

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)
)
LOUIS VICTORINO,)
)
)
Complainant,)
)
and)
)
GEORGE R. ARIYOSHI, Governor,)
State of Hawaii; DEPARTMENT OF)
TRANSPORTATION, State of)
Hawaii; and UNITED PUBLIC)
WORKERS, AFSCME, LOCAL 646,)
AFL-CIO,)
)
Respondents.)

CASE NOS.: CE-01-96
CU-01-49

ORDER NO. 579

ORDER HOLDING IN ABEYANCE
MOTION FOR DEFERRAL TO ARBI-
TRATION AWARD AND FOR DIS-
MISSAL OF CHARGES AND NOTICE
OF HEARING

In the Matter of)
)
STANLEY GONSALVES and UNITED)
PUBLIC WORKERS, AFSCME, LOCAL)
646, AFL-CIO,)
)
Complainants,)
)
and)
)
LOUIS VICTORINO and E. COURTNEY)
KAHR,)
)
Respondents.)

CASE NO. CEE-01-1

ORDER HOLDING IN ABEYANCE MOTION FOR
DEFERRAL TO ARBITRATION AWARD AND FOR
DISMISSAL OF CHARGES AND NOTICE OF HEARING

On May 14, 1985, the UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO [hereinafter referred to as UPW], filed
with the Hawaii Public Employment Relations Board [hereinafter
referred to as Board] a Motion for Deferral to Arbitration Award
and for Dismissal of Charges. Therein, UPW requested that the

Board defer to the arbitration award of Stanley Ling issued on December 4, 1984 arising from the promotion grievance filed by STANLEY GONSALVES [hereinafter referred to as GONSALVES] which challenged the selection of junior applicant LOUIS VICTORINO [hereinafter referred to as VICTORINO] for a position of heavy truck driver in a non-competitive selection by the Department of Transportation on the island of Kauai. UPW thus requests that the Board dismiss charges filed in Case Nos. CE-01-96 and CU-01-49.

In response, on June 10, 1985, VICTORINO (Complainant in Case Nos. CE-01-96 and CU-01-49) filed, through his attorney, E. COURTNEY KAHR, a document entitled Opposition to Motion for Deferral to Arbitration Award and for Dismissal of Charges.

On August 19, 1985, GEORGE R. ARIYOSHI, Governor of the State of Hawaii [hereinafter referred to as State], filed, through his attorney, Charleen Aina, a Memorandum in Support of Motion for Deferral to Arbitration Award and for Dismissal of Charges.

On August 20, 1985, the Board held a hearing on the subject motion.

After due consideration of the motion, supporting documents and arguments, the Board concludes that the Motion for Deferral to Arbitration Award and for Dismissal of Charges shall be held in abeyance pending resolution of issues surrounding the question of whether Complainant VICTORINO was afforded adequate representation by the UPW, primarily in the critical period during which the UPW chose to represent GONSALVES over VICTORINO

in the open competition for the heavy truck driver position in question. As stated by the Board Chairperson at the August 20 hearing, the Board has no intention of relitigating the propriety of the arbitration award issued by Arbitrator Ling. While recognizing said arbitration decision, the Board also notes that the instant case presents issues pertaining to the adequacy of representation afforded by UPW to VICTORINO prior to the issuance of the GONSALVES arbitration decision and not just issues regarding the propriety of deferral by the Board to the arbitration award. While the arbitration decision is not at issue, questions remain as to (1) the deliberations the UPW went through in interpreting the applicable collective bargaining contract provisions with regard to the question whether GONSALVES or VICTORINO should be supported on the competition for the subject vacancy; (2) how VICTORINO's taking of the performance test affected the UPW's decision not to represent VICTORINO in competition for the heavy truck driver position; and (3) whether VICTORINO's abandonment of the UPW's position of refusing to take the performance test in the competition affected in any way the question of the adequacy of representation afforded by the UPW to VICTORINO.

The Board reiterates that consideration of the question of the propriety of deferral to arbitration leaves unanswered questions of UPW's adequacy of representation with regard to VICTORINO. For this reason, deferral to arbitration is not proper at this juncture. Two other factors considered by the Board work also to influence the Board to decide that deferral is not proper at this time. Firstly, VICTORINO was

not a party to the arbitration culminating in the decision issued by Arbitrator Ling, although he was represented, in effect, by the State which was a party. Secondly, Arbitrator Ling expressly refrained from adjudicating the rights and interests of VICTORINO, stating "the authority of the Arbitrator is restricted to the grievance presented and does not extend to the consequences of the award affecting Louis Victorino." See Arbitrator's decision, p. 28. The Board, however, considers that deferral to arbitration may be proper subsequent to a consideration of the fair representation issues outlined herein.

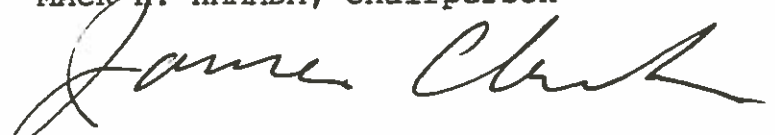
YOU ARE HEREBY NOTIFIED that the Board, pursuant to Administrative Rules § 12-42-8(g)(3)(C)(iv), will hold a hearing on the issues regarding the question of fair representation on February 4, 1986, at 10:00 a.m. in the Board's hearings room at 550 Halekauwila Street, second floor, Honolulu, Hawaii.

All parties have the right to appear in person and to be represented by counsel or other representative.

DATED: Honolulu, Hawaii, January 27, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

LOUIS VICTORINO vs. GEORGE R. ARIYOSHI, Governor, State of
Hawaii, DEPARTMENT OF TRANSPORTATION, State of Hawaii, and
UNITED PUBLIC WORKERS, LOCAL 646, AFSCME, AFL-CIO; STANLEY
GONSALVES and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646,
AFL-CIO vs. LOUIS VICTORINO and E. COURTNEY KAHR
CASE NOS.: CE-01-96, CU-01-49 and CEE-01-1
ORDER NO. 579
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AWARD AND FOR DISMISSAL OF CHARGES AND NOTICE OF HEARING

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