

On September 10, 2003, Complainants UPW and HGEA filed a First Amended Prohibited Practice Complaint. The amendment deleted Unit 06 from the complaint and added PATRICIA HAMAMOTO, Superintendent of Education (HAMAMOTO) and the BOARD OF EDUCATION, State of Hawaii (BOE) as Respondents.

On October 3, 2003, Respondents WATANABE and LINGLE filed Respondents KATHLEEN WATANABE, Director, Department of Human Resources Development, State of Hawaii; LINDA LINGLE, Governor, State of Hawaii's Motion to Dismiss. WATANABE and LINGLE argue that the Board lacks jurisdiction over the complaint; Complainant's allegations fail to state claims upon which relief can be granted; and the Board should decline jurisdiction because Complainants failed to exhaust contractual remedies.

On October 3, 2003, Respondents HAMAMOTO and BOE joined in WATANABE and LINGLE's motion.

On December 12, 2003, the Board held a hearing on the motion to dismiss. The parties were afforded full opportunity to argue their respective positions. After a thorough review of the record in this case, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The UPW is an employee organization and the exclusive representative, as provided under HRS § 89-2, of employees in bargaining unit 01, nonsupervisory employees in blue collar positions.
2. The HGEA is an employee organization and the exclusive representative, as provided under HRS § 89-2, of employees in bargaining units 02, supervisory employees in blue collar positions, 03, nonsupervisory employees in white collar positions, and 04, supervisory employees in white collar positions.
3. WATANABE, LINGLE, HAMAMOTO and the BOE (collectively Employer) are public employers or the representatives of a public employer within the meaning of HRS § 89-2.
4. Complainants and Respondents at all times relevant were parties to collective bargaining agreements covering employees in bargaining units 01, 02, 03, and 04.
5. Classified employees of the DOE covered by these collective bargaining agreements have historically and customarily been part of the "merit" or "civil service" system of the State of Hawaii. There are approximately 150 DOE positions which are in the PCS and covered by such civil service system.

6. By letter dated June 9, 2003, WATANABE communicated to HAMAMOTO DHRD's position, that based on PCS law, PCS employees are exempt from the civil service laws. The letter states, in part, as follows:

This letter is to officially document the Department of Human Resources Development's position with respect to the status of Public Charter School employees. The position of the Department of Human Resources Development (HRD) is that, based on the Public Charter School Law, employees of a Public Charter School do not have civil service status. The Public Charter School Law exempts public charter schools from all laws, except collective bargaining, discriminatory practices, and health and safety requirements. (Section 302A-1184, Hawaii Revised Statutes.) Therefore, Public Charter School employees are not subject to the Civil Service Laws. (Chapter 76, Hawaii Revised Statutes.)

Consequently, when a DOE public school converts to a Public Charter School, the DOE civil service (classified) employees who become Public Charter School employees do not retain their civil service status.

Similarly, when a Public Charter School wants to hire employees, the Public Charter School is not required to hire its employees through the civil service process. This is because the Public Charter School employees are not being appointed into the civil service system.

7. By letter dated June 12, 2003, WATANABE communicated to HAMAMOTO to have the DOE convert all PCS positions to non-civil service status by June 30, 2003. WATANABE stated, in part, as follows:

Based on our position that Public Charter School employees are not civil service, we are hereby requesting that the DOE convert all Public Charter School positions to reflect the fact that these positions do not have any civil service status. We are also asking that the status of the incumbent in these Public Charter School positions be changed to reflect the fact that the incumbent does not have any civil service status. We are asking that this conversion of the position and the incumbent's status be done by June 30, 2003, which is the NTE date set for a lot of these positions.

8. By memorandum dated July 8, 2003, HAMAMOTO communicated DHRD's position to all PCS administrators with concerns and instructions to inform employees of such. HAMAMOTO stated as follows:

We have been informed by the Department of Human Resources Development (DHRD), the State's governing agency for personnel matters, that it has reviewed the status of the Public Charter School (PCS) positions and employees and has determined that these positions should not be civil service positions nor their incumbents civil service members.

Consequently, DHRD has informed the Department that certified lists of eligible applicants will not be provided, and civil service appointments may not be made to fill PCS positions. DHRD had requested that all positions and incumbents be changed to exempt status by June 30, 2003.

