STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Complainant, and JEREMY HARRIS, Mayor, City and County of Honolulu and ROBERT J. FISHMAN, Managing Director, City and County of Honolulu, Respondents.	CASE NO. CE-01-390 DECISION NO. 395 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On April 3, 1998, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint against JEREMY HARRIS, Mayor, City and County of Honolulu and ROBERT J. FISHMAN, Managing Director, City and County of Honolulu (collectively HARRIS or City) with the Hawaii Labor Relations Board (Board). The UPW contends that Respondents entered into and then subsequently repudiated agreements reached over the amended Unit 01 collective bargaining agreement (contract) and amendments to the Automated Refuse Collection Operation (ARCO). Thus, Complainant contends that Respondents wilfully violated §§ 89-13(a)(1), (5), and (7), Hawaii Revised Statutes (HRS).

On April 6, 1998, the UPW filed a motion for interlocutory relief pending the issuance of a final decision with the Board. The UPW sought an order from the Board to (1) enjoin and restrain Respondents from repudiating the new Unit 01 contract

entered into on March 10, 1998 and (2) refusing to sign and execute the Unit 01 agreement between the UPW and the various public employers. The UPW contends that on March 10, 1998, a new Unit 01 contract was negotiated and entered into by and between the public employers and the UPW. The UPW further contends that the employees began ratifying the agreement on March 16, 1998 and on or about March 20, 1998, it was reported that HARRIS repudiated the contract. Thereafter on March 27, 1998, HARRIS notified the Union's chief negotiator that the City did not concur with the Unit 01 settlement package. The UPW contends that the City committed a prohibited practice by refusing to honor an agreement reached in labor negotiations.

On April 22, 1998, the Board conducted a prehearing conference in this matter. The City's counsel indicated, inter alia, that the City wanted to conduct discovery to determine when, where, and how any alleged agreement was reached and requested a continuance of the hearing scheduled on April 29, 1998 until May 13, 1998. The Board's Chairperson instructed the City's counsel to file a written motion for discovery and for a continuance with the Board.

On April 24, 1998, Respondents filed a memorandum in opposition to Petitioner's motion for interlocutory relief with the Board. Respondents contended that the UPW is attempting to enforce a purported agreement which was not entered into by Respondent HARRIS and/or his authorized representative Sandra Ebesu, Director of Personnel, City and County of Honolulu (Ebesu). The City also contends that the ARCO negotiations are not interrelated with the Unit 01 negotiations. The City also contends that there is

significant credible evidence that no agreement was ever reached and the City argues that the public will be injured if an injunction issues since it cannot support the pay raises for Unit 01 workers. The City also contends that the UPW committed a prohibited practice by repudiating the ARCO and inducing its members to participate in a work stoppage by refusing to perform work under the terms of the ARCO.

Also on April 24, 1998, the City filed a motion to allow discovery and continue the hearing scheduled on April 29, 1998 with the Board. The City argued, inter alia, that its right to effective cross-examination and the presentation of rebuttal evidence would be compromised without the opportunity to review and consider Complainant's substantive evidence prior to the initiation of hearings. The City requested the Board to allow discovery, including depositions, and to continue the hearing until May 13, 1998.

On April 27, 1998, the UPW filed a memorandum in opposition to Respondents' motion to allow discovery and to continue the hearing with the Board. The UPW argued that the City knew and understood what was being alleged by the UPW in the instant complaint because Respondents failed to file a motion for particularization of the complaint with the Board under Administrative Rules § 12-42-45(b) and instead filed detailed responses to the UPW's allegations in its Answer. In addition, the UPW contended that the affidavits of the neighbor island employer representatives indicate that the City's representatives were present during all bargaining sessions with the State Office of Collective Bargaining (OCB) representatives. The UPW further

argued that the City failed to establish good cause for the prehearing depositions of OCB Chief Negotiator Manabu Kimura (Kimura) and UPW State Director Gary Rodrigues (Rodrigues). The UPW also argued that since City representatives were present during all bargaining sessions with Kimura, the City already had access to the allegedly needed information. The UPW further argued that the City failed to present any legal or factual basis to justify discovery and a need for a continuance in this case.

On April 27, 1998, Respondents filed a motion with the Board to recuse Board Member Chester Kunitake from hearing the instant case. Respondents alleged that Member Kunitake should recuse himself from hearing this matter because of his reference to and reliance upon technical and/or scientific facts which were not before the Board during the prehearing conference held on April 22, 1998. Respondents contended that Member Kunitake's reference to and reliance upon technical and/or scientific facts, without providing notice to the parties and an opportunity to rebut is a clear violation of § 91-10(4), HRS,[1] and Administrative Rules § 12-42-8(g)(8)(G).[2] Respondents contended that Kunitake's

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[1]Section 91-10(4), HRS, provides as follows:

> Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

[2]Administrative Rules § 12-42-8 refers to proceedings before the Board and (g) refers to Hearings. Part (8) provides the Rules

statements evidenced a pre-conceived determination on the merits of Respondents' case. Respondents thus requested that Member Kunitake recuse himself and that any reference to the status of the legislative session be stricken from the record.

On April 28, 1998, the UPW filed a memorandum in opposition to the City's motion to recuse Member Kunitake with the Board. The UPW alleged that at the prehearing conference, counsel for the City indicated a desire to postpone the hearing and to undertake discovery depositions. The UPW further alleged that Chairperson Tomasu had indicated an inclination not to permit depositions based on the Board's past experience. Member Higa also indicated that if the complaint had been vague or indefinite, the City could have filed a motion for particularization with the Board. Member Kunitake expressed his concerns about the legislative adjournment and the impact of a delay in reference to the City's request for postponement of the hearing. In addition, the UPW contended that it had raised the 1998 legislative adjournment as an issue in the record in its Motion for Interlocutory Relief. Accordingly, the UPW contended that there was no basis to disqualify any Board member.

On April 28, 1998, Respondents filed a motion for reconsideration of the denial of their motion to allow discovery

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of evidence and (G) provides as follows:

> The board may take notice of generally recognizable technical or scientific facts within its specialized knowledge; however, parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

and to continue hearing with the Board. Respondents requested that the Board reconsider its oral decision to deny Respondents' motion to allow discovery. Respondents contended that they were not provided with specific information or witnesses which clarified the facts or issues of the complaint and Administrative Rules Section 12-42-46[3] allows for a hearing to be conducted within 40 days of the filing of complaints. Also, Respondents contended that Complainant waited until April 6, 1998 to file its prohibited practice complaint when the alleged repudiation occurred on or about March 17, 1998.

