

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.

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 3rd 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 2nd Interim Agreement.
4. On December 13, 2000, the State Librarian executed a 3rd 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.
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.
2. 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 3rd 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

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