

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

MARIE LADERTA, Director, Department of  
Human Resources Development, State of  
Hawaii,

Respondent.

CASE NOS.: CE-01-711a  
CE-10-711b

ORDER NO. 2630

ORDER

ORDER

Complainant is hereby directed to submit a proposed order, including proposed findings of fact and conclusions of law, reflecting the Hawaii Labor Relations Board's (Board) ruling in this case that:

1. The Board has jurisdiction over this Complaint pursuant to Hawaii Revised Statutes (HRS) §§ 89-5 and 89-14.

2. The Board finds based on the record that there are no genuine issues of material fact presented and Complainant is entitled to judgment as a matter of law.

The Board finds that on June 12, 2009, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union), by its State Director Dayton M. Nakanelua, filed a class grievance with Respondent MARIE LADERTA, Director, Department of Human Resources Development, State of Hawaii (Laderta) in UPW case nos. DMN-09-01 and DMN 09-02 alleging violation of Sections 1, 14, 25, 26, 38, and 61 of the respective Units 01 and 10 collective bargaining agreements (CBAs) arising from a June 1, 2009 announcement by Governor Linda Lingle of a statewide three-day per month furlough for employees for two years. Prior to the filing of the Complaint, by letter dated June 2, 2009, Laderta referred to the Governor's announcement of furloughs and solicited Nakanelua's input on how to address the budget shortfall by June 10, 2009. By letter dated June 8, 2009, the UPW, inter alia, requested bargaining over the changes in wages, hours and conditions of work by the announcement on June 1, 2009. By letter dated June 15, 2009, Respondent replied, inter alia, that furloughs were not negotiable.

On June 19, 2009, the Union submitted a request for information needed by the Union to investigate and process the class grievances to be provided within 7 calendar days. On June 19, 2009 the Union amended the grievances by adding alleged violations of Sections 3, 12, and 66 of the CBAs arising from the formulation of layoff plans. On June 19, 2009, Laderta denied the initial grievance and responded to and denied the amended grievance on June 24, 2009. On June 24, 2009, the UPW notified Laderta that the grievances would be submitted to arbitration.

On June 26, 2009, in separate letters, Laderta declined to provide the requested information to the UPW on the same basis as she denied the respective grievances, i.e., that furloughs are not subject to negotiation; the grievances are premature; and because there will be no contract provision under which to grieve after June 30, 2009, and therefore, the grievances were nonarbitrable.

On July 2, 2009, Circuit Court Judge Karl K. Sakamoto (Sakamoto) granted the injunction to prevent the State from implementing the furlough plans for employees represented by the UPW, Hawaii State Teachers Association and the Hawaii Government Employees Association.

By letter dated July 7, 2009, Respondent requested Randy Perreira, Executive Director, Hawaii Government Employees Association, and Dayton M. Nakanelua, State Director, UPW (Nakanelua), to begin collective bargaining on the subject of furloughs pursuant to Judge Sakamoto's decision and their prior requests to negotiate on the subject. Respondent's letter attached the Governor's executive order regarding furloughs and the State's proposed furlough plan.

By letter dated July 20, 2009, Respondent informed Nakanelua of an impending layoff with a list of permanent civil service positions in Units 01 and 10 in the State Executive Branch that are part of the proposed impending layoff, which included 123 Unit 1 and 93 Unit 10 employees.

By letter dated July 22, 2009, Clifford Uwaine for Nakanelua requested negotiations over the criteria and procedure for the impending layoffs announced.

On July 29, 2009, Judge Sakamoto entered his findings of fact and conclusions of law granting a permanent injunction against the State's furlough plan.

By letter dated July 30, 2009, Respondent refused UPW's request to negotiate over the impending layoffs.

To date, Respondent has not provided information to the UPW pursuant to the Union's June 19, 2009 requests.

Section 15.09 of the 2007-2009 Unit 01 CBA and Section 15.09 of the 2007-2009 Unit 10 CBA have identical provisions regarding the provision of information in the grievance procedure which provide as follows:

The Employer or Employer's designee 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:

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

Initially, Respondent denied the instant grievances on the basis that furloughs were not subject to negotiation; the grievances were premature because the furloughs would not be effectuated until July 1, 2009; and if there were no new contracts negotiated, after June 30, 2009, there would be no provision in the contract under which to grieve. Respondent denied the amended grievances challenging the layoffs on the basis that the grievances were premature because no layoffs had been implemented. By letters dated June 26, 2009, Respondent "declined" to provide the requested information on the same bases that the grievances were denied. Respondent contends here that the Circuit Court ruling granting UPW's preliminary injunction which stopped the implementation of the Furlough Plan renders the information request moot. Respondent also contends that the UPW failed to prove wilful conduct.

Based upon a review of the record, the Board concludes that Respondent violated Section 15.09 of the Units 01 and 10 CBAs by refusing to provide the information needed by the UPW to investigate and process its class grievances.

3. The determination of the arbitrability of the grievances is reserved for the arbitrator and the Board refrains from addressing the arbitrability of the grievances. Because there has been no determination yet by an arbitrator deciding the arbitrability of the grievances, the Board finds the information request is not moot.

4. The Circuit Court concluded that the subject of furloughs was a mandatory subject of negotiations, which negated Respondent's reasoning for not providing the requested information. However, even after the Circuit Court's ruling, Respondent refused to provide the information requested. Accordingly, the Board finds that the refusal rose to a level of wilful conduct, i.e., with conscious, knowing, or deliberate intent, and therefore violated § 15.09 of the applicable Units 01 and 10 CBAs constituting a prohibited practice under HRS § 89-13(a)(8).

5. The Board grants summary judgment in favor of Complainant and orders that the Respondent forthwith provide the information in the possession of the Employer pursuant to Section 15.09 of the applicable Units 01 and 10 CBAs.

6. In view of the foregoing decision and order, the Board need not address whether Respondent's conduct violated HRS §§ 89-13(a)(5) and (7). The Board also denies Respondent's Motion to Dismiss and/or for Summary Judgment.

Complainant has ten days, unless such time is extended by the Board, to draft the proposed order and secure the approval as to form of Respondent's counsel thereon and to file the original and five copies of the proposed order with the Board, accompanied by a copy of the proposed order on a disk or e-mailed to the Board's Chair at [James.B.Nicholson@hawaii.gov](mailto:James.B.Nicholson@hawaii.gov). If Respondent's counsel does not approve of the form of the proposed order, he may file objections and a copy of a proposed order with the Board, accompanied by a copy of the proposed order on a disk or e-mailed to the Board Chair, within five working days.

DATED: Honolulu, Hawaii, August 12, 2009.

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

  
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EMORY J. SPRINGER, Member

  
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SARAH R. HIRAKAMI, Member

Copies sent to:

Herbert R. Takahashi, Esq.  
Jeffrey A. Keating, Deputy Attorney General