing Instructors, Institution Carpentry Instructors, Emergency Medical Technicians II's through V's, Ambulance Service Support Technicians, Health Services Assistants and Prosector Assistants.

3. ELIGIBLE VOTERS. The eligible voters shall be all employees in Unit 10 who were employees during the payroll period ending September 15, 1987, including employees who did not work during the designated payroll period because they were ill, on authorized leave with or without pay (including maternity leave), and also including employees on leave for service in the United States military or the National Guard.

4. INELIGIBLE VOTERS. Employees who have retired, resigned or have been discharged for cause since the payroll period ending September 15, 1987 and who have not been rehired or reinstated prior to the date of this election shall be ineligible to vote.

5. LIST OF EMPLOYEES. On or before September 28, 1987, the Employers shall submit to the Board four (4) copies of a list of Unit 10 employees by polling places, listing the employees by name, social security number, job classification and home address.

6. NOTICE OF ELECTION. The Employer shall post copies of the Board's Notice of Election in conspicuous and usual posting places at the work sites. Such posting shall occur not less than seven (7) days before the scheduled date of election. The Employers shall, thereupon, certify to this Board that the notices have been posted where notices are normally posted.

7. FORM OF BALLOT. The ballot shall contain the names of the employee organizations in the following wording and order from top to bottom:

- (a) Hawaii Teamsters and Allied Workers, Local 996,  
International Brotherhood of Teamsters

(b) United Public Workers, Local 626, AFSCME, AFL-CIO

(c) No Representation

8. CAMPAIGN ACTIVITIES. Campaigning or related activities by both unions shall be allowed on the Employers' premises during duty free lunch time, before or after work shifts, in non-work areas designated by the facility's administration. There shall be no solicitation of or interference with employees who are on duty either by the TEAMSTERS or UPW.

The TEAMSTERS shall have the same rights respecting use of employee bulletin boards as those possessed by the UPW.

9. PREPARATION OF POLLING PLACE. The Employers shall be responsible for the preparation of the polling place to accommodate the election process.

10. PRIORITY OF BALLOTS. In the event the Board's records indicate that a voter has cast a ballot in person as well as by mail, the Board shall count the vote cast in person. If a voter has been found to have cast a ballot at his assigned polling place as well as at the Board's office, the Board shall count the ballot cast at the polling place.

11. PLACE, DATE AND TIME OF ELECTION. The election for employees at the following Oahu work sites shall be held on October 13, 1987, at the following polling places and times:

Polling Place: LEAHI HOSPITAL

6:45 a.m. - 7:45 a.m.  
2:30 p.m. - 3:30 p.m.

Leahi Hospital  
Ala Moana Womens', Infants' and  
Childrens' (WIC) Program  
Ambulance Maintenance  
Central Public Health Nursing Office  
Central Support

Polling Place: LEAHI HOSPITAL  
(Continued)

6:45 a.m. - 7:45 a.m.  
2:30 p.m. - 3:30 p.m.

Children's Mental Health Services  
Branch  
Diamond Head Health Education Office  
Bilingual Aides  
Diamond Head Mental Health Center  
Dispatch Center  
Family Health Services/Aliiolani School  
Family Health Services/Jefferson School  
Orthopedic Program  
Family Health Services/Liliuokalani School  
Hansen's Disease Clinic  
Hawaii School for the Deaf and Blind  
Health Services Division  
Kapahulu Public Health Nursing Office  
Koko Head Mental Health Clinic  
Leahi Hospital Mental Health Children's  
Inpatient Services  
Makiki Mental Health Clinic  
Venereal Disease Control Clinic  
Waikiki Mental Health Clinic

Polling Place: HAWAII STATE HOSPITAL

6:30 a.m. - 7:30 a.m.  
2:30 p.m. - 3:30 p.m.

