STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of MERIT APPEALS BOARD, State of Hawaii, Petitioner, and DEBORAH TAYLOR; and STATE OF HAWAII, DEPARTMENT OF PUBLIC SAFETY, Intervenors.	CASE NO. DR-00-103 ORDER NO. 2993
In the Matter of MERIT APPEALS BOARD, State of Hawaii, Petitioner, and JACQUELINE MULLEITNEER; and STATE OF HAWAII, DEPARTMENT OF PUBLIC SAFETY, Intervenors.	CASE NO. DR-00-104

DECLARATORY RULING

On November 21, 2012, Petitioner MERIT APPEALS BOARD, State of Hawaii (MAB), filed a Petition for Declaratory Ruling (Petition) with the Hawaii Labor Relations Board (Board) in Case No. DR-00-103. MAB alleged in its petition, *inter*

alia, that on November 24, 2008, Intervenor STATE OF HAWAII, DEPARTMENT OF PUBLIC SAFETY (PSD) denied Intervenor DEBORAH TAYLOR'S (Taylor) internal complaint regarding a Supplemental Agreement which was implemented for an Adult Corrections Officer (ACO) series; that on October 22, 2008 [sic], Taylor filed an appeal to the MAB regarding the classification of her position; that the MAB heard Taylor's appeal and issued its decision on April 29, 2011 [sic]; that MAB took the position that it had authority to hear Taylor's claims pursuant to Hawaii Revised Statutes (HRS) § 76-14(c)(2); that PSD appealed the MAB decision to the Circuit Court and that during the court hearing on August 31, 2012, the court cited HRS § 76-14(c)(2) and specifically instructed the MAB to seek guidance from the Board on any case where there is a question of jurisdiction; that Taylor is excluded from any bargaining unit and is therefore not subject to any collective bargaining agreements; that Hawaii Administrative Rules (HAR) § 14-25.1-1(b)(4)(C) provides that the MAB shall decide appeals from the actions taken by an appointing authority against civil service employees who are excluded from collective bargaining if the employee suffers a legal wrong; and that Taylor exhausted the internal complaint procedure and had standing to file an appeal with the MAB as she is a top-level managerial and administrative personnel position and excluded from collective bargaining coverage.

Also on November 21, 2012, the MAB filed a nearly identical Petition for Declaratory Ruling with the Board in Case No. DR-00-104 regarding a MAB appeal by JACQUELINE MULLEITNER (Mulleitner).

In each case, the Board issued a notice of the filing of the Petition for Declaratory Ruling which set December 10, 2012, as the deadline to file petitions for intervention in the matter and scheduled a Board conference on December 18, 2012.

On December 5, 2012, the UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO (UPW), by and through its counsel, filed Petitions for Intervention in Case Nos. DR-00-103 and DR-00-104, respectively. UPW alleged, *inter alia,* that it is the exclusive bargaining representative for employees in Bargaining Unit (BU) 01 and BU 10, where questions of jurisdiction of the MAB have arisen and that it has five pending appeals involving other PSD employees before the Circuit Court where similar issues are presented. UPW attached appeals of ACO IV Bernard Kuamoo, included in BU 10 regarding a promotion to ACO V; ACO III Denise Gabriel, included in BU 10, regarding a non-selection to an ACO IV position; ACO III Arasi Mose, included in BU 10, regarding a non-selection to an ACO IV position; ACO III Kelii Lau, included in BU 10, regarding a non-selection to an ACO IV position; and ACO IV Fiafia Sataraka, included

in BU 10, regarding a non-selection to an ACO V position.

On December 7, 2012, Taylor filed a Petition to Intervene in Case No. DR-00-103 alleging, *inter alia*, that her interests will be directly affected by any decision made in these proceedings; that there are no other means to protect her interests; and that her interest cannot be represented by any existing party.

Also on December 7, 2012, Mulleitner filed a Petition to Intervene in Case No. DR-00-104 alleging, *inter alia,* that her interests will be directly affected by any decision made in these proceedings; that there are no other means to protect her interests; and that her interest cannot be represented by any existing party.

On December 10, 2012, PSD filed Petitions for Intervention in Case Nos. DR-00-103 and DR-00-104. PSD's asserted that it is the entity responsible for raising the jurisdiction question that is the subject of the instant petitions and that PSD's participation will assist in the development of a sound and complete record before the Board.

