STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Complainant, and LINDA LINGLE, Mayor, County of 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, Department of Personnel, County of Hawaii; ALLAN TANIGAWA, Director, Department of Personnel, County of Kauai and SANDRA EBESU, Director, Department of Personnel, City and County of Honolulu, Respondents.	CASE NOS.: CE-01-410a CE-10-410b ORDER NO. 1894 ORDER GRANTING COMPLAINANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

ORDER GRANTING COMPLAINANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

On September 16, 1998, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, (UPW or Union) filed a prohibited practice complaint against LINDA LINGLE, Mayor, County of Maui; STEPHEN YAMASHIRO (YAMASHIRO), Mayor, County of Hawaii; MARYANNE KUSAKA (KUSAKA), Mayor, Kauai County; and JEREMY HARRIS (HARRIS), Mayor, City and County of Honolulu; RAYMOND KOKUBUN, Director, Department of Personnel, County of Maui; MICHAEL BEN (BEN), Director, Department of Personnel, County of Hawaii; ALLAN TANIGAWA

(TANIGAWA), Director, Department of Personnel, County of Kauai; and SANDRA EBESU (EBESU), Director, Department of Personnel, City and County of Honolulu (collectively Respondents or Employer) with the Hawaii Labor Relations Board (Board). Complainant alleges that Respondents wilfully failed to comply with an arbitration decision and award rendered by Arbitrator Patrick K.S.L. Yim (Yim) regarding derogatory materials contained in grievance case files, and failed or refused to provide information requested by the Union. Thus, Complainant contends that Respondents wilfully violated the Units 01 and 10 collective bargaining agreements and breached their duty to bargain in good faith in contravention of §§ 89-13(a)(1), (5), (7), and (8), Hawaii Revised Statutes (HRS).

On March 23, 1999, the Board issued Order No. 1711 which granted, in part, and denied in part, Respondents' motions to dismiss the complaint and/or for summary judgment. Having found that Respondents were not parties to the arbitration proceedings leading to the Yim award against the State of Hawaii, the Board determined that the complaint failed to state a claim for relief regarding non-compliance with the award by Respondents. However, the Board declined to dismiss the complaint or to grant summary judgment for the remaining claim that Respondents failed and improperly refused to provide the information as requested by the Union.

On March 29, 1999, Complainant filed a motion for partial summary judgment as to the remaining claim for relief. The UPW contends that there are no genuine issues of material fact since Respondents failed to respond to the request for information

submitted to them on July 10, 1998. Respondents filed cross-motions for summary judgment on April 16, 1999 and April 19, 1999. Respondents contend that the Board lacks subject matter jurisdiction, and that the complaint should be dismissed since Complainant failed to avail itself of available contractual remedies.

On April 28, 1999, the Board conducted a hearing on the UPW's motion for partial summary judgment and Respondents' cross-motions for summary judgment. After considering the evidence and argument of the parties, the Board found that there were no genuine issues of material fact in dispute and that UPW was entitled to judgment as a matter of law. Accordingly, on May 5, 2000, the Board issued Order No. 1858 directing the UPW to submit proposed findings of fact, conclusions of law, and an order reflecting the Board's ruling in this case.

On May 11, 2000, the UPW filed its proposed order with the Board. On May 22, 2000, Respondents HARRIS and EBESU, by and through their counsel, filed a statement of objections to Complainant's proposed order with the Board. On May 24, 2000, YAMASHIRO and BEN, by and through their counsel, filed objections to the UPW's proposed order and its proposed order with the Board. On June 1, 2000, Respondents KUSAKA and TANIGAWA, by and through their counsel, joined HARRIS and EBESU's and YAMASHIRO and BEN's objections to the UPW's proposed order. Thereafter, on June 5, 2000, the UPW filed objections to KUSAKA and TANIGAWA's joinder in HARRIS' and EBESU's objections to the UPW's proposed order because they were untimely.

Based on a thorough review of the record before the Board in this case, the Board renders the following findings of fact, conclusions of law, and order.[1]

FINDINGS OF FACT

The UPW is an employee organization and the exclusive bargaining representative as defined in § 89-2, HRS, of all blue collar non-supervisory employees in bargaining unit 01 and all institutional, health, and correctional employees in bargaining unit 10.

Respondent LINDA LINGLE was for all times relevant, Mayor of Maui County and a public employer as defined in § 89-2, HRS.

Respondent STEPHEN YAMASHIRO is the Mayor of Hawaii County and a public employer as defined in § 89-2, HRS.