Hawaii State Hospital  
Early Periodic Screening Diagnostic and  
Treatment Center at Windward Health Center  
Family Health Services/Ben Parker School  
Family Health Services/Kainalu School  
Health Education Office, Windward Oahu  
Kailua Counseling Center  
Waimanalo Children and Youth Program  
Windward Oahu Mental Health Center,  
Day Treatment Program  
Windward Infant Development Program  
Windward Oahu Health Center  
Windward Oahu Mental Health Center  
Windward Oahu Mental Health Clinic Visiting Team

Polling Place: HALAWA MEDIUM SECURITY FACILITY

Halawa Medium Security Facility

1:30 p.m. - 2:30 p.m.  
9:30 p.m. - 10:30 p.m.

Polling Place: HALAWA HIGH SECURITY FACILITY

Halawa High Security Facility

1:30 p.m. - 2:30 p.m.  
9:30 p.m. - 10:30 p.m.

Polling Place: WAIMANO TRAINING SCHOOL & HOSPITAL

Waimano Training School & Hospital	6:30 a.m. - 7:30 a.m. 3:00 p.m. - 4:00 p.m.
Campbell School, Orthopedic Unit	
Central Oahu Mental Health Center, Community Support Services	
Central Oahu Mental Health Center, Day Treatment Program	
Developmental Disabilities Division/Leeward Infant Day Care Program	
Developmental Disabilities Division/Wahiawa Infant Day Care Program	
Family Health Services/Manana School	
Family Health Services/Pearl Harbor School	
Family Health Services/Pohakea School	
Family Health Services/Wahiawa School	
Health Education Office/Leeward Office	
Leeward Infant Development Day Care Program	
Leeward Oahu Health Center	
Leeward Oahu Mental Health Center, Waipahu Counseling Service	
Leeward Oahu Mental Health Center, Waipahu Day Treatment Program	
Public Health Nursing Office/Pearl City and Wahiawa	
Rural Oahu Family Planning Project, Waipahu Health Center	
Wahiawa Infant Development Day Care Program	
Waianae Mental Health Center	
Waipahu Health Center, Public Health Nursing	

The election for employees at the following Oahu work sites shall be held on October 14, 1987, at the following polling places and times:

<u>Polling Place: MALUHIA HOSPITAL</u>	6:30 a.m. - 7:30 a.m. 2:30 p.m. - 3:30 p.m.
Maluhia Hospital	
Developmental Disabilities Division/Lanakila Health Center	
Director's Office, Department of Health	
Family Health Services/Pauoa School	
Health Education Office/Lanakila Office	
Kalihi-Palama Community Mental Health Branch	
Lanakila Infant Development Program	
Morgue	



Polling Place: MALUHIA HOSPITAL 6:30 a.m. - 7:30 a.m.  
(Continued) 2:30 p.m. - 3:30 p.m.

Pre-School Development Screening, Lanakila  
Health Center  
Tuberculosis Branch, Lanakila  
Health Center

Polling Place: HAWAII YOUTH CORRECTIONAL FACILITY

Hawaii Youth Correctional 1:30 p.m. - 2:30 p.m.  
Facility  
Corrections Resource Development Office  
Womens' Community Correctional Facility

Polling Place: OAHU COMMUNITY CORRECTIONAL CENTER

Oahu Community Correctional 2:30 p.m. - 3:30 p.m.  
Center 10:30 p.m. - 11:30 p.m.

Polling Place: WAIAWA CORRECTIONAL FACILITY

Waiawa Correctional Facility 7:30 a.m. - 8:30 a.m.  
3:30 p.m. - 4:30 p.m.

Polling Place: HALE HO'OMALU (DETENTION HOME)

Hale Ho'omalua (Detention Home) 7:00 a.m. - 8:00 a.m.  
2:30 p.m. - 3:30 p.m.

The election for employees for the following Maui work sites shall be held on October 15, 1987 at the following polling places and times:

Polling Place: MAUI MEMORIAL HOSPITAL 6:30 a.m. - 7:45 a.m.  
2:30 p.m. - 3:30 p.m.