On December 18, 2012, the Board conducted a conference and indicated that the Board would grant the petitions for intervention filed by Taylor, Mulleitner and PSD, but would defer ruling on the UPW's petition until the facts and issues were clarified. The parties indicated they would work on a Stipulation of Facts and counsel for the MAB indicated that he would file the records on appeal before the circuit court in the underlying cases with the Board.

On or about December 31, 2012, counsel for the MAB submitted to the Board the records on appeal before the circuit court in the underlying Taylor and Mulleitner cases.

On January 8, 2013, the Board issued Order No. 2872, Order Granting Intervention and Consolidating Cases for Disposition; and Notice of Rescheduled Status Conference. The Board found that Taylor, Mulleitner, and PSD alleged sufficient interests to intervene in the proceedings at that time and granted their petitions for intervention pursuant to HAR § 12-42-8(g)(14). The Board also reserved its ruling on the UPW's Petitions for Intervention until a further clarification of the underlying facts of these petitions. In addition, the Board found that the petitions involved substantially the same parties and issues and that the consolidation of the proceedings would be efficient, conducive to the proper dispatch of business and the ends of justice and would not unduly delay the proceedings, and consolidated the petitions and proceedings thereon

for disposition pursuant to I-1AR § 12-42-8(g)(13).

On February 8, 2013, UPW filed a First Amended Petition for Intervention with the Board, asserting:

> [UPW] is a signatory to the collective bargaining agreement for Unit10 which provides for provisions on promotion and salary, which with a Supplemental Agreement it was signatory to, were used as the evidentiary basis of the Employer's position that the Merit Appeals Board lacked jurisdiction to rule in the Taylor and Mulleitner MAB appeals. A jurisdictional ruling by the Board may directly affect the UPW's five MAB appeals pending before the circuit court. Petitioner also has a protectable interest in ensuring the proper interpretation of the Unit 10 Agreement(s) and Supplemental Agreement(s). Please see also the UPW's Memorandum in Support of the First Amended Petition, filed concurrently with this First Amended Petition for Intervention and Exhibits 6 through 13 attached with the Memorandum.

On February 22, 2013, the Board conducted a status conference with the parties to discuss and clarify the issues presented by the instant Petitions for Declaratory Ruling. Also on February 22, 2013, the parties submitted their Stipulated Facts to the Board.

After reviewing the record, and considering the issues presented by the parties, the Board held that the issue presented by Intervenors Taylor and Mulleitner was whether the Board had jurisdiction to hear the grievance of two members who are excluded from collective bargaining, as a threshold issue in this inquiry.

On March 15, 2013, the Board issued Order No. 2902 in this consolidated matter, which dismissed the Petitions for lack of jurisdiction. The Board held that it lacked jurisdiction because Taylor and Mulleitner were excluded from the coverage of HRS chapter 89, and therefore found good cause not to issue a declaratory ruling in this matter pursuant to HAR § 12-42-9(f)(4). The Board further found it unnecessary to address UPW's Petition for Intervention and First Amended Petition for Intervention, because of the dismissal for lack of jurisdiction.

On April 12, 2013, the UPW filed a Notice of Appeal from Order No. 2902 with

the circuit court in Civil No. 13-1-1108-04. Also on April 12, 2013, PSD filed a Notice of Appeal from Order No. 2902 with the circuit court in Civil No. 13-1-1102-04.

On April 18, 2013, the Board moved to consolidate the cases on appeal, with the UPW joining in the motion on April 22, 2013, and Taylor and Mulleitner filing a Statement of No Opposition to the motion on April 23, 2013. On May 8, 2013, the circuit court filed its order granting the motion to consolidate.

On December 31, 2013, and following the briefing and oral arguments in the consolidated appeals in Civil Nos. 13-1-1108-04 and 13-1-1102-04, the circuit court issued its Order Remanding Intervenor-Appellant State of Hawaii, Department of Public Safety's Agency Appeal Filed April 12, 2013. The circuit court held, *inter alia,* that the Petitions before the Board concerned the application of HRS § 76-14(c)(2), which states as follows:

> The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board.

