

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-12-57
)	
HONOLULU POLICE DEPARTMENT,)	DECISION NO. 284
City and County of Honolulu,)	
)	FINDINGS OF FACT, CONCLU-
Complainant,)	SIONS OF LAW AND ORDER
)	
and)	
)	
STATE OF HAWAII ORGANIZATION)	
OF POLICE OFFICERS (SHOPO),)	
)	
Respondent.)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On June 25, 1987, the HONOLULU POLICE DEPARTMENT, City and County of Honolulu [hereinafter referred to as CITY, HPD or Employer] filed a prohibited practice complaint with the Board. Complainant CITY alleged that the STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS [hereinafter referred to as SHOPO] violated Subsections 89-13(b)(2) and (5), Hawaii Revised Statutes [hereinafter referred to as HRS], by reneging on a settlement agreement reached on the eve of the arbitration of the grievance of Richard C. Kadota.

On July 9, 1987, Respondent SHOPO filed its answer with the Board. Therein, Respondent indicated that Complainant failed to state a claim upon which relief can be granted; that the Board lacked jurisdiction over this matter; that Complainant has failed to exhaust contractual remedies; denied that it had refused to bargain in good faith with Complainant; denied that it had

refused to participate in good faith in the grievance settlement dispute; and denied that it had violated the terms of the collective bargaining agreement.

A hearing was held on August 15, 1988. Briefs were filed by both parties.¹

Based on a full consideration of the record in this case, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Complainant HPD was at all times relevant the public employer as defined in Section 89-2, HRS, of Richard C. Kadota.

Respondent SHOPO is the exclusive representative as defined in Section 89-2, HRS, of bargaining unit 12 members which includes Richard C. Kadota.

Richard C. Kadota was at all times relevant a police officer with the Complainant HPD and a member of bargaining unit 12.

Kadota was terminated from the HPD. His grievance was scheduled for arbitration on June 8, 1987. Deputy Corporation

¹At the hearing in this matter which was held on August 15, 1988, it was understood that written briefs would be due ten days after the receipt of the transcripts. The transcript was filed with the Board on August 24, 1988, therefore the briefs were due for filing with the Board by September 6, 1988 because of intervening weekends and holidays. Respondent SHOPO's brief was filed on September 6, 1988. Complainant's brief was filed on September 12, 1988 without conforming to provisions of Administrative Rules Section 12-42-8(17)(D). As Respondent SHOPO has not objected to the late filing of Complainant's brief, we have considered the arguments contained therein. However, we would caution the CITY's attorney to follow the applicable procedures hereafter.

Counsel Jonathan Chun represented the Employer and Michael Kaneshiro, Esq., represented Kadota and SHOPO. Transcript [hereinafter referred to as Tr.] pp. 12-13. Chun testified he engaged in settlement negotiations with Kaneshiro at the pre-hearing conference and thereafter. Tr. pp. 14-15. On the morning of the arbitration, Chun offered that Kadota could, in lieu of termination, resign with no reemployment rights and receive a sum of money. Chun represented that unless the settlement was reached on that day, the Employer would not permit the continuance of the arbitration hearing. Tr. pp. 15-16. Kaneshiro requested a continuance for another week; Chun said this was unacceptable. Kaneshiro then asked for a continuance up until 12:00. Chun agreed to a continuance until 1:00 p.m. and indicated that if no agreement was reached, the parties would go on with the hearing at 1:00 p.m. Tr. p. 16. According to Chun, at 1:00 p.m. Kaneshiro told him that portions of the settlement agreement were acceptable; Kadota would resign from the police force and waive his rights of reemployment; but Kadota wanted a few questions answered about that. Kaneshiro also requested a substantial amount of backpay. Chun said this was not authorized; he would have to go back to the Employer. Tr. p. 17. Thereafter, Chun met with Fukuda and spoke with Chief Gibb over the phone. This took approximately 45 minutes. The final amount of backpay that the Employer agreed to was \$6,000.00.

Chun testified that Kaneshiro called Kadota in and they met in the stairwell of the Civil Service building. Kaneshiro explained the settlement agreement. After discussing the terms,

Kadota said, "Okay, it sounds good, let's go with it." Tr. p. 19. The parties shook hands on the terms of the agreement and proceeded into the hearings room. Tr. p. 20. Chun informed Arbitrator Walter Ikeda that the parties had reached an agreement and he requested that the agreement be put on the record. Kaneshiro indicated that he did not want to put the agreement on the record. Ikeda then indicated that it was his understanding that the parties had reached a tentative agreement in the matter. Tr. p. 21. According to Chun, the substantive parts of the agreement were all settled and no further negotiations were needed. Tr. pp. 22-23.

