

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-10-239
	)	
UNITED PUBLIC WORKERS, AFSCME,	)	DECISION NO. 411
LOCAL 646, AFL-CIO,	)	
	)	FINDINGS OF FACT, CONCLU-
Complainant,	)	SIONS OF LAW, AND ORDER
	)	
and	)	
	)	
KAUAI VETERANS MEMORIAL	)	
HOSPITAL, State of Hawaii;	)	
ORIANNA SKOMOROCH, Administra-	)	
tor, Kauai Veterans Memorial	)	
Hospital; and SUSAN GUCWA-	)	
BUCASAS, Director of Nursing,	)	
Kauai Veterans Memorial	)	
Hospital,	)	
	)	
Respondents.	)	
	)	

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On November 21, 1994, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union), by and through its counsel, filed a prohibited practice complaint against KAUAI VETERANS MEMORIAL HOSPITAL, State of Hawaii (KVMH), ORIANNA SKOMOROCH, Administrator, KVMH and SUSAN GUCWA-BUCASAS, Director of Nursing, KVMH (GUCWA-BUCASAS) (collectively Employer) with the Hawaii Labor Relations Board (Board). The UPW alleged that on or about September 9, 1994, Respondents held a meeting of Unit 10 employees of KVMH and, inter alia, made statements disparaging the Unit 10 collective bargaining agreement (contract) and the seniority provisions contained therein. Complainant further alleged that Respondents suggested to the employees that they start a petition to change the contract and that the employees should request a

waiver of the new scheduling requirements. Complainant also alleged that Respondents subsequently drafted and circulated a petition or petitions to waive the new scheduling requirements of the Unit 10 contract. Complainant therefore contends that Respondents violated §§ 89-13(a)(1), (2), (7), and (8), Hawaii Revised Statutes (HRS).

On January 6, 1995, the Board conducted a hearing on the merits of the case. The parties had full opportunity to present evidence and arguments to the Board. The parties thereafter filed written arguments with the Board. Based upon a thorough review of the record, the Board makes the following findings of fact, conclusions of law, and order.

#### FINDINGS OF FACT

The UPW is the exclusive representative as defined in § 89-2, HRS, of employees included in bargaining unit 10.

Respondent KVMH, State of Hawaii, is a representative of the public employer within the meaning of § 89-2, HRS, for employees at KVMH.

ORIANNA SKOMOROCH was for all times relevant, Administrator of KVMH and a representative of the public employer within the meaning of § 89-2, HRS, of employees at KVMH.

GUCWA-BUCASAS was for all times relevant, the Director of Nursing at KVMH and a representative of the public employer within the meaning of § 89-2, HRS.

The UPW and the public employers were for all times relevant, parties to a contract for Unit 10, dated July 1, 1993 to June 30, 1995.

On or about August 30, 1994, GUCWA-BUCASAS and Karen Holck (Holck), KVMH's Personnel Management Specialist, attended a workshop on Oahu to learn about changes in the new Unit 10 contract. They were informed that changes were made with regard to scheduling, but that the Department of Health (DOH) would remain on a four-week schedule.

Section 25.03 of the 1993-1995 Unit 10 contract relates to work schedules and provides in part:

b. The work schedules of employees who work in operating units subject to shift work (including units operating less than twenty-four (24) hours per day) shall be prepared and administered as follows:

1) Each work schedule shall be prepared for twelve (12) weeks, provided that the Department of Health work schedules shall be prepared for four (4) weeks.

\* \* \*

4) The work schedule shall be presented to employees commencing in Work Unit or Workplace seniority order for each classification nine (9) weeks prior to the start of the work schedule. Employees shall have three (3) weeks to exercise their choice of shift for the twelve (12) week period (four (4) week period for the Department of Health), subject to the manpower coverage, contractual restrictions and limitations in order of Work Unit or Workplace seniority for each classification.

5) The Employer shall post the final schedule at least four (4) weeks in advance.

On or about September 2, 1994, UPW agent Gilbert Nobrega (Nobrega), UPW Chief Steward Pamela Javier (Javier) and Holck had



an informal meeting and agreed that the hospital was on a four-week schedule.