The circuit court further held that, "this Court's plain reading of § 76-14(c)(2), HRS is that the HLRB is to resolve any controversy regarding the MAB's authority to hear the appeal." The circuit court therefore vacated Board Order No. 2902 and remanded the matter to the Board to resolve the controversy regarding the MAB's authority to hear the appeal. The circuit court also directed the Board to address the UPW's Petition for Intervention.

On May 5, 2014, the UPW filed with the Board "UPW's Supplemental Submission in Support of First Amended Petition for Intervention Filed On February 8, 2013."

Pursuant to HAR § 12-42-9, which governs declaratory rulings by the Board, "in the usual course of processing a petition for a declaratory ruling no formal hearing shall be granted to the petitioner" (§ 12-42-9(h)(1)). Furthermore, an order disposing of a petition shall be applicable only to the factual situation alleged in the petition and set forth in the order. The order shall not be applicable to different factual situations or where additional facts not considered in the order exist (§ 12-42-94(i)).

On remand, and based upon the allegations contained on the Petitions and the Stipulated Facts of the parties, as well as the record herein, the Board hereby makes the following declaratory ruling:

I. BACKGROUND

A. Intervenor Jacqueline Mulleitner

On June 24, 1994, Mulleitner began her career with PSD as an ACO.

At all times relevant to this Order, Mulleitner was or is employed at the Maui Community Correctional Center, PSD, and holds or held the position of Captain. In late 2006, Mulleitner received a promotion from ACO V (Lieutenant) to ACO VI (Captain) which is a BU 90 position that is excluded from collective bargaining coverage.

After Mulleitner was promoted to ACO VI, she was no longer included in BU 10, as provided for in HRS chapter 89, because the position of ACO VI is designated as a top-level managerial and administrative personnel position. Pursuant to HRS § 89-6(f)(3), top-level managerial and administrative personnel shall not be included in any appropriate BU or be entitled to coverage under chapter 89.

B. Intervenor Deborah Taylor

On June 30, 1997, Taylor began her career with PSD as an ACO.

At all times relevant to this Order, Taylor was or is employed at the Maui Community Correctional Center, PSD, and held or holds the position of Captain.

In late 2006, Taylor was promoted from ACO V (Lieutenant) to ACO VI (Captain), which is a BU 90 position that is excluded from collective bargaining coverage under HRS chapter 89.

After Taylor was promoted to ACO VI, she was no longer included in BU 10, as provided for in HRS Chapter 89, because the position of ACO VI is designated as a top-level managerial and administrative personnel position.

C. The PSD Internal Complaint Process

On October 6, 2008, Mulleitner and Taylor filed their respective internal

complaints with PSD regarding disparate compensation between ACO VI positions.

Under the MAB's appeal form's category entitled "The following types of actions can only be appealed by current employees of the State who occupy a civil service position:[,]" both appeals had checked off the box entitled "Classification action on my position (existing civil service employees only)[.]"

On November 24, 2008, the Director of PSD denied both Mulleitner's and Taylor's internal complaints and instructed Mulleitner and Taylor to "file a complaint with the Merit Appeals Board" if they wished to pursue the matter further.

On December 22, 2009, both Mulleitner and Taylor, after exhausting all internal complaint procedures, timely filed their respective appeals to the MAB.

D. The MAB Appeals

On October 19, 2010, PSD filed a motion before the MAB to dismiss both Mulleitner's and Taylor's appeals based upon the MAB's lack of jurisdiction.

On October 25, 2010, Mulleitner and Taylor filed their memorandum in opposition to PSD's motion to dismiss the appeals.

On October 28, 2010, the MAB found that it had jurisdiction and considered both Mulleitner and Taylor's appeal.

On April 28, 2011, the MAB issued its Findings of Fact; Conclusions of Law; Decision and Order (D&O) in favor of both Mulleitner and Taylor. The MAB held that it had jurisdiction over the appeals pursuant to HRS § 76-14 and HAR §§ 14-25.1-1 through 14-25.1-4 (Rules of Practice and Procedure of the Merit Appeals Board).

E. The Circuit Court Appeal

On May 27, 2011, PSD filed its notice of appeal and related documents with the circuit court.

On August 31, 2012, and after briefing was completed, PSD's appeal came on for oral argument before the circuit court.

The circuit court cited to HRS § 76-14(c)(2), which provides:

> The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board.

