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Case No. CE-01-706

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

MUFI HANNEMANN, Mayor, City and
County of Honolulu,

Respondent.

CASE NO. CE-01-706

ORDER NO. 3235

MINUTE ORDER DIRECTING PARTIES
TO SUBMIT PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING OR DENYING
RESPONDENT'S MOTION TO DISMISS

MINUTE ORDER DIRECTING PARTIES TO SUBMIT PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
GRANTING OR DENYING RESPONDENT'S MOTION TO DISMISS

On May 4, 2009, Complainant November 7, 2008, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Complainant or UPW) filed with the Hawaii Labor Relations Board (Board) a Prohibited Practice Complaint (Complaint) against Respondent MUFI HANNEMANN, Mayor (Mayor), City and County of Honolulu (Respondent or City¹).

The Complaint alleges Respondent violated Hawaii Revised Statutes (HRS) § 89-13(a)(5), and further alleges, *inter alia*, that in 2004 there arose a dispute between the UPW and the City regarding training of certain Unit 1 employees on the operation of heavy cranes and the certification of said employees as being properly skilled in the operation thereof; that the dispute resulted in a grievance; that agents for the parties met in an attempt to compromise and settle the

¹ Pursuant to Hawaii Rules of Civil Procedure (HRCP) Rule 25(d)(1), when a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party; proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. Although the Board does not amend the caption in this matter, the Board, pursuant to HRCP Rule 25(d)(1), deems the successor Mayor to be a party in this matter.

grievance; that the endeavor was successful and the parties reached a tentative settlement; that the agents agreed to obtain adoption of the settlement terms from their respective sides; that once adoption was obtained, the settlement was final and binding; that the final verbal settlement agreement shall be reduced to writing; that on or about March 2008, the agents telephonically informed each other that the foregoing settlement had been adopted by their respective parties; that the agents agreed the written settlement agreement would be drafted by the attorney for Complainant for the Respondent's attorney's review, correction if necessary, and execution; that Complainant's attorney drafted such a written settlement and forwarded to the Respondent's agent; that Respondent Mayor informed UPW that although the substance of the settlement terms in the document were true and accurate, the standard settlement agreement terms were too cumbersome; that on or about March 19, 2009, Respondent forwarded to UPW an amended written settlement agreement which failed to incorporate the substantive settlement terms, but rather stated substantive settlement terms that were markedly lower in financial value and well as substantively disadvantageous standard settlement agreement language; and that thereafter Respondent refused to return to the substantive settlement agreement terms that were agreed upon in 2008.

On July 10, 2009, Respondent filed Respondent's Motion to Dismiss (Motion to Dismiss), for failure to exhaust contractual remedies. The Motion to Dismiss asserted that the grievance procedure required under HRS § 89-10.8 is the exclusive forum for pursuing claims arising from the interpretation and application of the terms of a collective bargaining agreement (CBA); that it is well-settled that an employee must exhaust any grievance or arbitration procedures provided under a CBA before filing a complaint; that strong policy considerations support that rule; that the UPW's underlying grievance in this matter was scheduled for an arbitration hearing on October 5-7, 2009; that in the alternative, the Board should defer to the arbitration process; and that the Board lacks jurisdiction over any discovery issues occurring after the grievance was submitted to arbitration.

On August 28, 2009, the UPW filed its Memorandum in Opposition to Respondent's Motion to Dismiss, asserting that the substance of the grievance was the employer's failure to provide training to UPW members on how to operate a heavy duty crane, in violation of the CBA; that the subject matter of the Complaint is the allegation that the City entered into a settlement agreement over the grievance and later refused to sign or otherwise honor the settlement; that an employer's refusal to reduce to writing, sign or otherwise honor a verbal

settlement agreement which totally resolved a grievance was a refusal to bargain in good faith, in violation of HRS § 89-13(a)(5); that the gravamen of the Complaint cannot be arbitrated and deferral would be futile; that the City's case citations of exhaustion of arbitration remedies only apply to the situation where a plaintiff brings suit in court, not an administrative agency; and that the employer's duty to provide information necessary for the UPW to prepare for arbitration is part of an employer's duty to bargain in good faith and is independent of any duty under a CBA to disclose information.

On September 2, 2009, the Board heard oral arguments on Respondent's Motion to Dismiss, and took the matter under advisement.

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 parties is warranted based upon the nature of the proceeding and the status of the case which has been pending for years, as well as the change in the membership of the Board, and the Board's oral ruling taking Respondent's Motion to Dismiss under advisement.

Accordingly, this minute order directs the parties to submit to the Board for its consideration proposed findings of fact, conclusions of law, and order granting or denying Respondent's Motion to Dismiss. The proposed findings of fact, conclusions of law, and orders shall be filed with the Board and served on all other parties no later than **April 4, 2017**.

DATED: Honolulu, Hawaii, March 2, 2017.

HAWAII LABOR RELATIONS BOARD



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

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

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Charles K.Y. Khim, Esq.
Donna Leong, Corporation Counsel

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

Case No. CE-01-706 – UPW and Hannemann – MINUTE ORDER DIRECTING PARTIES TO SUBMIT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING OR DENYING RESPONDENT'S MOTION TO DISMISS.

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