

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.:	S-03-45a
	)		S-04-45b
JOHN WAIHEE, III, Governor,	)		S-13-45c
State of Hawaii,)		
	)	ORDER NO.	1049
Petitioner,)		
	)	ORDER GRANTING PETITIONER'S	
and	)	SECOND MOTION FOR INTERLOCU-	
	)	TORY RELIEF PENDING ISSUANCE	
HAWAII GOVERNMENT EMPLOYEES	)	OF FINAL BOARD DECISION	
ASSOCIATION, AFSCME, LOCAL 152,)		
AFL-CIO,)		
)		
Exclusive)		
Representative.)		
_____)		

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

On April 19, 1994, Petitioner JOHN WAIHEE, III, Governor, State of Hawaii (Employer), by and through his attorney, filed a Second 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 affidavits attached to the motion indicate that the lists attached as exhibits to the motion are additional positions needed to ensure the timely processing and distribution of welfare payments, food stamps, and child support payments to protect public health or safety pending a final order in the case.

The Board takes notice of its Decision No. 351, JOHN WAIHEE, III, dated April 16, 1994, in Case Nos.: S-03-28a, et seq., where the Board found that a strike by Bargaining Units 03, 04 and 13 is about to occur and that the withdrawal of services by employees in certain positions would cause imminent danger to the health and safety of the public. As of this date, the Board has not yet completed its investigation on the instant petition. It is unlikely that the Board will be able to complete its investigation and issue its final decision on the above-captioned petition before Unit 13 can strike, and Units 03 and 04 have been on strike since April 18, 1994. Given these facts and upon review of the motion and affidavits in support of the motion, the Board hereby grants Petitioner's second motion for interlocutory relief.

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. The Board is of the opinion that this authority includes the power to issue interlocutory relief pending the completion of its investigation.

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.

With respect to whether the Petitioner is likely to succeed on the merits, the Board's experience is that a vast majority of positions requested by the public employers in their petitions is granted, albeit modified slightly in terms of number and hours of work required.

Furthermore, the balance of irreparable damage clearly favors the issuance of the interlocutory order. Section 89-12, Hawaii Revised Statutes (HRS), provides that public employees have a qualified right to strike and that the public's right to health and safety services is paramount. The possibility that the public's health and safety would be imminently jeopardized if these positions were not staffed clearly outweighs any perceived impact to the employee who is denied his or her qualified right to strike.

Finally, the public interest overwhelmingly supports the granting of injunctive relief in this case. The Board has a statutory obligation to protect the health and safety of the public from imminent danger caused by a public worker strike. The public has a right to have essential services provided. This order is of a temporary nature and will protect the public while the Board continues to hear relevant evidence in the instant petition.

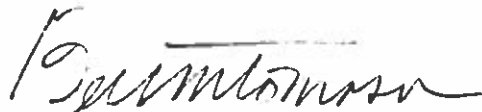
Counsel for the Exclusive Representative HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) argues that the positions which are the subject of this motion are not essential because failure to distribute welfare payments and food stamps or the curtailment of the efforts of the Child Support Enforcement Agency to ensure that child support payments are made would not imperil public health or safety. However, the evidence presented by the HGEA is insufficient to convince the Board of this contention.

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's previous orders in this case remain in full force and effect.

DATED: Honolulu, Hawaii, April 21, 1994.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

Dissenting Opinion

I respectfully dissent. Although I agree with the majority of the Board that we have the authority to issue interlocutory orders of this nature, I would deny this second motion for interlocutory relief because Petitioner should have requested the relief granted in this order in its first motion which was granted by the Board in Order No. 1040 in Case Nos.: S-03-45a, S-04-45b, S-13-45c, issued on April 16, 1994.

Sandra H. Ebesu

SANDRA H. EBESU, Board Member

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