

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
STATE OF HAWAII ORGANIZATION)	CASE NO. CE-12-63
OF POLICE OFFICERS (SHOPO);)	
FRANCIS C. DeMORALES; EDWIN)	
BACTAD; STEVEN T. BURKE;)	DECISION NO. 162
GORDON H. CHUN; GROVER G.)	
CHUN; LLOYD K. FAULKNER;)	
LEON GONSALVES; GEORGE J.)	
KAHOOHANOHANO; PATRICK)	
MALALA; JOHN W. PEIPER;)	
and LOUIS L. SOUZA,)	
)	
Complainants,)	
)	
and)	
)	
FRANK F. FASI, Mayor of the)	
City and County of Honolulu;)	
EDUARDO E. MALAPIT, Mayor)	
of the County of Kauai;)	
HERBERT T. MATAYOSHI, Mayor)	
of the County of Hawaii; and)	
HANNIBAL TAVARES, Mayor of)	
the County of Maui,)	
)	
Respondents.)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

On June 13, 1980, Complainants STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO) and FRANCIS C. DeMORALES, a police officer in the Hawaii County Police Department, filed with this Board a prohibited practice charge against Respondents HERBERT MATAYOSHI, Mayor of the County of Hawaii; Guy A. Paul, Chief of Police of the Hawaii County; and Edward L. Silva, Director of the Department of Personnel Services of Hawaii County. Complainants allege that Respondents unlawfully required Complainant DeMORALES to attend monthly SHOPO state board meetings and county chapter board of directors meetings on earned compensatory

time off or accrued vacation leave or leave without pay, rather than on regular work hours with pay. Complainants allege that this policy unlawfully reverses the clear and unbroken past practice under which SHOPO officials or delegates were permitted to attend state board and county chapter board meetings during working hours with pay, and without requiring them to use accrued compensatory time, vacation leave, or leave without pay. The complaint alleges that Respondents have committed prohibited practices in violation of Subsection 89-13(a), paragraphs (2), (5), (7), and (8), Hawaii Revised Statutes (HRS).

On July 2, 1980, the County of Kauai; its Mayor, EDUARDO E. MALAPIT; its Chief of Police, Roy K. Hiram; and its Director of Personnel Services, Herbert T. Doi, filed a Petition to Intervene as Party-Respondents. On July 3, 1980, the City and County of Honolulu; its Mayor, FRANK F. FASI; its Chief of Police, Francis A. Keala; and its Director of the Department of Civil Service, Harry Boranian, filed a similar Petition to Intervene.

The Board, in Order 332, dated July 11, 1980, finding that the Petitioners had a sufficient interest in the proceedings, granted intervention. The Board further directed, in view of said intervention, that Complainants file an Amended Complaint pursuant to oral instructions given Complainants at the prehearing conference.

An Amended Complaint was filed on August 8, 1980, naming FRANK F. FASI, Mayor of the City and County of Honolulu; EDUARDO E. MALAPIT, Mayor of the County of Kauai; HERBERT T. MATAYOSHI, Mayor of the County of Hawaii; and HANNIBAL TAVARES, Mayor of the County of

Maui, as Respondents, and naming as Complainants, besides DeMORALES, EDWIN BACTAD, STEVEN T. BURKE, GORDON H. CHUN, GROVER G. CHUN, LLOYD K. FAULKNER, PATRICK E. MALALA, JOHN W. PEIPER, and LOUIS L. SOUZA, police officers of the Honolulu Police Department; LEON GONSALVES, a police officer of the Kauai County Police Department; and GEORGE J. KAHOOHANOHANO, a police officer of the Maui County Police Department.

Complainants' Application for Requests for Admission and for an Order Shortening Time for Response was denied in Order No. 403, dated April 24, 1981.

Complainants' requests to reopen discovery, made in their Application for Taking Deposition Upon Written Interrogatories and for Issuance of Subpoena Duces Tecum, filed during the pendency of hearings, were denied in Order No. 415, dated June 29, 1980 [sic].

An amendment alleging that Respondents have continued their alleged unlawful denial of time off with pay up to the present was made to the Amended Complaint on April 21, 1981, and a further amendment, adding allegations of violations of Subsection 89-13(a), paragraphs (1) and (3), HRS, were made to the Amended Complaint on July 10, 1981.

At the conclusion of Complainants' case in chief, Respondents entered motions for directed verdict and dismissal. Said motions were denied by the Board.

The Board held hearings on the instant matter on April 2, 20, 21, 22, 23, 24; May 8; June 22; and July 14, 15, 16, and 17, 1981.

Upon a full review of the transcripts, exhibits and oral and written arguments, the Board makes the following findings of facts, conclusions of law, and order.

FINDINGS OF FACT

Complainants FRANCIS C. DeMORALES, EDWIN BACTAD, STEVEN T. BURKE, GORDON H. CHUN, GROVER G. CHUN, LLOYD K. FAULKNER, PATRICK MALALA, JOHN W. PEIPER, LOUIS L. SOUZA, LEON GONSALVES, and GEORGE J. KAHOOHANOHANO were, during all times material herein, public employees as defined in Section 89-2(7), HRS, and are in collective bargaining unit 12 (police officers).

Complainant SHOPO is and was, for all times relevant, the exclusive representative, as defined in Section 89-2(10), HRS, of unit 12 employees.

Respondents Mayor FASI, Mayor MALAPIT, Mayor MATAYOSHI, and Mayor TAVARES are public employers as defined in Section 89-2(9), HRS.

SHOPO and Respondents, on behalf of their respective counties, were and are parties to the unit 12 collective bargaining contracts covering the aggregate period July 1973 to June 1981. The first contract (Complainant's Exhibit 1-A or "C's Ex. 1-A") covers the period of July 1, 1973 to June 30, 1976. The second contract (C's Ex. 1-B) covers the period of July 29, 1976 to June 30, 1977. The third contract (Respondent Maui Exhibit 1 or "M. Ex. 1") covers the period of July 1, 1977 to June 30, 1979. The fourth contract (M. Ex. 2) covers the period of July 1, 1979 to

Paragraphs B and D are the provisions relevant to the instant proceedings and the provisions which Complainants allege entitle them to time off with pay to attend state and chapter board meetings. See infra.

In CBA II, the counterparts to CBA I, Article 8, paragraphs B and C are Article 8, paragraphs C, D, and E. CBA II, Article 8, reads as follows:

ARTICLE 8. LEAVES OF ABSENCE FOR
UNION BUSINESS

Leaves of absence without pay shall be in accordance with the then existing rules, regulations and statutes except those supplemented herein.

