

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-267
)	
UNITED PUBLIC WORKERS, AFSCME,)	DECISION NO. 408
LOCAL 646, AFL-CIO,)	
)	FINDINGS OF FACT, CONCLU-
Complainant,)	SIONS OF LAW, AND ORDER
)	
and)	
)	
BENJAMIN J. CAYETANO, Governor,)	
State of Hawaii and DR. LAWRENCE)	
MIIKE, Director, Department of)	
Health, State of Hawaii,)	
)	
Respondents.)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On September 7, 1995, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint against BENJAMIN J. CAYETANO, Governor, State of Hawaii, and DR. LAWRENCE MIIKE, Director, Department of Health, State of Hawaii (collectively State, Employer or Respondents) with the Hawaii Labor Relations Board (Board). Complainant alleges that Respondents unilaterally contracted out bargaining unit work at the pharmacy of the Hawaii State Hospital to a private entity and breached its duty to bargain in good faith over the decision to privatize and its impacts. Complainant also alleges that Respondents failed to provide relevant and necessary information for bargaining purposes. Complainant contends that Respondents breached their duty to bargain in good faith over a mandatory subject of bargaining in violation of § 89-9(a), Hawaii Revised

Statutes (HRS) and wilfully violated §§ 89-13(a)(1), (5), (7), and (8), HRS.

The Board conducted hearings in this matter on October 17 and 30, 1995. All parties had full opportunity to present evidence and arguments to the Board. Written memoranda were filed by the parties on November 13, 1995. Supplemental exhibits were filed by the parties on October 8, 1998, January 27, 1999 and May 24, 1999.

In Order No. 1772, dated September 16, 1999, the Board directed Complainant to submit a proposed order to the Board reflecting the Board's ruling in the case and also set deadlines for the submission of the proposed order and Respondents' objections thereto. Complainant filed its proposed order with the Board on November 22, 1999 and an Errata on November 23, 1999. On December 28, 1999, Respondents filed their objections to Complainant's proposed order with the Board. Thereafter, on December 30, 1999, Complainant filed objections to Respondents' submission with the Board contending that their objections should have been filed by Respondents by December 2, 1999 as no extensions for a late filing had been sought.

Based on a thorough review of the record and the arguments presented in this case, the Board makes the following findings of fact, conclusions of law, and order.¹

¹Respondents failed to file their objections to Complainant's proposed order within seven working days of the filing of Complainant's proposed order. Respondents did not seek an extension of time to file their objections and also failed to accompany their objections with a copy of their proposed order. Thus, the Board will not consider Respondents' objections to Complainant's proposed order. The Board has nevertheless adopted those proposed findings of fact and conclusions of law which support its decision in this case and has modified the proposed

FINDINGS OF FACT

The UPW is an employee organization and the exclusive bargaining representative as defined in § 89-2, HRS, of employees in bargaining unit 10.

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

Respondent DR. LAWRENCE MIIKE is the Director of Health, State of Hawaii, who represents the interests of the Governor and is a public employer as defined in § 89-2, HRS.

At all relevant times herein Respondents operated and managed various community hospitals throughout the State, including the Hawaii State Hospital.

The UPW was certified in 1971 as the exclusive bargaining agent of institutional, health, and correctional workers in bargaining unit 10 for the State of Hawaii, and since then has represented para-medical assistants (PMA's) employed by Respondents in the various state hospitals.

The UPW and the State of Hawaii have been parties to approximately ten (10) successive collective bargaining agreements covering all employees in bargaining unit 10 since on and after July 1, 1972.

At all relevant times herein a collective bargaining agreement for unit 10 employees was in effect containing provisions relating to union recognition, wages, hours of work, transfers,

order submitted by Complainant accordingly to reflect the Board's decision.

demotions, layoffs, safety, and other terms and conditions of employment.