Because of the serious implications to existing incumbent employees, we have requested and obtained a 90-day extension of this deadline. The Board of Education has also requested for a formal written opinion in the matter from the Department of the Attorney General. Most PCS positions are filled by civil service employees serving temporary appointment. Additionally, Lanikai and Waialae Elementary conversion schools have permanent positions which were established prior to the conversion and are occupied by permanent civil service employees.

While the Department works to resolve pending issues, current incumbents may continue their employment. The Office of Human Resources (OHR) is working with the Public Charter Schools Program Office to establish replacement exempt positions for PCS positions that are vacant, including those currently filled by 89-day non-civil service appointees. If any vacant PCS position must be filled immediately, an 89-day non-civil service appointment may be made until the replacement exempt position is established.

Please inform your employees about this recent development to ensure that they will be prepared for the change in their employment status. OHR will keep you informed with additional or new information. Your understanding and cooperation during these efforts will be greatly appreciated.

9. At the instant hearing, DHRD informed the parties that implementation of WATANABE's directive would be deferred until at least June 30, 2004. The DOE committed to communicating this deferral to the affected employees.
10. Complainants were not informed or consulted on the communications between DHRD and the DOE.

DISCUSSION

In the instant motion to dismiss, Respondents argue for dismissal on the basis of lack of subject matter jurisdiction, the alleged failure to exhaust contractual remedies, and the alleged failure to state a claim upon which relief can be granted. Complainants argue that dismissal is not warranted because, the subject matter of "merit principles" in HRS Chapter 76 are incorporated in Chapter 89; that deference to contractual remedies is inappropriate due to superceding policy considerations; and, that the complaint states an appropriate claim for relief.

Motion to Dismiss

The Employer contends that the Board should dismiss the instant complaint on the grounds that these allegations fail to state a claim upon which relief can be granted and that the Board lacks subject matter jurisdiction of this complaint. The Board will consider the grounds in conjunction since a viable claim necessarily invokes the proper jurisdiction of the Board, and relief cannot be granted for subjects falling outside of the Board's jurisdiction.

"The purpose of Rule 12(b)(6) is to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true." Mayer v. Mylod, 988 F.2d 635, 638 (6th Cir. 1993). A dismissal is clearly warranted under Rule 12(b)(6), HRCP, if the claim is clearly without merit due to "an absence of law to support a claim of the sort made, or of facts sufficient to make a good claim, or of disclosure of some fact which will necessarily defeat the claim." Rosa v. CWJ Contractors, Ltd., 4 Haw.App. 210, 215, 664 P.2d 745 (1983) (internal quotes and citation omitted). Such a dismissal is generally disfavored but warranted "if it appears beyond a reasonable doubt that the plaintiff can prove no set of facts entitling a plaintiff to relief." Bertelmann v. Taas Associates, 69 Haw. 95, 99, 735 P.2d 930 (1987). While the allegations in the complaint are deemed true, the court is not required to accept conclusory allegations on the legal effect of the events alleged. Marsland v. Pang, 5 Haw.App. 463, 474, 701 P.2d 175 (1985).

As the Board has considered matters outside of the pleadings, i.e., the affidavit, declarations, and exhibits submitted by the Complainants and Respondents, the Board will treat the instant motion as a motion for summary judgment. See, Rule 12(b)(6), HRCP; Hall v. State, 7 Haw.App. 274, 756 P.2d 1048 (1988) (When matters outside the pleadings are considered, an order of dismissal reviewed as one of granting summary judgment.) Summary

judgment is proper where the moving party demonstrates that there are no issues of material fact in dispute and, therefore it is entitled to judgment as a matter of law. State of Hawaii Organization of Police Officers (SHOPO) v. Society of Professional Journalists-University of Hawaii Chapter, 83 Hawaii 387, 389, 927 P.2d 386 (1996). A fact is material if proof of that fact would have the effect of establishing or refuting the essential elements of a cause of action or defense asserted by the parties. Konno v. County of Hawaii, 85 Hawaii 61, 937 P.2d 397 (1997). Accordingly, the controlling inquiry is whether there is no genuine issue of material fact and the case can be decided solely as a matter of law. Kajiya v. Department of Water Supply, 2 Haw.App. 221, 629 P.2d 635 (1981).

