

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.:	CE-01-410a
	)		CE-10-410b
UNITED PUBLIC WORKERS, AFSCME,)		
LOCAL 646, AFL-CIO,	)	ORDER NO.	1711
)		
Complainant,	)	ORDER GRANTING, IN PART,	
	)	AND DENYING, IN PART,	
and	)	RESPONDENTS' MOTIONS TO	
	)	DISMISS COMPLAINT AND/OR	
LINDA LINGLE, Mayor, County of	)	FOR SUMMARY JUDGMENT	
Maui; STEPHEN YAMASHIRO, Mayor,)		
County of Hawaii; MARYANNE)		
KUSAKA, Mayor, County of Kauai,)		
JEREMY HARRIS, Mayor, City and)		
County of Honolulu; RAYMOND)		
KOKUBUN, Director, Department of)		
Personnel, County of Maui;)		
MICHAEL BEN, Director, Depart-)		
ment of Personnel, County of)		
Hawaii; ALLAN TANIGAWA, Direc-)		
tor, Department of Personnel,)		
County of Kauai and SANDRA)		
EBESU, Director, Department of)		
Personnel, City and County of)		
Honolulu,)		
)		
Respondents.)		

ORDER GRANTING, IN PART, AND DENYING,
IN PART, RESPONDENTS' MOTIONS TO
DISMISS COMPLAINT AND/OR FOR SUMMARY JUDGMENT

On September 16, 1998, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed the instant complaint against the above-named Respondents with the Hawaii Labor Relations Board (Board). Complainant alleged that Respondents wilfully failed to comply with an arbitration decision rendered by Arbitrator Patrick K.S.L. Yim (Yim) regarding derogatory materials contained in grievance case files. In addition, Complainant alleged that Respondents failed or refused to provide information

requested by the Union. Complainant thus contends that Respondents wilfully violated §§ 89-13(a)(1), (5), (7), and (8), Hawaii Revised Statutes (HRS).

On October 16, 1998, Respondents MARYANNE KUSAKA and ALAN TANIGAWA (collectively Kauai Respondents), by and through their counsel, filed a motion to dismiss the instant prohibited practice complaint with the Board. The Kauai Respondents contend that they are not bound by the Yim arbitration award because they were not parties to the case and the Union failed to file a grievance on the matter in accordance with the terms of the applicable collective bargaining agreement.

Similarly, on October 19, 1998, Respondents STEPHEN YAMASHIRO and MICHAEL BEN (collectively Hawaii County Respondents), by and through their counsel, filed a motion to dismiss the instant prohibited practice complaint with the Board contending that Complainant failed to exhaust its contractual remedies. The Hawaii County Respondents submit that the parties have contractually agreed to a process for the retention and disposition of derogatory material in an employee's personnel file and have agreed to process disputes through the contract grievance procedure. The Hawaii County Respondents contend that the Union should have filed a grievance under the applicable collective bargaining agreement rather than file a complaint with the Board. Thus, the Hawaii County Respondents contend that the instant complaint should be dismissed because the Union failed to exhaust its contractual remedies, i.e., violation of Section 17 of the applicable contract.

Thereafter, on October 29, 1998, Respondents LINDA LINGLE and RAYMOND KOKUBUN (collectively Maui Respondents) filed a motion

to dismiss complaint for failure to state a claim upon which relief can be granted and/or motion for summary judgment with the Board. The Maui Respondents contend that the Yim arbitration award has no collateral estoppel effect upon the Maui Respondents. In addition, the Maui Respondents contend that there is no genuine issue of material fact presented in this case and since they were not party to the arbitration case, they are entitled to judgment as a matter of law.

