

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-01-324
	)	
UNITED PUBLIC WORKERS, AFSCME,	)	DECISION NO. 384
LOCAL 646, AFL-CIO,	)	
	)	FINDINGS OF FACT, CON-
Complainant,	)	CLUSIONS OF LAW AND
	)	ORDER
and	)	
	)	
LINDA CROCKETT LINGLE, Mayor,	)	
County of Maui and RAYMOND	)	
KOKUBUN, Director of Personnel	)	
Services, County of Maui,	)	
	)	
Respondents.	)	
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In the Matter of	)	CASE NO. CE-10-325
	)	
UNITED PUBLIC WORKERS, AFSCME,	)	
LOCAL 646, AFL-CIO,	)	
	)	
Complainant,	)	
	)	
and	)	
	)	
LINDA CROCKETT LINGLE, Mayor,	)	
County of Maui and RAYMOND	)	
KOKUBUN, Director of Personnel	)	
Services, County of Maui,	)	
	)	
Respondents.	)	
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On November 13, 1996, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed prohibited practice complaints with the Hawaii Labor Relations Board (Board) in Case Nos. CE-01-324 and CE-10-325, respectively. The UPW contended that on or about October 15, 1996, the Union and Respondents Jeremy Harris, Mayor, City and County of Honolulu (Harris), Cynthia Bond,

Director of Personnel, City and County of Honolulu (Bond), LINDA CROCKETT LINGLE, Mayor, County of Maui (LINGLE), RAYMOND KOKUBUN, Director of Personnel, County of Maui (KOKUBUN), Stephen Yamashiro, Mayor, County of Hawaii (Yamashiro), Michael R. Ben, Director of Personnel Services, County of Hawaii, Maryanne Kusaka, Mayor, County of Kauai (Kusaka), and Allan Tanigawa, Director of Personnel Services, County of Kauai (collectively Employers), reached agreements entitled Memorandum of Agreement on Commercial Motor Vehicle Alcohol and Controlled Substance Testing (MOA), covering the members of Units 01 and 10, respectively. The UPW asserts that the respective agreements were signed by the spokespersons representing the Union and Respondents. Thereafter, the UPW contends that Respondents failed or refused to execute the agreements in violation of Section 89-10, Hawaii Revised Statutes (HRS), thereby violating Section 89-13(a)(7), HRS.

Thereafter, on November 27, 1996, the UPW filed its notice of withdrawal of the complaints as against Respondents Harris and Bond.

On December 13, 1996, the UPW filed a motion for summary judgment contending that Respondents LINGLE and KOKUBUN (collectively MAUI County) committed a prohibited practice by refusing to execute the instant agreements in violation of Section 89-10, HRS. Respondents Yamashiro and Ben and Respondents Kusaka and Tanigawa, respectively, filed motions to dismiss the complaints on the basis that the complaints were moot because the mayors had executed the Unit 01 MOA in a timely manner.

After due notice and hearing, the Board issued Order No. 1404, Order Denying UPW's Motion for Summary Judgment and Denying Respondents' Motions to Dismiss Complaints on January 24, 1997. The Board found that there were outstanding issues of fact with respect to the scope of Kimura's authority to negotiate the agreement with the Union on the Employers' behalf. The Board also found that there was a factual issue regarding the understanding of the parties as to the effective date of the agreement and whether all of the parties were obliged to execute the agreement in order to further negotiate an implementation date. In addition, the Board also denied the Respondents' motions to dismiss and held a hearing on the outstanding issues on March 3, 1997.

At the close of the hearing, the UPW, by and through its counsel, withdrew its complaints as against Mayor Kusaka and Allan Tanigawa and Mayor Yamashiro and Michael Ben. The UPW further requested that the Board issue a cease and desist order against LINGLE as a remedy in this case.

Based upon the facts and arguments presented at the further hearing in this matter, the Board makes the following further findings of fact and conclusions of law.

#### FINDINGS OF FACT

The Board hereby incorporates the findings of fact contained in Order No. 1404, Order Denying UPW's Motion for Summary Judgment and Denying Respondents' Motions to Dismiss Complaints; Notice of Hearing on Prohibited Practice Complaints, dated January 24, 1997, insofar as they are consistent with this decision.

