STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Complainant, and MARIE LADERTA, Chief Negotiator, State of Hawaii, Respondent.	CASE NO. CE-10-718 ORDER NO. 2644 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT; DENYING COMPLAINANT'S ORAL MOTION TO STRIKE RESPONDENT'S REPLY MEMORANDUM; AND DENYING COMPLAINANT'S MOTION TO AMEND COMPLAINT

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS AND/ OR FOR SUMMARY JUDGMENT; DENYING COMPLAINANT'S ORAL MOTION TO STRIKE RESPONDENT'S REPLY MEMORANDUM; AND DENYING COMPLAINANT'S MOTION TO AMEND COMPLAINT

On July 15, 2009, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Complainant) filed the instant prohibited practice complaint (Complaint) with the Hawaii Labor Relations Board (Board) against MARIE LADERTA, Chief Negotiator, State of Hawaii (Laderta or Respondent). In its Complaint, the UPW alleges ultra vires action by Respondent, namely, selecting Georgina Kawamura (Kawamura) as the Employer panelist for the Unit 10 interest arbitration proceeding, that constitutes a willful violation of Hawaii Revised Statutes (HRS) §§ 89-6(d) and 89-11(e), and thereby committing a prohibited practice contrary to HRS §§ 89-13(a)(7) and (8).

On July 27, 2009, Respondent filed her Answer to the Complaint.

On August 10, 2009, the UPW filed a Motion to Amend Complaint, seeking to include additional allegations, including, inter alia, Respondent's selection of Stanley Shiraki (Shiraki) on July 29, 2009, to replace Kawamura as the Employer's representative.

On August 10, 2009, Respondent filed her Motion to Dismiss and/or for Summary Judgment, arguing that the Complaint should be dismissed for the following reasons: (1) the Complaint is moot; (2) the UPW lacks standing to challenge the selection of the Employer panelist; (3) the plain language of HRS § 89-6(d) is clear and unambiguous such that Respondent needs only a "simple majority" of the applicable employer group relating to the selection of the Employer panelist; and (4) the Complaint fails to state a claim upon which relief can be granted.

On August 12, 2009, the UPW filed its Objections to Hawaii Labor Relations Board Meeting Scheduled for August 13, 2009 (Objections to Meeting). This meeting scheduled by the Board was in relation to Case No. I-10-122, UPW and Linda Lingle, et al., involving the Board's Order Declaring an Impasse and Appointing a Mediator for Unit 10.

On August 12, 2009, Respondent filed her Motion to Strike the UPW's Objections to Meeting.

On August 14, 2009, the UPW filed its Memorandum in Opposition to Respondent's Motion to Dismiss and/or for Summary Judgment, and its Memorandum in Opposition to Respondent's Motion to Strike UPW's Objections to Meeting.

On August 17, 2009, Respondent filed her Memorandum in Opposition to UPW's Motion to Amend Complaint.

On August 18, 2009, Respondent filed her Reply to UPW's Memorandum in Opposition to Respondent's Motion to Dismiss and/or for Summary Judgment.

On August 19, 2009, the Board convened to hear oral argument on Respondent's Motion to Dismiss and/or for Summary Judgment and the UPW's Motion to Amend Complaint. As a preliminary matter, the Board, in its discretion, determined that further argument on Respondent's Motion to Strike the UPW's Objections to Meeting was unnecessary. Upon consideration of the motion and a review of the record, the Board denied the Motion to Strike the UPW's Objections to Meeting, and indicated that it would give the UPW's Objections to Meeting its proper weight. The parties proceeded to present argument on Respondent's Motion to Dismiss and/or for Summary Judgment and the UPW's Motion to Amend Complaint. The UPW also orally moved to strike Respondent's Reply to UPW's Memorandum in Opposition to Respondent's Motion to Dismiss and/or for Summary Judgment filed August 10, 2009 (Respondent's Reply). The UPW argued that the Board's rules do not permit the filing of a reply and objected to Respondent's counsel's Declaration and submission of Exhibit "D" because the Declaration did not properly authenticate the document as being from personal knowledge. Upon consideration of UPW's oral motion to strike Respondent's Reply, the Board agrees with the UPW that Exhibit "D" is not authenticated from personal knowledge or by the custodian of records and will give the document its proper weight.

