STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Complainant, and ELIZABETH A. CHAR, M.D., Director, Emergency Services Department, City and County of Honolulu; and MUFI HANNEMANN, Mayor, City and County of Honolulu, Respondents.	CASE NO. CE-10-746 ORDER NO. 2699 ORDER GRANTING UPW'S MOTION FOR SUMMARY JUDGMENT AND DENYING RESPONDENTS' MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT; AND NOTICE OF HEARING

ORDER GRANTING UPW'S MOTION FOR SUMMARY JUDGMENT AND DENYING RESPONDENTS' MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT; AND NOTICE OF HEARING

On January 13, 2010, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint (Complaint) against Respondents ELIZABETH A. CHAR, M.D. (Char), Director, Emergency Services Department, City and County of Honolulu and MUFI HANNEMANN (Hannemann), Mayor, City and County of Honolulu (collectively, Respondents or City and County), alleging Respondents violated Hawaii Revised Statutes (HRS) §§ 89-3 and 89-9(a), and committed prohibited practices in violation of HRS §§ 89-13(a)(1), (5), (7), and (8) by wilfully refusing to comply with the terms and conditions of Section 15.09 of the Unit 10 collective bargaining agreement (Agreement) which governs requests for information needed to investigate and/or process a grievance.

On February 1, 2010, the UPW filed a Motion for Summary Judgment, asserting that the UPW is entitled to summary judgment on all claims alleged in the Complaint; and the UPW is entitled to appropriate relief including reimbursement of costs, attorneys fees, and fines.

On February 3, 2010, Respondents filed a Motion to Dismiss Complaint or in the Alternative for Summary Judgment, asserting the grievance procedure is the exclusive

forum for pursuing claims arising from the interpretation and application of the terms of the Agreement, or in the alternative, the Board should apply the longstanding policy regarding deferral to the contractual grievance process; and that the Board lacks jurisdiction over discovery issues occurring after the grievance was submitted to arbitration.

On February 24, 2010, the Board held a hearing on the parties' motions pursuant to HRS §§ 89-5(i)(4) and (5), and Hawaii Administrative Rules (HAR) § 12-42-8(g)(3). After consideration of the record and the arguments presented, the Board issued an oral order for Respondents to provide the documents requested by Complainant.

On March 29, 2010, the UPW filed a Motion for Interlocutory Relief with the Board. Complainant's counsel stated in an affidavit attached to the motion, inter alia, that no information had been provided by Respondents in response to the UPW's October 8, 2009 request; that an arbitration hearing is scheduled before Arbitrator Patrick Yim from April 12, 13, 15, and 16, 2010 in Case No. LS-09-04; that the information is needed by the Union at least one week prior to the commencement of the arbitral hearings; and that without an interlocutory order, Respondents will not provide the information needed for the arbitration. On April 5, 2010, Respondents filed a Memorandum in Opposition to UPW's Motion for Interlocutory Relief Filed on March 29, 2010. Respondents contend that interlocutory relief is not appropriate as the entire matter has been determined by the Board and on February 24, 2010, the Board orally ruled by granting the UPW's Motion for Summary Judgment; the written order has not yet been issued and as such, the UPW's claim for interlocutory relief is misplaced; Respondents submit that they are entitled to have a written order prior to appealing; and that the UPW controls the scheduling of the arbitration.

After reviewing the record and the arguments made, the Board concludes that the UPW's Motion for Interlocutory Relief is moot in view of the instant Board order.

After careful consideration of the record and argument presented, the Board makes the following findings of fact, conclusions of law, and order granting UPW's Motion for Summary Judgment and denying Respondents' Motion to Dismiss or in the Alternative for Summary Judgment.

FINDINGS OF FACT

1. The UPW was or is at all relevant times an employee organization within the meaning of HRS § 89-2[1] for employees belonging to Unit 10.[2]

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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,

2. At all relevant times, Respondent Hannemann was or is the Mayor of the City and County of Honolulu.

3. At all relevant times, Respondent Char was or is the Director of the Emergency Services Department, City and County of Honolulu.

4. Respondents were or are at all relevant times "public employers" within the meaning of HRS § 89-2 for purposes of this Complaint.[3]

5. The UPW and the City and County were parties to the Unit 10 Agreement with effective dates July 1, 2007, through June 30, 2009. This Agreement included a grievance procedure, culminating in a final step of arbitration, in Section 15.

