

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO,

Complainant,

and

ROBERT WATADA, Chairperson, Wai`alae
School Board, Wai`alae Elementary School,
Department of Education, State of Hawaii and
PATRICIA HAMAMOTO, Superintendent,
Department of Education, State of Hawaii,

Respondents.

CASE NO. CE-01-558

ORDER NO. 2424

ORDER DENYING MOTION TO REOPEN
THE RECORD OF PROCEEDINGS ON
ROBERT WATADA AND WAI`ALAE
ELEMENTARY SCHOOL

ORDER DENYING MOTION TO
REOPEN THE RECORD OF PROCEEDINGS ON
ROBERT WATADA AND WAI`ALAE ELEMENTARY SCHOOL

On March 8, 2006, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO ("UPW"), by and through its counsel, filed a Motion to Reopen the Record of Proceedings on Robert Watada and Wai`alae Elementary School with the Hawaii Labor Relations Board ("Board"). Complainant's counsel states in an affidavit attached to the motion that on June 22, 2005, the UPW moved to defer the instant case to arbitration, in accordance with Hawaii Nurses Association, 2 HPERB 218 (1979) and United Public Workers, AFSCME, Local 646, AFL-CIO, Case No. CE-10-541, Order No. 2230, because Respondents raised the failure to exhaust contractual remedies as a defense to the prohibited practice complaint. The Board granted the UPW's motion without objection on June 30, 2005. Thereafter, Complainant contends Respondent ROBERT WATADA, Chairperson, Wai`alae Elementary School, Department of Education, State of Hawaii ("WATADA") and Wai`alae Elementary School ("School") (collectively "WAI`ALAE") were unwilling to settle the dispute through the grievance arbitration procedure and on March 2, 2006, Arbitrator Philip Uesato ("Uesato") dismissed WAI`ALAE as a party to the arbitration. Complainant contends that it has exhausted its contractual remedies and moves the Board to reopen the proceedings herein against the School.

On March 20, 2006, Respondent DOE filed a Memorandum in Opposition to UPW's Motion to Reopen the Record of Proceedings on Robert Watada and Wai`alae Elementary School with the Board. The DOE contended, inter alia, that the arbitration was

proceeding against the DOE and the UPW had not exhausted its contractual remedies in this matter.

On June 5, 2006, Respondent WAI`ALAE, by and through its counsel, filed a Submission with the Board. WAI`ALAE contended that Arbitrator Uesato found that the Unit 01 agreement did not apply to it in the relevant timeframe and therefore dismissed it from the arbitration. By this motion, WAI`ALAE contends that the UPW seeks to collaterally attack the Arbitrator's ruling before the Board.

The Board conducted a hearing on June 21, 2006¹ with Herbert R. Takahashi, Esq., representing the Complainant UPW, Richard H. Thomason, Deputy Attorney General, representing WAI`ALAE, and James E. Halvorson, Deputy Attorney General, representing Respondent DEPARTMENT OF EDUCATION, State of Hawaii ("DOE"). The parties had full opportunity to present evidence and argument to the Board.

Based upon the record and the arguments presented, the Board makes the following findings of fact and conclusion of law in denying Complainant's Motion to Reopen the Proceedings.

FINDINGS OF FACT

1. On March 24, 2004, the UPW filed a complaint with the Board in Case No. CE-01-558 against WATADA, the School, and Deputy Attorney General JONATHAN SWANSON alleging, *inter alia*, that the Respondents refused to sign a March 3, 2004 Memorandum of Agreement ("MOA") resolving Case No. CE-01-550 thereby repudiating the agreement and violating their duty to bargain in good faith in violation of HRS §§ 89-13(a)(1), (5), and (7).
2. On April 19, 2004, the UPW filed a Motion for Summary Judgment with the Board. On June 30, 2004, the Board granted Complainant's Motion for Summary Judgment in Order No. 2264, and ordered WAI`ALAE to cease and desist from repudiating the MOA and to execute and implement the MOA.
3. Thereafter, on April 28, 2005, the UPW filed a Motion to Enforce Order No. 2264 with the Board.
4. On May 17, 2005, the Board joined the DEPARTMENT OF EDUCATION, State of Hawaii as a Party Respondent in Order No. 2327.