Thereafter on April 28, 1998, the UPW filed its statement of opposition to Respondents' motion for reconsideration of Board ruling regarding discovery and continuance with the Board. The UPW contended that both parties identified 12 witnesses in common and that Respondents failed to direct any questions for clarification at the prehearing conference. The UPW also argued that while Respondents continue to repeat their need to conduct discovery, they fail to identify the witnesses to be deposed or to indicate why they are unable to conduct prehearing discovery on their own. In this regard, the UPW indicated that affidavits from Michael Ben, Allan Tanigawa, and Kenneth Taira had been obtained and filed. As the City was part of the multi-employer group, the City has access to the personnel at OCB. In addition, the UPW contended that it

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[3]Administrative Rules Section 12-42-46 refers to a notice of hearing and provides in (b) as follows:

> The hearing shall be held not less than ten nor more than forty days after the filing of the complaint or amendment thereof.

conducted ratification of the contract after Respondent HARRIS' letter of March 27, 1998.

At the commencement of the hearing on April 29, 1998, the parties presented oral argument on the City's motion for reconsideration and the City's motion for Member Kunitake's recusal. Based upon the arguments presented, the Board denied the motion to reconsider its decision regarding discovery. The Board noted that it would permit the Complainant to go forward with the evidence and assured the City that it would have ample time to consider the evidence presented and to rebut the evidence. The Board also noted that it was very unusual for the Board to permit discovery and that the City failed to establish good cause necessary to permit discovery in this case.

With regard to the City's motion for recusal, the Board, by the Chairperson and Member Higa, denied the motion to recuse Member Kunitake. The Board noted that the Administrative Rule which the City alleged was violated refers to notice and the opportunity to rebut the Board's taking notice of facts as a rule of evidence in hearings. In this case, the Board Member's statements at issue were made during a prehearing conference. Moreover, the Board never made any kind of finding which would affect its decision in this matter. In addition, the Board noted that the City raised the issue of a continuance for the first time at the prehearing conference since no motion was filed prior to that time requesting a continuance. Thus, Member Kunitake's statements were made in the context of the timing of the hearing and had no bearing on the merits of the case-in-chief.

The Board conducted hearings in this matter on April 29 and 30, May 7, 8, 11, and 29, 1998. On May 11, 1998, the Board heard arguments on the instant motion for interlocutory relief. On May 29, 1998, the Board conducted a hearing to receive further testimony from Kimura.[4] The parties submitted post-hearing memoranda with the Board on May 26, 1998 and June 9, 1998.

On June 23, 1998, Complainant filed a motion to reopen the record with the Board. The UPW sought to reopen the record of the proceedings for the limited purpose of admitting into evidence three Stipulations and Orders filed with the Board in Case No. CE-01-396 which the UPW believed are relevant to the remedial aspects of this case. The UPW alternatively requests that the Board take judicial notice of the orders which the Union alleges are relevant and material to this case.

On July 1, 1998, Respondents, by and through their counsel, filed a memorandum in opposition to Complainant's motion to reopen record with the Board. Respondents contend that the reopening of the record would constitute a violation of Administrative Rules Section 12-42-8 in that Respondents have not been given the opportunity to rebut the Stipulations before or during the hearing. In addition, Respondents contend that the Stipulations may not reflect the Board's ruling in this case.

On July 8, 1998, the Board issued Order No. 1643 granting Complainant's motion for interlocutory relief.

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[4]Kimura previously refused to answer certain questions propounded by the City. The Board applied to the Circuit Court to compel Kimura's testimony and the Court compelled Kimura's testimony in limited scope.

On September 2, 1998, Complainant filed a motion to seek enforcement and compliance with Board Order No. 1643 with the Board. Complainant's counsel states in an affidavit attached to the motion that on or about August 25, 1998, the City declined to select an arbitrator for a class action grievance on the basis that there is no Unit 01 agreement in effect. Complainant thus requested the Board to seek court enforcement of Board Order No. 1643.

In addition, on September 3, 1998, Complainant filed a supplement to the motion for enforcement with the Board. Complainant submitted another letter from the City in grievance no. MA98-30 where the City refused to select an arbitrator.

Thereafter, on September 11, 1998, Respondents filed a memorandum in opposition to the Complainant's motion for enforcement with the Board. Respondents contend that under the terms of the expired Unit 01 agreement, the subject grievances are not arbitrable in the absence of an extension of the Unit 01 agreement. The Respondents assert that there is no evidence that a Unit 01 agreement has been reduced to writing, executed by the parties, or that all cost items have been approved by all legislative bodies affected.

Subsequently, on September 16, 1998, Complainant filed additional exhibits with the Board in support of its motion for enforcement of the Board's Order. Complainant contends that Respondents failed to select arbitrators in three pending grievances. Complainant further contends that Respondents are not giving effect to the Attorney General's opinion, dated August 4, 1998.

On October 5, 1998, Complainant filed a supplemental motion to reopen the record in this case with the Board. Complainant seeks to admit the testimony of Sandra Ebesu on September 24, 1998 in Case No. CE-01-406 as well as the exhibits 1 through 17 in that case which the Union contends are relevant to the remedial aspects of the case.

With respect to the UPW's motion to reopen the record and the supplemental motion to reopen the record in this case to admit the Stipulations and Orders as well as the testimony of Ebesu and exhibits filed in a separate Board case for the remedial aspects of this case, the Board hereby denies UPW's motion to reopen the record. The Board finds that the Stipulations and the record of the other Board contested case hearing are immaterial to the fashioning of a remedy in this case.

With respect to the motion for enforcement filed with the Board, the Board will defer action on UPW's motion and will consider the enforcement action in a separate proceeding.

Based upon a careful review of the record and the written submissions of the parties and having considered the arguments presented, the Board hereby makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Complainant UPW is the exclusive representative of the employees included in Unit 01, as defined in § 89-6, HRS.

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

HRS, of employees of the City and County of Honolulu included in Unit 01.

Respondent ROBERT FISHMAN was for all times relevant, the Managing Director of the City and County of Honolulu.