Prior to initially determining the minimum staffing requirements, GUCWA-BUCASAS, Marilyn Planas, Assistant Director of Nursing, and Holck called Nobrega to solicit his help in setting up an acceptable procedure for scheduling under the new contract which would be effective on midnight September 11, 1994.

On or about September 9, 1994, GUCWA-BUCASAS called a meeting of the Unit 10 nursing staff at KVMH to discuss the scheduling procedures in the new Unit 10 contract and to address the concerns of her staff. The meeting lasted approximately one hour and the parties dispute what transpired at the meeting.

According to Javier, GUCWA-BUCASAS stated, inter alia, that the Unit 10 contract called for a 12-week schedule; that the seniority clause was inhumane and was Javier's fault; that GUCWA-BUCASAS would manage the hospital as she saw fit; that the Union wasn't representing its members well; that the 12-week schedule should be waived; and that a petition should be started to waive the scheduling provisions.

At the hearing, GUCWA-BUCASAS denied making the foregoing statements, stating that she attempted to explain the background of the scheduling section of the contract which called for a 12-week schedule when Javier cut her off stating that the contract provided for a four-week schedule. GUCWA-BUCASAS denied suggesting to the members that they start a petition to get the contract changed and further denied blaming any Unit 10 member for the existence of the seniority clause of the contract.

Edita Yere (Yere) attended the meeting and testified that GUCWA-BUCASAS stated that the seniority clause was inhumane and blamed Javier for the seniority clause. Yere also testified that GUCWA-BUCASAS stated that no one could make management follow the contract and suggested that a petition could be circulated to change the scheduling requirement. Sheila Taboniar also confirmed that GUCWA-BUCASAS suggested circulating a petition and further stated that Joan Reid (Reid), KVMH Head Nurse, told her that if she didn't want to go on a 12-week schedule, she should sign a petition and that Reid drafted the petition.

Thereafter, GUCWA-BUCASAS took a handwritten draft of the petition<sup>1</sup> and had the KVMH Nursing Secretary, Joyce Mercado, type the petition forms. Mercado inadvertently typed one petition on the hospital stationery with the KVMH letterhead. The petition stated:

NEW UPW SCHEDULE REQUIREMENTS WAIVER

We, the undersigned L.P.N's and P.M.A's of the NURSING FACILITY at KAUAI VETERANS MEMORIAL HOSPITAL request to be waived from the new UPW scheduling requirements; and prefer to stay with our current method of scheduling.

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<sup>1</sup>GUCWA-BUCASAS testified that after the meeting, the Unit 10 employees constantly interrupted her and asked her for clerical assistance in typing up the petition so she eventually relented. GUCWA-BUCASAS testified that to the best of her recollection, Sheila Taboniar or another Unit 10 employee presented the handwritten draft to her for typing. Nursing Secretary Mercado testified that she could not remember whose handwriting the petition was drafted in but that she recognized the handwriting. Mercado testified that she types for GUCWA-BUCASAS, the assistant, other supervisors and the head nurses, including Reid. Mercado further testified that she is not familiar with the Unit 10 employees' signatures, including Taboniar. Taboniar testified that Reid drafted the petition.

GUCWA-BUCASAS took the completed petition and placed it on a table in the reporting room. The petition was signed by 13 Unit 10 employees with dated signatures from 9/14/94 to 9/16/94. The Nursing Secretary also typed two similar petitions, one for Scrub Technician IV's of the Operating Room/Central Supply Unit which was signed by two employees, dated 9/16/94 and 9/20/94, respectively, and one petition for L.P.N.'s of the Obstetric/Nursery Unit which was signed by four employees, dated 9/14/94 through 10/4/94.

Nobrega subsequently spoke with the signatories of the petition and asked them why they signed the petition. They told him that they wanted a waiver of the 12-week work schedule. Nobrega called Holck on or about September 12, 1994 and informed her that the petition was on hospital letterhead.

Holck told Nobrega that she and the hospital had no knowledge of the petition and did not participate in it. Holck told Nobrega that she would investigate it and contact him. Holck spoke with GUCWA-BUCASAS and the Nursing Secretary and learned that the use of the hospital letterhead was a mistake. Holck called Nobrega and told him that they had nothing to do with the drafting of the petition but made an accommodation in typing it. Nobrega was further informed that the use of the letterhead was a mistake.