- A. Any employee elected or appointed to an office in the Union shall if such office requires his full time in the exercise and discharge of its duties, be given a leave of absence without pay not to exceed one (1) year. Extension may be granted by the Employer for a period not to exceed 12 months.
- B. Unless otherwise provided by law, no employee on leave of absence without pay shall be entitled to accrue or accumulate vacation allowance, sick leave, service credit for increments and longevity increases or other rights and benefits for the term of his leave but shall accrue seniority for the purpose of determining length of service.
- C. Any employee who is an elected or appointed official or delegate of the Union, if requested, may be granted earned compensatory time off or accrued vacation leave when the duties of his position with the Union require his participation at meetings, conferences, or conventions, including any reasonable travel time.
- D. The Employer shall make reasonable efforts to accommodate an elected or appointed official of the Union to attend monthly meetings of the State or County Board of which he is a member.
- E. The Union is required to notify the department head in writing at least a week in advance of the date of such meetings, conferences or conventions.

CBA II, Article 8, paragraph C, corresponds to CBA I, Article 8, paragraph B, the only difference material herein being the addition of the word "meetings" before the word "conferences."

CBA II, Article 8, paragraphs D and E in aggregate correspond to CBA I, Article 8, paragraph D. No changes material herein were made in these provisions.

In CBA III, no changes to provisions relevant herein were made:

ARTICLE 8. LEAVES OF ABSENCE FOR
UNION BUSINESS

Leaves of absence without pay shall be in accordance with the then existing rules, regulations and statutes except those supplemented herein.

- A. Any employee elected or appointed to an office in the Union shall if such office requires his full time in the exercise and discharge of its duties, be given a leave of absence without pay not to exceed one (1) year. Extension may be granted by the Employer for a period not to exceed 12 months.
- B. Unless otherwise provided by law, no employee on leave of absence without pay shall be entitled to accrue or accumulate vacation allowance, sick leave, service credit for increments and longevity increases or other rights and benefits for the term of his leave but shall accrue seniority for the purpose of determining length of service.
- C. Any employee who is an elected or appointed official or delegate of the Union, if requested, may be granted earned compensatory time off or accrued vacation leave when the duties of his position with the Union requires his participation at meetings, conferences or conventions including any reasonable travel time.
- D. The Employer shall make reasonable efforts to accommodate an elected or appointed official of the Union to attend monthly meetings of the State or County Board of which he is a member.

- E. The Union is required to notify the department head in writing at least a week in advance of the date of such meetings, conferences or conventions.

In CBA IV, Article 8, paragraphs C, D and E are the same as their CBA III counterparts, the only change material herein being the substitution of the phrase, "The Employer shall insofar as practicable," for "The Employer shall make reasonable efforts to" at the beginning of paragraph D. CBA IV, Article 8, reads as follows:

ARTICLE 8. LEAVES OF ABSENCE FOR
UNION BUSINESS

Leaves of absence without pay shall be in accordance with the then existing rules, regulations and statutes except those supplemented herein.

- A. Any employee elected or appointed to an office in the Union shall if such office requires his full time in the exercise and discharge of its duties, be given a leave of absence without pay not to exceed two (2) years.
- B. Unless otherwise provided by law, no employee on leave of absence without pay shall be entitled to accrue or accumulate vacation allowance, sick leave, service credit for increments and longevity increases or other rights and benefits for the term of his leave but shall accrue seniority for the purpose of determining length of service.
- C. Any employee who is an elected or appointed official or delegate of the Union, if requested, may be granted earned compensatory time off or accrued vacation leave when the duties of his position with the Union require his participation at meetings, conferences or conventions including any reasonable travel time.
- D. The Employer shall insofar as practicable, accommodate elected or appointed officials of the Union to attend meetings of boards and/or committees (Safety & Health Committee, Uniform & Equipment Committee, Legislative Committee and Stewards Committee) of which they are members.

- E. The Union is required to notify the department head in writing at least a week in advance of the date(s) of such meetings, conferences or conventions. In the event of a special or emergency meetings, notification may be made by telephone conversation followed by a written confirmation.

Also introduced into evidence was a written "Gentlemen's Agreement." City and County Ex. 4. This agreement had its genesis during the negotiations of CBA I, and was apparently finalized immediately following the negotiations on CBA I. Collective bargaining subjects which the parties discussed, but upon which no agreement was reached, and which the parties felt were not significant enough to warrant the slowing down of negotiations, were addressed in the agreement. The agreement is broken into eleven numbered paragraphs addressing eleven different articles in CBA I. It is unsigned and undated. The document was apparently drafted by SHOPO's chief negotiator for CBA I, Wallace Fujiyama, with the collaboration of the Employer's chief negotiator, Jack Reynolds. Paragraph (1) of the "Gentlemen's Agreement," the only paragraph relevant herein, reads:

1. Article 8-Paragraph D - Present practice regarding attendance at monthly union meetings on company time shall be permitted, if presently allowed.

Tr. IV, pp. 476-477, 488; Tr. VI, pp. 29-30, 34, 44.

Joseph Souza, a police officer from 1960 to 1974, and a SHOPO negotiator on CBA I, testified that the agreement was to be signed and ratified on the county level and made a part of the contract, but that that never occurred. Tr. IV, p. 489.

Clarence Scanlan, a SHOPO negotiator on CBA I, testified that the parties wished to address the "with pay" aspect of Article 8D in the agreement. Tr. VI, p. 23.

Frank Furcini, former SHOPO official and a member of the SHOPO negotiating team for CBAs I, II and III, testified that during the first of his two terms of office as SHOPO president, sometime in 1976, he repudiated the validity of the agreement because it was unsigned and communicated this repudiation to Harold Falk of the HPD administration. Tr. VI, pp. 90-110.

B. Employees' Testimonies Regarding Varying County Practices

The record indicates that the actual county-by-county practice regarding the type of leave taken for union business from the inception of the first SHOPO contract in 1973 up to the date of submission in the instant case is as follows:

Hawaii County

James Moniz, a lieutenant in the administrative services division, and chapter chairperson during the pendency of CBA I, testified that during this period he attended state and chapter board meetings on "administrative leave" and was never docked compensatory time or vacation leave to attend such meetings. Tr. II, pp. 40-45. Moniz stated that he believed that it was Article 8D that entitled SHOPO officials to attend union meetings on paid time. Tr. II, pp. 45, 57, 63, 83.