Respondent MARYANNE KUSAKA is the Mayor of Kauai County and a public employer as defined in § 89-2, HRS.

Respondent JEREMY HARRIS is the Mayor of the City and County of Honolulu and a public employer as defined in § 89-2, HRS.

Respondent RAYMOND KOKUBUN is the personnel director of Maui County and as a representative of Mayor LINGLE is a public employer as defined in § 89-2, HRS.

Respondent MICHAEL BEN is the personnel director of Hawaii County and as a representative of Mayor YAMASHIRO is a public employer as defined in § 89-2, HRS.

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[1]After considering Respondents' objections to the proposed order submitted by Complainant, the Board has adopted those proposed findings of fact and conclusions of law which support its decision in this case and rejected those which do not. The Board has modified the proposed order submitted by Complainant accordingly.

Respondent ALLAN TANIGAWA is the personnel director of Kauai County and as a representative of Mayor KUSAKA is a public employer as defined in § 89-2, HRS.

Respondent SANDRA EBESU is the director of human resources of the City and County of Honolulu, and as a representative of Mayor HARRIS is a public employer as defined in § 89-2, HRS.

On October 21, 1971 the UPW was certified as the exclusive representative of blue collar non-supervisory employees in bargaining unit 01.

On February 11, 1972 the UPW was certified as the exclusive representative of institutional, health, and correctional employees in bargaining unit 10.

Since on and after July 1, 1972 the UPW, the State of Hawaii, and the various Counties have been parties to 12 successive collective bargaining agreements covering employees in bargaining units 01 and 10. The collective bargaining agreements contain various provisions relating to the retention and removal of personnel records including derogatory materials, the handling of requests for information from the union, and other terms and conditions of employment.

Under § 17 of the Unit 01 and Unit 10 collective bargaining agreements "derogatory" materials, notes, and records on bargaining unit employees may not be retained outside of the official personnel file of the employees. Sections 17.01 and 17.02 afford bargaining unit employees the right to examine, review and comment on such derogatory materials as follows:

> 17.01. An employee covered hereunder shall, on his request and by appointment, be permitted to examine his personnel file. An employee may be given a copy of any material in his file if it is to be used in connection with a grievance or a personnel hearing.
> 17.02. No material derogatory to an employee covered hereunder shall be placed in his personnel file unless a copy of same is provided the employee. The employee shall be given an opportunity to submit explanatory remarks for the record. (Emphasis added).

The use by the employer of "derogatory" information regarding a Unit 01 or Unit 10 employee which is not maintained in the official personnel file in accordance with § 17 has been prohibited.

Under § 17.03 of the Unit 01 and 10 agreements the employer is also required to remove and destroy any "derogatory material" after two years. Section 17.03 states:

> An employee may request that any derogatory material not relevant to his employment be reviewed and destroyed after two (2) years. The employee's department head will determine whether the material is relevant and will decide whether the material will be retained or removed from his personnel jacket. Any decision to retain the material shall include reasons and shall be in writing. The employee's employment history record shall not be altered. The decision of the department head shall be subject to the provisions of Section 15. GRIEVANCE PROCEDURE, and be processed at Step 2. (Emphasis added).

In 1995 Arbitrator Ted T. Tsukiyama held that the State of Hawaii is required under § 17.03 to remove and expunge all entries and references to the past disciplinary actions (more than 2 years old) from SF-5 forms of a bargaining unit 01 employee, in addition to the removal of the disciplinary letters which the

parties considered to be "derogatory materials." In the Matter of the Arbitration between State of Hawaii, Department of Human Services and United Public Workers, Local 646 (Grievance of Dryden Kalaaukahi) (12/11/95, Tsukiyama). The Arbitrator discussed the understanding of the parties with respect to the term "derogatory materials" as follows:

> . . . the term "derogatory material" is defined neither in Section 17.03 nor in Personnel Rule 14-11-6 which speak to the matter. Employer's witness described the term "derogatory material" as "anything that's negative on the employee." The Union's spokesman testified "We felt derogatory was something that was to be considered negative that could cause harm to an employee for future employment, for promotion, for any type of gain through the merit system" and cited disciplinary action, negative JPR's, anonymous letters, complaints, criticism, and anything that could "be held against you." Apparently, Employer agreed that disciplinary suspensions constituted "derogatory material" since it was willing to remove/destroy the original disciplinary letters and the remarks describing the disciplined misconduct in Box #50 on the Form SF-5's in question. (Emphasis added).

