

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-01-340
)	
UNITED PUBLIC WORKERS, AFSCME,)	ORDER NO. 1415
LOCAL 646, AFL-CIO,)	
)	ORDER DENYING RESPONDENTS'
Complainant,)	MOTIONS FOR PROTECTIVE ORDER
)	AND AN ORDER TO QUASH SUB-
and)	POENAS
)	
JEREMY HARRIS, Mayor, City and)	
County of Honolulu; CYNTHIA)	
BOND, Director, Department of)	
Personnel, City and County of)	
Honolulu and KENNETH SPRAGUE,)	
Director, Department of Public)	
Works, City and County of)	
Honolulu,)	
)	
Respondents.)	

ORDER DENYING RESPONDENTS' MOTIONS FOR PROTECTIVE ORDER AND AN ORDER TO QUASH SUBPOENAS

On February 10, 1997, Respondents, by and through their counsel, filed a motion for a protective order and an order to quash the subpoenas duces tecum issued on behalf of the Complainant in this case. The subpoenas require Respondents to produce records of employees tested, in which disciplinary and/or discharge actions were taken and documents relevant to the remedial issues presented. Respondents contend that the disclosure of the subpoenaed documents may compromise the privacy interests of the employees affected. Respondents further argue that the employees' disciplinary records should not be released unless the employee has been suspended or discharged. In this case, some of the employees whose records are being sought have not been suspended nor

discharged and therefore, the employee has a recognized privacy interest which is protected by § 92F-14(b), Hawaii Revised Statutes (HRS). Respondents also contend that the records are protected by the employees' Constitutional right to privacy.

Thereafter, on February 12, 1997, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a memorandum in opposition to Respondents' motion for protective order. Complainant contends that the subpoenas require Respondents to produce records of those tested in which disciplinary and/or discharge actions were taken and documents relevant to remedial issues presented in this case. Complainant contends that Respondents argue that under Chapter 92F, HRS, the documents are not subject to subpoena. Complainant contends that pursuant to § 92F-28, HRS, an agency may provide access to personal records pursuant to subpoena in an administrative proceeding. Further, Complainant contends that the Office of Information Practices issued an Opinion Letter No. 95-16 which indicates that Chapter 92F, HRS, was never intended to establish a discovery privilege which precludes administrative agencies from subpoenaing personal records. In addition, Complainant argues that Respondents do not contend that the documents are irrelevant or immaterial to the issues presented.

Based upon the arguments presented, the Board hereby denies Respondents' motions for protective order and to revoke subpoenas. The Board concludes that records being sought are not privileged from discovery because they could invade the privacy of the employees. Here, Respondents do not claim that the matters

sought are irrelevant or immaterial. Moreover, Respondents do not claim that the subpoenas are overly broad. The Board also notes that the UPW requests information regarding the identity of employees who compose the class which was injured by the Respondents' alleged repudiation of the commitment not to discipline or discharge any employees pending negotiations and are thus, relevant.

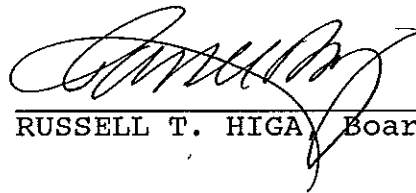
Respondents are hereby ordered to produce the subpoenaed materials forthwith to the Union.

DATED: Honolulu, Hawaii, February 21, 1997.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

Copies sent to:

Herbert R. Takahashi, Esq.
Cecelia C.Y. Chang, Deputy Corporation Counsel
Joyce Najita, IRC