The Board notes however that parties before the Board routinely file replies and supplemental submissions following the filing of motions and memoranda in opposition with the Board. In this case, the Board cannot find that the filing of Respondent's Reply caused unfair surprise or was abusive, and accordingly denies UPW's oral motion to strike Respondent's Reply.

In Order No. 2631, dated August 24, 2009, the Board directed Respondent to submit a proposed order within ten (10) days. On September 3, 2009, Respondent's counsel emailed a copy of its Proposed Findings of Fact, Conclusions of Law, and Order to the Board. On September 8, 2009, Complainant filed its objections to Respondent's proposed order.

The Board accepts and incorporates Respondent's proposed findings and conclusions which support the rationale of the instant order. The Board also rejects those findings and conclusions which do not support the Board's order. Accordingly, based upon a consideration of the record and the arguments presented, the Board makes the following findings of fact, conclusions of law, and order regarding the Respondent's Motion to Dismiss and/or for Summary Judgment and the UPW's Motion to Amend Complaint.

FINDINGS OF FACT

1. The UPW is an employee organization and exclusive representative within the meaning of HRS § 89-2, which represents the interests of public employees (institutional, health, and correctional workers) included in Unit 10.

2. Laderta is the Chief Negotiator for the State of Hawaii and as a designated representative of Governor Linda Lingle is a public employer within the meaning of HRS § 89-2.

3. On March 3, 2009, the UPW and the State of Hawaii, the Judiciary, the Hawaii Health Systems Corporation, and the City and County of Honolulu, parties to the Unit 10 collective bargaining agreement entered into a Memorandum of Agreement setting forth an alternative impasse procedure for Unit 10 pursuant to HRS § 89-11(a). Laderta, as the Chief Negotiator for the State of Hawaii, signed on behalf of the Employer (comprised of the State of Hawaii, the Judiciary, the Hawaii Health Systems Corporation, and the City and County of Honolulu).

4. The Memorandum of Agreement provides, inter alia, for a three member arbitration panel, of which two panel members are to be selected by the parties (i.e., one panelist by the Employer and one panelist by the Union).

5. According to the complaint, the "employer" as referred to in the Memorandum of Agreement is the State of Hawaii (State), the Judiciary, the Hawaii Health Systems Corporation (HHSC), and the City and County of Honolulu, and comprises the "simple majority" referred to in HRS § 89-6(d), for the purposes of negotiation of the terms of the Unit 10 agreement.

6. On or about July 13, 2009, Laderta notified the Board that the State selected Kawamura to serve as the employer panelist for the arbitration hearings for UPW Unit 10 (scheduled to commence on September 11, 2009), as well as for Hawaii Government Employees Association (HGEA) Units 2, 3, 4, 6, 8, 9 and 13 (scheduled to commence on September 4, 2009). The letter was copied to all employers (including those comprising the Employer for the Unit 10 arbitration) as well as to UPW and HGEA.

7. On or about July 14, 2009, a letter from the Hawaii Health Systems Corporation, the Judiciary, the Department of Education and the University of Hawaii (signed by their respective representatives) notified the Board that it supported Laderta's recommendation of Kawamura to serve as the employer panelist for the UPW and HGEA arbitration hearings.

8. On July 15, 2009, the UPW filed a Complaint with the Board against Respondent regarding the selection of Kawamura as the employer panelist for the Unit 10 arbitration. The Complaint alleged that Respondent's actions and conduct were ultra vires and constituted a willful violation of HRS §§ 89-6(d) and 89-11(e), and the March 3, 2009 Memorandum of Agreement and thereby committed a prohibited practice contrary to HRS §§ 89-13(a)(7) and (8).