Maui Memorial Hospital  
Developmental Disabilities  
Division/Hale Hauoli Day  
Activities Center  
Family Health Services/Lahainaluna School  
Maui Live-In Center  
Maui Womens', Infants' and Childrens'  
(WIC) Program  
Maui Mental Health Center  
Maui District Health Office,  
Health Education Office  
Public Health Nursing Office

Polling Place: MAUI COMMUNITY CORRECTIONAL FACILITY

Maui Community Correctional Facility 2:30 p.m. - 3:30 p.m.

Polling Place: KULA HOSPITAL

Kula Hospital

9:30 a.m. - 10:30 a.m.  
2:30 p.m. - 3:30 p.m.

The election for employees at the following work sites on the islands of Hawaii and Kauai shall be held on October 16, 1987 at the following polling places and times:

Polling Place: HILO HOSPITAL

Hilo Hospital

Case Management Program (PHN)  
Developmental Disabilities Division/  
Hilo Day Activities Center  
East Hawaii Mental Health Clinic  
Early Periodic Screening Diagnostic and  
Treatment Center, Hilo Maternity  
& Infant Care Program

Hale Oluea

Hawaii District Health Office, Health Education  
Hilo Womens', Infants' and Childrens'  
(WIC) Program

Keawe Maternity and Infant Clinic  
Public Health Office (Hilo)

6:30 a.m. - 7:30 a.m.  
2:30 p.m. - 3:30 p.m.

Polling Place: KONA HOSPITAL

Kona Hospital

Developmental Disabilities Division/  
Kona Infant Day Care Center at  
Konawaena School  
Kona Health Center, Public Health Nursing  
Kona Mental Health Clinic

2:30 p.m. - 3:30 p.m.

Polling Place: KULANI CORRECTIONAL FACILITY

Kulani Correctional Facility

6:30 a.m. - 7:30 a.m.  
2:30 p.m. - 3:30 p.m.

Polling Place: HAWAII COMMUNITY CORRECTIONAL FACILITY

Hawaii Community Correctional  
Facility

6:30 a.m. - 7:15 a.m.  
2:30 p.m. - 3:30 p.m.

Polling Place: KAUAI COMMUNITY CORRECTIONAL FACILITY

Kauai Community Correctional Facility 2:30 p.m. - 3:30 p.m.

Polling Place: SAMUEL MAHELONA MEMORIAL HOSPITAL

Samuel Mahelona Memorial Hospital 6:45 a.m. - 7:45 a.m.  
Developmental Disabilities Division/ 2:30 p.m. - 3:30 p.m.  
Hale Hauoli Day Activities Program  
Kauai District Health Office,  
Health Education  
Kauai District Health Office,  
Mental Health Program  
Kauai District Health Office,  
Public Health Nursing Program

Polling Place: KAUAI VETERANS MEMORIAL HOSPITAL

Kauai Veterans Memorial Hospital 6:30 a.m. - 7:30 a.m.  
2:30 p.m. - 3:30 p.m.

12. OBSERVERS. Each party hereto will be allowed to station an equal number of authorized observers, not to exceed two each, to be approved beforehand by the Board, at the polling places during the election to assist the Board in conducting the election and to challenge the eligibility of voters. The Employers shall provide the necessary observers for each polling place to assist in the verification of voters against the official list.

No observer or any other person while present in the polling place during the time of voting shall engage in any activity designed to influence the voters in their choices or wear or display any campaign material.

The Employers, TEAMSTERS, and UPW shall submit to the Board the names of their observers and alternates, if any, for each polling place no later than 4:30 p.m., September 28, 1987.

13. NO CAMPAIGNING. There shall be no campaigning within 100 feet of the entrance of the building in which the voting is being conducted.

