

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII FIRE FIGHTERS ASSOCIATION,  
IAFF, LOCAL 1463, AFL-CIO

Complainants,

and

CHARMAINE TAVARES, Mayor, County  
of Maui; FRANK PIKRONE, Chair, Fire &  
Public Safety Commission, County of Maui;  
and FIRE & PUBLIC SAFETY  
COMMISSION, County of Maui,

Respondents.

CASE NO.: CE-11-756

ORDER NO. 2742

ORDER GRANTING RESPONDENTS  
FRANK PIKRONE, CHAIR, FIRE &  
PUBLIC SAFETY COMMISSION,  
COUNTY OF MAUI; AND FIRE &  
PUBLIC SAFETY COMMISSION'S  
MOTION TO DISMISS PROHIBITED  
PRACTICE COMPLAINT; DENYING  
RESPONDENT CHARMAINE  
TAVARES, MAYOR, COUNTY OF  
MAUI'S MOTION TO DISMISS OR  
FOR SUMMARY JUDGMENT; AND  
DENYING COMPLAINANT  
HFFA/IAFF'S MOTION FOR  
INTERLOCUTORY RELIEF; AND  
NOTICE OF HEARING

ORDER GRANTING RESPONDENTS FRANK PIKRONE, CHAIR, FIRE  
& PUBLIC SAFETY COMMISSION, COUNTY OF MAUI; AND FIRE  
& PUBLIC SAFETY COMMISSION'S MOTION TO DISMISS PROHIBITED  
PRACTICE COMPLAINT; DENYING RESPONDENT CHARMAINE  
TAVARES, MAYOR, COUNTY OF MAUI'S MOTION TO DISMISS OR FOR  
SUMMARY JUDGMENT; AND DENYING COMPLAINANT HFFA/IAFF'S  
MOTION FOR INTERLOCUTORY RELIEF; AND NOTICE OF HEARING

On April 12, 2010, Complainant HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO (HFFA/IAFF) filed a Prohibited Practice Complaint (Complaint) against the above-named Respondents with the Hawaii Labor Relations Board (Board). Complainant alleged, *inter alia*, that on or about January 30, 2008, Respondents unilaterally conducted a written survey of bargaining unit 11 employees; that the survey was a matter affecting employee relations and Respondents were required to consult and/or bargain with the HFFA/IAFF prior to implementation of the survey; that the results of the 2008 survey may have been the basis for modification and/or amendment to the terms and conditions of bargaining unit 11 employees, and the practices and procedure in the County of Maui; that the HFFA/IAFF President was informed that the Respondents intended to conduct a second survey of bargaining unit 11 employees sometime in 2010; that the Complainant made a written demand to bargain or consult on the planned survey; that on February 17, 2010, Respondent FRANK PIKRONE (Pikrone), Chair, Fire & Public Safety Commission (Commission) asserted that the Commission is not bound by Chapter 89; and that on April 1, 2010, Respondents unilaterally commenced the implementation of the survey

concerning a variety of bargained-for terms and conditions of employment of Unit 11 employees. Complainant contends that Respondents violated Hawaii Revised Statutes (HRS) §§ 89-9(a), 89-9(c) and committed prohibited practices in violation of HRS §§ 89-13(a)(2), (5), (7), and (8).

On April 13, 2010, the Board issued a Notice to Respondents of Prohibited Practice Complaint.

On April 19, 2010, Complainant filed a Motion for Interlocutory Relief with the Board requesting that the Board enjoin, retrain, and prohibit Respondents from further implementation, corroboration, assessment and future distribution of its April 1, 2010 survey and any future survey pending issuance of a final order in this case.

