STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO, Complainant, and LINDA LINGLE, Governor, State of Hawaii; and BRENNON MORIOKA, Director, Department of Transportation, State of Hawaii, Respondents.	CASE NO. CE-01-701 ORDER NO. 2617 ORDER DENYING COMPLAINANT'S MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT AND GRANTING COMPLAINANT'S MOTION FOR ORDER GRANTING CONTINUANCE OF HEARING; AND NOTICE OF HEARING

ORDER DENYING COMPLAINANT'S MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT AND GRANTING COMPLAINANT'S MOTION FOR ORDER GRANTING CONTINUANCE OF HEARING AND NOTICE OF HEARING

On February 12, 2009, Complainant UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO (UPW or Union) filed a Prohibited Practice Complaint (Complaint) against Respondents LINDA LINGLE, Governor, State of Hawaii, and BRENNON MORIOKA, Director, Department of Transportation, State of Hawaii (collectively, Respondents or Employer). The Complaint alleges prohibited practices under Hawaii Revised Statutes (HRS) §§ 89-13(a)(1), (5), and (8), and asserts that the Department of Transportation committed a prohibited practice when it wilfully failed to produce certain information and documents in response to the UPW's February 6, 2008, letter requesting information necessary to the processing of a Step 1 grievance as required by the Unit 01 collective bargaining agreement (Agreement).

On February 18, 2009, Respondents filed a Motion to Dismiss Prohibited Practice Complaint Filed February 12, 2009 (Motion to Dismiss), asserting UPW's failure to file a timely Complaint, failure to exhaust contractual remedies, and that the Complaint fails to state a valid claim. On March 17, 2009, the Board held a hearing on Respondents' Motion to Dismiss, pursuant to HRS §§ 89-5(i)(4) and (5), and 89-14, and Hawaii Administrative Rules (HAR) § 12-42-8(g). On April 13, 2009, the Board denied Respondents' Motion to Dismiss in Order No. 2604.

On April 23, 2009, Complainant filed a Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment, asserting that Respondents failed to file an answer to the Complaint; that the failure to answer constitutes an admission of material facts alleged in the Complaint and a waiver of hearing; that Respondents willfully violated the Agreement; and that Complainant is entitled to judgment on the pleadings or in the alternative to summary judgment in its favor.

On April 29, 2009, Respondents filed their Opposition to Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment and Motion for Reconsideration of the Board's April 13, 2009 Order No. 2604 Denying Respondents (sic) Motion to Dismiss (Opposition to Summary Judgment).

On May 5, 2009, Complainant filed its Reply to Respondents' Opposition to Summary Judgment.

On June 9, 2009, Complainant filed a Motion for Order Granting Continuance of Hearing Scheduled for June 22, 2009 (Motion for Order Granting Continuance of Hearing).

On June 12, 2009, Respondents filed their Opposition to Complainant's Motion for Order Granting Continuance of Hearing Scheduled for June 22, 2009 (Opposition to Continuance).

The Board has carefully reviewed the pleadings and record in this case, and finds that oral argument is not necessary for the Board's disposition of Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment, and Complainant's Motion for Order Granting Continuance of Hearing.

After careful consideration of the record and the arguments presented in the parties' filings, the Board, for the reasons discussed below, denies Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment, and grants Complainant's Motion for Order Granting Continuance of Hearing.

FINDINGS OF FACT

1. At all times relevant to the Complaint, the UPW was or is an employee organization[1] and the exclusive bargaining representative, within the

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[1]HRS § 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,

meaning of HRS § 89-2, of employees included in bargaining unit (Unit or BU) 01, composed of nonsupervisory employees in blue collar positions. See HRS § 89-6(1).

2. At all times relevant to the Complaint, Respondent LINDA LINGLE, Governor, State of Hawaii (Governor), was or is a public employer within the meaning of HRS § 89-2.[2]

3. At all times relevant to the Complaint, Respondent BRENNON MORIOKA, Director, Department of Transportation, State of Hawaii (DOT), was or is an individual who represented the Governor or acted in the Governor's interest in dealing with employees with respect to the grievance referred to in the Complaint, within the meaning of HRS § 89-2.

4. The UPW and the Governor are parties to a Unit 01 collective bargaining agreement (CBA) which for all relevant times includes a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of the collective bargaining agreement.

5. Section 15.09 of the Unit 01 CBA provides in relevant part:

> Employer shall provide all information in the possession of the Employer which is needed by the grieving party and/or the Union to investigate and/or process a grievance as follows:
>
> 15.09 a. Photocopy and give the material requested to the grieving party and/or the Union within seven (7) calendar days of the request; or

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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.

