

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-01-204
)	
UNITED PUBLIC WORKERS, AFSCME,)	ORDER NO. 1090
LOCAL 646, AFL-CIO,)	
)	ORDER DENYING RESPONDENTS'
Complainant,)	MOTION TO DISMISS; NOTICE
)	OF HEARING
and)	
)	
COUNTY OF HAWAII; STEPHEN K.)	
YAMASHIRO; DONNA KIYOSAKI;)	
WILLIAM G. DAVIS; and GEORGE)	
YOSHIDA,)	
)	
Respondents.)	
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ORDER DENYING RESPONDENTS' MOTION
TO DISMISS; NOTICE OF HEARING

On November 15, 1993, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed the subject prohibited practice complaint with the Hawaii Labor Relations Board (Board). UPW alleged that Respondents COUNTY OF HAWAII; STEPHEN K. YAMASHIRO; DONNA KIYOSAKI; WILLIAM G. DAVIS; GEORGE YOSHIDA (collectively County or Employer) improperly hired Bradley Silva (Silva) as a Laborer II. UPW also alleged that YAMASHIRO, KIYOSAKI and DAVIS discriminated against other Unit 01 employees in favor of Silva and Lance Manliguis (Manliguis) thereby violating §§ 89-13(a)(1), (7) and (8), Hawaii Revised Statutes (HRS).

Additionally, UPW alleged that the Employer violated contractual provisions in violation of §§ 89-13(a)(1) and (8), HRS. Further, UPW alleged that YAMASHIRO engaged in unlawful retaliation

against the Union by refusing to entertain grievances filed with the County in violation of §§ 89-13(a)(1), (3), (4), and (7), HRS.

Thereafter on January 7, 1994, the County filed a motion to dismiss the complaint with the Board. The County contends that there is no valid collective bargaining agreement in effect; the dispute is moot since the employees are no longer in the challenged positions; the matter should be deferred to either the Civil Service Commission or the grievance procedure; and the claims involving Silva are collaterally estopped.

The Board conducted a hearing on Employer's motion to dismiss on January 12, 1994. The parties had full opportunity to present evidence and arguments before the Board. Based upon a thorough review of the record, the Board hereby denies Respondents' motion to dismiss.

On December 15, 1992, Mayor YAMASHIRO imposed a hiring freeze on all vacant positions within the County government. See UPW's Exhibit (Ex.) K attached to UPW's Memorandum in Opposition to Respondent's Motion to Dismiss. Exceptions to the freeze were to be granted: (1) where the non-filling of a position would cause undue hardship, or (2) the position affected the public's health or safety. Id. Pursuant to a memorandum issued on December 23, 1992, the freeze was extended to all temporary assignments. UPW's Ex. L.

The Union filed a grievance over the hiring freeze. UPW's Ex. N. The Employer denied the grievance on the grounds that the hiring freeze was in accord with the Unit 01 collective bargaining agreement (contract). Id.

On May 3, 1993, the Employer temporarily assigned Silva to a position in the Parks Department. Transcript of the hearing held on January 12, 1994 (Tr.), p. 5. On May 11, 1993, the UPW filed a grievance over Silva's hiring. UPW's Ex. P. On June 7, 1993, the Employer notified the UPW that the appointment of Silva would be rescinded and the position filled in accordance with the contract. UPW's Ex. R. Thereafter, the Employer converted the position to a permanent one and appointed Silva to the position. UPW's Ex. T.

The Employer also hired Manliguis on an emergency hire basis to fill an automotive mechanic's position in the Department of Public Works. UPW's Ex. V. However, Manliguis did not qualify for the position so he was given a Laborer's position on a County road crew. Id. Several days later, a complaint was filed with the Civil Service Commission alleging that Manliguis was being paid as a mechanic, i.e., at \$13.17 an hour, even through his duties were of a Laborer, payable at \$9.78 an hour. Id. As a result of the complaint, the Employer offered Manliguis a limited term contract to work as a Landfill Spotter. UPW's Ex. U. Manliguis accepted the offer. Id. However, Manliguis quit after the first day on the job and the Employer rescinded the contract. UPW's Ex. W. Thereafter, the Employer appointed Manliguis to a temporary position in the Department of Parks and Recreation. Id.

The Employer contends that the complaint should be dismissed because the Unit 01 contract expired and is no longer valid. The Employer relies upon the definition of "public employer" provided in § 89-2, HRS. The Employer also cites the

language in § 89-10(c), HRS, which limits the contract to June 30th of an odd-numbered year.

