

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of )  
 )  
UNITED PUBLIC WORKERS, AFSCME, )  
LOCAL 646, AFL-CIO, )  
 )  
Complainant, )  
 )  
and )  
 )  
BENJAMIN J. CAYETANO, Governor, )  
State of Hawaii, et al., )  
 )  
Respondents. )

CASE NO. CE-01-301

ORDER NO. 1543

ORDER DENYING RESPONDENTS'  
MOTION TO DISMISS PROHIBITED  
PRACTICE COMPLAINT; NOTICE  
OF HEARING

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BENJAMIN J. CAYETANO, Governor, )  
State of Hawaii, et al., )  
 )  
Respondents. )

CASE NO. CE-10-302

ORDER DENYING RESPONDENTS' MOTION TO DISMISS  
PROHIBITED PRACTICE COMPLAINT; NOTICE OF HEARING

On April 17, 1996, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed two prohibited practice complaints with the Hawaii Labor Relations Board (Board) against Respondents BENJAMIN J. CAYETANO, Governor, State of Hawaii; JAMES TAKUSHI, Director, Department of Human Resources Development, State of Hawaii; DR. KENNETH MORTIMER, President, University of Hawaii, State of Hawaii; GEORGE IRANON, Director, Department of Public Safety, State of Hawaii; KAZU HAYASHIDA,

Director, Department of Transportation, State of Hawaii; HERMAN AIZAWA, Superintendent, Department of Education, State of Hawaii; LAWRENCE MIIKE, M.D., Director, Department of Health, State of Hawaii; EARL ANZAI, Director, Department of Budget and Finance, State of Hawaii; MARGERY BRONSTER, ESQ., Attorney General, State of Hawaii; SAM CALLEJO, Comptroller, Department of Accounting and General Services, State of Hawaii; DR. SUSAN MEYERS CHANDLER, Director, Department of Human Services, State of Hawaii; RAY KAMIKAWA, Director, Department of Taxation, State of Hawaii; JAMES NAKATANI, Chairperson, Department of Agriculture, State of Hawaii; MAJOR GENERAL EDWARD RICHARDSON, Adjutant General, Department of Defense, State of Hawaii; KALI WATSON, Director, Department of Hawaiian Home Lands, State of Hawaii; and MICHAEL WILSON, Chairperson, Department of Land and Natural Resources, State of Hawaii (collectively Employer or Respondents).

The UPW alleged that it requested information from the Respondents pursuant to § 15.09 of the respective Units 01 and 10 collective bargaining agreements. The UPW contends that Respondents failed to comply with UPW's requests for information and therefore violated §§ 89-13(a)(1), (7), and (8), Hawaii Revised Statutes (HRS).

On May 16, 1996, the Board consolidated the two complaints for disposition.

On June 12, 1996, Respondents, by and through their attorney, filed a motion to dismiss the instant prohibited practice complaints with the Board. Respondents argue that the UPW seeks the personnel action (SF-5) forms documenting disciplinary actions

taken against employees including members of other bargaining units. Respondents contend that the other bargaining unit contracts include provisions regarding the confidentiality of disciplinary actions and thus, the Hawaii Government Employees Association, the University of Hawaii Professional Assembly, the Hawaii State Teachers Association, the Hawaii Fire Fighters Association, and the State of Hawaii Organization of Police Officers are indispensable parties to the present actions and the instant complaints should be dismissed because the UPW failed to join them in the present complaint. In addition, Respondents argue that as an employer, the State has an obligation to protect the confidentiality of certain personal and personnel information. In this case, Respondents contend that they are willing to provide the UPW with information in a summary fashion but the UPW requests the documentation of disciplinary actions which may affect the privacy rights of the employees. Further, Respondents allege that the information sought by the Union was not relevant or needed to process or investigate a specific grievance.

The UPW filed a memorandum in opposition to the motion to dismiss complaint with the Board. The UPW argues that the involvement of other unions in these cases is neither necessary nor appropriate because the UPW is seeking the information to protect its members and a decision in this case will not affect the rights of other unions. In addition, the UPW argues that the Union had six pending discharge cases at the time of its request and the employer did not challenge the relevance or materiality of the

information sought. Thus, the UPW argues that the Respondents are estopped from raising those claims at this time.

On August 6, 1996, the Board held a hearing on Respondents' motion to dismiss the complaints. After a thorough review of the record and arguments presented, the Board finds that the other unions are not indispensable parties to this action.

The Intermediate Appellate Court stated in American Security Bank v. Nishihara, 3 Haw. App. 594 (1983):

Our supreme court has stated, "The rule regarding indispensable parties is founded on equitable considerations, and is not jurisdictional." Midkiff v. Kobayashi, 54 Haw. 299, 324, 507 P.2d 724, 739 (1973). In determining indispensability, the courts have considered and weighed the following factors: (1) the possibility that an absent person will be adversely affected; (2) the possibility of inconsistent judicial decisions imposing hardship on the defendant; and (3) the likelihood of the defendant being harassed by multiple suits. (cite omitted.)

Id., at 599-600.

Relying on the foregoing analysis, the Board finds that the interests of the other unions will not be adversely affected by a Board decision in these cases in light of the Hawaii Supreme Court's decision in SHOPO v. Society of Professional Journalists, 83 Haw. 378, 927 P.2d 386 (1996). In the SHOPO case, the Court found that information regarding charges of misconduct by the officers that have been sustained after investigation and that have resulted in suspension or discharge is not highly personal and intimate information within the protection of the Hawaii constitutional right to privacy. The Court also considered whether the confidentiality provisions of the police union's collective

bargaining agreement prevented the disclosure of employment related misconduct and resulting discipline. The Court held that an agreement of confidentiality cannot take precedence over a statute mandating disclosure, Chapter 92F, HRS.

Unlike the employer in the SHOPO case, the Employer here contends that the records are confidential and their release would violate the employees' rights to privacy. Nevertheless, based upon the SHOPO case, the Board finds that the confidentiality provisions of the applicable collective bargaining agreements cannot prevent disclosure of matters which would be subject to disclosure under Chapter 92F, HRS. Accordingly, the Board denies Respondents' motion to dismiss the complaint for failure to join the other unions as indispensable parties.

YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing on the merits of the instant complaint on November 7, 1997, at 9:00 a.m., in the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

Auxiliary aids and services are available on request, call Dolorita Kato at 586-8610 (voice), (808) 586-8847 (TTY), or 1-888-569-6859 (TTY neighbor islands). A request for a reasonable accommodation should be made no later than ten working days prior to the needed accommodations.

DATED: Honolulu, Hawaii, October 23, 1997.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and BENJAMIN J. CAYETANO, Governor, State of Hawaii, et al.; CASE NO. CE-01-301 and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and BENJAMIN J. CAYETANO, Governor, State of Hawaii, et al.; CASE NO. CE-10-302

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RUSSELL T. HIGA, Board Member

  
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CHESTER C. KUNITAKE, Board Member

Copies sent to:

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