6. Respondents do not dispute the applicability of Section 15 of the Agreement beyond the expiration of the contract. Further, the Board finds that a grievance procedure was made a mandatory subject of bargaining pursuant to HRS § 89-10.8, which provides in relevant part, "[a] public employer shall enter into a written agreement with the exclusive representative setting forth 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 a written agreement." Accordingly, the grievance procedure in the Unit 10 Agreement may not be unilaterally changed without bargaining to impasse after the agreement has expired and negotiations on a new one have yet to be

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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]Pursuant to HRS § 89-6, Unit 10 consists of institutional, health, and correctional workers.

[3]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.

completed.[4] See, NLRB v. Katz, 369 U.S. 736 (1962); Laborers Health and Welfare Trust Fund v. Advanced Lightweight Concrete Co., 484 U.S. 539, 544 n.6 (1988).

7. Section 15.09 of the Unit 10 Agreement provides in relevant part:

> INFORMATION
>
> The Employer shall provide 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
>
> 15.09 b. 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 the grieving party and/or the Union agrees to sign Exhibit 15.09 and be responsible for the material until it is returned.

8. On May 14, 2009, the UPW filed a class action grievance in UPW Case No. LS-09-04, alleging violations of the Unit 10 Agreement relating to overtime pay and scheduling.

9. By letter dated September 29, 2009, the UPW notified Respondents that it was submitting the class action grievance to arbitration.

10. On or about October 8, 2009, the UPW submitted a request for information and asked that certain information be provided within seven calendar days.

11. In the Complaint, the UPW alleges that Respondents received the information request dated October 8, 2009, on or about October 10, 2009. Respondents, in their Answer to the Complaint, denied this allegation. However, in their

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[4]In Litton Financial Printing Division v. NLRB, 501 U.S. 190 (1991), the Court held that an arbitration clause does not, by operation of the National Labor Relations Act as interpreted in Katz, continue in effect after expiration of a collective-bargaining agreement, as arbitration is a matter of consent and will not be imposed beyond the scope of the parties' agreement. However, HRS § 89-10.8 makes the grievance procedure in the Unit 10 Agreement a mandatory subject of negotiation, and thus Litton is distinguishable in that respect.

motion and memoranda filed in this proceeding, Respondents have not denied that they did receive the information request at some point, and have not asserted any alternate date of receipt of the request.

12. In the Complaint, the UPW alleges that "[t]o the present day no information has been provided in response to the union's request for information." Respondents, in their Answer, deny this allegation. However, in their motion and memoranda filed in this proceeding, Respondents have not identified any information that was provided in response to the request dated October 8, 2009.

13. On February 1, 2010, the UPW filed a Motion for Summary Judgment, asserting that the UPW is entitled to summary judgment on all claims alleged in the Complaint; and the UPW is entitled to appropriate relief including reimbursement of costs, attorneys fees, and fines.

14. On February 3, 2010, Respondents filed a Motion to Dismiss Complaint or in the Alternative, for Summary Judgment, asserting the grievance procedure is the exclusive forum for pursuing claims arising from the interpretation and application of the terms of the Agreement, or in the alternative, the Board should apply the longstanding policy regarding deferral to the contractual grievance process; and that the Board lacks jurisdiction over discovery issues occurring after the grievance was submitted to arbitration.

15. On February 4, 2010, Respondents filed their Memorandum in Opposition to UPW's Motion for Summary Judgment Filed Herein on February 1, 2010, asserting that there is no violation by Respondents and that the prohibited practice is outside the scope of the Board's jurisdiction as the grievance is currently pending before an arbitrator.

16. On February 8, 2010, the UPW filed its Memorandum in Opposition to Respondents' Motion to Dismiss or for Summary Judgment, asserting that the claims presented in the Complaint are outside the jurisdictional authority of the arbitrator; the Board has sole authority over prohibited practices; and in order for arbitration to function properly, the Union needs information to evaluate the merits of claims beforehand.

17. On February 16, 2010, Respondents filed their Reply Memorandum to UPW's Memorandum in Opposition to Respondents' Motion to Dismiss Complaint or for Summary Judgment 2/18/10 (sic), asserting the claims are well within the authority of the arbitrator.

18. On February 18, 2010, the UPW filed its Supplemental Submission in Opposition to Respondents' Motion to Dismiss Complaint or for Summary Judgment.

19. On February 24, 2010, the Board held a hearing on the parties' motions pursuant to HRS §§ 89-5(i)(4) and (5), and HAR § 12-42-8(g)(3).

20. Throughout this proceeding, Respondents have not presented any evidence to show what information, if any, was provided to the UPW in response to its information request dated October 8, 2009. Respondents have not argued that the request was overly burdensome; that the material is privileged; that the scope of the request goes beyond what is provided for in the Agreement; that the request is vague and ambiguous; or any other reason why Respondents have not fully responded to the request, other than the argument that the request was made after the grievance was submitted to the arbitration stage, and thus the arbitrator has jurisdiction over the matter.