Arbitrator Tsukiyama ordered all references to disciplinary suspensions in SF-5 Forms or Employee History Cards be expunged from the employee's official personnel files.

On May 8, 1998 Arbitrator Ambrose Rosehill found that the retention of disciplinary records (whether in written reprimands, incident reports, or the written form) of employees in bargaining unit 01 was in violation of § 17.03 of the Unit 01 collective bargaining agreement. In the Matter of the Arbitration between the United Public Workers, AFSCME, Local 646, AFL-CIO and the State of Hawaii Department of Transportation, Highways Division (5/8/98, Rosehill). Arbitrator Rosehill held that such "derogatory

materials" were not relevant to employment and ordered them removed and destroyed. Section 17.03 has been applied to county agencies employing unit 01 employees as well. In the Matter of the Arbitration Between the United Public Workers Local 646, AFL-CIO and City and County of Honolulu (Nicholson, 9/21/98).

On June 24, 1998 Arbitrator Patrick Yim held that the State of Hawaii violated § 17 of the Units 01 and 10 collective bargaining agreements by failing to remove and/or destroy all derogatory materials kept in separate grievance files and records of the Department of Human Sources Development and various other departments of the State of Hawaii. In the Matter of the Arbitration between United Public Workers, AFSCME, Local 646, AFL-CIO and State of Hawaii, Department of Human Resources Development (6/24/98, Yim). On August 19, 1998 the decision and award of Arbitrator Yim was confirmed by Judge Kevin Chang of the Circuit Court of the First Circuit in S.P. No. 98-0349.

On or about July 10, 1998 Complainant believed that Respondents were in violation of the Units 01 and 10 collective bargaining agreements as interpreted by Arbitrator Yim by the retention of derogatory materials in grievance case files kept in files and records outside of the official personnel files of bargaining unit employees.

On July 10, 1998 Complainant sent to Respondents (and to the heads of various county departments employing bargaining units 01 and 10 employees) a copy of the Yim award, and requested that Respondents:

1. Remove and destroy any and all derogatory materials more than 2 years old (from the

date of this letter) pertaining to Unit 1 and 10 employees from the grievance case filed of your agency and/or department and from all other data bases retained by your agency and/or department (including computerized summaries prepared from the contents of the grievance case file).

2. Provide the UPW a copy of said derogatory materials and make the files and data bases available for inspection by UPW representatives to verify compliance with item 1.

3. Provide the UPW an updated list of all grievance case files (and data bases) retained in your agency and/or department in which you contend do not contain any derogatory materials and make those files (and data bases) available for inspection by UPW representatives.

4. Please provide a description of your agency or department's procedure used in the connection with access, destruction, and place of retention of files.

Respondents did not respond or reply in writing to Complainant's request of July 10, 1998.

On or about September 3, 1998 Complainant reiterated its request to Respondents as follows:

> On August 19, 1998 Judge Kevin Chang granted the UPW's motion to confirm the arbitration award of Arbitrator Patrick Yim dated June 24, 1998.
>
> In light of the foregoing, we reiterate our previous written request sent to all county agencies for removal and destruction of derogatory materials on Unit 1 and 10 employees. We also restate our request for information.
>
> The award of Arbitrator Yim is final and binding. Non-compliance with its terms is a prohibited practice under HRS Section 89-13(a)(8). Failure to provide the requested information violates HRS Sections 89-13(a)(5)& (7). (Emphasis added).

Respondents did not respond or reply in writing to Complainant's September 3, 1998 request.

Under § 15.09 of the Units 01 and 10 collective bargaining agreements an employer is required to provide information to the union upon its request as follows:

> 15.09 Any information in the possession of the Employer which is needed by the grieving party to investigate and process a grievance, shall be photocopied and given to the grieving party within five (5) working days of the grieving party's request for such information, provided that the Employer shall have the option to (a) photocopy and give the material requested to the grieving party within the 5-working day period, or (b) make the material requested available to the grieving party within the 5-working day period for the purpose of photocopying or review by the grieving party for three (3) working days on the condition that the grieving party agrees to sign out and be fully responsible for the material until it is returned. (Emphasis added).

