

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-264
)	
UNITED PUBLIC WORKERS, AFSCME,)	DECISION NO. 385
LOCAL 646, AFL-CIO,)	
)	FINDINGS OF FACT, CONCLUSIONS
Complainant,)	OF LAW AND ORDER
)	
and)	
)	
BENJAMIN J. CAYETANO, Governor,)	
State of Hawaii and GEORGE)	
IRANON, Director, Department of)	
Public Safety, State of Hawaii,)	
)	
Respondents.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On August 21, 1995, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a prohibited practice complaint against BENJAMIN J. CAYETANO, Governor, State of Hawaii and GEORGE IRANON, Director, Department of Public Safety, State of Hawaii (collectively Respondents or Employer) with the Hawaii Labor Relations Board (Board). Complainant alleges that Respondents have refused and/or failed to provide requested information needed to investigate and process a grievance filed on behalf of Stanley R. Tsuji. Thus, Complainant contends that Respondents' conduct constitutes a wilful violation of the Unit 10 agreement and a violation of Sections 89-13(a)(1), (7), and (8), Hawaii Revised Statutes (HRS).

On September 28, 1995, the Board conducted a hearing on the merits of the case. Thereafter, the parties submitted written

arguments to the Board on October 2 and 16, 1995 respectively. After considering the evidence and arguments presented, the Board makes the following findings of fact and conclusions of law and order.

FINDINGS OF FACT

The UPW is the exclusive bargaining representative, as defined in Section 89-2, HRS, of employees of the State of Hawaii who are included in Unit 10.

BENJAMIN J. CAYETANO is the Governor of the State of Hawaii and is a public employer as defined in Section 89-2, HRS.

GEORGE IRANON was for all times relevant, the Director of the Department of Public Safety, State of Hawaii and a representative of a public employer as defined in Section 89-2, HRS.

The UPW and the State of Hawaii are parties to a collective bargaining agreement which covers all institutional, health, and correctional workers in Unit 10.

By letter dated May 5, 1995, the UPW requested information from the Employer relating to the discharge grievance of Stanley R. Tsuji.

The request for information was made in accordance with Article 15.09 of the Unit 10 agreement which states:

15.09 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, provided that the Employer shall have the option to (a) photocopy and give the material requested to the grieving party within the

5-working day period, or (b) make the material requested available to the grieving party within the 5-working day period for the purpose of photocopying or review by the grieving party for three (3) working days on the condition that the grieving party agrees to sign out and be fully responsible for the material until it is returned.

The Union required the information in order to properly evaluate whether the case should be taken to arbitration. The request for information was received by the department on or about May 10, 1995. Although all of the information requested was available, the Employer failed to reply to the request for information within five working days.

The Union filed a Step 2 grievance on the failure to provide information on or about May 19, 1995. By letter dated May 26, 1995, the Employer indicated that the information was not available at the facility. The UPW filed the grievance with Director IRANON on or about May 30, 1995. When the Director failed to respond, the UPW filed the grievance at Step 3.

The Employer produced some of the records to the Union on September 21, 1995.

DISCUSSION

Based upon a thorough review of the record and the arguments presented, the Board finds that the basic facts are undisputed. Here, the UPW requested information on or about May 5, 1995 in connection with a pending grievance filed on behalf of Stanley R. Tsuji.

Pursuant to Section 15.09 of the Unit 10 contract, the Employer was required to provide the information to the UPW by

May 12, 1995. The information requested was not submitted to the Union until September 21, 1995. The Employer claims that through miscommunication and inadvertence, the information was not provided to the Union. Although the Employer also contends that it was always willing to provide the information to the UPW, the Board notes that there was no follow-up or verification procedure to ensure that the requirements of the contract were met.

Thus, the Board concludes based upon the evidence presented that the Employer violated Article 15.09 of the contract by not providing the information requested by the Union within the applicable time frame.

In addition, the Board has previously recognized in State of Hawaii Organization of Police Officers, 3 HPERB 25 (1982), that the failure to provide information relevant to a grievance filed by the union constitutes a violation of the Employer's duty to bargain in good faith. Thus, based upon the record, the Board concludes that the Employer also violated Section 89-13(a)(5), HRS, by its failure to provide the information requested.

With respect to the issue of wilfulness, in United Public Workers, AFSCME Local 646, AFL-CIO, 3 HPERB 507 (1984), the Board, while acknowledging its previous interpretation of "wilful" as meaning "conscious, knowing and deliberate intent to violate the provisions of Chapter 89, HRS" nevertheless stated that "wilfulness can be presumed where a violation occurs as a natural consequence of a party's actions." Id., at 514. Based upon the evidence before the Board, the Board finds that the natural consequence of the Employer's actions in failing to provide the information

necessary to the investigation of the grievance was the frustration of the grievance process. Thus, the Board finds that the Employer's action in this case was wilful.

Having found the foregoing prohibited practices, it is unnecessary for the Board to discuss the UPW's allegations of a violation of Section 89-13(a)(1), HRS, by the Employer's failure to provide the information requested.

In addition, the Union claims that the violations by Respondents were flagrant and repetitive and requests the Board to award the Union the expenses of litigation. However, after reviewing the record, the Board finds that in this case, the violations were not flagrant and therefore, the Board hereby denies the Union's request for legal expenses. Respondents should, however, note that the Board may revisit the issue of awarding legal expenses if prohibited practices of this nature are repeated.

CONCLUSIONS OF LAW

The Board has jurisdiction over this complaint pursuant to Sections 89-5 and 89-14, HRS.

Respondents committed prohibited practices in violation of Section 89-13(a)(8), HRS, when they wilfully violated Article 15.09 of the Unit 10 contract by failing to provide information to the UPW as requested by letter dated May 5, 1995, within the five working days provided for by contract.

As the duty to bargain in good faith encompasses the Employer's obligation to provide the Union with information relevant to a grievance, Respondents' failure to provide

information to the UPW as requested violated Section 89-13(a)(5), HRS.

ORDER

Based on the foregoing, the Board hereby orders the following:


(1) Respondents shall cease and desist from committing prohibited practices and shall provide information requested by the Union within the time limits provided.

(2) Respondents shall immediately post copies of this order in conspicuous places at its work sites where employees of bargaining unit 10 assemble and leave such copies posted for a period of 60 consecutive days from the initial date of posting.

(3) Respondents shall notify the Board within 30 days of the receipt of this order of the steps taken to comply herewith.

DATED: Honolulu, Hawaii, April 11, 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 BENJAMIN J.
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