

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

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| In the Matter of                                      | ) | CASE NO. CE-01-186   |
|   | ) |  |
| UNITED PUBLIC WORKERS, AFSCME,<br>LOCAL 646, AFL-CIO, | ) | ORDER NO. 970  |
|   | ) |  |
| Complainant,  | ) | ORDER DENYING COMPLAINANT'S<br>MOTION FOR INTERLOCUTORY<br>ORDER |
| and   | ) |  |
|   | ) |  |
| STEVEN K. YAMASHIRO, et al.,                          | ) |  |
|   | ) |  |
| Respondents,  | ) |  |
| and   | ) |  |
|   | ) |  |
| WASTE MANAGEMENT OF HAWAII,<br>INC.,                  | ) |  |
|   | ) |  |
| Intervenor.   | ) |  |
| _____   | ) |  |

ORDER DENYING COMPLAINANT'S MOTION FOR INTERLOCUTORY ORDER

On May 4, 1993, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a prohibited practice complaint against STEVEN K. YAMASHIRO; DONNA FAE K. KIYOSAKI; RICHARD WURDEMAN, ESQ.; SPENCER KALANI SCHUTTE; TAKASHI DOMINGO; JIMMY ARAKAKI; KEOLA CHILDS; AND JIM RATH with the Hawaii Labor Relations Board (Board). The UPW alleges that Respondents violated Sections 89-13(a)(1), (3), (5), (7), and (8), Hawaii Revised Statutes (HRS) by unilaterally subcontracting the West Hawaii sanitary landfill operations to WASTE MANAGEMENT OF HAWAII, INC. (WMI).

WMI filed a petition for intervention in these proceedings. The Board granted WMI's petition by Order No. 951 issued on July 14, 1993.

Thereafter, upon proper motion filed by Respondents, the Board dismissed the complaints as to RICHARD WURDEMAN, ESQ.; SPENCER KALANI SCHUTTE; TAKASHI DOMINGO; JIMMY ARAKAKI; KEOLA CHILDS; and JIM RATH by Order No. 954, dated July 26, 1993.

In its Amended Complaint, UPW charges 1) that Respondents unlawfully breached a 1992 agreement with Mayor Lorraine Inouye to have the County operate the West Hawaii landfill; 2) that Respondents modified various terms of the Unit 1 collective bargaining agreement in violation of section 1.05 of the contract; 3) that Respondent YAMASHIRO engaged in discriminatory conduct; and 4) that Respondents failed to comply with the duty to negotiate with UPW prior to its unilateral decision to contract out the operations of the West Hawaii landfill to WMI.

On August 9, 1993, Complainant UPW filed a Motion for Interlocutory Relief. In its motion, UPW requests that the Board direct Respondents to maintain the status quo ante and assure that when the West Hawaii landfill becomes operational in October 1993, that Unit 1 employees in equipment operator and landfill attendant classifications will be doing the work at the new landfill. In its Supplemental Memorandum, UPW requests that the Board enjoin Respondents YAMASHIRO and KIYOSAKI from implementing their decision to contract out the operations of the West Hawaii landfill to WMI pending a decision on the merits.

The Board conducted hearings on August 10, 11, 12, 13, September 7, 8, 9, 10, 15, 17 and 28, 1993. The parties were accorded full opportunity to present witnesses and arguments.

Based upon the testimony and arguments presented, the Board hereby denies the Complainant's motion for interlocutory relief.

The Board has jurisdiction over this matter pursuant to Section 89-13, HRS.

Complainant UPW is the exclusive representative, as defined in Section 89-2, HRS, of employees in bargaining unit 1.

Respondent STEVEN K. YAMASHIRO is the Mayor of the County of Hawaii and the public employer, as defined in Section 89-2, HRS, of the employees of the County of Hawaii, including those employees in bargaining unit 1.

Respondent DONNA FAE K. KIYOSAKI is the Chief Engineer of the County of Hawaii.

Intervenor WMI is a private corporation which contracted with the County of Hawaii to construct and operate a sanitary landfill in West Hawaii at Puuanahulu, Hawaii.