Historically and customarily Respondents have employed PMA's in hospital pharmacies since 1951 and thereafter. According to available records Respondents have employed in the past, and continue to employ currently, PMA's in state operated pharmacies at the following locations:

<u>Location of State Pharmacy</u>	<u>Initial Date PMA's Employed</u>	<u>Current No. of PMA's</u>
Honokaa Hospital	1951	-
Leahi Hospital	1969	1
Hilo Medical Center	1970	7
Maui Memorial Hospital	1970	5
Kula Hospital	1971	1
Kona Hospital	1974	5
Kauai Vet. Mem. Hospital	1978	1
Hawaii State Hospital	Approx. 1980	8
Mahelona Mem. Hospital	1982	1

Respondents have never contracted out the work of pharmacy technicians or PMA's generally in any of the various hospitals throughout the State of Hawaii.

The Hawaii State Hospital is an in-patient facility located at Kaneohe, Hawaii for the care, custody, diagnosis, treatment, and rehabilitation of mentally ill persons under Chapter 334, HRS. The average patient census at the hospital is 187 persons, approximately 75 percent of whom are admitted there by court order.

On March 7, 1991, the United States Department of Justice filed a complaint in Civil No. 91-00137 DAE against the State of Hawaii alleging that operations at the Hawaii State Hospital deprived patients of their constitutional rights in violation of the Civil Rights for Institutionalized Persons Act, 42 U.S.C. 1997 et. seq. On September 19, 1991, the federal district court approved a settlement agreement in the action.

On January 10, 1995, the Honorable David Ezra, Judge of the federal district court issued an order in Civil No. 91-00137 DAE finding Defendants in contempt of the court-approved settlement agreement. On January 19, 1995, the court issued a Stipulation and Order to remedy Defendant's contempt of the settlement agreement. Nothing in the Court's order required Defendants to privatize the pharmacy of the Hawaii State Hospital. The order only required Defendants to fill the pharmacy vacancies; it did not specify how Defendants should fill these vacancies.

A pharmacy was established at the Hawaii State Hospital in the early 1980's by Respondents. Over a period of approximately fifteen (15) years, the staff at the pharmacy grew to include three (3) professional pharmacists, two (2) clerical positions, and eight (8) PMA's employed as pharmacy technicians. All employees in the pharmacy were state personnel who were in the merit system established by Chapters 76 and 77, HRS. The pharmacists and clerical employees were represented for collective bargaining purposes by the Hawaii Government Employees Association and the PMA's were represented by the UPW.

As part of their duties and responsibilities, PMA's assigned to the Hawaii State Hospital pharmacy "provide para-professional assistance to the licensed pharmacists at the hospital in filling prescriptions, delivering them to patients, receiving and storing supplies, and maintaining pharmacy records." PMA's are supervised by licensed pharmacists. Respondents have had no difficulty filling PMA positions within the pharmacy at the Hawaii State Hospital.

Employed and assigned to the Hawaii State Hospital pharmacy as PMA III's were Patricia Santos (hired on November 7, 1990), Angeles Ipalari (hired on May 1, 1991), Shirley Layugan (hired on January 18, 1993), Bryan Kawasaki (hired on February 22, 1993), Evangeline Losbog (hired March 29, 1993), Roderick Casino (hired on September 1, 1994), and Kirin Tan (hired on August 23, 1993). Linda Kaaihue-Olivera (hired on August 5, 1994) was employed as a PMA II.

By letter dated January 26, 1995, Sherry Harrison (Harrison), a special assistant to Respondent MIIKE, wrote to Gary Rodrigues (Rodrigues), UPW State Director, to inform him that "Hawaii State Hospital will be closing its pharmacy effective May 18, 1995." Although Harrison indicated that the staff in the pharmacy would be relocated, no mention was made of contracting out the work of PMA's. According to William Elliott, associate administrator of Hawaii State Hospital (who was in charge of personnel), no decision to contract out bargaining unit work had been made as of that date by the Employer.

By letter dated February 8, 1995, Rodrigues responded to Harrison's notification by submitting a request to negotiate over the Employer's proposed course of action. The Union asked Respondents to "cease and desist" from unilaterally implementing its decision, and tendered a request for information relevant to the subject matter.