14. MAIL BALLOTS. Eligible voters working at the following locations shall receive and cast ballots by mail:

Aiea Ambulance (Oahu)  
Hana Medical Center (Maui)  
Honokaa Hospital (Hawaii)  
Kahuku Ambulance (Oahu)  
Kailua Ambulance (Oahu)  
Kaneohe Ambulance (Oahu)  
Molokai Mental Health Office (Molokai)  
Molokai Public Health Office (Molokai)  
Ka'u Hospital (Hawaii)  
Kohala Hospital (Hawaii)  
Lanai Community Hospital (Lanai)  
Lanai District Health Office (Lanai)  
Molokai Womens', Infants' and Childrens'  
(WIC) Program (Molokai)  
Pawaa Ambulance (Oahu)  
Queen's Hospital Ambulance (Oahu)  
St. Francis Hospital Ambulance (Oahu)  
Wahiawa Ambulance (Oahu)  
Waialua Ambulance (Oahu)  
Waianae Ambulance (Oahu)  
Wailupe Ambulance (Oahu)  
Waimanalo Ambulance (Oahu)  
Waimea Health Center (Hawaii)  
Waipahu Ambulance (Oahu)

Eligible voters on authorized leaves of absences will also be provided with a mail ballot at a time before the election. All mail ballots must be received by the Board no later than 4:30 p.m. on October 16, 1987.

15. ABSENTEE BALLOTS. Those eligible voters who will not be able to vote at their assigned polling places on the day of their election because of illness, absence from the island on which their place of employment is located, or for other compelling reason, may submit a request in writing to the Board for an absentee ballot. Such request must be received by the Board by 4:30 p.m., October 8, 1987.

If the eligible voter is unable, for good cause, to request a mail ballot by the deadline established by the Board, the voter shall be allowed to cast a ballot at the Board's office on the day of the election to his district. All such votes will be deemed challenged ballots.

All absentee ballots must be received by the Board no later than 4:30 p.m. on October 16, 1987.

16. VOTING ON DIFFERENT ISLAND OR BOARD OFFICE; CHALLENGED VOTES. If an employee from a neighbor island is on Oahu on his scheduled election day, such employee may vote at the Board's office in Honolulu. All votes cast under this paragraph shall be considered challenged ballots.

Except as hereinabove provided, if any voter assigned to a polling place on a given island casts a ballot at a different polling place on that island, such ballot shall be deemed null and void.

17. CONDUCT OF ELECTION. The election shall be conducted in each polling place by a Board member or its agent who shall have custody of the official list of eligible voters, ballots and other election materials. Each voter shall provide reasonable identification in order to receive a ballot.

When an employee has been properly identified, his name shall be crossed off the official list by the Employer's representative and the employee organizations' observers shall each make a check mark, one before and one after the name. A ballot shall then be issued to such employee by the Board member or its agent.

The Board member or its agent shall observe the checking of each eligible voter's name on the eligible voters list at the polling place, give the voter an unmarked ballot, allow the voter to vote in secret and deposit the cast ballot into the ballot box.

If a voter spoils his ballot, it shall be returned to the Board member or its agent who shall, in the presence of the observers, clearly mark said ballot "spoiled," place it in a "spoiled ballot" envelope, impound it and given the voter a new appropriate ballot.

The observers of the parties shall be allowed to view the eligibility list, handling of ballots and other procedures in the polling place, except the actual marking of the ballot by the voter. No observer shall handle any marked or unmarked ballots.

If any voter is challenged or his name is not on the official voting list, that voter shall be allowed to cast a challenged ballot.

18. CLOSE OF POLLING PLACE. At the close of the voting period at each polling place, the ballot box shall be opened by the Board member or its agent, its contents removed and placed in a large manila envelope marked "Cast Ballots." Said envelope shall be sealed in the presence of the observers and the observers and the Board member or its agent shall sign their names across the seal and transparent tape shall be placed over each signature. The sealed "Cast Ballots" envelopes from each polling place shall be delivered to the Board's office in Honolulu by the Board member or its agent.

19. DEFINITION OF BALLOTS. As used in this Direction of Election:

"Total votes cast" means all votes counted for any of the choices on the ballot and on the challenged ballots, if any, but shall not include such ballots deemed to be void in accordance with the procedures set forth herein.