The UPW and the public employers have been parties to ten successive collective bargaining agreements covering blue collar non-supervisory employees in bargaining unit 01 since July 1, 1972. The last agreement was entered into on June 21, 1994 and extended for the period from July 1, 1993 to June 30, 1995. Prior to the expiration of the contract, both the Union and the public employers gave notice of their desire to amend the agreement. Negotiations commenced in 1994, and the parties extended the agreement on June 29, 1995, January 31, 1996, June 28, 1996, January 31, 1997, June 27, 1997, and January 28, 1998. The latest extension expired on June 30, 1998. Former Personnel Director Cynthia Bond and later, Ebesu, signed the extensions on behalf of the City.

On October 15, 1996, the parties exchanged proposals to amend the prior Unit 01 contract. On October 16, 1996, the UPW transmitted the ground rules for the Unit 01 negotiations to Kimura who served as the chief spokesperson for the public employer group. These ground rules had not changed from prior negotiations and no changes were made by any party during the sessions of 1998. The grounds rules provide, inter alia, that each party can determine the size of their negotiating team. Further, the ground rules do not refer to any subcommittees with limited authority to negotiate. The ground rules also provide that all items agreed to are agreed to tentatively pending final disposition of all items.

The parties did not aggressively negotiate in 1996 because of fiscal concerns. In early 1997, the Hawaii Government Employees Association (HGEA) and the public employers began to reach settlements for various bargaining units and the negotiators in Unit 01 bargaining began discussing a cost package tailored to the Unit 02 wage increases. Since the Unit 01 workers are supervised by Unit 02 employees, the consensus within the employer group was that a cost package similar to the Unit 02 wage percentage increases would be acceptable. On November 20, 1997, the HGEA and the multi-employer group entered into a tentative agreement for Unit 02 employees for the period July 1, 1997 to June 30, 1999. According to Kimura, all jurisdictions agreed that Unit 01 cost items would be tailored to the Unit 02 settlement with the HGEA.

Historically, personnel directors of the City have been directly involved in negotiating and signing the Unit 01 contracts. Cynthia Bond, former Director of Personnel, signed extensions to the Unit 01 agreement on June 29, 1995, January 31, 1996 and June 29, 1996 without a concurrent signature by HARRIS. Thereafter, Ebesu signed Unit 01 extension agreements on January 31, 1997, June 27, 1997, and January 28, 1998. In addition, Ebesu executed modifications and changes to prior Unit 01 agreements affecting automated refuse collection and patterns of absence due to sickness. Ebesu has also signed approximately 24 settlement agreements for grievances affecting Unit 01 employees in five major departments of the City.

In the Unit 01 negotiations, Ebesu had actual authority to bind the City as the designee of the mayor at the bargaining

table. HARRIS was not directly involved in the negotiations and did not restrict or limit Ebesu's authority at any time during the bargaining process except that on March 16, 1998, HARRIS instructed Ebesu to vote "no" on the Unit 01 package. Other personnel directors from the respective counties were authorized to act on behalf of their mayors. Under § 89-6(b), Hawaii Revised Statutes (HRS), each mayor is entitled to one vote in negotiations and the Governor is entitled to four votes. The employer group was aware that Kimura represented the four votes from the Governor.

In early January 1998, the parties began more intensely negotiating the Unit 01 agreement. On January 12, 1998, the UPW submitted an overall settlement package to OCB. The UPW's proposal included language changes to approximately 62 sections of the existing contract. On January 15, 1998, the settlement proposal was transmitted to all public employers. Michael Ben (Ben), Personnel Director, County of Hawaii, indicated that the employer group was informed that a settlement was desired by the end of January 1998.

The employer negotiators reviewed the proposals in caucuses held on January 15, 16, and 20, 1998. At the meeting held on January 15, 1998, James Takushi (Takushi), Director, Human Resources Development, State of Hawaii, voiced his opposition to considering the UPW's proposals.

On January 21, 1998, Rodrigues explained the entire Union proposal to the employer group on a section-by-section basis and answered questions from the employers. Initially, the County employers, except for the City, were opposed to considering the UPW's settlement proposal.

After the January 21, 1998 meeting with the employer group, Rodrigues heard rumors that the City would not support the wage increases for Unit 01 employees. On January 27, 1998, Rodrigues contacted ROBERT FISHMAN and advised him of the rumor. Rodrigues told FISHMAN that if the City was not going to agree to the Unit 02 pay raises for the Unit 01 employees, he would not agree to the new automated refuse routes which the City wanted. Rodrigues also told FISHMAN that if the City did not support the wage increases, there would not be sufficient votes and he would start to prepare impasse papers. According to Rodrigues, FISHMAN denied the truth of the rumor and indicated that the City wanted the automated refuse expansion. FISHMAN promised to get back to Rodrigues after checking it out.

According to FISHMAN, he told Rodrigues that he wanted to see everything worked out, that he would pass the message to the mayor, and would get back to him. FISHMAN told HARRIS about the telephone call from Rodrigues. HARRIS left FISHMAN with the impression that the matter would be handled through the normal bargaining process. FISHMAN did not call Rodrigues back. FISHMAN, however, informed Ebesu about the call from Rodrigues.

Ebesu recalls that FISHMAN advised her that Rodrigues had talked to him about automated refuse collection and said he would touch bases with HARRIS. Ebesu had previously contacted Rodrigues earlier in January to ask if the Mayor could refer to the ARCO in his State of the City speech and Rodrigues had said no at that time.

Rodrigues also notified OCB that the Union would withdraw its proposals on drug testing for probationary employees and all employees in 1998.

During the first week of February 1998, Kimura informed Rodrigues that the employer group had rejected the Union's noncost proposals.

Thereafter, on February 11, 1998, the employer caucus met and Kimura asked each jurisdiction to indicate their position on the pay increase. Hawaii and Maui counties and the State of Hawaii did not object to the wage increases proposed by the Union. Thus, Kimura was satisfied that he had the necessary votes on wages, since only the City and the County of Kauai voiced opposition. Ebesu was outvoted on the issue of wage increases and informed HARRIS soon after the meeting that the votes supported the UPW's proposal on wages.

Also, during the employer caucus on February 11, 1998, the State of Hawaii and the City voted to entertain and consider the Union's proposals. At this point, Kimura believed that the City agreed to reconsider the whole package and that it was willing to discuss all of the issues to try to reach a settlement. Kimura believed that he had the necessary fifth vote to proceed with negotiations with the UPW. Without the City's change in position, Kimura felt that it would have been fruitless to pursue further negotiations with the Union.