By letter dated March 21, 1995, Harrison provided a partial response to the information request of the UPW. Although requested by the UPW in items #5, #6, #7, and #8 of its February 8, 1995 information request, Harrison did not provide any information regarding the private contractor, the scope of the contemplated services to be contracted, a copy of the contract, or a description of the duties and function of those replacing civil servants. Harrison informed the Union that the information was not available at the time because no request for proposals or bid had been issued, and a decision as to the course of action being considered had not been finalized.

By letter dated April 12, 1995, the UPW's State Director wrote to Respondent CAYETANO to express the Union's concern over the situation at the Hawaii State Hospital pharmacy. Governor CAYETANO had earlier indicated to Union officials that he did not favor the contracting out of state services.

On April 27, 1995, the State procurement office issued an invitation for bids for the furnishing of pharmaceutical services for the Hawaii State Hospital, Department of Health. The announcement indicated that bids were due on May 8, 1995 and would be opened soon thereafter.

On May 9, 1995, a bid for a one-year contract in the amount of \$312,000 filed by Interstate Pharmacy Corp (IPC) was selected by state officials to provide pharmaceutical services at the Hawaii State Hospital.

On or about May 10, 1995, Respondent MIIKE selected IPC as the private contractor to provide the pharmaceutical services.

On May 15, 1995, Gerry Fujii, vice president of IPC became acting director of the pharmacy at the Hawaii State Hospital. IPC immediately hired two additional pharmacists, where prior vacancies existed, but no change in PMA staffing occurred.

By letter dated June 16, 1995, the UPW's State Director requested Harrison to provide a copy of the IPC contract and full responses to items #5, #6, #7, and #8 of the February 8, 1995 request for information.

In June 19, 1995, IPC began advertising for "pharmacy technicians" to be employed at the Hawaii State Hospital.

On June 23, 1995, Respondents indicated a willingness to negotiate and bargain in good faith on the impact of privatization of the pharmacy as it relates to the hours, wages, and working conditions of six PMA III's who would be reassigned.

On June 29, 1995, Harrison responded to UPW's second request for information. A copy of the IPC private contract for pharmaceutical services and the job description of pharmacy technicians employed by IPC were not provided.

On July 5, 1995, the UPW agreed to "negotiate and bargain in good faith on the impact of privatization of the pharmacy as it relates to hours, wages, and working conditions." Two meetings

were held on July 24, 1995 and another shortly thereafter by the parties. However, Respondents were unwilling to negotiate over the impact of privatization on the bargaining unit and were prepared solely to discuss the placement of the PMA's outside of the pharmacy. Respondents declined to negotiate over the decision to contract out PMA services to IPC.

On August 15, 1995, Respondents unilaterally transferred all PMA's from the pharmacy of the Hawaii State Hospital. The eight PMA positions in the pharmacy were eliminated from bargaining unit 10. Respondents replaced bargaining unit employees with IPC employees. As of October 17, 1995, IPC filled three (3) of the PMA III positions (pharmacy technicians).

Respondents attribute the decision to contract out PMA services at the Hawaii State Hospital on and after August 15, 1995 to a Stipulation and Order approved by Judge Ezra and filed in Civil No. 91-00137 on January 19, 1995. The decision was not based on dissatisfaction with the services provided by the PMA's or with a problem of recruitment to fill vacancies in PMA positions.

As a direct result of Respondents' decision, bargaining unit employees were involuntarily removed from their positions and displaced. Patricia Santos was assigned to perform administrative support services outside the pharmacy pending a completion of training for placement in a nursing unit within the hospital. Angeles Ipalari declined placement in a nursing care unit and was deemed terminated. Shirley Layugan was trained and placed in nursing unit E within the hospital to perform nurses aid duties and responsibilities. Bryan Kawasaki declined a placement outside of

his classification as a PMA (pharmacy technician) and was also deemed terminated. Evangeline Losbog was trained and placed in nursing unit E within the hospital to perform nurses aid duties and responsibilities. Roderick Casino was demoted from a PMA III to PMA II and began working as a transporter. Karen Tan was trained and placed in nursing unit C-3 to perform nurses aid duties and responsibilities. Linda Kaaihue-Olivera was transferred to the housekeeping unit in the hospital.