The Employers and the Union sought to negotiate a uniform statewide policy regarding drug and alcohol testing for Unit 01 and 10 employees pursuant to U.S. Department of Transportation Rules. Thus, the public employers agreed to negotiate over the impact of the mandated drug and alcohol testing for Units 01 and 10 employees on a multi-employer basis. At the onset of negotiations, Robin Chun-Carmichael was designated as the spokesperson for the Employer group. Thereafter, sometime in mid-1995, Manabu Kimura, the State's Chief Negotiator, replaced Chun-Carmichael as the Employers' spokesperson. On or about October 15, 1996, Kimura reached an agreement with Rodrigues on the alcohol and controlled substance testing and both signed the MOAs covering employees for Units 01 and 10. The MOA for Unit 01 includes extensive provisions regarding alcohol and controlled substance testing, including testing procedures, evaluation, administrative and corrective actions, discipline, recordkeeping, indemnification and grievance procedure. The effective dates of the agreements were left blank with the understanding that the dates would be negotiated after the MOAs were signed by the public employers.

Thereafter, the Office of Collective Bargaining informed the Union that some of the mayors were reluctant to sign the MOAs or refused to sign the MOAs promptly. The Union filed the instant complaint on November 13, 1997. Mayors Harris, Kusaka, and Yamashiro, respectively, signed the Unit 01 MOA. Mayor Harris and Kusaka signed the Unit 10 MOA. Mayor LINGLE refuses to sign the MOAs at issue.

Based upon the testimony presented at the further hearing, the Board finds that in multi-employer bargaining the Employer group operates on a consensus basis where there is constant dialogue between the public employers' spokesperson and the employer representatives as to acceptable terms or the parameters for agreement. Once a tentative agreement is reached, no formal vote is taken and the public employers circulate the agreement for signature. If a majority of employers signs the agreement, pursuant to Section 89-10, HRS, the agreement is valid, binding, and enforceable.

Based upon the evidence presented at the further hearing, the Board finds that Kimura, as spokesperson, was authorized to negotiate the MOAs on behalf of the public employers within the parameters discussed in the employer caucuses and then to present the agreements to the counties for their concurrence. Ben testified that the Employer group did not delegate the right to come to consensus to Kimura. After the last meeting of the Employer group, the employer representatives left with the understanding that they would check the terms of the MOAs with their respective mayors. On October 15, 1996, prior to the representatives' responses however, Kimura signed the MOAs on behalf of the Governor of the State of Hawaii. Kimura then advised the counties that he had signed the MOAs and would circulate them to the counties for signature.

When Kimura signed the MOAs, the UPW was aware that Kimura only had authority to bind the Governor and the State of

Hawaii to the MOAs. Rodrigues was also aware that Mayor Harris agreed with and would sign the MOAs.

With respect to the effective dates of the MOAs, during negotiations, Rodrigues was concerned about the binding effect of the MOAs if all of the employers did not sign the MOAs. Previously, one mayor had refused to sign a memorandum of agreement and then challenged its validity. Rodrigues therefore insisted that the MOAs be signed by all parties prior to negotiating the effective dates. According to Rodrigues, without the signature of all of the mayors on the MOAs, the parties cannot negotiate the effective dates.

Michael Ben confirmed the understanding that the effective dates would be negotiated after all of the employers' signatures were obtained. Ben specifically asked what the effect of one employer refusing to sign the MOAs would be since he was uncertain whether his mayor would sign the MOAs. Hence, Ben's testimony confirmed that the parties' understanding that the effective dates would be negotiated after the signatures of employers were obtained.

#### DISCUSSION

The UPW contends that Maui County's refusal to sign the written MOA is a per se refusal to bargain in good faith. The Union relies upon H.J. Heinz Company v. National Labor Relations Board, 311 U.S. 514, 7 LRRM 291 (1941) in contending that the execution of the written contract which incorporates the agreement reached is encompassed within the duty to bargain collectively. The UPW contends that Respondents LINGLE and KOKUBUN entered into

multi-employer bargaining and agreed to be bound to the terms of a uniform agreement applicable to all Employers and then refused to sign what was agreed to. Here, the parties reached consensus on an extensive document which was rejected as a total package by MAUI County. The UPW thus contends that MAUI County's refusal to execute the MOAs violated Section 89-10, HRS, and constitutes a prohibited practice in violation of Section 89-13(a)(7), HRS.

Section 89-10, HRS, refers to written agreements and provides in pertinent part:

(a) Any collective bargaining agreement reached between the employer and the exclusive representative shall be subject to ratification by the employees concerned. The agreement shall be reduced to writing and executed by both parties. . . .

LINGLE contends that there was no agreement reached between the employers and the Union when Kimura signed the MOAs because Kimura represented only the Governor's four votes. LINGLE contends that in multi-employer bargaining, there is no agreement reached until a majority of the employers sign the agreement. LINGLE refuses to sign the MOAs because she contends that she did not agree to the Union's proposal. LINGLE recognizes, however, that the MOAs are binding and that she is willing to negotiate the effective dates of the MOAs.