For chapter board meetings, a form entitled "Application for Leave of Absence to Perform Union Duties" would

be filled out indicating the date, time, and place of the meeting, which would then be submitted to his Operations Commander and forwarded to the chief for approval. C's Ex. 2; Tr. II, pp. 43-44. For state board meetings, SHOPO would send a letter to the Chief notifying him of the upcoming meeting and requesting that Moniz be permitted to attend, presumably on administrative leave. Tr. II, pp. 41-42. Moniz would receive back from the Chief a xeroxed copy of the letter, with some sort of notation granting permission to attend. Tr. II, p. 76.

FRANCIS DeMORALES, police officer and chapter chairperson from 1976 to 1980, testified that during the pendency of CBA II, he was allowed to attend both chapter and state board meetings during working hours without the loss of pay. Tr. V, pp. 9-10.

To attend chapter board meetings, a leave-of-absence form was submitted to his immediate superior, indicating the date, time and location of the meeting. C's Ex. 2; Tr. V, pp. 10-11.

To attend state board meetings, SHOPO would send a letter of notification to the Chief, who would initial it, and have his deputy and DeMORALES' immediate supervisor also initial it. Tr. V, p. 12.

DeMORALES also testified that during the pendency of CBA III, he attended chapter and state board meetings on company time. Tr. V, p. 13. The same application for leave procedures as he followed under CBA II were followed by him under CBA III. Tr. V, p. 14.

DeMORALES further testified that chapter and state board meetings were attended by him during working hours

without loss of pay during the pendency of CBA IV. Tr. V, pp. 14-15. However, in April of 1980, the police department, according to DeMORALES, received a letter from the Department of Personnel Services mandating that henceforth attendance at state board meetings would be without pay. Tr. V, pp. 16-17. Thereafter, DeMORALES filed for vacation leave or compensatory time off to attend state board meetings. Tr. V, pp. 50-51. DeMORALES, as of the date of his testimony, still attended chapter meetings on company time, however. Tr. V, p. 61.

Kauai County

Thomas Sheldon, a patrol officer and chapter chairperson in the years 1973, 1974 and 1975, testified that he attended chapter board meetings on "duty time" (Tr. II, p. 89) and state board meetings on "assigned temporary duty," i.e., "company time." Tr. II, p. 91. The county never charged him compensatory time off or vacation time to attend such meetings. Tr. II, pp. 93-94. He would visit the Chief's office to clear his attendance at chapter board meetings, after which an administrative notice was "posted, signed and endorsed" by the Chief. Tr. II, pp. 89-90. To attend state board meetings, he would be temporarily assigned to the Administrative Division, under the Chief. Tr. II, p. 91. A letter of notification would be sent to the Chief, which would come back to Sheldon via his immediate supervisor or watch commander. Tr. II, p. 103.

There are three watches in the scheduling scheme. The first watch: 11:00 p.m. to 7:00 a.m.; second watch: 7:00 a.m. to 3:00 p.m.; and third watch: 3:00 p.m. to 11:00 p.m. Tr. II, pp. 88-89. Sheldon testified that if

he was assigned to the first or third watch on a day when a state board meeting was being held during the second watch, he would attend the meeting after being placed on temporary assignment in the Administrative Division. Tr. II, pp. 112-113.

Officer William Kaauwai, chapter chairperson from October 1975 to June 1976, the successor to Sheldon and Alvin Yoshida (Tr. II, p. 123), testified that no leave was taken to attend chapter board meetings. He just reported to his supervisor that he was going to the meeting. Tr. II, pp. 117-118. The Chief's secretary would be notified of the meeting and she would make out an administrative notice which was sent to each board member and posted at each station. Tr. II, p. 118.

For state board meetings, the Chief was notified of the meeting in writing, by the union. Tr. II, p. 118. The Chief would in turn notify his secretary, who would notify the commander, who would notify the union official. The union official would also receive a copy of the letter. Tr. II, p. 124. He did not have to take compensatory time off or vacation time to attend these meetings. Tr. II, p. 119. The meetings were attended on temporary duty status. Tr. II, p. 123.

LEON GONSALVES, police officer and squad representative from 1973 to present and chapter chairperson from 1976 to present, testified that since 1973 he has attended chapter board meetings on company time and that from 1973 up to sometime in late 1979, he attended state board meetings on company time or "TDY." From 1979, he had to take vacation or compensatory time off. GONSALVES would notify his immediate supervisor of the impending chapter board

meeting and attend, without filing any form. For state board meetings, the procedure was the same with the addition of a letter of notification being sent from SHOPO to the Chief of Police. Tr. IX, pp. 4-9, 15-16, 21.

Maui County

Louis Cambra, a police officer from 1968 to 1979, and SHOPO chapter chairperson from July 1974 to June 1975, testified that he was given "special assignment" (SA) leave to attend chapter board meetings, a form of "on duty" leave. Tr. II, p. 131. In scheduling such a meeting, Cambra would contact the SHOPO office in Honolulu to have a notification letter sent to the Maui Chief, and also to contact his immediate supervisor to inform him of the meeting. Tr. II, p. 132.

Cambra also took special assignment leave to attend state board meetings. Tr. II, p. 132. The SHOPO office in Honolulu would inform the Maui Chief by letter or telephone of the meeting and Cambra would contact his immediate supervisor. Tr. II, p. 132.

Cambra has no knowledge as to whether the Chief himself specifically acted on such applications for leave. Tr. II, pp. 137-138.

Anthony Leroy Rocha, a police lieutenant, and SHOPO chapter chairperson during 1975 and 1976, indicated that compensatory time off and vacation time were not used to attend chapter board meetings. Board members would merely notify their commander and attend the meetings. Tr. II, p. 146.

Rocha testified that state board meetings were attended on SA leave. Tr. II, p. 147. SHOPO would notify the Chief by letter of the meetings. Tr. II, pp. 153-154.

Rocha testified that off-duty officials attended chapter board meetings on their own time. Tr. II, p. 160.

The aforementioned Joseph Souza, a police officer from 1960 to 1974, and Maui Chapter chairperson from approximately February 1973 to March of 1974, stated that county chapter board meetings and state board meetings were attended without using compensatory time off or vacation time, and after merely informing the Chief and immediate supervisor of the date and time of the meetings. Tr. II, pp. 177-179.