[2]HRS § 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.

15.09 b. Make the material requested available to the grieving party and/or the Union within seven (7) days of the request for the purpose of photocopying or review for five (5) calendar days on the condition that the grieving party and the Union agrees to sign Exhibit 15.09 and be responsible for the material until it is returned.

6. On February 6, 2008, the UPW filed a Step 1 grievance on behalf of an Electrician II employed by the DOT at Honolulu Airport (Grievant).

7. By letter dated February 6, 2008, the UPW Business Agent Paula Ota (Ota) requested from the DOT certain information needed by the UPW to process the grievance, pursuant to section 15.09 of the CBA.

8. The letter dated February 6, 2008, from Ota to the DOT specifically requested, inter alia, (A) a copy of all rules, regulations and policies relied upon by the Employer in its action to discipline the Grievant; (B) any and all documents, memoranda, letters, postings notices [sic] and other records which would establish the following regarding the Employer's disciplinary rules, policies, etc: 1) When and how the Employer's disciplinary rules and policies were initially promulgated; 2) When and how the promulgated rules and policies were amended, modified, rescinded, or otherwise altered from the date of inception; 3) When and how bargaining unit employees were notified of the applicable disciplinary rules and policies; and 4) When and how the UPW was informed of said rules and policies and changes; and (C) any and all documents, notes and records used or related to the grievance which would indicate the nature and extent of the investigation conducted by Employer to discover whether the allegations against the Grievant were factual, including but not limited to: 1) All investigative reports and papers; 2) Statements of witnesses; and 3) Notes, memos, or other papers prepared or submitted during the investigative process.

9. The grievance was not resolved at Step 1 or Step 2, and by letter dated September 11, 2008, the UPW noticed the grievance for arbitration.

10. By letter dated January 21, 2009, Michael Nauyokas (Arbitrator) accepted the appointment to arbitrate the grievance.

11. Via telephone conference with the Arbitrator, the parties scheduled the arbitration hearing for March 11, 2009, and agreed to deliver pre-hearing statements and exhibits by February 25, 2009.

12. On January 30, 2009, the DOT served its Pre-Arbitration Statement and Exhibits upon the UPW.

13. The DOT's Pre-Arbitration Statement quotes Sections 4.12.16 and 4.12.03 of the DOT's "Staff Manual."

14. The DOT's Exhibit #8 attached to its Pre-Arbitration Statement includes a DOT memorandum dated December 6, 2007, with subject matter "Report of Investigation – Alleged Misconduct" relating to the Grievant.

15. Also part of the DOT's Exhibit #8 were four attachments, including one identified as "Copy of card reader events log for [Grievant] from midnight 8/20/07 to 11:59 p.m. 8/21/07."

16. The UPW alleges that the DOT did not provide the information described above in the Board's Findings of Fact nos. 13 through 15, and further, that the UPW was unaware of the existence of that information until it received the DOT's Pre-Arbitration Statement and attached Exhibits on or around January 30, 2009.

17. The DOT argues that the UPW was already aware of the existence of the Staff Manual and that the UPW previously filed a class-action grievance related to the Staff Manual; that the UPW should have been aware of the existence of the investigation report prior to January 30, 2009, because the UPW was involved during the investigation stage; and, that the DOT must have turned over the investigation report and other information because it is the DOT's usual practice to do so in response to a request by a union or grievant.

18. On February 12, 2009, the UPW filed its Complaint against Respondents, alleging prohibited practices under HRS §§ 89-13(a)(1), (5), and (8), and asserting that the Department of Transportation committed a prohibited practice when it wilfully failed to produce certain information and documents in response to the UPW's February 6, 2008, letter requesting information necessary to the processing of a Step 1 grievance as required by the Unit 01 CBA.

19. On February 18, 2009, Respondents filed their Motion to Dismiss,[3] asserting UPW's failure to file a timely Complaint, failure to exhaust contractual remedies, and that the Complaint fails to state a valid claim.

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[3]Respondents filed a Motion to Dismiss in lieu of filing an answer to the Complaint.

20. On February 24, 2009, the UPW filed a Memorandum in Opposition to Respondents' Motion to Dismiss.

21. On March 13, 2009, Respondents filed their Reply to the UPW's Opposition to Respondents' Motion to Dismiss.

22. On March 17, 2009, the Board held a hearing on Respondents' Motion to Dismiss, pursuant to HRS §§ 89-5(i)(4) and (5), and 89-14, and HAR § 12-42-8(g).

