

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of	)	Case No. CE-10-504
	)	
United Public Workers,	)	'02 DEC -5 A7:57
AFSCME, Local 646, AFL-CIO,	)	STIPULATION & ORDER
	)	HAWAII
Union,	)	LABOR RELATIONS BOARD
	)	
and	)	
	)	
Ted Sakai, Director,	)	
Department of Public Safety,	)	
State of Hawaii (2002-015),	)	
	)	
Respondent.	)	
	)	
	)	
	)	
	)	

(924:226)

STIPULATION & ORDER

COME NOW the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW) and Ted Sakai, Director, Department of Public Safety, State of Hawaii (Employer) by and through their undersigned counsel and hereby stipulate and agree to the following term and conditions to resolve the pending prohibited practice complaint in the above-referenced matter:

1. The UPW is an employee organization within the meaning of § 89-2, Hawaii Revised Statutes (HRS), and is the exclusive bargaining representative of institutional, health and correctional employees in bargaining unit 10.

2. Ted Sakai is the director of the Department of Public Safety, State of Hawaii, and is an employer within the meaning of § 89-2, HRS.

3. On and after January 1, 1973 to the present the UPW and the State of Hawaii (together with the several counties) have negotiated approximately twelve successive collective

bargaining agreements applicable to bargaining unit 10 employees.

4. In Section 17, the collective bargaining agreements establish a procedure for the examination, copying, and placement of personnel information in official personnel files and for the purging of "derogatory materials" as follows:

Section 17. Official Personnel File.

17.01 Examine and Copy.

17.01 a. The Employee and/or the Union shall by appointment, be permitted to examine the Employee's personnel file.

17.01 b. The Employee and or the Union shall, upon request, be given a copy of material in the file.

17.02 Placements and Explanation.

17.02 a. No material derogatory to an Employee shall be placed in the Employee's personnel file unless a copy is provided to the Employee.

17.02 b. The Employee shall be given an opportunity to submit explanatory remarks to be included in the file.

17.03 Derogatory and History.

17.03 a. An Employee and/or the Union may request that derogatory material not relevant to the Employee's employment be destroyed after two (2) years.

17.03 b. Derogatory material is defined as material that is detracting from the character or standing of an Employee, expressive of a low opinion of an Employee, degrading, belittling, contemptuous, disparaging, negative, uncomplimentary, and unflattering.

17.03 c. The Employer will determine whether the material is relevant and will decide whether the material will be retained or destroyed from the personnel file. The decision to retain the material shall include the reasons and shall be in writing.

17.03 d. The decision of the Employer shall be subject to Section 15. and processed at Step 2 of Section 15.

17.03 e. The Employee's employment history record shall not be altered.

5. On or about April 6, 1993 the UPW and the department of public safety resolved class action grievances

filed under Section 17 regarding the retention of personnel information in places other than in a singular personnel file by a stipulated arbitration decision and award issued by Wayne Yamasaki (Yamasaki Award).

6. The Yamasaki Award required the department of public safety to maintain at all times derogatory information on bargaining unit employees in a designated personnel file and not to retain secret files containing derogatory materials in violation of Section 17.

7. The Yamasaki Award was confirmed by the circuit court in S.P. No. 98-01640.

8. On October 27, 1994 the department of public safety was cited for civil contempt in S.P. No. 98-01640 for violations of the circuit court order confirming the Yamasaki Award because of the retention of derogatory materials in files maintained by the internal affairs unit outside of the designated personnel files of employees. The court ordered the department of public safety in paragraph 5 d. (1) to retain all completed internal affairs reports in a secure and confidential manner, and in paragraph 5 d. (2) to have all completed internal affairs reports subject to review and inspection by employees and the union and "be destroyed as provided in Section 17.03 of the unit 1 and 10 collective bargaining agreements."

9. On July 15, 2002 UPW filed a prohibited practice complaint against respondent alleging, inter alia, that the department of public safety had willfully violated Section 17.03 of the unit 10 agreement by failing to destroy "derogatory materials" more than two years old (and not relevant to employment) in internal affairs files kept outside of the official personnel file.

10. At a pre-hearing conference held on August 14, 2002 the parties stipulated and agreed to conduct a review and inspection of all internal affairs files of the department of public safety for the purpose of compliance with Section 17.03 of the unit 10 agreement.