On April 26, 2010, Respondents Pikrone and the Commission filed a response to the Complaint, asserting, inter alia, that the Board lacks jurisdiction over the Complaint; that the Board lacks jurisdiction over the Commission; that the Complaint was not filed in a timely manner; that Respondents Pikrone and Commission denies that Respondent Pikrone represented or acted on behalf of Employer, that is to say, Respondent Tavares, within the meaning of HRS § 89-2; that while some matters may require bargaining and/or consultation between Complainant and Employer, no such matters were involved in conducting the survey; that the Respondent Commission enjoys absolute and/or qualified immunity; that Respondents Pikrone and Commission acted in good faith relative to Complaint; and that the actions of Respondent Pikrone and Commission were never wilful as defined in HRS § 89-13.

On April 26, 2010, Respondent CHARMAINE TAVARES (Tavares), Mayor, County of Maui filed a response to the Complaint, asserting, inter alia, that the Board lacks jurisdiction over the Complaint; that while Respondent Pikrone is or was Chair of Respondent Commission, Respondent Tavares denies that Respondents Pikrone and Commission represented or acted on behalf of Employer within the meaning of HRS § 89-2; that while some matters may require bargaining and/or consultation between Complainant and Employer, no such matters were involved in conducting the survey; that the defense of waiver applies; that Respondent Tavares enjoys absolute and/or qualified immunity; that Respondent Tavares acted in good faith relative to Complainant; and that the actions alleged in Complaint were undertaken by third parties independent of Employer, and not subject to any collective bargaining obligations.

On April 28, 2010, Respondents Pikrone and the Commission filed a Memorandum in Opposition to HFFA/IAFF's Motion for Interlocutory Relief.

On April 29, 2010, Respondent Tavares filed a Memorandum in Opposition to HFFA/IAFF's Motion for Interlocutory Relief.

On May 3, 2010, the Board issued a Notice of Prehearing/Settlement Conference and Hearing on HFFA/IAFF's Motion for Interlocutory Relief.

On May 6, 2010, Complainant HFFA/IAFF filed a Prehearing Settlement Conference Statement.

On May 10, 2010, Respondent Tavares filed a Pre-Hearing Statement.

On May 10, 2010, Respondents Pikrone and the Commission filed a Pre-Hearing Statement.

On May 10, 2010, Respondents Pikrone and the Commission filed an Amended Certificate of Service.

On May 11, 2010, the Board issued a Notice of Filing Deadlines and Notice of Hearing.

On May 17, 2010, Complainant HFFA/IAFF filed a Reply Memorandum in Support of Motion for Interlocutory Relief.

On June 10, 2010, Respondents Pikrone and the Commission filed a Motion to Dismiss Prohibited Practice Complaint.

On June 10, 2010, Respondent Tavares filed a Motion to Dismiss or for Summary Judgment.

On June 28, 2010, Complainant filed a Memorandum in Opposition to Respondent Tavares' Motion to Dismiss or for Summary Judgment, and Respondents Pikrone and Fire and Public Safety Commission's Motion to Dismiss.

On June 30, 2010, the Board conducted a Hearing on the above-referenced motions. Complainant was represented by Peter Liholiho Trask, Esq., Respondent Tavares was represented by Deputy Corporation Counsel Richard B. Rost, and Respondents Pikrone and the Commission were represented by Deputy Corporation Counsel Cheryl Tipton. After hearing arguments from all parties for the respective motions, the Board took the matter under advisement.

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

After careful consideration of the record and the arguments presented, the Board makes the following findings of fact, conclusions of law, and order Granting Respondents Frank Pikrone, Chair, Fire & Public Safety Commission, County of Maui; and Fire & Public Safety Commission's Motion to Dismiss Prohibited Practice Complaint; and

Denying Respondent Charmaine Tavares, Mayor, County of Maui's Motion to Dismiss or for Summary Judgment.

FINDINGS OF FACT

1. At all times relevant to this Complaint, Complainant HFFA/IAFF is or was an employee organization within the meaning of HRS § 89-2<sup>1</sup> and the exclusive representative of employees belonging to bargaining unit 11.<sup>2</sup>
2. At all times relevant to this Complaint, Respondent Tavares is or was an "employer" or "public employer" within the meaning of HRS § 89-2.<sup>3</sup>

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<sup>1</sup>HRS § 89-2 provides in pertinent 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, 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.

