

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
MANUEL VEINCENT, JR.,)	Case No. <u>CE-11-54</u>
WILLIAM M. YOEMAN, ROBERT)	
FREITAS, HIRAM KA00, and)	
HAWAII FIRE FIGHTERS ASSOCIA-)	Decision No. <u>130</u>
TION, IAFF, LOCAL 1463,)	
AFL-CIO,)	
)	
Complainants,)	
)	
and)	
)	
HERBERT T. MATAYOSHI, Mayor)	
of the County of Hawaii,)	
)	
Respondent.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDERS

On August 27, 1979, Manuel Veincent, Jr., William M. Yoeman, Robert Freitas, and Hiram Kaoo (hereafter Complainants), and Hawaii Fire Fighters Association, IAFF, Local 1463, AFL-CIO (hereafter Complainant or HFFA), filed a prohibited practice complaint against Respondent Herbert T. Matayoshi, Mayor of the County of Hawaii (hereafter Respondent or County).

Complainants charged that Respondent failed to bargain in good faith within the meaning of Sections 89-13(a)(5) and (8), Hawaii Revised Statutes (hereafter HRS), by failing to produce documents relevant to their Step 3 grievances, in violation of the collective bargaining agreement between HFFA and Respondent. Complainants also alleged that Respondent's demand for four separate arbitration hearings for Complainant-firefighters' grievances, instead of one consolidated arbitration procedure, would be expensive, time-consuming, and inappropriate in view of the essentially identical facts of each grievance.

Complainants seek relief from this Board with orders for Respondent to produce the requested documents and to proceed to a consolidated arbitration hearing of the four grievances. Complainants also request the Board to maintain continuing jurisdiction over the parties pending the commencement of arbitration proceedings in order to ensure appropriate compliance and any order the Board may enter herein.

The hearing in this matter was held on April 28 and 29, 1980, in the Hawaii County Council Conference Room, County Office Building, Hilo, Hawaii.

Upon a full review of the transcripts, exhibits, and arguments made orally and in writing, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Complainants Veincent, Yoeman, Freitas, and Kao are public employees as defined in Section 89-2(7), HRS, and are included in collective bargaining unit 11 (firefighters).

Complainant HFFA is the exclusive representative, as defined in Section 89-2(10), HRS, of employees in Unit 11.

Respondent Mayor Matayoshi is a public employer as defined in Section 89-2(9), HRS.

HFFA and Respondent are parties to the Unit 11 collective bargaining agreement.

In February, 1979, the Hawaii County Fire Department, through a Promotional Evaluation Board (hereafter "promotion board") consisting of the deputy fire chief and two battalion chiefs, reviewed the candidacies of ten certified eligible firefighters for promotion to six fire captain positions. The six positions were filled from this group. The four who were not promoted filed the complaint herein.

When they failed to be promoted, Complainant-firefighters initiated grievance proceedings against Respondent, alleging violations of Section 2, Discrimination, and Section 12, Promotions, of the bargaining agreement. Because their grievances were not resolved at Steps 1 and 2, said firefighters filed appeals to Step 3.

On April 17, 1979, Barney Menor, Deputy Managing Director of the County of Hawaii, wrote to Stanley Roehrig, attorney for Complainants, acknowledging each Complainant-firefighters' grievance at Step 3 and advising that he would serve as the Step 3 hearings officer and would be available to meet on April 27, 1979.

By letter dated April 23, 1979, Roehrig replied to Menor that his clients would be available on April 27, 1979 to commence Step 3 grievance matters but suggested that the meeting be considered a prehearing to narrow the issues so as to expedite the grievance process. Of particular relevance to the prohibited practice complaint herein, Roehrig stated at page 2 of said letter:

One of the principal questions which this Grievance is going to have to determine is whether or not the March 1, 1979, captains' promotions at the Hawaii County Fire Department were fair and done pursuant to the applicable provisions of the Collective Bargaining Agreement. In order for this to be determined, it is absolutely essential that I receive from the County as soon as possible all of the personnel records of those promoted as well as my clients'. In addition, I will need all written records of promotion evaluations done by Battalion [sic] Chiefs, Nagao, Akao, and Deputy Chief Shishido. Finally, I will need a copy of whatever written criteria for promotion may have been considered.

