

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,
and

JEOFFREY S. CUDIAMAT, P.E., Director
and Chief Engineer, Department of Facility
Maintenance, City and County of Honolulu;
KENNETH NAKAMATSU, Director,
Department of Human Resources, City and
County of Honolulu; and KIRK
CALDWELL, Mayor, City and County of
Honolulu,

Respondents.

CASE NO.: CE-01-724

ORDER NO. 2885

ORDER DENYING COMPLAINANT'S
MOTION TO DEFER TO
ARBITRATION; NOTICE OF STATUS
CONFERENCE AND HEARING

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MOTION TO DEFER TO ARBITRATION; NOTICE OF
STATUS CONFERENCE AND NOTICE OF HEARING

On December 10, 2012, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a Motion for Deferral to Arbitration (Motion) with the Hawaii Labor Relations Board (Board). UPW requested the Board to defer all remaining issues in this case to an arbitration before Arbitrator Richard Hoh (Hoh) which is currently scheduled for hearing commencing on March 19, 2013. Complainant's counsel stated in an affidavit attached to the Motion that a hearing on the merits commenced on March 9, 2011; that it is uncertain when further hearings will be held in the instant case; that hearings are currently scheduled in a related grievance on wages and compensation before Hoh on March 19, 20, and 21, 2013; that the National Labor Relations Board has allowed for deferral to arbitration in a similar context when the employer engages in unilateral actions affecting changes in wages, etc., citing Collyer Insulated Wire, 192 NLRB No. 150, 77 L.R.R.M. 1931 (1971).

On December 20, 2012, Respondents filed a Memorandum in Opposition to Complainant's Motion for Deferral to Arbitration Filed December 10, 2012 with the Board. Respondents contend that there is no arbitration to defer to because the UPW did not file a grievance on the instant matter; that if the Board deferred the matter to arbitration it would be contrary to provisions in the collective bargaining agreement which prohibit the union

from raising additional claims beyond what was pled in the first steps of the grievance procedure; that there are no separate arbitration proceedings to consolidate under Hawaii Revised Statutes (HRS) § 658A-10; that the Board cannot defer a new grievance into an existing grievance and thus the UPW's Motion should be denied and the Board should dismiss this matter in its entirety.

On February 13, 2013, the Board conducted a hearing on the UPW's Motion pursuant to HRS § 89-5(i)(4) and (5), and Hawaii Administrative Rules (HAR) § 12-42-8(g)(3). The parties presented no oral arguments and rested on their positions in their filed documents. The Board took the matter under advisement.

Having carefully considered the record and arguments presented, the Board hereby denies UPW's Motion for two reasons. First, the Board has already exercised its jurisdiction over this matter by considering and ruling on dispositive motions in Order No. 2749, dated November 10, 2010, commencing the hearing on the merits of this case, receiving and marking exhibits, and hearing the testimony of three witnesses. Second, as Respondents argued in their opposition to the Motion, Complainant has not filed a grievance on the issues raised in this Complaint and thus there is no pending arbitration to which to defer, and Complainant did not respond to or contest Respondents' arguments. Therefore, the Board accepts Respondents' arguments that there is no pending arbitration to which to defer the instant case. Accordingly, the UPW's Motion is denied.

Notice of Status Conference and Hearing

NOTICE IS HEREBY GIVEN that the Board will conduct a status conference in this matter on **March 8, 2013 at 9:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

NOTICE IS ALSO 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 resume the hearing on the instant Complaint on **April 2 and 3, 2013 at 9:00 a.m.**, in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The Board may continue the hearing until completed. Previously issued subpoenas remain in force and effect for the continued hearing dates.

DATED: Honolulu, Hawaii _____ February 15, 2013 _____.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. JEOFFREY S. CUDIAMAT,
et al.

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SESNITA A.D. MOEPONO, Member



ROCK B. LEY, Member

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