

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. S-03-33
)	
JOHN WAIHEE, III, Governor,)	ORDER NO. 1036
State of Hawaii,)	
)	
Petitioner,)	ORDER GRANTING PETITIONER'S
)	MOTION FOR INTERLOCUTORY
and)	RELIEF PENDING ISSUANCE OF
)	FINAL BOARD DECISION
)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	
)	
Exclusive)	
Representative.)	

ORDER GRANTING PETITIONER'S MOTION FOR
INTERLOCUTORY RELIEF PENDING ISSUANCE OF FINAL BOARD DECISION

On April 14, 1994, Petitioner JOHN WAIHEE, III (Employer), by and through his attorneys, filed a Motion for Interlocutory Relief Pending Issuance of Final Board Decision with the Hawaii Labor Relations Board (Board). Petitioner moved the Board for an order designating positions which are identified in his motion, as essential pro tempore, until such time as the Board has the opportunity to complete its investigation and has issued its final decision on this matter. The affidavit of counsel attached to the motion states that the list of positions attached as an exhibit to Petitioner's motion are essential at the 241 schools operated by the Department of Education, which if not staffed during a work stoppage would result in imminent harm to public health or safety at each campus pending a final order on this petition. Petitioner also requested the Board to establish

requirements to ensure that the public's health and safety will not be endangered.

The Board takes notice of its Decision No. 351, JOHN WAIHEE, III, in Case Nos.: S-03-28a, et seq., where the Board found that a strike by Units 03, and 04 and 13 is imminent. As of this date, the Board has not heard evidence on this petition. Since it is unlikely that the Board will be able to complete its investigation and issue its decision in this case before bargaining units 03, 04 and 13 can strike, the Board hereby grants Petitioner's motion.

The Board relies on the analysis for interlocutory relief stated by the Hawaii Intermediate Appellate Court in Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. 272 (1981). The three requirements for the granting of interlocutory injunctive relief are: 1) Is the party seeking the relief likely to prevail on the merits? 2) Does the balance of irreparable damage favor issuance of injunctive relief? 3) Does the public interest support the granting of injunctive relief? The Court also noted that:

The more the balance of irreparable damage favors the issuance of the injunction, the less the party seeking the injunction has to show the likelihood of success on the merits. [Citations omitted.] Likewise, the greater the probability the party seeking the injunction is likely to prevail on the merits, the less he has to show that the balance of irreparable harm favors the issuance of the injunction.

Id. at 276.

In this case, the balance of irreparable damage heavily favors the issuance of injunctive relief at this time because of the public's right to have essential services provided. Section

89-12, Hawaii Revised Statutes (HRS), clearly sets forth that public employees have a qualified right to strike and that the public's right to health and safety services is paramount.

Counsel for the Exclusive Representative HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) contends that the Board lacks the statutory authority to grant an interlocutory order during the course of its preliminary investigation. We disagree. The Board's investigatory power under Section 89-12, HRS, is broad and encompasses the authority to set requirements in the event of a strike occurring or about to occur which may jeopardize the health and safety of the public. As stated above, we recognize the public employee's qualified right to strike. However, we are persuaded by the compelling arguments of Petitioner that these orders must issue at this time to protect the health and safety of the public.

The public interest clearly favors the continuation of services which impinge upon health and safety interests. Moreover, as to the likelihood of success on the merits criterion, the Board's experience is that a vast majority of positions requested by the public employers is granted, albeit modified slightly in terms of number and hours of work required. Furthermore, in this case the possibility of irreparable damage to the public if the interlocutory order is not issued is overwhelming.

On balance, even if the Board's final orders in this matter indicate that more positions are granted in Petitioner's motion than are established by the record, the Board chooses to err

in favor of the protection of the public by the granting of Petitioner's motion.

The Board hereby orders that the positions set forth in the exhibits attached to Petitioner's motion are essential and are required to be staffed in order to avoid an imminent danger to the health and safety of the public.

The Board further orders that the General Orders issued in Decision No. 351, dated April 16, 1994, are hereby incorporated by reference herein and are made applicable. In addition, the Board orders:

In the assignment of incumbents or other employees to essential positions, the Employer shall refrain from assigning persons designated as picket line captains, stewards, negotiation team members and HGEA Board of Directors members unless there are no other employees capable of satisfactorily performing the functions, duties and responsibilities of the essential positions.

The HGEA shall furnish the Employer with the names of picket line captains, stewards, negotiation team members and Board of Directors members forthwith.

DATED: Honolulu, Hawaii, April 16, 1994.

HAWAII LABOR RELATIONS BOARD

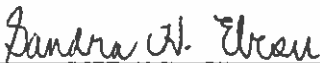

BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

JOHN WAIHEE, III, Governor of the State of Hawaii and HAWAII
GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO;
CASE NO. S-03-33

ORDER NO. 1036

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ISSUANCE OF FINAL BOARD DECISION



SANDRA H. EBESU, Board Member

Copies sent to:

Janice T. Kemp, Deputy Attorney General
Charles K.Y. Khim, Esq.
Joyce Najita, IRC