

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-146
)	
UNITED PUBLIC WORKERS,)	DECISION NO. 350
AFSCME, LOCAL 646, AFL-CIO,)	
)	FINDINGS OF FACT, CONCLU-
Complainant,)	SIONS OF LAW AND ORDER
)	
and)	
)	
FRANK F. FASI, Mayor of the)	
City and County of Honolulu,)	
and DEPARTMENT OF HEALTH,)	
City and County of Honolulu,)	
)	
Respondents.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On September 20, 1990, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against Respondents FRANK F. FASI, Mayor, City and County of Honolulu, and the DEPARTMENT OF HEALTH (DOH), City and County of Honolulu (collectively Employer). UPW alleged that the Employer, specifically the Director of the DOH, engaged in prohibited practices when he attempted to restrain Mobile Emergency Care Specialists Thomas Palmeira (Palmeira), Patricia Kelford (Kelford) and Belinda Lee (Lee) from expressing their concerns regarding administrative practices and emergency medical services, thereby violating Sections 89-13(a)(1), (4), (5), (7) and (8), Hawaii Revised Statutes (HRS).

The Board conducted hearings on the merits of the case on January 10 and 28, 1991. Employer filed a posthearing brief on February 22, 1991. UPW did not file a posthearing brief with the Board. Based upon a complete review of the record, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Complainant UPW was at all times relevant the exclusive representative, as defined in Section 89-2, HRS, of bargaining unit 10 employees.

Palmeira was at all times relevant a Mobile Emergency Care Specialist (MECS) II with the DOH, assigned to the Waialua Ambulance Unit and a member of bargaining unit 10.

Kelford was at all times relevant a MECS II with the DOH, assigned to the Waianae Ambulance Unit and a member of bargaining unit 10.

Lee was at all times relevant a MECS I with the DOH, assigned to the Pawaa Ambulance Unit and a member of bargaining unit 10.

Respondents DOH and FASI were at all times relevant the public employer, as defined in Section 89-2, HRS, of Palmeira, Kelford and Lee.

This case evolved from three separate incidents involving Dr. John Hall (Hall), Director of the DOH, City and County of Honolulu, and Palmeira, Kelford and Lee, respectively.

Palmeira supervises the ambulance services for the North Shore area from Kaena Point to Pupukea. On July 30, 1990, Palmeira

sent a memorandum to Dennis Yurong (Yurong), Assistant Administrator for Emergency Ambulance Services, criticizing the administration's transfer of two employees pending an internal investigation into their activities. Complainant's (C's) Exhibit (Ex.) 1. The two employees performed administrative work, including handling work schedules, sick leave and vacation requests. According to Palmeira, in order to fill the vacancies created by the transfer, employees had to be taken "off the road." Transcript of hearing held during the morning of January 10, 1991 (Tr. 1), p. 28. As a result, two road positions became vacant which could only be filled by the use of overtime. Id., p. 29. Palmeira felt the reassignment contradicted the administration's earlier request that ambulance units curb their overtime costs. Id., pp. 28-29.

The memorandum was reviewed by Hall who considered it to be undue criticism of the DOH. Id., pp. 30-31. Hall asked Yurong to call Palmeira to arrange to see Hall. Id., p. 29. After an unsuccessful attempt to contact Hall, Palmeira received a call from Hall. Id., p. 29. Hall was upset when he talked with Palmeira and stated how he felt. Id., p. 53; Transcript of hearing held on August 28, 1991 (Tr. 3), pp. 23-25. Hall asked Palmeira three specific questions regarding the memorandum: a) Have you personally seen evidence of overtime in the front desk? b) Do you have experience in administration? c) Do you have a technique to isolate a person being investigated that would avoid overtime? Id., pp. 32, 147-48. When Palmeira failed to give "Yes" or "No" answers to the questions, Hall employed what he described as the "broken record technique." Id., p. 37. Using this technique, Hall

repeated each question, speaking louder and louder each time, until Palmeira answered the question with a "Yes" or "No" answer. Id., p. 37. Frustrated by Hall's tactics, Palmeira asked Hall for a meeting and Hall agreed. Tr. 1, p. 30.

