

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-606
)	
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,)	ORDER NO. 2355
)	
Complainant,)	ORDER DENYING RESPONDENTS' MOTION TO DISMISS; ORDER DENY- ING UPW'S MOTION FOR ADMISSION OF MATERIAL FACTS AND FOR WAIV- ER OF A HEARING; AND NOTICE OF PREHEARING CONFERENCE
)	
and)	
)	
LINDA LINGLE, Governor, State of Hawaii; MARIE LADERTA, Director of Human Resources Development, State of Hawaii; and FRANK LOPEZ, Interim Director, Department of Public Safety, State of Hawaii,)	
)	
Respondents.)	
)	

**ORDER DENYING RESPONDENTS' MOTION TO
DISMISS; ORDER DENYING UPW'S MOTION FOR
ADMISSION OF MATERIAL FACTS AND FOR WAIVER OF
HEARING BY RESPONDENT; AND NOTICE OF PREHEARING CONFERENCE**

On November 14, 2005, the above-named Respondents, by and through their attorney, filed a Motion to Dismiss with the Hawaii Labor Relations Board. Respondents contended that the complaint was untimely, Complainant failed to exhaust contractual remedies, and fails to state a claim in view of the Hawaii Supreme Court's ruling in United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Hawai'i 359, 105 P.3d 236 (2005) (Hanneman).

On November 17, 2005, Complainant, by and through its attorney, filed a Memorandum in Opposition to Motion to Dismiss with the Board. Complainant contended, inter alia, that the complaint was not time-barred; that the complaints allege statutory violations not deferrable to arbitration and issues of superceding policy matters under HRS Chapter 89 are presented; and unlike Hanneman, the employer here breached its duty to negotiate over procedures relating to transfers outside of the bargaining unit.

On December 5, 2005, the Board conducted a hearing on Respondents' Motion to Dismiss. Based on a review of the record and the arguments presented, the Board hereby

denies Respondent's Motion to Dismiss the instant complaint. Respondents shall file their answer to the instant complaint within ten days after service of this order.¹

On December 20, 2005, Complainant filed UPW's Motion for Admission of Material Facts and for Waiver of Hearing by Respondent with the Board. Complainant contends that Respondents failed to file an answer within ten days after service of the complaint and under Hawaii Administrative Rules (HAR) § 12-42-45,² the Board should view Respondents' failure as an admission of the material facts in the complaint.

Thereafter, on December 22, 2005, Respondents filed a Memorandum in Opposition to UPW's Motion for Admission of Material Facts and for Waiver of Hearing by Respondents with the Board. Respondents argue that the Board indicated at the hearing on December 5, 2005 that a summary order would be forthcoming and Respondents would be permitted to answer within ten days.

In response, on December 23, 2005, the UPW filed a Reply Brief in Support of the Motion for Admission of Material Facts and for Waiver of Hearing by Respondents.

Based upon a review of the December 5, 2005 proceedings and the record in this case, the Board hereby denies the UPW's Motion for Admission of Material Facts and for Waiver of a Hearing by Respondent.³

NOTICE IS HEREBY GIVEN that the Board, pursuant to HRS §§ 89-5(i)(4) and (i)(5) and HAR § 12-42-47, will conduct a prehearing conference on the above-entitled prohibited practice complaint on January 26, 2006 at 10:00 a.m., or as soon thereafter as the case can be heard, in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The purpose of the prehearing conference is to arrive at a settlement or clarification

¹At the hearing on the instant motion, the Board indicated that it was inclined to deny Respondents' motion to dismiss and that a summary written order would be forthcoming and Respondents would be given ten days to respond to the instant complaint. Transcript of hearing December 5, 2005, p. 31.

²HAR § 12-42-45 provides for answers to prohibited practice complaints and states, in part, as follows:

(a) A respondent shall file a written answer to the complaint within ten days after service of the complaint. ...

* * *

(g) If the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing.

³See footnote 1.

of issues, to identify and exchange witness and exhibit lists, if any; set a hearing date, and to the extent possible, reach an agreement on facts, matters or procedures which will facilitate and expedite the hearing or adjudication of the issues presented. The parties shall file a Prehearing Statement which addresses the foregoing matters with the Board two days prior to the prehearing conference.

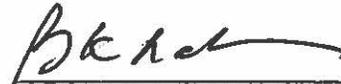
The parties shall submit to the Board four copies of all exhibits identified and offered into the record. Additional copies for opposing counsel shall also be provided.

All parties have the right to appear in person and to be represented by counsel or other representative.

Auxiliary aids and services are available upon request. Call Valri Lei Kunimoto at (808) 586-8610, (808) 586-8847 (TTY), or 1 (888) 569-6859 (TTY neighbor islands) for assistance. A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

DATED: Honolulu, Hawaii, January 11, 2006.

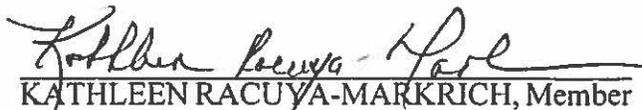
HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



EMORY J. SPRINGER, Member



KATHLEEN RACUYA-MARKRICH, Member

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