9. In the Complaint, the UPW requested the following relief: (1) declaratory relief consistent with chapter 89; (2) a cease and desist order prohibiting Kawamura from serving as a representative of the "employer" on the three member arbitration panel for Unit 10; (3) affirmative relief requiring all public employers engaged in Unit 10 negotiations to meet, confer, and vote by majority rule on who should serve as the duly designated representative of employer on the Unit 10 arbitration panel; (4) an extension of all deadlines set forth in the March 3, 2009 Memorandum of Agreement on alternative impasse procedure for Unit 10 until a proper selection has been and of the arbitration panel, including the selection of the one representative of the "employer"; and (5) other appropriate relief to right the wrongs committed by Respondent.

10. On July 27, 2009, Respondent filed an Answer, asserting, inter alia, that the UPW lacked standing; the Complaint fails to state a claim upon which relief can be granted; that Respondent at all times acted in good faith; and

assuming, arguendo, a prohibited practice was committed, Respondent denies it was committed "willfully"; the claims are barred by waiver and estoppel, laches, and unclean hands; accord and satisfaction; the UPW fails to plead sufficient facts to support the allegations regarding violation of HRS §§ 89-6(a), 89-11(e), and 89-13(a)(7) and (8); that the claims are barred by qualified, absolute, and sovereign immunity; and that claims based upon acts or omission that constitute the exercise of discretionary functions are barred.

11. On July 29, 2009, Laderta notified the Board that the State selected Shiraki to serve as the employer panelist for the arbitration hearing for UPW Unit 10, scheduled to commence on September 11, 2009. The letter was copied to Dayton Nakanelua (UPW), Honorable Linda Lingle (State of Hawaii), Chief Justice Ronald Moon (Judiciary), Thomas Driskill, Jr. (HHSC) and the Honorable Mufi Hannemann (City and County of Honolulu).

12. The Board takes notice of its official records in Case No. I-10-122, UPW and Linda Lingle, et al, regarding the impasse for Unit 10, which includes correspondence by members of the employer group for Unit 10 negotiations, including the following:

a. Letter to the Board dated July 14, 2009, from Thomas M. Driskill, Jr., President and CEO of the Hawaii Health Systems Corporation (Driskill), Thomas R. Keller; Administrative Director of the Courts, Judiciary (Keller); Patricia Hamamoto, Superintendent, Department of Education (Hamamoto); and David McClain, President, University of Hawaii (McClain). The letter stated:

> On behalf of our respective jurisdictions, we state our support of Chief Negotiator Marie Laderta's recommendation that Georgina Kawamura serve as the employer panelist for the HGEA and UPW arbitration hearings scheduled for September 2009.
>
> "UPW Unit 10" is indicated beneath the signatures of Driskill and Keller.[1]

b. Letter to the Board dated July 29, 2009, from Respondent, stating in relevant part:

[1] On July 14, 2009, the Board received a letter from the Hawaii Council of Mayors (Mayors Barnard Carvalho, Jr.; Mufi Hannemann; Billy Kenoi; and Charmaine Tavares), stating that the mayors did not approve Kawamura as the employer panelist for the arbitration hearing for HGEA Units 02, 03, 04, and 13.

> This letter is to inform you that the State has selected Stanley Shiraki to serve as the employer panelist for the arbitration hearing for UPW Unit 10 scheduled to commence on September 11, 2009.

The letter indicates that a copy was sent to the following:

> Dayton Nakanelua, UPW
> Honorable Linda Lingle
> Chief Justice Ronald Moon, Judiciary
> Thomas Driskill, Jr., HHSC
> Honorable Mufi Hannemann

c. The Board did not receive any objections from the members of the employer group who were copied on this July 29, 2009, letter.[2]

13. The Unit 10 collective bargaining agreement in the Board's records with effective dates of July 1, 2007, to and including June 30, 2009, was entered into by and between the State of Hawaii, the Judiciary, the HHSC, and the City and County of Honolulu (collectively referred to in the agreement as the "Employer"), and Complainant (referred to in the agreement as the "Union").

