

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.:	CE-03-357a
	)		CE-10-357b
UNITED PUBLIC WORKERS, AFSCME,	)		CE-13-357c
LOCAL 646, AFL-CIO and HAWAII)		
GOVERNMENT EMPLOYEES ASSOCIA-	)	ORDER NO.	1534
TION, AFSCME, LOCAL 152,)		
AFL-CIO,	)	ORDER DENYING RESPONDENTS'	
	)	MOTION TO DISMISS AND/OR	
Complainants,	)	FOR SUMMARY JUDGMENT;	
	)	NOTICE OF HEARING	
and)		
)		
BENJAMIN J. CAYETANO, Governor,)		
State of Hawaii; LAWRENCE)		
MIIKE, M.D., Director, Depart-)		
ment of Health, State of Hawaii;)		
and STANLEY C. YEE, Chief,)		
Development Disabilities)		
Division, Department of Health,)		
State of Hawaii,)		
)		
Respondents.)		

ORDER DENYING RESPONDENTS' MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT; NOTICE OF HEARING

On August 22, 1997, Respondents, by and through their attorneys, filed a motion to dismiss and/or motion for summary judgment with the Hawaii Labor Relations Board (Board). Respondents contend that the instant complaint should be dismissed and/or summary judgment should be rendered in their favor because the Legislature mandated the privatization of Hale Hauoli and as such, compliance with the statute is non-negotiable. In addition, Respondents argue that the Konno decision does not create a duty to bargain over the privatization. Respondents also assert that the terms and conditions governing the layoff of affected employees are clearly covered in the layoff procedures contained in the relevant

collective bargaining agreements. Finally, Respondents contend that since federal funds will be jeopardized, the provisions of Chapter 89, Hawaii Revised Statutes, are inoperative.

On August 27, 1997, Complainants filed a memorandum in opposition to Respondent's motion to dismiss and/or for summary judgment with the Board. Complainants contend that Respondents have not established that the claims are without merit to warrant summary dismissal. Complainants further contend that there are genuine issues of material fact and that contracting out is a mandatory subject of bargaining. Specifically, Complainants argue that the Legislature did not intend to nullify the bargaining obligations arising under Chapter 89, HRS. Further, Complainants argue that there is insufficient evidence that federal funds are jeopardized.

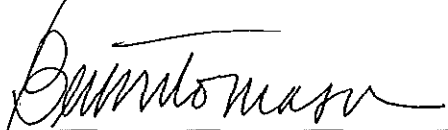
On August 28, 1997, the Board heard arguments on Respondents' motion. Based upon the arguments made and the record in this case, the Board hereby denies Respondents' motion. The Board finds that the record is insufficient to support a finding that the Legislature, in passing Act 189, intended to preempt any existing bargaining obligations. Moreover, there is a question of material fact as to the impact of privatization.

YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing on the merits of the instant prohibited practice complaint on October 15, 1997 at 9:00 a.m., in the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, et al. and
BENJAMIN J. CAYETANO, Governor, State of Hawaii; CASE NOS.:
CE-03-357a, CE-10-357b, CE-13-357c
ORDER NO. 1534
ORDER DENYING RESPONDENTS' MOTION TO DISMISS AND/OR FOR SUMMARY
JUDGMENT; NOTICE OF HEARING

DATED: Honolulu, Hawaii, October 7, 1997 .

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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