Joe Vegas, police officer and SHOPO chapter chairperson from February 1978 to December 1978, testified that he attended chapter board meetings on duty time after merely informing his immediate supervisor that he would be attending the meeting. Tr. III, pp. 212-214. Vegas also testified he took leave with pay to attend state board meetings. The SHOPO business manager would usually inform the Chief of the meeting by letter, usually a week or two in advance. Approval would be made, presumably by the Chief or his representative, and a copy of the approval sent to Vegas' division. In turn, his division commander informed him of the meeting and of the letter. Vegas also received a copy of the letter. Tr. III, pp. 215-218. His status for attending chapter board meetings was SA leave. Tr. III, p. 224.

He would fill out a "DF-1" form to gain permission to attend state board meetings. Tr. III, pp. 231,240.

Glen Nakashima, police officer and SHOPO chapter chairperson from late 1976 to early 1978, testified that he would merely inform his supervisor that he would be attending a chapter board meeting. No leave was applied for and

he was not required to take compensatory off time or vacation time. Tr. III, pp. 244-245. For state board meetings, the union sent a letter of notification to the "employer" and he "would get a copy." He would also submit a DF-1 form. C's Ex. 3; Tr. III, pp. 245-246. The form contains lines for approval signatures labeled "Supervisor," "Division Head," and "Department Head." Nakashima did not know the procedure for disposition of such applications, and whether the final approval for leaves of absence was given by the police department or by the Finance Department. Tr. III, pp. 309-310. He would take "leave with pay" to attend state board meetings. Tr. III, p. 247. He never was required to take compensatory time off or vacation time to attend chapter or state board meetings. Tr. III, p. 248.

Glenn Padua, a police officer and SHOPO chapter chairperson from January 1, 1979 to October 15, 1979, testified that he took leave with pay, on SA, to attend chapter board meetings. A "letter was sent" notifying the Chief of the meeting, and "notification" would also be made to his immediate supervisor. Tr. III, pp. 315-316.

Prior to April 1979, Padua took leave with pay, on SA, to attend state board meetings and was not required to take vacation or compensatory time off. Again, SHOPO would send a letter of notification to the Chief prior to the meeting. Tr. III, p. 317.

On April 9, 1979, Padua was informed by his patrol commander that he would be required to take either vacation or compensatory time off to attend the April 12, 1979 state board meeting. M. Ex. 3; Tr. III, pp. 318-323, 330. Padua was not informed by anyone as to why this change occurred. Tr. III, p. 324.

Padua also was required to take vacation or compensatory time off to attend state board meetings on April 20, 1979 and on an unspecified date in May 1979. Tr. III, pp. 334, 341. Padua filed a grievance protesting the alleged change in practice and was consequently "credited back" the three days of vacation or compensatory time off. Tr. III, pp. 341-342.

GEORGE J. KAHOOHANOHANO, police officer and chapter chairperson from October 15, 1979 to date, testified that to attend chapter board meetings, he takes no leave whatsoever, but is "on duty." He merely informs his immediate supervisor that he will be attending a meeting on the appointed date. Tr. IV, pp. 388-389. He is not, to his knowledge, put in any category such as "special assignment." Tr. IV, p. 408. He also testified that he was, as of the day of his testimony, still attending chapter board meetings on company time.

To attend state board meetings, KAHOOHANOHANO takes compensatory time off. His applications for leave with pay in January and February of 1980 were denied by Assistant Chief Teshima. A formal letter is customarily addressed to the Chief from SHOPO, informing him of the date, time and location of the impending meeting. City and County Ex. 3; C's Exs. 5, 6; Tr. IV, pp. 390-393, 447-550.

City and County of Honolulu

Frank Furcini, SHOPO president during the pendency of CBAs II and III, testified that he was "on duty" when he attended state board meetings during this period and that he received his regular pay while in attendance at meetings

occurring during his regularly scheduled work hours. C's Ex. 15; Tr. VI, pp. 75-76, 81-83. Certain application forms were filled out and routed to his immediate supervisor and/or unit commander to gain permission to so attend. C's Ex. 11, p. 8; C's Ex. 13; Tr. VI, pp. 76-77.

William Monteilh, police officer and chapter chairperson from 1976 to 1978, testified that under CBA II he attended chapter and state board meetings on Oahu on company time. He would fill out a form requesting time off and submit it to his watch captain. Tr. VIII, pp. 18-19.

Monteilh also attended union meetings using the same clearance procedures under CBA III. Tr. VIII, p. 20.

He would submit no claims for compensation for meetings attended during off-duty hours. Tr. VIII, p. 27.

Monteilh was unaware as to whether SHOPO also submitted a letter to the administration requesting that he be excused to attend meetings. Tr. VIII, p. 28.

GORDON CHUN, police officer and Director-at-large from 1973 through 1975, testified that he was given time off with pay to attend state board meetings during the pendency of CBA I. Tr. VIII, pp. 33-34. He customarily filed a request form with his supervisor indicating the date and time of the upcoming meeting. C's Ex. 11; Tr. VIII, p. 35.

CHUN also testified that he attended state board meetings using the same request procedures under CBA II. Tr. VIII, pp. 36-37. The same is true for CBA III, except that the request procedure differed in that he would merely notify his supervisor of the forthcoming meeting and his supervisor would then fill out the form. Tr. VIII, pp. 37-38.

Under CBA IV, CHUN, as SHOPO treasurer, attended state board meetings on company time until August of 1979, when Major Lester Akeo indicated to him that SHOPO meetings could no longer be attended on company time. Tr. VIII, pp. 38-39. However, CHUN testified to seeing a letter from Harry Boranian, Director of Civil Service, to Stan Burden, SHOPO Executive Director, dated January 20, 1978, permitting board members to attend state board and Oahu Chapter board meetings scheduled for the second watch on company time, "Based on the general pattern from the 1973 experience." C's Ex. 15; Tr. VIII, pp. 40-42. CHUN "made it known" that SHOPO would follow the Boranian letter permitting time off with pay. Tr. VIII, pp. 40-41.

CHUN also testified to seeing a second letter from Boranian to LOUIS SOUZA, SHOPO president, dated December 18, 1979, in which Boranian rescinded the January 20, 1978 letter, and established that effective November 20, 1979, the "practice of allowing Board members: administrative time off for attendance at Board meetings" was discontinued. C's Ex. 16; Tr. VIII, p. 41.

