

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: CE-03-222a
)	CE-04-222b
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	DECISION NO. 361
AFL-CIO,)	
)	FINDINGS OF FACT, CONCLUSIONS
Complainant,)	OF LAW AND ORDER
)	
and)	
)	
COLBERT SASANO, SANDRA FURUKAWA,)	
and CARL WATANABE, Bureau of)	
Conveyances, Department of Land)	
and Natural Resources, State of)	
Hawaii,)	
)	
Respondents.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On May 6, 1994, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA), by and through its attorney, filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against Respondents COLBERT SASANO (SASANO), SANDRA FURUKAWA (FURUKAWA), and CARL WATANABE (WATANABE), Bureau of Conveyances (Bureau), Department of Land and Natural Resources (DLNR), State of Hawaii (collectively Employer).

The HGEA alleges that the Employer violated Sections 89-13(a)(1), 89-13(a)(2), 89-13(a)(3), 89-13(a)(4), 89-13(a)(5), 89-13(a)(6), 89-13(a)(7) and 89-13(a)(8), Hawaii Revised Statutes (HRS), by retaliating, harassing and discriminating against Bureau employees who participated in a strike by members of bargaining units 03, 04 and 13 (HGEA strike).

Specifically, the HGEA alleges that after the conclusion of the HGEA strike and upon the return to work of employees who participated in the HGEA strike, the Employer restricted the use of telephones and required or restricted overtime work of Bureau employees in bargaining units 03 and 04. In addition, the HGEA alleges that the Employer issued a directive to Bureau employees in bargaining units 03 and 04 regarding telephone use and required written documentation from a union member to excuse her from overtime work.

On June 7, 1994, the Board conducted a prehearing conference in this matter.

On June 17, 1994, the HGEA filed a Motion for Issuance of Subpoena with the Board. In its motion, the HGEA requested that the Board allow the taking of oral depositions of Respondents SASANO, FURUKAWA and WATANABE on June 21, 1994.

On June 23, 1994, the Board conducted a hearing on the instant prohibited practice complaint. At the commencement of the hearing, the HGEA withdrew its Motion for Issuance of Subpoena. Transcript of hearing on June 23, 1994 (Tr.), p. 7.

In addition, the HGEA made an oral motion to amend its complaint to include two additional alleged incidents of misconduct by the Employer against Bureau employees who participated in the HGEA strike. Tr., p. 11. The first allegation concerned the denial of Bureau employee Faith Hope-Orlando's (Hope-Orlando) vacation request, and the second allegation concerned the contacting of Bureau employee Kerian Ishii's (Ishii) doctor and secondary employer. Tr., pp. 13-15. In response to the HGEA's

motion, the Employer expressed its continuing objection to the inclusion of additional allegations to the HGEA's complaint. Tr., pp. 16-17. Upon consideration of the arguments of the parties, the Board granted the HGEA's motion to amend its complaint. Tr., p. 18.

At the June 23, 1994 hearing, all parties were represented, allowed to present testimony and other evidence, and to cross-examine witnesses. At the close of the presentation of evidence by the HGEA, the Employer made a motion for directed verdict. Tr., pp. 131-32. In addition, the Employer presented a memorandum in support of its motion for directed verdict to the Board. Tr., pp. 132-34. The HGEA argued against the Employer's motion and asked that the Board summarily deny the Employer's request. Tr., pp. 134-35. After consideration of the memorandum and the arguments of counsel, the Board denied the Employer's motion, and the Employer proceeded to present its evidence in the case. Tr., p. 136.

On August 18, 1994, the HGEA and the Employer submitted post-hearing briefs.

Based upon the entire record before the Board, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Complainant HGEA is the exclusive representative, as defined in Section 89-2, HRS, of public employees included in bargaining units 03 (Nonsupervisory employees in white collar positions) and 04 (Supervisory employees in white collar positions).

Respondents SASANO, WATANABE and FURUKAWA are public employers within the meaning of Section 89-2, HRS.

Bureau employees are public employees within the meaning of Section 89-2, HRS.

Keith Ahue (Ahue) is the Director of the DLNR. Tr., p. 106. Ahue oversees the ten divisions of DLNR, including the Bureau. Tr., pp. 106-07.

Melvin H.C. Young (Young) is the DLNR Departmental Personnel Officer. Tr., p. 136. Young administers the personnel management program for DLNR, which involves labor relations, classification, training, safety and the organization of units within the department, including the Bureau. Tr., p. 137.

Respondent FURUKAWA is the Registrar of Conveyances. Tr., p. 165. FURUKAWA is the division chief for the Bureau and oversees sixty-one (61) employees and the recording of documents for the State of Hawaii. Tr., p. 166.

Respondent WATANABE is the Deputy Registrar at the Bureau. Tr., p. 253. WATANABE handles all communications to staff members and any personnel problems or administrative problems concerning Bureau operations. Tr., p. 253.

Respondent SASANO is the Regular System Branch Chief at the Bureau. Tr., pp. 25, 81. SASANO supervises the regular system receiving and indexing sections. Tr., p. 81.

The Bureau occupies the entire first floor of its building and is divided into two main work areas separated by a hallway. Tr., pp. 173-74. Each work area is approximately 1,400 square feet. Tr., p. 173. The Bureau records documents

affecting real property interests under the land court and regular systems. Tr., p. 167. Bureau employees process documents through receiving, indexing, microfilm, and review sections. Tr., pp. 167-68. Approximately 1,200 documents are recorded at the Bureau each day. Tr., pp. 170-71, 231.

Harriet Enrique (Enrique), Hope-Orlando and Ishii are Bureau employees and HGEA members. Enrique works in one of the review sections as an Abstractor IX and serves as a shop steward. Tr., pp. 79, 184. Enrique's supervisor is Patricia Kimura (Kimura). Tr., p. 79. Hope-Orlando works in the indexing section as an Abstracting Assistant V and is a member of bargaining unit 03. Tr., pp. 19-20; see also Respondents' Exhibit (R. Ex.) 3. Kinau Alber (Alber) is Hope-Orlando's immediate supervisor. Tr., pp. 20, 23. The record is silent as to Ishii's position within the Bureau and her bargaining unit membership.

Michael Fagundes (Fagundes) currently holds a Secretary III position with the Bureau. Tr., p. 224. Fagundes is an emergency hire who serves as secretary to the Registrar. Tr., pp. 225-26. From January through May 1994, Fagundes worked as a student intern at the Bureau. Tr., pp. 225-26. Fagundes worked at the Bureau during the HGEA strike. Tr., p. 226.

