STATE OF HAWAI'I

HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646,

Complainant,

and

LINDA LINGLE, Mayor, County of Maui; RAYMOND KOKUBUN, Director, Department of Personnel, County of Maui; STEPHEN YAMASHIRO, Mayor, County of Hawaii; MICHAEL BEN, Director, Department of Personnel, County of Hawaii; MARYANNE KUSAKA, Mayor, County of Kauai and ALLAN TANIGAWA, Director, Department of Personnel, County of Kauai,

Respondents.

CASE NO. CE-01-396
ORDER NO. 1776
ORDER DENYING COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF HEARING

On June 17, 1998, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) and Respondents LINDA LINGLE, Mayor, County of Maui and RAYMOND KOKUBUN, Director, Department of Personnel, County of Maui (KOKUBUN) (collectively MAUI COUNTY) filed a Stipulation and Order with the Hawaii Labor Relations Board (Board). MAUI COUNTY agreed in paragraph 10(b) of the Stipulation and Order, inter alia, to cease and desist from repudiating the existence of a new Unit 01 agreement in accordance with the Board's ruling in Case No. CE-01-390. The parties agreed that the violation of the terms and conditions of the Stipulation
and Order would constitute a prohibited practice by Respondents. The parties further agreed that the enforcement of the terms and provisions of the Stipulation and Order could be summarily decided upon motion of the UPW and in the event of a violation Respondents agreed to pay the attorneys fees and costs incurred by the UPW.

On October 16, 1998, Complainant, by and through its counsel, filed a motion for summary judgment in favor of the UPW against KOKUBUN for violating paragraph 10(b). The UPW seeks a declaratory ruling, injunctive relief, and attorney's fees and costs against KOKUBUN. Complainant contends that KOKUBUN repudiated the Unit 01 agreement in a letter to the UPW State Director by stating that, "It continues to be the employer's position that the public employers and the unions never entered into a contract for the period July 1, 1995 to June 30, 1999."

On October 26, 1998, Respondents filed a memorandum in opposition to Complainant's motion for summary judgment with the Board. Respondents contend that they have complied with the Board's Order No. 1643, Order Granting Complainant's Motion for Interlocutory Relief in Case No. CE-01-390, by submitting the cost items to the Maui County Council. In addition, Respondents contend that Respondents have selected arbitrators and scheduled hearings for arbitrations. Respondents also drafted a disclaimer to attach to its correspondence with the UPW which suggested that the Union agree to postpone the grievance and arbitration process.

1By letter, dated October 2, 1998, KOKUBUN included the following (considered by MAUI COUNTY to be a "disclaimer") in his response to Rodrigues on a pending grievance:

Please also note the "occurrence of the alleged violation" by the Employer in this
grievance is after April 30, 1998. As you
know, the prior Contract, dated July 1, 1993
to June 30, 1995, was extended only until
April 30, 1998. It continues to be the
Employer's position that the public employers
and the Union never entered into a contract
for the period July 1, 1995 to June 30, 1999.

However, the County of Maui entered a
stipulation with the Union, dated June 16,
1998, agreeing not to repudiate the existence
of a new Unit 01 Agreement subject to any
ruling from the HLRB determining that a new
contract had been agreed to.

Subsequent to the stipulation, on July 8,
1998, the HLRB issued its Order Granting
Complainant's Motion for Interlocutory Relief,
which finalized its oral determination made on
May 11, 1998 that a new contract does exist.

Final resolution of this matter is far
from over. The HLRB has not yet rendered a
final decision in this matter. In addition,
it is unclear that the interlocutory order is
enforceable because on September 29, 1998,
Judge Milks of the First Circuit Court found
that UPW "should not attempt enforcement of the
Interlocutory Order based on its position that
the Order is not final." Moreover, when the
HLRB does issue its final order in this
matter, it will likely be the subject of
appeal.

Even though the issue of whether or not a
new, enforceable, Contract exists is not
resolved, the County of Maui will abide by the
interlocutory order, pursuant to the June 16,
1998 stipulation and order. As in the past,
the Employer will continue to process
grievances. However, because the new Contract
is on such tenuous ground, the Employer urges
the Union to agree that scheduling of the
grievance process be postponed until the issue
of the existence of a new Contract is
resolved.

There exists compelling reasons for
postponing any grievances involving the new
Contract. Any grievance settled or arbitrated
currently would become null and void if the
HLRB or a higher judicial body determines that
a new Contract does not exist. This would
Respondents contend that the UPW failed to prove any repudiation of the Unit 01 agreement given the tenor of the entire letter which reassures compliance with the Stipulation and Order. Respondents' counsel's affidavit states that the Respondents intend to arbitrate all pending grievances unless the Union agrees otherwise. Thus, Respondents contend that the UPW's motion is frivolous and that it should be denied.

On November 4, 1998, the UPW filed a reply memorandum in support of its motion with the Board. The UPW contends that Respondents failed to comply with the timely disposition of the grievances and is seeking to delay resolution based on their disclaimer. The UPW also contends that the County officials have disavowed the existence of a Unit 01 agreement, thereby repudiating the agreement.

On November 16, 1998, Respondents filed a rebuttal to Complainant's reply memorandum with the Board. Respondents maintain that the facts establish that they have not repudiated the agreement and contend, inter alia, that the UPW's reply memorandum should be stricken as being a memorandum in support of its original motion; that the UPW's reply fails to overcome Respondents' answering affidavits; and that the exhibits submitted are not require the parties to reconsider grievances. Therefore, by postponing grievances involving the new Contract, the parties can promote judicial economy, which is one of the fundamental purposes behind the arbitration process.

The Employer would appreciate your cooperation in the above matters. Should you have any questions or comments, please feel free to contact me.
properly authenticated and otherwise should not be considered by the Board.

Based upon a review of the record and the arguments of counsel, the Board denies the UPW's motion for summary judgment. The Board finds that there is a material fact in dispute as to whether MAUI COUNTY refused to proceed to arbitration on the pending grievances. Accordingly, the Board will schedule a hearing on this matter as to whether the Respondents committed a prohibited practice by violating the Stipulation and Order by repudiating the Unit 01 agreement as alleged by Complainant.

YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing in this matter on October 5, 1999 at 9:00 a.m. in the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.


HAWAII LABOR RELATIONS BOARD

BERT M. TOMASU, Chairperson

RUSSELL T. HIGA, Board Member

CHESTER C. KUNITAKE, Board Member

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