<sup>2</sup>HRS § 89-6(a) provides in pertinent part:

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

\* \* \*

(11) Firefighters; . . . .

<sup>3</sup>HRS § 89-2 provides in pertinent 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.

3. At all times relevant to this Complaint, Respondent Commission is or was created by the Maui County Charter, Section 8-7.2.<sup>4</sup> There are nine members, including the chair, who are appointed by the mayor with the approval of the County Council.
4. Pursuant to the County of Maui Charter, 2003 Edition, Section 8-7.2.<sup>5</sup>, the duties of the Commission are as follows, to wit:

The fire and public safety commission shall:

1. Adopt such rules as it may consider necessary for the conduct of its business and regulation of the matters committed to its charge by law.
2. Review and submit to the mayor the department's request for an annual appropriation for the operation of the department.
3. Review the operations of the department of fire and public safety and the civil defense agency and make recommendations for changes that may be desirable to improve the performance of emergency functions and the provision of public safety services.
4. Receive, review, and investigate any charges brought forth by the public against the conduct of the department of fire and public safety or any of its members and submit a written report of its findings and recommendations to the fire chief for disposition.
5. Evaluate at least annually the performance of the fire chief and submit a report to the mayor and the council.

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<sup>4</sup>Charter, County of Maui, 2003 Edition, provides in pertinent part:

**Section 8-7.2. Fire and Public Safety Commission.** The fire and public safety commission shall consist of nine members appointed by the mayor with the approval of the council.

<sup>5</sup>See also Title MC-06, Department of Fire and Public Safety, Subtitle 1, Fire and Public Safety Commission, Chapter 102, Rules of Practice and Procedure for the Fire and Public Safety Commission of the County of Maui, Subchapter 2, Organization and Parliamentary Rules, Section 6-102-17 Officers and their duties. (Essentially codifies County of Maui Charter, 2003 Edition, Section 8-7.2. into the administrative rules of the Commission.)

6. Submit an annual report to the mayor and the council of its activities.
  7. Have such other powers and duties as may be provided by law. Except for purposes of inquiry or as otherwise provided in this charter, neither the commission nor its members shall interfere in any way with the administrative affairs of the department. (Amended 2002)
5. At some times relevant to this Complaint, Respondent Pikrone is or was chair of the Commission.
  6. The duties of the chair of the Commission are set forth in Title MC-06, Department of Fire and Public Safety, Subtitle 1, Fire and Public Safety Commission, Chapter 102, Rules of Practice and Procedure for the Fire and Public Safety Commission of the County of Maui, Subchapter 2, Organization and Parliamentary Rules, Section 6-102-17, which provides as follows, to wit:

§ 6-102-17 Officers and their duties. (a) Presiding officer. The Chairperson shall be the presiding officer of the commission and the vice-chairperson shall act as the presiding officer in the absence of the chairperson. The presiding officer shall:

- (1) Open all meetings of the commission at the appointed hour by taking the chair and calling the meeting to order;
- (2) Call for the approval of the minutes of any proceeding meeting when a quorum is present;
- (3) Maintain order and proper decorum;
- (4) Announce the business before the commission;
- (5) Review all matters properly brought before the commission, call for the votes and announce the results;
- (6) Appoint any committee chairperson with the approval of a proper majority of the members;
- (7) Authenticate by the chairperson's signature all acts of the commission as may be required by law;

(8) Do and perform other duties as may be required by law, or as may be properly appertain to such office; and

(9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the commission.