Kimura also informed the employer group that he would withdraw the employer proposals (approximately 15) which had been submitted earlier to the UPW. Kimura strongly recommended the withdrawal of the employer proposals because that had been the

employers' position in the HGEA negotiations. During a heated discussion in the caucus, Takushi expressed concerns about the handling of the employer group by Kimura. The next day, Ebesu called the neighbor island representatives to ask permission to speak with Kimura in an effort to pull the group together and operate as a unit.

On February 12, 1998, Rodrigues left a message with Robin Chun-Carmichael (Chun-Carmichael), a member of Ebesu's staff, indicating that he would not sign the ARCO Memorandum of Agreement (MOA) if the City did not support the Unit 01 pay increases.

On February 13, 1998, Ebesu met with Kimura in an effort to pull the employer group together. Ebesu told Kimura that it was important to function as a group and to consider the Union's proposals. Ebesu was concerned that the employer group would be accused of not giving the proposals due consideration and Kimura agreed to cooperate and meet separately with the personnel directors without their staff to see what could be done.

On February 18, 1998, a caucus was held with only the personnel directors present where Kimura recommended the formation of a subcommittee composed of Ebesu and himself, along with their respective staffs, to meet with the UPW over the proposals. All jurisdictions authorized Kimura and Ebesu to meet with the UPW negotiators. According to Ebesu, the subcommittee was authorized to review each proposal, draft language which would be acceptable to the employer group, meet with the Union to express employer concerns and report back to the group. Taira, however, recalls no specific discussion on the scope of the subcommittee's authority. Ben testified that there was an understanding that the subcommittee

would report back, but no one specifically said that the subcommittee could not bind the employer group or was otherwise limited in its authority. According to Tanigawa, the subcommittee's role was to resolve some "sticky" issues by discussing them with the Union and "trying to come to a position that would be acceptable to everybody."

Although Ebesu assumed that the subcommittee's role was limited and could not bind the employer group, she also believed that she represented the entire group. Ebesu also knew that she, as the City's representative, along with Kimura represented five votes on the employer's side. Kimura nevertheless believed that he had the fifth vote from the City to proceed with more than a mere discussion of issues. According to Kimura, when the City agreed to reconsider the whole package he believed that the City was willing to discuss all of the issues and try to reach a settlement. Based on the City's reconsideration, Kimura believed that he had the majority of votes to proceed to settlement. Kimura indicated that it would have been fruitless to pursue a settlement if he could not get one of the counties to agree with the State. Kimura informed Rodrigues that based on the reconsideration of the State and the City, negotiations could resume. Kimura notified Rodrigues that he was ready to negotiate on behalf of the State and the City.

Prior to and during this time period, Kimura and Ebesu discussed the various proposals with members of the employer group. Neighbor island negotiators contacted Ebesu with their concerns over interested items. The City presented its lump sum payment concept to address employer concerns regarding retroactive wage increases. Ebesu developed counterproposals based on her

discussions with the County personnel directors regarding drug testing, sick leave, and retroactive wage payments.

On February 25, 1998, Kimura and Ebesu and their respective staff members met with the UPW negotiators and worked off of the Union's settlement proposal. The employer group had discussed the lump sum proposal which the City drafted for the group to address administrative costs in making retroactive payments to the Unit 01 employees. Kimura and Ebesu discussed each item including cost and noncost items, and Kimura stated whether he agreed to the provision then would turn to Ebesu who would indicate assent or disagreement. There were a number of proposals which were acceptable to both sides. Contested items were put aside. Kimura and Ebesu spoke for and represented the employer group in these sessions with the Union. Rodrigues spoke for the UPW and believed that both Kimura and Ebesu spoke for the entire employer group.

On February 26, 1998, the employers again met in caucus and discussed a number of issues.

Some neighbor island members of the employer group disagreed over such matters as the withdrawal of employer proposals, consideration of the UPW settlement proposal, sick leave patterns, prior rights, legal plan and drug testing. Kauai County opposed the transportation provisions and Maui County opposed the legal plan. However, in these matters, Kimura and Ebesu essentially outvoted the dissenting jurisdictions in caucus and resolved the issues. On nearly all noncost issues, Kimura with four votes and Ebesu with the fifth vote representing HARRIS outvoted the other members.

Actions taken in the employer caucuses on all issues and items were kept confidential from the Union. However, during the bargaining sessions with the Union representatives, Kimura and Ebesu indicated their assent verbally and by other conduct on each item resolved. The City representatives actively participated in the negotiations. The UPW responded to concerns expressed on such issues as the retention of personnel records, alcohol and drug testing, and retroactive wage payments. Ebesu formulated and presented counter-proposals to address the concerns of the neighbor island counties and to reach common ground with the UPW. Concessions were made by the UPW. The City drafted the language reflecting the agreements reached between the parties. Ebesu recognized that when she indicated her assent in meeting with the UPW she was speaking for the employer group and that Kimura also represented the group. Through this process, the parties developed two documents which contained the substantial and material terms of an agreement on cost and noncost items. Ebesu had developed the lump sum proposal on retroactive pay and agreed with the provisions on noncost.

On March 2, 1998, Kimura, Ebesu, Rodrigues and their staffs met and discussed §§ 2, 11, 15, 17, 23, 36, 37, 42, 52, 55, 58, 61, and 64. Many items were resolved that day and substantial agreement was made on most of the terms and conditions. The UPW agreed to the lump sum concept and needed to work on the details. According to Rodrigues, the parties substantively agreed to every major issue, including wages, with the terms to be worked out. At that point, Rodrigues was approached by a City representative who asked, "well, can we get automated refuse now?" Relying on the

City's cooperation in bargaining over the Unit 01 cost and noncost items, Rodrigues indicated that he would sign it later that afternoon when he met with City representatives. Rodrigues executed a new MOA regarding the automated refuse routes on the afternoon of March 2, 1998. The automated refuse MOA was signed by Ebesu on March 3, 1998. Rodrigues indicated that he would not have signed the MOA if the City had no authority to negotiate.

On March 4, 1998, the parties resumed discussions on §§ 2, 11, 12, 15, 17, 36, 37, 42, 55, 54, 48, and 62. Issues relating to layoffs (12), elimination of grievance steps (15), provisions relating to personnel information (17), retroactive wage adjustments through lump sum payments (23), licenses (55), employee bill of rights (58), meal periods affecting DOE (52), and drug testing (63) were resolved. The final meeting between the UPW and the State and City negotiators occurred on March 10, 1998.