After reviewing the record and the arguments presented, the Board finds that Kimura was not authorized to bind the counties to the MOAs. Kimura negotiated the agreement as the Employers' chief spokesperson but signed the agreement on behalf of the Governor. Rodrigues was also aware of the limitation on Kimura's authority that Kimura could only sign on behalf of the Governor.

Thus, when Kimura signed the MOAs, the agreements were not binding on the counties because a simple majority of votes was not represented.

Section 89-10, HRS, requires that the collective bargaining agreements be reduced to writing and executed by both parties. Here, the parties are the Union and the Employer group. Pursuant to Section 89-6, HRS, agreement by a simple majority of the employer representatives is sufficient to bind the employers and in this case, the Board finds the agreements were executed by both parties since a simple majority of employers signed the MOAs. The Board concludes therefore that the Union failed to establish that LINGLE committed a prohibited practice by violating Section 89-10, HRS, by refusing to sign the MOAs.

In the context of multi-employer bargaining, under Chapter 89, HRS, the Board finds that the UPW is not prejudiced by LINGLE's refusal to sign the MOAs at issue here. The MOAs were binding once Mayor Harris signed them. From one perspective, LINGLE appears to argue that she is not required to sign the agreement because her signature is merely surplusage since the MOAs are binding notwithstanding the absence of her signature. The obvious danger in advocating MAUI County's position, however, as raised by the UPW, is the reality that the State's and only one county's votes are all that is necessary to come to a collectively bargained agreement. Thus, it appears that MAUI County unnecessarily minimalizes its presence at the bargaining table by arguing that its vote is unnecessary and so long as the concerns of

the State and one favorable county are addressed, the Union may virtually ignore the proposals of the other three counties.

The Union further contends however, that the parties cannot negotiate the effective dates of the agreements until Mayor LINGLE signs the agreement. The Union contends that there was an understanding that the parties would negotiate the effective dates once the MOAs were signed by all of the parties. Rodrigues testified that he was concerned that one of the employers would challenge the validity of the MOAs if each did not sign the agreements. Thus, Rodrigues testified that during negotiations with Kimura, he insisted that all of the employers sign the agreements prior to negotiating the effective dates of the MOAs. While Kimura was not called to testify regarding this understanding with Rodrigues, Michael Ben confirmed the understanding. In fact, Ben specifically asked what the effect of one mayor's refusal to sign would be since he was uncertain whether his mayor would sign the MOAs. Thus, the Board finds that there was an understanding between the parties that the effective dates of the MOAs would be negotiated after all of the employers signed the agreements. This understanding, however, does not affect whether LINGLE violated Section 89-10, HRS, since the MOAs are binding without her signature, but rather, goes to the question of when or whether the parties can go on to negotiate the effective dates of the MOAs.

In its previous Order No. 1404 at page 5, the Board found that, "absent a specific effective date in the agreement, it appears that the agreement became effective at [the time Mayor Harris signed the MOAs]." The Board concludes that this finding is

inconsistent with the evidence produced at the further hearing that the parties understood that the effective dates would be negotiated at a later date, and the Board therefore strikes this finding from its previous order.

The Board further notes that at the time that the instant complaint was filed, the MOAs had not been executed by the mayors. At this juncture where the MOAs have been signed by all of the mayors except for LINGLE, MAUI County correctly argues that her signature has no practical effect on the binding nature of the MOAs.

#### CONCLUSIONS OF LAW

The Board has jurisdiction over the instant prohibited practice complaints pursuant to Sections 89-5 and 89-13, HRS.

The public employer commits a prohibited practice by violating the terms of Chapter 89, HRS. Here, the Union failed to establish that LINGLE's refusal to sign the MOAs constituted a violation of Section 89-10, HRS. The MOAs have been signed by the Governor and the Mayors of three counties and have therefore been executed by the public employers within the meaning of Section 89-10, HRS.


#### ORDER

The instant consolidated prohibited practice complaints are hereby dismissed.

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. LINDA CROCKETT  
LINGLE, et al.; CASE NO. CE-01-324 and UNITED PUBLIC WORKERS,  
AFSCME, LOCAL 646, AFL-CIO v. LINDA CROCKETT LINGLE, et al.; CASE  
NO. CE-10-325  
DECISION NO. 384  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATED: Honolulu, Hawaii, April 3, 1997.

HAWAII LABOR RELATIONS BOARD

  
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