The reassignment of PMA's Patricia Santos, Shirley Layugan, Evangeline Losbog and Karen Tan involved a change in hours of work since nursing units at the Hawaii State Hospital operate on a 24-hour shift schedule. The reassignment to direct patient care duties and responsibilities involved significant changes in working conditions giving rise to concerns regarding job safety and training. PMA's Angeles Ipalari, Bryan Kawasaki, and Roderick Casino sustained a loss and reduction in wages and/or compensation.

The pharmacy at the Hawaii State Hospital after August 15, 1995 continued to be operated by IPC at the same time, in the same location, providing the same services previously provided by civil servants. The IPC contract was renewed on a year-to-year basis until September 30, 1998 when it expired.

DISCUSSION

We are presented once again with the question of whether the contracting out of bargaining unit work violates Chapter 89, HRS. In Decision No. 382, Linda Crockett Lingle, 5 HLRB 650 (1996), we held that:

The determination of negotiability will depend on the factual context of the case and upon the degree of adverse impact, if at all, upon the bargaining unit. Based upon the facts of each case, the Board will determine whether the employer complied with its bargaining obligations. If the charging party establishes that the work performed was previously exclusively performed by the bargaining unit and that the transferred job duties are similar to the bargaining unit work so that there is a continuity of function, the matter will be subject to negotiation unless the employer can show that there is a significant change in the qualifications for the work. The Board will consider the extent of adverse impact to the bargaining unit and will apply a balancing test to determine whether the Employer's interests in contracting out the work outweighs the interests in maintaining the bargaining unit work.

Id., at 676 (citing Niagara Frontier Transportation Authority, 18 NYPERB 18-3083 (1985)).

In the present case, the relevant context and history is virtually undisputed. The work performed by PMA's in pharmacies in state hospitals has been exclusively assigned to employees of bargaining unit 10 who are represented by the UPW. Since 1971 when Complainant was certified as the exclusive representative by this Board, PMA's performing duties as pharmacy technicians have been employed at Leahi Hospital, Hilo Medical Center, Maui Memorial Hospital, Kula Hospital, Kona Hospital, Kauai Veteran Memorial Hospital, Mahelona Memorial Hospital, and the Hawaii State Hospital. Respondents have never contracted out the work of pharmacy technicians or PMA's generally at any of the various state hospitals. At the Hawaii State Hospital, PMA positions in the pharmacy were created in the early 1980's and by 1995 eight regular PMA III positions were in existence. PMA's have provided

para-professional assistance to licensed pharmacists filling prescriptions, delivering them to patients, receiving and storing supplies, and maintaining pharmacy records at the Hawaii State Hospital for approximately 15 years.

On August 15, 1995 and thereafter, Respondents unilaterally replaced PMA's from bargaining unit 10 with pharmacy technicians hired by IPC without a change in job duties and responsibilities or a change in function. The pharmacy technicians employed by IPC continued to perform the same work under similar conditions of employment as previously provided by PMA's in bargaining unit 10. The services and functions continued to be supervised by licensed pharmacists, albeit under private auspices since May 15, 1995. Respondents have not established a significant change in the qualifications to perform the work of pharmacy technicians, and the decision to engage in privatization had nothing to do with dissatisfaction with the qualification or services performed by PMA's in bargaining unit 10 at the pharmacy.

Turning to the question as to whether the decision to privatize and its impact are subject to negotiations, the Board traditionally applies a balancing test to determine the nature and impact of the subject on terms and conditions of employment, i.e., whether there is a material and significant effect on terms and conditions of employment. Hawaii Government Employees Association, 1 HPERB 763 (1977). The Board has relied upon the analysis in Dec. No. 26, Department of Education, 1 HPERB 311 (1973), Dec. No. 102, Hawaii Fire Fighters Association, 2 HPERB 207 (1980), and Dec. No. 382, Linda Crockett Lingle, 5 HLRB 650 (1996) to determine

whether the disputed issue is a mandatory subject of bargaining under §§ 89-9(a) and (d), HRS.