The public employers and the UPW are parties to the Unit 1 collective bargaining agreement effective for the period July 1, 1989 to June 30, 1993. The public employers, except for YAMASHIRO, and the UPW have entered into written agreements extending the terms of the collective bargaining agreement to January 15, 1994.

The Board has adopted the following criteria in determining whether interlocutory injunctive relief should be granted. In Hawaii Government Employees Association (HGEA), Case Nos. CE-03-

170a, et seq., a case still pending before the Board, Complainant HGEA requested an interlocutory order to enjoin the Board of Education (BOE) from implementing a seven (7) day public service schedule for its public library system pending the issuance of a final Board decision. The Board relied generally upon the standards applicable in the judicial system for interlocutory injunctive relief. The Board adopted the test for interlocutory injunctive relief proposed by the Hawaii Intermediate Court of Appeals in Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. 272, 630 P.2d 646 (1981), that the decision maker should consider: 1) whether the party seeking the injunction is likely to prevail on the merits; 2) whether the balance of irreparable damage favors the issuance of the interlocutory injunction; and 3) whether the public interest supports the granting of the injunction. In the HGEA case, the Board found that the complainant satisfied the foregoing test and issued Order No. 912 which ordered the Department of Education to cease implementation of its new seven-day work schedule.

The record indicates that if the County of Hawaii does not close the Kealakehe landfill by October 9, 1993, Environmental Protection Agency (EPA) regulations would require substantial operational modifications and remediation efforts to correct deficiencies. Furthermore, the first cell of the new West Hawaii landfill at Puuanahulu was constructed using a material under the plastic membrane which although meeting the EPA permeability requirements, is not of the same material required under the EPA

regulations. The landfill must be operational before October 9, 1993 to use this alternate material.

The granting of the interlocutory order would require the County to abrogate its agreement with WMI. Thereafter, WMI will not be obligated to construct future landfill cells, perform environmental monitoring, close the landfill and defend the County against claims based upon the landfill construction and operations. In all probability, the County would not be able to accept solid waste at Puuanahulu prior to October 9, 1993 and the new cell constructed at the landfill would not meet EPA requirements. Moreover, in all likelihood, if the interlocutory relief was granted and the County prevailed on the merits, WMI or another contractor would be reluctant to resume the operations and assume the same degree of liability related to the operation of the landfill.

According to the testimony, the transfer station attendants at Kealakehe will continue their work. Five Equipment Operator III's who currently work at the Kealakehe landfill will be the only employees directly affected when Kealakehe landfill stops receiving solid waste. The record indicates that at some point those employees will no longer operate both bulldozers and tractor trailers but will operate only tractor trailers to haul solid waste from the transfer stations to Puuanahulu. The record further indicates that WMI's operation of the landfill will not result in any County workers being laid off.

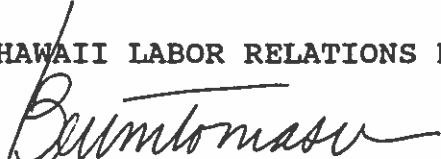
Based on the foregoing, the Board is persuaded that the County will suffer severe irreparable damage if the UPW's motion is granted while the employees represented by the UPW will be minimally affected, if at all, if the interlocutory order is not issued.

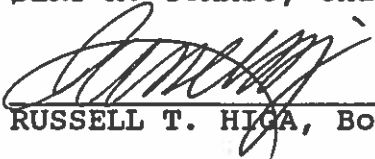
With respect to the public interest, the Board finds that the public interest clearly favors having a landfill, that meets or is exempted from the EPA requirements, operational in West Hawaii by October 9, 1993. The record indicates that the Kealakehe landfill will close by October 9, 1993 and if there were no operational landfill at Puuanahulu at this time, the people of West Hawaii would not have access to a landfill in close proximity to dispose of their solid waste. The record also indicates that the County does not now have employees with the expertise to train its personnel to comply with the EPA standards.


The UPW's arguments in support of the likelihood of success on the merits are not so compelling as to override the balance of irreparable harm and the public interest policy considerations discussed.

DATED: Honolulu, Hawaii, October 1, 1993.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
SANDRA H. EBESU, Board Member

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