

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)
)
UNITED PUBLIC WORKERS, AFSCME,)
LOCAL 646, AFL-CIO,)
)
Complainant,)
)
and)
)
LINDA CROCKETT LINGLE, Mayor,)
County of Maui; RAYMOND KOKUBUN,)
Director of Personnel Services,)
County of Maui; STEPHEN)
YAMASHIRO, Mayor, County of)
Hawaii; MICHAEL R. BEN, Director)
of Personnel Services, County of)
Hawaii; MARYANNE KUSAKA, Mayor,)
County of Kauai and ALLAN)
TANIGAWA, Director of Personnel)
Services, County of Kauai,)
)
Respondents.)

CASE NO. CE-01-324

ORDER NO. 1404

ORDER DENYING UPW'S MOTION
FOR SUMMARY JUDGMENT AND
DENYING RESPONDENTS' MOTIONS
TO DISMISS COMPLAINTS; NOTICE
OF HEARING ON PROHIBITED
PRACTICE COMPLAINTS

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Hawaii; MARYANNE KUSAKA, Mayor,)
County of Kauai and ALLAN)
TANIGAWA, Director of Personnel)
Services, County of Kauai,)
)
Respondents.)

CASE NO. CE-10-325

ORDER DENYING UPW'S MOTION FOR SUMMARY JUDGMENT AND
DENYING RESPONDENTS' MOTIONS TO DISMISS COMPLAINTS;
NOTICE OF HEARING ON PROHIBITED PRACTICE COMPLAINTS

In these consolidated complaints, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) contends that the various mayors and County personnel directors refused to sign negotiated agreements regarding alcohol and drug testing. The UPW contends that on or about October 15, 1996, the Union and Respondents LINDA CROCKETT LINGLE, Mayor, County of Maui (LINGLE), RAYMOND KOKUBUN, Director of Personnel, County of Maui (KOKUBUN), STEPHEN YAMASHIRO, Mayor, County of Hawaii (YAMASHIRO), MICHAEL R. BEN, Director of Personnel Services, County of Hawaii, MARYANNE KUSAKA, Mayor, County of Kauai (KUSAKA), and ALAN TANIGAWA, Director of Personnel Services, County of Kauai (collectively Employers), reached agreements entitled Memorandum of Agreement on Commercial Motor Vehicle Alcohol and Controlled Substance Testing (MOA), covering the members of Units 01 and 10, respectively. The UPW asserts that the respective agreements were signed by the spokespersons representing the Union and Respondents. The UPW charges that thereafter Respondents failed or refused to execute the agreements in violation of § 89-10, Hawaii Revised Statutes (HRS), thereby violating § 89-13(a)(7), HRS.

On December 13, 1996, the UPW filed a motion for summary judgment contending that Respondents LINGLE and KOKUBUN (collectively MAUI County) committed a prohibited practice by refusing to execute the instant agreements in violation of § 89-10, HRS. The UPW contends that there are no genuine issues of material

fact presented in this case and that summary judgment should be granted in its favor.

Based upon a review of the record, the Board makes the following findings of fact and conclusions of law.

The UPW is the exclusive bargaining representative, as defined in § 89-2, HRS, of employees included in bargaining units 01 and 10.

LINDA CROCKETT LINGLE is the Mayor of the County of Maui and a public employer as defined in § 89-2, HRS.

RAYMOND KOKUBUN is the Director of Personnel, County of Maui and a representative of a public employer as defined in § 89-2, HRS.

STEPHEN YAMASHIRO is the Mayor of the County of Hawaii and a public employer as defined in § 89-2, HRS.

MICHAEL R. BEN is the Director of Personnel Services, County of Hawaii and a representative of a public employer as defined in § 89-2, HRS.

MARYANNE KUSAKA is the Mayor of the County of Kauai and a public employer as defined in § 89-2, HRS.

ALLAN TANIGAWA is the Director of Personnel Services for the County of Kauai and representative of a public employer as defined in § 89-2, HRS.

After negotiating over the implementation of the U.S. Department of Transportation Rules pertaining to drug and alcohol testing of employees occupying safety sensitive positions, Manabu Kimura, the spokesperson for the Employer group, and Gary W. Rodrigues, UPW's State Director and negotiator, reached an

agreement on October 15, 1996. Kimura signed the memoranda of agreement on behalf of the State of Hawaii and Rodrigues signed on behalf of the Union. However, according to the Union, § 20 of the memoranda regarding the effective date of the agreements was left blank with the understanding that the parties would negotiate the effective date after all of the employer representatives signed the document.