Beverly J. Look (Look) is an HGEA Union Agent and is responsible for assisting Bureau employees in bargaining unit 03. Tr., p. 291.

The HGEA strike commenced on April 18, 1994 at 12:01 a.m. See Complainant's Exhibit (C. Ex.) A.

Bureau employees who participated in the HGEA strike returned to work for one day during the strike on Friday, April 22, 1994 at the request of the HGEA. Tr., pp. 80, 176, 295. On that day, Bureau employees returned to work on the condition that Bureau management would not be present in the work area. Tr., pp. 90, 117-18, 128, 294, 300. Bureau employees recorded documents but did not index them. Tr., p. 171. Ahue testified that the situation on the one-day return to work exacerbated bad feelings among management and certain groups of Bureau employees. Tr., p. 118.

During the HGEA strike, Hope-Orlando testified at the essential worker hearings conducted by the Board. Tr., pp. 28-29.

The HGEA strike ended on April 29, 1994. See Tr., p. 295. The HGEA and the State of Hawaii and the various counties entered into an undated Resumption of Work Agreement, which provides in relevant part:

3. There shall be no retaliation or punitive action against employees as a result of or based upon their participation in, or support or non-support of the strike. The Employer is not precluded from taking any appropriate action against any employee for any acts of sabotage, violence or other flagrant misconduct. The employee may grieve any action that may be taken against the employee.

C. Ex. A.

Telephones

Bureau employees who participated in the HGEA strike returned to work on May 2, 1994. Tr., pp. 47-48, 53, 295. Upon their return to work, Bureau employees discovered that telephones had been disconnected and removed from their work areas. Tr., pp. 22, 24, 26, 82. The telephones were physically present on the

day that the Bureau employees worked during the strike. Tr., pp. 26, 80. The telephones were removed sometime during the second week of the strike. Tr., pp. 124-25, 175-77, 210, 227, 254-55.

Fagundes and another emergency hire, Tom Williams (Williams) removed the telephones at the direction of FURUKAWA. Tr., pp. 175-77. WATANABE was made aware of the phones being removed. Tr., p. 255.

Telephones at the Bureau are used by employees in their work and for their personal use. Tr., pp. 27-28, 84-85. The record is unclear as to the number of telephones normally available for use at the Bureau, see Tr., pp. 80-81, 240-45, 254; however, Fagundes disconnected and removed all but approximately six telephones, leaving four on the administrative side and two on the receiving side. Tr., pp. 240-45; see also Tr., p. 257.

Hope-Orlando brought the telephone situation to the attention of Alber because she needed access to a telephone in order to contact her mother who was watching her three-month-old infant. Tr., pp. 23, 25, 50.

Enrique brought the telephone situation to the attention of WATANABE and the other assistant registrars at the Bureau. Tr., pp. 82-83, 87-88. In addition, on the first day back at work, Enrique spoke with Ahue regarding the telephone situation because her subordinate, Susan Cummings (Cummings), needed access to a telephone due to the hospitalization of her husband. Tr., pp. 83, 88.

On or about May 2, 1994, Ahue met with Bureau employees to discuss the telephone situation. Tr., pp. 54, 107-08, 137-38.

Young and HGEA representatives Chester Kunitake (Kunitake) and Look were also present at the meeting. Tr., pp. 107-08.

On or about the afternoon of May 2, 1994, Ahue directed FURUKAWA to return the telephones. Tr., p. 178, 211. FURUKAWA did not return the telephones at that time because she did not know where the telephones were located. Tr., pp. 210-11. Fagundes had locked the telephones in the supply cabinet and did not tell anyone where he put them. Tr., pp. 227-28. WATANABE was asked to replace one telephone but could not do so because he could not find where the telephones were stored. Tr., pp. 258-59.

On or about May 3, 1994, FURUKAWA instructed Fagundes and Williams to return the telephones. Tr., pp. 178, 211, 232. FURUKAWA did not give Fagundes or Williams a time frame in which to reinstall the telephones. Tr., p. 178. According to the testimony of witnesses, the telephones were reinstalled on either May 2, May 3 or May 4, 1994. Tr., pp. 26, 178-79, 232, 256-59. In its prohibited practice complaint, however, the HGEA alleges that "all telephones were finally operable in the late afternoon on Tuesday, May 3, 1994." Board Exhibit (B. Ex.) 1.

By document dated May 3, 1994, the Employer issued a telephone policy which states:

1. Telephone is to be answered on the second ring. (It is the third ring for the customer).
2. Calls are to be transferred ONLY if a specific person is asked for. If employee answering the telephone does not know the answer, said employee is to take the persons [sic] name, number and question and work with said employee's respective supervisor in getting the answer.

3. Personal telephone calls are to be limited to 3 minutes.

C. Ex. B.

The Bureau's Policies and Procedures Manual dated January 1994 sets forth the following procedures for telephone use:

I. GENERAL PROCEDURE

* * *

TELEPHONE

Employees should use good telephone manners with all callers and respond to all queries as much as possible. Transferring calls to other employees is discouraged; employees should try to assist the caller directly. Telephones are to be picked up no later than the third ring. All long distance and neighbor island calls must be approved by the respective supervisor. Personal calls must be kept to an absolute minimum and not exceed three minutes.

R. Ex. 10.

Overtime

The Bureau has a system of mandatory and voluntary overtime. Tr., pp. 187, 220-21, 262-63. On May 2, 1994, SASANO issued a directive requiring certain Bureau employees to perform twenty (20) hours of overtime work during the week of May 2 to May 6, 1994. Tr., pp. 51, 58, 60, 110-11, 139, 182-83, 260, 282-83. Bureau employees in the indexing and receiving sections were issued the mandatory overtime directive. Tr., p. 111, 184. Bureau employees in the review sections were not required to work overtime. Tr., pp. 95-96, 184.

On or about May 2, 1994, Ahue met with Bureau employees from the indexing and receiving sections to discuss the overtime directive. Tr., pp. 54, 107-08, 137-38. At that time, Ahue

excused two Bureau employees, Kalama Akamine (Akamine) and Ishii, from the mandatory overtime requirement based upon their verbal requests. Tr., pp. 111-14, 139, 141-44, 185-86, 260-61. Akamine reported transportation problems, since he had to catch a bus home from work, and Ishii reported that she had already committed to working at Safeway, her secondary job, on Monday and Friday evenings. Tr., pp. 112-13, 141-42, 185-86. Ahue did not excuse Hope-Orlando from the mandatory overtime requirement. Tr., pp. 114, 126, 142-44, 186, 261, 263.