"Blank ballot" means an unmarked ballot.

"Challenged ballot" means a ballot cast by a person whose identity is questioned, or whose name is not on the eligible voters list, or who has voted at the Board's office or whose ballot for other good and sufficient reason is questioned as having been improperly cast.

"Mismarked ballot" means a ballot determined by the Board or its agent to be marked in such a way as to prevent the determination of the voter's choice.

"Void ballot" means a ballot which is found to have been blank or mismarked, or improperly cast, or cast by an ineligible voter in accordance with the procedures herein, or cast by a voter assigned to another polling place on the same island.

20. TALLY OF BALLOTS. On October 20, 1987 at 10:00 a.m., the Board shall proceed with the tally of ballots to determine which employee organization, if any, the majority of the employees in Unit 10 voting desires to have as their exclusive bargaining representative.

The counting and handling of ballots shall be done at the Board office by the Board and its agents. Each party shall

be entitled to have one observer per counting team and two additional observers at the Board's office. The ballots from each polling place will be counted separately.

The actual count shall proceed as follows:

(a) All mail ballots, after being checked that they have been received in time, and that no other ballot has been cast by the voter concerned, will be counted separately.

(b) The sealed "Cast Ballots" envelope from each polling place shall be opened by the Board or its agents in the presence of observers and the ballots shall be segregated into three piles representing each choice on the ballot.

If the marking on any ballot is questioned, the Board or its agent shall determine the validity of the ballot. If the ballot is determined to be valid, it shall be included in the tally. If the ballot is determined to be invalid or a determination of its validity cannot be made, said ballot shall be placed in an envelope and the Board or its agent shall note on the back of the envelope that the marking on the ballot has been questioned and by whom. All questioned ballots shall be segregated and placed in a container supplied for that purpose.

(c) The number of ballots for each choice shall be counted and the total number of each choice entered on a tally sheet provided by the board. At the completion of the tally for each polling place, the tally sheet shall be signed by a Board member or its agent and the observers. Each of the undersigned parties shall be given a copy of the tally.



At the completion of the tally of ballots from each polling place, including all mail ballots, the Board shall make a cumulative tally thereof which shall be furnished to each of the parties. The cumulative tally shall include the number of votes cast for each choice on the ballot and the number of challenged ballots.

If the cumulative tally shows that one of the choices has received a majority of the total votes cast, this shall complete the count.

(d) If the number of challenged ballots is sufficient to affect the results of the election, the Board shall conduct an informal review of such ballots. Each envelope containing a challenged ballot will be reviewed by the Board and designated observers from each party.

If a challenged ballot is found to have been properly cast by an eligible voter in accord with this Direction of Election, and the parties so agree, then such ballot shall be opened and counted.

If a challenged ballot is found to have been improperly cast or cast by an ineligible voter, then the challenged envelope shall be marked "void."

If the Board believes that a challenged ballot should not be opened or declared void because further investigation is required to establish its validity or the identification of the voter, such ballot shall remain a challenged ballot.

If, after the informal review of the challenged ballots, a new tally shows that the remaining challenged ballots are

insufficient in number to affect the results of the election and no timely objection is filed, the Board shall issue forthwith to the parties a certification of the results of the election.

(e) If the number of challenged ballots remaining after the informal review is sufficient to affect the results of the election, the parties shall be prepared for a hearing not less than ten days after October 16, 1987, at which time the parties will present evidence concerning the eligibility of the challenged voters. The Board shall issue its decision as soon as possible after the close of the hearing. The decision of the Board as to challenged ballots shall be final and conclusive. A new tally sheet shall be issued promptly.

21. ELECTION RESULTS. (a) If the election results in a determination that a majority of the votes cast was for the UPW or the Teamsters, the Board shall certify said employee organization as the exclusive bargaining representative for employees of Unit 10.