The parties agreed that this [holding the MAB proceedings in abeyance] was not done in this case. Accordingly, the circuit court granted PSD's appeal and had the case remanded to the MAB for further referral to the Board for a resolution of the controversy over the MAB's authority in this case.

On October 9, 2012, the circuit court issued its Order regarding PSD's appeal.

II. DISCUSSION AND CONCLUSION

There is no dispute that for all relevant times, Taylor and Mulleitner were ACO VI Captains and excluded from BU 10 as top-level managerial and administrative personnel.

Prison guards with rank of sergeant through captain were initially included in BU 10. In Decision No. 9, dated February 11, 1972, United Public Workers, Local 646, UPW/AFSCME, Case No. R-10-6, the Board initially certified UPW as the exclusive representative of BU 10, which was composed of:

> Included: All SUPERVISORY Hospital and Institutional Workers, jail and prison guards of rank Sergeant through Captain, ambulance driver II, all paramedical assistant V and above except positions #3884, 14513, and 2142.
>
> All NON-SUPERVISORY Hospital and Institutional Workers employed as jail and prison guards, houseparents, juvenile detention officers, ambulance drivers and para-medical assistants including positions #3884, 14513 and 2142.
>
> Excluded: All others.

Thereafter, in Decision No. 215, dated May 22, 1986, George R. Ariyoshi, the Board found after reviewing the administrative/managerial duties and responsibilities of an ACO VI, that the position is the responsible employee for the organizational unit or correctional facilities at assigned times and each position was near the top of an on-going complex agency. As such, the Board concluded that the positions were properly excluded from BU 10 and coverage of HRS chapter 89.

On October 6, 2008, Mulleitner and Taylor filed their respective internal complaints with PSD regarding disparate compensation between ACO VI positions. Under the MAB's appeal form's category entitled "The following types of actions can only be appealed by current employees of the State who occupy a civil service position: [.]" both appeals had checked off the box entitled "Classification action on my position (existing civil service employees only)[.]"

In its D&O issued on April 28, 2011, the MAB held that it had jurisdiction over the appeals pursuant to HRS § 76-14, and HAR §§ 14-25.1-1 through 14-25.1-4 (Rules of Practice and Procedure of the Merit Appeals Board).

HRS § 76-14 provides (emphases added):

> (a) The merit appeals board of each jurisdiction shall decide appeals from any action under this chapter taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:
>
> (1) Recruitment and examination;
>
> (2) Classification and reclassification of a particular position, including denial or loss of promotional opportunity or demotion due to reclassification of positions in a reorganization;
>
> (3) Initial pricing of classes; and
>
> (4) Other employment actions under this chapter, including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6.

(b) Any person suffering legal wrong by an action under subsection (a)(1) or aggrieved by such action shall be entitled to appeal to the merit appeals board. Any employee covered by chapter 76 suffering legal wrong by an action under subsection (a)(2) or (3) shall be entitled to appeal to the merit appeals board. Only employees covered by chapter 76, who are excluded from collective bargaining, suffering legal wrong by an action under subsection (a)(4) shall be entitled to appeal to the merit appeals board. Appeals under this section shall be filed within time limits and in the manner provided by rules of the merit appeals board.

(c) The rules adopted by the merit appeals board shall provide for the following:

(1) The merit appeals board shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement;

(2) The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board;

(3) The merit appeals board shall prescribe time limits for filing an appeal that require exhaustion of all internal complaint procedures, including administrative review and departmental complaint procedures, before an appeal is filed; and

(4) The merit appeals board shall use the conditions listed in section 76-41(b) in reaching a decision on whether actions taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or

without merit.

(d) Notwithstanding the provisions of this section, the merit appeals board shall have the authority to hear and decide appeals pending before the state civil service commission as of June 30, 2002, in accordance with the jurisdictional requirements and procedures applicable to the state civil service commission as of June 30, 2002.

(e) This section shall be construed liberally to determine whether the appeal falls within the jurisdiction of the merit appeals board.