Subsequently, the number of required overtime hours was reduced from twenty (20) to fifteen (15) hours for the remainder of the week. Tr., pp. 140, 183, 185, 214, 260. In addition, Ahue instructed Young to arrange for the Bureau to open at 6:00 a.m. in order to allow Bureau employees flexibility in performing their overtime work. Tr., pp. 121, 139-40, 148.

Hope-Orlando complained about the overtime directive because she had to pick up her son after work. Tr., pp. 52, 54. Although she performed some overtime work during the morning window period, see Tr., p. 61, Hope-Orlando did not work after 4:30 p.m. during the week of May 2, 1994 to May 6, 1994. Tr., p. 67.

Alber verbally instructed Hope-Orlando to submit a written explanation as to why she could not work the required number of overtime hours. Tr., p. 58.

By memorandum dated May 4, 1994, SASANO instructed Hope-Orlando to submit a written explanation since her schedule did not meet the 15-hour overtime requirement. C. Ex. C.

By memorandum dated May 6, 1994, WATANABE instructed Hope-Orlando to submit a written explanation to cover her absences from afternoon overtime by 2:00 p.m. that afternoon or be subject to a written warning for insubordination. C. Ex. E.

In 1992, the Bureau established a practice of accepting written excuses from Bureau employees to document their absences from overtime work. Tr., pp. 186-87, 203-04, 262-63. The policy is unwritten; however, the Employer keeps binders of the written excuses submitted by Bureau employees. Tr., pp. 188-89, 203-04.

Hope-Orlando submitted written excuses from overtime work in the past. See R. Exs. 7, 8 and 9. By note dated June 14, 1993, Hope-Orlando wrote that she would not be able to work that night because she had to pick up medication for her father. R. Ex. 7. By note dated June 16, 1993, Hope-Orlando wrote that she would not be able to work "comp time" due to lack of rest. R. Ex. 8. In addition, by note dated October 25, 1993, Hope-Orlando wrote that she would be late to work on Friday, October 29, 1993, due to a lab test appointment. R. Ex. 9.

Hope-Orlando did not submit a written excuse for failing to work the required number of overtime hours during the week of May 2 to May 6, 1994. Tr., pp. 63-64. Akamine and Ishii, who were excused by Ahue, were not required to submit written excuses from overtime work. Tr., pp. 127, 263.

Article 17, Item H, of the Unit 03 collective bargaining agreement for 1991 through 1993 provides:

The employee shall have the right to refuse for good cause as determined by the employer to work overtime, to accept any temporary

assignment or perform any work, not representative of that job.

Tr., pp. 300-01.

The Bureau's Policies and Procedures Manual dated January 1994 sets forth the following overtime procedures:

I. GENERAL PROCEDURES

* * *

OVERTIME

Overtime will be worked only when necessary and an employee will be required to work overtime on occasion when it has been deemed necessary by their respective supervisor. . . . All authorized overtime work will be compensated in accordance with the employee's respective collective bargaining agreement. A ten-minute break will be allowed after two hours of overtime work.

R. Ex. 10.

Vacation Leave Request

In December 1993, Hope-Orlando requested vacation leave, in writing, for the period of November 14 to November 19, 1994. Tr., pp. 29, 35. On June 22, 1994, Hope-Orlando verbally asked Alber if she could change her vacation to the week of Thanksgiving. Tr., pp. 30, 32, 36. Alber and SASANO instructed Hope-Orlando to submit her request for change of vacation in writing. Tr., pp. 33, 36.

By memorandum dated June 22, 1994, SASANO requested Hope-Orlando to document her request to exchange vacation dates with Cummings and to change her requested vacation dates from November 14 through 21, 1994 to November 21 through 28, 1994.

R. Ex. 1.

By undated note from Hope-Orlando to SASANO, Hope-Orlando requested that SASANO either grant or deny her request to change her vacation "based on whether there is an actual need to have me work during my requested absence from work." R. Ex. 2. In addition, Hope-Orlando indicated that SASANO's memorandum of June 22, 1994 "mentions the fact that you are aware of the agreement between myself and Susan Cummings that there was acknowledgement of the switch." Id. Finally, Hope-Orlando stated, "[a]s far as documenting my request, all of these memo's going back and forth between us are ENOUGH documentation." Id.

The Bureau's Policies and Procedures Manual dated January 1994 sets forth the following vacation leave policy:

II. LEAVES

* * *

VACATION LEAVES

Each employee must complete a Vacation Request form in December for the following calendar year. . . . Scheduling will be based on seniority, workload, and coverage.

The priority shall be rotated in descending order according to seniority to assure that each Employee will receive priority scheduling at some time. Only one Employee in a section will be approved for annual vacation leave at the same time. . . .

Any changes to the vacation schedule must be submitted in writing and have the prior approval of the respective supervisor and Registrar.

R. Ex. 10.

Hope-Orlando has never had a vacation request denied.

Tr., p. 32.

Medical Certificate

By medical certificate dated May 2, 1994, Guy Yatsushiro, M.D., certified that Ishii "was incapacitated from performing his [sic] usual duties." R. Ex. 11. Dr. Yatsushiro remarked: "unwise for pt. to work beyond 6:30 p.m. due to health condition. pls. call if you have any questions." R. Ex. 11.

WATANABE became aware that Ishii has a heart condition on May 3, 1994; therefore, he asked her to submit a physician's certificate indicating any limitation of duties. Tr., p. 283. Prior to that day, Ishii had given her second job and lack of air conditioning as reasons for not working overtime. Tr., pp. 283-86.

There have been longstanding labor-management relations problems at the Bureau, which go beyond labor relations. Tr., pp. 130-31. Attempts have been ongoing to improve interpersonal relations and communication within the Bureau. Tr., pp. 146-47. After the HGEA strike, complaints about management at the Bureau escalated. Tr., pp. 92, 309-10, 315.

On May 6, 1994, the HGEA filed the instant prohibited practice complaint. B. Ex. 1. On the same day, Look filed a Step 1 grievance on behalf of Hope-Orlando regarding overtime work. R. Ex. 3. In addition, Look filed a class grievance on behalf of bargaining unit 03 members at the Bureau regarding the distribution of overtime and telephone memoranda. R. Ex. 4.