At the meeting, Palmeira explained his reason for writing the memo. Id., p. 56. Hall explained to Palmeira that the two employees were being reassigned because they were under investigation. Id., p. 50. Palmeira had knowledge about the pending investigation when he wrote the memo. Id., p. 49. Hall asked Palmeira if he had any suggestions on how the two employees could be reassigned without incurring any overtime. Id., p. 51. Palmeira said that if he were in charge he would "keep them exactly where I can see them. Right at Central doing their jobs. And I'll be keeping a hawkeye out for these guys." Id., p. 52.

Hall never instructed Palmeira to stop writing memos or refrain from criticizing the administration. Hall never threatened to terminate Palmeira for writing the memo. Id., p. 58. Palmeira felt things went well during the meeting. Id., p. 60. At the close of the meeting, Hall offered to work with Palmeira and the other employees to resolve problems within the department. Id., p. 59. After the meeting, Palmeira felt that the disagreement had been resolved. Id., pp. 60-61.

The second incident involved Kelford, who is responsible for supervising the ambulance service for the Waianae Coast from Kahe Point to Kaena Point. On August 7, 1990, Kelford attended a Waianae Coast Neighborhood Board meeting and signed in as a

representative of Emergency Ambulance Services. She reported the number of alarms for the previous month as well as the number of patients transported, patients transferred, MAST missions, and canceled calls. C's Ex. 2; Respondent (R's) Ex. 8. Following her report, Kelford also commented on a newspaper article regarding the proposed cutback of services in the midnight shift of the Baker One ambulance unit at Queen's Hospital. Tr. 1, pp. 75-76. Kelford never contacted her Union to discuss what she would be saying at the board meeting. Id., p. 104.

Ten days after the meeting, Kelford received a telephone call from Roy Tanouye, Administrative Assistant at DOH. Id., p. 77. Tanouye informed Kelford that a representative from the Mayor's office, Rom [sic] Duran (Duran), who attended the August 7 meeting, accused her of speaking out against the administration. Id., p. 78. Duran informed the administration that Kelford appeared to be in uniform when she addressed the board. Tr. 3, p. 64. Kelford indicated that she usually attended the board meetings wearing her dark blue uniform pants and a non-uniform dark blue jacket with the term "Paramedic" on the back. Id., pp. 89-90. Tanouye scheduled a meeting between Kelford and Hall for August 23, 1990 to discuss the DOH's concerns regarding her status at board meetings. Id., p. 61.

On August 23, 1990, Kelford, her Union representative, Clifford Uwaine (Uwaine), Deputy Director of Health Gimo Manuel (Manuel) and Hall attended the meeting. Tr. 1, p. 80. At the start of the meeting, the Employer informed Kelford the meeting was nondisciplinary. Tr. 3, pp. 139-40. The Employer indicated that

Kelford is perceived at board meetings to be a representative of the City and not a private citizen because she signs in as a representative of the City or Emergency Ambulance Service and dresses in a manner similar to the uniform worn by City ambulance personnel. Id., pp. 80-81, 89-90. Hall indicated that if Kelford appeared as a representative of the City, it would be incumbent upon her to present the City's viewpoint. Id., p. 64.

The Union argued that Kelford had a First Amendment right to say what she wanted at the Neighborhood Board meetings. Id., p. 82. Kelford felt that since she attended the board meetings during her off duty hours, she had the right to say whatever she wanted to. Id. Hall wanted Kelford to make it clear to those present at the meetings which "hat" she wore when making her statements. Tr. 1, p. 102. Hall told her that she could say anything she wanted when she wore her "private hat." Id.

During the meeting on August 23, 1990, Hall never told Kelford to stop attending Neighborhood Board meetings or to stop giving reports or making comments to the board. Id., pp. 101-02. Kelford was never disciplined for the comments she made at the August 7, 1990 board meeting and she continues to make personal comments to the board. Id., pp. 111, 124-25.

The third incident involved Lee who is nonsupervisory and charged with the responsibility to provide advanced life support and emergency medical treatment to members of the public. Lee is also the president of the Pre-hospital Emergency Care Professional Association (PECPA), an organization of paramedics and other interested persons who wish to improve the quality of emergency

medical care and to educate the public concerning emergency care services.

