

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-331
UNITED PUBLIC WORKERS,)	ORDER NO. 1405
AFSCME, LOCAL 646, AFL-CIO,)	
)	ORDER GRANTING COMPLAINANT
Complainant,)	UPW'S MOTION FOR SUMMARY
)	JUDGMENT
and)	
BENJAMIN J. CAYETANO, Governor,)	
State of Hawaii; LAWRENCE MIIKE,)	
M.D., Director, Department of)	
Health, State of Hawaii and)	
WILLIAM ELLIOTT, Associate)	
Administrator, Hawaii State)	
Hospital, State of Hawaii,)	
)	
Respondents.)	

ORDER GRANTING COMPLAINANT UPW'S MOTION FOR SUMMARY JUDGMENT

On November 26, 1996, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint against BENJAMIN J. CAYETANO, Governor, State of Hawaii; LAWRENCE MIIKE, M.D., Director, Department of Health, State of Hawaii and WILLIAM ELLIOTT, Associate Administrator, Hawaii State Hospital, State of Hawaii (collectively, Respondents or Employer) with the Hawaii Labor Relations Board (Board). Complainant alleges that Respondents failed to provide any response to Complainant's request for information needed to investigate and process a grievance in violation of § 15.09 of the Unit 10 agreement, and thereby breached their duty to bargain in good faith. Thus, Complainant contends that Respondents wilfully

violated § 89-9 and §§ 89-13(a)(1), (5), (7), and (8), Hawaii Revised Statutes (HRS).

On December 23, 1996, Complainant filed a motion for summary judgment with the Board. The UPW contends that there are no genuine issues of material fact in dispute and that the Union is entitled to judgment as a matter of law since Respondents admit that the requested information was not provided within five (5) working days as required by § 15.09 of the Unit 10 agreement.

On January 3, 1997, Respondents filed their memorandum in opposition to Complainant's motion for summary judgment. Respondents admit that the requested information was not transmitted in a timely manner, but contend that summary judgment should not issue since there are outstanding issues of material fact present.

On January 9, 1997, the Board conducted a hearing on the UPW's motion for summary judgment. After considering the evidence and arguments presented, the Board found that there were no genuine issues of material fact and that the UPW was entitled to judgment as a matter of law. The Board thereupon directed the UPW to submit a proposed order. On January 15, 1997, the UPW filed its proposed order with the Board.

The Board accepts and incorporates Complainant's proposed findings and conclusions which support the rationale of the instant order. The Board also rejects those findings and conclusions which do not support the Board's order. Accordingly, based upon a review of the evidence and arguments presented the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The UPW is the exclusive bargaining representative, as defined in § 89-2, HRS, of employees of the State of Hawaii who are included in Unit 10.

BENJAMIN J. CAYETANO is the Governor of the State of Hawaii and is a public employer as defined in § 89-2, HRS.

LAWRENCE MIIKE, M.D., is the Director of the Department of Health, State of Hawaii and a representative of a public employer as defined in § 89-2, HRS.

WILLIAM ELLIOTT is the associate administrator at the Hawaii State Hospital and a representative of a public employer as defined in § 89-2, HRS.

The UPW and the State of Hawaii are parties to a collective bargaining agreement which covers all institutional, health, and correctional workers in Unit 10.

On October 14, 1996, the UPW filed a grievance alleging an improper reassignment of paramedical assistants at the Hawaii State Hospital, in violation of §§ 1.05, 25.03(b)(2), (3), (4), and (5), and 46.02 of the Unit 10 agreement.

In connection with the investigation of the aforementioned grievance the UPW submitted a request for information referencing seven (7) items by letter dated October 14, 1996.

The request for information was made in accordance with § 15.09 of the Unit 10 agreement which states:

15.09 Any information in the possession of the Employer which is needed by the grieving

party to investigate and process a grievance, shall be photocopied and given to the grieving party within five (5) working days of the grieving party's request for such information, provided that the Employer shall have the option to (a) photocopy and give the material requested to the grieving party within the 5-working day period, or (b) make the material requested available to the grieving party within the 5-working day period for the purpose of photocopying or review by the grieving party for three (3) working days on the condition that the grieving party agrees to sign out and be fully responsible for the material until it is returned.

Respondent ELLIOTT received the UPW's request for information on October 18, 1996. ELLIOTT failed to respond to the grievance at Step 1 and the UPW filed a Step 2 appeal dated October 28, 1996. By letter dated November 12, 1996, UPW filed a Step 3 appeal because Respondent MIIKE did not respond to the grievance at Step 2. Thereafter, by letter dated November 15, 1996, David Knight, Departmental Personnel Officer, denied the grievance at Step 2.

On November 26, 1996, the UPW filed the instant prohibited practice complaint with the Board. ELLIOTT received a copy of the complaint on December 3, 1996 and began gathering the requested information. By letter dated December 17, 1996, Respondents provided the information to the UPW. Respondent ELLIOTT indicates that he failed to properly track the underlying grievance but admits that he failed to provide the information requested.

DISCUSSION

The UPW contends that the Respondents violated §§ 89-13(a)(1), (5), (7), and (8), HRS, by failing or refusing to

provide the Union with information to process the grievance as requested.