DISCUSSION

The HGEA alleges that the Employer violated Sections 89-13(a)(1) through 89-13(a)(8), HRS, by harassing, discriminating

and retaliating against Bureau employees in bargaining units 03 and 04 who participated in the HGEA strike.

Specifically, the HGEA contends that after the conclusion of the HGEA strike and upon the return to work of Bureau employees who participated in the strike, the Employer committed prohibited practices by removing and restricting the use of telephones; issuing a directive regarding telephone use; requiring or restricting overtime work; instructing Hope-Orlando to submit a written explanation for excuse from overtime work; instructing Hope-Orlando to submit a request to change her vacation; contacting Ishii's doctor and secondary employer; and denying Ishii the right to work overtime.

Section 89-13(a), HRS, sets forth prohibited practices of a public employer or its designated representative and provides in relevant part:

- 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;
 - (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;
- (6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in section 89-11;
- (7) Refuse or fail to comply with any provision of this chapter;
- (8) Violate the terms of a collective bargaining agreement;

Under the foregoing statutory provision, the Employer's actions must be wilful to constitute a prohibited practice. In Decision No. 194, UPW and Kunimura, 3 HPERB 507, 514 (1984), the Board explained "wilfulness" as follows:

"Wilful" has been interpreted by the Board to mean "conscious, knowing, and deliberate intent to violate the provisions of Chapter 89, HRS." Aio, et al., and HSTA, 2 HPERB 458, 491 (1980) Haw. ____, ____, P.2d ____, ____ (1983). However, while adhering to a literal interpretation of the term, the Board in Aio made it clear that wilfulness could be inferred from circumstances depending on whether obligations under the law which are allegedly broken are clearly delineated in settled doctrines. 2 HPERB at 481. The Board has also ruled that wilfulness can be presumed where a violation occurs as a natural consequence of a party's actions. State of Hawaii Organization of Police Officers (SHOPO), et al. and Frank F. Fasi, 3 HPERB 12, 23, (1982); Burns and State of Hawaii Organization of Police Officers (SHOPO) and Eileen R. Anderson, 3 HPERB 114, 123 (1982).

The Board's Administrative Rules Section 12-42-8(g)(16) sets forth the applicable burden of proof and states:

(16) 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. The party raising any subsequent issue shall have the burden of proving that issue by a preponderance of the evidence.

In addition, in Decision No. 161, SHOPO and Fasi, 3 HPERB 25, 46 (1982), the Board held:

This section [12-42-8(g)(16)] will be interpreted by this Board to mean that the party required to carry the burden of proof, must not only produce sufficient evidence but also support that evidence with arguments in applying the relevant legal principles. Henceforth, if any party fails to present sufficient legal arguments with respect to any issue, the Board shall find that the party failed to carry its burden of proof and dispose of the issue accordingly.

Thus, the Board requires that the HGEA prove by a preponderance of the evidence, together with sufficient legal argument, that the Employer committed wilful violations of Section 89-13(a)(1) through 89-13(a)(8), HRS.

Based upon the foregoing standard of proof, the Board hereby dismisses the HGEA's charges of Section 89-13(a)(2), 89-13(a)(3), 89-13(a)(4), 89-13(a)(5), 89-13(a)(6), 89-13(a)(7) and 89-13(a)(8), HRS, violations. At the outset, the Board finds that the HGEA failed to present any legal arguments to support the allegations and therefore failed to carry its burden of proof with respect to these claims.

Instead, the HGEA relies on the Board's Decision No. 278, United Food & Commercial Workers Union and Hawaiian Milling Corporation, 4 HLRB 510 (1988), where the Board considered an alleged violation of Section 377-6(1), HRS, which is analogous to Section 89-13(a)(1), HRS. In that case, the Board held:

In examining an employer's conduct under Subsection 377-6(1), HRS, then, "the test is not whether the language or acts were coercive in actual fact, but whether the conduct in question had a reasonable tendency in the

totality of the circumstances to intimidate."
(Citation omitted.)

Id. at 517; see also Decision No. 290, United Food & Commercial Workers Union and Hawaiian Milling Corporation, 4 HLRB 617, 625. Accordingly, the Board will consider solely the HGEA's Section 89-13(a)(1), HRS, claim.

Removal of Telephones

The HGEA contends that the Employer removed telephones at the Bureau to harass, discriminate and retaliate against Bureau employees in bargaining units 03 and 04 who participated in the HGEA strike. With respect to this allegation, the HGEA states:

On May 2, 1994, Sasano, Furukawa and Watanabe disconnected all telephones which are used by unit 03 and 04 members who returned to work at the Bureau. Moreover, the members were instructed to make a request to a supervisor each time for the use of a telephone, or to use the public pay phone. Sasano, Furukawa and Watanabe's acts were clearly discriminatory, and were retaliatory because the members of units 03 and 04 went on strike. After the HGEA intervened, Watanabe, the Deputy at the Bureau, opened 2 telephones for approximately 50 employees who are members of units 03 and 04. The HGEA intervened again, and all telephones were finally operable in the late afternoon on Tuesday, May 3, 1994.

B. Ex. 1.

In order to prove a retaliation theory, the HGEA must demonstrate that the Employer had an improper motive; second, that there was a causal connection between the improper motive and the decision to remove the telephones; and third, that the improper motive was a motivating factor in the decision to remove the

telephones. See Decision No. 329, Lepere and Waihee, 5 HLRB 123, 127 (1993).

Hope-Orlando testified that after the HGEA strike, only three telephones for management's use remained intact inside the Bureau. Tr., pp. 22-23. Hope-Orlando stated that there are normally two telephones available for use by twelve employees who work in the indexing section; however, after the HGEA strike, the workers had no access to telephones except for the public pay phones outside the Bureau. Tr., pp. 23-24, 47, 49. Hope-Orlando testified that there were no telephones within the larger work area, but only two telephones in the review section and one in FURUKAWA's office. Tr., pp. 25, 49. Hope-Orlando has no idea who removed the telephones or when they were removed because they were there on the one day that she worked during the strike. Tr., pp. 24, 26. Hope-Orlando testified that the telephones were returned on the afternoon of the third day after the strike, but she does not know why they were returned. Tr., pp. 26, 28, 46-47, 48.

