

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, City and County of
Honolulu; and MUFI HANNEMANN,
Mayor, City and County of Honolulu,

Respondents.

CASE NO. CE-10-746

ORDER NO. 2731

ORDER GRANTING
COMPLAINANT'S MOTION TO
ENFORCE

ORDER GRANTING COMPLAINANT'S MOTION TO ENFORCE

On April 19, 2010, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Complainant or UPW) filed a Motion to Enforce Board Order No. 2699 (Motion to Enforce), and on April 21, 2010, the UPW filed a supplemental submission in support of the motion to enforce Order No. 2699. On April 26, 2010, Respondents filed their Memorandum in Opposition to UPW's Motion to Enforce Board Order No. 2699.

On May 17, 2010, the Board heard arguments on Complainant's Motion to Enforce and took the matter under advisement.

Based upon the record and the arguments presented, the Board grants Complainant's Motion to Enforce for the reasons set forth below.

In its Motion to Enforce Board Order No. 2699, the UPW requested the Hawaii Labor Relations Board (Board) to initiate an enforcement action against Respondents for noncompliance with 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 issued on April 16, 2010 by April 19, 2010. The UPW alleged that it requested Respondents' compliance with the Board's Order No. 2699, issued on April 16, 2010 by April 19, 2010 and that Respondents failed to provide information to Complainant.

Respondents argued, *inter alia*, that the UPW's demand for compliance was unreasonable because Respondents received Order No. 2699 on April 19, 2010; the

Respondents should be given a reasonable amount of time to read the order and comply with it; that even though the Respondents had started to gather the information it was unreasonable to expect the Respondents to comply with the UPW's demand; the Respondents neither disobeyed nor failed to comply with the Board's order; that forcing compliance prior to the filing of an appeal would improperly eliminate the Respondents' right to appeal.

After reviewing the record and the arguments presented, the Board finds that the UPW submitted the instant request for information on or about October 8, 2009; the instant prohibited practice complaint was filed on January 13, 2010; the Board heard dispositive motions on February 24, 2010 and issued an oral order at the close of the hearing for Respondents to respond to UPW's information request; thereafter, the Board issued Order No. 2699 on April 16, 2010 which provides in part in Conclusion of Law No. 17 a clear written order for Respondents to "forthwith provide responses to the UPW's request for information, dated October 8, 2009," and reserved ruling on the other remedies requested; Respondents argue that the UPW's demand for compliance was unreasonable because of the short period of time given for compliance; the Motion to Enforce was heard on May 17, 2010, approximately one month after Order No. 2699 was issued and no information had been produced; there is nothing in the record to indicate any compliance or effort to provide the information requested except for Respondents' representation in its Memorandum in Opposition to UPW's Motion to Enforce Board Order No. 2699 Filed on April 19, 2010, filed on April 26, 2010, that "the City has started gathering the information requested"; to date Respondents have had ten months to comply with the initial request for information; and nothing more has been submitted to the Board since the motions hearing held on May 17, 2010 that Respondents have produced any information requested by the UPW indicating Respondents substantially complied with the Board's order.

HAR § 12-42-51 regarding Enforcement of order, provides in part:

If any party fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit court judge of the judicial circuit wherein such party resides or usually transacts business for the enforcement of the order and for appropriate temporary relief or restraining order,

Based upon the foregoing, Board concludes that Order No. 2699 was clear in requiring the Respondents to provide the information pending the resolution of additional remedies requested by the UPW and Respondents failed to substantially comply with the Board's order. Thus, the Board hereby grants the UPW's motion to seek enforcement of the Board's order.

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. ELIZABETH A. CHAR,
M.D., et al.
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DATED: Honolulu, Hawaii _____ August 13, 2010 _____.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

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