

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-01-396
)	
UNITED PUBLIC WORKERS, AFSCME,)	ORDER NO. 1776
LOCAL 646,)	
)	ORDER DENYING COMPLAINANT'S
Complainant,)	MOTION FOR SUMMARY JUDG-
)	MENT; NOTICE OF HEARING
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 Per-)	
sonnel, County of Kauai,)	
)	
Respondents.)	
)	

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.¹

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.

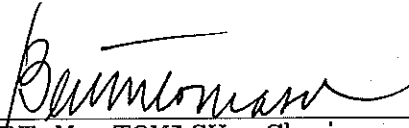
properly authenticated and otherwise should not be considered by the Board.

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.

DATED: Honolulu, Hawaii, September 20, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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