Neighbor island personnel directors received reports of bargaining sessions and were afforded an opportunity to present their concerns, and helped prepare for the subsequent meetings. It was obvious to everyone in the employer caucuses that negotiations with the Union were in progress as the parties changed their positions on various issues and the Union made concessions.

The neighbor island directors believed that while the subcommittee composed of Kimura and Ebesu had limited authority and could not bind the employer group, they admit that the limitation on authority was never specifically discussed in caucus. Moreover, neither the Chief Negotiator nor the City representatives ever expressed to the Union that there was any restriction on their authority to negotiate. Also, Rodrigues was never told that any

agreement reached between the parties was subject to a vote or approval by some employer who was not present at the table. Rodrigues indicated that had he been told that the City representatives lacked authority to bind the Mayor, the Union would have sought a declaration of an impasse in negotiations. Further, Rodrigues indicated that if the negotiators' agreement was subject to a majority vote of counties not present, he would not have resumed negotiations. Rodrigues testified that previously, if the employers had to check with others, the negotiators would say that they could not commit and needed to check. Rodrigues understood that whoever was present had the authority to negotiate on behalf of the group or at least to bind the parties present. Both Kimura and Ebesu believed they represented the employer group as a whole and had the requisite votes between them needed to resolve the issues.

On March 10, 1998, Rodrigues hand-carried the agreements to OCB. After the bargaining concluded, the negotiators shook hands and congratulated each other. As of March 10, 1998, Rodrigues and Kimura believed that an agreement had been reached, subject to employee ratification. Rodrigues testified that no one from the employer group indicated that the tentative agreement was subject to ratification by the employers. Kimura initialed each section of the agreement in the presence of Chun-Carmichael and Allison Murakawa, another City staff member, after verifying that the documents reflected the understanding of the parties reached in bargaining. Ebesu was not present when Kimura signed the tentative agreements (TAs) but acknowledges that Exhibits 13 and 14 reflect the substantial and material terms of the deal with UPW. After

Kimura initialed each of the TAs, the documents were transmitted for initialling by Rodrigues.

Later that day, Chun-Carmichael and Murakawa reported to Ebesu that Kimura signed the TAs. Ebesu called Kimura to express her concerns regarding Kimura's initialling of the TAs but Kimura does not recall that Ebesu raised any opposition to the TAs. Ebesu, however, never notified the UPW of any objections to the process or that the TAs were not authorized.

The Union proceeded to schedule ratification meetings soon after the documents were initialed. By letter, dated March 10, 1998, Ben confirmed a conversation with Kimura regarding the direction of "negotiations for Unit 01." Ben expressed his concern over not having meaningful input and an "apparent 5-3 vote system" employed to settle the Unit 01 talks. Ben warned Kimura that if the contract was settled without due consideration for his concerns, the County might lobby the Council to reject the cost items.

On March 13, 1998, Ebesu and Malcolm Tom, Director of the City's Budget department met with Rodrigues. The discussion centered on when and in what manner lump sum payments would be made in accordance with the wage settlement. Ebesu tried to dissuade Tom from proceeding with the meeting, but she realized at the time that the City had been outvoted on the wage and cost items in the negotiations and could be held to the commitments made in accordance with the multi-employer process. Rodrigues indicated that he would look at specific proposals and could work it out later. No one at the meeting said that the Mayor could not pay for the wage increases. Ebesu knew that Kimura would have signed all

of the TAs by March 10, 1998 but never told Rodrigues that the agreement was not final and a vote would be taken at a meeting on March 17, 1998.

Ratification meetings commenced on March 16, 1998. The Union held ratification meetings at State work sites. The respective counties denied the Union's request to conduct ratification meetings and the Union, nevertheless, proceeded to conduct ratification meetings to present the tentative agreement for a vote by employees during previously scheduled Section 8 meetings. According to Rodrigues, 97% of those voting ratified the agreement.

Also on March 16, 1998, HARRIS instructed Ebesu to vote "no" on the Unit 01 package.

On March 17, 1998, Kimura presented the TAs to the employer group and explained each item. Ebesu did not oppose the presentation of the TAs. The neighbor island county representatives raised some concerns over certain items but believed that the State and the City had agreed to the tentative agreement because they had voted together on all items in prior employer caucuses (except on wages), and Ebesu did not object or oppose what Kimura presented as the settlement package. Kimura did not ask for a vote on the tentative agreement but presented the material as to what was agreed to.

As the meeting broke, Ben indicated for the "record" that Hawaii County was not "agreeing to the package." Maui County, Kauai County, and the City also indicated "no" to the package. The neighbor island representatives assumed that the City had outvoted them on the package and were surprised that the City voted "no."

The ground rules provide that the negotiators resolve the issues on an item-by-item basis. There is no provision requiring voting on the whole package. Taira testified that previously, Unit 01 negotiators resolved issues on an item-by-item basis and it was not normal for the group to vote on the entire package. Tanigawa also confirmed that all proposals during the bargaining process are taken up one at a time and voting does not occur on the package. For employer negotiators, voting on an item-by-item basis occurred in caucus.

During the employer caucuses no one indicated that bargaining commitments made would be conditioned on a vote on the entire package by a majority. The concept of a vote on the whole package was neither raised nor presented. The Union was never informed that an agreement was contingent upon a majority vote of all employers on the entire package.

Thereafter, Kimura contacted Rodrigues to advise him that the City was "backing out of the agreement." Rodrigues asked Kimura whether the State was also backing out of the deal. Kimura informed Rodrigues that there was an agreement. Governor Cayetano, Kimura, Takushi and Budget and Finance Director Earl Anzai executed the memorandum of agreement which indicated their commitment to the Unit 01 agreement.

On March 27, 1998, HARRIS wrote to Rodrigues:

> My understanding from Sandi Ebesu, my Personnel Director is that the official vote on the unit 1 contract was taken on March 17, 1998. The City voted against the settlement package because while I feel unit 1 employees deserve a pay raise, the City does not have the money to fund an increase at this time.

By letter dated April 9, 1998, Rodrigues informed Ebesu that since the City repudiated the Unit 01 contract, the ARCO MOA was void.

