

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
CLAUDE K. CARVALHO,	)	Case No. <u>CU-12-18</u>
	)	
Complainant,	)	Decision No. <u>90</u>
	)	
and	)	
	)	
STATE OF HAWAII ORGANIZATION	)	
OF POLICE OFFICERS,	)	
	)	
Respondent.	)	
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The subject prohibited practice charge against the State of Hawaii Organization of Police Officers (hereafter SHOPO) was filed by police officer Claude K. Carvalho on June 2, 1977. At the request of Mr. Carvalho's attorney, the case was continued several times. The hearing herein was held before the full Board on March 9 and 21, 1978, and the post-hearing briefs of the parties were received on May 19, 1978.

In his complaint against SHOPO, Mr. Carvalho charges that SHOPO brought pressure to bear upon his employer causing it to interfere with his rights under Chapter 89, Hawaii Revised Statutes (hereafter HRS), to support NUPO, a union which is a rival of SHOPO, and that it violated its duty to fairly represent him.

Mr. Carvalho also brought charges against his employer. Case No. CE-12-36. He, however, entered into a settlement agreement with the employer and dropped that case. Order No. 178, March 9, 1978.

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

#### FINDINGS OF FACT

Complainant Carvalho is a public employee, who is and was at all times relevant a member of Unit 12 (Police Officers) employed by the Honolulu Police Department (hereafter HPD). He also was a member of SHOPO until that organization expelled him from membership on March 11, 1977.

Respondent SHOPO is the exclusive representative of all employees in Unit 12.

The National Union of Police Officers, AFL-CIO, (NUPO) is an employee organization which is a rival of SHOPO. Mr. Carvalho became a supporter of NUPO while he was a SHOPO member and it is the response of SHOPO to activity on his part on behalf of NUPO which gave rise to this case and to Case No. CE-12-36.

The record establishes that Dayton Nakanelua, SHOPO's senior business agent, on March 4, 1977, telephoned Major William Jones of the HPD to inform him that Claude Carvalho was soliciting support among fellow police officers for NUPO during working hours as well as non-working hours and on the employer's premises as well as off of them. Nakanelua told the Major that SHOPO would file prohibited practice charges against the HPD if Carvalho was permitted to continue solicitation during duty hours on departmental premises.

There is a policy which prohibits solicitation on the HPD property during working hours. The validity of this

policy and its application to Officer Carvalho were not contested in this case.

After Mr. Nakanelua phoned him, Major Jones informed Mr. Nakanelua that Officer Carvalho had been advised that his organizational activities would not be permitted on departmental premises during his duty hours.

No prohibited practice case was filed by SHOPO against the HPD.

After SHOPO made its complaint to Major Jones, Officer Carvalho was asked to go to the office of Captain Walter Nakageneku. The captain and a lieutenant were in the office. Officer Carvalho indicated that the door and windows of Captain Nakageneku's office were closed. During this meeting in Captain Nakageneku's Office, Officer Carvalho was shown a copy of Petitioner's Exhibit 2, the memo written by Major Jones (also referred to hereafter as the Jones memo).<sup>1</sup> He was told it was a complaint against him by SHOPO. He was not given a copy of the Jones memo although he sought to obtain one.

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<sup>1</sup>Petitioner's Exhibit 2 which is a copy of a memo Major Jones wrote to John Pekelo states:

TO : JOHN PEKELO, ASSISTANT CHIEF OF POLICE  
FROM : WILLIAM JONES, MAJOR  
SUBJECT : VIOLATION - COLLECTIVE BARGAINING ACT  
(Exclusive Representative Rights)

On March 4, 1977 at 1530 hours, I received a call from Mr. Dayton NAKANELUA of the State of Hawaii Organization of Police Officers (S.H.O.P.O.) who informed me that as the Assistant Executive Director of S.H.O.P.O. he wish [sic] to informally make a complaint against Officer Claude Carvalho (MPO-M) assigned to J.C.P.D. The officer has been soliciting signatures in behalf of National Union of Police Officers (N.U.P.O.) in an effort to obtain



He met on March 11 with SHOPO shop steward Bertha Nahoopii, told her that Captain Nakageneku had interfered with his statutorily protected right to join NUPO and had denied him a copy of the Jones memo. He referred to his complaint as a grievance. Ms. Nahoopii stated that she did not know what kind of grievance he had.