Approximately two days later, Chun received a phone message from Kaneshiro stating that Kadota had changed his mind and he wanted to go to arbitration. Tr. p. 24. Subsequent to the telephone call, Kaneshiro wrote Chun that SHOPO was not going to follow through with the agreement based upon the discovery of new evidence. Tr. p. 27. When Chun asked Kaneshiro for the new evidence, Kaneshiro did not give him an answer. Tr. p. 47.

Chun indicated the Employer insisted on going to arbitration on that particular day because the witnesses were hard to contact, unemployed, or did not have permanent addresses. Tr. p. 35. In addition, one witness was leaving for Maui and would not be available for several weeks. Tr. pp. 36-37. Further, the incidents precipitating Grievant's termination occurred approximately in the late 70's and early 1980's. Thus, the witnesses had difficulty remembering the events. Tr. p. 42.

Kaneshiro testified that he represented Kadota at the arbitration hearing. Tr. p. 69. Kaneshiro did not subpoena any witnesses for that day. Tr. p. 70. Kaneshiro considers the case still set for arbitration except the hearing date is not scheduled. Tr. p. 72.

CONCLUSIONS OF LAW

Complainant alleges that SHOPO entered into a settlement agreement moments before an arbitration hearing was to begin in bad faith, i.e., with no intention of following through with the terms. Complainant argues that SHOPO thereby violated Subsections 89-13(b) (2) and (5), HRS. These subsections provide:

Prohibited practices; evidence of faith.

* * *

(b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

* * *

(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9;

* * *

(5) Violate the terms of a collective bargaining agreement.

The facts in this case clearly indicate that the Grievant Kadota was terminated from the HPD. After his grievance was denied at the lower steps, the case proceeded to arbitration. Walter Ikeda was selected as the arbitrator and a hearing date of June 8, 1987 was agreed upon. Prior to that date and continuing

on that date, settlement negotiations were entered into. A tentative settlement was reached and the arbitrator recessed the proceedings. It appears that all material terms of the settlement were agreed to. Two days later, SHOPO counsel Kaneshiro telephoned Chun leaving a message indicating that Kadota had changed his mind and wanted to proceed to arbitration. Chun returned Kaneshiro's telephone call and asked him why Kadota had changed his mind. Kaneshiro told Chun that Kadota changed his mind and he could not control his client. Thereafter, Kaneshiro sent Chun a letter stating that SHOPO was not going to follow through with the agreement because of the discovery of new evidence. When Chun requested the new evidence of Kaneshiro, he did not provide any.

Complainant contends that SHOPO acted in bad faith by entering into a tentative settlement agreement to somehow forestall the arbitration in this matter. Complainant relies on Olinkraft, Inc., 73 LA 194 (1979). In that case, the question before the arbitrator was whether the grievant had the right under the collective bargaining agreement to arbitrate the merits of his grievance after concurring in a settlement agreement negotiated by his collective bargaining representative with his active participation. The primary issue there was one of arbitrability. The grievant in that case was discharged and after negotiations, accepted a ten-day suspension in lieu of discharge. Thereafter, once the suspension was imposed, the employee filed a grievance protesting the ten-day suspension. The arbitrator held that the grievance was not arbitrable citing as a proposition

that a settlement agreement is binding and final, unless the settlement is unfair, procured by fraud, negotiated unfairly at the expense of the grieving employee or agreed to in patent violation of a specific term of the collective bargaining agreement.

In the case before us, the agreement was tentative pending the execution of formal documents. This is not a case on all fours with Olinkraft, supra, where the grievant challenged the lesser discipline imposed as a result of a negotiated settlement. Kadota is, rather, repudiating the entire settlement. As there was no final and executed settlement agreement, the oral agreement between the parties was not binding. Moreover, we are not presented with any compelling facts or authority which would invoke any equitable principles to enforce the tentative agreement. While we recognize that Chun felt he was disadvantaged by the postponement of the arbitration, the hearing would have been continued for several weeks. Although it is apparent that such postponement would require the issuance of new subpoenas, such reissuance does not create in our minds such hardship as would prompt enforcement of the tentative agreement.

With regard to the Subsection 89-13(b)(5), HRS, allegation, i.e., violation of the terms of a collective bargaining agreement, Complainant failed to introduce the applicable collective bargaining agreement into evidence. Hence, the Board concludes that Complainant has failed to establish a violation of Subsection 89-13(b)(5), HRS. See Eldon P. Kaopua, 2 HPERB 551 (1980).

However, even if the appropriate contract provision were in evidence, the Board finds that the Complainant has failed to prove the requisite wilfullness in repudiating the settlement. Complainant failed to provide the Board with sufficient facts upon which to base a finding of a wilfull violation of Subsection 89-13(b)(5), HRS. Accordingly, the Board would conclude that Complainant has failed to prove by preponderance of evidence that Respondent wilfully violated Section 89-13, HRS.

ORDER

The complaint is hereby dismissed.

DATED: Honolulu, Hawaii, October 20, 1988.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES R. CARRAS, Board Member


GERALD K. MACHIDA, Board Member

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