Relevant to the foregoing, the Unit 11 collective bargaining agreement, under Section 17, Grievance Procedure, states in pertinent part:

Any information in the possession of the Employer which is needed by the grieving party to investigate and process a grievance, shall be presented to the grieving party within three working days of the grieving party's request for such information.

By letter dated June 22, 1979, Roehrig advised Menor that, pursuant to the Step 3 grievance provisions at page 10 of the bargaining agreement, Complainants would not consent to any further extensions for Respondent's decision on the four grievances at Step 3.

By letter dated June 27, 1979 to Roehrig, Hawaii County Corporation Counsel Stephen Bess confirmed that at a meeting held on June 25, 1979 between Roehrig, Bess and Menor, Roehrig requested that the County proceed to arbitration rather than proceed any further with Step 3 grievance proceedings, and Menor and Bess indicated their willingness to go to arbitration. Of significance to the subject complaint, the last paragraph of Bess's letter stated:

We believe that each grievant's case should be considered separately. As such, we request that there be four separate arbitration proceedings. We are willing to proceed immediately with the selection of an arbitrator for the first case. Please inform us as to the names of any arbitrators you wish to hear the cases. Hopefully, the County may be able to agree to an arbitrator from the list of names submitted by you.

In a letter of July 24, 1979 to Bess, Roehrig stated his objections to the County's demand for four separate arbitration hearings and advised that the County had not complied with his April 23, 1979 request for documents needed to prepare for Complainants' grievances, in violation of the bargaining agreement. In the final paragraph of his letter, Roehrig stated:

If I do not hear from you within seven days from this date as to the availability

of the documents needed to prepare grievants' cases and as to an agreement to proceed to select one arbitrator to hear all four arbitrations, then I will take whatever actions as are available to my clients under the circumstances.

Complainants filed the prohibited practice complaint herein on August 27, 1979.

At the hearing on the subject complaint held on April 28, 1980, counsel for Complainants stated that the case presented four issues: (1) Whether the County had properly responded to the requirement in the collective bargaining agreement to produce within three days any information in the possession of the Employer which is needed by the grieving party to investigate and process the grievance. (2) Identification of the requested information. (3) Whether there should be one, two, three or four arbitration hearings relating to all four grievances filed pursuant to a promotion decision made effective March 1, 1979 for all grievants. (4) Whether the Board should retain jurisdiction pending the commencement of arbitration to ensure compliance with the Board's orders relating to arbitration, based on the language in Board Rule 3.10.¹ (I Tr. 11-12)

¹Board Rule 3.10 provides as follows:

The Board shall prepare a decision setting forth the findings of fact, conclusions of law and its order dismissing or sustaining the complaint, in whole or in part, and require the respondent to cease and desist from the prohibited practice found to have been committed, suspend his rights, immunities, privileges or remedies granted or afforded by the Act for not more than one year, and require him to take such affirmative action as will effectuate the purpose of the Act, including reinstatement of employees with or without pay as may be deemed proper. The order may further require such person to make reports from time to time showing the extent to which he has complied.

Board Chairman Hamada expressed his opinion that, relative to the first issue, the County would not deny that it failed to produce the information requested by Complainants. He also stated that the matter of jurisdiction is always within the Board's prerogative. Therefore, there were only two issues to be decided by the Board: (1) what documents should be produced by Respondent, and (2) whether there should be one or four arbitration hearings. Counsel for Complainants and Respondent agreed. (I Tr. 12-14)

The County and Complainants agreed to the production or non-production of certain of the documents requested by Complainants. (I Tr. 21-57)

The County ultimately refused to produce the following documents: (1) "tally sheets" prepared by each member of the promotion board in evaluating the ten applicants during the interview process; (2) personal notes made by each member of the promotion board as to how he arrived at each applicant's scores; (3) personnel files of the firefighters promoted; and (4) annual performance reports of the firefighters promoted, which are part of the personnel files. (I Tr. 57)

