

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

2006 OCT -4 PM 12:52

In the Matter of)
)
 United Public Workers,)
 AFSCME, Local 646, AFL-CIO,)
)
 Complainant,)
)
 and)
)
 Kenneth Nakamatsu, Director,)
 Department of Human)
 Resources, City and County of)
 Honolulu (2006-023),)
)
 Respondent.)
)
)

Case No. CE-01-624a
 CE-10-624b

HAWAII LABOR
 RELATIONS BOARD

STIPULATION AND ORDER

()

STIPULATION AND ORDER

COMES NOW the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW or Union) and Kenneth Nakamatsu (Nakamatsu or Respondent) by and through their undersigned counsel and hereby stipulate and agree to the following:

1. The UPW is at all relevant times herein an employee organization and the exclusive representative, as provided in Hawaii Revised Statutes (HRS) Section 89-2, of blue collar, non-supervisory employees in bargaining unit 1 and institutional, health and correctional workers in bargaining unit 10.

2. Kenneth Nakamatsu is the director of the Department of Human Resources, City and County of Honolulu and is a public employer within the meaning of HRS Section 89-2.

3. On March 8, 2006 the UPW filed class action grievances in case numbers CU-06-05 and CU-06-06 with the City and County of Honolulu (City or Employer) alleging violations of Sections 1, 11, 14, 37, 58, and 64 of the unit 1 and 10 agreements respectively.

4. On March 8, 2006 the UPW submitted to Nakamatsu a request for information as part of its investigation of the class action grievances in case numbers CU-06-05 and CU-06-06 in accordance with Section 15.09 of the collective bargaining agreements.

5. The union requested Nakamatsu to submit a full and complete response to the information within 7 calendar days of March 8, 2006 as required by Section 15.09 of the agreements.

6. Nakamatsu failed to comply with union's request of March 8, 2006 within 7 calendar days as required by Section 15.09 of the unit 1 and 10 agreements.

7. On March 31, 2006 Nakamatsu provided a partial response to the March 8, 2006 request for information from the union, and indicated, *inter alia*, that the City has "a practice of placing employees on unauthorized leave of absence without pay for sick leaves of five or more consecutive days duration for those days not covered by a physician's certificate."

8. On June 8, 2006 the UPW submitted a supplemental request for information to Nakamatsu regarding said "practice" of the City and County of Honolulu referred to in Nakamatsu's March 31, 2006 request.

9. On June 15 2006, Nakamatsu indicated that the June 8, 2006 supplemental request should be brought to the attention of the arbitrator pursuant to Section 658A-17, HRS.

10. On June 16, 2006 the UPW filed a prohibited practice complaint in CE-01-624a and CE-10-624b, alleging violations of Section 89-13 (a) (5), (7), and (8), HRS, by Nakamatsu.

11. On July 17, 2006 the UPW and the City and County of Honolulu selected Keith Hunter to arbitrate the class action grievance in CU-06-06.

12. On August 17, 2006 the UPW filed a motion for arbitral order compelling answers to request for information and production of documents dated June 8, 2006 with Arbitrator Keith Hunter in case CU-06-06.

13. On August 22, 2006 the UPW filed a motion to consolidate grievance case number CU-06-05 and grievance case

number CU-06-06 in S.P. No. 06-1-0276 VSM, which was granted by the Honorable Victoria Marks on September 19, 2006.

14. On September 5, 2006 Arbitrator Hunter granted in part the UPW's August 17, 2006 motion for arbitral order compelling answers to request for information and production of documents dated June 8, 2006, as it related to the class action grievance in CU-06-06 within 21 days, in pre-arbitration order number one.

15. On September 19, 2006 the Honorable Victoria Marks in S.P. No. 06-1-0276 VSM granted the UPW's motion to consolidate CU-06-05 and CU-06-06 before Arbitrator Keith Hunter.

16. On September 19, 2006 the UPW filed a motion to amend pre-arbitration order number one dated September 5, 2006 before Arbitrator Hunter to compel answers to request for information and production of documents dated June 8, 2006 as it is related to CU-06-05.

17. On September 25, 2006 Employer submitted responses to the UPW's information request dated June 8, 2006 in CU-06-06 pursuant to arbitrator Hunter's pre-arbitration order number one.

18. On September 28, 2006 UPW submitted a supplemental request to employer in CU-06-06 to the City and County of Honolulu, and on October 2, 2006 filed a motion to compel answers with Arbitrator Hunter in connection with the September 28, 2006 request.

19. The Hawaii Labor Relations Board has scheduled a hearing on the merits in CE-01-624a and CE-10-624b for October 4, 2006.

20. It is hereby stipulated and agreed by UPW and Nakamatsu that on and after March 15, 2006 Employer committed prohibited practices by willfully failing to provide prompt responses to the request for information submitted by the union on March 8, 2006 within 7 calendar days as required by Section 15.09 of the unit 1 and unit 10 collective bargaining agreements in violation of Section 89-13 (a) (5), (7), and (8), HRS. Respondent is hereby ordered to cease and desist from said prohibited practices in violation of Section 15.09, and shall submit full and complete responses to the March 8, 2006 request by the union within 21 days. It is expressly understood that the City

stipulated to willfulness in this case for the sole purpose of avoiding further controversy, litigation and expense.

21. Within twenty-one days of this Stipulation and Order Employer shall provide to the UPW a full and complete response to the June 8, 2006 request for information relating to CU-06-05 now pending before Arbitrator Hunter. It is expressly understood that the request for information dated June 8, 2006 shall apply to all departments and agencies of the City and County of Honolulu employing bargaining unit 1 employees uniformly.

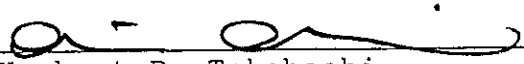
22. Within twenty-one days of this Stipulation and Order Employer shall provide to the UPW a full and complete response to the September 28, 2006 request for information relating to CU-06-06 now pending before Arbitrator Hunter. It is expressly understood that the request for information dated September 28, 2006 shall apply to all departments and agencies of the City and County of Honolulu employing bargaining unit 10 employees uniformly.


23. A copy of this stipulation and order shall be promptly provided to Arbitrator Keith Hunter by the parties herein.

24. A violation of paragraph 20 of this Stipulation and Order shall constitute a prohibited practice, and said provision shall be enforceable pursuant to Sections 89-14 and 377-9 (e), HRS.

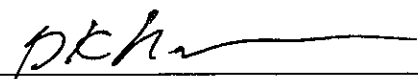
25. Paragraphs 21 and 22 of this Stipulation and Order shall be considered by the parties herein as a discovery order before Arbitrator Hunter in CU-06-05 and CU-06-06, and shall be enforced for non-compliance pursuant to Sections 658A-17 (d) and 658A-21 (c), HRS.

Dated: Honolulu, Hawaii, October 4, 2006.


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


Paul K.W. Au
Deputy Corporation Counsel
Attorney for Respondent
Kenneth Nakamatsu

Approved and So Ordered As Order
No. 2399.



Brian K. Nakamura, Chairperson

DATED: October 4, 2006



Emory J. Springer, Member



Sarah R. Hiramami, Member