

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DEPARTMENT OF PUBLIC SAFETY,
State of Hawaii,

Complainant,

and

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

Respondent.

CASE NO. CU-10-247

ORDER NO. 2431

ORDER GRANTING UPW'S MOTION
TO DISMISS, FILED ON MARCH 3,
2006

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On February 28, 2006, Complainant DEPARTMENT OF PUBLIC SAFETY, State of Hawaii ("PSD" or "Employer"), by and through its counsel, filed a prohibited practice complaint against Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO ("UPW" or "Union") with the Hawaii Labor Relations Board ("Board"). PSD alleged that on or about June 16, 2004, the Union filed a grievance on behalf of David Nohara ("Nohara") regarding his suspension and other disciplinary actions. The PSD further alleged that the parties agreed to resolve the grievance during the course of the grievance procedure, and Arbitrator Paul S. Aoki entered a Stipulated Arbitration Award on January 3, 2006 ("Stipulated Award"). Thereafter, the PSD contends that the UPW repudiated the Stipulated Award by attempting to confirm the award and have judgment rendered in its favor. The PSD contends that the UPW repudiated the settlement of a grievance and thereby wilfully violated Hawaii Revised Statutes ("HRS") §§ 89-13(b)(2), (4) and (5).

Thereafter, on March 3, 2006, the UPW filed a Motion to Dismiss with the Board contending that the Board lacked subject matter jurisdiction over the complaint and the PSD failed to state a claim for relief. On March 10, 2006, PSD filed a Memorandum in Opposition to UPW's Motion to Dismiss with the Board. Supplemental memoranda were also filed by the parties with the Board.

On May 25, 2006, the Board conducted a hearing on the UPW's Motion to Dismiss. Deputy Attorney General Richard H. Thomason represented the Complainant and Herbert R. Takahashi, Esq. represented the Respondent. The parties were afforded

full opportunity to present evidence and argument to the Board. Based on a review of the record and the arguments presented, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. On or about June 16, 2004, the UPW filed a grievance against the PSD, Case No. LK-04-12, on behalf of Nohara contesting his suspension and other related disciplinary actions.
2. The grievance was not resolved at Step 1 and the Union demanded arbitration on or about September 29, 2004.
3. Paul S. Aoki was selected as the arbitrator for Nohara's grievance.
4. The parties entered into negotiations to settle the grievance and agreed to the issuance of an arbitration award based on the terms set forth in the award. Arbitrator Aoki issued the Stipulated Award on January 3, 2006.
5. The Stipulated Award, dated January 3, 2006 states, in part, as follows:
 1. The Employer withdraws the allegation of a violation on January 2, 2004 and agrees to take no action with respect to the violation which was alleged to have occurred on December 28, 2003.
 2. The parties agree that given the actions and stipulations described above pertaining to the alleged third, fourth and fifth violations under Section 37.17.b that the discharge (termination) of David Nohara challenged in UPW case number LK-04-33 cannot stand; therefore, Grievant shall be promptly reinstated to his former position as an ACO III at the Halawa Correctional Facility.
 3. Grievant shall be made whole for loss of straight time pay, overtime pay, seniority, service credit, and any other contract benefits which will result from the setting aside of the discipline in this grievance and the rescission of the discharge. Payment of back pay and restoration of service credits and contract benefits shall be completed within forth-five (45) days from the date of this Stipulated Arbitration Award.

4. The Employer will return to Grievant 12 suspension days for purposes of Section 37 of the Collective Bargaining Agreement.
 5. This stipulated arbitration award does not prevent either the Union or Employer from pursuing the grievance currently before Arbitrator James Nicholson (LK-04-33).
 6. The Employer shall remove and destroy from the personnel records of Grievant any and all derogatory materials related to the suspension for alleged violations on December 27, 2003, December 28, 2003 and January 2, 2004.
 7. The Employer's agreement to withdraw charges and to take no action does not constitute an admission of any error or liability on the part of the Employer and is made only for purposes of compromise and settlement.
 8. The Stipulated Arbitration Award represents the agreement reached by the parties on all matters dealing with Grievance LK-04-12 regarding David Nohara. It is expressly understood that the UPW will seek court confirmation of this Stipulated Arbitration Award in accordance with Hawaii Revised Statutes, § 658A-22 and enforcement and relief for non-compliance with this Award may be enforced pursuant to § 658A-25, HRS.
 9. The arbitrator makes no finding other than that the terms of this agreement are fair and reasonable.
 10. This Stipulated Arbitration Award shall not constitute or be used as precedent of any kind in any other proceedings.
 11. The arbitrator shall retain jurisdiction for a period of 60 days from the date of this stipulated arbitration award to resolve any disputes over implementation of the terms of the stipulated arbitration award. [Emphasis in original.]
6. On January 23, 2006, the UPW filed a Motion to Confirm Arbitrator Paul S. Aoki's Stipulated Arbitration Award Dated January 3, 2006 requesting pursuant to HRS §§ 658A-5, 658A-22, 658A-25 to confirm the Stipulated Award of Arbitrator Paul S. Aoki dated January 3, 2006 and to obtain a judgment in favor of the UPW based on the Stipulated Award.

