

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)
)
 BENJAMIN J. CAYETANO, Governor,)
 State of Hawaii; JEREMY HARRIS, Mayor,)
 City and County of Honolulu; JAMES)
 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.)

CASE NOS.: INV-01-01/S-01-50
 INV-01-01/S-01-51
 INV-01-01/S-01-52
 INV-01-01/S-01-53
 INV-01-01/S-01-54
 INV-01-01/S-01-55
 INV-01-01/S-01-56
 INV-01-01/S-01-57
 INV-01-01/S-01-58
 INV-01-01/S-01-59
 INV-01-01/S-01-60
 INV-01-01/S-01-61
 INV-01-01/S-01-62
 INV-01-01/S-01-63
 INV-01-01/S-01-64
 INV-01-01/S-01-65
 INV-01-01/S-01-66
 INV-01-01/S-01-67
 INV-01-01/S-01-68
 INV-01-01/S-01-69
 INV-01-01/S-01-70
 INV-01-01/S-01-71
 INV-01-01/S-01-72
 INV-01-01/S-01-73
 INV-01-01/S-01-74
 INV-01-01/S-01-75

ORDER NO. 1955

ORDER DENYING UPW'S
 MOTIONS FOR PARTICULARIZA-
 TION AND GRANTING, IN PART,
 MOTION FOR EXTENSIONS OF
 TIME TO FILE ANSWERS

ORDER DENYING UPW'S MOTIONS FOR PARTICULARIZATION AND
 GRANTING, IN PART, MOTION FOR EXTENSIONS OF TIME TO FILE ANSWERS

On November 1, 2000, Petitioner STEPHEN K. YAMASHIRO, Mayor of the County of Hawaii (YAMASHIRO), by and through his counsel, filed a Petition Relating to Strike Occurring or Strike About to Occur Endangering Public Health or Safety (Essential Worker Petition) with the Hawaii Labor Relations Board (Board). Petitioner requested the Board to conduct an investigation to determine whether a strike occurring or about to occur

presents an imminent or present danger to the health or safety to the public and to set requirements to avoid any such danger.

Similarly, on November 2, 2000, BENJAMIN J. CAYETANO, Governor, State of Hawaii (CAYETANO) filed Essential Worker Petitions for the Department of Accounting and General Services (DAGS) (S-01-51) and the Department of Agriculture (S-01-52), respectively. Thereafter, on November 3, 2000, MARYANNE KUSAKA, Mayor, County of Kauai filed an Essential Worker Petition (S-01-53). CAYETANO thereafter filed Essential Worker Petitions 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), Department of Human Services (DHS) (S-01-67), Department of Business, Economic Development and Tourism (DBEDT) (S-01-68), University of Hawaii (UH) (S-01-69), Department of Land and Natural Resources (DLNR) (S-01-70), Department of Public Safety (PSD) (S-01-71), Department of Transportation (DOT) (S-01-72), and the Judiciary (S-01-73). JEREMY HARRIS, Mayor, City and County of Honolulu (City and County) filed Essential Worker Petitions 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), Department of Environmental Services (S-01-65), and Department of Human Services (S-01-67). Hawaii Health Systems Corporation and JAMES APANA, Mayor, County of Maui also filed Essential Worker Petitions (S-01-74 and S-01-75, respectively).

On November 3, 2000, the Exclusive Representative UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Motion for Particularization of the Petition and an extension to file an answer. UPW's counsel states in an affidavit attached to the motion that the instant petition does not identify "essential positions" or "essential employees" as required by Hawaii Administrative Rules (HAR) § 12-42-82(c)(3)(A) and does not allege on what basis YAMASHIRO believes a Unit 01

strike in violation of Hawaii Revised Statutes (HRS) § 89-9(c) is about to occur or is in progress.¹ UPW thus contends that the petition is so vague and indefinite that the UPW cannot reasonably formulate an Answer to it and requests that YAMASHIRO identify the positions which he alleges to be “essential positions” and that the UPW be afforded at least ten working days in order to confer with the affected employees in order to formulate an Answer. The UPW thus requests an extension of 10 working days to file an Answer after YAMASHIRO identifies the essential positions or employees or 10 working days after the Board rules on the instant motion.