Based upon the foregoing facts, the Board finds that on September 9, 1994 GUCWA-BUCASAS called a meeting with the Unit 10 nursing staff to discuss their concerns about their work schedules pursuant to the newly negotiated contract. Although GUCWA-BUCASAS testified that she was aware that KVMH would be on a four-week schedule under the new contract and started to explain the



procedure to the employees when she was cut off by Javier, the employees came away from the meeting with the understanding that the hospital would be on a 12-week schedule and if they wanted to return to the old scheduling provisions, some kind of exemption from the contract would have to be achieved. Also during that meeting, the Board finds based upon the preponderance of evidence that GUCWA-BUCASAS commented on the unfairness of the seniority clause in scheduling work and blamed chief steward Javier for the existence of the seniority clause in the contract. Despite GUCWA-BUCASAS' denials, the Board finds, based on the evidence before it, that she suggested that a petition be circulated to be exempted from the work schedule. Thereafter, GUCWA-BUCASAS directed the Nursing Secretary, Mercado, to type the petition which was drafted by another manager or supervisor known to Mercado and facilitated the signing of the petition by employees.

The Board finds that the Director of Nursing, by her actions, wilfully interfered with and coerced the rights of employees guaranteed under this chapter and interfered in the administration of the Union.

#### DISCUSSION

Complainant contends that Respondents violated §§ 89-13(a)(1), (2), (7), and (8), HRS, by disparaging the efforts of the UPW and the newly negotiated contract and circulating a petition to waive its provisions. Section 89-13, HRS, provides in part:

**§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;

\* \* \*

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

Complainant contends that Respondents violated § 89-13(a)(1), HRS, by interfering with the rights of employees guaranteed by § 89-3, HRS. Section 89-3, HRS, provides as follows:

Rights of employees. 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. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of amounts equivalent to regular dues to an exclusive representative as provided in Section 89-4.

Complainant argues that GUCWA-BUCASAS and Head Nurse Reid made statements which interfered with, restrained, or coerced the Unit 10 employees from exercising their protected rights to join, or continue membership, or assist any employee organization through representatives of their own choosing. Complainant argues that the record reflects that Reid authored the petitions to waive the scheduling requirements of the Unit 10 contract and that GUCWA-BUCASAS directed the typing of the petitions.



Respondents contend based essentially on GUCWA-BUCASAS' testimony denying the UPW's allegations that the UPW failed to prove that they wilfully committed prohibited practices.

In Decision No. 407, Hawaii Government Employees Association, AFSCME, LOCAL 152, AFL-CIO, 6 HLRB \_\_\_\_\_ (May 3, 2000), the Board considered whether the employer's statements violated § 89-13(a)(1), HRS. The Board stated:

To determine whether or not questioning of an employee reasonably tends to restrain, coerce or interfere with rights guaranteed under §8(a)(1) turns on the totality of the circumstances<sup>2</sup> of the alleged questioning. The Seventh Circuit stated:

. . . [i]t is not unusual for employees who interact with one another on a daily basis to converse about matters which affect their work, thus conversations between employees and supervisors do not violate the Act. [Cite omitted.] Even an interrogation does not, per se, violate the Act. [Cite omitted.] We categorize as "interrogations" within the meaning of § 8(a)(1) only those questions which, by word or context, suggest an element of coercion or interference. [Cite omitted.] Consequently, a question becomes coercive only when it is "likely to deter the interrogated worker (or others, who had heard about the interrogation) from supporting or . . . working actively for the union." [Cite omitted.] Factors which we weigh in deciding whether a particular inquiry is coercive include the tone, duration, and purpose of the questioning, whether it is repeated, how many workers are involved, the setting, the authority of the person asking the question, and whether the

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<sup>2</sup>The courts have used "all-the-circumstances" and "totality of the circumstances" synonymously.

company had otherwise shown hostility to the union. [Cite omitted.] We also consider whether questions about protected activity are accompanied by assurances against reprisal, and whether the interrogated workers feel constrained to lie or give non-committal answers rather than answering truthfully. [Citations omitted.]

NLRB v. Champion Laboratories, Inc., 99 F.3d 223, 227, 153 LRRM 2657, 2660 (7th Cir. 1996).