23. On April 13, 2009, the Board denied Respondents' Motion to Dismiss in Order No. 2604. Accepting the allegations of the Complaint as true and construing the allegations in the light most favorable to the UPW, the Board held, inter alia, (1) that the Complaint was not untimely, for the UPW may not have known of the existence of certain documents, including the investigation report, prior to receipt of the DOT's Pre-Arbitration Statement and attached Exhibits, and therefore would not have known that the DOT's response to the UPW's information request was incomplete until on or around January 30, 2009; (2) that the alleged failure by the DOT to provide a complete response to the UPW's request for information may be a violation of section 15.09 of the Unit 01 CBA; however, using federal case law as guidance, such alleged failure may also interfere with the UPW's proper performance of its duties and constitute a prohibited practice such that deferral to the grievance process is not warranted in the present case; and (3) because the information request and response at issue in this case occurred prior to the arbitration stage of the grievance, the Board does not defer the prohibited practice complaint to the arbitrator.

24. On April 15, 2009, Respondents filed their Answer to the Complaint.

25. On April 23, 2009, Complainant filed a Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment, asserting that Respondents failed to file an answer to the Complaint; that the failure to answer constitutes an admission of material facts alleged in the Complaint and a waiver of hearing; that Respondents willfully violated the Agreement; and that Complainant is entitled to judgment on the pleading or in the alternative to summary judgment in its favor.

26. On April 29, 2009, Respondents filed their Opposition to Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment and Motion for Reconsideration of the Board's April 13, 2009 Order No. 2604 Denying Respondents (sic) Motion to Dismiss (Opposition to Summary Judgment).

27. On May 5, 2009, Complainant filed its Reply to Respondents' Opposition to Summary Judgment.

28. By letter dated May 26, 2009, counsel for Complainant requested a rescheduling of the hearing in this matter set for June 22, 2009, due to counsel's need to be on the east coast for the entire week of June 22, 2009, for the birth of a first grandchild.

29. By letter dated June 2, 2009, counsel for Respondents requested a "sworn written declaration" be provided by June 5, 2009, confirming the date Complainant's counsel's travel arrangements were booked, and why other counsel are unavailable to represent Complainant in this matter, otherwise Respondents would be unable to agree to a rescheduling of the June 22, 2009, hearing.

30. On June 9, 2009, Complainant filed a Motion for Order Granting Continuance of Hearing Scheduled for June 22, 2009. Complainant asserts that an essential witness would not be available to testify on June 22, 2009, and would not return to Hawaii until June 28, 2009 (see Affidavit of Andy Takekuma).

31. On June 12, 2009, Respondents filed their Opposition to Complainant's Motion for Order Granting Continuance of Hearing Scheduled for June 22, 2009 (Opposition to Continuance). Respondents assert that proceedings in this Complaint may already exceed the duration of the related arbitration, and that Complainant has opposed Respondents' own continuance requests for witnesses on medical leave in that arbitration proceeding.

32. Respondents filed their Answer within the time prescribed by the Board. The Answer states general denial of all allegations and lists several affirmative defenses. Although the Answer is somewhat lacking in detail it provides reasonably clear notice to Complainant that Respondents deny all material allegations and intend to assert certain affirmative defenses. Although the Board, in Order No. 2604, denied Respondents' Motion to Dismiss based upon timeliness, lack of jurisdiction, and failure to exhaust the grievance process (which are repeated in Respondents' affirmative defenses), a motion to dismiss is based upon the Complaint; the factual allegations in the Complaint are accepted as true for purposes of the motion, yet may remain disputed at trial. Furthermore, additional notice of Respondents' position regarding the factual allegations and legal claims contained in the Complaint was provided via Respondents' filings and argument related to their Motion to Dismiss. Accordingly, there is no prejudice to Complainant or the Board, and generally default judgments are not favored.

33. The Board finds that material allegations of fact remain in dispute in this case such that granting Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment is not proper. Such material facts in dispute including whether Complainant knew of the existence of certain documents, including the investigation report, prior to receipt of the DOT's Pre-Arbitration Statement and attached Exhibits; whether the information requested by Complainant was required for the proper performance of Complainant's duties, and whether such information was fully disclosed within reasonable time to permit the proper performance of such duties; and, if not, whether Respondents wilfully failed to produce certain information. Accordingly, the judgment on the pleadings or summary judgment is not warranted.

34. With respect to Complainant's counsel's request for continuance, the Board finds that Respondents would not be prejudiced by a continuance, that Complainants' attorney will be out of state during that week, that Complainant's witness will be out of state during that week, and that Complainant has not previously requested continuance of trial in this matter. Accordingly, the Board grants the request for continuance.