After seeing this letter, CHUN took vacation time to attend meetings. Tr. VIII, pp. 43, 73.

Eldon Kaopua, police officer, and Oahu Chapter board member from 1976 to present, testified that he attended chapter board meetings on company time for meetings scheduled while he was on duty. For meetings held during his off-duty hours, he attended on his own time. Tr. VIII, pp. 77, 80. Procedures to process requests were the same as those testified to by GORDON CHUN. Tr. VIII, p. 81.

Kaopua was also chapter chairperson from September to December of 1980 and testified that during this period he attended state board meetings on company time. Tr. VIII, pp. 81-82.

Immediately subsequent to the receipt of Boranian's December 18, 1979 letter, Kaopua was not affected by the change of policy because he attended meetings during off-duty hours. Tr. VIII, pp. 84, 87-88. Kaopua also testified, however, that he took compensatory time off or vacation time to attend state or chapter board meetings. Tr. VIII, p. 88.

As of the date of his testimony, Kaopua was receiving time-off with pay to attend "monthly board meetings" when working on the day shift pursuant to a letter from Mayor Eileen Anderson to Chief Francis Keala, dated March 6, 1981 which stated that board members should be granted a "reasonable amount of administrative leave" to attend board meetings occurring on day shift. C's. Ex. 18; Tr. VIII, pp. 85-87. Kaopua saw the letter at the SHOPO office. Tr. VIII, p. 86.

Kaopua has in fact been granted administrative leave to attend state and chapter board meetings subsequent to March of 1981. Tr. VIII, pp. 97-100.

C. Employers' Testimonies Regarding Varying County Practices

A misunderstanding between SHOPO and the counties as to the leave policy for attendance at union meetings is evidenced as follows:

Robert McCorrison, a personnel technician for the County of Maui, testified that in August of 1973, it was discovered that, unbeknownst to the Maui Department of

Personnel Services, SHOPO officials were attending board meetings on company time. The Maui Chief of Police was then instructed by the Department to discontinue the practice. Tr. IX, pp. 63-64, 73-74. McCorriston stated that the Department was thus surprised when Glenn Padua filed a grievance and prohibited practice complaint (not contested in the instant matter) protesting denials to attend board meetings on company time in 1979. Tr. IX, pp. 64-65.

McCorriston testified that the present practice of Maui County is to grant time off in accordance with Article 8C of CBA IV, i.e., to permit attendance on compensatory time off or vacation time. Tr. IX, p. 63.

Manabu Kimura, Deputy Personnel Director for the County of Maui, corroborated McCorriston's testimony. He stated that his Department's discovery in 1973 of the attendance by SHOPO union officials at union chapter and state board meetings on company time arose out of a written inquiry directed to all county personnel directors from Herbert Doi, Director of Personnel Services for the County of Kauai. Doi inquired as to county practices under Article 8D of CBA I and whether union officials were required to take compensatory time off or vacation time to attend state board meetings. M. Ex. 10. Maui's practice in this regard was thus investigated. After it was discovered that the police department was permitting SHOPO officials time off with pay to attend state board meetings, the Chief was advised that this practice should be discontinued. M. Ex. 11. The practice of allowing time off with pay was occurring "without our knowledge," Kimura testified. Kimura further testified that

Article 8D has always been interpreted to not permit time off with pay to attend union meetings. Tr. X, pp. 19-29.

In response to the testimony of Kimura, SHOPO's attorney asked Kimura why he did not simply refer Doi to the Gentlemen's Agreement provision that the existing practice would be allowed to continue. Kimura responded that Doi's inquiry was directed to the practice under the then existing contract (CBA I) and did not refer to the Gentlemen's Agreement. Tr. X, p. 28.

Wallace Kunioka, Assistant Director of Civil Service for the City and County of Honolulu, testified that he discovered in late 1977, pursuant to his own investigation, that SHOPO board members were attending board meetings on company time. He stated he was "surprised" to learn of the existence of the Gentlemen's Agreement and that the city was permitting this practice to occur. He decided that inasmuch as "the matter was not discussed," the policy would be permitted to continue for the duration of CBA III. He also stated that at that time he "made it very plain" to Stan Burden, the Executive Director of SHOPO, that "any continuance of that policy would have to be negotiated." Kunioka deposition, pp. 8-10 (admitted as evidence, Tr. 7/16/81, p. 80).

D. Intent of Parties During Negotiations

Clarence Scanlan, referred to supra as one of SHOPO's negotiators on CBA I, stated that throughout those negotiations, the union's intent was to permit its officials time off with pay to conduct union business while on duty and that such policy is embodied in Article 8D of CBA I.

Tr. VI, pp. 7-8, 20. Scanlan conceded however, that nowhere in Article 8 is it explicitly provided that union meetings be attended on company time. Tr. VI, pp. 33-34.

James Moniz, previously referred to as SHOPO's former Hawaii Chapter chairperson, testified that Article 8D of CBA I permitted attendance at board meetings on administrative time. Tr. II, pp. 40, 45-46, 56-57, 83. Joseph Souza's and Louis Cambra's testimonies were in accord. Tr. II, pp. 180, 153, 138-139. Anthony Rocha's testimony was also in accord, as to both CBA I and II. Tr. II, pp. 150, 169.

Frank Furcini, a member of the SHOPO negotiating team on CBAs I, II and III as referred to supra, testified that pursuant to Article 8D of CBA I, union officials were to be permitted time off with pay for board meetings. Tr. VI, p. 73. He further testified that the intent of the parties to CBA II was to continue to permit union officials time off with pay for union business. Tr. VI, p. 74. Furcini conceded that while such was the intent of CBA I, Article 8, it does not explicitly state that the employer shall allow employees time off with pay to attend monthly board meetings. Tr. VI, pp. 87-89.

LEON GONSALVES, previously referred to as SHOPO's Kauai Chapter chairperson and also a SHOPO negotiator on CBAs II, III, and IV, stated that Article 8D of these CBAs entitled him to attend SHOPO board meetings on company time. Tr. IX, pp. 40-41.

Glen Nakashima, previously referred to as SHOPO's Maui Chapter chairperson and also a negotiator on CBAs III and IV, testified as to CBAs III and IV, Article 8D, i.e., that the "special assignment" or SA status on which officers

were placed to attend board meetings were grants of leave such as were covered by Article 8D. Tr. III, p. 280.

