

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

KIRK CALDWELL, Mayor, City and County  
of Honolulu; HONOLULU FIRE  
DEPARTMENT, City and County of  
Honolulu; and CITY AND COUNTY OF  
HONOLULU,

Respondents.

CASE NO. CE-11-815

ORDER NO. 2909

ORDER GRANTING HFFA/IAFF'S  
MOTION FOR AN ORDER  
COMPELLING RESPONDENTS TO  
PRODUCE DOCUMENTS, FILED ON  
APRIL 8, 2013

ORDER GRANTING HFFA/IAFF'S MOTION FOR AN ORDER COMPELLING  
RESPONDENTS TO PRODUCE DOCUMENTS, FILED ON APRIL 8, 2013

On November 27, 2012, Complainant HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO (Complainant) filed its prohibited practice complaint (Complaint) with the Hawaii Labor Relations Board (Board) alleging, *inter alia*, that Respondents unilaterally implemented changes to Section 33, VACATIONS, of Bargaining Unit 11's collective bargaining agreement (CBA); failed to bargain and/or consult in good faith with Complainant; failed to recognize Complainant as the certified exclusive employee organization; violated Sections 1, 8 and 33 of the CBA; deprived Bargaining Unit 11 members of fundamental statutory rights of collective bargaining; and violated Chapter 89, including sections 89-9(c), 89-13(a)(5), (7) and (8), Hawaii Revised Statutes (HRS).

On November 28, 2012, the Board filed and mailed to the parties a Notice to Respondents of Prohibited Practice Complaint; Notice of Prehearing/Settlement Conference and Notice of Hearing on the Prohibited Practice Complaint setting a prehearing/settlement Conference on December 20, 2012 at 9:00 a.m. and a hearing on the merits on January 4, 2013 at 1:00 p.m.

On December 7, 2012, Respondents filed their Motion to Dismiss and answer to the complaint. On December 13, 2012, Complainant filed its Memorandum in Opposition to Respondents' Motion to Dismiss.

On December 19, 2012, Complainant filed its Motion for Interlocutory Relief requesting the Board to enjoin, restrain, and prohibit Respondents from further actions resulting in unilateral modifications and violations of the CBA and Chapter 89, HRS.

On December 20, 2012, the Board held a Prehearing/Settlement Conference to set the deadlines prior to the hearing on the merits, to set the hearing for both Motions for January 4, 2013 at 1:00 p.m. and continued the hearing on the merits to February 27 and 28, 2013 at 9:00 a.m.

On December 26, 2012, Respondents filed their Memorandum in Opposition to Complainant's Motion for Interlocutory Relief filed on December 19, 2012. On December 31, 2012, Complainant filed its Reply Memorandum.

On January 4, 2013, the Board heard both motions and denied the Respondents' Motion to Dismiss and denied Complainant's Motion for Interlocutory Relief without prejudice.

On February 26, 2013, the Board received a letter from Complainant's counsel requesting on behalf of the parties that the hearings beginning on February 27, 2013 be suspended pending settlement discussion.

On February 27, 2013, the Board sent a Notice of Status Conference to be held on March 11, 2013 at 11:00 a.m. to follow-up on the parties' request to suspend the hearings scheduled to begin on February 27, 2013.

On March 11, 2013, the Board held a status conference and re-scheduled the hearing on the merits for May 7 and 8, 2013 at 9:00 a.m. Complainant's Counsel notified the Board that he requested information and documents from the Respondents and expected a response by April, 2013. He also stated that he would file a motion if necessary.

On March 11, 2013, a Notice of Hearing was sent to all parties regarding the hearing on the merits scheduled for May 7 and 8, 2013 at 9:00 a.m.

On April 8, 2013, Complainant's counsel filed HFFA/IAFF's Motion for an Order Compelling Respondents to Produce Documents (Motion) with the Board. Included in the Motion were four letters, Exhibits 1-4, chronicling the history of Complainant's counsel's request for information and documents from Respondents.