As a direct and immediate result of the decision to privatize PMA services at the Hawaii State Hospital pharmacy on August 15, 1995 eight regular employees in PMA III positions were displaced. Four employees were required to undergo training to perform nurses aid services and compelled to transfer to nursing units at the hospital. Their hours of work were modified to 24-hour shift work and their reassignment to direct patient care significantly changed working conditions including but not limited to safety and training. One employee was reassigned to the housekeeping unit and another was demoted to a transporter position. Two employees who declined to leave pharmacy work were constructively terminated by Respondents. Three employees sustained loss and/or reduction in wages and compensation. In addition, the bargaining unit was affected by the loss of bargaining unit 10 work. Clearly, the effect of privatization on employment terms and conditions and the bargaining unit were significant and material.

In its defense, Respondents contend that the contracting out was mandated by a federal court order following a contempt of court finding on January 10, 1995 in Civil No. 91-00137 DAE. In their post-hearing brief Respondents maintain that they had "no discretion" in the matter and were compelled by the federal judge to contract out the work in question. Unfortunately, in an order issued by the Judge Ezra on November 24, 1997 the court indicated that no such mandate ever existed. It stated:

In this case, Defendants have failed to show that they were acting under a federal officer by privatizing the Hospital pharmacy. Although Defendants maintain that they were required to privatize the pharmacy in order to comply with the court's January 19, 1995 Stipulation and Order, nothing in the court's order required Defendants to privatize the pharmacy. The order only required Defendants to fill the pharmacy vacancies; it did not specify how Defendants should fill these vacancies. (Emphasis added).

Based on the foregoing determination by Judge Ezra, the Board must agree with Complainant that the federal court did not mandate the privatization of the specific positions. Moreover, Respondents concede that there were no vacancies in PMA III positions to be filled under the terms of the settlement agreement either. Even assuming a mandate under federal law, where an employer has "discretion, choice, or latitude" in implementing compliance with federal requirements the duty to bargain applies. Univ. of Hawai'i Prof. Assem. v. Tomasu, 79 Hawai'i 154, 157-58, 900 P.2d 161 (1995).

Thus, under the balancing test the Board finds that the effects of contracting out at the Hawaii State Hospital pharmacy decidedly tips in favor of negotiations because of the material and significant impact on bargaining unit 10 employees, as well as on the bargaining unit. Respondents were obligated under § 89-9, HRS, to negotiate over the decision to privatize and its impact. In Lingle Crockett Lingle, supra, we held that the decision to privatize and its impact are so intertwined that the negotiations over the impact of the decision necessarily involves the decision to privatize itself.

On June 23, 1995, Respondents indicated a willingness to negotiate and bargain in good faith on the impact of privatization. However, when the parties met on July 24, 1995 and once thereafter, Respondents indicated they were unwilling to negotiate, except as to the placement of PMA's outside of the pharmacy. Respondents declined to negotiate over the decision to contract out PMA services to IPC, and on August 15, 1995 proceeded unilaterally to displace all bargaining unit employees and to replace them with IPC employees. When a public employer unilaterally implements changes in wages, hours, and other terms and conditions of employment, such conduct is tantamount to a refusal to bargain. As the Hawaii Supreme Court held in UHPA v. Tomasu, supra:

