

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

HAWAII HEALTH SYSTEMS  
CORPORATION – HILO MEDICAL  
CENTER, State of Hawaii,

Respondent.

CASE NO. CE-01-609

ORDER NO. 3228

MINUTE ORDER DIRECTING  
RESPONDENT TO SUBMIT PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER IN  
THIS MATTER

MINUTE ORDER DIRECTING RESPONDENT TO SUBMIT PROPOSED FINDINGS  
OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER IN THIS MATTER

On November 25, 2005, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Complainant) filed a Prohibited Practice Complaint (Complaint) against Respondent HAWAII HEALTH SYSTEMS CORPORATION – HILO MEDICAL CENTER (HHSC OR RESPONDENT), alleging violation of Hawaii Revised Statutes (HRS) § 89-13(a)(5) and (8) when Respondent failed to fully respond to a demand for information relevant to the investigating and processing of a grievance, and refused to disclose information requesting in a second demand.

On December 19, 2005, Respondent filed Respondent's Motion to Dismiss Prohibited Practice Complaint Filed November 25, 2006 (Motion to Dismiss), asserting that a discovery dispute does not constitute a violation of HRS § 89-13(a)(5) (refusal to bargain collectively in good faith), and that an arbitrator has jurisdiction over discovery requests made during the arbitration stage of a grievance. On December 29, 2005, Complainant filed UPW's Memorandum in Opposition to Respondent's Motion to Dismiss Prohibited Practice Complaint Filed November 25, 2005, asserting that an employer breaches its statutory duty to bargain in good faith with a union with which it has a collective bargaining relationship, when said employer

refuses a request from the union to disclose information relevant to the investigating and processing of a grievance, and that refusing to disclose information demanded by the union at the arbitration step also violates the collective bargaining agreement (CBA) and thus violated HRS § 89-13(a)(8).

On January 19, 2006, the Board heard oral arguments on Respondent's Motion to Dismiss. Following the presentation of oral argument, the Board orally granted in part and denied in part the Respondent's Motion to Dismiss, holding that the Board has exclusive original jurisdiction over willful contractual violations, but with regard to the information requests that were made after the demand for arbitration, the Board would defer to the arbitrator.

The hearing on the merits in this matter commenced on December 5, 2006, and was continued on December 13, 2006. After presentation of Complainant's case, Respondent orally moved for directed verdict or judgment as a matter of law because the Board lacked jurisdiction, and Complainant orally moved to amend the complaint to allege violation of HRS § 89-13(a)(5) when employer unilaterally changed terms and conditions of employment by disregarding the promotion agreement.

On January 16, 2007, Respondent filed Respondent's Motion for Judgment as a Matter of Law (Motion for Judgment as a Matter of Law). Respondent asserted that the evidence at hearing revealed the only discovery dispute that arose prior to the notice to arbitrate involved a request made by the UPW on October 28, 2004, and responded to by the employer on December 9, 2004, and accordingly a claim based upon that dispute was untimely and barred by HRS § 377-9(l). Respondent also asserted that no evidence was produced at the hearing on the merits that the employer failed to respond to discovery requests after the notice of intent to arbitrate was submitted.

On January 26, 2007, Complainant filed its Motion to Amend Prohibited Practice Complaint (Motion to Amend Complaint), seeking to add a count to the Complaint alleging the CBA provides, when making promotions, one of several options be utilized, and that the HHSC changed the terms and conditions of the CBA when it enacted a unitary system when making promotions, constituting a violation of HRS § 89-13(a)(5) by bargaining in bad faith.

Also on January 26, 2007, Complainant filed a Motion for Reconsideration (Motion for Reconsideration), requesting the Board to reconsider its order to defer a portion of the Complaint to the arbitrator.

Also on January 26, 2007, Complainant filed its opposition to the Motion for Judgment as a Matter of Law, asserting the Board has jurisdiction over the dispute, and that the failure to provide information was a continuing violation and thus timely.

On February 6, 2007, Respondent filed its opposition to the Motion for Reconsideration, asserting that the Board previously held it would defer “whenever appropriate” and deferral is appropriate in this case.

On June 21, 2007, the Board heard oral arguments on the Motion for Judgment as a Matter of Law, the Motion to Amend Complaint, and the Motion for Reconsideration. Following the presentation of oral arguments, the Board orally held that it would grant the Motion for Judgment as a Matter of Law and dismiss the case; further, the Board therefore need not address the Motion to Amend. The Board also reiterated its deference to arbitration.

Hawaii Administrative Rules (HAR) § 12-42-8(g)(17)(C) provides that the “[B]oard may direct oral argument or the filing of briefs or **proposed findings of facts, conclusions of law, or both**, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein” (emphases added). In the present case, the Board finds that the submission of proposed findings of fact and conclusions of law by the HHSC as the prevailing party is warranted based upon the nature of the proceeding and the status of the case, as well as the Board’s oral rulings following oral argument by the parties.

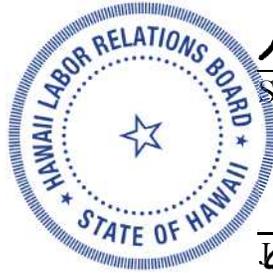
Accordingly, this minute order directs the HHSC to submit to the Board proposed findings of fact, conclusions of law, and decision and order incorporating the Board’s oral rulings in this matter and providing findings of fact and conclusions of law pertinent to the Board’s oral rulings granting in part and denying in part HHSC’s Motion to Dismiss, granting HHSC’s Motion for Judgment as a Matter of Law, denying UPW’s Motion to Amend Complaint, and denying UPW’s Motion for Reconsideration. Respondent shall submit the proposed findings of fact, conclusions of law, and decision and order to the Board with copy to Complainant no later than **May 2, 2017**.

The Board further notifies the parties that after May 2, 2017, the Board will issue its own Proposed Findings of Fact, Conclusions of Law, and Decision and Order which may or may not incorporate all, some, or none of Respondent’s submission. However, following the Board’s issuance, any party adversely affected will thereafter be given the opportunity to file

exceptions thereto and to present argument to the Board, in accordance with the provisions of HRS § 91-11.

DATED: Honolulu, Hawaii, Feb. 24, 2017.

HAWAII LABOR RELATIONS BOARD



*Sesnita A. D. Moepono*  
SESNITA A.D. MOEPONO, Member

*J. N. Musto*  
J.N. MUSTO, Member

Copy:

Charles K.Y. Khim, Esq.  
Anne E. Lopez, Chief Operating Officer and General Counsel

\*The Board offers a free electronic filing service. Please contact the Board's office for more information.

Case No. CE-01-609 – UPW and Hawaii Health Systems Corporation – Hilo Medical Center – MINUTE ORDER DIRECTING RESPONDENT TO SUBMIT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER IN THIS MATTER.

Order No.: 3228