(b) If the election results in a determination that a majority of the votes cast was for no representation, the Board shall not issue a certification to either employee organization as the exclusive bargaining representative of employees in Unit 10.

(c) If the election results show that no choice on the ballot received a majority of the total votes cast, the Board shall declare the election inconclusive and shall conduct a runoff election pursuant to the Administrative Rules of the Board.

(d) Should a runoff election be necessary, it shall be conducted commencing on November 16, 1987, at the polling places and times designated above, provided that there have been no objections filed and that no hearing on challenged ballots is necessary.

Provisions as to the use of mail ballots in the October 12-16, 1987 election shall apply with equal force in the runoff election.

22. OBJECTIONS, CHALLENGES, REPORTS THEREON. Objections to the conduct of the election or conduct affecting the results of the election, and all other questions arising out of the election shall be determined by the Board in accordance with Chapter 89, HRS, and the Administrative Rules of the Board.

DATED: Honolulu, Hawaii, September 18, 1987.

HAWAII LABOR RELATIONS BOARD



MACK H. HAMADA, Chairperson



JAMES K. CLARK, Board Member

Opinion of JAMES R. CARRAS, Concurring, in Part and Dissenting, in Part

I cannot agree with my colleagues who would order an election at this time, despite the existence of a recently negotiated valid collective bargaining agreement.

The TEAMSTERS (Petitioners) do not challenge the validity of this contract between the UPW (Intervenor) and the public employers which has a duration of July 1, 1987 to June 30, 1989.

This agreement which applies to employees of bargaining unit 10 was negotiated by the representatives of UPW and public employers before the 1987 Legislature adjourned. Voting by secret ballot, more than a majority of Unit 10 members ratified it. This contract was implemented on July 1, 1987 without challenge by the Petitioner or any of the employees affected by its terms under Section 1.01 of the contract, public employers are duty-bound to recognize the UPW as the exclusive bargaining representative for public employees in the nonprofessional hospital and institutional workers' unit (Unit 10) until June 30, 1989.

Under Section 89-7, HRS, it appears to this Board member that the Board is prohibited from directing an election in Unit 10. The bar to such an election clearly stated therein as follows:

No election shall be directed by the Board in any appropriate unit within which . . . (2) a valid collective bargaining agreement is in force and effect, except upon a petition as provided herein not more than ninety days, but not less than sixty days, prior to the expiration of the agreement.

The history of Section 89-7 confirms that Hawaii's collective bargaining law has not authorized a choice in bargaining representatives to public employees when a valid contract is in effect.

In addition to all the above legal reasons why it is felt strongly that an election should not be directed by the Board at this time, this Board member feels strongly that to conduct an election at this time would be totally disruptive of the peaceful labor climate that prevails at this time.

There are many ramifications that would or could be triggered by election regardless of the outcome. The renegotiation of a new contract which could lead to a strike or at least heavy friction between factions which would certainly develop and are slow to heal result in the insecurity of employees in the public sector.

In conclusion it is felt by this Board member that ordering an election at this time will be totally disruptive and against the fundamental purpose of Hawaii's collective bargaining laws as stated in Section 89-1. It risks disrupting a contract which was successfully negotiated and is now in effect.

Within any group of workers, professional or blue-collar, organized or unorganized, you can always find some discontent or dissatisfaction with work conditions or the terms of the contract. I submit that there are ample provisions to seek redress or to change representation if the majority so desires before a contract (relatively short contract) expires, but not after negotiations, ratifications and implementation of a new contract has been consummated without challenge.

  
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JAMES R. CARRAS, Board Member

HAWAII TEAMSTERS & ALLIED WORKERS, LOCAL 996, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS and JOHN WAIHEE, Governor of the State  
of Hawaii and FRANK F. FASI, Mayor of the City and County of  
Honolulu and UNITED PUBLIC WORKERS, AFSCME LOCAL 646, AFL-CIO,  
CASE NO. R-10-19  
DECISION NO. 254  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

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