Thereafter, on or about May 1, 1998, Mayor Stephen K. Yamashiro, Mayor, County of Hawaii, issued a notice to all Unit 01 employees, which indicated, inter alia, that the Unit 01 contract expired as of midnight on April 30, 1998 and the terms and conditions of employment were governed by civil service laws and regulations.

DISCUSSION

The UPW contends in this case that the Union and the employers negotiated a new agreement and that HARRIS later repudiated such agreement. The UPW contends that Kimura and Ebesu had actual authority to bind the entire employer group or apparent authority to negotiate the contract. The UPW argues that an employer's refusal to honor or sign an agreement reached through negotiations is prohibited. The UPW further contends that absent injunctive relief, there will be irreparable harm to the bargaining unit employees and to the bargaining relationship and that the public interest favors restoration of the status quo ante to prevent Respondents from undermining the bargaining process.

The City contends that the UPW is attempting to enforce a purported agreement for UPW pay raises that was not entered into by HARRIS and/or his authorized representative, Ebesu. The City also contends that in order to coerce the Respondents into acceding to the Union's demand for pay increases and other conditions of

work, the UPW and its members have undertaken illegal strike activity by refusing to comply with the conditions of the ARCO MOA. The City further contends that the ARCO MOA was not connected with the pay raise negotiations.

The City alleges that the negotiations over the Unit 01 contract recommenced in January 1998 and during most of the negotiations and public employer caucuses, the City was represented by Ebesu and Chun-Carmichael. The City contends that the public employers designated a subcommittee to review the Union's Unit 01 proposals in order to determine which of the proposals would be considered by the public employer. The City contends that the subcommittee was composed of the City and OCB representatives with the understanding that the subcommittee was to report its recommendations to the group for consideration. The City contends that on February 26, 1998, at an employer caucus, representatives of the counties advised Kimura of their disagreement with the UPW increases and the overall contract package. The City argues that without the authority of the counties, Rodrigues and Kimura initialed the tentative agreements on approximately March 10, 1998. Thereafter, on or about April 9, 1998, Ebesu received a letter from Rodrigues where he claimed that since the City revoked its agreement on the Unit 01 contract, the ARCO agreement was therefore void.

The City contends that there is no evidence to support a finding that Ebesu agreed to the pay increases at issue. The City contends that without HARRIS' agreement to the UPW pay raises, the Board may not enforce the alleged agreement. The City contends that there is no meeting of the minds on the proposals submitted.

The City further contends that the UPW failed to establish any irreparable harm and that greater harm will result by compelling one party to comply with the purported agreement without its assent. The City also argues that the City is unable to pay the additional 10-14 million dollars related to the pay raise.

Based upon the record before the Board, the Board finds that the UPW has carried its burden of proving that the employers are bound by the Unit 01 contract negotiated between Rodrigues and Kimura and Ebesu. The Board agrees with the UPW that the negotiators at the bargaining table must have sufficient authority to negotiate. Any limitation on authority must be clearly expressed. The record is clear in this case that Rodrigues was never told that the subcommittee was not authorized to negotiate a contract. He testified that if he had known that the subcommittee lacked authority, he would not have pursued further negotiations.

In University of Bridgeport, 229 NLRB 1074, 95 LRRM 1389 (1977), the National Labor Relations Board held that ratification by a person with ultimate authority was unnecessary where negotiators have apparent authority to negotiate. The foregoing case recognizes that the authority to negotiate may be limited, but that such limitation must be disclosed prior to reaching an agreement. Moreover, if the necessity of the employer's approval of an agreement reached by the employer's agent is not clearly understood, under the cases cited by the Union, the employer's refusal to sign the agreement is unlawful. Thus, an agent appointed to negotiate a collective bargaining agreement has the apparent authority to bind the principal in the absence of notice to the contrary.

In N.L.R.B. v. Donkin's Inn, Inc., 532 F.2d 138 (9th Cir. 1976) (Donkin's Inn), the Court concluded that even if the negotiator was not vested with actual agency to accept the contract, he was vested with apparent agency authority. The Court discussed the concept of apparent authority and stated:

> Apparent authority, while a term admitting of some confusion, has been defined in the 2nd Restatement of the Law of Agency, § 8, as:
>
> > ". . . the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons."
>
> This court in Hawaiian Paradise Park Corp. v. Friendly Broadcast Co., 414 F.2d 750 (9th Cir. 1969), discussed further the principle of apparent authority.
>
> > "Apparent authority results when the principal does something or permits the agent to do something which reasonably leads another to believe that the agent had the authority he purported to have . . . [Citations omitted] In determining whether there was apparent authority, the factual inquiry is the same as in the case of actual implied authority, except that the principal's manifestations to the third person are substituted in place of those to the agent. Restatement of Agency (Second), § 8, at 31.
>
> > "The principal's manifestations giving rise to apparent authority may consist of direct statements to the third person, directions to the agent to tell something to the third person, or the granting of permission to the agent to perform acts and conduct negotiations under circumstances which create in him a reputation in the area which the

> agent acts and negotiates." 414 F.2d at 756.

Id., at p. 141.

The Court in the Donkin's Inn case, supra, held that the evidence was convincing that the agent was vested with apparent agency authority, if not actual agency authority to enter into an understanding that would be embodied in a written agreement.

In Metco Products, Inc. v. N.L.R.B., 884 F.2d 156 (4th Cir. 1989), the Court held that the employer's negotiator had apparent authority to enter into the collective bargaining agreement and the employer's failure to execute the agreement constituted an unfair labor practice. The Court discussed the concept of apparent authority and stated:

> In the context of collective bargaining, the NLRB has adopted a clear and simple rule regarding the creation of apparent authority on the part of a labor negotiator. The NLRB has long held that "when an agent is appointed to negotiate a collective-bargaining agreement that agent is deemed to have apparent authority to bind his principal in the absence of clear notice to the contrary." University of Bridgeport, 229 NLRB 1074, 95 LRRM 1389, 1390 (1977). See also Aptos Seascape Corporation, 194 NLRB 540, 79 LRRM 1110 (1971), Medical Towers Limited, 289 NLRB ___ (No. 123), 129 LRRM 1169 (1987), enf. granted without opinion, Medical Towers Ltd. v. N.L.R.B., 862 F.2d 309 (3rd Cir. 1988). The laudable purpose of this rule is to lessen the opportunities for ambiguity and confusion by requiring a party who chooses to negotiate through an agent to disclose any limitations on the agent's authority. See University of Bridgeport, 95 LRRM, at 1390.