On August 9, 1990, the DOH sent a memorandum to all "Emergency Ambulance Services Personnel" advising of an "Informational Meeting" scheduled for August 22, 1990 at 3:45 p.m. at the Diamond Head Health Center. C's Ex. 8. The employees were informed that Hall and Manuel would be attending the meeting which would be moderated by Irv Cohen and Donna Maiava (Maiava) of the State Health Department. Tr. 3, p. 81. Hall indicated that the meeting was arranged at the request of the DOH and was intended to resolve the perceived tension between the DOH and ambulance personnel concerning various issues, one of which was the proposed closing of the midnight shift of Baker One. Id., pp. 80-81, 87.

When Lee received the notice, she indicated that she believed the meeting would be open to the public. Transcript of hearing held during the afternoon of January 10, 1991 (Tr. 2), p. 12. Lee also believed that the focus of the meeting would be the closure of the midnight shift at the Baker One unit at Queen's Hospital. Id., p. 13. Lee contacted other PECPA members by telephone and discussed whether to send a letter announcing PECPA's objections to the closing of the Baker One midnight shift. The officers agreed that they would formally object to the closing of the Baker One midnight shift. Id., p. 43. Lee drafted the letter, dated August 16, 1990, discussing PECPA's position on the closure of the Baker One midnight shift and personally mailed copies to those persons she thought would be interested in the issue. Id.,

pp. 23-24. The letter included an open invitation to attend the informational meeting. C's Ex. 9.

On August 20, 1990, when Maiava learned of Lee's invitation, she called Hall, telling him of the need to exclude outside persons from the meeting since the meeting was to be patterned after a Critical Incident Stress Debriefing (CISD). Tr. 3, pp. 87-88. Maiava indicated that the presence of outsiders would destroy the purpose of the meeting because the employees could not freely discuss their feelings. Id., p. 88. Later, Hall contacted Manuel and instructed him to call Lee and tell her that the informational meeting was closed to outsiders. Id., pp. 85-86. Hall also wanted Manuel to obtain a list of the people who Lee had sent the PECPA letter to. Id. When Manuel called Lee and asked her for the list, Lee refused to comply. Tr. 2, p. 17. Manuel contacted Hall and told him about Lee's refusal to cooperate. Tr. 3, p. 88.

After talking to Manuel, Hall called Lee and told her that she had no right to invite people outside of the department to the August 22nd meeting. Tr. 2, p. 18. Hall explained to Lee that the meeting would be confidential and closed to the public. Id. Hall asked Lee to withdraw the invitations she had sent out. Id. When Lee refused to voluntarily cancel the invitations, Hall ordered her to retract the invitations. Tr. 3, pp. 89-90. Lee rejected Hall's instruction and told him that PECPA wanted the meeting to be accessible to "people from the outside" because the closing of Baker One would affect the public's health and welfare. Tr. 2, pp. 19-20. Hall informed Lee that she would be subject to

disciplinary action if she refused to obey his order. Id., p. 64. Lee told Hall, "Do what you have to" and hung up the phone. Id., p. 72.

The day after Hall talked to Lee, Hall contacted Maiava and told her that he had been unsuccessful in persuading Lee to "disinvite" the recipients of the letter. Tr. 3, p. 103. Hall preferred to reschedule the meeting, but Maiava indicated that the room would not be available at a later date. Id. Hall told Maiava that the only remaining alternative was to turn away unauthorized guests at the door. Id.

On the day of the meeting, Hall had Yurong pass out a memorandum to the non-departmental personnel who wanted to enter the meeting. Id., p. 104. Basically, the memo which was signed by Hall stated that the people who had been invited by Lee would be denied entry into the "private meeting." C's Ex. 10. The meeting went on as planned, despite the presence of non-emergency personnel. Tr. 3, p. 104.