The duty to bargain arises in two circumstances potentially applicable to this decision: First, the obligation to bargain collectively forbids unilateral action by the employer with respect to pay rates, wages, hours of employment during the term of a labor contract, even if the action is taken in good faith. It is well established that an employer's unilateral action in altering the terms and conditions of employment, without first giving notice to and conferring in good faith with the union constitutes an unlawful refusal to bargain. See, e.g., NLRB v. Katz, 369 U.S. 736, 737, 82 S.Ct. 1107, 1108. 8 L.Ed.2d 230 (1962) (unilateral implementation of automatic wages increases, changes in sick-leave benefits and numerous merit increases violated the statutorily imposed duty to bargain collectively); Burlington Fire Fighters Ass'n v. City of Burlington, 142 Vt. 434, 457 A.2d 642 (1983) (principle that unilateral imposition of terms of employment is a violation of duty to bargain is equally applicable to public sector bargaining); First Nat'l Maint. Corp. v. NLRB, 452 U.S. 666, 101 S.Ct. 2573, 69 L.Ed.2d 318 (1982). Therefore, when the employer attempts to promulgate a policy that will affect bargainable topics, the employer cannot do so without first initiating bargaining on such topics.

Second, the duty to bargain also arises if a union unilaterally demands "mid-term" bargaining, that is, bargaining mid-way through an active applicable collective bargaining agreement on bargainable subjects such as wages, hours, or terms of employment.

Id., at 159.

Respondents ignored the UPW's written request to negotiate dated February 8, 1995 and decided on May 10, 1995 to proceed with the selection of IPC as a private contractor. Although PMA's were retained on May 15, 1995 when IPC took over operations at the pharmacy, Complainant was not provided the necessary information it needed for bargaining purposes. Then on August 15, 1995, Respondents unilaterally laid off all PMA's from the pharmacy and reassigned, demoted, and separated all bargaining unit employees. The Employer failed to comply with the contractual requirements under the union recognition, layoff, transfer, and scheduling provisions of the Unit 10 agreement, and did not provide a copy of the IPC contract to the UPW or other information it needed to determine the full scope of the privatized service by IPC after August 15, 1995. Intertwined with the duty to bargain in good faith is the duty to supply relevant information needed by the exclusive bargaining agent to perform its statutory role and function. NLRB v. Truitt Manufacturing Co., 351 U.S. 149 (1956). The information UPW requested was necessary for bargaining over the decision to privatize and its impact.

Further, the Board finds that the natural consequence of Respondents' failure to negotiate over the decision and impact of the privatization of the PMA positions in the pharmacy was the loss of the PMA positions in the pharmacy resulting in the displacement

of the existing PMA's and the interference with the Union's right to preserve the bargaining unit. The Board concludes therefore, that Respondents' actions were wilful and constitute prohibited practices in violation of §§ 89-13(a)(1), (5), (7), and (8), HRS.

Finally, it should also be noted that Respondents' reliance on Act 230, 1998 Session Laws of Hawaii, as a defense is misplaced. Although Act 230 appears to authorize certain forms of privatization notwithstanding Chapter 89, HRS, § 14(a) of the Act expressly states that its provisions "shall not affect . . . proceedings that were begun prior to the effective date of this Act." Act 230, 1998 SLH, became law on July 20, 1998. Hawaii law does not favor retrospective legislation. Section 1-3, HRS; State v. Van Geldern, 64 Haw. 210 (1981); Robinson v. Bailey, 28 Haw. 462 (1925). The action in this case preceded the effective date of Act 230, 1998 SLH by almost three years and therefore is not foreclosed by Act 230.² The Act however, exempts all new contracts entered into by the State or county after the effective date of July 20, 1998 and prior to July 1, 2001 from civil service and collective

²Part V, § 14(a) of the Act provides as follows:

(a) Part IV of this Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, prior to the effective date of this Act. Upon the effective date of this Act, no action or proceeding may be initiated by any party against the State or county regarding any contract with any private entity for goods, services, or construction that was entered into pursuant to Part IV of this Act.

bargaining laws.³ As this case involves the contract to privatize the pharmacy which expired in 1995, Act 230 effectively limits any remedy that the Board could prospectively issue regarding negotiating the decision to privatize the pharmacy.