7. In 2008, William Soares (Chair Soares), then Chair of the Commission, sent out letters to Maui County Firefighters, dated January 30, 2008, requesting the firefighters fill out an attached survey (2008 survey) developed by the Commission.
8. While Chair Soares' letter of January 30, 2008, stated "The commission will not be privy to the individual identities of the respondents unless firefighters choose to disclose their identity on the form submitted[,]" the letter did not explicitly state that participation in the 2008 survey was strictly voluntary.
9. Chair Soares' letter of January 30, 2008, also requested that the 2008 survey be returned on or before Thursday, February 14, 2008, via an included self-addressed, stamped envelope.
10. The 2008 survey consisted of twenty-two (22) questions, divided into six (6) sections covering: 1. Operation, 2. Training, 3. Stations, 4. Strategic Plan, 5. Accreditation, and 6. Commission. The survey requested that the firefighters answer each question by using a variety of different rating scales, including, but not limited to, "Poor," "Below Average," "Average," "Above Average," and "Excellent."
11. The 2008 survey was administered through a partnership with the Maui Community College Cooperative Education Program, which was tasked with preparing a report on ratings and comments received. The report was subsequently completed and titled: "Results from Survey of Maui County Firefighters conducted by the Maui County Fire & Public Safety Commission Spring 2008."
12. While Complainant contends that the 2008 survey conducted by Respondents was a matter affecting employee relations and that Respondents were required to consult and/or bargain with Complainant prior to the implementation of the 2008 survey, Complainant admits that it did not file a complaint with the Board within ninety (90) days of occurrence, as set forth in Hawaii Administrative Rules (HAR) § 12-42-42(a)<sup>6</sup>, and therefore Respondents'

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<sup>6</sup>HAR § 12-42-42 provides, in pertinent part:

conducting and/or implementing the 2008 survey is not subject to the instant Complaint.

13. On January 21, 2010, HFFA/IAFF President, Robert H. Lee (Lee) sent a letter to Respondents Pikrone and Commission, stating, inter alia, that the Commission's 2008 survey at least required consultation.
14. Lee's letter of January 21, 2010 also informed Respondents Pikrone and Commission that HFFA/IAFF was aware that Respondents intended to conduct a second survey of bargaining unit 11 members employed by the County of Maui some time in 2010; consequently, Lee made a written demand on Respondents Pikrone and Commission, Respondent Tavares, and Fire Chief Jeffrey Murray (Fire Chief Murray)<sup>7</sup>, to bargain, or at the very least consult with HFFA/IAFF on the planned 2010 survey.
15. On February 17, 2010, Respondent Pikrone, in his capacity as Commission Chair, responded in writing to HFFA/IAFF regarding Lee's letter of January 21, 2010, which demanded Respondents bargain or consult over the 2010 survey.<sup>8</sup> Respondent Pikrone conveyed in his letter that the Commission is an independent body; is not the employer of bargaining unit 11 employees; does not represent the Fire Chief or the Mayor, but represents the people of Maui County. Respondent Pikrone also confirmed that the Commission did, in fact, intend to conduct another survey in conjunction with Maui Community College. Respondent Pikrone essentially stated that he felt HFFA/IAFF's request to bargain or consult was interfering with the Commission being an independent body.
16. In March 2010, Respondents Pikrone, in his capacity as Commission Chair, and the Commission sent out letters to "Maui County Firefighters," dated March 19, 2010, informing them, inter alia, that the ". . . Commission will again be conducting a survey of all firefighters to help the Commission evaluate the administration's efficiency and performance."

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(a) A complaint that any public employer, public employee, or public organization has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed by a public employee, employee organization, public employer, or any party in interest or their representatives within ninety days of the alleged violation. Emphasis added.

<sup>7</sup>Lee's letter of January 21, 2010, indicated that it was also "cc"-ed to Respondent Tavares, and to Fire Chief Jeffrey Murray.

<sup>8</sup>Respondent Pikrone's letter of February 17, 2010, indicated that it was also "cc"-ed to Respondent Tavares, and to Fire Chief Jeffrey Murray.



