

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

SCOTT ENRIGHT, Chairperson,
Department of Agriculture, State of Hawaii
and BARBARA KRIEG, Director,
Department of Human Resources

Respondents.

CASE NO. CE-01-843

ORDER NO. 3026

ORDER GRANTING IN PART
AND DENYING IN PART
UPW'S MOTION TO
WITHDRAW WITHOUT
PREJUDICE PROHIBITED
PRACTICE COMPLAINT FILED
ON JUNE 6, 2014

ORDER GRANTING IN PART AND DENYING IN PART
UPW'S MOTION TO WITHDRAW WITHOUT PREJUDICE
PROHIBITED PRACTICE COMPLAINT FILED ON JUNE 6, 2014

On September 12, 2014, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, (Complainant) by and through its attorney Herbert R. Takahashi, Esq., filed UPW'S MOTION TO WITHDRAW WITHOUT PREJUDICE PROHIBITED PRACTICE COMPLAINT FILED ON JUNE 6, 2014, (Motion) with the Hawaii Labor Relations Board (Board), pursuant to Hawaii Administrative Rules (HAR) § 12-42-8 (g) (3) and § 12-42-44.

On September 16, 2014, Respondents SCOTT ENRIGHT and BARBARA KRIEG (Respondents) by and through their attorney Miriam P. Loui, Deputy Attorney General, filed RESPONDENTS SCOTT ENRIGHT AND BARBARA KRIEG'S STATEMENT OF NO OPPOSITION TO UPW'S MOTION TO WITHDRAW WITHOUT PREJUDICE PROHIBITED PRACTICE COMPLAINT FILED ON JUNE 6, 2014. Respondents requested however that the complaint be dismissed with prejudice in keeping with the Board's standard practice under Title 12, Section 12-42-

44 of the Board's Rules of Practice and Procedure. Respondents further requested that the Board state that the withdrawal shall not constitute a waiver of any defenses, including timeliness, should the Complainant later re-file the Complaint or pursue a grievance.

On September 28, 2014, Complainant filed UPW'S REPLY BRIEF IN SUPPORT OF MOTION TO WITHDRAW COMPLAINT WITHOUT PREJUDICE FILED SEPTEMBER 12, 2014. Complainant argues that Respondents' filed a statement of no opposition to the motion but set forth two conditions not requested in the September 12, 2014 motion.

The UPW submits there is no merit to Respondents' "conditions" for the following reasons and grounds:

1. There is no Board "standard practice" to dismiss complaints "with prejudice" as Respondents contend. In fact, there is a practice to dismiss complaints "without prejudice."
2. The settlement agreement signed on September 17, 2014 does not provide for a dismissal of the complaint "with prejudice" as requested by Respondents.
3. The sole motion before the Board is to withdraw the complaint "without prejudice" filed by the union to obtain Board consent. There is no motion filed by the employer. Under Hawaii Administrative Rule § 12-42-44 the Board's role is simply to determine whether to "consent" to the union's motion to withdraw the complaint without prejudice. Accordingly, the Board is requested to grant the union's motion.

HAR § 12-42-44 provides that "Any complaint may be withdrawn at any time prior to the issuance of a final decision and order thereon, upon motion and consent of the board. Whenever the board approves withdrawal of such complaint, the case shall be closed." Based on a review of the record and consideration of the instant motion and the response thereto, the Board consents and grants the withdrawal of the instant Complaint, with prejudice. This case is closed.

UPW v. SCOTT ENRIGHT, Chairperson, Department of Agriculture, State of Hawaii
CASE NO. CE-01-843

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WITHDRAW WITHOUT PREJUDICE PROHIBITED PRACTICE COMPLAINT
FILED ON JUNE 6, 2014

DATED: Honolulu, Hawaii October 9, 2014.

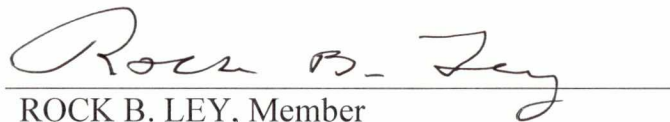
HAWAII LABOR RELATIONS BOARD

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JAMES B. NICHOLSON, Chair

A handwritten signature in black ink, appearing to read 'Sesnita A.D. Moepono', is written over a horizontal line.

SESNITA A.D. MOEPONO, Member

A handwritten signature in black ink, appearing to read 'Rock B. Ley', is written over a horizontal line.

ROCK B. LEY, Member

Copies sent to:

Herbert R. Takahashi, Esq.
Miriam P. Loui, Deputy Attorney General