

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. INV-01-01
)	
BENJAMIN J. CAYETANO, Governor,	)	ORDER NO. 1950
State of Hawaii; JEREMY HARRIS, Mayor,)	
City and County of Honolulu; JAMES	)	ORDER DENYING UPW'S MOTION
APANA, Mayor, County of Maui; STEPHEN	)	TO STRIKE NOTICE OF PREHEAR-
YAMASHIRO, Mayor, County of Hawaii;	)	ING CONFERENCE AND INVESTI-
and MARYANNE KUSAKA, Mayor,	)	GATION DATED OCTOBER 27,
County of Kauai,	)	2000 AND TO REQUIRE NOTICE
	)	AND OPPORTUNITY TO BE
Public Employers,	)	HEARD TO ESSENTIAL EMPLOYEES,
	)	AND AMENDING THE
and	)	NOTICE OF INVESTIGATION
	)	ABOUT TO OCCUR ENDANGER-
UNITED PUBLIC WORKERS, AFSCME,	)	ING PUBLIC HEALTH AND
LOCAL 646, AFL-CIO,	)	SAFETY DATED OCTOBER 27,
	)	2000
Exclusive)	
Representative.)	

ORDER DENYING UPW'S MOTION TO STRIKE NOTICE OF PREHEARING CONFERENCE AND INVESTIGATION DATED OCTOBER 27, 2000 AND TO REQUIRE NOTICE AND OPPORTUNITY TO BE HEARD TO ESSENTIAL EMPLOYEES, AND AMENDING THE NOTICE OF INVESTIGATION ABOUT TO OCCUR ENDANGERING PUBLIC HEALTH AND SAFETY DATED OCTOBER 27, 2000

On October 31, 2000, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Motion to Strike Notice of Prehearing Conference & Investigation Dated October 27, 2000 and to Require Notice and Opportunity to be Heard to Essential Employees; Memorandum in Support of Motion; Declaration of Gary W. Rodrigues; Exhibits 1-5; Certificate of Service with Hawaii Labor Relations Board (Board).

The notice in question was issued by the Board on October 27, 2000. It provides in relevant part as follows:

NOTICE OF PREHEARING CONFERENCE AND INVESTIGATION RELATING TO STRIKE ABOUT TO OCCUR ENDANGERING PUBLIC HEALTH OR SAFETY

Pursuant to Hawaii Revised Statutes (HRS) §§ 89-12(c) and 89-5(b)(5) and Hawaii Administrative Rules §§ 12-42-8(d) and 12-42-86, the Hawaii Labor Relations Board (Board) will conduct an investigation relating to a possible strike about to occur endangering public health or safety by Unit 01. The purpose of the investigation

is to determine whether a Unit 01 strike will present an imminent or present danger to the public's health or safety and to establish requirements in order to avoid any danger.

NOTICE IS HEREBY GIVEN that the Board will conduct a prehearing conference on November 3, 2000 at 9:00 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The purpose of the prehearing conference is to determine whether any agreements can be reached by the parties as to the issue of essential workers and the requirements that affect them. The Board will also determine the order of proceeding with the investigation and information needed by the Board in its investigation.

NOTICE IS ALSO GIVEN that the Board will conduct an investigation pursuant to HRS § 89-12(c)(1) beginning November 14, 2000 at 9:00 a.m. in the above-mentioned hearing room and continuing as necessary to establish requirements that include the designation of essential positions.

For purposes of this investigation, the parties shall file an original and two copies of all documents with the Board.

All parties have the right to appear in person or to be represented by counsel or other representative.

The UPW argues that the notice must be stricken because 1) the initiation of essential worker proceedings is premature; and 2) notice has not been served upon all essential workers.

The Board finds that UPW misunderstands the notice at issue. The Board has no intention of short circuiting the due process of Unit 01 members designated as essential workers to be given by the public employers after the Board has completed its inquiry. It was, and remains, the Board's intention to initiate this investigation exclusively pursuant to its authority under HRS § 89-5(b)(5).¹ But because the investigation will relate to the

¹(b) In addition to the powers and functions provided in other sections of this chapter, the board shall:

* * *

(5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions.

identification of essential positions in Bargaining Unit 01 (BU 01), the Board will utilize the provisions of HRS § 89-12(b)² and the rules promulgated pursuant thereto as substantive and procedural guidelines. If essential worker petitions are filed with the Board during the course of its investigation, the proceedings may then be consolidated into the investigation.³

Among the most critical duties of the Board is that of identifying essential workers. This involves making a determination as to whether an imminent or occurring strike would present an “imminent and present danger to the health and safety of the public and ... set[ting] requirements that must be complied with to remove any such danger,” George Ariyoshi, 2 HLRB 337, 340 (1979), including the designation of essential positions. HRS § 89-12(c)(1)(a). Such decisions could impact life or death; or they may wrongfully deprive workers of any right to strike.

The Board finds that the full and careful consideration of these matters as part of the BU 01 impasse proceedings – together with affording parties full and meaningful notice and opportunity to be heard – is “necessary to carry out properly its functions and powers.” HRS § 89-5(b)(5). Accordingly, it has initiated an investigation to identify probable essential positions. Any findings issued pursuant to this investigation, will not be binding for the purposes of HRS § 89-12(c), however they may be administratively noticed in the event that petitions are concurrently filed under that subsection.

There is sometimes a regrettable public perception that our state and county governments often do too little to insure the public’s safety and welfare. This is often accompanied by the belief that bureaucratic and legalistic red tape delay the making of necessary decisions and the provision of necessary services. For these reasons, the Board is initiating this investigation to ensure the health and safety of the public to the fullest degree

²HRS § 89-12(b) provides:

It shall be lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (1) the requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith, (2) the proceedings for the prevention of any prohibited practices have been exhausted, (3) sixty days have elapsed since the fact-finding board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

³On November 1, 2000, the first Petition Relating to Strike Occurring or Strike About to Occur Endangering Public Health or Safety was filed by Stephen K. Yamashiro, Mayor, County of Hawaii. On November 2, 2000, a Petition Relating to Strike Occurring or Strike About to Occur Endangering Public Health or Safety was filed by the Benjamin J. Cayetano, Governor, State of Hawaii.

possible in as fair a manner as possible. We trust that both the employers and the union join us in sharing these goals.

Since the investigation is initiated pursuant to HRS § 89-5(b)(5), the threshold requirements of HRS § 89-12(c) are not applicable. The notice and hearings therefore cannot be stricken on this ground. And since the investigations are not "contested cases" as defined in HRS § 91-1, notice to each potentially affected party is not strictly required.⁴

Accordingly, the UPW's motion to strike is denied and the Strike Notice of Prehearing Conference and Investigation Dated October 27, 2000 is amended to conform to this order.

DATED: Honolulu, Hawaii, November 3, 2000.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

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⁴UPW argues that due process requires that notice of the proceeding be provided all incumbents to essential positions. But as no essential positions have been identified, incumbents also cannot be identified, thus, it is impossible to notify them. Given this impossibility, we, as must their membership, trust that the union will responsibly serve as their lawful agents in this matter as they do in others.