CONCLUSIONS OF LAW

1. HRS § 89-6, governing appropriate bargaining units, provides in relevant part:

> (d) For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:
>
> > (1) For bargaining units (1), (2), (3), (4), (9), (10), and (13), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit[.]
>
> * * *

[2] On August 3, 2009, the Board received a letter from the Hawaii Council of Mayors stating that the mayors approve the appointment of Shiraki as the employer panel member for the arbitration hearings for the HGEA collective bargaining units.

Any decision to be reached by the applicable employer group shall be on the basis of simple majority, except when a bargaining unit includes county employees from more than one county. In such case, the simple majority shall include at least one county.

2. HRS § 89-11, governing resolution of disputes; impasses, provides in relevant part:

(e) If an impasse exists between a public employer and the exclusive representative of bargaining unit . . . bargaining unit (10), institutional, health, and correctional workers . . ., the board shall assist in the resolution of the impasse as follows:

(1) Mediation. During the first twenty days after the date of impasse, the board shall immediately appoint a mediator, representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse.

(2) Arbitration. If the impasse continues twenty days after the date of impasse, the board shall immediately notify the employer and the exclusive representative that the impasse shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.

(A) Arbitration panel. Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified

arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of such list, the parties shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the neutral arbitrator and chairperson of the arbitration panel.

(B) Final positions. Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final position which shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions which each party is proposing for inclusion in the final agreement.

(C) Arbitration hearing. Within one hundred twenty days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit either in writing or through oral testimony, all information or data supporting their respective final positions. The arbitrator, or the chairperson of the arbitration panel together with the other two members, are encouraged to assist the parties in a voluntary resolution of the impasse through mediation, to the extent practicable throughout the entire arbitration period until the date the panel is required to issue its arbitration decision.

(D) Arbitration decision. Within thirty days after the conclusion of the hearing, a majority of the arbitration panel shall reach a decision pursuant to subsection (f) on all provisions that each party

> proposed in its respective final position for inclusion in the final agreement and transmit a preliminary draft of its decision to the parties. The parties shall review the preliminary draft for completeness, technical correctness, and clarity and may mutually submit to the panel any desired changes or adjustments that shall be incorporated in the final draft of its decision. Within fifteen days after the transmittal of the preliminary draft, a majority of the arbitration panel shall issue the arbitration decision.

3. HRS § 89-13(a), governing prohibited practices by public employers, provides in relevant part:

> It shall be a prohibited practice for a public employer or its designated representative wilfully to:
>
> * * *
>
> (7) Refuse or fail to comply with any provision of this chapter; [or]
>
> (8) Violate the terms of a collective bargaining agreement[.]

4. Hawaii Administrative Rules (HAR) § 12-42-43 provides:

> Any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order thereon.

5. Review of a motion to dismiss is based on the contents of the complaint, the allegations of which are accepted as true and construed in the light most favorable to the complainant. Dismissal is improper unless it appears beyond doubt that the complainant can prove no set of facts in support of the claim which would entitle the complainant to relief. See Yamane v. Pohlson, 111 Hawai`i 74, 81, 137 P.3d 980, 987 (2006) (citing Love v. United States, 871 F.2d 1488, 1491 (9th Cir. 1989)).

6. However, when considering a motion to dismiss pursuant to Hawaii Rules of Civil Procedure Rule 12(b)(1), the court is not restricted to the face of the

pleadings, but may review any evidence, such as affidavit and testimony, to resolve factual disputes concerning the existence of jurisdiction. Id. (citing McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988); 5A C. Wright & A. Miller, Federal Practice and Procedure § 1350, at 213 (1990)).

7. 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 (1995).

8. 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. 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.

9. To defeat a summary judgment motion, the non-moving party may not rest upon the mere allegations or denials in the pleadings, but must establish the existence of a genuine factual dispute on the basis of admissible evidence. See MAI Systems, Corp. v. Peak Computer, Inc., 991 F.2d 511, 518 (9th Cir. 1993); Fed. R. Civ. P. 56(e).

