

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

ROBERT WATADA, Chairperson, Waiialae
School Board, WAIALAE ELEMENTARY
SCHOOL, Department of Education, State of
Hawaii and PATRICIA HAMAMOTO,
Superintendent, Department of Education,
State of Hawaii,

Respondents.

CASE NO. CE-01-594

ORDER NO. 2425

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 Decision No. 104, 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 on June 30, 2005. Thereafter, Complainant contends Respondents ROBERT WATADA and WAI'ALAE ELEMENTARY SCHOOL (collectively "WAI'ALAE") were unwilling to settle the dispute through the grievance arbitration procedure and on March 2, 2006, Arbitrator Philip Uesato's ("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 WAI'ALAE.

On June 5, 2006, WAI'ALAE filed a Submission with the Board contending that Arbitrator Uesato found that the Unit 01 agreement did not apply to the school in the relevant time frame and the UPW seeks to improperly 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 conclusions of law in denying Complainant's Motion to Reopen the Proceedings.

FINDINGS OF FACT

1. On March 28, 2005, the UPW filed a complaint with the Board in Case No. CE-01-594 against Respondents WATADA and PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawaii alleging, inter alia, Respondents failed or refused to provide any response to the UPW's January 18, 2005 information request in conjunction with a grievance regarding a breach of a memorandum of agreement involving food service at Wai'alaie Elementary School. The UPW contended that Respondents thereby violated Hawaii Revised Statutes ("HRS") §§ 89-13(a)(1), (5), and (7).
2. On April 6, 2005, Respondents filed a Motion to Dismiss with the Board contending the allegations in the complaint were moot and/or the UPW failed to state a claim for which relief could be granted.
3. On April 7, 2005, the UPW filed a Motion for Partial Summary Judgment with the Board asking that judgment be rendered against Respondents for breach of the duty to bargain in good faith by their failure to provide the Union with information needed in a grievance.
4. On April 15, 2005, the UPW filed a Motion to Amend Complaint where the UPW alleged, inter alia, that Respondents provided certain information but that Respondents failed to comply with a March 3, 2004 Memorandum of Agreement and unilaterally changed the material terms and conditions contained therein by ceasing to purchase food services through the DOE. The UPW contended that the Respondents thereby violated HRS §§ 89-13(a)(1), (3), (5), (7), and (8).
5. On April 20, 2005, Respondent WAI'ALAE filed a Memorandum in Opposition to Complainant's Motion to Amend Complaint and on April 21,

¹Because of the similarity of issues, the Board consolidated the hearing in this case with that in Case No. CE-01-558.

2005, Respondent DOE joined WAI'ALAE's opposition to Complainant's Motion to Amend.

6. The Board conducted a hearing on the motions on April 25, 2005. After hearing arguments, the Board indicated an inclination to grant the Complainant's motion to amend the complaint and entertain arguments on dispositive motions addressing the complaint, as amended, at a later time.
7. On May 5, 2005, WAI'ALAE filed a Motion to Dismiss and/or for Partial Summary Judgment with the Board. WAI'ALAE contended that the First Amended Prohibited Practice Complaint should be dismissed for lack of jurisdiction, failure to state a claim upon which relief can be granted, failure to exhaust contractual remedies, redundancy and mootness or in the alternative, partial summary judgment should be granted on all claims against WAI'ALAE.
8. 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.
9. In the absence of any opposition, on June 30, 2005, the Board granted Complainant's Motion to Defer to Arbitral Proceedings in Order No. 2342.
10. On March 2, 2006, Arbitrator Uesato granted WAI'ALAE's Motion to Dismiss filed on June 13, 2005. Arbitrator Uesato concluded that since there was no agreement to arbitrate grievances between WAI'ALAE and the Union at the time the grievance was filed, there was no basis for the Arbitrator to exercise jurisdiction over WAI'ALAE.
11. 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 Uesato granted a Motion to dismiss WAI'ALAE from the arbitration proceedings on March 2, 2006.

12. On June 5, 2006, WAI'ALAE filed a Submission with the Board contending that Arbitrator Uesato found that the Unit 01 agreement did not apply to the school in the relevant timeframe and the UPW seeks to improperly collaterally attack the Arbitrator's ruling before the Board.
13. 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 against 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

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