Arbitrators have consistently held that § 15.09 "is intended in part to fulfill the function of a subpoena duces tecum," and is to be liberally interpreted to facilitate the "free flow of relevant and necessary information" to investigate and process grievances. In the Matter of the Arbitration between UPW and Dept. of Transportation (Griev. of Larry Alao) (Conklin, 5/9/83); In the Matter of the Arbitration Between UPW and Dept. of Public Works, County of Maui (Griev. of John Sardinha) (Tsukiyama, 7/27/83); In the Matter of the Arbitration between UPW and Dept. of Transportation (Griev. of Wanda Wong) (Tsukiyama, 1/23/85); In the Matter of the Arbitration between UPW and DLNR (Griev. of Robert Covington) (Najita, 12/19/96).

Respondents did not comply with § 15.09 by providing to Complainant the requested information "within five working days" of either the July 10, 1998 or the September 3, 1998 request.

On September 16, 1998 the UPW filed the instant prohibited practice complaints with the Board in Case Nos. CE-01-410a and CE-10-410b.

DISCUSSION

We are once again required to determine the nature and the scope of an employer's obligation to provide information to an exclusive bargaining representative under Chapter 89, HRS, and applicable collective bargaining provisions which require "any information in the possession of the Employer which is needed by the grieving party to investigate and process a grievance." Manuel Veincent, Jr., et al. and Herbert Matayoshi, 2 HPERB 494 (1990); SHOPO, et al. and Frank Fasi, 3 HPERB 25 (1982); HGEA and Board of Regents, et al., 5 HLRB 198 (1993); United Public Workers, AFSCME, Local 646, AFL-CIO and Benjamin Cayetano, et. al, 4 HLRB 701 (1997).[2] In United Public Workers, AFSCME, Local 646, AFL-CIO and Benjamin Cayetano, et. al, 4 HLRB 701 (1997), the Board held that an employer violates §§ 89-13(a)(5) and (a)(8), HRS, by its failure to provide information relevant to a grievance previously filed by a union. In this case, we find that Respondents violated § 89-13(a)(5), HRS, by refusing to respond to Complainant's request to provide information which was necessary for the Union to

[2]See also, United Public Workers, AFSCME, Local 646, AFL-CIO v. Cayetano, Order No. 1406, Case CE-10-332; United Public Workers, AFSCME, Local 646, AFL-CIO v. Cayetano, Order No. 1405, Case CE-10-331.

determine whether the Respondents were in violation of § 17.03 of the Units 01 and 10 agreements. The Board also finds that the Respondents wilfully violated § 15.09 of the respective contracts by failing to provide the information requested by the UPW on July 10, 1998 and again on September 3, 1998.

It has long been recognized that intertwined with the duty to bargain in good faith is the duty on the part of the employer to supply the union, upon request, with sufficient information to perform its statutory obligation as a bargaining agent. Labor Board v. Truitt Mfg. Co., 351 U.S. 149, 76 S.Ct. 753, 100 L.Ed. 1027 (1956). It is "well settled that it is an unfair labor practice within the meaning of section 8(a)(5) of the Act for an employer to refuse to furnish a bargaining union [such information as] is necessary to the proper discharge of the duties of the bargaining agent." NLRB v. Whitin Machine Works, 217 F.2d 593, 35 LRRM 2215 (4th Cir. 1954); Aluminum Ore Co. v. NLRB, 131 F.2d 485, 11 LRRM 693 (7th Cir. 1942). The duty to furnish information is a statutory obligation which exists independent of any agreement between the parties. American Standard, 203 NLRB 1132, 83 LRRM 1245 (1973). The duty arises following certification of the bargaining agent and "does not terminate with the signing of the collective bargaining contract" but "continues through the life of the agreements so far as it is necessary to enable the parties to administer the contract and resolve grievances or disputes." Sinclair Refining Co. v. NLRB, 306 F.2d 569, 571, 50 LRRM 2830 (5th Cir. 1962).

Collective bargaining is "a continuing process" and the union not only has the duty to negotiate a collective bargaining agreement, but also the obligation to police and administer existing agreements. J. I. Case Co. v. NLRB, 253 F.2d 149, 41 LRRM 2679 (7th Cir. 1958); Southwestern Bell Tel. Co., 173 NLRB 172, 69 LRRM 1251 (1968); Twin City Lines, Inc., 170 NLRB 625, 67 LRRM 1553 (1968), enforced, 425 F.2d 164, 74 LRRM 2024 (1970). Thus, the union's right to information continues after an agreement is signed. Los Angeles Chapter, Sheet Metal Contractors, 246 NLRB 886, 103 LRRM 1018 (1979); NLRB v. Acme Industrial Co., 385 U.S. 432, 87 S.Ct. 565, 17 L.Ed.2d 495 (1967). In Acme Industrial Co., supra, the U.S. Supreme Court upheld the labor board's determination that a § 8(a)(5) violation had occurred when the employer refused to furnish information which would have allowed the union to determine at the outset whether there had been a breach of the collective bargaining agreement. The high court held that the labor board properly determined that the desired information was relevant and that "it would be of use to the union in carrying out its statutory duties and responsibilities." Acme Industrial Co., 385 U.S. at 437.