11. On or about August 23, 2002 the parties jointly completed a review of all internal affairs reports retained by the department of public safety relating to the Waiawa Correctional Facility employees which verified that certain internal affairs reports containing "derogatory materials" on bargaining unit 10 employees which are more than two years old and which are not relevant to employment have been improperly retained by respondent in violation of Section 17.03 of the agreement. Exhibit C is a listing of cases pertaining to the Waiawa Correctional Facility employees.

12. The continued retention of the "derogatory materials" more than two years old which are not relevant to employment in internal affairs and other reports constitutes a violation of Section 17.03 of the unit 10 agreement and is a prohibited practice in violation of § 89-13 (a) (1) and (8), HRS.

13. On or about September 3, 2002 the Hawaii Labor Relations Board in Order No. 2119 approved a Stipulation and Order Granting Interlocutory Relief.

14. On September 4, 2002, William Hoshijo, Executive Director of the Hawaii Civil Rights Commission filed a petition for order to compel the Department of Public Safety to comply with its investigative subpoenas in S.P. No. 02-1-0404 VSM.

15. Subsequently, a Stipulation and Order was executed by the parties in S.P. No. 02-1-0404 VSM, a copy of


which is attached as Exhibit 1. The terms and conditions of said Stipulation and Order shall be incorporated herein by reference.


16. Employer shall comply with the terms and conditions of the Stipulation and Order (Exhibit 1) and shall provide written verification of compliance with paragraph 7 of the Stipulation and Order within ninety (90) days of the date said Stipulation and Order is approved by the court.

17. Compliance with provisions of this Stipulation and Order shall not pertain to active and ongoing internal investigations.


18. A violation of the terms and conditions of this Stipulation and Order shall constitute a prohibited practice by the Employer. It is agreed that the enforcement of the terms and provisions of this Stipulation and Order may be summarily determined by motion of the UPW and in the event of a violation the Employer shall pay attorney's fees and costs which may be incurred by the UPW.

Dated: Honolulu, Hawaii, November 27, 2002.

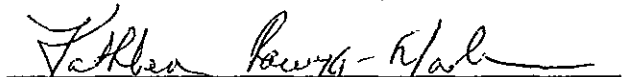
  
\_\_\_\_\_  
Sarah R. Hiramami  
Attorney for Respondent Ted Sakai

  
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Herbert R. Takahashi  
Attorney for Complainant UPW

Approved and So Ordered:

  
\_\_\_\_\_  
Brian K. Nakamura, Chair

  
\_\_\_\_\_  
Chester C. Kunitake, Member

  
\_\_\_\_\_  
Kathleen Racuya-Markrich, Member

ORDER NO. 2135

DATED: December 5, 2002

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2002 DEC -2 AM 8:15

R. HIGA  
CLERK

Of Counsel:  
TAKAHASHI, MASUI & VASCONCELLOS  
Attorneys at Law

HERBERT R. TAKAHASHI #1011-0  
547 Halekauwila Street, Room 206  
Honolulu, Hawaii 96813  
Telephone Number: 526-3003

Attorney for Defendant  
Governmental Employees  
Organization

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

William D. Hoshijo, in his	)	S.P. No. 02-1-0404 VSM
official capacity as the	)	
Executive Director of the	)	
Hawaii Civil Rights	)	
Commission,	)	STIPULATION AND ORDER
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Doe Governmental Entity; Doe	)	
Governmental Employees	)	
Organization (2002-015),	)	
	)	
Defendants.	)	
	)	

( )

STIPULATION AND ORDER

COME NOW, William D. Hoshijo, executive director of the Hawaii Civil Rights Commission (Director), the Department of Public Safety, State of Hawaii (Employer), and the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW or Union) by and through their undersigned counsel and hereby agree to the following terms and conditions to resolve any and all disputes regarding the enforcement of the April 17, 2002 first amended

**EXHIBIT** 1

investigative subpoena for production of documents issued by the Director to Employer in charge number 10244, 37B-AO-0204 now pending before the Hawaii Civil Rights Commission (Commission):

1. No later than thirty (30) days from the date this Stipulation and Order is approved by the Court the Employer shall provide to the Director and UPW a true and accurate copy of all records of disciplinary actions against female adult correctional officers of the Waiawa Correctional Facility during the period June 26, 1998 through June 26, 2000.

2. No later than sixty (60) days from the date this Stipulation and Order is approved by the Court the Employer shall provide to the Director and UPW a true and accurate copy of all records of disciplinary actions and disciplinary investigations conducted against male adult correctional officers of the Waiawa Correctional Facility during the period June 26, 1998 through June 26, 2000 for comparable or similar reasons or grounds for which female adult correctional officers were disciplined during the same period at the Waiawa Correctional Facility as indicated in the records produced pursuant to paragraph 1 of this Stipulation and Order.

