

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-01-500
	)	
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,	)	ORDER NO. 2145
	)	
Complainant,	)	ORDER GRANTING RESPONDENTS' MOTION TO STRIKE UPW'S THIRD SUPPLEMENTAL MEMORANDUM TO ITS NOVEMBER 5, 2002 MEMORAN- DUM OF FACT AND LAW AND PRO- POSED EXHIBIT 33
	)	
and	)	
	)	
FRANK J. DOYLE, Deputy Director, Depart- ment of Environmental Services, City and County of Honolulu; TIMOTHY E. STEINBERGER, Director, Department of Environmental Services, City and County of Honolulu; CHERYL OKUMA-SEPE, Director, Department of Human Resources, City and County of Honolulu; and JEREMY HARRIS, Mayor, City and County of Honolulu.	)	
	)	
Respondents.	)	

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ORDER GRANTING RESPONDENTS' MOTION TO STRIKE UPW'S  
THIRD SUPPLEMENTAL MEMORANDUM TO ITS NOVEMBER 5, 2002  
MEMORANDUM OF FACT AND LAW AND PROPOSED EXHIBIT 33

On December 27, 2002, Complainant filed UPW's Third Supplemental Memorandum to its November 5, 2002 Memorandum of Fact and Law; Exhibit 33 on the question of Article XIII Section 2 of the State Constitution with the Hawaii Labor Relations Board (Board). Exhibit 33 is a letter from Respondent Department of Environmental Services Director TIMOTHY E. STEINBERGER (STEINBERGER) to Peter L. Trask (Trask), Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO's (UPW) Administrator, dated December 13, 2002 where STEINBERGER proposed using the route maps submitted to UPW on October 3, 2001 for the 2003 route selection. In addition, STEINBERGER notified the UPW that he was evaluating several changes, inter alia, adjusting the boundary between Waialua and Laie due to workload and privatizing island-wide front loader service as well as the remaining manual collection routes at the Pearl City baseyard in accordance with Act 90 (2001).

On December 31, 2002, Respondents filed a motion to strike UPW's Third Supplemental Memorandum and Exhibit 33 from the record. Respondents' counsel states in an affidavit attached to the motion that the hearings were completed on July 5, 2002 and after filing post-hearing briefs, the Board authorized the parties to file supplemental

memoranda related to Act 90 and county privatization, preemption, and their effect on the Board's jurisdiction no later than October 31, 2002. Thereafter the parties stipulated to extend the briefing deadline to November 27, 2002. On December 6, 2002, the UPW filed a Second Supplemental Memorandum which Respondents did not object to because the information was not substantive but consisted of a recent appellate court decision. Respondents, however, objected to UPW's Third Supplemental Memorandum and Exhibit 33 because, unlike UPW's Second Supplemental Memorandum and Exhibit 32, it allegedly consisted of non-relevant hearsay which "UPW is attempting to inject into the proceedings as substantive evidence long after the record has been closed."

On January 2, 2003, UPW filed a Statement of Opposition to Respondents' Motion to Strike Exhibit 33. The UPW, argues, *inter alia*, that STEINBERGER's letter, Exhibit 33, is relevant to the Act 90 issue because it refers to privatizing services in accordance with Act 90. In addition, the UPW contends that under Hawaii law, administrative agencies are allowed to admit hearsay evidence. *Shorba v. Board of Educ.*, 59 Haw. 388, 397, 583 P.2d 313 (1978). The UPW also contends that the Board's rules, Hawaii Administrative Rules § 12-42-8(g)(8), permit the admission of documentary evidence which has been authorized by one of the parties in the case.

Based upon a review of the record and the arguments submitted by the parties, the Board agrees that Exhibit 33 must be stricken because it was submitted after the evidentiary record was closed in July 2002. Thus, the Board grants Respondents' motion to strike the UPW's Third Supplemental Memorandum and Exhibit 33 from the record.

DATED: Honolulu, Hawaii, January 7, 2003.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
CHESTER C. KUNITAKE, Member

  
KATHLEEN RACUYA-MARKRICH, Member

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