¹Because of the similarity of issues raised in the cases, the Board consolidated the hearing in this case with that in Case No. CE-01-594.

5. On June 22, 2005, the UPW filed a Motion to Defer to Arbitral Proceedings with the Board. Complainant's counsel stated in an affidavit filed with the motion that the parties would be arbitrating a grievance over the food services program at the Wai'alaie School cafeteria commencing on July 26, 2005. Since one of the defenses raised by Respondents to the prohibited practice complaint herein is the exhaustion of contractual remedies and the Board had in similar circumstances adopted the NLRB's deferral doctrine, citing Decision No. 104, Hawaii Nurses Association, 2 HPERB 218 (1979), and Order No. 2230 (January 20, 2004) issued in United Public Workers, AFSCME, Local 646, AFL-CIO, Case No. CE-10-541, it was appropriate to defer the prohibited practice complaint to arbitration.
6. In the absence of any opposition, on June 30, 2005, the Board granted Complainant's Motion to Defer to Arbitral Proceedings in Order No. 2341.
7. On March 2, 2006, Arbitrator Uesato granted WAI'ALAE SCHOOL's Motion to Dismiss filed on June 13, 2005. Arbitrator Uesato concluded that since there was no agreement to arbitrate grievances between WAI'ALAE SCHOOL and the Union at the time the grievance was filed, there was no basis for the Arbitrator to exercise jurisdiction over WAI'ALAE.
8. On March 8, 2006, the UPW filed a Motion to Reopen the Record of Proceedings on Robert Watada and Wai'alaie Elementary School with the Board. The UPW moved the Board for an order reopening the proceedings before the Board because Arbitrator Philip Uesato granted a Motion to dismiss WAI'ALAE SCHOOL from the Arbitration on March 2, 2006.
9. On March 20, 2006, Respondent DOE filed a Memorandum in Opposition to UPW's Motion to Reopen the Record of Proceedings on Robert Watada and Wai'alaie Elementary School with the Board. The DOE contended, inter alia, that the arbitration was proceeding against the DOE and the UPW had not completely exhausted its contractual remedies in this matter.
10. On March 20, 2006, Respondent WAI'ALAE filed a Joinder to State of Hawaii, Department of Education's Memorandum in Opposition to UPW's Motion to Reopen the Record of Proceedings on Robert Watada and Wai'alaie Elementary School and a further Memorandum in Support of its Joinder to Respondent DOE's Memorandum in Opposition on May 5, 2006.
11. Complainant filed a motion to defer these proceedings to arbitration. Without objection from Respondents, the Board deferred its jurisdiction over the issues in this proceeding to the contractual process, thereby declining its jurisdiction in favor of the arbitral process. At the time Complainant filed its Motion to

Defer with the Board, WAI'ALAE had already filed its motion to dismiss before the Arbitrator. Arbitrator Uesato then held that he had no jurisdiction over WAI'ALAE because there was no agreement between the UPW and WAI'ALAE to arbitrate disputes and dismissed WAI'ALAE from the arbitration proceedings. The UPW now seeks to reopen the proceedings as against WAI'ALAE while the arbitration with the DOE proceeds. While the Board does not defer to the Arbitrator's award, the contractual process resulted in a final and binding decision as to WAI'ALAE but is proceeding as to other respondents. Thus, the Board declines to reopen these proceedings given its declination of jurisdiction in the first instance.

CONCLUSION OF LAW AND ORDER

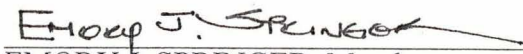
1. Based on the Board's previous order deferring this matter to the contractual process, the Board declined jurisdiction over the issues presented. The Board therefore denies Complainant's motion to reopen these proceedings.

DATED: Honolulu, Hawaii, February 8, 2007.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



EMORY J. SPRINGER, Member

Copies sent to:

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