

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. INV-01-01
)	
BENJAMIN J. CAYETANO, Governor,)	ORDER NO. 1954
State of Hawaii; JEREMY HARRIS, Mayor,)	
City and County of Honolulu; JAMES)	PREHEARING ORDER
APANA, Mayor, County of Maui; STEPHEN)	
YAMASHIRO, Mayor, County of Hawaii;)	
and MARYANNE KUSAKA, Mayor,)	
County of Kauai,)	
)	
Public Employers,)	
)	
and)	
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Exclusive)	
Representative.)	
)	

PREHEARING ORDER

1. Docket and Designation. In Order No. 1950, dated November 3, 2000, the Hawaii Labor Relations Board (Board) identified the following reasons for the opening of Docket No. INV-01-01.

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”, 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 1 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 or subsequently filed under that subsection.

On November 1 through 3, 2000, Petitions Relating to Strike Occurring or About to Occur Endangering Public Health and Safety (Essential Worker Petitions) were filed by STEPHEN YAMASHIRO, Mayor, County of Hawaii (S-01-50), and BENJAMIN J. CAYETANO, Governor, State of Hawaii (CAYETANO), for the Department of Accounting and General Services (DAGS) (S-01-51), and the Department of Agriculture (S-01-52), respectively.

At the November 3, 2000, prehearing conference for the instant docket, the Public Employers were directed to file any further such petitions by November 13, 2000. As of November 9, 2000, Essential Worker Petitions have since been received from MARYANNE KUSAKA, Mayor, County of Kauai (S-01-53); CAYETANO, for the Department of Health (DOH) (S-01-54), Hawaii State Libraries (S-01-55), Department of Hawaiian Home Lands (DHHL) (S-01-56), Department of Education (DOE) (S-01-66), and Department of Human Services (DHS) (S-01-67); and JEREMY HARRIS, Mayor, City and County of Honolulu (City and County) for the Department of Parks and Recreation (S-01-57), Honolulu Fire Department (S-01-58), Department of Emergency Services (S-01-59), Department of Transportation (S-01-60), Honolulu Police Department (S-01-61), Honolulu Board of Water Supply (S-01-62), Department of Enterprise Services (S-01-63), Department of Facilities Maintenance (S-01-64), and Department of Environmental Services (S-01-65). For the purposes of this prehearing order, hearings on each petition will be treated as separate to the degree practicable and each petitioning county and agency will be treated as a discreet petitioning employer unless otherwise expressly provided.

Each of the Essential Worker Petitions received, and any others filed prior to close of business on November 13, 2000, are hereby consolidated within Case No. INV-01-01. All filings will therefore be designated as Case No. INV-01-01/S-01-xx, as applicable. To the degree practicable, separate hearings will be held on each Essential Worker Petition, however the Notice of Investigation and hearing issued on October 27, 2000, and this Prehearing Order will be the only such notice issued for the purposes of Hawaii Administrative Rules (HAR) §§ 12-42-86 and 87.

Consideration of any Essential Worker Petitions received after November 13, 2000 will proceed only after the issuance of the Board’s Order in Case No. INV-01-01.

It is the Board’s intention to conclude this investigation prior to December 26, 2000, the conclusion of the cooling-off period in the dispute at issue. Ten days thereafter the

UPW may legally strike and public health and safety may be at risk. Accordingly, time is of the essence and proceedings will be expedited to the degree practicable and consonant with the public health and safety and any employee's right to strike.

2. Hearing Procedures. Generally, hearings will be conducted pursuant to the Board's Rules of Practice and Procedure, Subchapter I, Rules of General Applicability, H.A.R. §§ 12-42-1 to 12-42-9. However, unless exception must be made to accommodate extraordinary circumstances, for the purposes of the instant investigation, the following special rules of procedure will apply:

a. Answers and Replies. The UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) may file answers to any or all petitions filed with the Board prior to November 14, 2000. Any such answers shall be filed no later than November 21, 2000. Employer replies are not invited and will not be entertained.

b. Burden of Proof. Each petitioning employer will have the burden to prove by a preponderance of evidence that any identified essential position is necessary in order to avoid or remove any imminent or present danger to the health or safety of the public.

c. Representation. Each petitioning employer (each county, or department in the case of the City and County or State) shall designate an attorney or representative for the purposes of essential worker petition hearings. Only the designated representative or attorney may participate as counsel during hearings on any given employer's petition. This includes the making of motions or arguments thereon, and the presentation, examination or cross-examination of witnesses.

1) Upon motion, the Board may permit the calling of a witness to testify on matters affecting more than one petition or jurisdiction. In such circumstances, the Board may allow attorneys for other affected petitioning employers the opportunity to question the witness.

3. Disclosure and Discovery.

a. Except for hearings to be conducted during the week of November 13, 2000, the parties shall exchange their list of witnesses together with a summary of anticipated testimony at

least three working days prior to the commencement of any hearing. If prejudice can be demonstrated because of the absence of witness lists for the week of November 13, 2000, the Board may reopen such hearings to permit the recalling of witnesses or the calling of rebuttal witnesses.