Id., at pp. 159-60.

In Cho Mark Oriental Food v. K & K International, 73 Haw. 509, 516-17, (1992), the Court discussed the theory of apparent authority and stated:

> Apparent authority arises when "the principal does something or permits the agent to do something which reasonably leads another to believe that the agent had the authority he was purported to have." Hawaiian Paradise Park Corp., 414 F.2d at 756; see also Grisham, 126 Ariz. at 126, 613 P.2d at 286; Restatement (Second) of Agency §§ 8, 27. The critical focus is not on the principal and agent's intention to enter into an agency relationship, but on whether a third party relies on the principal's conduct based on a reasonable belief in the existence of such a relationship. See, e.g., Lewis, 463 A.2d at 670 n.7. Apparent authority can occur under the following circumstances:
>
> > (1) [T]he principal has manifested his consent to the exercise of such authority or has knowingly permitted the agent to assume the exercise of such authority; (2) . . . the third person knew of [the principal's actions] . . . and, acting in good faith, had reason to believe, and did actually believe, that the agent possessed such authority; and (3) . . . the third person, relying on such appearance of authority, has changed his position and will be injured or suffer loss if the act done or transaction executed by the agent does not bind the principal. [cites omitted.]

HARRIS authorized Ebesu to represent the City in the Unit 01 contract negotiations. Ebesu, supported by her staff, was present at the caucus and represented the City's vote. The evidence is clear that HARRIS never attended any caucuses or bargaining sessions and did not give Ebesu any specific instructions with regard to the Unit 01 contract except to vote against the Unit 01 wage increases and later to vote against the whole Unit 01 package. Previously, Ebesu executed the Unit 01 extension agreements, she negotiated and signed other amendments to the Unit 01 contract, and numerous settlement agreements on behalf

of the City. In prior multi-employer negotiations with the UPW, Rodrigues had negotiated with a group smaller than the whole employer negotiating team on such matters, including the drug testing issue in the commercial driver's license context. Thus, it was not unreasonable for Rodrigues to rely on the team of Kimura and Ebesu as representing the whole employer group or at least two employers, sufficient to cast at least five votes constituting a simple majority of the employer group.

The Board also finds based on the evidence in the record that the employer representatives authorized Kimura and Ebesu to meet with Rodrigues but did not expressly authorize them to negotiate an agreement with the UPW. There was an informal "understanding" in the employer group that the subcommittee was to meet with the Union, clarify the Union's position, present the employers' position and come back to the group with a short list of articles to be negotiated. Ebesu testified that the intent of the subcommittee was to work on language acceptable to the whole group. According to the City's contentions, Kimura and Ebesu were merely authorized to meet with the Union to find common ground.

When the subcommittee met with Rodrigues, Kimura believed that the City would support the agreement reached because the City agreed to reconsider the whole package of proposals, including the cost items. Kimura believed he had the City's fifth vote indicating a majority of the votes necessary to settle the Unit 01 contract. Ebesu already knew she had been outvoted on the wage increases since the counties of Hawaii and Maui voted in favor of the increases and she was reluctant to ignore the rest of the settlement package of noncost issues presented by the Union. Ebesu

pursued the development of the issues presented which included the retroactive wage payments as part of the cost package. Kimura and Ebesu went through the proposals item-by-item and indicated their assent to each item.

At the close of the March 2, 1998 meeting, because substantial progress had been made especially with regard to the wage issues, Rodrigues was asked by the City to sign the ARCO MOA and he agreed. Ebesu and Chun-Carmichael knew that Rodrigues would not sign the ARCO MOA if there was no Unit 01 "deal." Thus, it is clear that at that point the City negotiators likewise believed that they had a "deal" or at least an agreement in principle on the whole Unit 01 agreement because it is unreasonable for this Board to believe that these negotiators would have consciously misled Rodrigues to commit to the ARCO MOA otherwise.

While the City now contends that the Unit 01 negotiations and the ARCO MOA are unrelated, the Board finds that the evidence in the record indicates that while the agreements were negotiated at different times and under different circumstances, at least from January 1998, Rodrigues made it abundantly clear to the Respondents and their representatives that the signing of the ARCO MOA depended upon the City's support of the Unit 01 pay raises. Thus, the execution of the ARCO MOA by Rodrigues lends credence to his testimony that he believed that Ebesu had authority to negotiate on behalf of the employer group as well as HARRIS, and that a deal was reached with the City on the Unit 01 agreement.

Moreover, the neighbor island representatives knew that during the caucuses that the City and the State outvoted the counties on many noncost issues. In addition, at some point, the

neighbor island representatives realized that the subcommittee was negotiating with the Union since counterproposals were being made, there was movement or change in positions, and concessions were being made by the Union. The employer representatives also knew that the subcommittee was successful in negotiating the lump sum retroactive wage proposal which was in fact developed by the City and presented in caucus. However, while some employer representatives of the counties had previously contacted Rodrigues on other matters, e.g., legislation, no one informed Rodrigues as to the limited authority of the subcommittee.

The evidence is clear that Rodrigues was never put on notice that the subcommittee was not authorized to negotiate a contract with the Union. No one conveyed the limited authority of the subcommittee to Rodrigues and there was no mention that HARRIS or any other employer needed to approve the whole package. Neither Kimura nor Ebesu told Rodrigues about the limitation during the bargaining sessions, after the signing of the TAs, nor during the meeting with Tom and Ebesu after the TAs were signed.

During the bargaining sessions with the Union, Kimura and Ebesu actively negotiated the provisions and eventually assented to each provision discussed. Moreover, the conduct of the City representatives was such that even the neighbor island negotiators believed that the City supported the Unit 01 contract. It was only at the time of the actual vote, at the conclusion of the meeting on March 17, 1998 that the other counties as well as the State realized that the City did not support the whole Unit 01 package because of the Mayor's instructions given to her on the previous day.

The City contends that Chapter 89, HRS, requires a formal vote to consummate a multi-employer collective bargaining agreement. It is clear to the Board, however, from the evidence presented that the procedures followed in the employer caucuses are informal. The Chief Negotiator does not call for a vote; rather, he either polls the jurisdictions or the representatives are expected to voice any opposition to the issue presented. The record also indicates that in previous negotiations, the articles were negotiated on an item-by-item basis and then tentatively agreed to. These tentative agreements were then set aside and negotiations continued on the remaining articles. There has never previously been a vote on the whole package.