In the present situation Complainant and Respondents are parties to multi-employer collective bargaining agreements which prohibits the retention and use of derogatory materials for more than two years. After the issuance of the Yim award against one employer the UPW requested information from all other public employers to determine whether they were retaining derogatory materials which were found in violation of § 17 in grievance case

files kept separately from the official personnel files of bargaining unit employees. The information was necessary for the Union to determine whether Respondents were in violation of the collective bargaining agreements. The request for information was initially submitted on July 10, 1998 and reiterated on September 3, 1998. Respondents declined to respond and failed to provide to the UPW the information it needed to fulfill its duty as an exclusive bargaining agent. Clearly, Respondents breached their duty to bargain in good faith under § 89-9(a), HRS by failing to respond to the UPW's requests.

Respondents have misconstrued their legal obligation imposed by the statutory duty to provide information to a bargaining agent. Under established legal principles, neither the filing of a grievance nor proof of a meritorious claim under the contract constitutes a pre-condition for providing information. An employer's duty to supply the bargaining representative with information arises when the union makes a request for information either in writing or orally which is relevant to the union's statutory duty. NLRB v. Boston Herald-Traveler Corp., 210 F.2d 134, 33 LRRM 2435 (1st Cir. 1954); Food Serv. Co., 202 NLRB 790, 82 LRRM 1746 (1973) (union request for general access to employer records); Acme Industrial Co., supra, 385 U.S. 432, 435-36; Keauhou Beach Hotel, Ltd., 298 NLRB 702, 134 LRRM 1245 (1990).

Information regarding wages and the terms and conditions of employment of bargaining unit employees is presumptively relevant and necessary. Dyncorp/Dynair Services, Inc., 322 NLRB 602, 155 LRRM 1028 (1996); JRED Enterprises, Inc.,

313 NLRB 1244, 146 LRRM 1244 (1994); Bryant & Stratton, 323 NLRB 410, 155 LRRM 1033 (1997). Matters relating to the retention of derogatory materials of bargaining unit employees are "terms and conditions of employment." Unified School District 501 v. Secretary of Kansas Department of Human Resources, 235 Kan. 968, 685 P.2d 874, 118 LRRM 2116 (1984) (proposal that derogatory materials be kept outside of the employee's personnel file is a mandatory subject of bargaining). As the NLRB stated in Bryant & Stratton, supra:

> It is well settled that information concerning names, addresses, telephone numbers, as well as wages, hours worked, and other terms and conditions of employment of unit employees is presumptively relevant to the Union's role as exclusive collective-bargaining representative. See Deadline Express, 313 NLRB 1244 [146 LRRM 1244] (1994), and cases cited therein.

Id., 155 LRRM 1033. To be entitled to information a bargaining agent is not required to establish proof of a meritorious claim under the collective bargaining agreement. Sinclair Refining Co., supra, (the board may not adjudicate the merits of the dispute "under the guise of determining relevance" and pertinence of data since it may determine the intrinsic merit of the underlying claim); Timken Roller Bearing Co. v. NLRB, 325 F.2d 746, 54 LRRM 2785 (6th 1963) (in upholding the union's right to information, the court relied essentially on the value of the information in the general administration of the contract).

In the present case the Board also finds that Respondents violated § 15.09 of the Unit 01 and Unit 10 collective bargaining agreements by failing to provide the requested information to UPW.