Other relevant circumstances are the employer's attitude toward its employees, the nature of the information sought, the rank of the questioner in the employer's hierarchy, the truthfulness of the employee's reply, the place and manner of the conversation, whether the employer had a valid purpose in obtaining the information sought about the union, whether a valid purpose if existent, was communicated to the employee and whether the employer assured the employee of no reprisals if he or she supported the union. Centre Property Mgmt. v. NLRB, 807 F.2d 1264, 1270, footnote 4, 125 LRRM 2409 (5th Cir. 1987). See also, Midland Transportation Co., Inc. v. NLRB, 962 F.2d 1323, 140 LRRM 2270 (8th Cir. 1992).

The Board must determine in this case whether the Respondents engaged in conduct, including making statements, which reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Chapter 89, HRS, rights. The Board finds after considering the evidence in the record, that GUCWA-BUCASAS' testimony is directly controverted by other credible witnesses and that during the meeting, she made statements disparaging the Union's chief steward and the newly negotiated contract provisions. The Board finds that GUCWA-BUCASAS cast an unfavorable light on Javier's participation in the negotiations process and interfered with Javier's right to participate in Union activities. In

addition, GUCWA-BUCASAS' statements at the meeting were coercive as she misled the employees to view the contract provisions as requiring a 12-week schedule instead of a four-week schedule. Although she testified that she was aware that the DOH was exempted from the 12-week work scheduling and that there was no issue with regard to the DOH's exemption from the scheduling provisions, inexplicably, the employees' misperceptions continued throughout, culminating in the petitioning of the Union to waive the 12-week scheduling provision from which the hospital was already clearly exempted.

Based upon the foregoing, the Board finds that GUCWA-BUCASAS interfered with and coerced employees in the exercise of their rights guaranteed in Chapter 89, HRS. The Board finds GUCWA-BUCASAS' actions to be wilful because the natural consequence of her actions was the undermining of the employees' confidence in the Union and their chief steward.

In addition, the Board finds that GUCWA-BUCASAS interfered with the administration of the Union by undermining the employees' confidence in the Union and the newly negotiated contract and by her participation in the preparation of the petitions. The petitioning of the Union interfered with the Union's business since Nobrega was required to investigate the source of the members' unrest and dissatisfaction. The Board finds that GUCWA-BUCASAS' participation was wilful since the natural consequence of undermining of the employees' confidence in the Union leading up to the actual petitioning of the Union was the interference with the administration of the Union.



In view of the foregoing, the Board finds it unnecessary and therefore declines to rule on Complainant's allegations of §§ 89-13(a)(7) and (8), HRS, violations.

#### CONCLUSIONS OF LAW

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

An Employer violates § 89-13(a)(1), HRS, when it interferes with, restrains, or coerces employees in the exercise of their rights guaranteed under this chapter.

Based upon the record of this case, the Board concludes that the Respondent GUCWA-BUCASAS committed a prohibited practice when she disparaged the Union's chief steward and the newly negotiated contract during a meeting with employees.

An Employer violates § 89-13(a)(2), HRS, when it dominates, interferes with, or assists in the formation, existence, or administration of the union.

The Board concludes that GUCWA-BUCASAS committed a prohibited practice by involving herself in the petitioning of the Union which interfered with the Union's business and undermined the employees' confidence in their representative.

#### ORDER

The Board hereby orders the Respondents to cease and desist from undermining the employees' confidence in the Union as well as in its representatives, including the Union steward.

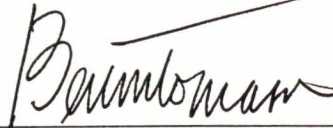
The Employer shall immediately post copies of this order in conspicuous places on the bulletin boards where KVMH employees

in Unit 10 assemble, and leave such copies posted for a period of 60 consecutive days from the initial date of posting.

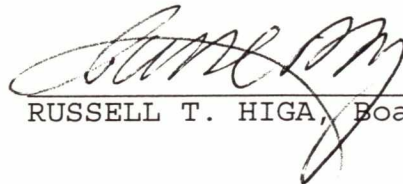
The parties shall notify the Board within 30 days of receipt of this Decision of the steps taken by the Employer to comply with the Board's order.

DATED: Honolulu, Hawaii, June 9, 2000.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

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