The next day, Hall attended a supervisor's meeting. He informed all of the supervisors who were present that Lee would be terminated for "gross insubordination and defiance of a direct order." Tr. 2, p. 110. At first, Hall intended to suspend Lee for one week, but decided to terminate her when he learned that Lee had sent out more invitations after their telephone conversation on August 20. Id., p. 111. However, an investigation failed to prove that Lee had sent out invitations after August 20th and Hall reduced the discipline to a 15-day suspension. Id. Hall imposed the suspension because of the seriousness of the offenses committed

by Lee. Id., pp. 111-12. Hall also considered disciplining the four signatories to Lee's letter, but decided against taking action against them because no one else had been directly ordered to disinvite people. Tr. 3, pp. 124-25.

Lee filed a grievance against the City regarding the disciplinary action. Tr. 2, p. 69.

DISCUSSION

The Union charged the Employer with violating Subsections 89-13(a)(1), (4), (5), (7) and (8), HRS.

Section 89-13(a), HRS, provides as follows:

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;

* * *

- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined or chosen to be represented by any employee organization;
- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in Section 89-9, HRS;

* * *

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

Pursuant to Administrative Rules Section 12-42-8(g)(16), the charging party, in asserting a violation of Chapter 89, HRS, shall have the burden of proving the allegations by a preponderance of the evidence. Thus, to prevail in this case, the Union must prove by a preponderance of the evidence that Employer violated the provisions set forth in Subsections 89-13(a)(1), (4), (5), (7) and (8), HRS.

Subsection 89-13(a)(4), HRS, states that it is a prohibited practice for an employer to discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization. In the instant case, Palmeira wrote a memo to his immediate supervisor, C's Ex. 1; Kelford provided information to the Waianae Neighborhood Board, Tr. 1, pp. 75-76; and Lee sent a letter to members of the public as the President of PECPA, C's Ex. 9.

The record indicates that none of the employees signed any document or provided any information or testimony under Chapter 89, HRS. Palmeira indicated that he drafted the memo "on his own." Tr. 1, p. 46. He did not consult the Union or any employee before writing the memo. Id., pp. 46-47. Kelford stated that she attended the Waianae Neighborhood Board meetings "on her own time" and as a "private citizen." Id., p. 75. At the meetings, Kelford provided the board with statistical information relating to the ambulance service in the Waianae area. Id., p. 99. Lee indicated that PECPA is not a labor organization which represents employees

in labor disputes with the Employer. Tr. 2, p. 36. Lee also indicated that the letter she signed as President of PECPA had nothing to do with any labor dispute related to the closing of "Baker One." Id., p. 46.

The record further indicates that none of the employees were disciplined for signing any document or providing any information or testimony under Chapter 89, HRS, or because they informed, joined, or chose to be represented by any employee organization. Lee was suspended for fifteen days for "gross insubordination and refusing to obey a direct order." The Board finds that the disciplinary action taken against Lee had nothing to do with her affiliation with PECPA or her membership in UPW. Employer never discouraged Lee from joining PECPA or from becoming its President. Id., pp. 38-39. Lee understood that she was disciplined for disobeying a direct order to disinvite the people to whom she had sent PECPA's letter. Id., pp. 68-69. Hall did not care about the content of PECPA's letter, he only wanted the invitation contained in the letter withdrawn. Tr. 3, pp. 154-55. Lee did not consult any employee or the Union before deciding to disobey Hall's order. Tr. 2, p. 68. Lee never informed Hall during their telephone conversation on August 20, 1990, that she wanted a Union representative present. Id., p. 70. Lee was never denied the right to Union representation when she met with people from administration, including Hall. Id., p. 70. The Employer never discouraged her from joining the Union or prevented her from becoming more involved in Union activities. Id., pp. 71-72.

Based on the foregoing, the Board dismisses the Complainant's allegations of a Subsection 89-13(a)(4), HRS, violation.

Subsection 89-13(a)(5), HRS, provides that the employer commits a prohibited practice by wilfully refusing to bargain in good faith with the exclusive representative as required in Section 89-9, HRS. As there is no evidence or argument in the record to support this claim, the Board hereby dismisses the complaint with respect to any alleged Subsection 89-13(a)(5), HRS, violation.

