

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

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,

Respondent.

CASE NOS.: CE-01-636a
CE-10-636b

ORDER NO. 2448

ORDER GRANTING COMPLAINANT'S
MOTION FOR SUMMARY JUDGMENT

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On March 22, 2007, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO ("Complainant" or "UPW") filed a prohibited practice complaint ("Complaint") against Respondent KENNETH NAKAMATSU, Director, Department of Human Resources, City and County of Honolulu ("Respondent" or "Nakamatsu"), alleging that Respondent failed to comply with a stipulation and order previously issued in Case Nos.: CE-01-624a and CE-10-624b, by failing to provide full and complete responses to a March 8, 2006, request for information.

On April 3, 2007, Complainant filed its Motion for Summary Judgment, which was heard by the Board on April 27, 2007, pursuant to Hawaii Revised Statutes ("HRS") §§ 89-5(i)(4) and (5), and Hawaii Administrative Rules ("HAR") § 12-42-8(g)(3). After careful consideration of the record and argument presented, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Complainant was or is at all relevant times an employee organization within the meaning of HRS § 89-2.
2. Respondent was or is at all relevant times the Director of the Department of Human Resources, City and County of Honolulu, and as a designative

representative of the Mayor is a public employer within the meaning of HRS § 89-2 for purposes of this Complaint.¹

3. Complainant and Respondent were parties to a previous proceeding, Case Nos.: CE-01-624a and CE-10-624b.
4. On October 4, 2006, a Stipulation and Order was filed by the Board in Case Nos.: CE-01-624a and CE-10-624b, wherein the parties stipulated in relevant part:

20. It is hereby stipulated and agreed by the 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 wilfulness in this case for the sole purpose of avoiding further controversy, litigation and expense.

* * *

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.

(Attachment B to the Affidavit of Herbert Takahashi).

5. Item 6 of the March 8, 2006, request for information asked for the following information:

All documents, memorandums, material, information, etc. on charging employees unauthorized leave of absences without

¹In Case Nos.: CE-01-624a and CE-10-624b, the UPW and Nakamatsu stipulated that "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." (Para. 2 of Attachment B to the Affidavit of Herbert Takahashi).

pay for sick leave dates not covered on a physicians certificate.

6. On March 2, 2007, Complainant became aware that the City had conducted surveys of its departments regarding how the departments applied the collective bargaining contract regarding authorized leaves of absence; the surveys were done via e-mail, prior to a November 16, 2005, workshop on contract interpretation.
7. On March 5, 2007, counsel for Complainant informed counsel for Respondent of the failure to produce information regarding the e-mail surveys, and requested that copies of the two e-mail surveys be provided to the union.
8. On March 21, 2007, counsel for Complainant sent a letter to counsel for Respondent, stating that Respondent failed to provide copies of the e-mail surveys, in violation of the Stipulation and Order dated October 4, 2006, and requesting a firm date as to production.
9. On March 21, 2007, counsel for Respondent sent a letter to counsel for Complainant, stating that, “[a]s we discussed on March 20, 2007, we have forwarded your recent document request to the Department of Human Resources in an effort to timely respond pursuant to Arbitrator Hunter’s order dated March 8, 2007.”
10. On March 22, 2007, Complainant filed the instant Complaint, alleging that Respondent failed to comply with the October 4, 2006, Stipulation and Order by failing to provide full and complete responses to the March 8, 2006, request for information.
11. On April 3, 2007, Complainant filed its Motion for Summary Judgment.
12. In Respondent’s Memorandum in Opposition to UPW’s Motion for Summary Judgment, filed April 10, 2007, Respondent attached copies of the Labor Relations Contract Interpretation Training Survey Results, dated November 16, 2005, which were transmitted to the UPW on or about April 5, 2007.
13. In Complainant’s Reply Brief in Support of Motion for Summary Judgment, filed April 24, 2007, Complainant asserted that the document attached to Respondent’s Memorandum in Opposition appeared to be a summary, and that to date the two e-mail surveys that were requested have yet to be produced.

14. Counsel for Respondent has produced all the documents that were provided to counsel; however, at hearing, counsel was unable to state whether any surveys or e-mail responses exist in the City's possession beyond what was attached to the Memorandum in Opposition. In addition, Respondent's counsel provided Complainant's counsel other materials which were not previously provided pursuant to Complainant's request for information.²
15. It appears from the facts taken in the light most favorable to Respondent that Respondent failed to fully respond to the March 8, 2006, request for information within 21 days of the October 4, 2006, Stipulation and Order, in violation of paragraph 20 of Stipulation and Order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the instant Complaint pursuant to HRS §§ 89-5 and 89-14.
2. Summary judgment should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any (hereinafter, "relevant materials"), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. GECC Financial Corp. v. Jaffarian, 79 Hawai'i 516, 521, 904 P.2d 530, 535 (Haw. App. 1995), *aff'd* 80 Hawai'i 118, 905 P.2d 624.
3. The burden is on the party moving for summary judgment to show the absence of any genuine issues as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. Id.
4. Inferences to be drawn from the underlying facts alleged in the relevant materials must be viewed in the light most favorable to the non-moving party. Id.
5. HRS § 89-13(a)(5) provides that it shall be a prohibited practice for a public employer or its designated representative wilfully to refuse to

²On May 3, 2007, Complainant submitted copies of the documents produced by Respondent's counsel at the April 27, 2007 hearing which included, Questions on Patterns of Absence Due to Sickness ("Questions"); Labor Relations Contract Interpretation Training Section 37 (Sick Leave) & 38.11 (Unauthorized Leave of Absence) November 16, 2005 ("Contract Interpretation Questions"); and the responses to the Questions and Contract Interpretation Questions.

bargain collectively in good faith with the exclusive representative as required in section 89-9.

6. As a general rule, an employer must provide a union with relevant information necessary for the proper performance of its duties. NLRB v. Acme Industrial Co., 385 U.S. 432, 435-36, 87 S. Ct. 565, 567-68 (1967). The failure to provide relevant information may support a finding of a failure to bargain in good faith. See, NLRB v. Truitt Mfg. Co., 351 U.S. 149, 76 S. Ct. 753 (1956).
7. It appears from the facts taken in the light most favorable to Respondent that Respondent failed to fully respond to the March 8, 2006, request for information within 21 days of the October 4, 2006, Stipulation and Order, in violation of paragraph 20 Stipulation and Order. Although counsel for Respondent, in the Memorandum in Opposition, produced the information that was provided to counsel, counsel was unable to state whether any surveys or e-mail responses exist in the City's possession beyond what was attached to the Memorandum in Opposition.
8. Respondent argues that there is no willfulness, and no showing of willfulness. However, paragraph 24 of the Stipulation and Order provides that, "[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[.]" and accordingly, the Board need not reach the issue of willfulness.
9. Respondent argues that actions to enforce an order of the Board are governed by HRS § 377-9(e), and not prohibited practice proceedings. However, paragraph 24 of the Stipulation and Order provides that, "[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[.]" and accordingly, the Board may find that the failure to fully respond to the March 8, 2007, constitutes a prohibited practice.
10. Pursuant to the October 4, 2006, Stipulation and Order, and HRS § 89-13(a)(5), Respondent's failure to fully respond to the March 8, 2006, request for information constitutes a prohibited practice.

ORDER

The Board hereby grants Complainant's Motion for Summary Judgment. Respondent is ordered to cease and desist from engaging in prohibited activities; specifically, Respondent shall fully comply with the March 8, 2006, request for

information and either produce the requested e-mail surveys and responses within 10 days of this Order, or, after conducting a search for such information within the City's departments, provide a statement to Complainant affirming that no such documents exist.

DATED: Honolulu, Hawaii, May 8, 2007

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

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