Respondents argue that the subject matter at issue relates solely to their position that the Public Charter School Law, HRS § 302A-1184,¹ exempts charter schools from the

¹HRS § 302A-1184 provides in part:

New century charter schools; exemptions. Schools designated as new century charter schools shall be exempt from all applicable state laws, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
 - (A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decisionmaking;
 - (B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items;
 - (C) The agreements shall be funded from the current allocation or other sources of revenue received by the new century charter school; and
 - (D) These agreements may differ from the master contracts;
- (2) Discriminatory practices under section 378-2; and
- (3) Health and safety requirements.

New century charter schools shall be exempt from the state procurement code, chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. However, where possible, the new century charter school is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the new century charter school to any other provision of chapter 103D. New century charter schools shall account for funds expended for the procurement of goods

Civil Service Law, HRS Chapter 76. Respondents conclude that since the alleged wrongful action is the DHRD's and DOE's interpretation of the Charter School exemption from all applicable laws, these interpretations of Chapters 302A and 76 are outside the scope of the Board's jurisdiction.

Complainant Unions respond that the inclusion of merit principles as a part of the fundamental policy² of the law governing public employee collective bargaining

and services, and this accounting shall be available to the public. In addition, notwithstanding any law to the contrary, as public schools and entities of the State, new century public charter schools shall not bring suit against any other entity or agency of the State of Hawaii.

²HRS § 89-1 provides, in part:

(b) The legislature declares that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are best effectuated by:

- (1) Recognizing the right of public employees to organize for the purpose of collective bargaining;
- (2) Requiring public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other conditions of employment, while, at the same time, maintaining the merit principle pursuant to section 76-1; and
- (3) Creating a labor relations board to administer the provisions of chapters 89 and 377.

In addition, HRS § 89-5 provides in part:

§ 89-5 Hawaii labor relations board. (a) There is created a Hawaii labor relations board to ensure that collective bargaining is conducted in accordance with this chapter and that the merit principle under section 76-1 is maintained.

* * *

(i) In addition to the powers and functions provided in other sections of this chapter, the board shall:

* * *

- (3) Resolve controversies under this chapter;
- (4) Conduct proceedings on complaints of prohibited practices by employers, employees, and employee

incorporates by reference the jurisdiction to determine the propriety of the interpretation and application of civil service law as applied to parties to collective bargaining agreements. Complainants argue that the interpretation and promised implementation at issue amounts to unilateral stripping of merit principle protection from the unionized civil servants employed by charter schools. This withdrawal of the merit principles they argue violates the statutory mandate of their preservation in connection with collective bargaining contained in Chapter 89.

The United States Supreme Court in First National Maintenance Corp. v. N.L.R.B., 452 U.S. 666, 101 S.Ct. 2573, 69 L.Ed.2d 318 (1981), recognized and enforced a distinction between an employer's duty to bargain about decisions protected by management rights and the effects of protected decisions when they impact the terms and conditions of employment of workers covered by a collective bargaining agreement. The Court concluded that even though a management decision might not be a mandatory subject of bargaining, if the effects of the decision have a material and substantial impact on the terms and conditions of employment,

[t]here is no dispute that the union must be given a significant opportunity to bargain about these matters of job security as part of the "effects" bargaining mandated by § 8(a)(5) [of the National Labor Relations Act]. See e.g., NLRB v. Royal Plating & Polishing Co., 350 F.2d 191, 196; NLRB v. Adams Dairy, Inc., 350 F.2d 108 (CA 8 1965) cert. denied, 382 U.S. 1011, 86 S.Ct. 619, 15 L.Ed. 256 (1966). And under § 8(a)(5), bargaining over the effects of a decision must be conducted in a meaningful manner and at a meaningful time, and the [National Labor Relations] Board may impose sanctions to insure its adequacy.