Thereafter, UPW filed similar Motions for Particularization and for Extensions of Time to File an Answer for each Essential Worker filed by the respective public employer. On November 9, 2000, CAYETANO filed oppositions to UPW’s motions in Case Nos. S-01-51, S-01-52, S-01-54, S-01-55, and S-01-56. Thereafter, on November 13, 2000, the UPW filed memoranda in support of its motions in each case. The UPW maintains that the petitioning public employers should identify the public employees it contends occupy essential position and that additional time is required to answer the respective petitions.

After reviewing the record and considering the arguments raised by the UPW, the Board makes the following findings of fact, conclusions of law and hereby denies the UPW’s motion for particularization and grants the UPW’s motion for extension of time to file an answer, in part.

FINDINGS OF FACT

1. YAMASHIRO is the Mayor of the County of Hawaii and a public employer, as defined in HRS § 89-2, of employees of Hawaii County who are included in bargaining unit 01.

¹The UPW also attached a copy of its Motion to Strike Notice of Prehearing Conference & Investigation Dated October 27, 2000, & to Require Notice & Opportunity to be Heard to Essential Employees filed in Case No. INV-01-01 on October 31, 2000. The Board takes administrative notice that the motion was denied in Order No. 1950, dated November 3, 2000.

2. CAYETANO is the Governor of the State of Hawaii and a public employer, as defined in HRS § 89-2, of employees of the State of Hawaii who are included in bargaining unit 01.

3. KUSAKA is the Mayor of the County of Kauai and a public employer, as defined in HRS § 89-2, of employees of Kauai County who are included in bargaining unit 01.

4. HARRIS is the Mayor of the City and County of Honolulu and a public employer, as defined in HRS § 89-2, of employees of the City and County of Honolulu who are included in bargaining unit 01.

5. APANA is the Mayor of the County of Maui and a public employer, as defined in HRS § 89-2, of employees of the Maui County who are included in bargaining unit 01.

6. The UPW is the exclusive representative, as defined in HRS § 89-2, of the employees included in bargaining unit 01.

7. The UPW filed its motions for particularization pursuant to HAR §§ 12-42-8(g)(3)(C) and 12-42-85.

8. HAR § 12-42-45² referring to Answers in prohibited practice cases filed pursuant to HRS §§ 89-13 and 89-14, and provides for the filing of a motion for particularization where the charge is believed to be vague and indefinite.

9. The instant petitions were filed pursuant to HRS § 89-12 regarding strikes.

²HAR §12-42-45(b) provides in part:

If the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, within five days after service of the complaint, file with the board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information.

10. HAR § 12-42-81³ provides that Subchapter 5 of the Board's administrative rules relate to proceedings relating to strikes pursuant to HRS § 89-12.

11. HAR § 12-42-85 provides as follows:

- (a) The public employee or employee organization against whom the petition is filed shall file with the board the original and five copies of a written answer, with proof of service upon all parties, within two days after service of the notice of investigation.
- (b) In extraordinary circumstances as determined by the board, the board may extend the time within which the answer shall be filed.

12. There is no authority or reference for the filing of a motion for particularization of a petition in Subchapter 5 of the Board's administrative rules.

13. The Board's Prehearing Order, dated November 13, 2000, provides, *inter alia*, that each petitioning employer shall identify each claimed essential position by class title, position number, and incumbent(s) and/or probable designee. Thus, the UPW's motion for particularization is addressed by the Board's Order.

14. As the UPW's instant motions were pending before the Board when the time for the UPW to file an answer elapsed, the Board finds that this is an extraordinary circumstance within the meaning of HAR § 12-42-85(b) and will permit the UPW five days from this order to file its answers to the respective petitions.

CONCLUSIONS OF LAW

1. There is no provision for the filing of a motion for particularization of a petition filed pursuant to HRS § 89-12 and HAR Subchapter 5.

³HAR § 12-42-81 sets forth the scope of Subchapter 5 of the Board's Procedures Relating to Strikes, Rights and Prohibitions Pursuant to HRS § 89-12 and provides:

This subchapter governs the general procedure relating to employee participation in a strike, to a strike about to occur or in progress which presents an imminent or present danger to the health or safety of the public, and to a strike declared or authorized by an employee organization pursuant to section 89-12, HRS.

2. The Board in its discretion determines that this is an extraordinary circumstance under HAR § 12-42-85(b) warranting an extension of time for the UPW to file an answer to the instant petition.

ORDER

The Board hereby denies the UPW's motion for particularization and grants the UPW's motion for an extension of time to file an answer, in part. The UPW shall file its answer to the instant petition within five days from the date of this order.

DATED: Honolulu, Hawaii, November 15, 2000.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

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