

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

HAWAII HEALTH SYSTEMS
CORPORATION; THOMAS M. DRISKILL,
JR., President and Chief Executive Officer,
Hawaii Health Systems Corporation; and
EARL GREENIA, Regional Chief Executive
Officer, Kona Community Hospital, State of
Hawaii,

Respondents.

CASE NOS.: CE-01-679a
CE-10-679b

ORDER NO. 2550

ORDER DENYING UPW'S MOTION
FOR SUMMARY JUDGMENT AND
MOTION FOR INTERLOCUTORY
RELIEF; AND NOTICE OF SECOND
PREHEARING CONFERENCE

ORDER DENYING UPW'S MOTION FOR SUMMARY
JUDGMENT AND MOTION FOR INTERLOCUTORY
RELIEF; AND NOTICE OF SECOND PREHEARING CONFERENCE

On July 15, 2008, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a prohibited practice complaint (Complaint) against Respondents HAWAII HEALTH SYSTEMS CORPORATION (HHSC); THOMAS M. DRISKILL, JR. (Driskill), President and Chief Executive Officer, HHSC; and EARL GREENIA (Greenia), Regional Chief Executive Officer, Kona Community Hospital (KCH), State of Hawaii (collectively, Respondents or HHSC). The Complaint alleges, *inter alia*, that by letter dated July 14, 2008, the UPW requested Respondents to negotiate over the impacts and effects of the HHSC's budget shortfall on the wages, hours, and terms and conditions of bargaining unit 01 and 10 employees, and to cease and desist from making unilateral changes pending bargaining; that thereafter Respondents refused to negotiate with the UPW over the impact and the effects of the anticipated budget shortfalls, and began unilaterally implementing changes in wages, hours, and working conditions at the KCH; and that without prior notice and opportunity to bargain, Respondents determined they would eliminate 55 positions at the KCH. The UPW alleges prohibited practices pursuant to Hawaii Revised Statutes (HRS) §§ 89-13(a)(1) (wilfully interfering, restraining, and coercing employees in the free exercise of rights established by § 89-3); 89-13(a)(5) (failure to bargain in good faith over wages, hours, and terms and conditions of employment, including but not limited to the impact and

effects of the anticipated budget shortfall, under HRS § 89-9(a); 89-13(a)(7) (failure to comply with the provisions of chapter 89 over effects bargaining); and 89-13(a)(8) (violated the duty to negotiate as set forth in the union recognition provisions in the Units 01 and 10 collective bargaining agreements (CBA or Agreement)).

On August 7, 2008, the UPW filed a Motion for Summary Judgment and a Motion for Interlocutory Relief. On August 14, 2008, Respondents filed their Memorandum in Opposition to UPW's Motion for Interlocutory Relief and Memorandum in Opposition to UPW's Motion for Summary Judgment.

The Board held a hearing on UPW's Motion for Summary Judgment and Motion for Interlocutory Relief on August 20, 2008, pursuant to HRS § 89-5(i)(4) and (5), and HAR § 12-42-8(g)(3).

After careful consideration of the record and arguments presented, the Board makes the following findings of fact, conclusions of law, and order denying UPW's Motion for Summary Judgment and Motion for Interlocutory Relief.

FINDINGS OF FACT

1. At all times relevant to this Complaint, the UPW was or is an employee organization within the meaning of HRS § 89-2¹ for HHSC employees belonging to Unit 01 and Unit 10.²

¹HRS § 89-2 provides in relevant part:

“Employee organization” means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund or a voluntary employees' beneficiary association trust, and other terms and conditions of employment of public employees.

²HRS § 89-6 provides in relevant part:

Appropriate bargaining units.

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in blue collar positions;
[and]

2. At all times relevant to this Complaint, the board of directors of the HHSC was or is a public employer within the meaning of HRS § 89-2.³
3. At all times relevant to this Complaint, Respondent Driskill was or is the President and the Chief Executive Officer of the HHSC.
4. At all times relative to this Complaint, Respondent Greenia was or is the Acting Regional Chief Executive Officer of West Hawaii Regional Health Care System (WRH) on the island of Hawaii. Respondent Greenia oversees the daily operations of the health care facilities within the WRH, including the KCH.
5. At all times relevant to this Complaint, Janice Wakastuki (Wakastuki) was or is the HHSC Vice President and Director of Human Resources, and oversees the administration of personnel policies of, and collective bargaining agreements affecting, the HHSC and its affiliated Regions.
6. The UPW and the HHSC are parties to the Unit 01 Agreement effective July 1, 2007, through June 30, 2009, and the Unit 10 Agreement effective July 1, 2007, through June 30, 2009.
7. The Unit 01 Agreement provides in relevant part:

1.05 CONSULT OR MUTUAL CONSENT.

The Employer shall consult with the Union when formulating and implementing personnel policies, practices and any matter affecting working conditions. No changes in wages, hours or other conditions of

* * *

(10) Institutional, health, and correctional workers[.]