Id., at 681-82. This Board has similarly "recognized that secondary impacts of managerial decisions on conditions of employment, if substantial, must be negotiated before the

organizations and take such actions with respect thereto as it deems necessary and proper;

And, HRS § 89-9 refers to the scope of negotiations; consultation and provides in subsection (d) as follows:

Excluded from the subjects of negotiations are matters of classification, reclassification, benefits of but not contributions to the Hawaii public employees health fund, recruitment, examination, initial pricing, and retirement benefits except as provided in section 88-8(h). The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1....

management decision may be implemented.” United Public Workers, AFSCME, Local 646, AFL-CIO, 5 HLRB 239, 260 (1994), rev’d, in part, on other grounds; University of Hawaii Professional Assembly, 3 HPERB 562 (1984); see also, Linda Crockett Lingle, 5 HLRB 650 (1996).

The Board concludes that the duty to negotiate the impacts or effects of a unilateral management decision is applicable to the disposition of the instant motion to dismiss and compels its denial.

The Board agrees with management’s argument that the interpretation of the scope of Chapter 76 through the exemption provision of HRS § 302A-1184 is the exclusive province of the Director of Human Resources Development, HRS §§ 76-12 and 13 (duties of director), and the administrative appeals mechanism designated by statute, HRS § 76-14 (merit appeals board, duties and jurisdiction.) So long as such a decision is made apart from the collective bargaining process³ it is outside of the jurisdiction of this Board. William Blanchard, 4 HLRB 350, 382 (1988) (“Issues relating to civil service status, salary schedules, punitive damages, and office personnel and management style are all matters outside the Board’s jurisdiction.”) Thus, insofar as the Unions seek to have the Board substitute its judgment for that of the DHRD Director, any such claim must be dismissed as being beyond the jurisdiction of the Board.

But while the Director’s power over matters of civil service classification may be beyond the jurisdiction of the Board, when the implementation of such powers will have a substantial impact upon the terms and conditions of employment, Chapter 89 imposes a duty upon the employers to engage in good faith negotiations with affected exclusive representatives before implementation can occur.

In the instant proceeding, the Unions allege two levels of substantial impact upon the terms and conditions of employment. The first level is the deprivation of civil service rights in themselves. The second level is the degree to which the deprivation or derogation of these rights would result in the violation or abrogation of contractual rights contained in applicable collective bargaining agreements which incorporate, are dependent upon, or interpret merit principles contained in Chapter 76.

³Recognition of the Director’s jurisdiction does not deprive the Board of all power regarding the enforcement of merit principles embodied in HRS §76-1 and incorporated in Chapter 89. Rather the Board interprets Chapter 89 to require that right to engage in collective bargaining occurs within the parameters of merit principles. The explicit directive of the legislature that “representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1,” HRS 89-9(d), forbids any employer, including the Director, and the Unions from contravening merit principles, and no deference will be given to the interpretation of the Director in determining whether any such challenged agreement violated Chapter 89.

The Unions assert that substantial impacts occur on both levels in conditions of employment and contractual rights regarding wages and benefits, job security, disciplinary procedures, promotions, transfers, work opportunity, layoffs, and the size and composition of bargaining units. The Employer asserts that no such substantial impacts can be found because they have not engaged in implementation so that any such effects are speculative.

The Board concludes that the question of whether the effects of the Employer's decision to exclude charter school employees from the provisions of Chapter 76 constitute substantial impacts on the terms and conditions of employment is a material issue of fact that precludes the granting of summary judgment for either party. Similarly, even if there were no material issue regarding the substantiality of impacts, material issues of fact would exist regarding any wilful violation of the duty to bargain in good faith that arises.

To adopt the Employer's argument that a conclusion of any substantial impact and its corresponding bargaining obligation has to await actual implementation would absolutely undermine the purpose of the effects bargaining obligation which is to require good faith negotiations before any deleterious or violative impacts occur.

Also, in University of Hawaii Professional Assembly, 4 HLRB 689 (1990), the union filed prohibited practice charges against the Board of Regents (BOR) alleging that it was required to bargain regarding an antidrug policy statement. The Board found in favor of the BOR, ruling that the policy statement was not bargainable because it merely complied with a federal statute and the BOR had not yet attempted to implement the policy statement. The Board agreed with the BOR in that case that "actual implementation of the apparatus required for the execution of the mandates of the [Drug-Free Workplace Act], as opposed to the mere publishing or promulgation of those mandates in policy statements, may give rise to the duty to bargain." Id., at 712. The union appealed to the Circuit Court which affirmed the Board. Upon the union's further appeal, the Hawaii Supreme Court in University of Hawai'i Prof. Assem. v. Tomasu, 79 Hawai'i 154, 162-63, 900 P.2d 161 (1995) considered the issue of implementation and reversed the Board, stating:

In the present case, the BOR asserts that because it has not yet attempted to implement the apparatus to effectuate the policy statement, the policy statement alone does not have an effect on wages, hours, or working conditions and therefore is not subject to the duty to bargain. We disagree.