On October 30, 1998, Respondents JEREMY HARRIS and SANDRA EBESU (collectively City Respondents), by and through their counsel, filed a motion to dismiss the instant complaint with the Board. The City Respondents contend that Complainant alleges that the Respondents refused to abide by a court-confirmed arbitration decision between the UPW and the State of Hawaii and by refusing to provide information requested by UPW in conjunction with the decision. The City Respondents argue that they are not bound by the arbitration decision because the City is not in privity with the State of Hawaii. In addition, the City Respondents contend that they were not noticed for the arbitration and the court confirmation hearings. Thus, the City Respondents request the Board to dismiss this complaint on the grounds that the UPW failed to properly afford the City notice and a meaningful opportunity to be heard on the substantive issues at arbitration and the issue of whether the decision is binding on the City Respondents.

Thereafter, the Kauai, Hawaii County and the City Respondents joined in the motions filed by the other respective employers. The Maui Respondents only joined in the motions filed by the Kauai and Hawaii County Respondents.

On November 6, 1998, Complainant filed a memorandum in opposition to the motions to dismiss filed by the Respondents. Complainant contends that the Board should not dismiss the instant complaint for failure to exhaust the contractual grievance procedure or defer the matter to the contractual grievance process as the Board has previously determined that it has concurrent jurisdiction over complaints alleging violations of the collective bargaining agreement. In addition, Complainant contends that the issue is whether the interpretation of Section 17 as interpreted by Arbitrator Yim is being uniformly applied by the counties. Complainant contends that no purpose would be served by requiring the UPW to file four separate grievances in the respective county jurisdictions as it would be costly and defeat the purpose of uniform contract administration intended by the parties to the Unit 01 contract. Complainant also contends that certain Respondents are refusing to arbitrate cases or deny the existence of the Unit 01 contract and have thereby frustrated the grievance process. Further, Complainant contends that the complaint also involves the failure to provide information in violation of statutory rights. Complainant thus argues that summary dismissal of the instant complaint would violate its due process rights to a full hearing on the merits of the controversy.

On November 18, 1998, the Board heard arguments on the motions filed with the Board by conference call. Counsel for Hawaii County Respondents and Kauai Respondents, respectively, participated by telephone and counsel for Complainant and the remaining Respondents appeared in the Board's hearings room.

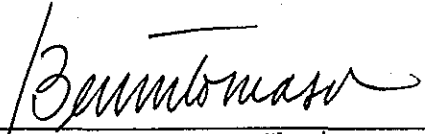
Based upon the record and the arguments presented, there is no dispute that the Respondents were not party to the Yim arbitration proceeding or the court confirmation of the Yim award. The Board agrees with Respondents that they are therefore not bound by the Yim award and the doctrine of res judicata does not apply to prevent relitigation of the claims. Respondents contend that it is basically unfair and violative of their due process rights to apply an arbitration award to them where they were not given notice and an opportunity to respond to the charges.

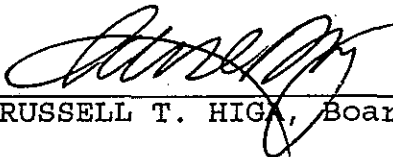
The Board appreciates the UPW's argument that the collective bargaining agreement provides that arbitration awards are final and binding and that the contract should be applied uniformly across the employing jurisdictions. Nevertheless, the gravamen of UPW's prohibited practice complaint is that the Respondents failed or refused to comply with the Yim award regarding the destruction of derogatory materials contained in the grievance files. The central question is the applicability of the Yim award and while the award is an arbitral precedent, the Board is persuaded that the complaint fails to state a claim for relief as the Respondents were not party to the arbitration proceeding and are not bound by the decision. The Board thus hereby dismisses the instant complaint with regard to the refusal to apply the Yim award. Complainant's allegations that the Respondents failed or refused to respond to its requests for information remain to be resolved.

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and LINDA LINGLE,
Mayor, County of Maui, et al.
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TO DISMISS COMPLAINT AND/OR FOR SUMMARY JUDGMENT

DATED: Honolulu, Hawaii, March 23, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIG, Board Member


CHESTER C. KUNITAKE, Board Member

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