³HRS § 89-2 provides in relevant part:

“Employer” or “public employer” means the governor in the case of the State, the respective mayors in the case of the counties, the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of these employers or acts in their interest in dealing with public employees.

work contained herein may be made except by mutual consent.

* * *

SECTION 12. LAYOFF.

* * *

12.02 FIRST NOTICE.

12.02 a. When there is an impending layoff because of lack of work, need, or funds, the Employer shall inform the affected Employee and the Union of this in writing as soon as possible but in any case at least ninety (90) calendar days before the impending layoff will take place.

12.02 b. After receipt of notification, the Union may request a meeting with the Employer to discuss the Employer's reason(s) and plan(s) for layoff.

8. The Unit 01 Agreement contains further provisions governing layoffs, including sections on retention points, waiver of displacement rights, conditions for placement, placements and layoff within the employing department, second notice, and employer-wide layoffs.
9. The Unit 10 Agreement provides in relevant part:

1.05 CONSULT OR MUTUAL CONSENT.

The Employer shall consult the Union when formulating and implementing personnel policies, practices and any matter affecting working conditions. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

* * *

SECTION 12. LAYOFF.

* * *

12.02 FIRST NOTICE.

12.02 a. When there is an impending layoff because of lack of work, need, or funds, the Employer shall inform the affected Employee and the Union of this in writing as soon as possible but in any case at least ninety (90) calendar days before the impending layoff will take place.

12.02 b. After receipt of notification, the Union may request a meeting with the Employer to discuss the Employer's reason(s) and plan(s) for layoff. The time limits for notices contained herein shall not apply to the elimination of a federally funded position where the Employer has insufficient notice by the Federal government to meet the time requirements.

10. The Unit 10 Agreement contains further provisions governing layoffs, including sections on retention points, waiver of displacement rights, conditions for placement, placements and layoff within the employing department, second notice, and employer-wide layoffs.
11. The UPW first learned of an anticipated budget shortfall of the HHSC on or about January 9, 2008, when the UPW was asked to support an emergency funding request submitted to Governor Linda Lingle.
12. On or about April 1, 2008, Respondent Greenia became aware that the HHSC general and the KCH specifically faced a severe financial shortfall.
13. On June 18, 2008, Respondent Greenia presented the KCH Fiscal year Contingency Plan and Budget demonstrating the shortfall and need for a reduction in force to the HHSC West Hawaii Region Board. The HHSC West Hawaii Region Board approved the plan.
14. On June 18, 2008, Respondent Driskill, Wakastuki, and HHSC Personnel Program Manager Allan Tanigawa (Tanigawa) met with UPW representatives Dayton Nakanelua (Nakanelua), the state director of the UPW, and Clifford Uwaine (Uwaine) to discuss the estimated \$62 million revenue shortfall for the July 1, 2008, to June 30, 2009, fiscal year (FY). At this meeting, the parties discussed the KCH's FY09 Contingency Plan for a reduction in force of approximately 58-59 positions.
15. On June 24, 2008, Nakanelua, Uwaine, Wakastuki, Hawaii Government Employees Association (HGEA) representative Randy Perreira, Speaker of

the House Calvin Say, Senate President Colleen Hanabusa, and HHSC management and board representatives met to discuss the budget shortfall, contingency plans, and possibility of a special legislative session. Also discussed was the need for implementing reductions in force including eight to nine HHSC Corporate Office positions and approximately 59 positions in clerical, administrative, and support services at KCH as part of the FY09 contingency plans.