17. Respondent Pikrone's letter of March 19, 2010, stated that the survey was constructed by the Commission without input from the County or department administration.
18. Respondent Pikrone's letter of March 19, 2010, stated that the University of Hawaii – Maui College would be conducting the survey; mailing, collecting and compiling the results, and when the results are completed a representative from the college will present them to the Commission in an open meeting.
19. Respondent Pikrone's letter of March 19, 2010, stated that "[t]his survey in no way affects the collective bargaining of the department as the Commission has no role in such negotiations. This is simply to help the Commission in its evaluation of the department's administration as we only have authority over the Chief."
20. Respondent Pikrone's letter of March 19, 2010, stated that "[t]he survey should be arriving in the mail approximately April 2<sup>nd</sup> and we appreciate your participation and assistance in our endeavors to keep this department the best it can be."
21. Respondent Pikrone's letter of March 19, 2010, did not explicitly state that participation in the 2010 survey was strictly voluntary.
22. In April of 2010, Respondents Pikrone, in his capacity as Commission Chair, and the Commission<sup>9</sup> sent out letters, dated April 1, 2010, to all firefighters of Maui County, requesting the firefighters fill out the attached (2010) survey developed by the Commission.
23. While Respondent Pikrone's letter of April 1, 2010, stated, "[t]he commission will not be privy to the individual identities of the respondents unless firefighters choose to disclose their identity on the form submitted[.]" the letter did not explicitly state that participation in the 2010 survey was strictly voluntary.
24. Respondent Pikrone's letter of April 1, 2010, also requested that the 2010 survey be returned on or before April 30, 2010, by sending the completed form in the enclosed self addressed envelope.

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<sup>9</sup>The April 1, 2010 letter was signed by Respondent Pikrone in his capacity as Chair, but the letter also included the following individuals in the signature block under Respondent Pikrone, to wit: Stephanie Crivello, Vice-Chair (Molokai); Members: Andrew de la Cruz (Lanai), May Fujiwara (Lahaina), Ella Alcon (Molokai), Wendy Osher (Kahului), Kevyn Correa (Kula), Robert Motooka (Wailuku), Mark Vaught (Wailuku).

25. The 2010 survey consisted of twenty-four (24) questions; like the 2008 survey, the 2010 survey was also divided into six (6) sections covering: 1. Operations, 2. Training, 3. Stations, 4. Strategic Plan, 5. Accreditation, and 6. Commission. Like the 2008 survey, the 2010 survey also requested that the firefighters answer each question by using a variety of different rating scales, including, but not limited to, "Poor," "Below Average," "Average," "Above Average," and "Excellent."
26. On April 12, 2010, Complainant filed a Complaint with the Board alleging, inter alia, that: (1) on or about January 30, 2008, Respondents unilaterally conducted a written survey of bargaining unit 11 employees; (2) the survey was a matter affecting employee relations and Respondents were required to consult and/or bargain with the HFFA/IAFF prior to implementation of the survey; (3) the results of the 2008 survey may have been the basis for modification and/or amendment to the terms and conditions of bargaining unit 11 employees, and the practices and procedure in the County of Maui; (4) the HFFA/IAFF President was informed that the Respondents intended to conduct a second survey of bargaining unit 11 employees sometime in 2010; (5) the Complainant made a written demand to bargain or consult on the planned survey; (6) on February 17, 2010, Respondent Pikrone, Chair, Commission asserted that the Commission is not bound by Chapter 89; and (7) on April 1, 2010, Respondents unilaterally commenced the implementation of the survey concerning a variety of bargained-for terms and conditions of employment of Unit 11 employees. Further, Complainant contends that Respondents violated HRS §§ 89-9(a), 89-9(c) and committed prohibited practices in violation of HRS §§ 89-13(a)(2), (5), (7), and (8).
28. On April 19, 2010, Complainant filed a Motion for Interlocutory Relief with the Board requesting that the Board enjoin, restrain, and prohibit Respondents from further implementation, corroboration, assessment and future distribution of its April 1, 2010 survey and any future survey pending issuance of a final order in this case.
29. On April 26, 2010, Respondents Pikrone and the Commission filed a response to the Complaint asserting, inter alia, that: (1) the Board lacks jurisdiction over the Complaint; (2) the Board lacks jurisdiction over the Commission; (3) the Complaint was not filed in a timely manner; (4) Respondents Pikrone and Commission deny that Respondent Pikrone represented or acted on behalf of Employer, that is to say, Respondent Tavares, within the meaning of HRS § 89-2; (5) while some matters may require bargaining and/or consultation between Complainant and Employer, no such matters were involved in conducting the survey; (6) the Respondent Commission enjoys absolute and/or qualified immunity; (7) Respondents Pikrone and Commission acted in good