7. On February 13, 2006, the PSD filed a partial objection to the UPW's motion to confirm the Stipulated Award with the Court. The Employer did not object to the confirmation of the award but objected to the UPW's seeking judgment in its favor. The PSD argued that several months earlier, the Honorable Sabrina S. McKenna ("McKenna") entertained similar arguments in a case involving a negotiated settlement and requested that the Court follow the Order and Judgment entered by Judge McKenna.
8. On February 28, 2006, the PSD brought the instant prohibited practice complaint contending that the UPW's efforts to obtain judgment in its favor in the confirmation process constitutes a repudiation of the negotiated terms in items 7, 9, and 10 above. The PSD argues that the UPW also repudiated the settlement by attempting to deny the Employer its bargained for right to seek future judicial enforcement if need be of the remedial clauses specifically prohibiting UPW from asserting that the Employer's settlement constituted an admission of error or liability, asserting that the Arbitrator held that the Employer had been at fault, and attempting to utilize the Stipulated Award as precedent in other cases.
9. On March 3, 2006, the Honorable Bert I. Ayabe entered an Order Granting Union's Motion to Confirm Arbitrator Paul S. Aoki's Stipulated Arbitration Award Dated January 3, 2006, Filed on January 23, 2006. The Judgment was similar to the Judgment previously entered by Judge McKenna and states, in part, that, "Judgment is hereby entered in conformity therewith in accordance with Section 658A-25a, Hawaii Revised Statutes."
10. Also on March 3, 2006, the UPW filed Motion to Dismiss the instant complaint.
11. On March 10, 2006, the PSD filed its Memorandum in Opposition to UPW's Motion to Dismiss with the Board.
12. On May 19, 2006, the UPW filed a Supplemental Submission on March 28, 2006 and a Supplemental Memorandum on May 19, 2006.
13. On May 24, 2006, the PSD filed a Supplemental Memorandum in Opposition to UPW's Motion to Dismiss.
14. The Board finds that this controversy stems from a confirmation proceeding in the Circuit Court where the PSD objected to the content of the UPW's proposed judgment. In viewing the allegations of the complaint as true and construed in the light most favorable to the PSD, the Board finds that the parties entered into the Stipulated Award to resolve Nohara's grievance

where the parties agreed, inter alia, that the Employer did not admit error or liability by its agreement to withdraw the underlying charges. The parties also understood that the UPW would seek confirmation of the Stipulated Award in accordance with HRS § 658A-22.¹ Although the Employer in a previous case before a different judge engaged in a similar dispute with the UPW as to the wording of the judgment in the process of confirming a stipulated award, this Stipulated Award does not specify or clarify how the judgment is to be worded. The language of paragraph 8 of the Stipulated Award appears to be ambiguous in this regard. Pursuant to the Stipulated Award, the UPW sought confirmation of the award and its reduction to a judgment and neither party sought to invoke the Arbitrator's assistance in resolving the dispute in the implementation of the Stipulated Award pursuant to Section 11. In the confirmation process, the Circuit Court agreed with PSD that judgment was not rendered in favor of the UPW but that, "Judgment is hereby entered in conformity therewith in accordance with Section 658A-25a, Hawaii Revised Statutes."

15. As the gravamen of the instant complaint is the UPW's counsel's actions in confirming the Stipulated Award in the Circuit Court and reducing it to a judgment, those actions are within the discretion and jurisdiction of the Circuit Court. The Court confirmed the Stipulated Award and issued its final judgment. The Board has no jurisdiction over the UPW's conduct in the court confirmation process under HRS Chapter 658A and there are no further facts which can be presented which would support a claim entitling the PSD to relief before the Board.

CONCLUSIONS OF LAW

1. PSD represents the Governor, State of Hawaii or acts in her interest with respect to employees in Unit 10 and is an "employer," within the meaning of HRS § 89-2.

¹HRS § 658A-22 provides:

Confirmation of award. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 658A-20 or 658A-24 or is vacated pursuant to section 658A-23.

2. The UPW is an “employee organization” and an “exclusive representative” with the meaning of HRS § 89-2, of employees in Unit 10.
3. The Board has jurisdiction over this prohibited practice complaint pursuant to HRS §§ 89-5 and 89-14.
4. Review of a motion to dismiss is based on the contents of the complaint, the allegations of which are accepted as true and construed in the light most favorable to the complainant. See Wright v. Home Depot U.S.A., Inc., 111 Hawai'i 401, 406-07, 142 P.3d 265 (2006). Dismissal is improper unless it appears beyond doubt that the complainant can prove no set of facts in support of the claim which would entitle the complainant to relief. Id.
5. The PSD contends that the UPW's seeking judgment in its favor upon court confirmation of the Stipulated Award constitutes a repudiation of the Stipulated Award and violates of HRS §§ 89-13(b)(2), (4), and (5). Those sections provide as follows:

It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

* * *

(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9;

* * *

(4) Refuse or fail to comply with any provision of this chapter; or

(5) Violate the terms of a collective bargaining agreement.

6. Viewing the allegations of the complaint as true and construed in the light most favorable to the PSD, the Board concludes that it appears beyond doubt that the PSD cannot prove any set of facts to support its claim that the UPW committed a prohibited practice by repudiating the Stipulated Award in this case by filing its proposed judgment in the Circuit Court to confirm the Stipulated Award. The Stipulated Award provided that the UPW would seek confirmation of the Stipulated Award in accordance with HRS § 658A-22. Although the Employer in a previous case before a different judge engaged in a similar dispute with the UPW as to the wording of the judgment confirming a stipulated award, this Stipulated Award does not specify how the judgment is to be worded. Thereafter, the confirmation process proceeded in accordance with HRS Chapter 658A as contemplated by the parties. Based on the facts not in dispute and viewed in the light most

favorable to the PSD, the Board cannot say that UPW committed a prohibited practice by its motion to confirm the Stipulated Award. The Board further concludes that the Board lacks jurisdiction over the conduct of the parties during the Court confirmation process.

ORDER

The Board hereby grants the UPW's Motion to Dismiss the instant prohibited practice Complaint.

DATED: Honolulu, Hawaii, February 23, 2007

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



EMORY, J. SPRINGER, Member

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