16. On June 27, 2008, a letter was sent to KCH employees by Respondent Greenia on the FY09 financial challenges stating the need for tough decisions including reduction in the size of the workforce. The letter was transmitted to the UPW on the same day.
17. On or about July 3, 2008, Wakastuki requested a meeting with the UPW to discuss the KCH reduction in force, and the Reduction in Force (RIF) Guidelines.
18. The RIF Guidelines submitted as an exhibit to Respondents' Memorandum in Opposition to UPW's Motion for Summary Judgment are dated September 20, 2002, and are unsigned. The HHSC asserts that it consulted and negotiated with the UPW over the RIF guidelines, and that in February, 2003, the UPW agreed to the final version of the RIF Guidelines. The RIF Guidelines provide that non-regular employees, such as probationary and temporary employees, are not entitled to the 90-day notice period specified in the collective bargaining agreements; rather, they would receive reasonable notice of not less than two weeks. The UPW asserts that it did not agree to the RIF Guidelines.
19. On July 9, 2008, Nakanelua, Uwaine, Wakastuki, HHSC's Personnel Program Manager Allan Tanigawa (Tanigawa), HHSC's Personnel Program Administrator Henry Kanda (Kanda), and Personal Program Officer Juanita Lauti met to discuss the reduction in force, and commenced discussions regarding the impact of the fiscal shortfall on the KCH affecting approximately 20 positions in bargaining units 01 and 10. The UPW was provided with a copy of the 2002 RIF Guidelines sometime prior to or at the meeting.
20. On or about July 11, 2008, an informational briefing was held with the Senate Ways and Means Committee and the House Finance Committee.
21. On July 13, 2008, a follow-up meeting was held at the KCH with Respondent Greenia, Nakanelua, and other UPW representatives regarding the RIF. The UPW alleges that at this meeting Respondent Greenia refused to negotiate with the UPW over the impact of the fiscal shortfall and

indicated that all decisions were being made by the regional system Board in charge of West Hawaii. The HHSC asserts that Respondent Greenia notified Nakanelua that KCH planned to send out notice of the RIF on July 14, 2008; that Nakanelua asked Greenia if he would consider delaying the RIF notices; that Greenia told him he would not; and that Nakanelua then declared the meeting over without proposing any alternatives or proposals for effects bargaining.

22. On July 14, 2008, notices were sent to the UPW and affected employees that KCH was initiating a RIF. 90-Day RIF notices were issued to affected regular employees and to the UPW, and 30-Day notices were issued to affected non-regular employees and the UPW. The affected employees included three Unit 01 and two Unit 10 probationary employees; four Unit 01 and four Unit 10 temporary employees; and seven Unit 01 and five Unit 10 regular employees.
23. On July 14, 2008, the UPW sent a request to Respondent Driskill, the HHSC, and Respondent Greenia to negotiate in good faith over the impact and effects of the budgetary shortfall, and to cease and desist from implementing any RIF, relocations, displacements, and terminations of employees, and to cease and desist from making unilateral changes to existing terms and conditions of employment prior to good faith bargaining. The request was received by the HHSC on July 15, 2008.
24. On July 16, 2008, Wakastuki called the UPW requesting to meet to begin effects bargaining on the KCH issues, but was unable to schedule a meeting with the UPW.
25. On July 16, 2008, the UPW sent a letter to the HHSC requesting information.
26. On July 17, 2008, the HHSC responded in writing to the UPW's letter dated July 14, 2008, to acknowledge receipt of the letter requesting effects bargaining and informing the UPW that the HHSC would be contacting the UPW to schedule a meeting.
27. On July 17, 2008, the HHSC sent a letter to the UPW acknowledging the UPW's July 16, 2008, information request.
28. On July 23, 2008, the HHSC responded to the UPW's request to meet for effects bargaining over the RIF by agreeing to meet at Leahi Hospital. Wakastuki, Kanda, Tanigawa, Sandra McFarlane, and Uwayne met and discussed the UPW's information request. The HHSC asserts that the UPW

made no proposals. The HHSC further asserts that a follow-up meeting was scheduled for August 8, 2008, but the UPW cancelled that meeting.