Respondents did not file a response to the Complainant's Motion with the Board in accordance with Hawaii Administrative Rules (HAR)§ 12-42-8(g)(3)((iii)).<sup>i</sup>

Based upon a review of the Motion and the record in this matter, the Board finds that by letter dated January 16, 2013 (Exhibit 1) Complainant's counsel requested certain documents and information from Respondents' counsel in order to prepare for Board hearings in this matter. Specifically, Complainant's counsel requested:

1. Legible copies of all Honolulu Fire Department policies and procedures, rules, regulations, Fire Department Manuals, Fire Chief Directives, orders, and other documents in any way related to Section 33 Vacations of the Unit 11 collective bargaining agreement, issued, published, disseminated, distributed by Respondents that interpreted, clarified, explained, or implemented, Section 33 within the last 20 years.
2. Legible copies of all Honolulu Fire Department documents that confirm the Department's efforts to consult with HFFA/IAFF on any proposed changes, amendments, modifications, explanations, clarifications, descriptions, or interpretations of Section 33 Vacation of the Unit 11 Agreement within the last 2 years, or Fire Department documents that confirm there is no Departmental duty to consult.
3. Legible copies of all Honolulu Fire Department documents that confirm the Department's efforts to negotiate with HFFA/IAFF any Department proposed



changes, amendments, modifications, explanations, clarifications, descriptions, or interpretations of Section 33 of the Unit 11 Agreement within the last 2 years, or Fire Department documents that confirm there is no Departmental duty to negotiate.

4. Legible copies of all documents that establish a Unit 11 employee's obligation to select an annual vacation month at any time pursuant to the Unit 11 Agreement.
5. Legible copies of all Honolulu Fire Department rules, regulations, policies and procedures, statutes and standards, Departmental Directives, and other documents, including HFD Manuals, that describe, determine, establish minimum safe staffing levels within the HFD for the last 20 years.

Please provide all documentation that reveals whether “minimum safe staffing” was consulted, and if not consulted, whether negotiated, with the HFFA/IAFF and when.

6. Respondents alleged in their answer to the prohibited practice complaint that the matters involved in the complaint were “discussed” with Complainant (HFFA/IAFF). Please provide the date(s), time(s), and identities of the participants of those discussions claimed by Respondents.

In addition, please provide legible copies of all documents containing a description of the “matters” discussed and the outcome or conclusions reached by Respondents and HFFA/IAFF at these discussions.

7. Please provide all documentation upon which Respondents believe the Department owes no duty to bargain changes to Section 33 of the Unit 11 Agreement. [Emphasis in original.]

By letter dated February 7, 2013, Exhibit 2, Complainant's counsel advised Respondents' counsel that a motion for discovery was to have been filed with the Board, but rather than doing so, Complainant's counsel requested Respondents' counsel to advise him when the information requested on January 16, 2013 would be provided.

By letter dated February 13, 2013, Exhibit 3, Respondents' counsel responded that Complainant had requested a voluminous amount of information and that it was unlikely that the information could be provided prior to the February 27, 2013 hearing date, and that at the earliest the information could be provided by March 5, 2013. Respondents' counsel asked if the scope of information could be narrowed to assist them in providing a response at an earlier date. Alternatively, Respondents' counsel indicated she would join in a request to continue the hearing on the merits.

By letter dated February 17, 2013, Exhibit 4, Complainant's counsel advised Respondents' counsel that although he preferred to have the documents requested in his January 16, 2013 letter, Complainant was not willing to delay the February 27, 2013 hearing. Therefore, Complainant's counsel requested that Respondents focus on producing the information requested in paragraph No. 6 of the January 16, 2013 written request before the February 27, 2013 hearing date.

By letter dated February 26, 2013, Complainant's counsel requested that the hearing in this matter be continued pending settlement discussions. Thereafter, the Board was informed that a resolution of the dispute was not possible. The Board rescheduled the hearing on the merits for May 7 and 8, 2013. To date, there is nothing in the record to indicate that the Respondents have produced any documents or information requested by Complainant.

### ORDER

Based on a review of the record and the Motion, the Board finds that the information and documents were requested by Complainant from the Respondents by letter dated January 16, 2013 as evidenced in Exhibit 1 of the Motion. At the Status conference on March 11, 2013, Complainant's counsel stated that if he did not receive the information requested by April, 2013, then he would file a motion. Further, the Board finds that Respondents have failed to file an answer raising any objection to the Motion. Therefore, the Board finds good cause to grant the instant Motion compelling production of the requested information and documents.

The Board hereby orders the Respondents to provide Complainant with the information and documents requested in Exhibit 1 of the Motion by the close of business on May 2, 2013.

DATED: Honolulu, Hawaii, April 24, 2013.

HAWAII LABOR RELATIONS BOARD



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JAMES B. NICHOLSON, Chair



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SESNITA A.D. MOEPONO, Member



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ROCK B. LEY, Member

Copies sent to:

Peter Liholiho Trask, Esq.  
Elizabeth A.K. Contrades, Esq.

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<sup>i</sup> HAR § 12-42-8(g)((3)(iii) provides as follows:

Answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise.