

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DEPARTMENT OF TRANSPORTATION,
STATE OF HAWAII,

Petitioner,

and

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO; and HAWAII
GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Intervenors.

CASE NOS.: DR-01-97
DR-02-97

ORDER NO. 2505

ORDER GRANTING PETITIONS FOR
INTERVENTION; ORDER
CANCELLING BOARD
CONFERENCE; AND NOTICE OF
BRIEFING SCHEDULE

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On April 4, 2008, the Hawaii Labor Relations Board (Board) issued a Notice of Filing of Petition for Declaratory Ruling; Notice of Deadline for Filing Petitions for Intervention; and Notice of Board Conference. The Board set April 23, 2008 as the deadline for filing Petitions for Intervention in this matter and scheduled a Board Conference on May 2, 2008.

On April 11, 2008, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Petition for Intervention alleging that it is the exclusive representative of Unit 01 employees and that a Board decision on the representational rights of a Unit 01 employee who is disciplined while on probation to a Unit 02 position may affect the terms and conditions of employment of Unit 01 employees. The UPW contends, *inter alia*, that the question of arbitrability of the HGEA grievance is for the arbitrator to decide. On April 21, 2008, the UPW filed a Motion to Dismiss with the Board.

On April 23, 2008, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) filed a Petition for Intervention with the Board. The HGEA alleges that it filed a grievance on behalf of an employee who was suspended for five days while serving a new probationary period in a

Unit 02 position alleging various violations of the Unit 02 collective bargaining agreement. The HGEA also alleges that the grievance is pending at arbitration.

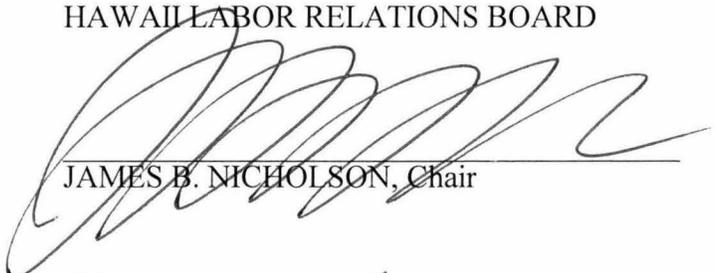
After considering the respective Petitions for Intervention and reviewing the record in this case, the Board finds that the UPW and the HGEA have timely filed Petitions for Intervention and have alleged sufficient interests to intervene in these proceedings because a decision may affect the terms and conditions of employment of their respective bargaining unit members and concerns the unions' representational obligations. The Board therefore grants the respective Petitions for Intervention pursuant to Hawaii Administrative Rules (HAR) §§ 12-42-8(g)(14) and 12-42-9(e).

By letter to the Board dated April 28, 2008, Petitioner's counsel requested a continuance of the initial conference due to a conflict in his schedule. Petitioner's counsel indicated that Intervenor HGEA's counsel did not object to the continuance and no response was received from Intervenor UPW's counsel. By letter to the Board dated April 29, 2008, Intervenor UPW's counsel also had no objection to a continuance of the Board conference but requested the Board to rule on the Petitions for Intervention and to schedule its Motion to Dismiss for hearing. By letter dated April 29, 2008, Petitioner's counsel stated his understanding that the Board's rules did not contain a time limit to respond to the UPW's motion to dismiss and that the Board would schedule the briefing of issues and a hearing, if necessary, at the Board conference. By letter dated April 30, 2008, Intervenor UPW's counsel requested the Board to grant its motion to dismiss for lack of opposition because Petitioner failed to comply with HAR § 12-42-8(g)(3)(C)(iii)'s five-day deadline to file a response to the UPW's motion.

After reviewing the record and the foregoing correspondence, the Board conference scheduled on **May 2, 2008 at 9:00 a.m.** is cancelled. As the issues presented in the instant petition are clear and the Board would like to give all parties the opportunity to submit their arguments for a complete record, the Board will set the following briefing schedule. The parties shall file any position statements or additional arguments with the Board by the close of business on **May 12, 2008**. If the Board decides to hear oral argument on the instant petition, the Board will issue a further notice of hearing.

DATED: Honolulu, Hawaii, May 1, 2008.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member

DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII, Petitioner, and UNITED
PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO; and HAWAII GOVERNMENT
EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO, Intervenors
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SARAH R. HIRAKAMI, Member

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