Complainants seek the tally sheets and personal notes of the promotion board to learn whether, in accordance with the Hawaii County Fire Department's Memorandum No. 78-13 on Promotion Policy (Complainants' Ex. 1-D), the factors of seniority and temporary assignment as captain were considered. Complainants claim substantial temporary assignment as captains and substantially greater seniority than those firefighters promoted. Complainants also seek to learn whether the Performance Appraisal Interview sheet (Complainants' Ex. 1-E) used in conjunction with the tally sheet was uniformly applied as to each applicant. (I Tr. 33-37, 59)

The Memorandum on Promotion Policy states in pertinent part:

The Promotional Evaluation Board, when considering an employee for promotion, shall consider the following:

- (a) Knowledge of job and accuracy.
- (b) Demonstrated ability, efficiency, and initiative.
- (c) Ability to accept responsibility.
- (d) Attitude toward the job and the County.
- (e) Ability to do the job.
- (f) Ability to get along with others.

The Board shall assess personal qualities such as appearance, manner, speech, self-confidence, tact, and judgment; personal record file for attendance, suspensions, charges, evaluation, and awards; training and experience (temporary assignment, past duty performances, and special assignments).

Seniority is a determination factor when ability is relatively equal.

A blank tally sheet is in evidence as Complainants' Ex. 1-H. It lists the ten applicants in a column at the left of the page. Across the top are five categories for evaluation: Order of Eligibility, Performance, Personal Relations, Supervisory, and Attendance.

The Performance Appraisal Interview sheet states in full:

A. Performance:

How well does this individual carry out his responsibility, knowledge of job, demonstrated ability to do the job, efficiency and initiative? Indicate your rating on the scale below.

[The scale under each category runs horizontally across the page and consists of a line divided into twenty boxed segments numbered from 1 to 20. The word "Unsatisfactory" is typed under boxes 1, 2, 3; "Satisfactory" under boxes 9, 10, 11; and "Excellent" under boxes 18, 19, 20.]

B. Personal Relations:

How does this individual get along with others; in the fire station - on the fire ground? Does he inspire team spirit in his group? Include in your consideration such factors as emotional control, positive attitude toward organizational objective, willingness to cooperate with fellow officers. Indicate your rating on the scale below.

C. Supervisory:

Does this individual have the capacity to assume leadership responsibilities? On the scale below, indicate your rating.

D. Attendance & Dependability:

Counsel for Respondent stated that he would be willing to turn over the requested personnel files and annual performance reports if counsel for Complainants obtained the consent of the firefighters involved. Counsel for Complainants stated that he contacted Steve Querobin, HFFA Hawaii Division Chairman, for such consent and was informed that none of said firefighters would voluntarily provide the requested information. (I Tr. 31, 35-36)

Pertinent to the question of separate or consolidated arbitration, Complainant-firefighters, in their Step 1 grievance forms, all alleged violations of Section 12, Promotions, of the bargaining agreement (II Tr. 32). In subsequent letters of appeal to the County, each complainant particularized his allegations, as follows:

(a) Manuel Veincent, Jr., claimed he was unjustly discriminated against when the reason given by Hawaii County Fire Chief Donald Thompson for his failure to be promoted was that he was selective in his area preference (South Kohala). There were three openings in South Kohala, and the County "promoted three inexperienced people from Hilo who knew nothing about the area." Two years previously, Veincent had

been promoted to fire equipment operator in South Kohala, which he had marked as his only area preference. (Bd. Ex. 1-0)

(b) William Yoeman claimed he was unjustly discriminated against in the promotion process because of his political activities, specifically, that he actively campaigned in 1976 for Dante Carpenter, Mayor Matayoshi's opponent. (Bd. Ex. 1-X)

(c) Robert Freitas alleged unjust discrimination when the reason given for his failure to be promoted was his sick leave record in 1976, 1977 and 1978. He claimed his sick leave hours were within the leave time he was entitled to. (Bd. Ex. 1-F)

(d) Hiram Kao based his Step 3 appeal on several reasons, the most pertinent of which were: (i) failure of the Promotional Evaluation Board to follow proper procedures; (ii) the Promotional Evaluation Board was not properly convened in that the full Board was not present; (iii) pursuant [sic] to Promotion Policy Memorandum No. 78-13, no credit was given for temporary assignment. (Bd. Ex. 1-S)

CONCLUSIONS OF LAW

The issues before this Board are: (1) what documents, if any, Respondent must furnish to Complainants, and (2) whether arbitration of the four firefighters' grievances is to be separate or consolidated.

