

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;
MARIE LADERTA, Director, Department of
Human Resources Development, State of
Hawaii; MUFU HANNEMANN, Mayor, City
and County of Honolulu; CHARMAINE
TAVARES, Mayor, County of Maui;
BERNARD P. CARVALHO, Jr., Mayor,
County of Kauai; WILLIAM KENOI, Mayor,
County of Hawaii; THOMAS KELLER,
Administrative Director, The Judiciary, State
of Hawaii; and THOMAS M. DRISKILL, Jr.,
President and Chief Executive Officer,
Hawaii Health Systems Corporation,

Respondents.

CASE NOS.: CE-01-717a
CE-10-717b

ORDER NO. 2625

ORDER DENYING MOTIONS FOR
PARTICULARIZATION OF THE
COMPLAINT; AND NOTICE OF
PREHEARING/SETTLEMENT
CONFERENCE AND HEARING ON
PROHIBITED PRACTICE
COMPLAINT

ORDER DENYING MOTIONS FOR PARTICULARIZATION
OF THE COMPLAINT; AND NOTICE OF PREHEARING/SETTLEMENT
CONFERENCE AND HEARING ON PROHIBITED PRACTICE COMPLAINT

On July 10, 2009, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union), by and through its counsel, filed a Prohibited Practice Complaint (Complaint) against the above-named Respondents with the Hawaii Labor Relations Board (Board). The UPW alleged it is the exclusive representative for bargaining units (Units) 01 and 10; that the amount of contributions to be paid by the State, the various counties, the judiciary and the Hawaii Health Systems Corporation (HHSC) to the Hawaii Employer Union Health Benefit Trust Fund (EUTF or trust fund) for plan years 2007-2008 and 2008-2009 were negotiated as provided in section 62 of the current Units 01 and 10 collective bargaining agreements (CBAs); in accordance with Sections 66 and 68 of the July 1, 2007 to June 30, 2009 agreements, the UPW submitted written notices and proposals to all public employers on or about June 16, 2008 to modify the amount of contributions payable by all public employers for plan years 2009-2010 and 2010-2011; the Union proposed that the amounts of employer contributions for health benefit plans be increased to 100% of the full premium for single and family plans; on or

about July 8, 2008 designated representatives of the UPW and the public employers commenced negotiations over wages, hours, and other terms and conditions of employment, including the amount of employer contributions to the EUTF; on or about May 19, 2009, Respondents decided to unilaterally change the amounts of employer-employee contributions to be made to EUTF for extended health benefit plans in effect for plan years 2008 to 2009; on June 29, 2009, the UPW requested all public employers to cease and desist from their unilateral course of conduct and negotiate in good faith with the Union; and the Respondents declined to cease and desist from their unilateral conduct. The UPW alleged that the Respondents wilfully committed prohibited practices in violation of Hawaii Revised Statutes (HRS) §§ 89-13(a)(1), (5), (7), and (8).

On July 20, 2009, Respondent MUFU HANNEMANN, Mayor, City and County of Honolulu (Hannemann or City), by and through his counsel, filed a Motion for Particularization of UPW's Prohibited Practice Complaint with the Board. Hannemann contends that the complaint filed is vague and indefinite because it does not articulate facts with sufficient clarity for Hannemann to determine the specific acts allegedly engaged in which constitute prohibited practices. Hannemann alleges that the final premium rates established by the EUTF have increased and the City continues to pay 60% of the final premium rates as established by EUTF and 100% of the administrative fees. The City requested that the Board issue an order requiring specific information from Complainant and tolling the City's July 24, 2009 deadline to serve its answer.

Similarly on July 20, 2009, Respondent BERNARD P. CARVALHO, Mayor, County of Kauai (Carvalho) and Respondent WILLIAM KENOI, Mayor, County of Hawaii (Kenoi), and on July 21, 2009, Respondent CHARMAINE TAVARES, Mayor, County of Maui (Tavares), by and through their respective counsels, filed Motions for Particularization of UPW's Prohibited Practice Complaint seeking clarification of the allegations of the Complaint.

Also on July 20, 2009, Complainant filed a Statement of Position Regarding Respondent William Kenoi, County of Hawaii's Motion for Particularization with the Board. The UPW contends that the motion for particularization is meritless and should be denied because, *inter alia*, the EUTF decided to temporarily extend health benefit plans for the months of July and August 2009; the public employers were apparently made aware of this on or about May 19, 2009 by the EUTF; on May 28, 2009 the county mayors notified EUTF that they were unilaterally agreeing to the increase in rates and decided what the amounts of employer contributions and employee contributions would apply for the increase in rates; the unilateral actions resulted in increased employee contributions without engaging in good faith bargaining; and negotiations on the UPW's proposal for the employer to pay the full premium had not as yet reached an impasse in multi-employer bargaining.

