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Case No. 16-CE-11-887, 14-CE-11-845**

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII FIRE FIGHTERS ASSOCIATION,
IAFF, LOCAL 1463,

Complainant,

and

KIRK CALDWELL, Mayor, City and County
of Honolulu; MANUEL P. NEVES, Fire
Chief, Honolulu Fire Department, City and
County of Honolulu; HONOLULU FIRE
DEPARTMENT, City and County of
Honolulu; and CITY AND COUNTY OF
HONOLULU,

Respondents.

CASE NO.: 14-CE-11-845

ORDER NO.: 3293

MINUTE ORDER DIRECTING HFFA, AS
PREVAILING PARTY, TO SUBMIT
PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION
AND ORDER; AND ORDER SETTING
DEADLINES REGARDING ANY
REQUEST FOR ATTORNEY'S FEES AND
COSTS

In the Matter of

HAWAII FIRE FIGHTERS ASSOCIATION,
IAFF, LOCAL 1463,

Complainant,

and

KIRK CALDWELL, Mayor, City and County
of Honolulu; MANUEL P. NEVES, Fire
Chief, Honolulu Fire Department, City and
County of Honolulu; HONOLULU FIRE
DEPARTMENT, City and County of
Honolulu; and CITY AND COUNTY OF
HONOLULU,

Respondents.

CASE NO.: 16-CE-11-887

Case Nos. 14-CE-11-845 and 16-CE-11-887 – HFFA/IAFF v. Kirk Caldwell, et al. – Minute Order Directing HFFA, As Prevailing Party, to Submit Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Order Setting Deadlines Regarding Any Request for Attorney's Fees and Costs.

Order No.:

MINUTE ORDER DIRECTING HFFA, AS PREVAILING PARTY, TO SUBMIT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

On August 27, 2014, Complainant HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO (HFFA or HFFA/IAFF) filed with the Hawaii Labor Relations Board (Board) a prohibited practice complaint in Case No. CE-11-845 (Complaint No. 845) against Respondents KIRK CALDWELL, Mayor, City and County of Honolulu (Mayor); MANUEL P. NEVES, Fire Chief, Honolulu Fire Department, City and County of Honolulu (Chief Neves); HONOLULU FIRE DEPARTMENT (HFD); and the CITY AND COUNTY OF HONOLULU (City and County) (collectively, "Respondents").

Complaint No. 845 alleged, *inter alia*, that the HFFA and Respondents are parties to the bargaining unit (BU) 11 collective bargaining agreement (Agreement), which provides in relevant part, "[t]he Employer shall grant to any individual certified Union representative the right to go onto the premises of the Employer to investigate grievances and to ascertain whether or not the Agreement is being observed. The Union agrees that its representative shall notify the supervisor in charge of the Company, Station or Bureau of the representative's presence"; and that the BU 11 Agreement further provides that informational and educational meetings may be held by the Union once every calendar quarter, and the "Employer or its representatives shall permit its employees to attend such meetings held during working hours and such meeting shall be limited to not more than 2 hours. The Union shall give written notice to the Employer or its representative at least 5 calendar days prior to the date of the meetings."

Complaint No. 845 further alleged, *inter alia*, that on June 17, 2014, the HFD issued an email to non-bargaining unit HFD administrative staff that stated, "From the Chief's office: all station visitations from the HFFA shall cease until further notice"; that on or about June 17, 2014, at HFD Station 34, a photograph was taken of a bulletin board posting that stated, "From Fire 1 if any Union Rep comes by the station to talk story/meeting you are to ask them to leave!"; that on June 18, 2014, HFFA/IAFF Board Members were in the process of conducting a pre-arranged BU 11 Sectional Informational and Educational meeting at Station 33 when they were asked to leave by Captain Blake Takahashi, pursuant to instructions given to him the Assistant Chief Ronald Rico; and that on June 20, 2014, Chief Neves unilaterally established a process for the conduct of contractual Informational and Educational meetings by HFFA/IAFF with its members.

Complaint No. 845 alleged that during the last twelve months, Respondents have “continually failed and/or refused to ‘recognize’ HFFA/IAFF as the certified employee organization for BU 11 employees”; that during the last twelve months, Respondents have “continually failed and/or refused to consult with HFFA/IAFF on matter that require consultation” under Hawaii Revised Statutes (HRS) § 89-9(c); that during the last twelve months Respondent have “continually failed and/or refused to negotiate on matters or wages, hours, and other terms and conditions of employment” under HRS § 89-9(a); that the conduct of Respondents has denied and deprived the HFFA/IAFF of its BU 11 Agreement contractual right to investigative, informational, and educational meetings.

Complaint No. 845 alleged prohibited practices pursuant to HRS § 89-13(a)(1), (2), (5), (7), and (8). HRS § 89-13(a) provides in relevant part:

It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

* * *

- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

* * *

- (7) Refuse or fail to comply with any provision of this chapter; [or]
- (8) Violate the terms of a collective bargaining agreement[.]