Enrique testified that on the first day back to work after the HGEA strike, she brought the telephone situation to the attention of WATANABE and the other assistant registrars, and also Ahue. Tr., pp. 82-83. Enrique testified that she complained to WATANABE again on the second day, May 3, 1994, when the telephones had still not been returned. Tr., pp. 87-88. In addition, Enrique testified that she spoke with Ahue, and he told her that "Mike Ushinaga [sic] was going to take care of it and the phones would be

back. But the second day, the phones still weren't back." Tr., p. 88.

Enrique stated, "we have a phone that's available to us, and that phone was taken away." Tr., p. 97. Enrique further testified that WATANABE, SASANO, and Kimura made a general announcement that any employees who wanted to use the telephone had to use pay phones during their breaks. Tr., pp. 97-98.

Enrique testified that some Bureau employees approached her as a shop steward and expressed their belief that management was retaliating against them for going on strike. Tr., p. 89. In addition, Enrique indicated that this was the first time in the ten years that she has worked at the Bureau that the telephones have been taken away. Tr., pp. 87, 89. Enrique further testified that "there are no reasons for the phones not to be physically there." Tr., p. 89.

Enrique testified that SASANO called her one night at home and told her that Bureau management was really upset, and would probably get back at the Bureau employees. Tr., p. 90. Enrique further testified that Bureau management seemed angry and upset about the Bureau employees' conditional return to work on the one day during the strike. Tr., pp. 90-91.

Ahue testified that he understood that many of the telephones were disconnected sometime during the strike. Tr., p. 123. Ahue testified:

- A. From what I've been able to gather since the incident came up, some of the -- most of the phones were removed because there was nobody there to answer them. And because calls continued to come in from the public as well as other government

agencies inquiring about the status of the Bureau, with the limited number of staff there, it was nor [sic] practical to have only a few phones operable so that they could be answered.

Q. [By Mr. Chang] And to do that, they would reprogram the telephones into fast forward or call forward to another line?

A. From what I understand, normally, you would be able to do that, but I was told that with at least some of the phones, that doesn't work. So the phones would ring any way. In other words, you could not -- As I've been told, you could not call forward on every single phone in the office, so you would have some phones ringing regardless.

Q. In order to, at least address that problem of some phones not being able to call forward, wouldn't it be just a simple test of pulling out the jack line and the phone won't ring?

A. That's what I understood they did.

Q. Is it your understanding that someone grabbed all the telephones prior to return of the employees to regular work after the strike, where they carried away all the telephones and put it some place else away from the regular work place?

A. That's my understanding.

Q. Can you explain why that would happen?

A. No.

Tr., pp. 124-25.

FURUKAWA testified that during the second week of the strike, "when we were trying to receive documents, the phones were ringing, and they're bouncing all over the place." Tr., p. 172.

FURUKAWA testified:

A. We did have an answering machine available, and some of the lines were directed. However, some of them just

didn't work. And so we didn't know, you know, which lines were working properly and which lines were not.

Q. [By Mr. Goo] What do you mean "didn't work?"

A. We had tried to assign as many phones as we could, in fact, all the phones to that telephone, that message, that recording. But you know, the phones would ring, some phones would ring, and we didn't know why it was ringing. And when we tried to get there, it would bounce some place else.

Q. What action then did you take in response to this?

A. I just told the employees that were working at the time to disconnect the phones.

Tr., p. 175.

With regard to the removal of the telephones, FURUKAWA testified on direct examination that she directed the employees to physically remove the telephones from the tables because, "I just didn't want to be bothered with the phones at that point. We were just trying to get the work out." Tr., p. 176. However, on cross-examination, FURUKAWA explained the difference between removing the jack of a telephone and physically removing a telephone as follows:

A. I think it was the way I communicated to -- I just said, "Remove the phones." And they went and took it away physically. And I didn't even realize that, and when I did I just said, "Please put them back."

Q. [By Mr. Chang] So you mean to inform the Board today that you were not aware that individuals, namely two individuals, were

removing the telephones from the various workstations?

A. That's correct.

Tr., pp. 209-10.

FURUKAWA testified that she did not remove the telephones to get back at a particular employee, nor did she know that by removing the telephones she would be getting back at a particular employee. Tr., p. 177. FURUKAWA stated, "I couldn't even think of that at that time. All I was thinking about was the recording process and getting the documents out." Tr., p. 177.

When questioned about her decision to leave the telephones disconnected after the conclusion of the HGEA strike and upon the return to work of Bureau employees, FURUKAWA testified:

This [sic] only reason I said to leave it off was we had the backlog of work. We had about six bins of mail to do, to record from the backlog of, you know, the strike which we didn't address, we weren't able to address. Plus the fact that we had our regular recordings coming through. And to do that -- because I had complaints before that the telephones just bothered them, that they couldn't do their work. So I said for this week just leave it off, and then return it. Because I had anticipated, if we did one week of overtime, we should be able to catch up and get back to normal.

Tr., p. 180.

In addition, FURUKAWA testified that WATANABE was supposed to issue a directive informing Bureau employees of telephone numbers where they could be reached if they had personal or any kind of emergency calls. Tr., p. 181. FURUKAWA indicated that WATANABE disseminated this information to the Bureau's

management team on Monday, the first day back from the strike. Tr., pp. 211-12.

FURUKAWA contends that the telephones were not returned on Monday because she was not instructed by Ahue to return them until about 4:00 p.m. or 4:30 p.m. on Monday afternoon. Tr., pp. 178, 211. FURUKAWA contends that she waited until Tuesday to instruct Fagundes and Williams to return the telephones because they had already left for the day and she did not know where the telephones were located. Tr., pp. 178, 211. FURUKAWA testified that she does not know why the telephones were not returned on Tuesday morning nor why individuals would continue to complain about access to telephones as late as Wednesday. Tr., pp. 211-12.

Fagundes testified that sometime during the second week of the HGEA strike:

[I]t was decided that we would remove the phones from the office, preparing for when the strike was over. When the workers were to come back to work, we expected a very, very large workload to come in. A number of documents that had to be recorded. So we decided so that everybody could concentrate on their work, that the phones would be removed.

Tr., p. 227; see also Tr., pp. 230-31.

Fagundes testified that he removed the telephones by disconnecting them from the phone jacks, placing them in a box, taking them across the hall and storing them in the supply cabinet. Tr., pp. 227-28. Fagundes explained that he was instructed to "take the phones out and put them way [sic]." Tr., p. 228.

Fagundes testified that telephones were accessible to Bureau employees if they needed to make a phone call. Tr., p. 239. Fagundes further testified that Bureau supervisors did not issue a

directive forbidding the use of telephones. Tr., p. 230. However, Fagundes testified that he was not certain whether Bureau employees were informed that they could use the available telephones. Tr., p. 239.