Based upon the allegations in the Petitions, the Stipulated Facts of the parties, the record in this case, and the directive of HRS § 76-14(e) that "[t]his section shall be construed liberally to determine whether the appeal falls within the jurisdiction" of the MAB, the Board concludes that the appeals filed by Taylor and Mulleitner sufficiently invoked the MAB's jurisdiction. At the time of the appeals, Taylor and Mulleitner were current civil service employees who were excluded from collective bargaining coverage under HRS chapter 89. The appeals alleged wrongful action under the "Classification action on my position (existing civil service employees only)" category of the MAB's appeal form, invoking the MAB's jurisdiction under HRS § 76-14(a)(2). Furthermore, lo]ther employment actions" under HRS chapter 76 may be challenged by Taylor and Mulleitner as "employees covered by chapter 76, who are excluded from collective bargaining" pursuant to HRS § 76-14(a)(4) and (b).

Additionally, there is no dispute that the appeals were timely, or that Taylor and Mulleitner exhausted all internal complaint procedures before the appeals were filed.

Finally, the record herein is insufficient to support a conclusion that the action complained of in each appeal "constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement," such that the MAB may have been required to defer to such other authority under HRS § 76-14(c)(1). Although PSD argued before the MAB that Taylor's and Mulleitner's wages are covered by the BU 10 collective bargaining agreement and therefore the MAB should defer to collective bargaining, both Taylor and Mulleitner are excluded from collective bargaining. To the extent the MAB may refer to or interpret provisions of the BU 10 collective bargaining

agreement in reaching its own decision in the appeals regarding appropriate compensation for Taylor and Mulleitner, the Board concludes that such reference/interpretation goes to the merits of the appeal before the MAB and is therefore a matter for the MAB to decide.

Accordingly, the Board concludes that the appeals filed by Taylor and Mulleitner sufficiently invoked the MAB's jurisdiction.

III. UPW'S FIRST AMENDED PETITION FOR INTERVENTION

The UPW's First Amended Petition for Intervention asserts, *inter alia,* that:

> [UPW] is a signatory to the collective bargaining agreement for Unit 10 which provides for provisions on promotion and salary, which with a Supplemental Agreement it was signatory to, were used as the evidentiary basis of the Employer's position that the Merit Appeals Board lacked jurisdiction to rule in the Taylor and Mulleitner MAB appeals. A jurisdictional ruling by the Board may directly affect the UPW's five MAB appeals pending before the circuit court. Petitioner also has a protectable interest in ensuring the proper interpretation of the Unit 10 Agreement(s) and Supplemental Agreement(s). Please see also the UPW's Memorandum in Support of the First Amended Petition, filed concurrently with this First Amended Petition for Intervention and Exhibits 6 through 13 attached with the Memorandum.

The UPW also asserted that the Board's ruling under HRS § 76-§14(c)(2), and under various provisions of HRS chapter 89, will "very likely affect the outcome of the pending appeals referred to above" and may affect statutory and contractual rights of public employees represented by the UPW; that the UPW has no other available means to protect its interest on the issues presented in the Petitions filed by the MAB; that the UPW's interests will not be adequately represented by the MAB or any other interested party to the proceeding; that the UPW's participation will assist in the full development of a sound record; and that the UPW's participation is not intended to broaden the issues or delay the proceedings.

The UPW referred back to the exhibits attached to its original Petition for Intervention, which all involved non-selection for promotion to a higher ACO position

(and specifically the utilization of background "suitability" checks), and all positions at issue were BU 10 position covered by HRS chapter 89. The additional exhibits attached to the First Amended Petition for Intervention consisted of copies of portions of the record on appeal from the Taylor and Mulleitner MAB appeals and the appeal to the circuit court therefrom, and Executive Order No. 03-01; the Petitions herein; and documents relating to a petition for intervention by another union in Board Case No. CE- 05-781.

The UPW's Supplemental Submission in Support of First Amended Petition for Intervention Filed on February 8, 2013, consisted of copies of the February 24, 2014, Petition for Declaratory Ruling filed by the employer in Board Case No. DR-01-105; the March 14, 2014, Petition for Intervention filed by the UPW in DR-01-105; and the March 17, 2014, Order granting the UPW's Petition for Intervention in DR-01-105.