Although Ms. Nahoopii indicated on March 11, 1977, that she did not understand what Mr. Carvalho's grievance was, she did go with him to Captain Nakageneku's office to ask him for a copy of the Jones memo. It was not given to her. Later, the employer said it had thrown the memo away.

That same day, Officer Carvalho, accompanied by William Hightower, the AFL-CIO Regional Representative, went to the SHOPO office where Stanley Burden, SHOPO's executive director, told him SHOPO would represent him if he would

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Footnote 1 continued

the decertification of S.H.O.P.O. as the exclusive bargaining agent for police officers. This soliciting has taken place on City and County property and during times when both, the solicitor and the solicited have been on duty; as well as some solicitations made off duty and off City and County property. Personnel approached by the officer were named as: Gordon Kong (MPO-M), Alika Desha (MPO-M), Michael Marques (MPO-M), and George Morioka (MPO-M).

The complaint is not against this department's administration and/or the administration of the J.C.P.D. - just against the officer.

S.H.O.P.O. is preparing appropriate action to file a formal complaint with H.P.E.R.B. I suspect that when the hearing is scheduled, a representative from this department will have to attest to the fact that the officer was warned.

/s/William Jones  
WILLIAM JONES  
Executive Assistant  
March 4, 1977

state what his grievance was. Mr. Carvalho said he explained several times what his grievance was but Mr. Burden insisted he could not understand it. Throughout this meeting, Officer Carvalho took notes.

When, during the hearing before this Board, Officer Carvalho was asked if Mr. Burden refused to represent him, Officer Carvalho said, "Well, he just said you have no grievance." Thereafter at page 88-89 of the March 9 transcript, the following colloquy between Member Milligan and Officer Carvalho is recorded. It reveals Officer Carvalho's perception of the grievance he wanted SHOPO to pursue:

THE WITNESS: He said, "You have no grievance, I don't know what you're saying."

MR. MILLIGAN: Had you specified the charge that you wanted to make?

THE WITNESS: Yes, sir.

MR. MILLIGAN: Was it written out?

THE WITNESS: No. I --

MR. MILLIGAN: What exactly were you charging in your grievance?

THE WITNESS: That the employer -- I have it written here. I read Chapter 89-3, 89-13 --

MR. MILLIGAN: It wasn't a contractual agreement? It had nothing to do with the contract between SHOPO and the employer?

THE WITNESS: No. At that time I read him the specific sections of the law stating that the Department had refused -- had interfered [sic] with my rights.

MR. MILLIGAN: You read him parts of Chapter 89?

THE WITNESS: Yes, sir.

MR. MILLIGAN: Give them to me? Chapter 89 --

THE WITNESS: 89-3, and 89-13.

MR. MILLIGAN: Specifically what were you charging? I want to know what the grievance was.

THE WITNESS: That the Captain interferred [sic] with my rights to --

MR. MILLIGAN: To what?

THE WITNESS: -- to join or participate in another organization.

MR. MILLIGAN: The Captain disagreed with your rights in what what -- interferred [sic] with your rights?

THE WITNESS: He gave me a formal complaint against me of doing what supposedly was on this complaint.

MR. MILLIGAN: It was your position that you should have a right to organize for another union on company time?

THE WITNESS: No, it wasn't.

MR. MILLIGAN: Then, what were you complaining about?

THE WITNESS: That -- I talked to a lot of people off duty in regards to this union, and that they were interfering [sic] with my job -- I mean -- with me off duty.

MR. MILLIGAN: Did anyone tell you that you could not organize for another union off duty? Has anyone told you that?

THE WITNESS: No.

MR. MILLIGAN: Then what were you complaining about?

THE WITNESS: That letter said it.

MR. MILLIGAN: Pardon?

THE WITNESS: That original to/from letter said it.

On March 17, 1977, Officer Carvalho received a letter from SHOPO stating that his membership in SHOPO had been terminated on March 11. Mr. Carvalho says he did not understand that he could appeal within the SHOPO hierarchy his termination of membership. However the letter of March 17, 1977, clearly and unambiguously stated that he could appeal his termination. In any event, he did not appeal it.



## CONCLUSIONS OF LAW

A union may not cause an employer to discriminate against or interfere with or coerce an employee because the employee exercises protected rights. Radio Officers' Union v. NLRB, 347 U.S. 17, 33 LRRM 2417 (1954); NLRB v. Burnup and Sims, Inc., 379 U.S. 21, 57 LRRM 2385 (1964).