Subsection 89-13(a)(7), HRS, provides that it is a prohibited practice for an employer to refuse or fail to comply with any provision of this chapter. The Union contends that Employer violated Subsection 89-13(a)(7), HRS, when it failed to comply with the provisions set forth in Sections 89-1 and 89-3, HRS.

Section 89-1, HRS, provides general policy guidelines concerning the employment relationship between government employers and their employees. Section 89-3, HRS, states, in pertinent part, that:

Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion.

With respect to Section 89-1, HRS, Complainant failed to produce any evidence to support a charge that the Employer refused to negotiate with the UPW regarding wages, hours, and other

conditions of employment. In addition, the issue of equal pay for equal work is inapplicable to the facts in this case. Finally, none of the employees involved was denied Union representation when discussing their problems with the Employer.

Hall never discouraged Palmeira from talking with or working through the Union if he had any complaints. Tr. 1, p. 59. Palmeira never filed a grievance concerning his telephone conversation or his meeting with Hall. Id., p. 61. Employer did not stop or prevent Kelford from bringing a Union representative to the August 23rd meeting with Hall. Id., p. 113. Kelford also failed to file a grievance against Hall. Id. Lee stated that she had "no problem" with the Employer's processing of her grievance. Tr. 2, p. 69. In addition, Employer never denied Lee's right to have a Union representative present whenever she met with Hall or anyone else from administration. Id.

With respect to Section 89-3, HRS, the record fails to establish that the actions taken by the employees were for the purpose of organizing other employees to collectively bargain with the City or for other mutual aid or protection.

Palmeira indicated that it was his decision to write the memo. Tr. 1, p. 46. He did not speak with the Union steward or the unit chairman about writing the memo. Id., p. 47. At no time did Palmeira discuss his memo with either of the employees who were the subject of the memo. Id., p. 47.

Kelford attended the August 7, 1990, Neighborhood Board meeting as a private citizen. Id., p. 75. She did not consult with the Union regarding the content of her presentation to the

board. Id., p. 104. At the meetings, Kelford presented the monthly statistics related to the ambulance service in the Waianae area. Id., p. 99. Her personal comments regarding the closing of the Baker One midnight shift were in regard to the health and safety of the general public and not with labor relations.

Lee indicated that PECPA's intent for inviting people to the August 22, 1990, meeting was to inform them of the issues surrounding the closing of the Baker One midnight shift. Tr. 2, p. 46. PECPA's letter had nothing to do with any labor dispute related to the closing of Baker One. Id. Further, PECPA is not a labor organization. Id., p. 36. It is a public interest group concerned about the public health and welfare. Id., p. 37.

Based on the evidence presented, the Board finds that Employer did not violate Sections 89-1 and 89-3, HRS, and therefore dismisses Complainant's allegations of a Subsection 89-13(a)(7), HRS, violation.

Subsection 89-13(a)(8), HRS, provides that it shall be a prohibited practice for an employer to violate the terms of a collective bargaining agreement. The Board notes that there is nothing in the record to indicate which section of the collective bargaining agreement (Agreement) Employer is alleged to have violated. Although the Complainant failed to submit the Agreement as evidence in this case, the Board takes official notice of the Agreement pursuant to Administrative Rules Section 12-42-8(g)(8). However, there is nothing in the record to assist the Board in discerning which provisions Complainant alleges has been violated.

Therefore, the Board dismisses the Complainant's allegations of a Subsection 89-13(a)(8), HRS, violation.

Pursuant to Subsection 89-13(a)(1), HRS, an employer commits a prohibited practice when it wilfully interferes, restrains or coerces any employee in the exercise of any right guaranteed under Chapter 89, HRS. The Union contends that Employer violated Subsection 89-13(a)(1), HRS, by failing to comply with the provisions set forth in Section 89-3, HRS. Section 89-3, HRS, guarantees the rights of employees to bargain collectively and to engage in lawful concerted activities for mutual aid or protection. More specifically, the Union charged Employer with the following:

- 1) "stifling" Palmeira's right to criticize the Administration;
- 2) interfering and restraining Kelford's right to convey her personal feelings at Neighborhood Board meetings during non-work hours; and
- 3) attempting to coerce Lee into following "non-work related instructions" by threatening her with disciplinary action.