10. A grant or denial of a motion to amend a complaint is within the court's discretion. See Gonsalves v. Nissan Motor Corp. in Hawaii, Ltd., 100 Hawai`i 149, 158, 58 P.3d 1196, 1205 (2002). Factors that may be used to deny a motion to amend include undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, and futility of the amendment. Foman v. Davis, 371 U.S. 178 (1962). Leave to amend a complaint may be denied based upon "futility of amendment." Keawe v. Hawaiian Electric Co., 65 Haw. 232, 649 P.2d 1149 (1982).

11. Standing is concerned with whether the parties have the right to bring suit. Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai`i 64, 67, 881 P.2d 1210, 1213 (1994); Akinaka v. Disciplinary Board of the Hawaii Supreme Court, 91 Hawai`i 51, 55, 979 P.2d 1077, 1081 (1999).

12. The Hawaii Supreme Court has held that even where the parties did not consider the question of standing, the Court has a duty, sua sponte, to

determine whether the plaintiff had standing to prosecute the complaint. Akinaka, 91 Hawai`i at 55, 979 P.2d at 1081.

13. In deciding whether a plaintiff has the requisite interest in the outcome of the litigation, the Hawaii Supreme Court employs a three-part test: (1) has the plaintiff suffered an actual or threatened injury as a result of the defendant's wrongful conduct; (2) is the injury fairly traceable to the defendant's actions; and (3) would a favorable decision likely provide relief for plaintiff's injury. Id.; Kaho`ohanohano v. State, 114 Hawai`i 302, 318, 162 P.3d 696, 712 (2007).

14. Because the test is stated in the conjunctive, a plaintiff must satisfy all three prongs to establish standing. Akinaka, 91 Hawai`i at 55, 979 P.2d at 1081; Kaho`ohanohano, 114 Hawai`i at 318, 162 P.2d at 712.

15. With respect to the first prong of the test, the plaintiff must show a distinct and palpable injury to himself or herself; the injury must be distinct and palpable, as opposed to abstract, conjectural, or merely hypothetical. Akinaka, 91 Hawai`i at 55, 979 P.2d at 1081; Kaho`ohanohano, 114 Hawai`i at 318, 162 P.2d at 712.

16. In this case, the Complaint alleges that the March 3, 2009 Memorandum of Agreement setting forth the Unit 10 alternate impasse procedure provides for a three member arbitration panel, "two are [sic] whom are to be selected by the parties, i.e., one by the employer and one by the union, on or about July 6, 2009" (paragraph 5 of the Complaint, emphasis added). Thus, by the plain language of the agreement as alleged in the Complaint, the "employer" has the right to select one member of the panel. The Union does not, on the face of the contract, have any input into the employer's selection of its panel member. Even assuming the selection was made "unilaterally" by Respondent as alleged by Complainant, there is nevertheless no injury to the UPW – if any injury is suffered by a "unilateral" selection of the panel member, such injury would be to the remaining members of the employer group, not the Union.

17. Accordingly, the UPW lacks standing to bring the present Complaint under the test articulated in Akinaka; the UPW has not suffered an actual or threatened injury that is "distinct and palpable."

18. The Hawaii Supreme Court has held that the duty of that Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. Courts will not

consume time deciding abstract propositions of law or moot cases, and have no jurisdiction to do so. Kapuwai v. City and County of Honolulu, Dept. of Parks and Recreation, 121 Hawai`i 33, 45, 211 P.3d 750, 762 (2009) (citing Wong v. Board of Regents, 62 Haw. 391, 394-95, 616 P.2d 201, 204 (1980).