Section 89-13(a), HRS, provides in pertinent part:

§ 89-13 Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

* * *

(5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

* * *

(7) Refuse or fail to comply with any provision of this chapter;

(8) Violate the terms of a collective bargaining agreement; . . .

In the instant case, Respondent ELLIOTT received the Union's request for information in connection with the pending class grievance on October 18, 1996. Section 15.09 of the contract provides that the Employer must provide the information to the Union within five working days after receipt of the request or in this case, by October 25, 1996. Respondents did not provide the information until December 17, 1996. Respondents provide no reason for failing to provide the information to the UPW except that Respondent ELLIOTT failed to track the grievance and mistakenly believed that the request for information would be handled at the Step 2 level. Thus, Respondents contend that there is a material fact in issue, i.e., whether any violation was wilful, and that summary judgment should be denied.

Based upon a review of the record and the arguments presented, the Board finds that there are no genuine issues of material fact in dispute in this case. Where a party demonstrates that there are no genuine issues of material fact and movant is entitled to judgment as a matter of law, summary judgment is appropriate. Reyes v. Kuboyama, 76 Haw. 137 (1994).

Here, the UPW requested information in connection with a pending grievance. The Employer failed to timely respond to the information request within the contractual time limits set forth in § 15.09 of the contract. The information requested, in fact, was not produced until approximately two months after the request was received by the Employer subsequent to the filing of the instant prohibited practice complaint. Respondent contends that ELLIOTT was under the mistaken belief that the matter would be taken care of by someone else. In the Board's view, this is no justification for the Employer's inaction nor does it vitiate a finding of wilfulness.

The reasons for requiring the Employer to produce the information in a timely manner are clear. If the information provided is helpful, the Union will be able to use the information in its investigation and further processing of the grievance. If the information is damaging, the Union may reevaluate the claim and resolve the grievance or not pursue the grievance further. Here, the Employer's refusal to provide the information requested prevented the Union from either course and therefore frustrated the grievance process. Thus, the Board finds based upon the evidence

presented that the Employer violated the contract by not supplying the information requested within the applicable time frame.

In addition, the Board has previously recognized in State of Hawaii Organization of Police Officers, 3 HPERB 25 (1982), that the failure to provide information relevant to a grievance filed by the union constitutes a violation of the employer's duty to bargain in good faith. Thus, based upon the record, the Board concludes that the Employer also violated § 89-13(a)(5), HRS, by its failure to provide the information requested.

With respect to the issue of wilfulness, in United Public Workers, AFSCME, Local 646, AFL-CIO, 3 HPERB 507 (1984), the Board, while acknowledging its previous interpretation of "wilful" as meaning "conscious, knowing and deliberate intent to violate the provisions of Chapter 89, HRS" nevertheless stated that "wilfulness can be presumed where a violation occurs as a natural consequence of a party's actions." Id., at 514. Based upon the evidence before the Board, the Board finds that the natural consequence of the Employer's actions in failing to provide the information necessary to the grievance frustrated the grievance process. Thus, the Board finds that the Employer's action in this case was wilful.

Having found the foregoing prohibited practices, it is unnecessary for the Board to discuss the UPW's allegations of violations of §§ 89-13(a)(1) and (7), HRS, by the failure to provide the information requested.

In addition, the Union requests that the Board assess the Employer attorney's fees and costs for submitting a frivolous defense. However, after reviewing the record, the Board does not

find the Employer's defense frivolous and therefore, the Board hereby denies the Union's request for fees and costs.

CONCLUSIONS OF LAW

The Board has jurisdiction over this complaint pursuant to §§ 89-5 and 89-14, HRS.

Respondents committed prohibited practices in violation of § 89-13(a)(8), when they wilfully violated § 15.09 of the Unit 10 contract by failing to provide information to the UPW as requested on October 14, 1996 within five working days.

As the duty to bargain in good faith encompasses the Employer's obligation to provide the Union information relevant to a grievance, Respondents' failure to provide information to the UPW as requested violated § 89-13(a)(5), HRS.

ORDER

Based upon the foregoing, the Board hereby orders the following:

(1) Respondents shall cease and desist from committing prohibited practices and shall provide information requested by the Union within the time limits provided under relevant contract provisions.

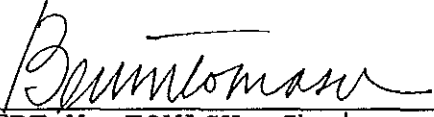
(2) Respondents shall immediately post copies of this order in conspicuous places at its worksites where employees of the bargaining unit assemble and leave such copies posted for a period of 60 consecutive days from the initial date of posting.

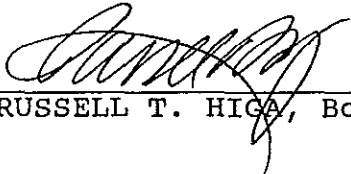
(3) Respondents shall notify the Board within 30 days of the receipt of this order of the steps taken to comply herewith.

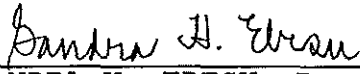
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DATED: Honolulu, Hawaii, January 27, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

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