Fagundes testified that FURUKAWA instructed him to reinstall the telephones in the late morning on the second or third day after the HGEA strike. Tr., pp. 231-32. However, Fagundes explained that FURUKAWA "didn't say it was an urgent, immediate thing that had to be done right away, so that afternoon I went and put back all the phones." Tr., p. 232.

Fagundes maintains that the primary reason FURUKAWA gave him for removing the telephones was to allow Bureau employees to concentrate on their work, and not to prevent the telephones from "bouncing." Tr., pp. 251-52.

WATANABE testified that during the HGEA strike, the phones "were ringing off the hooks," and therefore, a decision was made to disconnect the telephones. Tr., p. 254. WATANABE testified:

We basically have two sections. There's an office with two basic office areas. The phones, basically, were being call-forwarded to different sections because of the need to be able to answer the phone calls. We were having problems with the phones jumping and not being able to determine where the phones were ringing. We have, I would say, within the office, if I had to guess, in excess of 20 phone instruments.

Tr., p. 254.

With regard to the removal of the telephones, WATANABE explained:

A. Basically, we had had some concerns raised earlier in regards to the phone being a nuisance, that for the people to do the work to have to answer the phone calls, as well as do the work, it was difficult. I believe that was the major intent that we considered in terms of the phone removal at the time it was removed.

Q. [By Mr. Goo] What about jumping of the phones and the --

A. That was another issue.

Q. -- telephone answering service?

A. You have to run and it was hard to determine where the phones are ringing to. It was difficult to determine where the phones were ringing, or which phones were ringing. I have that problem even at the present time, whether it's a phone right outside my office or the one right in front of me or the one on the left side.

Tr., p. 256.

WATANABE testified that Fagundes initially stored the disconnected telephones in his office; however, the next day, he instructed Fagundes to move the telephones elsewhere. Tr., pp. 255, 270-73. WATANABE testified that he did not know where Fagundes eventually stored the telephones. Tr., p. 273.

WATANABE testified that Bureau employees complained about not having access to telephones on Monday morning, the first day back from the HGEA strike. Tr., p. 274. WATANABE further testified that he informed FURUKAWA about the complaints. Tr., pp. 274-75. In addition, WATANABE testified that he explained the reasons for removing the telephones to the Bureau employees:

Q. [By Mr. Chang] So you didn't say it was in their best interest, you didn't say it was better for them, so what did you try to convey to them?

- A. That the phones would eventually be returned.
- Q. Okay. So that's the extent?
- A. When asked why they were removed, I said one of the concerns were [sic] that we were running around, having difficulty in answering the phones, and number two, there were concerns raised in the past that people would prefer to work without phones in a busy period.
- Q. And when was it in the past conveyed to you that people would prefer not to have the phone?
- A. In receiving, the receiving supervisors have verbally expressed that. People in the back in review have expressed that, that without having to answer phones, they were able to get more work done.

Tr., pp. 275-77.

WATANABE testified that he was never instructed by FURUKAWA, or anyone else, to inform Bureau employees that certain telephones were available for use or which phones were available for use. Tr., p. 187. WATANABE stated, "I think we basically assumed there were phones available." Tr., p. 187.

However, WATANABE testified that he instructed Bureau managers at a staff meeting to inform the employees that they could use the telephones available. Tr., pp. 287-88. In addition, WATANABE testified that he gave out telephone numbers where Bureau employees could be reached. Tr., pp. 288-89. WATANABE further testified that the managers present at the staff meeting are members of bargaining units 03 and 04. Tr., p. 289.

WATANABE testified that he understood that a decision and agreement were made to return the telephones. Tr., p. 256. WATANABE believes that the telephones were replaced on Monday

afternoon or Tuesday. Tr., pp. 257-59. WATANABE contends that the telephones were not removed for the purpose of retaliating against or getting back at Bureau employees who participated in the HGEA strike. Tr., p. 257.

Look testified that Enrique conveyed to her that the telephones were removed so that Bureau employees "could work more" since "there was going to be this backlog." Tr., pp. 306-07. Look testified that to the contrary, Ahue told her that the telephones were removed because "the phones were jumping all over." Tr., p. 307. In addition, Look testified that Ahue promised that the phones would be returned on the first day back from the strike; however, "when the second day rolled around and then the third day, the answer was that they [the Employer] didn't know where the phones were." Tr., p. 307.

Based upon the credible testimony of witnesses and the weight of the evidence presented before the Board, the Board finds that the Employer's removal of the telephones at the Bureau constituted harassment of Bureau employees in bargaining units 03 and 04 who participated in the HGEA strike.

The Board finds significant the Employer's two different rationales for removal of the telephones; on one hand they were removed during the strike to prevent "jumping", on the other to minimize disruption during the post-strike resumption of work period.

Furthermore, the Employer's physical removal of the telephone instruments from work areas rather than merely disconnecting the jacks, and the admitted failure by the Employer

to promptly reinstall the telephones upon Ahue's direction, evidence a causal connection between the Employer's improper motive and its decision to disconnect the telephones.

The evidence indicates a longstanding problem of communication and interpersonal conflict between Bureau management and employees, which peaked during the HGEA strike and was exacerbated by the conditional one-day return to work during the HGEA strike.

On balance, the Board finds that the Employer's improper motives were the motivating factor in the Employer's decision to remove the telephones and the Employer's subsequent failure to promptly return the telephones. Thus, the Board infers that the Employer denied Bureau employees access to telephones in the work place to harass the employees for their participation in the HGEA strike. The Board therefore concludes that the actions of the Employer were wilful and a natural consequence of its actions.

Accordingly, the Board finds that the Employer committed a prohibited practice in violation of Section 89-13(a)(1), HRS, when it wilfully removed telephones from use by Bureau employees in bargaining units 03 and 04 who participated in the HGEA strike.

Telephone Policy

The HGEA alleges that the Employer continued to retaliate against Bureau employees in bargaining units 03 and 04 by issuing a directive on the use of the telephones dated May 3, 1994. See B. Ex. 1. However, the HGEA failed to present anything more than the mere allegation in support of this claim.

Moreover, the Employer introduced into evidence the Bureau's Policies and Procedures Manual, dated January 1994, which sets forth a telephone policy consistent with the one stated in the memorandum issued on May 3, 1994. See R. Ex. 10; C. Ex. B.

