

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 and THOMAS M.
DRISKILL, JR., Hawaii Health Systems
Corporation,

Respondents.

CASE NOS.: CE-01-684a
CE-10-684b

ORDER NO. 2559

ORDER GRANTING COMPLAINANT'S
MOTION TO WITHDRAW
COMPLAINT, FILED ON OCTOBER 10,
2008, WITHOUT PREJUDICE

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On October 10, 2008, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union), by and through its counsel, filed a Motion to Withdraw Complaint Without Prejudice with the Hawaii Labor Relations Board (Board). Complainant alleges that the motion is made pursuant to paragraphs 3 and 4 of an October 9, 2008 settlement agreement regarding HHSC Reduction-In-Force Guidelines (2002); Kona Community Hospital Reduction-In-Force (2008); and HLRB Case Nos. CE-10-679a, CE-10-679b, CE-01-684a, CE-10-684b, CE-01-686a, and CE-10-686b (Settlement Agreement).

On October 16, 2008, Respondents HAWAII HEALTH SYSTEMS CORPORATION (HHSC), et al., by and through their counsel, filed a Memorandum in Response to UPW's Motion to Withdraw Complaint Without Prejudice Filed on October 10, 2008 with the Board. Respondents requested that the Board grant the withdrawal of the complaint with prejudice because of HHSC's understanding that all outstanding issues in this matter had been resolved and for public policy grounds to minimize the cost of litigation and for judicial economy.

On October 28, 2008, the UPW filed a Reply Brief in Support of Motion to Withdraw Complaint "Without Prejudice" Filed on October 10, 2008 with the Board. The UPW submits that its motion should be granted, inter alia, because there is no evidence of an intent to have the complaint withdrawn "with prejudice" in any of the settlement agreements; the settlement agreement indicates an intent to avoid an

adjudication on the merits; Hawaii Administrative Rules (HAR) § 12-42-44 permits the Complainant to determine the terms for withdrawal of a complaint; the Hawaii Rules of Civil Procedure (HRCP) Rule 41(a)(1) allows for an order dismissing a complaint without prejudice; an order granting the motion to withdraw without prejudice is consistent with public policy favoring the resolution of disputes through negotiations, and neither party would be prejudiced if the UPW's motion is granted since the settlement agreement may be enforced by either party regardless of how the case is disposed of.

HAR § 12-42-44 provides that a complaint can be withdrawn at any time prior to the issuance of a final decision and order upon motion and with the consent of the Board. The Board's rule provides for withdrawal of the complaint without regard to prejudice. In looking for guidance to the HRCP, Rule 41, Dismissal of actions, Rule 41(a) pertaining to Voluntary dismissal; Effect thereof, provides as follows:

(1) BY PLAINTIFF; BY STIPULATION. An action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal at any time before the return date as provided in Rule 12(a) or service by the adverse party of an answer or of a motion for summary judgment, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States, or of any state, territory or insular possession of the United States an action based on or including the same action. [Emphasis added.]

In reviewing the Settlement Agreement attached to the instant motion, the Board finds that the parties agreed, in part, as follows:

3. HLRB Cases:

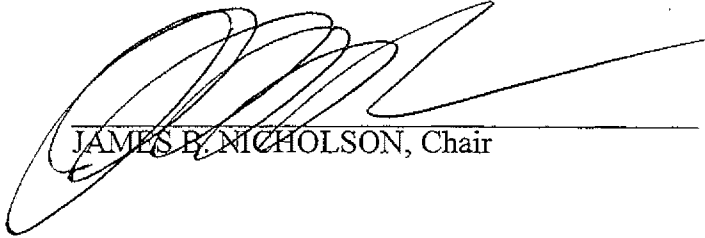
In light of the above, the Union agrees to withdraw the following cases currently pending before the Hawaii Labor Relations Board:

1. Case Nos. CE-01-679a and CE-10-679b
2. Case Nos. CE-01-684a and CE-10-684b
3. Case Nos. CE-01-686a and CE-10-686b

Based on the foregoing, as the parties have not specified that the dismissal be with or without prejudice, the Board hereby grants Complainant's motion to withdraw the instant complaint, without prejudice.

DATED: Honolulu, Hawaii, October 29, 2008.

HAWAII LABOR RELATIONS BOARD



A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

JAMES B. NICHOLSON, Chair



A handwritten signature in black ink, appearing to read 'Emory J. Springer', with a horizontal line underneath.

EMORY J. SPRINGER, Member

Copies sent to:

Herbert R. Takahashi, Esq.
Robert S. Katz, Esq.