Based upon the arguments presented, the Board finds that on February 11, 1998, the employer group voted on the Unit 01 wage increases and there were six votes to support the wage increases. There is no dispute that the City opposed the wage increases and also no dispute that Ebesu was outvoted by the simple majority of employer votes, with Hawaii and Maui counties voting with the State to support the wage increases. Thereafter, on March 17, 1998, the employer group reviewed the Unit 01 settlement package which had been presented as a tentative agreement but voted "no" to the Unit 01 package. Ebesu indicated, however, that she supported the noncost proposals. Thus, the Board finds based upon the evidence in the record that there were sufficient votes to approve the cost items and also, to approve the noncost items but insufficient votes from a single county to approve the package as a whole.

The Board, however, agrees with the Union based upon the authorities cited that Kimura and Ebesu had the apparent authority

to bind the multi-employer group to the Unit 01 contract because there was no express limitation placed upon their authority to negotiate. In addition, the evidence supports a finding that Ebesu had the apparent authority to bind HARRIS to the Unit 01 contract. In the past, HARRIS permitted Ebesu to perform acts and conduct negotiations which cloaked her with full authority in all labor-related matters. Rodrigues believed she had the authority and relying on such appearance changed his position so that he and the Unit 01 membership would suffer loss if the contract did not bind HARRIS. Moreover, under the Bridgeport case, there was no express limitation placed on her authority to negotiate on his behalf. The refusal of an employer to sign a contract embodying agreed upon terms is evidence of a refusal to bargain collectively in good faith. NLRB v. Strong, 393 U.S. 357, 359, 89 S.Ct. 541, 21 L.Ed.2d 546 (1969); H.J. Heinz v. National Labor Relations Board, 311 U.S. 514, 523-26, 61 S.Ct. 320, 85 L.Ed. 309 (1941). HARRIS' later repudiation of the Unit 01 contract constitutes a refusal to bargain in good faith in violation of § 89-13(a)(5), HRS.

The City raises the issue of whether the UPW conducted an illegal strike by refusing to comply with the ARCO MOA and allegedly instructing its membership not to perform work under the MOA. The Board finds this argument to be outside the scope of the instant complaint. Moreover, the Board does not make a specific finding with regard to the validity of the ARCO MOA. The Board finds that the ARCO MOA is relevant and material in the instant case as it reinforces the finding that the UPW and City negotiators

believed during the bargaining process that an agreement had been reached.

The Board finds that the policies underlying Chapter 89, HRS, that joint decision-making and the collective bargaining process promote effectiveness in government is furthered by the issuance of the subject order. In addition, the Board finds that the public policy in promoting the parties to negotiate in good faith supports a finding here that the public employer be bound by the actions of its agent who had apparent authority to negotiate the contract. Respondent HARRIS should not be permitted to repudiate a contract which his bargaining representatives have negotiated since the Union relied upon their apparent authority.

In United Public Workers, AFSCME, Local 646, AFL-CIO, 3 HPERB 507 (1984), the Board held that wilfulness can be inferred from the circumstances of the case and can be presumed where the violation occurred as a natural consequence of the party's actions. Thus, based on the evidence in the record, the Board finds that the natural consequence of the City's refusal to bargain in good faith with the Union and its repudiation of the Unit 01 agreement constitutes a prohibited practice in violation of Section 89-13(a)(5), HRS. As the Board has concluded that the Respondents refused to bargain in good faith, the Board will not address the further violations of Sections 89-13(a)(1) and (7), HRS, raised by Complainant.

Based upon the foregoing, the Board hereby orders Respondent HARRIS to cease and desist from repudiating the Unit 01

contract negotiated by his representatives. Affirmatively, HARRIS shall recognize the agreement and give effect to its terms.[5]

CONCLUSIONS OF LAW

The Board has jurisdiction over this complaint pursuant to Sections 89-5 and 89-13, HRS.

An employer commits a prohibited practice in violation of Section 89-13(a)(5), HRS, when it wilfully refuses to bargain in good faith with the union.

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[5]The City contends that there has been no "meeting of the minds" as to the terms of the applicable terms of the Unit 01 contract. The evidence in this record establishes that the tentative agreements constitute the substantial and material terms of the Unit 01 contract. In the Donkin's Inn case, supra, the Court recognized that the critical question is whether the two sides have reached an "agreement." The Court stated:

> In the context of labor disputes, and particularly section 8(a)(5) violations, however, the technical question of whether a contract was accepted in the traditional sense is perhaps less vital than it otherwise would be. Rather, a more crucial inquiry is whether the two sides have reached an "agreement," even though that "agreement" might fall short of the technical requirements of an accepted contract. Judge Duniway stated for this court in Lozano Enterprises v. NLRB, 327 F.2d 814, 818 (9th Cir. 1964):
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> > "We do not think that, in deciding whether, under a particular set of circumstances, an employer and a union have in fact arrived at an agreement that the employer is then obliged to embody in a written contract upon the union's request, the Board is strictly bound by the technical rules of contract law."

The Employer violated Section 89-13(a)(5), HRS, when it repudiated the Unit 01 agreement which its representative had apparent authority to negotiate and agree to.

ORDER

Based on the foregoing, the Board orders the following:

(1) The Board's Order No. 1643, dated July 8, 1998, is rescinded;

(2) The Employer shall cease and desist from refusing to bargain in good faith with the Union by repudiating the Unit 01 agreement;

(3) The Employer shall, within thirty (30) days of the receipt of this decision, post copies of this decision in conspicuous places on the bulletin boards at the worksites where Unit 01 employees assemble, and leave such copies posted for a period of sixty (60) days from the initial date of posting; and

(4) The Employer shall notify the Board within thirty (30) days of the receipt of this decision of the steps taken to comply herewith.

DATED: Honolulu, Hawaii, October 30, 1998.

HAWAII LABOR RELATIONS BOARD

BERT M. TOMASU, Chairperson

RUSSELL T. HIGA, Board Member

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and JEREMY HARRIS, Mayor, City and County of Honolulu, et al.; Case No. CE-01-390
DECISION NO. 395
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

CHESTER C. KUNITAKE, Board Member

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Paul A. Brooke, Deputy Corporation Counsel
Joyce Najita, IRC
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