With respect to petitions for intervention, the granting or denial of a request for permissive intervention is a matter within the Board's discretion (see In re Estate of Campbell, 106 Hawai`i 453, 461, 106 P.3d 1096, 1104 (2005)). Intervention in this proceeding is "permissive" only, as HAR § 12-42-9(e), which governs declaratory rulings, provides that [a]ny party ***may*** intervene subject to the provisions of section 12-42-8(g)(14)"; in turn, § 12-42-8(g)(14)(D) provides in relevant part that "[i]ntervention ***shall not be granted except*** upon averments which are ***reasonably pertinent to the issues already presented*** but do not unduly broaden them" (emphases added).

The five cases involving ACOs used in support of the UPW's Petition for Intervention all involved the non-selection of BU 10 collective bargaining members to higher BU 10 positions, specifically due to background "suitability" checks, where all positions at issue ranged from ACO III to ACO V and all positions at issue are covered under HRS chapter 89. In contrast, the Taylor and Mulleitner appeals involved the unrelated issue of appropriate compensation for high-level non-collective bargaining positions, excluded from coverage under chapter 89. Taylor and Mulleitner are not members of BU 10, and the ACO VI positions are not covered by collective bargaining.

Furthermore, the cases cited by the UPW in its memoranda in support are not on point and do not establish that the interests of collective bargaining employees in non-selection cases are sufficiently affected by a proceeding involving non-collective bargaining employees in compensation cases such that intervention is proper. For example, Board of Regents and UPW and UHPA, Board Case No. DR-07-101, involved an alleged failure to bargain in good faith, and unilateral creation and distribution of a

second version of a collective bargaining agreement. Thus, the "core" subject of that declaratory ruling proceeding was the duty to negotiate changes to a collective bargaining agreement. The UPW intervened because the core process of negotiating collective bargaining agreements between the Board of Regents and UHPA was similar in nature to the process between the Board of Regents and UPW. Additionally, Dept. of Transportation and UPW and HGEA, Board Case Nos. DR-0l -97 and DR-02-97, involved a declaratory ruling proceeding concerning a BU 01 bargaining unit employee who was disciplined while on probation to a BU 02 bargaining unit position, and there was no dispute that all positions at issue were collective bargaining positions.

In State of Hawaii, Department of Education, Hickam Elementary School and UPW, Board Case No. DR-01-105, the employer disputed the arbitrability of a grievance between the UPW and the Department of Education. Thus, the UPW was a party to the underlying action (the arbitration proceeding) that was the subject of the petition for declaratory ruling, which is legally and factually different from the Taylor and Mulleitner Petitions.

The UPW further asserts that the Taylor and Mulleitner appeals involve reference to the provisions of the BU 10 collective bargaining agreement, notwithstanding the exclusion of ACO VI positions from collective bargaining, and that the UPW has an interest in their proper interpretation. However, this is really an argument that goes to the ***merits*** of the Taylor and Mulleitner appeals before the MAB, and not the sole question of whether the appeals sufficiently invoked the MAB's jurisdiction that is before the Board, and therefore intervention is not appropriate. Although PSD argued before the MAB that Taylor's and Mulleitner's wages are covered by the BU 10 collective bargaining agreement and therefore the MAB should defer to collective bargaining, both Taylor and Mulleitner are excluded from collective bargaining. To the extent the MAB may refer to or interpret provisions of the BU 10 collective bargaining agreement in reaching its own decision in the appeals regarding appropriate compensation for Taylor and Mulleitner, such reference/interpretation goes to the merits of the appeal before the MAB and is therefore a matter for the MAB to decide.

Finally, HAR § 12-42-9, which governs Declaratory Rulings by the Board, provides in relevant part (emphasis added):

(i) An order disposing of a petition ***shall be applicable only to the factual situation alleged in the petition or set forth in the order.*** The order shall

not be applicable to different factual situations or where additional facts not considered in the order exist. Such order shall have the same force and effect as other orders issued by the board.

Accordingly, because this Order is applicable solely to the factual situation involving Taylor and Mulleitner discussed herein, which involves the MAB's jurisdiction over employees excluded from collective bargaining, intervention by the UPW in this proceeding before the Board is not warranted or needed to protect the UPW's interests.

For the reasons discussed above, the Board hereby denies the UPW's First Amended Petition for Intervention.

DATED: Honolulu, Hawaii, June 2, 2014.

HAWAII LABOR RELATIONS BOARD

JAMES B. NICHOLSON, Chair

SESNITA A.D. MOEPONO, Member

ROCK B. LEY, Member

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