21. Under the facts of this case, the Board finds that the City and County wilfully, i.e., with conscious, knowing, or deliberate intent, violated Section 15.09 of the Unit 10 Agreement by failing to respond to the UPW's information request dated October 8, 2009.

22. In Order No. 2697, Order Granting in Part and Denying in Part the UPW's Motion for Summary Judgment in Part the UPW's Motion for Summary Judgment and Denying Respondents' Motion for Summary Judgment; and Notice of Hearing, dated April 12, 2010, in Case No. CE-10-744, the Board found that the City and County wilfully committed prohibited practices when they failed to promptly select an arbitrator in several grievance proceedings as required by Section 15.17 of the Agreement. One of the grievances at issue in Case No. CE-10-744 is UPW grievance no. LS-09-04, the same grievance at issue in the present Complaint.

23. Respondents argue that the Board should defer this information request issue to the contractual arbitration process as there is a discovery process available which is controlled by the arbitrator. While the Board does not disagree with Respondents' position that the discovery process is controlled by the arbitrator, in order to rely upon that argument, Respondents must have made a good faith effort to comply with the arbitration process in the Agreement. Based upon Order No. 2697, supra, Respondents here failed to comply with the arbitration process by unduly delaying the selection of the arbitrator which in turn delayed the production of information requested.

24. To the extent that Respondents argue that the Board should rely on HRS chapter 658A since the information request was made after the demand for arbitration, the Board finds that reliance on HRS chapter 658A requires the parties to make a good faith effort to select an arbitrator in a timely fashion. In Order No. 2697, the Board found Respondents' actions evidenced a conscious indifference to their obligation under the Agreement to timely select an arbitrator and concluded that Respondents' actions were wilful.

25. The record in this case indicates that Respondents completely ignored Complainant's October 8, 2009 request for information in conscious indifference to their obligation under the Agreement and was therefore wilful.

DISCUSSION AND CONCLUSIONS OF LAW

1. The Board has jurisdiction over the instant Complaint pursuant to HRS §§ 89-5 and 89-14.

2. With respect to the powers of the Board, HRS § 89-5(i) provides in part:

> In addition to the powers and functions provided in other sections of this chapter, the board shall:
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> * * *
>
> (3) Resolve controversies under this chapter;
>
> (4) Conduct proceedings on complaints of prohibited practices by employers, and employee organizations and take such actions with respect thereto as it deems necessary and proper;
>
> * * *
>
> (10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it.

3. HRS § 89-13(a) provides in relevant part:

> It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(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;

* * *

(7) Refuse or fail to comply with any provision of this chapter; [or]

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

4. 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.

5. 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.

6. 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.

7. "When a motion for summary judgment is made . . . an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided [by Rule 56], must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate,

shall be entered against the adverse party." Hawaii Rules of Civil Procedure (HRCP) Rule 56. Thus, "[a] party opposing a motion for summary judgment cannot discharge his or her burden by alleging conclusions, 'nor is [the party] entitled to a trial on the basis of a hope that [the party] can produce some evidence at that time.'" Henderson v. Professional Coatings Corp., 72 Haw. 387, 501, 819 P.2d 84, 92 (1991).

8. 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)).

9. 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)).

10. The Board looks to the Hawaii courts' evolving guidance in interpreting provisions of HRS Chapter 89.

11. The most recent Board decision involving an information request from a union that was made after the grievance had been submitted to arbitration is Order No. 2499 in Case No. CE-01-655, United Public Workers, AFSCME, Local 646, AFL-CIO v. Milton Arakawa, et al., involving the UPW and the County of Maui. In that case, the Board held that the County of Maui committed a prohibited practice under HRS § 89-13(a)(8) by refusing to utilize the striking process to select an arbitrator for a grievance in accordance with Section 15.17b of the collective bargaining agreement. The UPW also contended that Maui County failed to provide information requested by the Union to process the grievance. The Board found that the information requests during the arbitration stage of a grievance to properly be within the arbitrator's jurisdiction and deferred the issue to the arbitrator, stating, in part:

> 13. ...Pursuant to HRS § 658A-9, a "person initiates an arbitration proceeding by giving notice in a record to the

other parties to the agreement to arbitrate in the agreed manner between the parties . . . The notice shall describe the nature of the controversy and the remedy sought." Thus, when the January 24, 2008, requests for information were made, the grievance was already at the arbitration stage. Pursuant to HRS § 658A-17, the arbitrator controls witnesses, subpoenas, depositions, and discovery. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective (HRS § 658A-17(c)). Accordingly, the issue of information requests, including UPW's requests of January 24, 2008, during the arbitration stage of a grievance is properly within the jurisdiction of the arbitrator.

