

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

~~GORDON LESLIE; BERNARD KUAMOO;
GEORGE SHERIDAN; DEANGELO
DIXON; and FELICIANYYO SAMSON;~~

~~Complainants,~~

~~and~~

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

~~Respondent.~~

CASE NO(S). ~~20-CU-10-381~~

ORDER NO. 3773

ORDER REQUIRING PARTIES TO
SUBMIT STATUS REPORT; NOTICE OF
STATUS CONFERENCE

In the Matter of

CASE NO(S). 20-CE-10-943

GORDON LESLIE; JAMES AKAU; MARC S. AMERINO; ANTHONY BAYSA; DANIEL J. BRYANT; LEVI CHRISTENSON; MICHAEL COSTA; NEEMIA FEAGAI; LEE FIELDS, JR.; WILLIAM T.K. GREIG; WILLIAM S. GONSALVES; HENRY C. HOPE; SHEEN H. IKEGAMI; CRANSTON M.KAMAKA, JR.; AUSTIN R. KEANU; BERNARD KUAMOO, JR.; JOHN P. LALOTOA; WYATT G. LEE; ALTON LORICO, JR.; RAYMOND R. LYMAN, SR.; RAYMOND A. MAAE; CHAD K. MAHUKA; GARY D. MENDONCA; DAVID MURRAY; DALE U. NEWCOMB; POTUMOE OLOMUA; ROBERT L. PRADO; STEVEN PREZA; ADRIAN P. SALAS; FELICIANO SAMSON; FIAFIA S. SATARAKA; IAFETA SAVE; DEBORAH SEGICH; GEORGE SHERIDAN, III; KENNETH SIILATA; MICHAEL TAAMILO; WILLIAM TAAMU-PERIFANOS; JARED TAJON; THOMAS TAUM; MARIA ELENA Y.L.W. TOM; PILIPO TUITAMA; EDWARD F. VAOVASA; BRADLEY WAKUTA; MARK M. WATANABE; and LANCE F.P. WONG,

Complainants,

and

DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety,

Respondents.

In the Matter of

CASE NO(S). 20-CU-10-382

GORDON LESLIE; JAMES AKAU; MARC S. AMERINO; ANTHONY BAYSA; DANIEL J. BRYANT; LEVI CHRISTENSON; MICHAEL COSTA; NEEMIA FEAGAI; LEE FIELDS, JR.; WILLIAM T.K. GREIG; WILLIAM S. GONSALVES; HENRY C. HOPE; SHEEN H. IKEGAMI; CRANSTON M.KAMAKA, JR.; AUSTIN R. KEANU; BERNARD KUAMOO, JR.; JOHN P. LALOTOA; WYATT G. LEE; ALTON LORICO, JR.; RAYMOND R. LYMAN, SR.; RAYMOND A. MAAE; CHAD K. MAHUKA; GARY D. MENDONCA; DAVID MURRAY; DALE U. NEWCOMB; POTUMOE OLOMUA; ROBERT L. PRADO; STEVEN PREZA; ADRIAN P. SALAS; FELICIANO SAMSON; FIAFIA S. SATARAKA; IAFETA SAVE; DEBORAH SEGICH; GEORGE SHERIDAN, III; KENNETH SIILATA; MICHAEL TAAMILO; WILLIAM TAAMU-PERIFANOS; JARED TAJON; THOMAS TAUM; MARIA ELENA Y.L.W. TOM; PILIPO TUITAMA; EDWARD F. VAOVASA; BRADLEY WAKUTA; MARK M. WATANABE; and LANCE F.P. WONG,

Complainants,

and

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

Respondent.

ORDER REQUIRING PARTIES TO SUBMIT STATUS REPORT

The Hawai'i Labor Relations Board (Board) held a prehearing conference in the above-entitled consolidated cases, at which, among other things, the parties requested additional time to conduct informal discovery on the issue of the timeliness of the instant complaint. The Board cancelled all dates and deadlines set forth in Board Order No. 3770, Pretrial Order and Notices and informed the parties that the Board would set a status conference and require the parties to submit a status report prior to the status conference.

The Board hereby orders the parties to submit a status report on or by **August 31, 2021, at 4:30 p.m.**, which addresses the following:

1. The Board's understanding of the amended prohibited practice complaint (Amended Complaint) is that Complainants are alleging:
 - That the Employer-Respondents violated Hawai'i Revised Statutes (HRS) 89-13(a)(8) by entering into the 2015 Settlement Agreement that allegedly violated the terms of the relevant collective bargaining agreement, by continuing to enforce the 2015 Settlement Agreement, and violated HRS §§ 89-13(a)(7) and 89-10(a) by implementing and continuing to implement the 2015 Settlement Agreement; and
 - That the Union-Respondent violated HRS §§ 89-13(b)(5) by entering into the 2015 Settlement Agreement that allegedly violated the terms of the relevant collective bargaining agreement, by continuing to enforce the 2015 Settlement Agreement, and violated HRS §§ 89-13(b)(4) and 89-10(a) by failing to ratify the 2015 Settlement Agreement and by implementing and continuing to implement the 2015 Settlement Agreement.