The clear and unambiguous provisions of the agreements state that the union is entitled "to any information in the possession of the Employer which is needed by the grieving party to investigate and process a grievance."[3] This provision has been broadly and liberally interpreted to require the "free flow of relevant and necessary information" to the UPW. In the Matter of the Arbitration between UPW and Dept. of Transportation (Griev. of Larry Alao) (Conklin, 5/9/83); In the Matter of the Arbitration between UPW and Dept. of Public Works, County of Maui (Griev. of John Sardinha) (Tsukiyama, 7/27/83); In the Matter of the Arbitration between UPW and Dept. of Transportation (Griev. of Wanda Wong) (Tsukiyama, 1/23/85); In the Matter of the Arbitration between UPW and DLNR (Griev. of Robert Covington) (Najita, 12/19/96). Here, Respondents failed to respond to the two requests made by the UPW. Their failure to provide the information constitutes a wilful breach of § 15.09 of the Units 01 and 10 agreements. United Public Workers, AFSCME, Local 646, AFL-CIO, 3 HPERB 507 (1984). The Board finds that the natural consequence of employers' failure to provide the requested information was to frustrate the grievance investigation process contemplated under

[3]In this regard, the Board is not persuaded that the contract specifically requires that a grievance be filed prior to the request for information. The contract requires the employer to provide information needed by the union to investigate and process a grievance. Arguably, the union may need information in order to investigate in the first instance whether a violation or misapplication of the contract has occurred in order to file the grievance. Thus, the contract does not foreclose the union's request for information to determine whether a grievance should be filed which could precede the filing of a grievance.

the agreements. Accordingly, Respondents wilfully violated § 89-13(a)(8), HRS.

The Board has original and exclusive jurisdiction over prohibited practice complaints of this nature under §§ 89-5 and 89-14, HRS. Fasi v. State Pub. Emp. Relations Bd., 60 Haw. 436, 591 P.2d 113 (1979) (Board has subject matter jurisdiction to determine whether conduct of an employee is a prohibited practice in violation of a collective bargaining agreement via declaratory ruling petition); Hawaii State Teachers Association and Department of Education, 1 HPERB 253, 264 ("It is clear that the Board has jurisdiction over prohibited practice charges including those alleging breaches of contract regardless of the presence of a grievance arbitration provision in a collective bargaining agreement"); State of Hawaii Organization of Police Officers and Linda Lingle, 5 HLRB 597, 599 (Board retained concurrent jurisdiction over matters arising from specific contractual violations pursuant to § 89-13(a)(8), HRS). Further, § 89-14, HRS, vests "exclusive original jurisdiction" over all prohibited practice complaints. This statutory provision was amended in 1982 after a decision issued by the Appellate Court in Winslow v. State of Hawaii, 2 Haw.App. 50, 625 P.2d 1046. Act 27, 1982 SLH. See also, Stand. Comm. Rep. 134-82, 1982 House Journal at 943.

Deferral to the contractual grievance or arbitration process is inappropriate in this case since Respondents' failure to provide the requested information to the bargaining agent undermines the integrity of the investigative process contemplated under § 15 of the applicable agreements. U.S. Postal Service,

228 NLRB 1235, 94 LRRM 1728 (1977). Deferral to arbitration would be wholly inappropriate where the parties have established strict time limits as an essential component of the dispute resolution process. Hawaii State Teachers Association and Department of Education, 1 HPERB 253 (1972); Hawaii State Teachers Association and Board of Education, 1 HPERB 442 (1974). Requiring the parties to exhaust the grievance-arbitration process would defeat the underlying purpose and object of § 15.09 of the Units 01 and 10 agreements.

CONCLUSIONS OF LAW

The Board has jurisdiction over this subject complaint pursuant to §§ 89-5 and 89-14, HRS.

An employer commits a prohibited practice in violation of § 89-13(a)(5), HRS, by wilfully refusing or failing to bargain in good faith. The failure to provide relevant and necessary information to a bargaining agent constitutes a breach of the duty to bargain in good faith.

Respondents committed prohibited practices in violation of § 89-13(a)(8), HRS, when they wilfully violated § 15.09 of the Units 01 and 10 agreements by failing to provide information to the UPW as requested by letters dated July 10, 1998 or September 3, 1998 within the five working days provided for by said agreements.

ORDER

Based on the foregoing findings and conclusions, the Board directs and orders Respondents:

(1) To cease and desist from their failure to provide to the UPW the information requested on July 10, 1998 and September 3, 1998 in a timely manner as required by § 15.09 of the Units 01 and 10 collective bargaining agreements.

(2) To immediately post copies of this order in conspicuous places at its work sites where employees of bargaining units 01 and 10 assemble and leave such copies posted for a period of 60 consecutive days from the initial date of posting.

(3) To notify the Board within 30 days of the receipt of this order of the steps taken to comply herewith.

DATED: Honolulu, Hawaii, June 28, 2000.

HAWAII LABOR RELATIONS BOARD

BERT M. TOMASU, Chairperson

RUSSELL T. HIGA, Board Member

CHESTER C. KUNITAKE, Board Member

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