

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. 92-3 (RD)
LILLIAN J. PAIVA,)	ORDER NO. 917
Petitioner,)	ORDER STAYING PROCEEDINGS
and)	
ILWU, LOCAL 142,)	
Exclusive)	
Representative,)	
and)	
MAUNA LANI TERRACE ASSOCIATION)	
OF APARTMENT OWNERS,)	
Employer.)	

ORDER STAYING PROCEEDINGS

LILLIAN J. PAIVA filed a Petition for Decertification with the Hawaii Labor Relations Board (Board) on October 27, 1992. At the pre-election conference held on November 12, 1992, the ILWU, LOCAL 142 (ILWU or Union), by and through its attorney, Herbert R. Takahashi, Esq., contended that the Board lacked jurisdiction over the subject petition. The ILWU further interposed objections to the composition of the bargaining unit involved in the petition. On November 23, 1992, the Board conducted a hearing on the foregoing issues. The parties were accorded full opportunity to present witnesses and arguments. Counsel for the Employer and the Exclusive Representative submitted post-hearing briefs on December 15, 1992.

Based upon consideration of the record in this case, the Board makes the following findings of fact, conclusions of law and order.

Petitioner LILLIAN J. PAIVA, is and was for all times relevant, a grounds keeper at the Mauna Lani Terrace Condominiums, on the Kohala Coast of the island of Hawaii.

The ILWU, LOCAL 142, is and was for all times relevant, the exclusive representative of gardeners and maintenance workers employed by the MAUNA LANI TERRACE ASSOCIATION OF APARTMENT OWNERS.

The MAUNA LANI TERRACE ASSOCIATION OF APARTMENT OWNERS, is and was for all times relevant, an organization of the owners of the Mauna Lani Terrace Condominiums and the Employer of the gardeners and maintenance workers who work at the condominiums.

The Board certified the ILWU as the exclusive bargaining representative of "all full-time and regular part-time employees including gardeners and maintenance workers employed by the employer located P. O. Box 4500, Kawaihae, Hawaii, 96743. Excluded: Resident managers, supervisors, confidential employees, and all other employees of the employer." The ILWU was duly certified on May 2, 1986, pursuant to an election conducted by the Board. Employer's Exhibit (Ex.) 2. There is currently a collective bargaining contract in force and effect which will expire on December 31, 1992.

Roger Hudlow manages the Mauna Lani Terrace Condominiums and Chaney, Brooks and Company is the property manager for the Homeowners of Mauna Lani Terrace and prepares its financial

statements. Transcript from the hearing conducted on November 23, 1992 (Tr.) p. 13. The total cash receipts for the Employer for the period ending December 31, 1991 is \$979,035.90. Tr. p. 14. For the ten month period ending October 30, 1992, the gross receipts total \$515,816.49. Tr. p. 15; Employer's Ex. 1. The major item of revenue for the association is the maintenance fees from the homeowners; there are no shipment of goods involved. Tr. p. 44.

Based upon the foregoing, the Board finds that the Employer has gross receipts in excess of \$900,000 for the year ending December 1991 and \$500,000 for the current year up until October 1992.

The ILWU contends that the Board lacks jurisdiction over the employees and the Employer until the National Labor Relations Board (NLRB) advises that it will either assert or decline jurisdiction over this matter. Specifically, the Union believes that an advisory opinion is needed from the NLRB before the jurisdictional issues can be resolved. The ILWU submits that the evidence in this case is undisputed that the Employer has received revenues for December 1991 of \$979,035.90 and \$515,816.49 for the 1992 year ending in October. The Union also submits that it appears that the Employer's annual out-of-state purchases exceed \$30,000. The ILWU contends that it would be premature at the present time for the HLRB to assert jurisdiction over PAIVA's petition.

The Employer concedes that the NLRB has previously asserted jurisdiction over condominiums whose gross receipts exceed

\$500,000.00. Imperial House Condominium, Inc., 279 NLRB 1225 (1986). The Employer therefore acknowledges that the NLRB would now have jurisdiction over the Employer based upon its gross receipts for 1991. The Employer, however, suggests that the Board dismiss the instant petition without prejudice to PAIVA's right to refile with the NLRB.


The term "employee" is defined in subsection 377-1(3), Hawaii Revised Statutes, as "any person . . . working for another for hire in the State, . . . provided that the term 'employee' includes any individual subject to the jurisdiction of the National Labor Relations Act, as amended from time to time, but over whom the National Labor Relations Board has declined to exercise jurisdiction or indicated by its decisions and policies that it will not assume jurisdiction." Although the Board previously exercised its jurisdiction over the parties in 1986, it appears that under the \$500,000 gross revenue per annum benchmark used by the NLRB with regard to housing cooperatives and condominiums, the Board lacks jurisdiction over the present petition. Rather than the Board requesting the NLRB for an advisory opinion as to whether it will take jurisdiction over the subject petition, the Board finds that it would be more prudent to stay these proceedings while the Petitioner seeks to invoke the jurisdiction of the NLRB over this case.

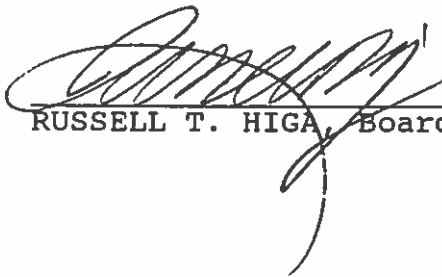
The Board hereby orders these proceedings stayed until the NLRB either indicates that it has jurisdiction over the parties or that it will decline jurisdiction. The secondary issue regarding the bargaining unit composition will be also addressed at a future time, if appropriate.

LILLIAN J. PAIVA and ILWU, LOCAL 142 and MAUNA LANI TERRACE
ASSOCIATION OF APARTMENT OWNERS; CASE NO. 92-3(RD)
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DATED: Honolulu, Hawaii, December 31, 1992.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

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