1. Palmeira

The Board finds that Employer did not unlawfully "stifle" Palmeira's right to criticize the administration. Hall's main concern over Palmeira's memo was that Palmeira was a unit supervisor and was critical of the administration without getting his facts straight. Tr. 3, p. 47. Hall indicated that he welcomed criticism of the administration, but wanted the person doing the criticizing to "get all the facts" before criticizing anyone. Id., p. 48. Hall never told Palmeira to stop writing memos or to refrain from criticizing the administration, or threaten to

discipline or terminate Palmeira for writing the memo. Tr. 1, p. 58.

The Board also finds that Hall did not intend to intimidate Palmeira by raising his voice over the telephone. It is obvious from the record that Hall was angry when he called Palmeira about the memo. Id., p. 29; Tr. 3, p. 32. However, Hall's loud voice on the telephone can be attributed to his use of what he called the "broken record technique". Id., p. 37. The technique required Hall to repeat a question, speaking louder and louder each time, until Palmeira answered his questions with a "Yes" or "No" answer. Id.

Finally, the Board finds that Hall permitted Palmeira to express his concerns over the reassignment of the two employees mentioned in the memo. When Palmeira became frustrated with Hall's telephone conversation, he asked Hall to meet with him. Tr. 1, p. 30. Hall agreed to meet with Palmeira. Id. At the meeting, Palmeira explained his reasons for writing the memo. Id., p. 56. Hall also asked Palmeira if he knew of any way the two employees could be reassigned without incurring overtime. Id., p. 51. Palmeira indicated that it would be beneficial to Employer to keep both of the employees "right at central" so Employer could supervise the employees more closely. Id., p. 52. Palmeira indicated that the incident with Hall had been a misunderstanding and that it had been resolved in the meeting with Hall. Id., p. 60.

Based on the foregoing, the Board finds that UPW failed to demonstrate by a preponderance of the evidence that Employer

violated Subsection 89-13(a)(1), HRS, through its actions involving Palmeira.

2. Kelford

The Board finds that Employer did not wilfully restrain or interfere with Kelford's right to express her personal feelings at the Waianae Neighborhood Board meetings. Hall spoke to Kelford about her participation at the Neighborhood Board meetings after a representative from the Mayor's office complained that Kelford spoke out against the administration. Id., p. 78. Duran also informed the administration that Kelford appeared to be in uniform when she addressed the board. Id., p. 65. Kelford attended the board meetings wearing her dark blue uniform pants and a "non-uniform" dark blue jacket with the term "Paramedic" on the back. Id., pp. 89-90. The record also indicates that although Kelford went to the meetings during her off-duty hours, she would sign-in on the board's guest attendance sheet as a representative of the City and County's Ambulance service. C's Exs. 1-7 and 9.

Hall's main concern was that if Kelford appeared as a representative of the City, she presented the City's point of view. Tr. 3, p. 64. Hall wanted Kelford to make it clear to those present at the meetings that her comments were her personal views. Tr. 1, p. 102. Hall told her that she could say anything she wanted to when she appeared as a private citizen. Id. Hall never told Kelford to stop attending the meetings or to stop giving reports or making comments to the board. Id., pp. 101-02. Moreover, Kelford was never disciplined for the comments she made at the board meeting. Id., p. 111. In any event, Kelford

continues to make private comments at the Neighborhood Board meetings. Id., pp. 124-25.

Hall also met with Kelford to explain to her that as part of administration she had to separate personal feelings from speaking for the administration at the board meetings. Tr. 3, pp. 60-61. Hall met with Kelford and Uwaine, her Union representative. Tr. 1, p. 113. At the meeting, Uwaine was given the opportunity to present Kelford's side of the story. Id., p. 82.

Given the evidence presented here, the Board dismisses Kelford's allegations of a Subsection 89-13(a)(1), HRS, violation.