faith relative to Complaint; and (8) the actions of Respondents Pikrone and Commission were never wilful as defined in HRS § 89-13.

30. On April 26, 2010, Respondent Tavares filed a response to the Complaint asserting, inter alia, that: (1) the Board lacks jurisdiction over the Complaint; (2) while Respondent Pikrone is or was Chair of Respondent Commission, Respondent Tavares denies that Respondents Pikrone and Commission represented or acted on behalf of Employer within the meaning of HRS § 89-2; (3) while some matters may require bargaining and/or consultation between Complainant and Employer, no such matters were involved in conducting the survey; (4) the defense of waiver applies; (5) Respondent Tavares enjoys absolute and/or qualified immunity; (6) Respondent Tavares acted in good faith relative to the Complaint; and (7) the actions alleged in the Complaint were undertaken by third parties independent of Employer, and not subject to any collective bargaining obligations.
31. After reviewing the record and the arguments presented, the Board finds that the primary issues presented in this Petition are whether Respondents Pikrone, the Commission, and Tavares are "Employers," pursuant to HRS § 89-2, and, if so, is there a duty to provide Complainant HFFA/IAFF with prior notice, and/or to engage in bargaining or consultation before the Commission conducts a survey of HFFA/IAFF members. These issues are within the Board's statutory jurisdiction. Moreover, the Respondents' respective Motions to Dismiss and/or for Summary Judgment filed on June 10, 2010, and Complainant's Motion for Interlocutory Relief are also within the Board's statutory jurisdiction

#### 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:

\* \* \*

- (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. At all times relevant to this Complaint, Complainant HFFA/IAFF is or was an employee organization within the meaning of HRS § 89-2<sup>10</sup> and the exclusive representative of employees belonging to bargaining unit 11.<sup>11</sup>
  4. At all times relevant to this Complaint, Respondents Pikrone and Commission are not or were not an “employer” or “public employer” as defined in HRS § 89-2.<sup>12</sup>
  5. At all times relevant to this Complaint, Respondent Tavares is or was an “employer” or “public employer” as defined in HRS § 89-2.<sup>13</sup>
  6. 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.
  7. 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.
  8. 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.

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<sup>10</sup>See footnote 1.

<sup>11</sup>See footnote 2.

<sup>12</sup>See footnote 3.

<sup>13</sup>Id.

9. “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 (HRCPP) 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).
10. 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 (9<sup>th</sup> Cir. 1989)).
11. The Board finds that while Respondents Pikrone and Commission may be “employers” with respect to the fire chief, pursuant to, inter alia, Maui Charter, 2003 Edition, Section 8-7.2, Respondents Pikrone and Commission are neither “employers,” nor “public employers” with respect to firefighters, pursuant to HRS § 89-2; thus, the Board lacks jurisdiction over Respondents Pikrone and Commission.
12. The Board finds that Respondent Tavares and Fire Chief Murray are “employers” and/or “public employers,” pursuant to HRS § 89-2; thus, the Board has jurisdiction over Respondent Tavares and Fire Chief Murray.<sup>14</sup>
13. The Board finds that because of the genuine dispute over material facts, it has not yet been established that Respondent Tavares is likely to prevail on the merits of this case. The arguments set forth in HFFA/IAFFs’ [sic] Memorandum in Opposition to Respondents Charmaine Tavares’ Motion to Dismiss or for Summary Judgment, and Respondents Frank Pikrone and Fire and Public Safety Commissions’ Motion to Dismiss create genuine dispute as to whether the Respondent Tavares and the County of Maui by and through Fire Chief Murray wilfully refused or failed to bargain in good faith and/or