19. In this instance, the Board received notice from Respondent, via letter dated July 29, 2009, that the State had selected Shiraki to serve as the Employer panelist for the arbitration hearing for UPW Unit 10 scheduled to commence on September 11, 2009. The letter was copied to Chief Justice Moon (Judiciary), Driskill (HHSC), and Mayor Mufi Hannemann (City and County of Honolulu), all of whom are members of the Employer group for Unit 10 negotiations, pursuant to HRS § 89-6(d). The Board did not receive any objections from the members of the Employer group who were copied on this July 29, 2009 letter.

20. Accordingly, the selection of Kawamura became a moot issue when the State instead selected Shiraki to serve as the Employer panelist for the Unit 10 arbitration hearing, with notice to and no objection by Chief Justice Moon, Driskill, or Mayor Hannemann.

21. Even assuming, arguendo, that the UPW has standing to bring the present Complaint, and the Complaint is not moot, the Board nevertheless holds that there was no violation of HRS §§ 89-6(d) or 89-11(e), or the Unit 10 Memorandum of Agreement on Alternate Impasse Procedure.

22. Regarding the terms of the Alternate Impasse Procedure, the Complaint states the following:

* * *

> 5. The agreement provides, inter alia, for a three member arbitration panel two are whom are [sic] to be selected by the parties, i.e., one by the employer and one by the union, on or about July 6, 2009.
>
> 6. The "employer" as referred to in the March 3, 3009 memorandum of agreement is the "employer majority" as referred to in Section 89-6(d), HRS, for the purposes of negotiate [sic] over the terms of the unit 10 agreement.

23. In turn, HRS § 89-6, governing appropriate bargaining units, provides in relevant part:

(d) For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:

(1) For bargaining units (1), (2), (3), (4), (9), (10), and (13), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit[.]

* * *

Any decision to be reached by the applicable employer group shall be on the basis of simple majority, except when a bargaining unit includes county employees from more than one county. In such case, the simple majority shall include at least one county.

24. In the present case, Unit 10 does not include county employees from more than one county. Thus, according to HRS § 89-6,(d), any decision to be reached by the employer group shall be on the basis of simple majority, and that majority need not include at least one county.

25. By the plain language of HRS § 89-6(d), for Unit 10, the Governor has six votes, and the four mayors, the Judiciary, and the HHSC have one vote each if they have employees in the particular bargaining unit.

26. From the letter to the Board dated July 14, 2009, from Driskill, Keller, Hamamoto, and McClain, it appears that both the Judiciary (via Keller) and the HHSC (via Driskill) supported the selection of Kawamura as the employer's panel member for the Unit 10 arbitration. Because the Governor has six votes, the addition of Keller's vote and Driskill's vote would give the Governor a simple majority of votes.

27. Accordingly, there was no violation of HRS § 89-6(d) or § 89-11(e) by the selection of Kawamura. Furthermore, paragraph 6 of the Complaint indicates that the "employer" refers to the "employer majority" as provided for in HRS § 89-6(d), and thus there was no violation of the memorandum of agreement either.

ORDER

For the foregoing reasons, the Board concludes that the UPW lacks standing to bring the present Complaint; the Complaint is moot; and, even assuming, arguendo,

that the UPW has standing to bring the present Complaint, and the Complaint is not moot, the Board nevertheless holds that there was no violation of HRS §§ 89-6(d) or 89-11(e), or the Unit 10 Memorandum of Agreement on Alternate Impasse Procedure. Accordingly, the Board grants Respondent's motion to dismiss the Complaint, filed on August 10, 2009.

Further, because the UPW lacked standing to bring the Complaint, resulting in the Complaint's dismissal, the Board also denies the Motion to Amend Complaint.[3]

DATED: Honolulu, Hawaii, October 1, 2009.

HAWAII LABOR RELATIONS BOARD

JAMES B. NICHOLSON, Chair

EMORY J. SPRINGER, Member

SARAH R. HIRAKAMI, Member

Copies sent to:

Herbert Takahashi, Esq.
Claire Chinn, Deputy Attorney General

[3] Granting the Motion to Amend Complaint would be futile as the Amended Complaint would not cure the Complainant's lack of standing.