29. On July 25, 2008, the HHSC provided a partial listing of related classes of employees in Unit 01 and Unit 10 positions that could be affected by the RIF at KCH due to “bumping.” The HHSC also requested the UPW to call to schedule the effects bargaining and to submit proposals in advance of meeting.
30. The UPW asserts that the HHSC, Driskill, and Greenia have undertaken unilateral actions without good faith bargaining over the effects and impact of the budget shortfall, that not all Unit 01 and Unit 10 employees are being afforded 90 days notice of the RIF, and that the Respondents unilaterally changed existing terms and conditions of employment without mutual consent of the union.
31. On July 15, 2008, the UPW filed the instant Complaint. The Complaint alleges, inter alia, that by letter dated July 14, 2008, the UPW requested Respondents to negotiate over the impacts and effects of the HHSC’s budget shortfall on the wages, hours, and terms and conditions of bargaining unit 01 and 10 employees, and to cease and desist from making unilateral changes pending bargaining; that thereafter Respondents refused to negotiate with the UPW over the impact and the effects of the anticipated budget shortfalls, and began unilaterally implementing changes in wages, hours, and working conditions at the KCH; and that without prior notice and opportunity to bargain, Respondents determined they would eliminate 55 positions at the KCH. The UPW alleges prohibited practices pursuant to HRS §§ 89-13(a)(1) (wilfully interfering, restraining, and coercing employees in the free exercise of rights established by HRS § 89-3); 89-13(a)(5) (failure to bargain in good faith over wages, hours, and terms and conditions of employment, including but not limited to the impact and effects of the anticipated budget shortfall, under § 89-9(a)); 89-13(a)(7) (failure to comply with the provisions of chapter 89 over effects bargaining); and 89-13(a)(8) (violated the duty to negotiate as set forth in the union recognition provisions in the Unit 01 and Unit 10 Agreements).
32. On August 7, 2008, the UPW filed a Motion for Summary Judgment and a Motion for Interlocutory Relief. The UPW argues that there are no genuine issues of any material fact in dispute, and the UPW is entitled to a judgment as a matter of law over the HHSC’s failure to negotiate in good faith over the impact and effects of the HHSC budget shortfall for the fiscal year 2008-2009, and any related reductions in force, displacements, termination, and layoffs of bargaining unit employees.

33. On August 14, 2008, Respondents filed their Memorandum in Opposition to UPW's Motion for Interlocutory Relief and Memorandum in Opposition to UPW's Motion for Summary Judgment.
34. The Board held a hearing on UPW's Motion for Summary Judgment and Motion for Interlocutory Relief on August 20, 2008, pursuant to HRS §§ 89-5(i)(4) and (5), and HAR § 12-42-8(g)(3).
35. On August 18, 2008, the UPW filed its Reply Brief in Support of Motion for Summary Judgment.
36. On September 2, 2008, Respondents filed a Motion for Leave to Supplement the Declaration of Janice Wakastuki Attached to Respondents' Memorandum in Opposition to UPW's Motion for Summary Judgment and supporting documents.
37. On September 8, 2008, Respondents filed their Submission of Original Declaration of Janice Wakastuki.
38. On September 9, 2008, the UPW filed its Memorandum in Opposition to Respondents' Motion to File Supplemental Declaration Dated September 2, 2008.
39. On September 16, 2008, Respondents filed their Reply Memorandum to UPW's Memorandum in Opposition to Respondents' Motion to File Supplemental Declaration Dated September 2, 2008.
40. The Board grants Respondents' Motion for Leave to Supplement the Declaration of Janice Wakastuki Attached to Respondents' Memorandum in Opposition to UPW's Motion for Summary Judgment; however, the Board finds that the supplemental memorandum does not affect the Board's decision regarding the UPW's Motion for Summary Judgment or Motion for Interlocutory Relief. The Board finds that with or without the supplemented Declaration of Janice Wakastuki, there exists dispute over material facts regarding the adoption of the RIF Guidelines.
41. The Board finds that there are issues of material fact in dispute that preclude summary judgment. The facts in dispute include whether the HHSC wilfully refused to participate in effects bargaining with the UPW; whether the RIF Guidelines were unilaterally implemented by the HHSC without approval of the UPW, thus changing the layoff procedures provided by the Agreements; and whether the HHSC acted in good faith or unilaterally in implementing a RIF.

42. The Board finds that because of the genuine dispute over material facts, it has not yet been established that the UPW is likely to prevail on the merits of this case. The Board also finds that the type of harm that may occur from the RIF is primarily financial in nature and not irreparable. Finally, the Board finds that UPW hasn't sufficiently demonstrated that the public interest supports the granting of injunctive relief; the severe revenue shortfall is not in dispute and public interest favors the continued operation and provision of essential medical services in West Hawaii.