FRANCIS DeMORALES, referred to supra as SHOPO's Hawaii Chapter official and also a SHOPO negotiator on CBAs III and IV, testified that Article 8D of CBA IV provides for company time to attend union meetings. He stated that Article 8D, requires the employer to, "insofar as practicable," accommodate the attendance of officials at board meetings, and specifically covers "meetings of boards," whereas Article 8C, permits employees to take compensatory time off or vacation time to attend "meetings, conferences, or conventions." If it had been intended that officials take compensatory time off or vacation time to attend board meetings, such intent would have been embodied in Article 8C, DeMORALES testified. Tr. V, pp. 19-20, 34-35.

Curtis Uno, a negotiator for SHOPO on CBA IV, agreed with DeMORALES' interpretation of Article 8D of CBA IV as applied to both CBAs III and IV, i.e., that it permits union officials to attend board meetings on company time. Tr. V, pp. 98-99. He also agreed with the rationale for the distinction between Articles 8C and 8D (in CBA III), i.e., that Article 8C, regarding the taking of compensatory time off or vacation time to attend meetings, is general, while Article 8D, referring to board meetings, is more specific, and therefore controls. Tr. V, p. 101. Uno stated however, that at negotiations for CBA IV, he took the position that the word "accommodate" in Article 8D did not include the granting of time off with pay, but was more concerned with manning and scheduling considerations. Tr. V, pp. 101-105. Uno took this position, he explained,

since it was "presupposed" that the "officials" referred to in Article 8D were getting time off to attend state board meetings since paragraphs A through E in Article 8 were all exceptions to the lead paragraph concerning leaves of absence without pay. Tr. V, pp. 101-105.

Allan Tanigawa, Deputy Director of Personnel Services for the County of Kauai and the Employer negotiator on CBAs II, III, and IV, likewise testified that the word "accommodate" in CBA IV is addressed to "management scheduling" and not "free time." Tr. X, p. 79.

A meeting between SHOPO representatives and Employer representatives occurred, at SHOPO's request, sometime in February 1980, at the Office of Collective Bargaining, to have the employer to "listen to what [SHOPO] had to say," regarding Article 8, among other concerns. SHOPO asserted its desire that the practice of allowing time off with pay for union business be continued. Concerns raised by SHOPO were answered by letter, dated March 14, 1980, signed by Harry Boranian, Director of Civil Service, City and County of Honolulu. C's Ex. 20; Tr. IX, pp. 13-15, 33; Tr. V, pp. 17-18, 43-45; Tr. X, pp. 33-35. In this letter, Boranian, "on behalf of all concerned jurisdictions," stated that the practice was "abolished with the advent of the present collective bargaining agreement in effect" (CBA IV).

CONCLUSIONS OF LAW

Complainants allege in their Complaint, as amended, that the Employer's denial of paid time off for SHOPO officials to attend chapter and state board meetings

is a violation of Subsection 89-13(a) paragraphs (1), (2), (3), (5), (7) and (8), HRS. This Subsection in pertinent part provides:

Section 89-13. Prohibited practices; evidence of bad faith.
(a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;

* * *

- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

* * *

- (7) Refuse or fail to comply with any provision of this chapter; or
- (8) Violate the terms of a collective bargaining agreement.

Complainants argue in their briefs that the subject of leaves of absence to conduct union business is a mandatory subject of bargaining. Complainants' Reply Brief, at pp. 8-11. Complainants argue that, in altering the alleged past practice of allowing SHOPO board members company time to conduct union business without formal notice, Respondents have breached the duty to bargain collectively in good faith as enunciated in Subsection

89-9(a), HRS,¹ and thus have violated Subsection 89-13(a)(5), HRS. Complainants' Post-Hearing Brief at 2-4.

Complainants argue that in unilaterally revoking the alleged past practice, Respondents have violated the meet-and-confer requirements of Subsection 89-9(c), HRS,² which require that the employer consult with the exclusive representative on matters affecting employee relations and on major policy changes affecting employee relations. Complainants maintain that this constitutes a violation of Subsection 89-13(a)(7), HRS. Post-Hearing Brief at 5-9.

Complainants argue further that Article 8, viewed in light of the alleged prevailing past practice, allows board members company time to conduct union business. In unilaterally terminating this contract right of board members, Respondents have violated Subsection 89-13(a)(8), HRS. Post-Hearing Brief at 10.

Complainants also raise the argument that Subsection 76-101(10), HRS, is applicable to this case. This Subsection provides:

Elected officers of duly recognized
employee organizations and employee

¹Section 89-9(a) Scope of negotiations. (a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, and other terms and conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.

²Section 89-9(c) Except as otherwise provided herein, all matters affecting employee relations, including those that are, or may be, the subject of a regulation promulgated by the employer or any personnel director, are subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every

representatives or shop stewards designated by an employee organization shall have a reasonable amount of time off during working hours to carry out the duties of their office, as determined by the employer, without loss of pay or benefits. [Emphasis added.]

The alleged past practice is an indication of what is "reasonable" under this provision, Complainants argue, and thus a departure from the alleged past practice is a violation of this section. Reply Brief at 14-15.

A motion to dismiss on grounds of a statute of limitations violation by Complainants was made by counsel for Respondent FASI during the hearing on April 20, 1981, which was joined in by counsel for Respondents TAVARES, MALAPIT and MATAYOSHI. Tr. I, pp. 24-28. Upon a subsequent renewal of the motion at a later hearing date, the motion was denied. Tr. X, pp. 72-76. The Board now proceeds on to address the substantive issues in the case.

A. Violations of Subsection 89-13(a), Paragraphs (1), (2) and (3), HRS

Complainants do not advance any argument in support of their allegations of the above-referenced violations of paragraphs of Subsection 89-13(a), HRS. The Board notes that Complainants attempted to "highlight only the more blatant violations of Section 89-13, HRS" for the "sake of efficiency and economy" in its Post-Hearing Brief, filed on August 6, 1981. Respondents argued in their Answering Brief, filed on August 31, 1981, that Complainants had failed to produce sufficient evidence to support each and

(Footnote 2 continued)

reasonable effort to consult with the exclusive representatives prior to effecting changes in any major policy affecting employee relations.

every allegation of its complaint. However, Complainants again wholly failed to address the above-referenced arguments in its Reply Brief, filed on September 16, 1981.

The Board's Administrative Rules Section 12-42-8(g) (16) provide in pertinent part:

The charging party, in asserting a violation of chapter 89, HRS, or this chapter, shall have the burden of proving the allegations by a preponderance of the evidence.

