#### STATE OF HAWAII

### HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,

Complainant,

and

VIRGINIA LOWELL,<sup>1</sup> State Librarian, Department of Education, State of Hawaii,

Respondent.

CASE NO. CE-01-308

**ORDER NO. 2006** 

ORDER REQUIRING STATUS REPORT

#### ORDER REQUIRING STATUS REPORT

On March 15, 2001, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Request for Board Investigation into Non-Compliance with Stipulation and Order Dated September 18, 2000 which was entered into between the parties to resolve the instant complaint and approved by the Hawaii Labor Relations Board (Board) as Order No. 1929 (Stipulation and Order).

The UPW alleges that the State Librarian agreed in the Stipulation and Order to not contract out bargaining unit 01 work and that all work performed by Ameritech Library Services, Inc. (Ameritech) employees would be performed by the Electronic Services Support Section (ESSS) when the Interim Agreement<sup>2</sup> with Ameritech ran out on or about December 31, 2000. The UPW alleges that thereafter, it learned that the Hawaii State Library Systems had extended its agreement (for continued contracting out) to June 30, 2001 without prior notification to the UPW. The UPW requested the Board to investigate whether Respondent failed to comply with the Stipulation and Order and take appropriate action to enforce its terms.

<sup>&</sup>lt;sup>1</sup>Bartholomew A. Kane has been succeeded by Virginia Lowell as State Librarian.

<sup>&</sup>lt;sup>2</sup>An Interim Agreement for Automation Services was effective from April 14, 1999 to December 14, 1999. An Amended Interim Agreement for Automation Services was effective from December 15, 1999 to June 14, 2000. The 2<sup>nd</sup> Amended Interim Agreement for Automation Services was effective from June 15, 2000 to December 31, 2000. The "Interim Agreement" referred to in the Stipulation and Order is in fact the 2<sup>nd</sup> Amended Interim Agreement for Automation Services.

On March 21, 2001, a Board Conference was held at which the UPW was represented by Herbert R. Takahashi, Esq. and the Respondent VIRGINIA LOWELL, State Librarian, Department of Education, State of Hawaii (State Librarian) was represented by Deputy Attorney General Nelson Nabeta.

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The State Librarian contends the Stipulation and Order has not been violated because the Interim Agreement did not run out. She explains that because of delays experienced in completing the work under the Interim Agreement in force at the time, it was necessary to amend the Interim Agreement a third time with *epixtech*, *inc.* (*epixtech*), formerly known as Ameritech. The 3<sup>rd</sup> Amended Interim Agreement for Automation Services between the Hawaii State Public Library System and *epixtech* extends to June 30, 2001 was signed by the State Librarian on December 13, 2000.

## FINDINGS OF FACT

- 1. Board Order No. 1929 is a Stipulation and Order entered into between the UPW and State Librarian issued on September 18, 2000 to resolve the prohibited practice complaint filed in Case No. CE-01-308.
- 2. Paragraph 14 of the Stipulation and Order provides:

The Employer agrees to not contract out bargaining unit 01 work currently performed by unit 01 employees in accordance with the collective bargaining agreement and with chapter 89, HRS, and agrees that all work currently performed by Ameritech employees will be performed by ESSS staff when the Interim Agreement with Ameritech runs out on or about December 31, 2000.

- 3. In December 2000, the State Librarian decided to change the computer equipment lease agreement and purchase computer hardware, including servers, thus triggering the need to extend the 2<sup>nd</sup> Interim Agreement.
- 4. On December 13, 2000, the State Librarian executed a 3<sup>rd</sup> Amended Interim Agreement for Automation Services in order to have the work performed by *epixtech* employees that includes training of ESSS staff in bargaining unit 01 to allow a smooth transition. This extension, directly impacting compliance with the Stipulation and Order, was not communicated to the UPW or the Board.
- 5. The State Librarian extended the Interim Agreement for Automation Services with *epixtech* due to her decision to purchase computer equipment and to have

*epixtech* provide training to the Unit 01 workers after installation. There are six to ten technicians in the ESSS in bargaining unit 01 who have been undergoing informal training by, and job shadowing of, *epixtech* employees in compliance with the Interim Agreement. There has been no measurable loss of Unit 01 work due to the extension of the Interim Agreement.

6. The UPW accepts Respondent's representation that the extension of the Interim Agreement was necessary to accommodate Respondent's operational needs but expressed concerns that the extension was not communicated to the UPW and was not viewed by the Respondent as violative of terms of the Stipulation and Order. The UPW also seeks a date certain for compliance with the Stipulation and Order.

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- 7. The installation of the computer hardware and servers scheduled for April 16, 2001, is not the responsibility of the *epixtech* employees. However, the formal training of ESSS technicians in bargaining unit 01 by *epixtech* employees cannot begin until the installation of hardware is completed and successful.
- 8. Barring any unanticipated operational problems, the State Librarian expects the bargaining unit 01 work to be turned over to the ESSS technicians by June 30, 2001.

# **CONCLUSIONS OF LAW**

- 1. The Board retains jurisdiction over the enforcement of Board Order No. 1929.
- By extending the Interim Agreement from December 31, 2000 to June 30, 2001 without notice to the UPW, the Board concludes that an investigation is warranted.

### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board hereby orders the following:

The Board orders the State Librarian to file by June 1, 2001 a status report on the training of ESSS technicians by *epixtech* employees and whether the turnover of bargaining unit 01 work is on schedule for June 30, 2001.

The Board shall deem the State Librarian's failure to file a status report by June 1, 2001 or a failure to terminate the 3<sup>rd</sup> Amended Interim Agreement for Automation Services between the Hawaii State Public Library System and *epixtech* by June 30, 2001,

absent good cause, as a failure to comply with Paragraph 14 of Board Order No. 1929 within the meaning of Hawaii Administrative Rules (HAR) §12-42-51, and will proceed to the circuit court for enforcement as provided therein.

DATED: Honolulu, Hawaii, April 18, 2001

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

CHESTER C. KUNITAKE, Member

KATHLEEN KACUYA-MARKRICH, Member

Copies sent to:

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Herbert R. Takahashi, Esq. Nelson Nabeta, Deputy Attorney General Joyce Najita, IRC