Thereafter, the Union was informed by the Office of Collective Bargaining that some of the mayors of the various counties were reluctant to sign the MOAs or refused to do so promptly. The UPW filed the instant complaints with the Board on November 13, 1996. Mayors Jeremy Harris, Mayor of the City and County of Honolulu, KUSAKA, and YAMASHIRO signed the memoranda after the instant complaints were filed.

The parties stipulated that LINGLE has not signed the agreements at issue and further, that LINGLE does not intend to sign the agreements.

The UPW contends that LINGLE and KOKUBUN violated § 89-10, HRS, by refusing to sign the agreements after entering into multi-employer bargaining and agreeing to be bound to the terms of a uniform agreement applicable to all Employers.

MAUI County does not dispute that there are binding agreements between the Employers and the UPW over the drug and alcohol testing for Units 01 and 10 employees in safety sensitive positions. MAUI County admits that it is bound by the terms of the MOAs. MAUI County submits, however, that Kimura signed the MOAs on behalf of the Governor, State of Hawaii on October 15, 1996 and

that Kimura was not authorized to vote on the counties' behalf. MAUI County further asserts that the counties had not agreed to the UPW's proposal at that time. According to the practice among the Employer group, the spokesperson was authorized to negotiate the drug and alcohol policy and present the agreement to the counties. The counties would then vote on the tentative agreement. MAUI County thus contends that when Kimura signed the MOAs, he was not authorized to bind the counties.

Based upon a review of the record, the Board finds that there are binding agreements at this juncture regarding the drug and alcohol testing for safety sensitive positions for Units 01 and 10. The Board agrees with MAUI County that the agreements are binding because under § 89-6(b), HRS, only a simple majority of Employer votes is necessary to enter into a binding collective bargaining agreement. Thus as the Governor is entitled to four votes, when Jeremy Harris, Mayor of the City and County of Honolulu signed the agreement, a majority vote of the Employers was represented which bound all of the Employers. Further, absent a specific effective date in the agreement, it appears that the agreement became effective at that time.

After reviewing the record in the light most favorable to the nonmoving party, the Board further agrees with MAUI County that there are outstanding issues of material fact which must be resolved in order to resolve the instant complaints. There is an issue outstanding as to the scope of Kimura's authority as the spokesperson of the Employer group to negotiate a multi-employer agreement with the Union on the Employer's behalf. In addition,

there is an issue as to the understanding of the parties as to the effective date of the agreement and whether all of the parties were obliged to execute the agreement in order to further negotiate an effective date. Based upon the foregoing, the Board finds that there are genuine issues of material fact present and hereby denies UPW's motion for summary judgment.

Respondents YAMASHIRO and BEN and Respondents KUSAKA and TANIGAWA filed motions to dismiss the complaints, respectively, on the basis that the complaints were moot because the respective mayors executed the Unit 01 agreement in a timely manner. The UPW responds that the cases are not moot because there are remedial issues to be determined and continuing collateral consequences due to Respondents' refusal to sign the agreement when initially presented with it.

After reviewing the record, the Board finds that the evidence in the record does not clearly establish the scope of the spokesperson's authority and whether the parties failed to sign the documents when they were initially presented as contended by the UPW. Accordingly, the Board denies the Respondents' motions to dismiss the complaint in Case No. CE-01-324 at this time.

With respect to Case No. CE-10-325, Respondents YAMASHIRO and BEN and Respondents KUSAKA and TANIGAWA contend that complaint should be dismissed because the respective counties have no Unit 10 employees. Respondents therefore contend that the mayors' signatures are unnecessary for the parties to enter into a binding agreement.

The UPW does not dispute that the counties have no Unit 10 employees. However, the Board takes notice that the respective mayors are signatories to the Unit 10 collective bargaining agreement. Thus, based upon the foregoing, the Board denies Respondents' motions to dismiss the complaints in Case No. CE-10-325 at this time.


YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing on these complaints on March 3, 1997 at 9:00 a.m. in the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

DATED: Honolulu, Hawaii, January 24, 1997.

HAWAII LABOR RELATIONS BOARD



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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