On July 20, 2009, Complainant filed a Statement of Position regarding Carvalho's Motion for Particularization attaching its above-referenced Position Statement

regarding Kenoi. On July 21, 2009, Complainant filed a Supplemental Memorandum of Points in Opposition to Kenoi and Carvalho's Motions for Particularization citing prior Board cases where Motions for Particularization were denied. On July 23, 2009, Complainant filed similar Statements of Position regarding Tavares and Hannemann's respective Motions for Particularization.

Pursuant to Hawaii Administrative Rules (HAR) § 12-42-42(b), a prohibited practice complaint shall be prepared on a form furnished by the Board. The Board's form requires a complainant to specify in detail the particular alleged violation, including the subsection or subsections of HRS § 89-13 alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper. HAR § 12-42-45(b) provides that if the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, within five days after service of the complaint, file with the Board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information.

After reviewing the record, including the Complaint, the pending motions, as well as Complainant's Statements of Position, the Board finds that the Complaint is not so vague and lacking in specificity that Respondents cannot be required to frame and answer thereto. The Complaint clearly states that on or about May 19, 2009 Respondents decided to unilaterally change the amounts of employer-employee contributions to the EUTF for Units 01 and 10 employees without prior notice, consultation, negotiations or the mutual consent of the UPW and Respondents declined to cease and desist from their unilateral course of conduct.

Accordingly, the Board hereby denies the respective Motions for Particularization of the Complaint filed by Respondents Hannemann, Carvalho, Kenoi, and Tavares. The due date for their respective answers are tolled by the Board's consideration of the instant motions.

Respondents HANNEMANN, CARVALHO, KENOI AND TAVARES ARE DIRECTED to file with this Board the original and five (5) copies of their answers, with proof of service upon Complainant, no later than 4:30 p.m. of the fifth day after service of this order. If you fail to timely file and serve an answer, such failure may constitute an admission of the material facts alleged in the complaint and a waiver of a hearing.

**Notice of Prehearing/Settlement Conference
and Hearing on Prohibited Practice Complaint**

NOTICE IS HEREBY GIVEN that pursuant to HRS § 377-9 and/or §§ 89-5(i)(4) and (i)(5) and Hawaii Administrative Rules (HAR) § 12-42-47, the Board

will conduct a prehearing/settlement conference in this matter by conference call on **August 6, 2009 at 10:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.¹ The purpose of the prehearing/settlement conference is to arrive at a settlement or clarification of issues, to identify and exchange witness and exhibit lists, if any, and to the extent possible, reach an agreement on facts, matters or procedures which will facilitate and expedite the hearing or adjudication of the issues presented. **The Board encourages the parties to have a representative with settlement authority and/or is familiar with the dispute appear at the prehearing/settlement conference.** The parties shall file a Prehearing Statement which addresses the foregoing matters with the Board two days prior to the prehearing conference.

NOTICE IS FURTHER 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 instant complaint on **August 18, 2009 at 8:30 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 parties shall submit to the Board four copies of all exhibits identified and offered into the record. Additional copies for opposing counsel shall also be provided.

All parties have the right to appear in person and to be represented by counsel or other representative.

Auxiliary aids and services are available upon request, call Mrs. Nora Ebata at (808) 586-8610, (808) 586-8847 (TTY), or 1 (888) 569-6859 (TTY neighbor islands). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

DATED: Honolulu, Hawaii, July 28, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

¹If the neighbor island counsel wish to participate by conference call, counsel shall call to notify the Board at (808) 586-8610 at least one day prior to the conference.

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. LINDA LINGLE, et al.
CASE NOS.: CE-01-717a, CE-10-717b
ORDER NO. 2625
ORDER DENYING MOTIONS FOR PARTICULARIZATION OF THE COMPLAINT; AND
NOTICE OF PREHEARING/SETTLEMENT CONFERENCE AND HEARING ON
PROHIBITED PRACTICE COMPLAINT


SARAH R. HIRAKAMI, Member

Copies sent to:

Herbert R. Takahashi, Esq.
Maria C. Cook, Deputy Attorney General
Duane W.H. Pang, Deputy Corporation Counsel
Richard B. Rost, Deputy Corporation Counsel
Diane A. Noda, Deputy Corporation Counsel
Alfred B. Castillo, Jr., Deputy County Attorney