DISCUSSION AND 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. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Silva v. City and County of Honolulu, 115 Hawai'i 1, 6, 165 P.3d 247, 252 (2007).
6. HRS § 89-13(a) provides in relevant part:

It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

* * *

- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

* * *

- (7) Refuse or fail to comply with any provision of this chapter; [or]

- (8) Violate the terms of a collective bargaining agreement[.]

- 7. HRS § 89-3, governing “rights of employees,” provides:

Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, including retiree health benefit contributions, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4.

- 8. Pursuant to HRS § 89-9, the employer and exclusive representative are required to negotiate in good faith with respect to wages, hours, contributions to health benefits trust funds, and other terms and conditions of employment that are subject to collective bargaining and that are to be embodied in a written agreement. Additionally, all matters affecting employee relations, including those that are, or may be, the subject of a rule adopted by the employer or any director, shall be subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations.

- 9. HRS § 377-9(d), made applicable to the Board by HRS § 89-14,⁴ provides:

⁴HRS § 89-14, entitled Prevention of Prohibited Practices, provides in relevant part, “[a]ny controversy concerning prohibited practices may be submitted to the board in the same

After the final hearing, the board shall promptly make and file an order or decision, incorporating findings of fact upon all the issues involved in the controversy and the termination of the rights of the parties. Pending the final determination of the controversy the board may, after hearing, make interlocutory orders which may be enforced in the same manner as final orders. Final orders may dismiss the complaint or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend the person's rights, immunities, privileges, or remedies granted or afforded by this chapter for not more than one year, and require the person to take such affirmative action, including reinstatement of employees with or without pay, as the board may deem proper. Any order may further require the person to make reports from time to time showing the extent to which the person has complied with the order. (Emphasis added.)

10. Similarly, HAR § 12-42-48, governing interlocutory orders, provides:

Pending the final determination of the controversy the board may, after hearing, make interlocutory orders which may be enforced in the same manner as final orders.

11. In Office of Hawaiian Affairs, et al. v. Housing and Community Development Corp., et al., 117 Hawai'i 174, 211, 177 P.3d 884, 921 (2008), the Hawaii Supreme Court discussed the standards for injunctive relief, and stated:

The test for granting or denying temporary injunctive relief is three-fold: (1) whether the plaintiff is likely to prevail on the merits; (2) whether the balance of irreparable damage favors the issuance of a temporary injunction; and (3) whether the public interest supports granting an injunction. Life of the Land v. Ariyoshi, 59 Haw. 156, 158, 577 P.2d 1116, 1118 (1978); *see also* Morgan v. Planning Dep't, County of Kauai, 104 Hawai'i 173, 86 P.3d 982 (2004). However, as observed by the Intermediate Court of Appeals in Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. 272, 630 P.2d 646 (1981), "[t]he more the balance of irreparable damage favors issuance of the injunction, the less the party

manner and with the same effect as provided in section 377-9[.]”

seeking the injunction has to show the likelihood of his success on the merits.” *Id.* at 276, 630 P.2d at 650 (citations omitted).

12. Historically, the Board and the state courts have used federal precedent to guide their interpretation of state public employment law. See, Hokama v. University of Hawai`i, 92 Hawai`i 268, 272 n. 5, 990 P.2d 1150, 1154 n. 5 (1999).
13. The HHSC does not dispute a duty to bargain over the impact or effects of the RIF resulting from the budget shortfall. See Del Monte Fresh Produce (Hawaii), Inc. v. ILWU, Local 142, AFL-CIO, 112 Hawai`i 489, 146 P.3d 1066 (2006). The question at issue here is whether the HHSC wilfully refused or failed to conduct such bargaining. The Board finds that there are issues of material fact in dispute that preclude summary judgment. The facts in dispute include whether the HHSC wilfully refused to participate in effects bargaining with the UPW. The declarations attached to the HHSC’s Memorandum in Opposition to UPW’s Motion for Summary Judgment assert that the HHSC provided advance notice to the UPW of the budget shortfall; that the HHSC worked with the UPW in bringing concerns to legislative leaders; the HHSC arranged meetings with, and met with, representatives from the UPW to discuss the budget shortfall and resulting RIF or displacements, layoffs, or terminations; that the UPW did not present proposals at the meeting for the HHSC to consider; that future meetings were welcomed by the HHSC; and that future meetings may be scheduled between the parties.
14. To establish whether an employer has met its statutory duty to bargain, the HLRB has looked to federal labor law principles regarding bargaining in “good faith,” and has adopted the standard of whether the totality of the employer’s conduct evinces a present intent to find a basis for agreement and sincere effort to reach a common ground. See Del Monte, 112 Hawai`i at 500, 146 P.3d at 1077 (the Court recites the HLRB’s standard, the propriety of which the Court passed on as not being raised by either party).
15. Viewing the inferences to be drawn from the underlying facts alleged in the record in the light most favorable to the HHSC, the Board concludes that summary judgment in favor of the UPW is not appropriate on the issue of wilful failure or refusal to bargain.
16. The RIF Guidelines are also constitute a material fact in dispute in this proceeding. The UPW alleges that the HHSC acted unilaterally in changing the RIF provisions contained in the Unit 01 and Unit 10 Agreements; however, the HHSC asserts that the UPW approved the RIF Guidelines and