Clearly, Complainants have the burden to prove their allegations of Chapter 89 violations by a preponderance of evidence. It is not for this Board to formulate legal arguments for Complainants where they are, as here, represented by presumably competent legal counsel. Because of Complainants' repeated failure to adequately support their alleged violations of Subsection 89-13(a), paragraphs (1), (2) and (3), HRS, factually and legally, the Board dismisses said charges for the failure to establish a prima facie case.

B. Violation of Subsection 89-13(a) (5),
HRS

Though mindful of the hardship imposed on SHOPO officials by the requirement that compensatory time off or vacation time, rather than time off with pay, be used to attend board meetings, the Board agrees with Respondents' positions in the application of Article 8 in the instant controversy. Article 8C of CBA IV (and its equivalents in CBAs I, II, and III, i.e., Articles 8B, C and D respectively) is clearly the contract provision most pertinent to the issue at hand. It explicitly permits the employer to grant compensatory time off or vacation time to

union officials attending meetings, conferences or conventions. It clearly does not require the employer to grant such officials time off with pay to attend such meetings. The absence of the word "meetings" from CBA I hardly lessens this conviction as the provision is patently devoid of a requirement that company time be granted. The language of this provision is clear and unambiguous and does not lend itself to Complainants' interpretation.

It is just as clear that Article 8D of CBAs I, II, III and IV is not determinative of the issues at hand. This article contains no requirement that union officials be given time off with pay to attend SHOPO board meetings. The "accommodation" required of the employer under this section is most properly regarded as referring to scheduling and manning considerations, totally divorced from considerations of the type of leave to be granted to union officials attending union meetings and of whether such leave is to be taken with or without pay. Curtis Uno, SHOPO negotiator for CBA IV, conceded this in testimony. Allan Tanigawa, Deputy Director of Personnel Services for the County of Kauai, and Employer negotiator on CBAs II, III, and IV, also asserted this position as to CBA IV. Tr. V, pp. 101-105; Tr. X, p. 79.

As far as the instant controversy is concerned, Article 8 of CBAs I, II, III and IV are clear and unambiguous and their application is straightforward. Respondents merely assert clear and unequivocal contractual rights in requiring Complainants to take compensatory time off or vacation time to attend chapter and state board meetings.

That certain county police departments may have had ad hoc policies permitting time off with pay for some

given period of time does not alter these conclusions as the law is clear that unambiguous contractual language controls despite a varying practice.

These principles are now to be explained:

(1) The written language of a contract provision, if clear and unambiguous, best and solely reveals the intendment and contemplation of the Parties when they wrote it. (2) No amount of practice contrary to the clear language of a written contract provision can prevail over the latter. Even clear-cut practice of long duration and mutual acceptability does not have the force and effect of written contract language when in conflict with the latter and when, as here, one of the Parties wishes to abrogate the practice and stand on the written contract. (3) In the construction of written contract language, practice has validity and utility only when said language is obscure and ambiguous, thus admitting of two or more interpretations. In such case the intendment of the Parties cannot surely be divined; and therefore clear practice of long and mutual acceptability is of substantial help for discovering what the unclear language was meant to say. [Emphasis added.]

In Re National Carloading Corp. and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, 48 L.A. 1355, 1357 (1967). The past practice doctrine is limited to ascertain intent of the parties "which otherwise would remain unascertainable." In Re AMF Western Tool, Inc. and United Automobile, Aerospace and Agricultural Implement Workers of America, 49 L.A. 719 (1967). Thus Complainants' argument that past practice has altered the applicable contractual provisions is rejected.

Even if an examination of the alleged past practice on a state-wide basis is warranted on the basis that the contract language is ambiguous, the testimony and evidence adduced at hearings clearly show that criteria

developed to determine whether a past practice exists were not met.

One formulation for establishing a past practice requires the following to be shown:

(1) clarity and consistency of the course of conduct, (2) longevity and repetition, (3) underlying circumstances, (4) acceptability and (5) mutuality. (Mittenthal, Past Practice and Administration of Collective Bargaining Agreements, Arbitration and Public Policy, at 32, 33. Respondents' Answering Brief at 17.

See also In Re Celanese Corp. of America and Textile Workers Union of America, Local 1093, 24 L.A. 168, 172 (1954) holding that past practice, to be binding on parties, must be: (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both parties.

Complainants do not address the question of whether the conduct of the parties and attendant circumstances amount to a past practice but rather assume in their arguments that the past practice exists. Based upon a review of the relevant evidence presented, the Board concludes that Complainants have failed to meet the burden of proving their position on this issue by a preponderance of the evidence. Administrative Rules, Section 12-42-8(g)(16).

Various Complainants testified, for example, that the practice varied from department to department and even within departments (Scanlan, Tr. VI, p. 30), and that getting time off with pay was a problem "from the day this union started" (Furcini, Tr. VI, pp. 69-71). There was also testimony that time off with pay was continued on Kauai. Tr. IX, p. 9. There was further testimony that the

practice has been reestablished in the City and County pursuant to a directive issued by Mayor Anderson. Tr. VIII, pp. 85-87. Manifestly, there has been no clarity of the alleged practice. Consistency of the practice as to those allegedly eligible is in doubt also, as Complainants failed to prove that all eligible officials participated in the alleged practice.

Clarity and consistency being in doubt necessarily casts doubt on the longevity and repetition of the alleged past practice.

Under the rubric of "underlying circumstances," the Gentlemen's Agreement requires consideration. The Agreement's provision that the allowance of meeting attendance on company time may continue, "if presently allowed," implicitly recognizes that the practice may in fact vary county-by-county, and thus militates against a finding of a past practice.

Acceptability and mutuality, finally, are clearly not present as Respondents' witnesses testified that the practice, such as it was, existed without their knowledge. In this regard, Kunioka testified that the City and County of Honolulu became aware of the practice in late 1977. Kimura testified that he thought Maui had terminated the practice in 1973.

The Board therefore concludes that Respondents have not violated Subsection 89-13(a)(5), HRS. Since no past practice was proved to exist, the denial of such allowance does not amount to a failure to bargain collectively under Section 89-9, HRS, and thus Subsection 89-13(a)(5), HRS, has not been violated.

C. Violation of Subsection 89-13(a)(7),
HRS

Complainants contend that the unilateral revocation of the alleged past practice by Respondents violated the meet-and-confer requirements of Subsection 89-9(c), HRS. Complainants propose that the subject matter is a mandatory subject of bargaining and requires negotiations prior to modification of the practice. Alternatively, Complainants argue that the subject requires consultation and that consultation was not afforded in this case.