DISCUSSION AND CONCLUSIONS OF LAW

1. The Board has jurisdiction over the instant Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment; Motion for Reconsideration; Motion for Order Granting Continuance of Hearing pursuant to HRS §§ 89-5 and 89-14.

2. The Complaint alleges violation of HRS §§ 89-13(a)(1), (5), and (8), which provide in relevant part:

> (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:
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> (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; [or]

* * *

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

3. A motion for judgment on the pleadings only has utility when all material allegations of fact are admitted in the pleadings and only questions of law remain. Hawaii Medical Ass'n. v. Hawaii Medical Service Ass'n, Inc., 113 Hawai'i 77, 90, 148 P.3d 1179, 1192 (2006). The movant must clearly establish that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law. In considering a motion for judgment on the pleadings, the court is required to view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party. Id. at 91, 148 P.3d at 1193.

4. HAR § 12-42-45 provides in relevant part:

(a) A respondent shall file a written answer to the complaint within ten days after service of the complaint. One copy of the answer shall be served on each party, and the original and five copies, with certificate of service on all parties, shall be filed with the board.

* * *

(c) The answer shall contain the following:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or, if respondent is without knowledge thereof, such respondent shall so state and such statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation.

(2) A specific detailed statement of any affirmative defense.

(3) A clear and concise statement of the facts and matters of law relied upon constituting the grounds of defense.

* * *

(g) If the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing.

5. 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.

6. 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.

7. 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.

8. Generally default judgments are not favored because they do not afford parties an opportunity to litigate claims or defenses on the merits. See In re Genesys Data Technologies, Inc. v. Genesys Pacific Technologies, Inc., 95 Hawai`i 33, 40, 18 P.3d 895, 902 (2001). The Ninth Circuit has considered the following factors when exercising discretion as to the entry of a default judgment: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

9. Complainant contends that Respondents' Answer does not specifically admit or deny the allegations in the Complaint and thus fails to comply with HAR § 12-42-45(c). Complainant argues that the Board should find that Respondents failed to file an answer and their failure should constitute an admission of material facts alleged in the complaint and a waiver of a hearing under HAR § 12-42-45(g). Here, Respondents filed their Answer within the time prescribed by the Board. The Answer states general denial

of all allegations and lists several affirmative defenses. The Board cautions Respondents that HAR § 12-42-45(c) requires that each answer contain a "specific admission, denial, or explanation of each allegation of the complaint" and that had the procedural background of this case been different, the Board may have reached a different conclusion regarding Complainant's present motion. However, as it stands, the Answer provides reasonably clear notice to Complainant that Respondents deny all material allegations and intend to assert certain affirmative defenses. Although the Answer is lacking in detail as to each specific allegation, additional notice of Respondents' position regarding the factual allegations and legal claims contained in the Complaint was provided via Respondents' filings and arguments related to their Motion to Dismiss.

Although the Board, in Order No. 2604, denied Respondents' Motion to Dismiss based upon timeliness, lack of jurisdiction, and failure to exhaust the grievance process (which are repeated in Respondents' affirmative defenses), a motion to dismiss is based upon the Complaint; the factual allegations in the Complaint are accepted as true for purposes of the motion, yet may remain disputed at trial.

In summary, there is no prejudice to Complainant or the Board; material facts remain in dispute; and default judgments are not favored (In re Genesys Data Technologies, Inc.). Accordingly, the Board denies the Motion for Judgment on the Pleadings.

10. The Board finds that material allegations of fact remain in dispute in this case such that granting Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment is not proper. Such material facts in dispute including whether Complainant knew of the existence of certain documents, including the investigation report, prior to receipt of the DOT's Pre-Arbitration Statement and attached Exhibits; whether the information requested by Complainant was required for the proper performance of Complainant's duties, and whether such information was fully disclosed within reasonable time to permit the proper performance of such duties; and, if not, whether Respondents wilfully failed to produce certain information. Accordingly, the Board denies Complainant's request for summary judgment.

11. Respondents appear to argue that Complainant had knowledge of the investigation itself, and that it must therefore have had knowledge of the existence of a report, and therefore knowledge that the report was missing from Respondents' response to its information request outside of the statute

of limitations. However, the Board did not make such a finding for purposes of evaluating the Motion to Dismiss, for allegations and the inferences to be drawn therefrom must be construed in the light most favorable to the non-moving party. There remains a disputed issue as to whether Complainant knew or should have known about the existence of the investigation report itself.