In addition, the Employer presented the testimony of witnesses to corroborate its contention that the memorandum issued on May 3, 1994 reflects established telephone procedures at the Bureau.

Young testified that he did not know the motivation behind the circulation of the memorandum; however, he understands that "it only reflects the standard telephone courtesy." Tr., p. 152.

FURUKAWA testified that the memorandum served as a reminder to employees when the telephones were returned. Tr., pp. 195-96. FURUKAWA explained:

Q. [By Mr. Goo] Was it necessary to issue this document?

A. Well, in the discussions with Keith, he had asked, you know, why -- not he had asked -- he had made a statement to me that the employees agreed that they would answer the telephones and they would not transfer the calls to other parties. And they would answer the questions that were asked of them.

Q. Was there a difficulty in the employees not answering the calls?

A. Yes. They would let the telephones ring, and nobody wanted to answer the questions. Once they answered the phones, they would transfer the calls. This is prior to the strike. They would transfer the calls to somebody else to answer.

Tr., p. 196.

Based upon the testimony of witnesses and the evidence presented before the Board, the Board finds that the telephone directive issued by the Employer merely reiterates a previously established policy within the Bureau. Accordingly, the Board finds that the HGEA failed to meet its burden of proof with respect to this claim and hereby dismisses this charge.

Overtime Directive

In its complaint, the HGEA alleges that on May 2, 1994, the Employer instructed all Bureau employees in bargaining units 03 and 04 that they must work a minimum of 15 hours per day "until the backlog of work caused by the strike was cleared up and updated to an operational standard." B. Ex. 1. In addition, the HGEA alleges that SASANO denied any overtime work to Bureau employees in bargaining units 03 and 04 who were "unable or unwilling to work the full 15 hour [sic] per day." B. Ex. 1.

Based upon a thorough review of the record, the Board finds that the HGEA failed to present any evidence in support of this claim. Moreover, the testimony of witnesses indicates that the overtime directive required a total of fifteen (15) hours of overtime work for the week of May 2, 1994 through May 6, 1994, and not fifteen (15) hours per day as alleged by the HGEA. Tr., pp. 140, 183-185, 214, 260.

Accordingly, the Board finds that the HGEA failed to meet its burden of proof with respect to this claim and hereby dismisses this charge.

Faith Hope-Orlando's Overtime Excuse

In connection with the Employer's overtime directive, the HGEA alleges that:

[I]n a May 4, 1994 memorandum, Sasano noted that if a member could not work the mandated 15 hours per day, a written explanation was needed. (Reference to attachment omitted.)
. . . .

[I]n an additional brutal and unlawful example of continued discrimination, harassment and retaliation, Watanabe issued a memorandum to member Hope-Orlando, and demanded an explanation on why she was not able to work the overtime since Monday (which included up to 15 hours per day), and further unreasonably demanded that the explanation be in writing by the end of today [May 6, 1994]. (Reference to attachment omitted.)

B. Ex. 1.

Hope-Orlando testified that she felt no need to justify her absence from overtime in writing because "it was done before orally." Tr., pp. 63-64. Furthermore, Hope-Orlando testified that Ahue excused her from the mandatory overtime requirement. Tr., pp. 53, 64-66.

With respect to the requirement of submitting written documentation as an excuse from overtime work, Hope-Orlando testified:

Q. [By Mr. Goo] How about the requirement to submit requests for excusal from overtime? There is no such procedure?

A. Not after 4:30 to justify what, on written form, what you have to do, why you can't.

Q. Never has been one in the Bureau?

A. Not that I know of. Not for me.

Q. Nor for any office policy that you've been aware of during the entire time you've been in the Bureau of Conveyances?

A. That is the first for me.

Q. No. No.

A. Where I cannot -- you know, I refuse to submit a letter on my part after 4:30 giving reasoning why I can't work the overtime.

Q. We understand your comment, but within the Bureau of Conveyance [sic] as a whole, the place that you work at, is there a policy that you are aware of concerning the need to have written requests for excusal from overtime?

A. No.

Q. No such policy at all?

A. Not that I know of.

Q. You know of no policy?

A. Not that I know of.

Tr., pp. 76-77.

Moreover, Enrique testified that the Employer previously accepted verbal excuses from overtime work; however, after the HGEA strike, the Employer requested written documentation. Tr., p. 95. Enrique testified that the requirement of submitting written excuses from overtime work is not part of a written office procedure and is not consistently enforced. Tr., pp. 101-02.

The evidence before the Board, rather, indicates that the requirement of submitting written documentation as an excuse from overtime work has been a standard practice at the Bureau since 1992. Tr., pp. 186-87, 203-04, 262-63. Moreover, while Hope-Orlando testified that she was unaware that such a requirement

existed, the evidence in the record indicates that she complied with the requirement several times in the past. See R. Exs. 7, 8 and 9. Furthermore, while Hope-Orlando believed that she was excused by Ahue from overtime work, the testimony of witnesses indicates that Ahue did not excuse her from the mandatory overtime requirement. Tr., pp. 122, 126, 143-44, 195.

Based upon the weight of the evidence presented, the Board finds that the HGEA failed to prove by a preponderance of the evidence that the Employer requested written documentation from Hope-Orlando to harass, discriminate or retaliate against her participating in the HGEA strike. Accordingly, the Board concludes that the HGEA failed to meet its burden of proof with respect to this claim and hereby dismisses this charge.

Denial of Faith Hope-Orlando's Vacation Request

As part of its amended complaint, the HGEA alleged that the Employer unlawfully refused Hope-Orlando's request to change her vacation. Specifically, counsel for the HGEA alleged:

With respect to the vacation time, it relates to Faith Hope Orlando, who previously testified in the essential worker proceedings here. She were [sic] -- she asked for a vacation beginning in November some time, her supervisor told her she can't do it. She submitted a memorandum response to the request on June 20th. Until the present date, she hadn't [sic] had a firm response.

Tr., pp. 13-14.

Hope-Orlando testified that her original vacation request was verbally approved. Tr., p. 30. However, Hope-Orlando testified that she wanted to change her vacation to an "open week" when no one else was taking time off for a vacation. Tr., p. 31.

Hope-Orlando testified that Alber approved her second vacation request, but SASANO demanded a written explanation for the change. Tr., pp. 32-33. Hope-Orlando testified that she had never been asked to submit a written request to change her vacation in the past and that amended vacation requests had always been done verbally. Tr., pp. 34, 37.