- b. Except for hearings to be conducted during the week of November 13, 2000, each petitioning employer shall, five days before any hearing, file with the Board and UPW a table identifying each claimed essential position by class title, position number, workplace, whether designated essential by the Board in 1979 and 1984, the number of persons in the class, the total number of class members requested, the hours requested (including standby), and the incumbent(s) and/or probable designee. (See, Case No. INV-01-01/S-01-51 (DAGS), EXHIBIT 1, supplemented by incumbent(s) and/or probable designee.) Petitions filed for hearings to be conducted during the week of November 13, 2000 are already in substantial compliance except for incumbent(s) and/or probable designees. Petitioning employers for these hearings shall provide this information no later than November 17, 2000.
- c. Except for hearings to be conducted during the week of November 13, 2000, each petitioning employer shall, five days before any hearing, file with the Board and UPW a current organization chart of the department including portions which specifically relate to claimed essential worker positions, and a staffing roster of all non-Bargaining Unit (BU) 01 employees who have the minimum requirements to perform the work of claimed essential workers. For hearings to be conducted during the week of November 13, 2000, petitioning employers shall provide this information no later than November 17, 2000.
- d. Subpoenas and Subpoenas duces tecum will not be issued. However, any Board Member may require that the record be supplemented by testimony or documents and any party may initiate a request to that effect by letter, with copy to the petitioning employer or union. Any such letter must be received no later than five days before a hearing and the ex parte rule is waived for the purpose of explaining or supplementing any request.

- e. Except for hearings to be conducted during the week of November 13, 2000, the UPW shall, at least 24 hours prior to any hearing, inform the Board and opposing counsel of the number of BU 01 positions the UPW agrees are essential and the number of BU 01 positions the UPW is in good faith contesting. To the extent practicable, the numbers identified shall be broken down by worksite and baseyard. For hearings to be conducted during the week of November 13, 2000, this information shall be provided no later than November 17, 2000.

4. Witnesses and Examination.

- a. The petitioning employer shall proceed directly to the examination of witnesses without the necessity of an opening statement. The UPW may cross-examine any employer witness on relevant matters expressly raised during direct examination. At the conclusion of the Employer's case-in-chief, the UPW will proceed directly to the examination of its witnesses without the necessity of an opening statement. The petitioning employer may cross-examine any UPW witness on relevant matters expressly raised during direct examination. Unless permitted by the Board, direct and cross-examination of each witness shall be limited to 15 minutes, respectively. Redirect and re-cross examination will be permitted only under extraordinary circumstances demonstrated by offer of proof. Scope will be limited accordingly. Rebuttal witnesses will not be permitted except in extraordinary circumstances. The Board reserves the right to question each witness. Closing arguments, not to exceed ten minutes in length, will be permitted at the conclusion of witness examination.
- b. Examination of each witness will be preceded by an offer of proof summarizing the witness' proffered testimony. If opposing counsel waives cross-examination of the witness, the Board may direct that the testimony of the witness be submitted by affidavit. Any party may otherwise submit written testimony through affidavits or declarations provided that the declarant is made available for cross-examination.
- c. When hearings are conducted on a neighbor island, witnesses who live and work on that island may be called to testify on any petition filed as a part of this investigation. If, however, the hearings on a petition have been otherwise concluded, such

testimony will only be permitted if the witness was identified on the witness list exchanged for the applicable hearing.

5. Schedule. Absent amendment by the Board, hearings will be conducted pursuant the following schedule. If a hearing is not concluded in the allotted time, it will be continued on the immediately following weekend.

November 14-17, 20	DAGS, AGRICULTURE, DOH
November 21, 22	HEALTH SYSTEMS CORP.
November 24	LIBRARIES, HHL
November 27-29	CITY AND COUNTY OF HONOLULU (all dpts.)
December 4 and 6	HAWAII COUNTY
December 7,8	KAUAI COUNTY
December 11 and 13	MAUI COUNTY
December 14-15	STATE REMAINDER
December 19	JUDICIARY
December 20, 21	UH
December 22	DBEDT

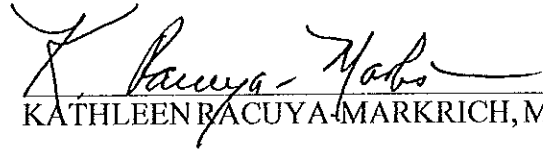
DATED: Honolulu, Hawaii, November 13, 2000.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member

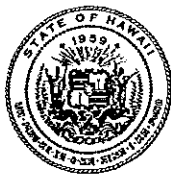
BENJAMIN J. CAYETANO, Governor, State of Hawaii; et al. and UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO
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KATHLEEN RACUYA-MARKRICH, Member

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BENJAMIN J. CAYETANO
GOVERNOR



BRIAN K. NAKAMURA, CHAIRPERSON
CHESTER C. KUNITAKE, BOARD MEMBER
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ACKNOWLEDGMENT OF SERVICE

This will acknowledge receipt of the following document(s):

PREHEARING ORDER BENJAMIN J. CAYETANO, et al. v. UPW

HLRB Case No.(s) INV-01-01

Sheila S. Tateishi
Print Name

Sheila S. Tateishi
Signature of Person Receiving Document

Title

11/13/00
Date