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<sup>14</sup>The Board notes that while Fire Chief Murray has not been specifically named as a Respondent in the instant case, nonetheless, he is an “employer” and/or “public employer” within the ambit and purview of HRS § 89-2 by virtue of his position as a department head employed by the County of Maui.

took unilateral action affecting terms and conditions of employment, when the Commission provided Fire Chief Murray with the results of the Commission's surveys for implementation.

14. With respect to HFFA/IAFF's Motion for Interlocutory Relief, the Board finds that because of the genuine dispute over material facts, it has not yet been established that HFFA/IAFF is likely to prevail on the merits of this case. The arguments within and the exhibits attached to Respondent Charmaine Tavares, Mayor, County of Maui's Memorandum in Opposition to Hawaii Fire Fighters Association, IAFF, Local 1463, AFL-CIO's Motion for Interlocutory Relief create genuine dispute as to whether Respondent Tavares wilfully refused or failed to bargain in good faith and/or took unilateral action affecting terms and conditions of employment, when the Commission provided Fire Chief Murray with the results of the Commission's surveys for implementation.
15. Based upon the Board's findings, the Board concludes that Complainant HFFA/IAFF's Motion for Interlocutory Relief should be denied.

#### ORDER

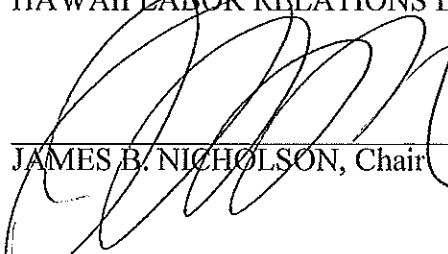
Based on the foregoing, the Board hereby grants Respondents Frank Pikrone, Chair, Fire & Public Safety Commission, County of Maui; and Fire & Public Safety Commission's Motion to Dismiss Prohibited Practice Complaint; denies Respondent Charmaine Tavares, Mayor, County of Maui's Motion to Dismiss or for Summary Judgment; and denies Complainant HFFA/IAFF's Motion for Interlocutory Relief.

#### NOTICE OF HEARING

NOTICE IS HEREBY 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 merits of the instant complaint on **October 20, 2010 at 9:30 a.m. and October 21, 2010 at 10:00 a.m.** in the Board's hearing room. The purpose of the hearing is to receive evidence and arguments on whether Respondent committed prohibited practices as alleged by the Complainant. The hearing may continue from day to day until completed.

DATED: Honolulu, Hawaii, October 6, 2010.

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO and CHARMAINE TAVARES, Mayor, County of Maui; FRANK PIKRONE, Chair, Fire & Public Safety Commission, County of Maui; and FIRE & PUBLIC SAFETY COMMISSION, County of Maui  
CASE NO. CE-11-756  
ORDER NO. 2742

ORDER GRANTING RESPONDENTS FRANK PIKRONE, CHAIR, FIRE & PUBLIC SAFETY COMMISSION, COUNTY OF MAUI; AND FIRE & PUBLIC SAFETY COMMISSION'S MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT DENYING RESPONDENT CHARMAINE TAVARES, MAYOR, COUNTY OF MAUI'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT; AND DENYING COMPLAINANT HFFA/IAFF'S MOTION FOR INTERLOCUTORY RELIEF; AND NOTICE OF HEARING

  
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SARAH R. HIRAKAMI, Member

  
\_\_\_\_\_  
NORMAN K. KATO II, Member

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