Enrique also testified that vacation changes have always been agreed upon verbally by Bureau management and personnel. Tr., p. 93. Enrique testified that in the ten years that she has worked at the Bureau, she never heard of anyone other than Hope-Orlando being asked to write a letter to change her vacation dates. Tr., p. 102.

While Hope-Orlando and Enrique contend that SASANO's request for written documentation to change vacation dates was unprecedented at the Bureau, the HGEA failed to present corroborating evidence to substantiate the claim. Instead, the evidence before the Board indicates that the Bureau's established policies and procedures require Bureau employees to submit written requests to change vacation dates. See R. Ex. 10.

Based upon the evidence presented, the Board finds that the HGEA failed to meet its burden of proof with respect to this claim and hereby dismisses this charge.

Contacting of Kerian Ishii's Doctor and Secondary Employer

In addition, the HGEA amended its complaint to include a charge that the Employer harassed, retaliated or discriminated against Ishii by contacting her doctor and secondary employer. Counsel for the HGEA stated:

With respect to the continued contact of Ms. Ishii's other employer and doctor, that has been on-going [sic] since the strike time. Well after the return to work began, you know, at the beginning of May. She's been contacted. Her doctor has been contacted on numerous occasions. Someone more specifically recently contacted her secondary employer, Safeway stores, to find out how many hours she were [sic] working there. And that's the only additions that I have.

Tr., p. 14.

With respect to this allegation, Enrique testified that Ishii was concerned because the Employer was constantly calling her doctor. Tr., p. 94. Enrique testified that Ishii's doctor's note was not sufficient "[f]or whatever management wanted." Tr., p. 93. Moreover, Look testified that Ishii felt that the Employer was invading her privacy because "[t]hey were kind of like calling her doctor and demanding to know more." Tr., p. 309. The HGEA presented no further testimony or evidence in this matter.

On the other hand, the Employer presented Ishii's medical certificate, which indicated that the Employer should "call if you have any questions." R. Ex. 11. In addition, WATANABE testified that he spoke with Ishii about her medical condition rather than contacting her doctor. Tr., p. 268. WATANABE testified that he did not instruct anyone to contact Ishii's doctor but that SASANO may have contacted her doctor as a follow-up. Tr., p. 286. WATANABE further testified that SASANO contacted Ishii's doctor "only once that I'm aware of." Tr., p. 286.

WATANABE testified that he is not aware of anyone who contacted Ishii's secondary employer, Safeway, to determine whether she was working there instead of at the Bureau. Tr., p. 286.

Based upon the evidence presented before the Board, the Board finds that the HGEA failed to meet its burden of proof with respect to this claim and hereby dismisses this charge.

Denial of Kerian Ishii's Overtime

Finally, the HGEA alleges that WATANABE denied Ishii overtime work since she was unable to work after 6:30 p.m. The HGEA alleges in its complaint:

[I]n the agreement between the HGEA and DLNR, the parties agreed that members of units 03 and 04 need not work upon proper medical certification or other good cause reasons. Member Kerian Ishii submitted a doctor's note which stated that she could not work after 6:30 a.m. [sic] Sasano, Furukawa and Watanabe disregarded the agreement between the HGEA and DLNR. Member Kerian Ishii was told by Watanabe that she could not work any overtime if she could not work after 6:30 p.m.

B. Ex. 1.

Again, the HGEA failed to present any evidence to substantiate this claim. Instead, the record before the Board indicates that Ishii attempted to avoid overtime work by getting an excuse from Ahue for Monday and Friday evenings and by presenting a medical certificate to avoid work after 6:30 p.m. See Tr., pp. 113-14, 143-44, 185-86, 261; R. Ex. 11.

Although the HGEA would like the Board to believe that Ishii was denied the opportunity to work overtime due to her participation in the HGEA strike, the evidence before the Board indicates that the Employer denied Ishii overtime work out of concern for her health. Tr., pp. 215, 266-69. WATANABE testified that he decided that Ishii did not have to work any extended hours

after she informed him that she has a heart condition. Tr., p. 266. In addition, FURUKAWA testified that she discussed Ishii's condition with WATANABE and that WATANABE informed Ishii that she should not work any overtime until she obtains a health clearance from her doctor. Tr., p. 215.

Based upon the evidence presented before the Board, the Board finds that the HGEA failed to establish any wrongful intent on the part of the Employer in contacting Ishii's physician and denying Ishii overtime work. Accordingly, the Board finds that the HGEA failed to meet its burden of proof with respect to this claim and hereby dismisses this charge.

CONCLUSIONS OF LAW

In accordance with sections 89-5 and 89-13, HRS, the Board has jurisdiction over the instant complaint.

A public employer or its designated representative commits a prohibited practice when it wilfully violates any of the provisions of section 89-13(a), HRS.

The Employer harassed employees for exercising their right to strike by removing their telephones. The Employer thereby violated Section 89-13(a)(1), HRS.

The HGEA failed to prove by a preponderance of the evidence that the Employer harassed, discriminated or retaliated against Bureau employees who participated in the HGEA strike by issuing a directive regarding telephone use.

The HGEA failed to prove by a preponderance of the evidence that the Employer harassed, discriminated or retaliated against Bureau employees who participated in the strike by

requiring them to work overtime or denying them the opportunity to work overtime.

The HGEA failed to prove by a preponderance of the evidence that the Employer harassed, discriminated or retaliated against Hope-Orlando by instructing her to submit a written excuse from overtime work and instructing her to submit a written request to change her vacation.

The HGEA failed to prove by a preponderance of the evidence that the Employer harassed, discriminated or retaliated against Ishii by contacting her doctor or her secondary employer and denying her the opportunity to work overtime.

ORDER

The Board hereby orders the Employer to cease and desist from harassing Bureau employees who participated in the HGEA strike.

The Employer shall immediately post copies of this order in conspicuous places on the bulletin boards at the Bureau where members of bargaining units 03 and 04 of the Employer assemble, and leave such copies posted for a period of sixty (60) consecutive days from the initial date of posting.

DATED: Honolulu, Hawaii, November 23, 1994 .

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson

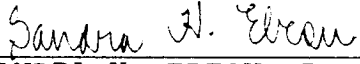
HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO v. COLBERT SASANO, SANDRA FURUKAWA, and CARL
WATANABE, Bureau of Conveyances, Department of Land and
Natural Resources, State of Hawaii; CASE NOS.: CE-03-222a,
CE-04-222b

DECISION NO. 361

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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