

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

CITY AND COUNTY OF HONOLULU and
JEREMY HARRIS, Mayor, City and County of
Honolulu,

Complainants,

and

STATE OF HAWAII; BENJAMIN J.
CAYETANO, Governor, State of Hawaii; and
UNITED PUBLIC WORKERS, LOCAL 646,
AFSCME, AFL-CIO,

Respondents.

CASE NOS.: CE-10-481
CU-10-187

ORDER NO. 2096

ORDER GRANTING RESPONDENT
UPW'S MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT

ORDER GRANTING RESPONDENT UPW'S
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

On May 22, 2002, Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) moved to dismiss the above-captioned prohibited practice complaint pending before the Hawaii Labor Relations Board (Board) for failure to state a claim for relief and/or for summary judgment. The UPW contends that the Board recently addressed and determined the issues raised in the instant case in Decision No. 434, City and County of Honolulu, 6 HLRB ___ (May 17, 2002). The UPW thus argues that the issues have been rendered moot and this complaint should be dismissed or summary judgment rendered in its favor.

Based upon the entire record, and absent any objection by Complainants CITY AND COUNTY OF HONOLULU and JEREMY HARRIS, Mayor, City and County of Honolulu (collectively CITY) and Respondents STATE OF HAWAII and BENJAMIN CAYETANO, Governor, State of Hawaii (STATE), the Board makes the following findings of fact, conclusions of law and order dismissing the instant complaint with prejudice.

FINDINGS OF FACT

1. The CITY is the public employer as defined in Hawaii Revised Statutes (HRS) § 89-2, of employees of the City and County of Honolulu included in bargaining unit (BU) 10.

2. The STATE is the public employer as defined in HRS § 89-2, of employees of the State of Hawaii included in BU 10.
3. The UPW is the employee organization as defined in HRS § 89-2, and the exclusive representative of STATE and CITY employees in BU 10.
4. On October 8, 2001, the CITY filed the instant complaint against Respondents UPW and the STATE (collectively Respondents) for allegedly violating HRS §§ 89-9(d) and (e), and engaging in prohibited practices in wilful violation of HRS §§ 89-13(a)(1), (5), (6) and (7), and HRS §§ 89-13(b)(1), (2), (3) and (4), respectively, by negotiating matters which constitute retirement and health benefits in the form of employer contributions to a newly created deferred compensation plan sponsored by the UPW. The CITY alleged that retirement and health benefits are excluded from negotiations under HRS §§ 89-9(d) and (e), and, therefore, provisions for an as yet to be established deferred compensation plan sponsored by the UPW in the collective bargaining agreement for BU 10 covering the period July 1, 1999 to July 30, 2003 are invalid and cannot be implemented.
5. The CITY's complaint presents identical facts and issues raised by the CITY's petition for declaratory ruling filed on November 26, 2001, in Case Nos.: DR-01-87a and DR-10-87b that resulted in Board Decision No. 434, supra.
6. On May 17, 2002, in Decision No. 434, the Board issued a declaratory order that: (1) the BUs 01 and 10 Contract provisions for public employer contributions to a union-sponsored deferred compensation plan is not excluded from the subject of negotiations by HRS § 89-9(d), and (2) the BUs 01 and 10 Contract provision for the transfer of retroactive amounts to a union-sponsored deferred compensation plan previously negotiated as contributions to the Hawaii public employees health fund for the purpose of providing an adult dental plan and prescription drug plan is not excluded from the subject of negotiations by HRS §§ 89-9(d) and (e).
7. In Decision No. 434, the Board concluded that a percentage of wages in the form of employer contributions to the UPW-sponsored Deferred Compensation Plan was negotiated in accordance with HRS § 89-9(a). Contrary to the CITY's allegations to support the instant complaint, the contract provisions for these employer contributions do not erode a legislatively established and controlled retirement system to confer retirement benefits within the meaning of HRS § 89-9(d).

8. In Decision No. 434, the Board concluded that employer contributions previously negotiated in the 1995-1999 Contracts for BUs 01 and 10 as payments for employees enrolled in the adult dental plan and prescription drug plan, constitute “contributions to the Hawaii public employees health fund within the meaning of HRS § 89-9(d).” Contrary to the CITY’s allegations to support the instant complaint, HRS §§ 89-9(d) and (e), do not preclude re-negotiating the terms of these payments to transfer retroactive amounts into the UPW-sponsored Deferred Compensation Plan.
9. On June 14, 2002, the UPW supplemented its Motion to Dismiss and/or for Summary Judgment filed on May 22, 2002 by attaching written confirmation from the City’s counsel of record, Jeffrey S. Harris, Esq., that no appeal will be filed from Decision No. 434. Accordingly, Decision No. 434 is final and binding on the parties.¹

CONCLUSIONS OF LAW

1. Based on the Board’s ruling in Decision No. 434, there are no genuine issues of material fact to support the CITY’s complaint, and, therefore, we conclude that Respondents UPW and STATE are entitled to summary judgment as a matter of law. The CITY can prove no set of facts to show that Respondents UPW and STATE violated HRS §§ 89-9(d) and (e), and engaged in prohibited practices in wilful violation of HRS §§ 89-13(a)(1), (5), (6) and (7), and HRS §§ 89-13(b)(1), (2), (3) and (4), respectively, by negotiating matters which constitute retirement and health benefits in the form of employer contributions to a newly created deferred compensation plan sponsored by the UPW.
2. We also conclude that the Board’s ruling in Decision No. 434, renders the instant prohibited practice complaint moot.

¹The Board notes in its correspondence that the City requested the State “to seek a private letter ruling to confirm that the plan is drafted to comply with IRS requirements,” in light of the Board’s finding that the parties agreed the deferred compensation plan would comply with IRS requirements so that BUs 01 and 10 employees would receive beneficial tax treatment. The Board does not interpret the parties’ agreement to “comply with IRS requirements” as obligating the State to seek an IRS ruling that the deferred compensation plan does meet the IRS requirements.

ORDER

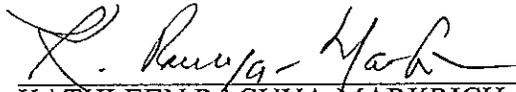
For the reasons given above, the Board hereby grants Respondent UPW's Motion to Dismiss for Failure to State a Claim for Relief and/or for Summary Judgment, and dismisses the instant prohibited practice complaint.

DATED: Honolulu, Hawaii, June 19, 2002

HAWAII LABOR RELATIONS BOARD


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CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

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