

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

BRIAN K. TOM,

Complainant,

and

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

Respondent.

CASE NO. CU-01-301

ORDER NO. 2781

ORDER GRANTING COMPLAINANT'S
WITHDRAWAL WITH PREJUDICE OF
PROHIBITED PRACTICE COMPLAINT

ORDER GRANTING COMPLAINANT'S WITHDRAWAL
WITH PREJUDICE OF PROHIBITED PRACTICE COMPLAINT

On February 3, 2011, Complainant BRIAN K. TOM (Complainant or Tom), *pro se*, filed a Prohibited Practice Complaint (Complaint) against Respondent UNITED PUBLIC WORKERS, Local 646, AFSCME, AFL-CIO (Respondent or UPW). The Complaint challenged, among other things, overtime assignments and deductions for a Christmas fund, and alleged violations of Hawaii Revised Statutes §§ 89-3, 89-4, 89-13(b)(1), 89-13(b)(4), 89-13(b)(5), and 89-15.

On February 15, 2011, the UPW filed a Motion to Dismiss Complaint (Motion to Dismiss), asserting lack of jurisdiction due to untimely filing; failure to state a hybrid claim for relief for breach of a collective bargaining agreement and breach of fair duty of representation; failure to state a statutory claim for relief; lack of subject matter jurisdiction over internal affairs of the union; and failure to exhaust contractual remedies.

On February 16, 2011, the Board issued a Notice of Prehearing/Settlement Conference and Hearing on UPW's Motion to Dismiss Complaint Filed on February 3, 2011 [sic].

On March 1, 2011, the UPW filed a Motion to Dismiss Complaint for Lack of Prosecution and for Order Granting Costs and Attorney's Fees (Motion to Dismiss for Lack of Prosecution).

On March 2, 2011, the Board held a Prehearing/Settlement Conference in this matter. At the conference, Complainant orally requested to withdraw his Complaint. Counsel for the UPW had no objection to the withdrawal conditioned on Complainant's

understanding that the withdrawal be "with prejudice." Counsel for the UPW and the Board questioned Complainant as to his understanding and agreement to the condition "with prejudice," and Complainant agreed.

Hawaii Administrative Rules § 12-42-44 provides that a complaint can be withdrawn at any time prior to the issuance of a final decision and order, upon motion and with the consent of the Board.

Accordingly, based on the foregoing, the Board hereby grants Complainant's request to withdraw the Complaint; the withdrawal is with prejudice. The UPW's Motions to Dismiss and Motion to Dismiss for Lack of Prosecution are denied as moot.

DATED: Honolulu, Hawaii, March 3, 2011.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

SARAH R. HIRAKAMI, Member

Copies sent to:

Brian K. Tom
Herbert R. Takahashi, Esq.