14. The failure of the employer to provide documents during the arbitration stage of a grievance may be a violation of Section 15.09 of the CBA, governing "Information." The CBA, however, does not dictate whether such information dispute will be resolved by the arbitrator or the Board. Pursuant to HRS § 89-5, the Board resolves controversies under chapter 89, and conducts proceedings on prohibited practice complaints. Additionally, pursuant to HRS § 89-19, "[chapter 89] shall take precedence over all conflicting statutes concerning this subject matter and shall preempt all contrary local ordinances, executive orders, legislation, or rules adopted by the State, a county, or any department or agency thereof, including the departments of human resources development or of personnel services or the civil service commission." Chapter 658A, however, is not a "conflicting statute," for HRS § 89-10.8(a)[5]

[5]HRS § 89-10.8(a) provides in relevant part:

> A public employer shall enter into written agreement with the exclusive representative setting forth 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 a written agreement.

> specifically allows the parties to enter into an agreement setting forth a grievance procedure culminating in arbitration. In turn, the circuit courts have consistently applied chapter 658A to such arbitration proceedings. Accordingly, the Board concludes that the arbitrator has jurisdiction over the present January 24, 2008, information dispute. To the extent the Board may have concurrent jurisdiction, the Board defers to the arbitrator.

The UPW filed an appeal from Order No. 2499 to the circuit court in Civil No. 08-1-0885-05, and, the circuit court, by the Honorable Sabrina S. McKenna, held that the Board has exclusive jurisdiction over prohibited practice complaints and the Board erred by deferring the claim underlying the prohibited practice charge based on the UPW's request for information, to the Arbitrator for disposition. The court remanded the case to the Board to determine whether the County of Maui committed prohibited practices when it failed to provide information requested by the UPW. See, Order Reversing Hawaii Labor Relations Board Order No. 2499 Dated April 14, 2008 and Remanding Case for Further Proceedings, dated May 4, 2009. On remand, the parties resolved the underlying grievance thereby rendering the information request moot, and the parties agreed to the dismissal of the complaint. See, Order No. 2612, Order Dismissing Complaint, dated June 1, 2009.

12. Throughout this proceeding, Respondents have not presented any evidence to show what response or information, if any, was provided to the UPW in answer to its information request dated October 8, 2009. Respondents have not argued that the request was overly burdensome; that the material is privileged; that the scope of the request goes beyond what is provided for in the Agreement; that the request is vague and ambiguous; or provided any other reason why Respondents have not fully responded to the request, other than the argument that the request was made after the grievance was submitted to the arbitration stage, and thus the arbitrator has jurisdiction over the matter. The Board thus finds that Respondents did not respond or provide any information to the UPW in response to its request and finds that there is no genuine dispute of any material fact and concludes that the UPW is entitled to judgment as a matter of law.[6]

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[6]The Board also notes based on the UPW's Motion for Interlocutory Relief, filed on March 29, 2010 and Respondents' Memorandum in Opposition to UPW's Motion for Interlocutory Relief Filed on March 29, 2010, filed on April 5, 2010, that no information was provided following the Board's oral order of February 24, 2010.

13. The Board finds that the City and County wilfully,[7] i.e., with conscious, knowing, or deliberate intent, violated Section 15.09 of the Unit 10 Agreement by failing to respond to the UPW's information request dated October 8, 2009. In Order No. 2697, Order Granting in Part and Denying in Part the UPW's Motion for Summary Judgment in Part the UPW' Motion for Summary Judgment and Denying Respondents' Motion for Summary Judgment; and Notice of Hearing, dated April 12, 2010, the Board found that Respondents wilfully committed prohibited practices when they failed to promptly select an arbitrator in several grievance proceedings as required by Section 15.17 of the Agreement. One of the grievances at issue in Case No. CE-10-744 is UPW grievance no. LS-09-04, the same grievance at issue in the present Complaint. Thus, the Board finds the City and County's argument that the arbitrator has jurisdiction over the information or discovery request under HRS § 658A to be unpersuasive where it has committed prohibited practices by not promptly selecting an arbitrator and thereby delaying the production of any information to the Union.

14. The Board concludes that Respondents committed a prohibited practice under HRS § 89-13(a)(8) by wilfully violating Section 15.09 of the Unit 10 Agreement governing requests for information necessary for the processing of a grievance by failing to respond to the Union's October 8, 2009 request for information.