3. No later than ninety (90) days from the date this Stipulation and Order is approved by the Court the Employer shall provide to UPW a true and accurate copy of any and all records of disciplinary actions taken against adult correctional officers of the Waiawa Correctional Facility during the period June 26, 1998 to June 26, 2000, or any other derogatory materials which Employer may use as part of its defense in charge number 10244, 37B-AO-0204 before the Commission.

4. All records produced by Employer pursuant to paragraphs 1, 2, and 3 of this Stipulation and Order shall be used solely for the purpose of the investigation and possible litigation of charge number 10244, 37B-AO-0204 before the

Commission against Employer and subsequent appeals. The records shall be maintained at all times on a strictly confidential basis, except as may be required to be introduced into evidence and/or to disclose the identity of witnesses and their testimony during a hearing of said charge before the Commission by the Director or Employer.

5. All records produced by Employer pursuant to paragraphs 1, 2, and 3 and/or made a part of the record of proceedings before the commission pursuant to paragraph 4 of this Stipulation and Order shall be purged and destroyed by the Employer and Director as soon as possible after final disposition of charge number 10244, 37B-AO-0204, by the commission. Notice of final disposition shall be provided by the Director to the Union and the Employer and either the Union or the Employer may seek appropriate judicial relief for compliance with this paragraph notwithstanding § 94-3, Hawaii Revised Statutes (HRS). In the event that a civil action is brought within ninety days after a right to sue letter is issued and a party requests records from the Director pursuant to § 368-4, HRS, the Director shall notify the Employer and the Union who may seek appropriate judicial relief regarding of the use, maintenance, and destruction of the requested records.

6. No adult correction officer at the Waiawa Correctional Facility whose records are produced and/or used pursuant to paragraphs 1, 2, 3, and 4 of this Stipulation and Order shall be subject to any adverse personnel action by the Employer as a result of the disclosure of information in said records and shall not be named as a defendant or respondent by the Director in proceedings before the Commission.

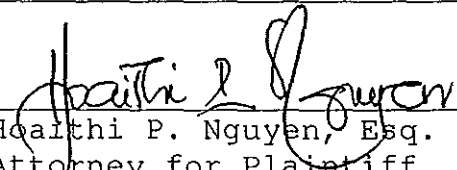
7. Except with respect to records produced by Employer pursuant to paragraphs 1, 2, and 3 of this Stipulation and Order, the Employer shall within ninety (90) days of this

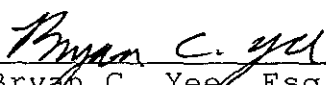


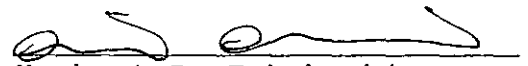
Stipulation and Order destroy all "derogatory materials" as that term is defined in Section 17 of the unit 10 collective bargaining agreement, more than two years old (from the date of this Stipulation and Order) from the records and files of bargaining unit 10 employees, including but not limited to materials retained by the internal affairs unit of the Employer, and shall thereafter comply with the requirements for destruction of derogatory materials under Section 17 of the unit 10 collective bargaining agreement and any order issued by the Hawaii Labor Relations Board in case CE-10-504.

8. It is expressly understood and agreed that the terms and provisions of this Stipulation and Order constitutes the entire agreement of the parties to resolve any and all disputes over the production of derogatory materials by Employer in charge number 10244, 37B-AO-0204 (which is the subject matter of a pending motion for enforcement in Court), and that appropriate judicial enforcement and relief shall be available for non-compliance with any of the terms and conditions herein.

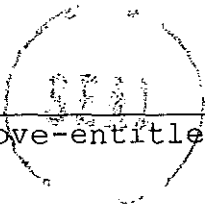
Dated: Honolulu, Hawaii, NOV 29 2002.

  
\_\_\_\_\_  
Hoaiti P. Nguyen, Esq.  
Attorney for Plaintiff  
William D. Hoshijo, Executive  
Director, Hawaii Civil Rights  
Commission

  
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Bryan C. Yee, Esq.  
Deputy Attorney General  
Attorney for Defendants  
Department of Public Safety

  
Herbert R. Takahashi  
Attorney for Defendants  
United Public Workers,  
AFSCME, Local 646, AFL-CIO

Approved and so Ordered: NOV 29 2002

VICTORIA S. MARKS   
Judge of the above-entitled Court