Complainants base their right to the documents they deem necessary to pursue their grievances on the following provision of Section 17, Grievance Procedure, of the collective bargaining agreement:

Any information in the possession of the Employer which is needed by the grieving party to investigate and process a grievance, shall be presented to the grieving party within three working days of the grieving party's request for such information.

The information in dispute, which Complainants seek and Respondent refuses to produce, are: (1) the tally sheets and (2) personal notes used by the promotion board in evaluating the ten candidates for fire captain, and (3) the personnel files and (4) annual performance reports of the six firefighters promoted to captain.

The County's basis for withholding the foregoing is that it would be invading the sanctity of the examination process and the privacy of the firefighters whose records are sought. The County expressed its willingness to provide the requested personnel files and annual performance reports if Complainants obtained said firefighters' consent, but such consent was not forthcoming.

Complainants base their grievances on the contention that the promotions in question were not based on merit, contrary to Section 12 of the bargaining agreement on Promotions, which states in relevant part:

Promotions in the fire departments shall be made on the basis of merit, efficiency and fitness as ascertained by examination which, so far as practicable, shall be competitive.

Complainants seek the documents in question as relevant to their grievance allegations.

There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties. NLRB v. Acme Industrial Co., 385 U.S. 432, 435-36, 87 S.Ct. 565, 17 L.Ed. 495 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149, 76 S.Ct. 753, 100 L.Ed. 1027 (1956). If the requested data is relevant and therefore reasonably necessary, to a union's role as bargaining agent in the administration of a collective bargaining agreement, it is an unfair labor

practice for an employer to refuse to furnish the requested data. *Curtiss-Wright Corp., Wright Aero. Div. v. NLRB*, 347 F.2d 61, 68 (1965). However, a union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 99 S.Ct. 1123, 1131, 59 L.Ed.2d 333 (1979). Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met. *NLRB v. Truitt*, *supra*, 351 U.S. at 153-154, 76 S.Ct. at 756. The same may be said for the type of disclosure that will satisfy that duty. *Detroit Edison Co.*, *supra*, 99 S.Ct. at 1131.

In *Local 13, Detroit Newspaper v. NLRB*, 598 F.2d 267 (D.C. Cir. 1979), the appeals court discussed the duty of disclosure:

A broad disclosure rule is crucial to full development of the role of collective bargaining contemplated by the National Labor Relations Act. Unless each side has access to information enabling it to discuss intelligently and deal meaningfully with bargainable issues, effective negotiation cannot occur. (Cits. omitted.) Accordingly, the standard for assessing the relevancy of requested information to a bargainable issue is a liberal one, much akin to that applied in discovery proceedings. (Cits. omitted.) Under the Federal Rules of Civil Procedure governing discovery, "relevancy" is synonymous with "germane," and a party must disclose information if it has any bearing on the subject matter of the case. (Cits. omitted.) Any less lenient rule in labor disputes would hamper the bargaining process. 598 F.2d at 271-72.

Under the facts therein, the court held that information verifying the availability of substitute workers in a union's jurisdiction was relevant and necessary to meaningful bargaining, and that the union's failure to furnish such information constituted a breach of its duty to bargain in good faith.

In *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863 (9th Cir. 1977), the appeals court upheld a ruling of the National Labor Relations Board that where employees hired by an employer as a strike contingency force were not within the bargaining unit represented by the union, information concerning those individuals was not presumptively relevant and the union was required to make a showing of relevance before being entitled to information from the employer concerning those individuals. The court discussed the burden of proving relevance as follows:

When the Union requests information and the employer refuses, there arises the issue of who has the initial burden of proof as to the relevance of the information. The courts have held that certain types of information, such as wage data [sic] pertaining to employees in the unit, are so intrinsic to the core of the employer-employee relationship that such information is considered presumptively relevant (cits. omitted). In those cases, the employer has the burden to prove a lack of relevance, *Prudential Insurance Co. v. NLRB*, 412 F.2d 77, 84 (2d Cir. 1969), cert. denied, 396 U.S. 928, 90 S.Ct. 263, 24 L.Ed.2d 226 (1969), or to provide adequate reasons as to why he cannot, in good faith, supply such information [cf. cit. omitted]. Conversely, when the Union requests information which is not ordinarily pertinent to its performance as a bargaining representative, but which is alleged to have become so because of peculiar circumstances, the courts have required a showing of relevance by the Union before holding that the employer must comply with the request. *Prudential Insurance*, supra, 412 F.2d at 84. 548 F.2d at 867.

