

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)
KENROY R. MAGLOIRE,)
Complainant,)
and)
DEPARTMENT OF PUBLIC SAFETY,)
State of Hawaii,)
Respondent.)

CASE NO. CE-10-236
ORDER NO. 1219
ORDER GRANTING RESPONDENTS'
MOTIONS FOR DIRECTED VERDICTS

In the Matter of)
KENROY R. MAGLOIRE,)
Complainant,)
and)
UNITED PUBLIC WORKERS, AFSCME,)
LOCAL 646, AFL-CIO,)
Respondent.)

CASE NO. CU-10-104

ORDER GRANTING RESPONDENTS'
MOTIONS FOR DIRECTED VERDICTS

On September 22, 1994, Complainant KENROY R. MAGLOIRE (Magloire) filed a prohibited practice complaint against the DEPARTMENT OF PUBLIC SAFETY, State of Hawaii (PSD or Employer) with the Hawaii Labor Relations Board (Board) in Case No. CE-10-236. Also, on September 22, 1994, Magloire filed a prohibited practice complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) with the Board in Case No. CU-10-104.

Complainant alleges that Respondent PSD violated Sections 377-6(10), 377-8, 378-2(1)(a) and (c), 378-32 and 378-33, Hawaii

Revised Statutes (HRS). The gravamen of Magloire's complaint against the PSD is that he was allegedly treated disparately when he was terminated from employment on January 31, 1994. Magloire also alleges that Respondent UPW violated Sections 89-13(b)(2), (3), (4), and (5), HRS, when the Union informed him of its decision not to proceed with the arbitration of his termination grievance, while allegedly successfully pursuing arbitrations on behalf of other employees similarly situated.

On October 3, 1994, Respondent UPW filed a Motion to Dismiss and/or for Summary Judgment. On October 6, 1994, the Board consolidated both cases for disposition. On October 12, 1994, Respondent PSD also filed a Motion to Dismiss the Complaint.

The Board scheduled a hearing on October 28, 1994 to hear both motions and in the event the motions were denied, set the hearing on the merits of the case on the same day. At the hearing, the Board denied UPW's Motion for Summary Judgment, granted UPW's Motion to Dismiss as to alleged violations of Sections 89-13(b)(2), (3), and (5), HRS, but proceeded to hear the case concerning an alleged violation of Section 89-13(b)(4), HRS. Also at the hearing, the Board denied PSD's Motion to Dismiss and granted Magloire's motion to amend his complaint against the PSD by adding an alleged violation of Section 89-13(a)(8), HRS.

Complainant was an adult corrections officer (ACO) at the time he was indicted in October of 1993 for allegedly committing various felony drug offenses. On or about January 31, 1994, the Complainant was terminated from employment.

On February 17, 1994, the UPW, by and through its business agent, Melvin Rodrigues, filed a grievance on behalf of Magloire, contesting his termination. The Union processed his grievance through steps 2 and 3 of the grievance procedure. By letter, dated July 7, 1994, the Union informed Magloire that the Union would not arbitrate his grievance. In August of 1994, Magloire pleaded guilty to Class B and C felonies.

In the presentation of his case, Complainant alleged that other ACOs who also committed criminal offenses and were incarcerated, were not terminated from employment or were subsequently reinstated. The basis for this disparate treatment was his rank of sergeant, i.e., the Employer wanted to target supervisors and used him as an example of employment infractions by higher ranking personnel. Transcript page (Tr. p.) 56. Fred Chun, Special Investigator with the Attorney General's Office and currently Chief Investigator, testified that Magloire was not specifically targeted for investigation by the PSD, but became a target as a result of the investigation of another individual. Tr. p. 45.

Arvid Hara (Hara), a Personnel Management Specialist with the PSD, testified about records subpoenaed by Complainant. Board Exhibit (Ex.) 9. Roy Yamamoto, also from PSD, who was originally subpoenaed, was ill on the date of the hearing. Tr. p. 46. Hara testified that personnel files for the individuals named in the subpoena were researched and that the research revealed one or more of the following: 1) no violations of the code of conduct or a felony or misdemeanor record; 2) they are no longer employed with

PSD; and 3) no personnel record exists under the names listed in the subpoena. Tr. pp. 46-52.

Magloire testified that other ACOs violated the code of conduct, committed criminal offenses, and were incarcerated. However, these ACOs were allowed to remain as employees or in the event of termination, the Union helped to win job reinstatements. Tr. pp. 55-56.

Upon conclusion of Complainant's case, both respondents moved this Board for a directed verdict. The standard for granting a directed verdict was enunciated in Stewart v. Budget Rent-A-Car Corp., 52 Haw. 71, 470 P.2d 240 (1970). The Hawaii Supreme Court stated:

A directed verdict may be granted only when after disregarding conflicting evidence, giving to the plaintiff's evidence all the value to which it is legally entitled, and indulging every legitimate inference which may be drawn from the evidence in plaintiff's favor, it can be said that there is no evidence to support a (jury) verdict in his favor.

Id. at 77, 244.

In reviewing the evidence presented by the Complainant, all we have are uncorroborated statements from the Complainant that he was treated disparately by both the Employer and Union.

The Complainant failed to present any evidence to support a finding that other employees, similar situated, were treated any differently by the Employer or Union.

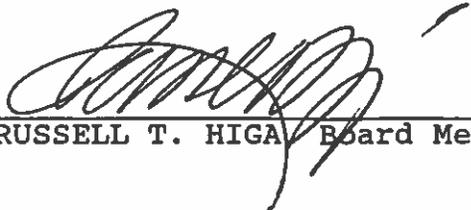
Accordingly, the Board hereby grants the motions for directed verdict filed by Respondents PSD and UPW, respectively.

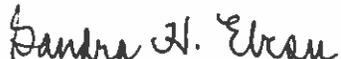
The Board further dismisses any and all other claims based on alleged violations of Chapters 89, 377 and 378, HRS.

DATED: Honolulu, Hawaii, August 10, 1995.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

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