The Board finds § 89-6(b), HRS, applicable to this case. That section provides as follows:

For the purpose of negotiations, the public employer of an appropriate bargaining unit shall mean the governor or his designated representatives of not less than three together with not more than two members of the board of education in the case of units (5) and (6), the governor or his designated representatives of not less than three together with not more than two members of the board of regents of the University of Hawaii in the case of units (7) and (8), and the governor or his designated representatives together with the mayors of all the counties or their designated representatives in the case of the remaining units. The designated employer representatives for units (5), (6), (7), and (8) shall each have one vote and in the case of the remaining units, the governor shall be entitled to four votes and the mayor of each county shall each have one vote, which may be assigned to their designated representatives. Any decision to be reached by the applicable employer group shall be on the basis of a simple majority.

Pursuant to the foregoing statute, a simple majority of the public employers or their designated representatives may bind the entire employer group for the purposes of negotiations.

The record indicates that all of the public employers, except YAMASHIRO, signed extensions of the Unit 01 agreement for the periods July 1, 1993 to August 31, 1993 and September 1, 1993 to January 15, 1994. UPW's Exs. B and C. Thus, since a majority of the public employers signed the extensions of the contract as required under § 89-6(b), HRS, all public employers are bound by the contract extensions.

The statutory scheme does not permit one County employer to jeopardize the agreement of the majority of employers. This would lead to varying employment practices in the different jurisdictions depending upon the employer's vote at the negotiations table. The Board does not adopt this view and further is not persuaded that the statute providing for coterminous expiration dates of the collective bargaining agreements, § 89-10(c), HRS, which is relied upon by the County, precludes entering into contract extensions.

The record indicates that since 1970, Mayors Frank Fasi and Hannibal Tavares, respectively, refused to sign multi-employer collective bargaining agreements which were executed by the other employers. Despite the absence of their signatures, the contracts became effective and were implemented in all jurisdictions.

Based upon the foregoing, the Board concludes that the contract extensions are valid and binding upon the County.

With regard to the issue of mootness, the Employer contends that the claims regarding Silva and Manliguís are moot because the employees, Silva and Manliguís no longer occupy the positions at issue in the complaint. Thus, the Employer contends that there is no effective remedy which can be fashioned by the Board.

The Board finds that Silva and Manliguís were appointed to their positions while the Employer's hiring freeze was in effect. In addition, the positions filled by Silva and Manliguís were affected by the freeze. There is nothing in the record indicating how these positions fell under one of the exceptions to

the freeze, i.e. positions affecting public safety or creating undue hardship. Moreover, the record is silent as to the criteria that was used in selecting Silva over other employees. Since these hirings could have resulted in injury to other members of Unit 01 the Board finds that the issues presented are not moot and the complaint should not be dismissed at this stage on that basis.

The County also argues that the complaint should be dismissed because the Union failed to exhaust the grievance procedure under the contract or alternatively, failed to pursue its complaint before the Civil Service Commission prior to filing its complaint with the Board. After reviewing the complaint, the Board finds the statutory violations and contract violations alleged are properly within the jurisdiction of the Board. Moreover, the Board will not require the UPW to exhaust its contractual remedies since it appears that the Employer repudiates the validity of the contract. Exhaustion in such instance would be futile and dismissal of the complaint on that basis would be inappropriate.

Finally, the County argues that UPW's claims involving Silva are barred by the doctrine of collateral estoppel. After a review of the record, the Board finds that the Employer has not demonstrated that UPW is estopped from raising the claims concerning Silva before this Board.

The record indicates that Thomas Tallent filed an appeal with the Civil Service Commission on behalf of Jeffrey Case. See Ex. 4, Respondent's Motion to Dismiss. Case alleged that the Employer violated civil service laws when it converted Silva's

Laborer II position from a limited term appointment to permanent status. The Commission denied Case's appeal.

It is clear that the parties to the Civil Service Commission appeal are not identical to those in the case before the Board. Moreover, the issues presented are significantly different. The UPW raises issues as to contractual violations and statutory violations which are not considered to be within the jurisdiction of the Civil Service Commission. Hence, the Board finds that the UPW is not estopped from bringing the instant complaint before the Board.

Based on the foregoing, the Board hereby denies the Respondent's motion to dismiss the subject complaint.

YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing on the instant complaint on September 6, 1994 at 9:30 a.m. at a site to be designated in Hilo, Hawaii. The hearing may continue from day to day until completed. Appropriate provisions of the notice issued on December 10, 1993 remain applicable.

DATED: Honolulu, Hawaii, August 11, 1994.


HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and COUNTY OF
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