Regardless of whether bargaining on the subject matter here is mandatory or permissive, the Board concludes that Article 8 of CBA IV addresses the concerns of the parties with regard to the issue. There being a specific provision in the applicable contract, further negotiations on this matter are unnecessary. As discussed in the previous section, any modification in practice is immaterial in light of the specific contract language pertaining to this issue. Mere adherence to the contract terms does not constitute a prohibited practice.

Moreover, as no past practice was proved to have existed, the Board concludes that Respondents have not violated the duty-to-consult provisions of Subsection 89-9(c), HRS, as there was no change in "past practice" from which a duty to consult could arise. However, even if a past practice was found to have existed, the Board finds that the duty to consult was satisfied by the meeting at the Office of Collective Bargaining (OCB) on February 29, 1980. The time-off-for-union-business issue is not a "major policy affecting employee relations," as the nexus between leave for union business and Complainants' status as police

department employees is relatively tangential. See Hawaii Firefighters Association, Local 1463 v. State of Hawaii, 1 HPERB 650 (1977); Hawaii Federation of College Teachers v. Board of Regents, University of Hawaii, 1 HPERB 381 (1973); Sage v. Board of Regents, 1 HPERB 496 (1974). As a "matter affecting employee relations," the issue was adequately discussed at the OCB meeting where SHOPO was able to freely present its views and was informed that a written response would be presented, which subsequently was provided.

Complainants argue at page 9 of their Post-Hearing Brief that the OCB meeting should not be regarded as an adequate consultation under Subsection 89-9(c), HRS, because there was no "free-flowing" exchange of ideas. However, it is obvious from the history of the controversy regarding the time-off-for-union-business issue that the OCB meeting was, at the time of its occurrence, a culmination of the ad hoc exchange of views occurring sporadically in the various county jurisdictions which began at the negotiations for CBA I. Tr. X, pp. 33-35; Tr. IX, pp. 13-15. No resolution of differences is required by the duty to consult. Sage v. Board of Regents, supra; Jahne Hupy v. George Ariyoshi, et al., 1 HPERB 689 (1977). The fact that the meeting was requested by the employees does not, in this case, attenuate the conclusion that the meet-and-confer requirements were met. Hawaii Federation of College Teachers v. Board of Regents, University of Hawaii, supra. Although the Sage decision, supra, at p. 511, requires the employer to initiate consultation, where adequate consultation occurs without employer initiation, the issue of who initiated the consultation becomes moot.

Based on the above discussion, the Board concludes that Respondents have not violated Subsection 89-13(a)(7), HRS.

D. Violation of Subsection 89-13(a)(8),
HRS

Lastly, Complainants contend that Respondents violated various provisions of the applicable collective bargaining agreement, to wit, Articles 8, 25 and 35, thereby committing a prohibited practice. Complainants premise the Article 8 violation upon an alleged ambiguity in the language of Article 8, evidenced by the intent of said provision and the conduct of Respondents from 1973 to 1979. While they admit that the provision is not "explicit" in granting SHOPO board members company time to conduct union business, they argue that the alleged past practice should be used to interpret the ambiguous language.

Respondents, on the other hand, maintain that the language in Article 8 is unambiguous. As such, any past practice is irrelevant as an aid to contract interpretation. Moreover, Respondents argue that reconciliation of the relevant contract provisions, i.e., paragraphs C and D of Article 8 of CBA IV, indicates that SHOPO officials are not entitled to attend board meetings on company time. Alternatively, Respondents contend that the Complainants' argument is inapposite in light of and unsupported by, the negotiations history of the foregoing provisions.

Complainants' allegations of Articles 35 and 25 violations also involve primarily contract interpretation, although an issue is raised as to the construction of Subsection 76-101(10), HRS. Complainants contend that there

is a statutory entitlement to company time which is preserved by and incorporated into the agreement. Violation of the statute, therefore, Complainants argue, constitutes a violation of the agreement and, therefore, a violation of Subsection 89-13(a)(8), HRS.

Under the facts presented in this case, the Board concurs with Respondents' position.

As discussed supra, Article 8C of CBA IV expressly permits the employer to grant compensatory time off or vacation time to union officials attending meetings, conferences or conventions. Contrary to Complainants' position, we find the language of the agreement to be clear and unambiguous; therefore, any interpretive aids for the contract language is not resorted to. Elkouri, How Arbitration Works, 3d Ed., at 303; H. Hackfeld & Co. v. Grossman, 13 Hawaii 725 (1902); Calderon v. Atlas S. S. Co., 170 U.S. 272, 18 S.Ct. 588, 42 L.Ed. 1033 (1898). Therefore, evidence of a past practice, if established, is irrelevant.

Moreover, the Board finds that Article 8D of CBA IV is not a basis upon which to support a claim that SHOPO officials are entitled to company time to attend board meetings. The Board regards the provision as referring to accommodation in scheduling and manning, rather than being determinative as to the type of leave granted, especially when the foregoing contract provision addresses that issue.

In addition, even if the Board had agreed with Complainants that there was ambiguity in the contract language, the evidence submitted as to the negotiations history of Article 8, the Gentlemen's Agreement and its repudiation by then-SHOPO President Furcini, militate

against the interpretation urged by Complainants.

(Respondents' Answering Brief, pp. 35-41.)

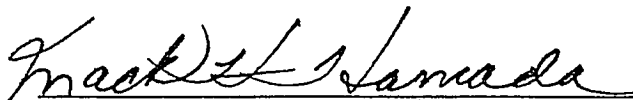
Further, the Board rules that Subsection 76-101(10), HRS, does not create a statutory entitlement to attendance at board meetings on company time, which is arguably maintained and incorporated into Articles 35 and 25 of the CBA IV. The statute provides for a "reasonable" amount of time off, without reduction in pay, for officers of employee organization to carry out their duties. As the evidence is totally deficient with regard to the time off requested and denied for the performance of other duties, the Board is not able to conclude that Respondents' refusal to grant time off with pay for board meetings constitutes a statutory violation. Hence, those charges of contract violations are dismissed based upon the evidence presented.

ORDER

For the foregoing reasons, the prohibited practice charges brought by Complainants are hereby dismissed.

DATED: Honolulu, Hawaii, June 17, 1982.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member

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