In *Prudential Insurance*, supra, the union was granted its request for the names and addresses of employees in the unit it represented, comprised of 16,795 district agents employed by the insurance company in 34 states, and where the annual rate of turnover was approximately 25%. The court held that such information was as intrinsic to the union's role in the employer-employee relationship as wage data, and therefore presumptively relevant.

In Curtiss-Wright Corp., supra, the union therein believed that the employer was misclassifying employees out of bargaining units, i.e., that employees classified as administrative, and therefore excluded, were actually doing work which should have been allocated to those in the bargaining unit. The employer refused the union's request for information concerning job classifications, job descriptions, and rates of pay of the excluded employees, contending that such information was not relevant to the union's performance as a bargaining agent of its unit employees. The court disagreed. Citing Boston Herald-Travel Corp. v. NLRB, 223 F.2d 58 (1 Cir. 1955) and Int'l. Woodworkers of America v. NLRB, 105 U.S. App. D.C. 37, 263 F.2d 483 (1959), the court held that:

. . . wage and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it, unless effective employer rebuttal comes forth; as to other requested data, however, such as employer profits and production figures, a union must, by reference to the circumstances of the case, as an initial matter, demonstrate more precisely the relevance of the data it desires. Thus, the standard, relevancy of the data, is the same for all cases, but the manner in which a union can demonstrate that its requests conform to the standard shift with the type of information desired.

Once relevance is determined, an employer's refusal to honor a request is a per se violation of the Act. 347 F.2d at 69.

To the employer's further claim that it was not required to divulge what it considered to be confidential data, the court stated:

. . . the relevance of the data requested in the instant case to appropriate representation of unit employees themselves was so well

established that confidentiality cannot serve as a shield to protect the Employer from the consequences of its refusal to divulge this relevant data. 347 F.2d at 71.

After reviewing the facts of the instant case, the Board makes an initial finding that while the information requested by Complainants is not presumptively relevant, Complainants have shown its potential relevance to their grievances.

However, the Board is mindful of the distinction between information which an employer may claim as confidential to itself and which may be overcome by a finding of relevance, as demonstrated in *Curtiss-Wright Corp.*, *supra*, and information which is confidential as being personal to individuals and protected by the right to privacy. As the court in *Detroit Edison Co.*, *supra*, stated: "The sensitivity of any human being to disclosure of information that may be taken to bear on his or her basic competence is sufficiently well-known to be an appropriate subject of judicial notice." 99 S.Ct. at 1133.

The County cited the *Detroit Edison* case, *supra*, in support of its position of rightful withholding of the requested information. The U. S. Supreme Court ruled therein that the employer did not commit an unfair labor practice when it refused to disclose psychological aptitude test scores requested by the union for grievance arbitration, without the consent of the employees involved. The union declined to seek such consent. There, the testing program was designed by the employer-company's industrial psychologists. The Company administered the tests to applicants with the express commitment that each applicant's test score would remain confidential. Test and test scores were kept in the offices of the Company's industrial psychologists who, as

members of the American Psychological Association, deemed themselves ethically bound not to disclose test information to unauthorized persons. Under this policy, the Company's psychologists did not reveal the tests or report actual test numerical scores to management or to employee representatives. The psychologists would, however, if an individual examinee so requested, review the test questions and answers with that individual. 99 S.Ct. at 1127.

Two salient points distinguishing the foregoing case from the case before us, however, are the employer's express commitment to the confidentiality of the test scores and the fact that neither the tests nor the numerical scores were revealed to management.