Accordingly, the Board requires that the parties briefly confirm whether the Board's understanding is correct or incorrect regarding the issues set forth above and further address their understanding regarding any additional issues presented by the Amended Complaint.

2. HRS § 89-14 provides that controversies concerning prohibited practices may be submitted in the same manner and with the same effect as provided by HRS § 377-9. HRS § 377-9(l) and Hawai'i Administrative Rules (HAR) § 12-42-42(a) provide that prohibited practice complaints will be considered only if they are filed within ninety days of the occurrence of the specific prohibited practice.

The Board's approach to the ninety-day timeline has been to follow the principles that require the Board to strictly follow the timelines and that, even if the

complainant misses the deadline by a single day, the Board cannot waive that ninety-day requirement. Fitzgerald v. Ariyoshi, Board Case Nos. CE-10-75; CU-10-43, Decision No. 175 (1983) (<https://labor.hawaii.gov/hlrp/files/2018/12/Decision-No-175.pdf>). The Board has further followed the principle that this ninety-day period begins when the complainant knew or should have known that their rights were being violated. United Public Workers, AFSCME, Local 646 v. Okimoto, Board Case No. CE-01-515, Decision No. 443 (2003) (<https://labor.hawaii.gov/hlrp/files/2018/12/Decision-443A.pdf>) (Okimoto).

The Board has previously accepted that the enforcement of maintenance of a contract does not constitute a continuing violation. Kotaka v. HSTA, et al., Board Case Nos. CU-05-19; CE-05-37, Decision No. 86 (1978) (<https://labor.hawaii.gov/hlrp/files/2018/12/Decision-No-86.pdf>). Further, the Hawai'i courts have disfavored the view that a continuing violation creates a new, contestable violation with each occurrence. *See Okimoto*. The grievance procedures contained in most of the collective bargaining agreements provide that for alleged continuing violations, grievances must be filed within twenty working days after the alleged violation first became known or should have become known.

Based on the foregoing principles, the Board requires that Complainants briefly outline their position as to:

- a. What specific events or actions constitute or may constitute prohibited practices in this case; and
- b. The specific date or dates that Complainants knew or should have known of any alleged prohibited practices.

The Board requires that Respondents briefly outline their position as to:

- a. The specific date that Complainants knew or should have known of any alleged prohibited practices.

Given the multitude of Complainants in this case, at this time, the Board does not require that such positions break down the dates for each individual Complainant.

3. Complainants have alleged violations of HRS § 89-13(a)(8) by the Employer-Respondents. Accordingly, the Board requires that the parties briefly outline their position as to whether any applicable contractual remedies exist for any of the allegations in the Amended Complaint and, if they do exist, have been exhausted.

See, e.g., Univ. of Hawaii Prof'l Assembly v. Bd. of Regents, Case No. CE-07-804, Board Order No. 2939 (August 22, 2013) (<https://labor.hawaii.gov/hlrp/files/2019/01/HLRB-Order-2939.pdf>); *see also Poe v. Hawaii Labor Relations Board*, 105 Hawai'i 97, 101, 94 P.3d 652, 656 (2004).

4. Complainants have alleged that the Respondents are continuing to enforce the 2015 Settlement Agreement that the Board ruled as invalid in *Paio, et al. v. UPW*, Board Case Nos. 16-CU-10-344; 16-CU-10-345, Decision No. 497 (2020) (<https://labor.hawaii.gov/hlrp/files/2020/03/Decision-No.-497.pdf>). Respondents disputed this claim at the prehearing conference. Accordingly, the Board requires that the parties briefly outline their position as to whether the 2015 Settlement Agreement is currently being enforced and provide a summary of any evidence the parties have as to the enforcement or lack thereof of the Settlement Agreement.
5. The Board cannot confirm, vacate, or modify or correct an arbitration award. *See, e.g., Stucky v. Okabe, et al.*, Board Case No. CU-05-303, Decision No. 508 (<https://labor.hawaii.gov/hlrp/files/2021/06/Decision-No.-508.pdf>).

Further, the Board has no jurisdiction over any part of the UPW Local 146 or AFSCME International's constitutions. *See*, HRS § 89-5.

Accordingly, the Board requires that the parties briefly address their understanding of the relevance of Arbitrator Keith W. Hunter's 1998 Arbitration Decision and Order, and the UPW Local 146 or AFSCME International constitutions on this matter.

The Board further notes for the record that nothing in HRS Chapter 89 or HRS § 377-9 permits the Board to consider "class action" prohibited practice complaints.

NOTICE OF STATUS CONFERENCE

NOTICE IS GIVEN, per Hawai'i Revised Statutes §§ 89-5(i)(4) and (i)(5), and 377-9, the Board will hold a Status Conference at the place, time, and date listed below.

DATE AND TIME: September 7, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

At the Status Conference, parties must be prepared to discuss, among other things, the contents of the Status Reports, the status of any informal discovery, any requests for formal discovery, including but not limited to a request for an evidentiary hearing, and the scheduling for the case moving forward.

Auxiliary aids and services are available upon request to parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

DATED: Honolulu, Hawai'i, July 6, 2021.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Eric Seitz, Esq.

Richard Thomason, Deputy Attorney General

Jonathan Spiker, Esq.