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**Transaction ID 60369582**  
**Case No. CE-10-753**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

DR. CHIYOME FUKINO, Director,  
Department of Health, State of Hawaii; and  
MARIE LADERTA, Director, Department of  
Human Resources Development, State of  
Hawaii,

Respondents.

CASE NO. CE-10-753

ORDER NO. 3239

MINUTE ORDER DIRECTING PARTIES  
TO SUBMIT PROPOSED FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING OR DENYING  
COMPLAINANT'S MOTION FOR  
SUMMARY JUDGMENT

**MINUTE ORDER DIRECTING PARTIES TO SUBMIT PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING  
OR DENYING COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT**

On March 8, 2010, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Complainant) filed with the Hawaii Labor Relations Board (Board) a Prohibited Practice Complaint (Complaint) against Respondents DR. CHIYOME FUKINO<sup>1</sup>, Director, Department of Health, State of Hawaii (Director of Health); and MARIE LADERTA, Director, Department of Human Resources Development, State of Hawaii (Director of DHRD), collectively "Respondents."

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<sup>1</sup> Pursuant to Hawaii Rules of Civil Procedure (HRCPP) 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 HRCPP Rule 25(d)(1), deems the successor Director of Health and the successor Director of DHRD to be parties in this matter.

The Complaint alleged, *inter alia*, that on February 19, 2010, the UPW filed a class grievance in DMN-10-01 (Class Grievance) and requested information, and that Respondents declined to provide any information in response to the request. The Complaint alleged Respondents wilfully interfered, restrained, and coerced employees in the exercise of their statutory rights under Hawaii Revised Statutes (HRS) §§ 89-3 and 89-9(a); failed to bargain in good faith as required by HRS § 89-9(a); and violated the terms of the Unit 10 collective bargaining agreement (Agreement), thereby committing prohibited practices in violation of HRS §§ 89-13(a)(1), (5), (7), and (8).

On March 23, 2010, the UPW filed a Motion for Summary Judgment, asserting that the UPW is entitled to summary judgment on all claims as alleged in the Complaint; there are undisputed facts that the Respondents failed to provide information needed by the UPW in the grievances; that employers have an obligation to furnish information that is relevant and necessary to the union's role; and that prior decisions and orders of the Board have held the failure to provide information constitutes a breach of the duty to bargain in good faith, and violates HRS § 89-13(a)(5), (7), and (8), and that such violations result in derivative claims of violation of § 89-13(a)(1). The UPW further asserted that it is entitled to appropriate relief including reimbursement of costs and attorneys fees and fines.

On March 31, 2010, Respondents filed Respondents' Memorandum in Opposition to UPW's Motion for Summary Judgment Filed on March 23, 2010, asserting that the duty to supply information is dependent upon the existence of either a valid grievance or negotiable subject; that the furlough schedule is not a mandatory subject of bargaining, and the Class Grievance is a disguised attempt to seek an arbitral ruling that the Respondents violated an interest arbitration award, not the Unit 10 Agreement; that the Department of Health had no duty to provide information not in its possession; and that Respondents' good faith refusal to provide information in connection with an invalid demand for negotiations and invalid grievance cannot be construed as willful.

On April 7, 2010, the Respondents submitted Respondents' Supplemental Submission, consisting of exhibits of documents from circuit court proceeding S.P. No. 09-1-0305 (GWBC), concerning the UPW's motion to confirm and enforce an interest arbitration award.

On April 16, 2010, the UPW submitted its Supplemental Memorandum in Support of Motion for Summary Judgment Filed on March 23, 2010, asserting, *inter alia*, the interest arbitration award stated, in part, “Following issuance of this decision, the Union and Employer shall meet and confer, without undue delay, and draft such language for the 2009 – 2011 Agreement as is necessary and appropriate to give effect to the foregoing awards”; that on February 4, 2010, the employer unilaterally implemented a “furlough schedule” over which the UPW requested negotiations and submitted a request for information; that the UPW filed the Grievance and addressed a request for information to the Director of Health and the Director of DHRD; that the Department of Health provided some information after the filing of the Complaint; that the duty to provide information does not depend upon the merits of a grievance or the validity of a union’s position; and that the failure to promptly respond to a request for information constitutes a breach of the duty imposed on the employer.

On April 19, 2010, the Board heard oral arguments on the UPW’s Motion for Summary Judgment. At the oral arguments, the Respondents submitted a copy of the Board’s Order No. 2541, and the UPW submitted its Exhibit 14, which is a copy of correspondence dated February 19, 2010, from the UPW to the Director of Health. Following the presentation of oral arguments, the Board took the matter under advisement.

On May 24, 2010, the Respondents submitted Respondents’ Second Supplemental Submission; and on July 21, 2010, the Respondents submitted Respondents’ Supplemental Submission.

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 the UPW’s Motion for Summary Judgment 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 the Complainant's Motion for Summary Judgment. 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 **May 22, 2017**.

DATED: Honolulu, Hawaii, March 21, 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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\*The Board offers a free electronic filing service. Please contact the Board's office for more information.

Case No. CE-10-753 – UPW and Dr. Chiyome Fukino, et al. – MINUTE ORDER DIRECTING PARTIES TO SUBMIT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING OR DENYING COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT.

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