In the instant case, confidentiality was not an issue during the promotion process. The Board notes that Steve Querobin and Mr. Higashita, Union Recorder for the island of Hawaii, sat as observers at the promotion interviews of all the applicants. (II Tr. 4-9)

As to test scores, the County itself, through the promotion board, graded the applicants with numerical scores on tally sheets and used those scores in its promotion decisions. (I Tr. 68)

The Board concludes that the tally sheets are relevant and necessary to the subject grievances which allege irregularities in the promotion procedure, and that Respondent must provide them to Complainants. The scores recorded therein are not products of the individuals themselves but indices of management's subjective judgment of those individuals. The Board finds that the tally sheets do not reach the sensitivity of the psychological tests in Detroit Edison, *supra*.

The Board therefore holds that under the statutory duty of bargaining in good faith, Respondent must yield to Complainants' right to examine these basic documents from which the County made its promotion decisions.

Concomitantly, it is the Board's opinion that the promotion board members' personal notes, as a reflection of management's thinking and deliberation, are entitled to the shield of confidentiality argued by Respondent to protect the integrity of the examination process. The Board finds that, with regard to the promotion interviews, the tally sheets are sufficient evidence of the promotion board's evaluation of the candidates to aid Complainants in proceeding with their grievances. Therefore, the Board will not require that Respondent provide Complainants with said personal notes.

The Board also finds that the request for personal files is overbroad and raises the issue of an individual's right to privacy. The Board does not feel that relevancy as discussed herein may overcome the individual's interest in the confidentiality of his personnel file and therefore does not grant this request to Complainants. The Board acknowledges Complainants' willingness to have it examine in camera all documents for relevance prior to submission to Complainants (I Tr. 68), but this the Board declines to do.

The Board does grant to Complainants the annual performance reports, on the same grounds as discussed above in granting the tally sheets.

In summary, the Board finds that Complainants are entitled to be provided with the tally sheets and annual performance reports pursuant to their request. They are

not so entitled as to the promotion board's personal notes and personnel files of the firefighters promoted.

The Board turns now to the issue of whether arbitration should be separate or consolidated. Complainants ask for consolidation contending that the grievances each cited a violation of Section 12, Promotions, of the bargaining agreement, that essentially identical facts are involved, and that separate arbitrations would be time-consuming and costly. Respondent's position is that each grievant stated a different ground as to why he was not promoted and therefore separate arbitrations would be more appropriate.

The U. S. Supreme Court has held:

Once it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, "procedural" questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator. John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 557, 84 S.Ct. 909, 918, 11 L.Ed.2d 898 (1964).

In that case, the Supreme Court granted certiorari to determine whether arbitration provisions of a collective bargaining agreement survived a corporate merger so as to be binding against the present corporate employer, and if so, whether it was for a court or arbitrator to decide whether procedural prerequisites leading to arbitration under the bargaining agreement had been met. The court ruled that the former question, concerning the duty to arbitrate, was for the courts, while the latter question, concerning procedural matters, was for the arbitrator. The rationale for the latter conclusion was that in many cases the merits of the dispute and the question of grievance procedure would be intertwined "raising the same questions on the same facts." 376 U.S. at 557, 84 S.Ct. at 918.

In Tobacco Workers International Union, Local 317 v. Lorillard Corporation, 448 F.2d 949 (4th Cir. 1971), seven grievances were filed by female employees contending sex discrimination in different contexts. The court held, at 954:

Whether a group of employees who have an identical complaint must each file separate grievances or whether they can instead, in the interest of administrative convenience, choose a representative to file a single grievance for the entire group is clearly a question of grievance procedure which arises as a collateral issue to the substantive claim in the grievance and as such is a question to be decided by an arbitrator. John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 84 S.Ct. 909, 11 L.Ed.2d 898 (1964). (Footnotes omitted)

The Board views the question of whether arbitration herein should be separate or consolidated as a procedural matter and therefore rules that it should be decided by an arbitrator.

ORDERS

In view of the foregoing, the Board hereby orders and directs that:

(1) Respondent provide Complainants with: (a) the tally sheets used by the promotion board in evaluating the candidates for promotion to fire captain in February, 1979; and (b) the annual performance reports of the six firefighters promoted to fire captain as of March 1, 1979.

(2) The issue of whether arbitration is to be separate or consolidated shall be determined by an arbitrator.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD



Mack H. Hamada, Chairman



James K. Clark, Board Member



John E. Milligan, Board Member

Dated: June 18, 1980

Honolulu, Hawaii