12. With respect to Respondents' argument that Complainant failed to exhaust contractual remedies and failed to state a claim, the Board already held in Order No. 2604 that the alleged failure to provide information may interfere with the UPW's proper performance of its duties and constitute a prohibited practice such that deferral to the grievance process is not warranted. This general principle is applicable in the context of a union's duty to process a grievance as well as to negotiations. See, e.g., Detroit Edison Co. v. NLRB, 440 U.S. 301, 99 S.Ct. 1123 (1979); Decision No. 130, In the Matter of Manuel Veincent, Jr., et al., 2 HPERB 494, Case No. CE-11-54 (1980); and Salt River Valley Water Users' Assn. v. NLRB, 769 F.2d 639 (9th Cir. 1985). There remain disputed facts regarding this issue, as found above.

13. With respect to Respondents' argument that Complainant has not provided evidence at the arbitration hearing to conclusively establish that Respondents wilfully failed to provide certain information, such argument is beyond the scope of Respondents' prior motion to dismiss based upon timeliness, lack of jurisdiction, and failure to state a claim.[4] For purposes of Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment, the issue of whether or not Respondents wilfully failed to provide necessary information remains in dispute.

14. With respect to Complainant's counsel's request for continuance, the Board finds that Respondents would not be prejudiced by a continuance, that Complainants' attorney will be out of state during that week, that Complainant's witness will be out of state during that week, and that

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[4]Respondents did not file a motion for summary judgment, which may test the sufficiency of Complainant's ability to produce evidence to support its claims and not merely rest upon its pleadings; rather, Respondents had previously filed a motion to dismiss, and the Board "must therefore view [the] complaint in a light most favorable to [Complainant] in order to determine whether the allegations contained therein could warrant relief under any alternative theory. For this reason . . . consideration is strictly limited to the allegations of the complaint, and [the Board] must deem those allegations to be true." Jou v. Dai-Tokyo Royal State Ins. Co., 116 Hawai'i 159, 164, 172 P.3d 471, 476 (2007).

Complainant has not previously requested continuance of trial in this matter. Accordingly, the Board grants the request for continuance.

15. It is difficult for the Board to discern whether Respondents are also requesting that the Board reconsider its denial of Respondents' Motion to Dismiss, or are solely arguing that Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment should be characterized as a motion for reconsideration and accordingly denied. To the extent Respondents are moving the Board for reconsideration of Order No. 2604, the Board finds that Complainant has not been provided sufficient notice and opportunity to respond due to the manner in which the motion was drafted; and moreover, the Board denies such motion on its merits because facts and inferences regarding whether Complainant knew of the existence of the investigation report must be viewed in a light most favorable to the non-moving party; the legal principles regarding an employer's duty to supply information necessary to the proper performance of a union's duty may extend to the context of processing grievances (see Detroit Edison Co. v. NLRB, 440 U.S. 301, 99 S.Ct. 1123 (1979); In the Matter of Manuel Vincent, Jr., et al., 2 HPERB 494, Case No. CE-11-54 (1980); Salt River Valley Water Users' Assn. v. NLRB, 769 F.2d 639 (9th Cir. 1985)); and evidence presented at the arbitration hearing is beyond the scope of the motion to dismiss for which Respondents are asking reconsideration.

ORDER

The Board hereby denies Complainant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment, and grants Complainant's Motion for Order Granting Continuance of Hearing, for the reasons discussed above. To the extent Respondents are requesting reconsideration of Order No. 2604, the Board hereby denies such motion for reconsideration.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Board, pursuant to HRS §§ 89-5(i)(4), 89-5(i)(5), and 89-14, and HAR § 12-42-8(g), will conduct a hearing on the merits of instant complaint on **July 14, 2009 at 9:00 a.m.** in the Board's hearing room. The purpose of the hearing is to receive evidence and arguments on whether Respondents committed prohibited practices as alleged by the Complainant. The hearing may continue from day to day until completed.

UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO and LINDA LINGLE, et al.
CASE NO. CE-01-701
ORDER NO. 2617
ORDER DENYING COMPLAINANT'S MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT AND GRANTING COMPLAINANT'S MOTION FOR ORDER GRANTING CONTINUANCE OF HEARING; AND NOTICE OF HEARING

DATED: Honolulu, Hawaii, June 25, 2009.

HAWAII LABOR RELATIONS BOARD

JAMES B. NICHOLSON, Chair

EMORY J. SPRINGER, Member

SARAH R. HIRAKAMI, Member

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