The Court thereupon held that the union did not have to wait until the BOR attempted an implementation of an apparatus to effectuate the policy. Because implementation would affect bargainable topics, the union could initiate bargaining at any time on the such topics and the Court found that the BOR's duty to bargain was triggered by the union's mid-term demand.

The legislature, in an analogous circumstance, unambiguously deferred the impact of its civil service reforms until effected employee rights could be assured:

SECTION 149. The provisions of sections 131, 132, 133, 134, 135, and 136 of this Act notwithstanding, the rights, benefits, and privileges currently enjoyed by civil servants under chapters 77, 79, 80, 81, 82, and 83 shall not be diminished or impaired, unless comparable rights, benefits, and privileges are either negotiated into collective bargaining agreements or established by executive order for civil servants. Act 235, SLH 2000.

Effectuated collective bargaining rights of charter school employees deserve no less.

Grievance Arbitration Deferral

The Employer also argues that dismissal of the claims of contractual violations must be deferred to the grievance process contained in the collective bargaining agreement. Generally, such alleged violations are adjudicated through the bargaining agreement's grievance process. And Chapter 89 expressly authorizes parties to a collective bargaining agreement to establish a "grievance procedure culminating in a final and binding decision . . ." (Emphasis added.) HRS § 89-10.8(a). Chapter 89, however, also provides the Board with jurisdiction over alleged contractual violations by either an employer or exclusive representative via its authority to adjudicate prohibited practices complaints. HRS § 89-13(a)(8) and HRS § 89-13(b)(5). This jurisdictional dilemma is usually resolved by the Board's deferral to the arbitration process. ("It shall be the policy of this Board to attempt to foster the peaceful settlement of disputes, wherever appropriate, and application by deferral of matters concerning contractual interpretation to the arbitration process agreed to by the parties." Hawaii State Teachers Association, 1 HPERB 253, 261 (1972) (HSTA). Thus the Board has deferred to the contractual grievance process except where there exists countervailing policy considerations, or the Union's failure to satisfy its duty of fair representation effectively deprives the claimant access to the grievance process. See e.g., HSTA, supra (arbitration fruitless and parties waive arbitration); Hawaii State Teachers Association, 1 HPERB 442 (1974) (speed); Hawaii Government Employees' Association, Local 152, HGEA AFSCME, AFL-CIO, 1 HPERB 641 (1977) (subject not covered by contract).

It is true in the instant case that the alleged breaches of contract might be addressed through the grievance process. But the Board herein declines to defer jurisdiction because this case presents superceding policy considerations. The Unions argue that the stripping of civil service protections and systems will undermine or abrogate a plethora of contractual rights which are either predicated or built upon the merit system. A multiplicity of grievances to adjudicate these alleged contractual violations makes neither administrative nor economic sense. Further the possibility of different or inconsistent outcomes might leave a confusing vacuum in the place of administrative and legal guidance.

The Employer further argues that any alleged contractual violations are not ripe for consideration because it has done nothing to interpret or enforce allegedly violative contractual implications. The Unions contend the merit principles embodied in civil service are so integrated into collective bargaining agreements that the elimination of civil service protections violate the provisions of the agreements. The Board concludes that this represents a colorable claim of harm and presents a mixed question of law and material fact. Thus, both dismissal and summary judgment are precluded.

The Board's retention of jurisdiction over contractual claims in no way restricts or reduces any duty to negotiate in good faith regarding the effects of the Director's interpretation of Chapter 76. Indeed, as discussed above, such bargaining is compelled if the implementation of the decision would have a substantial impact on the terms and conditions of employment embodied in collective bargaining agreements. If, in the course of bargaining, the parties come to agreement regarding terms of implementation which do not offend or deny contractual obligations such "joint decision-making," HRS § 89-1, would be consistent with the principles and purposes of Chapter 89, and moot this case.