3. Lee

The Board finds that Hall's instruction to Lee to withdraw the invitation in PECPA's letter was work-related. Hall asked Lee to withdraw the invitations in PECPA's letter after he received a call from Maiava who indicated that the purpose of the meeting would be compromised. Tr. 3, pp. 87-88. The record demonstrates that Maiava was one of the principals involved in arranging the meeting. C's Ex. 8. Maiava told Hall that the meeting would be patterned after a type of debriefing which required the exclusion of members of the public. Tr. 3, p. 88. Maiava informed Hall that the presence of outsiders would destroy the purpose of the meeting. Id., p. 88. Hall did not care about the content of PECPA's letter, he only wanted the invitation contained in the letter to be withdrawn. Id., pp. 154-55.

The Board finds that Hall did not coerce Lee by threatening to discipline her if she refused to withdraw PECPA's invitation. Hall attempted to resolve the situation by having Manuel

call Lee and explain to her the purpose of the meeting. Id., pp. 85-86. Hall also wanted Manuel to ask Lee for a list of the people to whom she sent PECPA's letter in order to disinvite them. Id., p. 86. When Lee refused to cooperate with Manuel, Hall called Lee and spoke to her directly. Id., p. 89. During their conversation over the phone, Hall made several attempts to explain to Lee why outsiders could not be invited to the August 20th meeting. Id., p. 90. Despite Hall's explanation, Lee refused to withdraw the invitations. Id., pp. 89-90. Hall then ordered Lee to "disinvite" the people who received the letter. Id. Again, Lee refused Hall's instruction. Tr. 2, pp. 19-20. Hall informed Lee that she would be subject to disciplinary action if she refused to obey a direct order. Id., p. 64. Lee responded by telling Hall, "Do what you have to" and hung up the telephone. Id., p. 72. Lee understood that she had been disciplined for disobeying a direct order to disinvite the people to whom she had sent PECPA's letter. Id., pp. 68-69.

The evidence indicates that Hall attempted to facilitate Lee's desire to inform the public about the situation with Baker One. During his conversation with Lee over the phone, Hall indicated that if PECPA had concerns about the Baker One situation, PECPA should schedule a public meeting and invite all the people it wanted to. Tr. 3, p. 117. Hall agreed to attend the meeting and answer any questions people might have regarding Baker One. Id. Hall told Lee that, "a meeting planned by the state is not the place to do it." Id.

Based upon the foregoing, the Board finds that Employer did not unlawfully interfere with Lee's rights guaranteed under

Chapter 89, HRS. The DOH suspended Lee for insubordination for refusing a direct order, not for engaging in any lawful protected activity. Her interest in pursuing the public meeting regarding the proposed closure of the Baker One situation was for the protection of the general public and not in the furtherance of concerted activities. Consequently, the Board dismisses the claims of a Subsection 89-13(a)(1), HRS, violation with regard to Lee's suspension.

CONCLUSIONS OF LAW

The Board has jurisdiction over this complaint pursuant to Sections 89-5 and 89-13, HRS.

Complainant failed to meet its burden of proving by a preponderance of the evidence that Employer violated Subsection 89-13(a)(4), HRS. None of the affected employees signed any document or provided any information or testimony under Chapter 89, HRS. Nor were any of the employees disciplined for signing any document or providing any information or testimony under Chapter 89, HRS, or because they informed, joined, or chose to be represented by any employee organization.

Complainant failed to present any evidence to support the allegations that Employer violated Subsections 89-13(a)(5) and 89-13(a)(8) HRS.

Complainant failed to show by a preponderance of the evidence that Employer violated Sections 89-1 and 89-3, HRS; thereby violating Subsection 89-13(a)(7), HRS. There was nothing in the record to indicate that Employer violated the provisions contained in Section 89-1, HRS. As for Section 89-3, HRS, the

record failed to establish that the actions taken by the employees were for the purpose of organizing other employees to collectively bargain with the City or for other mutual aid or protection.

Complainant failed to establish that Employer violated Subsection 89-13(a)(1), HRS, by wilfully interfering, restraining or coercing the employees in their right to engage in lawful concerted activities for mutual aid or protection as required under Section 89-3, HRS.

ORDER

The prohibited practiced charges contained in Case No. CE-10-146 are hereby dismissed.

DATED: Honolulu, Hawaii, February 18, 1994.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

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