Based upon the foregoing findings and conclusions it is the determination of the Board that Respondents wilfully violated §§ 89-13(a)(1), (5), (7), and (8), HRS. Consistent with the basic purpose of Chapter 89, HRS, and in accordance with its authority under § 89-5(b)(4), HRS, and Administrative Rules § 12-42-50, the Board hereby orders Respondents to (1) make the affected PMA's whole for any loss of compensation, benefits, and seniority

³Part V, §§ 14(b) and (c) of the Act provide as follows:

(b) All new contracts for goods, services, or construction which are entered into by the State or county after the effective date of this Act and prior to July 1, 2001, which extend beyond June 30, 2001, shall include a provision stating that the contract, during its term, is subject to a single review by the state or county pursuant to the managed process in Part III, Section 6. Pursuant to the managed process review, the contract may be canceled, renegotiated, continued, or extended by the State or county. All of these contracts shall continue to be exempt from civil service laws, merit principles, and collective bargaining laws for the duration of the contract even if a managed process is not implemented.

(c) All contracts for goods, services, or construction which are entered into by the State or county on or before the effective date of this Act, including contracts which extend beyond June 30, 2001, shall not be subject to review by the State or county pursuant to the managed process in Part III, Section 6. All of these contracts shall continue to be exempt from civil service laws and merit principles for the duration of the contract.

suffered as a result of the privatization of the PMA positions in the pharmacy; (2) cease and desist from refusing to provide information relevant to the bargaining process; and (3) cease and desist from making unilateral changes in wages, hours of work, and other terms and conditions of employment at the pharmacy of the Hawaii State Hospital. The Board believes that the foregoing remedies are necessary and proper in light of the strong public policy requiring joint decision-making as a means of promoting effectiveness in government. Board of Educ. v. Hawaii Pub. Emp. Relations Bd., 56 Haw. 85, 528 P.2d 809 (1974).

CONCLUSIONS OF LAW

The Board has jurisdiction over the subject complaint pursuant to §§ 89-5 and 89-13, HRS.

An employer commits a prohibited practice in violation of § 89-13(a)(1), HRS, by interfering, restraining, or coercing any employee in the exercise of rights guaranteed under Chapter 89, HRS.

An employer commits a prohibited practice in violation of § 89-13(a)(5), HRS, by wilfully refusing or failing to negotiate in good faith over a mandatory subject of bargaining or fails to provide information needed in the bargaining process.

An employer commits a prohibited practice in violation of § 89-13(a)(7), HRS, by wilfully failing to comply with its statutory obligations under Chapter 89, HRS.

An employer commits a prohibited practice in violation of § 89-13(a)(8), HRS, by wilfully violating the terms and provisions of a collective bargaining agreement.

Respondents wilfully violated §§ 89-13(a)(1), (5), (7), and (8), HRS, by their refusal and failure to negotiate in good faith over the decision to privatize bargaining unit 10 work and its impact at the Hawaii State Hospital pharmacy and their unilateral changes to wages, hours, and terms and conditions of employment of PMA's under the Unit 10 agreement at said pharmacy.

ORDER

Based on the foregoing the Board directs and orders Respondents:

(1) To make whole all affected PMA's for their loss of compensation, benefits, and seniority;

(2) To cease and desist from making unilateral changes in wages, hours of work, and other terms and conditions of employment at the pharmacy of the Hawaii State Hospital;

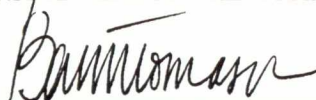
(3) To cease and desist from refusing to provide information to the Union needed for the purposes for negotiations;

(4) To post copies of this decision in conspicuous places at its worksites where employees of the bargaining unit assemble within 30 days hereof, and leave such copies posted for a period of 60 consecutive days from the initial date of posting; and

(5) To notify the Board of the steps taken by Respondents to comply with this order within 30 days of receipt of this order.

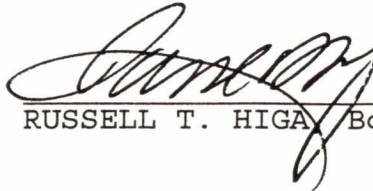
DATED: Honolulu, Hawaii, May 5, 2000.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and BENJAMIN J.
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RUSSELL T. HIGA Board Member

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