Officer Carvalho has an undisputed right to support NUPO without interference or discrimination by his employer. Section 89-3, and, by implication, Subsections 89-13(a)(1) and (3), HRS. This right is not, however, absolute. It may be subject to restrictions such as requiring the employee to solicit only on his own time. See, Republic Aviation v. NLRB, 324 U.S. 793, 16 LRRM 620 (1945).

In the instant case, Officer Carvalho failed to put on evidence that SHOPO's telephoned complaint to the HPD resulted in any employer discrimination against him caused by his exercise of protected rights. He failed also to put on evidence of any improper employer interference with his organizing effort.

Thus, with respect to the telephoned complaint, Officer Carvalho failed to provide any basis for finding any violation of his rights by SHOPO who admittedly set in motion, by making the phone call, whatever employer response occurred.

SHOPO does owe Officer Carvalho a duty of fair representation without discrimination. Section 89-8, HRS; Decision 89. In Decision 89, this Board stated:

Under the principles set forth in Vaca, it is clear that SHOPO, as the exclusive representative of employees in bargaining unit 12, is required by Chapter 89, HRS, to serve the interests of all of its members without discrimination, to act in good faith and to avoid arbitrary conduct.

Repeatedly, Officer Carvalho insisted that SHOPO represent him respecting alleged violations of his statutory rights by his supervisor. At least once he also asked SHOPO to obtain a copy of the Jones memo for him.

SHOPO representatives repeatedly told him they would help him if he could tell them what his grievance was. On the facts of this case, this was not unreasonable or bad faith conduct on SHOPO's part. It reasonably concluded that the alleged statutory violations were not grievances arising under the contract and that the Jones' memo which was an internal departmental communication was not the kind of complaint Officer Carvalho would be entitled to get a copy of under the Unit 12 Contract.

A question may arise as to whether SHOPO should have investigated the situation to determine whether the employer had behaved wrongly towards Officer Carvalho. The facts of this case reveal that SHOPO had initiated the complaint against Officer Carvalho so it was not unfamiliar with the origin and nature of the complaint. With respect to the employer's alleged violation of his statutory rights, Officer Carvalho's communications were unclear. The SHOPO representatives had difficulty understanding what he was talking about. Their insistence on specificity is not surprising in this case since Officer Carvalho's conduct which included going to SHOPO offices with an AFL-CIO representative (NUPO is an AFL-CIO affiliate) and taking notes of his conversation with Mr. Burden reasonably put them on their guard. Even during the hearing in this case, the Board found it difficult to understand what Officer Carvalho's grievance or complaint was and what he wanted SHOPO to do for him.



On the facts of this case, this Board finds that SHOPO did not violate its duty of fair representation toward Mr. Carvalho.

As to Mr. Carvalho's expulsion from SHOPO membership, the Board finds that this action by the SHOPO board of directors was not improper. It falls within the ambit of HPERB Decision 30 where we stated:

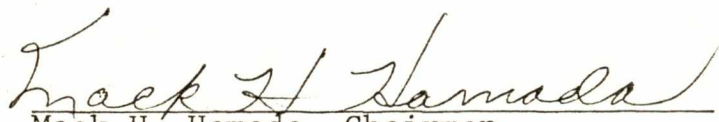
To hold that a union may not protect itself from actions such as those engaged in by Petitioners through the use of discipline, such as expulsion, would be to prevent a union from taking reasonable steps to preserve its existence. The conduct of Petitioners attacked the viability of the union. Expulsion, in such a case, can hardly result in coercing or restraining them in the exercise of their rights guaranteed under Section 89-3, for their actions, in attempting to repudiate the union, showed how lightly they regarded membership therein, and expulsion from a union they sought to destroy can hardly, in these circumstances, have coercive or restraining effect upon them.

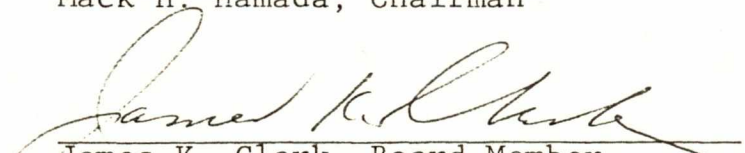
Based upon the foregoing, the Board finds on the record in this case that SHOPO did not commit any prohibited practices against Officer Carvalho.

ORDER

This case is dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: July 7, 1978

Honolulu, Hawaii