15. The Board further concludes that Respondents' actions constitute a prohibited practice pursuant to HRS § 89-13(a)(1). As a result of the lack of response to the UPW's request for information, Respondents' actions also unduly delayed, and thus interfered with, the UPW's representation of its members in the arbitration stage of the grievance process.

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[7]The Hawaii Supreme Court reiterated that in assessing a violation of HRS § 89-13, the Board is required to determine whether the respondent acted with "conscious, knowing, and deliberate intent to violate the provisions" of HRS Chapter 89. In re Hawaii Government Employees Ass'n., AFSCME, Local 152, AFL-CIO, 116 Hawai'i 73, 99, 170 P.3d 324, 350 (2007) ("With respect to HRS chapter 89, this court has said that 'wilfully' means 'conscious, knowing, and deliberate intent to violate the provisions of HRS chapter 89' . . . Thus, in assessing a violation of HRS § 89-13, the Board was required to determine whether Respondents acted with the 'conscious, knowing, and deliberate intent to violate the provisions' of HRS chapter 89 when it removed the campaign materials"). Accordingly, when assessing an alleged prohibited practice under HRS § 89-13, the Board will determine whether the respondent acted with "conscious, knowing, and deliberate intent" to violate the provisions of HRS chapter 89.

16. In its Complaint and Motion for Summary Judgment, the UPW also alleged that Respondents committed violations of HRS §§ 89-3 and 89-9(a) and prohibited practices under HRS §§ 89-13(a)(5) and (7), by the wilful refusal to provide information to the Union.

HRS § 89-3 provides:

> Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, including retiree health benefit contributions, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4.

HRS § 89-9(a) provides with respect to scope of negotiations, consultation, as follows:

> (a) The employer and the exclusive representative shall meet at reasonable times, including meetings sufficiently in advance of the February 1 impasse date under section 89-11, and shall negotiate in good faith with respect to wages, hours, the amounts of contributions by the State and respective counties to the Hawaii employer-union health benefits trust fund or a voluntary employees' beneficiary association trust to the extent allowed in subsection (e), and other terms and conditions of employment that are subject to collective bargaining and that are to be embodied in a written agreement as specified in section 89-10, but the obligation does not compel either party to agree to a proposal or make a concession; provided that the parties may not negotiate with respect to cost items as defined by section 89-2 for the biennium 1999 to 2001, and the cost items of employees in bargaining units under section 89-6 in effect on June 30, 1999, shall remain in effect until July 1, 2001.

The UPW argues that participating in the grievance procedure is a concerted right and Respondents have violated HRS §§ 89-3 and 89-9(a) and committed prohibited practices in violation of HRS §§ 89-13(a)(5) and (7) by interfering with the Union's role as the exclusive bargaining representative of unit employees. The Board has found that Respondents violated HRS § 89-13(a)(1) by interfering with the UPW's representation of its members in the arbitration stage of the grievance process. After reviewing the UPW's arguments, the Board finds that the UPW has not alleged sufficient facts to support a claim that Respondents otherwise violated HRS §§ 89-3 and 89-9(a) to support a finding of violations of HRS §§ 89-13(a)(5) and (7). Accordingly, the Board concludes that the UPW failed to prove violations of HRS §§ 89-13(a)(5) and (7).

17. With respect to the issues of remedies,[8] the Board orders the Respondents to forthwith provide responses to the UPW's request for information, dated October 8, 2009, but reserves its ruling on other remedies requested. The Board requests the parties further brief these specific matters prior to a Board ruling on these issues. Thus, with regard to the UPW's request for attorneys fees and costs, as well as civil fines, the Board will conduct further proceedings to determine whether such remedies are warranted in this case.

ORDER

For the reasons discussed above, the Board grants UPW's Motion for Summary Judgment and finds that the City and County committed a prohibited practice by wilfully violating Section 15.09 of the Unit 10 Agreement governing requests for information necessary for the processing of a grievance by failing to provide documents and other information within its possession in a timely manner. The Board denies Respondents' Motion to Dismiss or in the Alternative for Summary Judgment and orders Respondent to provide a response to the UPW's request for information forthwith.

NOTICE OF HEARING

The Board sets April 29, 2010 as the deadline for filing memoranda specifically addressing the issue of appropriate remedies, and will conduct a hearing on the issue on

[8]The UPW in its Motion for Summary Judgment, filed on February 1, 2010, requested make whole remedies to the Union, including attorney's fees and costs incurred and also, fines under HRS § 377-9(d).

May 4, 2010 at 10:00 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

DATED: Honolulu, Hawaii, April 16, 2010.

HAWAII LABOR RELATIONS BOARD

JAMES B. NICHOLSON, Chair

SARAH R. HIRAKAMI, Member

Copies sent to:

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