CONCLUSIONS OF LAW

1. The Hawaii Labor Relations Board has jurisdiction over this matter pursuant to HRS §§ 89-5 and 89-14.
2. A dismissal of a claim is warranted under HRCP Rule 12(b)(6) if the claim is clearly without merit due to an absence of law to support a claim of the sort made, or of facts sufficient to make a good claim, or of disclosure of some fact which will necessarily defeat the claim.
3. The Board agrees with management's argument that the interpretation of the scope of Chapter 76 through the exemption provision of HRS § 302A-1184 is the exclusive province of the Director of Human Resources Development, HRS §§ 76-12 and 13 (duties of director), and the administrative appeals mechanism designated by statute, HRS § 76-14 (merit appeals board, duties and jurisdiction). Insofar as the Unions seek to have the Board substitute its judgment for that of the Director of Human Resources Development, such claim is dismissed as being beyond the jurisdiction of the Board.
4. The Board concludes that the question of whether the effects of the Employer's decision to exclude charter school employees from the provisions of Chapter 76 constitute substantial impacts on the terms and conditions of employment is a material issue of fact that precludes the granting of summary judgment for either party. Similarly, even if there were no material issue regarding the substantiality of impacts, material issues of fact would exist regarding any violation of the duty to bargain in good faith that arises.

5. Generally, while alleged violations of the collective bargaining agreement are adjudicated through the grievance process, the Board declines to defer jurisdiction over the alleged contract violations because of superceding policy considerations.
6. The Board concludes that the alleged contractual violations are ripe for consideration because the Unions present a colorable claim of harm by contending that the merit principles embodied in civil service are so integrated into collective bargaining agreements that the elimination of civil service protections violate the provisions. To adopt the Employer's argument that a conclusion of any substantial impact and its corresponding bargaining obligation has to await actual implementation would absolutely undermine the purpose of the effects bargaining obligation which is to require good faith negotiations before any deleterious or violative impacts occur.

ORDER

Based on the foregoing, the Board hereby grants Respondents' motion to dismiss, in part, and denies the motion, in part. The Board also denies Complainants' cross-motion for summary judgment.

NOTICE OF PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that the Board, pursuant to HRS §§ 89-5(i)(4) and (i)(5) and Hawaii Administrative Rules (HAR) § 12-42-47, will conduct a prehearing conference on the above-entitled prohibited practice complaint on February 13, 2004 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The purpose of the prehearing conference is to arrive at a settlement or clarification of issues, to identify and exchange witness and exhibit lists, if any, and to the extent possible, reach an agreement on facts, matters or procedures which will facilitate and expedite the hearing or adjudication of the issues presented. The parties may file a Prehearing Statement or Amended Prehearing Statement, as appropriate, which addresses the foregoing matters with the Board two days prior to the prehearing conference, if necessary.

NOTICE IS ALSO GIVEN that the Board, pursuant to HRS §§ 89-5(i)(4), 89-5(i)(5), and 89-14, and HAR § 12-42-8(g), will conduct a hearing on the instant complaint on March 15, 2004 at 9:30 a.m. in the above-mentioned hearing room. The purpose of the hearing is to receive evidence and arguments on whether Respondents committed prohibited practices as alleged by the Complainants.

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, et al. v. KATHLEEN
WATANABE, et al.

CASE NOS.: CE-01-537a, CE-02-537b, CE-03-537c, CE-04-537d

ORDER NO. 2231

ORDER DENYING, IN PART, AND GRANTING, IN PART, RESPONDENTS' MOTION TO
DISMISS AND DENYING, COMPLAINANT'S CROSS-MOTION FOR SUMMARY
JUDGMENT; AND NOTICE OF PREHEARING CONFERENCE AND HEARING ON FIRST
AMENDED PROHIBITED PRACTICE COMPLAINT

DATED: Honolulu, Hawaii, February 2, 2004.

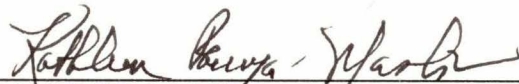
HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Herbert R. Takahashi, Esq.
Jonathan A. Swanson, Deputy Attorney General
Kathryn Jean Taniguchi, Deputy Attorney General
Joyce Najita, IRC