any change to the RIF procedures, including those governing notice to non-regular employees. Accordingly, the material facts relating to the HHSC's alleged unilateral action are in dispute, and inferences therefrom must be viewed in the light most favorable to the HHSC, precluding summary judgment.

17. Pursuant to HAR § 12-42-8(g)(10)(A), “[a]ny document filed in a proceeding may be amended, in the discretion of the board, at any time prior to the issuance of a final order thereon.” The Board grants Respondents’ Motion for Leave to Supplement the Declaration of Janice Wakastuki Attached to Respondents’ Memorandum in Opposition to UPW’s Motion for Summary Judgment; however, the Board finds that the supplemental memorandum does not affect the Board’s decision regarding the UPW’s Motion for Summary Judgment or Motion for Interlocutory Relief. The Board finds that with or without the supplemented Declaration of Janice Wakastuki, there are material facts in dispute regarding the adoption of the RIF Guidelines.
18. The UPW argues that the HHSC did not honor the “status quo” prior to bargaining to impasse and therefore unilaterally changed terms and conditions of employment for Unit 01 and Unit 10 employees. However, viewing the facts in the light most favorable to the HHSC, the HHSC implemented the RIF in accordance with provisions of the Unit 01 and Unit 10 Agreements, and/or the RIF Guidelines which the HHSC asserts was approved by the UPW. While the parties may bargain over changes to the layoff provisions in the Agreements as part of their impact/effects bargaining, the Agreement provisions would govern a layoff in the absence of mutual agreement to any such changes. Accordingly, for the purposes of the Motion for Summary Judgment, the Board cannot conclude that the HHSC acted unilaterally.
19. With respect to the UPW’s Motion for Interlocutory Relief, The Board finds that because of the genuine dispute over material facts, it has not yet been established that the UPW is likely to prevail on the merits of this case. The declarations and exhibits attached to the HHSC’s Memorandum in Opposition to UPW’s Motion for Summary Judgment as well as HHSC’s Memorandum in Opposition to UPW’s Motion for Interlocutory Relief create genuine dispute as to whether the HHSC wilfully refused or failed to bargain in good faith or took unilateral action affecting terms and conditions of employment.
20. The Board also finds that the type of harm that may occur from the RIF is primarily financial in nature and not irreparable. Monetary injury is not normally considered irreparable. Los Angeles Memorial Coliseum

Commission v. National Football League, 634 F.2d 1197, 1202 (9th Cir. 1980). Although the loss of a job may entail more than monetary damages, including emotional distress, the Board finds that the risk of harm involves *primarily* financial matters for purposes of weighing hardships.

21. Finally, the Board finds that UPW hasn't sufficiently demonstrated that the public interest supports the granting of injunctive relief. The severe revenue shortfall facing the HHSC is not in dispute and public interest favors the continued operation and provision of essential medical services in West Hawaii.
22. Based upon the Board's findings, the Board concludes that the UPW's Motion for Interlocutory Relief should be denied.

ORDER

For the reasons discussed above, the Board denies UPW's Motion for Summary Judgment and Motion for Interlocutory Relief.

NOTICE OF SECOND PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN, that the Board will conduct a Second Prehearing Conference on **October 9, 2008 at 9:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

DATED: Honolulu, Hawaii, _____ September 29, 2008 _____.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and HAWAII HEALTH
SYSTEMS CORPORATION; et al.
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