On November 14, 2016, the HFFA filed a prohibited practice complaint against Respondents on Case No. CE-11-887 (Complaint No. 887). Complaint No. 887 alleged, *inter alia*, that on August 16, 2016, Respondent Neves “in unilateral action informed the HFFA/IAFF that he was limiting Section 6 Informational and Educational Meetings at fire stations after 1700 (5:00 pm) hours”; that Respondent Neves’ action is a violation of the BU 11 Agreement; that Respondent Neves’ unilateral modification of Section 6 is a matter requiring negotiation and prior mutual

consent of the HFFA/IAFF pursuant to the BU Agreement and HRS § 89-9(a); that Respondents have failed and/or refused to negotiate with HFFA/IAFF in violation of HRS § 89-9(a); in the alternative, Respondents failed and/or refused to consult with the HFFA/IAFF prior to August 16, 2016, in violation of HRS § 89-9(c) and the BU 11 Agreement; that the imposition of the blanket restriction or prohibition from conducting Section 6 meeting until after 5:00 p.m. is an unwarranted intrusion, interference, obstruction and restraint to BU 11 employees engaged in protected union activity; and that on and after August 30, 2016, Respondents engaged in a series of emails through September 8, 2016, informing Battalion Chiefs of an HFD unilaterally implemented “process” for the conduct of Section 6 meetings and that the process was not negotiated or consulted with the HFFA/IAFF prior to its implementation.

Complaint No. 887 alleged prohibited practices pursuant to HRS § 89-13(a)(1), (2), (5), (7), and (8).

On November 30, 2016, the Board issued Order No. 3212, granting the HFFA’s motion to consolidate Case Nos. 14-CE-11-845 and 16-CE-11-887, and, *inter alia*, noticing the hearing on the merits in the consolidated proceeding to commence on December 12, 2016, beginning at 9:00 a.m.

The Board held a hearing on the merits in this consolidated proceeding on December 12, 13, 14, 19, and 22, 2016. The parties submitted their post-hearing briefs on April 28, 2017. Based upon the evidence presented, the legal arguments of the parties, and the record as a whole in this consolidated matter, the Board makes the following rulings:

The Board finds and concludes that Chief Neves acted, at all times relevant to this proceeding, as the Mayor’s designated representative in dealing with HFFA member employees. Respondents committed a prohibited practice pursuant to HRS § 89-13(a)(1) and (a)(2) in unilaterally changing or imposing a requirement that information meetings only be held after 5:00 p.m., and that such action interferes with the rights of employees and the HFFA guaranteed under chapter 89; additionally, the Board finds that such prohibition against visits prior to 5:00 p.m. was selectively and discriminatorily applied to the HFFA. The Board finds that such conduct was wilfull, i.e., with knowing, conscious, and deliberate intent, to violate or disregard the rights of the HFFA and its members under chapter 89. The Board further finds and concludes that such action does not constitute a prohibited practice pursuant to HRS § 89-13(a)(5), (7), or (8) because, with respect to the breach of collective bargaining agreement allegations (§ 89-13(a)(8)), the HFFA

must exhaust contractual remedies before bringing the claim before the Board; and, the Board finds the remaining assertions (§ 89-13(a)(5) and (a)(7)) redundant and superfluous to the § 89-13(a)(1), (2), and (8) claims.

The Board denies all other claims and allegations brought by the HFFA in this consolidated proceeding.

The Board orders the following remedies and penalties:

Respondents shall cease and desist from committing the prohibited practices found above.

Respondents shall pay a penalty of \$20,000 (twenty thousand dollars) made payable to the Director of Finance, State of Hawaii, within thirty (30) days of the Board's final order.

Respondents shall post a copy of the Board's final order in a conspicuous locations where legal notices to HFFA members are customarily posted.

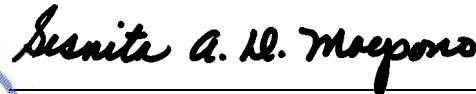
The Board awards Complainant its reasonable attorney's fees and costs.

Accordingly, the Board directs the HFFA, as the prevailing party, to draft proposed findings of fact, conclusions of law, and decision and order (Proposed Decision) consisted with the Board's rulings herein. The Proposed Decision shall be filed with the Board and Served on Respondents no later than **October 30, 2017**. The HFFA shall also have until **October 30, 2017**, to file a motion for attorney's fees and costs in this matter, along with sufficient documentation to enable the Board to determine reasonableness.

Respondents shall have until **November 20, 2017**, to file and serve on the HFFA any exceptions to the HFFA's Proposed Decision, and any objection to the HFFA's motion for attorney's fees and costs.

DATED: Honolulu, Hawaii, September 18, 2017.

HAWAII LABOR RELATIONS BOARD



ESNITA A.D. MOEPONO, Member





J.N. MUSTO, Member

Copy:

Peter Liholiho Trask, Esq.

Amanda Furman, Deputy Corporation Counsel