

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-10-89
JON L. KAISER,)	ORDER NO. 1025
Complainant,)	ORDER GRANTING RESPONDENTS
and)	UPW'S AND EMPLOYER'S MOTIONS
UNITED PUBLIC WORKERS, LOCAL)	TO DISMISS
646, AFSCME, AFL-CIO; JOHN)	
WAIHEE, Governor, State of)	
Hawaii and DEPARTMENT OF PUBLIC)	
SAFETY, State of Hawaii,)	
Respondents.)	

ORDER GRANTING RESPONDENTS
UPW'S AND EMPLOYER'S MOTIONS TO DISMISS

In the instant prohibited practice case filed by Complainant JON L. KAISER (KAISER), the Hawaii Labor Relations Board (Board) denied in part, Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO's (UPW) and Respondent JOHN WAIHEE, Governor, State of Hawaii and DEPARTMENT OF PUBLIC SAFETY, State of Hawaii's (collectively Employer) motions to dismiss by Order No. 978, dated October 21, 1993.¹ The Board reserved ruling on the Employer's motion to dismiss for failure to state a claim until further evidence could be adduced. In addition, the Board reserved ruling on the UPW's motion to dismiss for failure to state a claim because there was insufficient evidence in the record to determine

¹To avoid reiteration of the procedural history in this case, Order No. 978, dated October 21, 1993, is incorporated herein by reference.

whether the UPW's actions fell within the wide range of reasonableness espoused in Air Line Pilots Ass'n. Int'l. v. O'Neill, 499 U.S. 65, 113 L. Ed. 2d 51, 111 S.Ct. 1127 (1991).

In O'Neill, the United States Supreme Court clarified the standard governing a claim that a union breached its duty of fair representation in its negotiation of a settlement agreement. Id. at 67. The Supreme Court held "that the rule announced in Vaca v. Sipes, 386 U.S. 171, 190 (1967)--that a union breaches its duty of fair representation if its actions are either 'arbitrary, discriminatory, or in bad faith'--applies to all union activity" Id. Moreover, the Supreme Court held "that a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness,' Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953), as to be irrational." Id.

On December 13, 1993, the Board conducted an evidentiary hearing to clarify the following issues: (1) the decision to award promotions to certain employees rather than redo the selection; and (2) the method of selecting employees for the Adult Corrections Officer (ACO) IV positions.

The evidence indicates that KAISER's complaint arises from a series of promotions that began in 1991 when the Employer attempted to fill twenty-six (26) ACO IV vacancies at the Halawa Correctional Facility. UPW Exhibit 15; Tr. 12/13/93, pp. 14, 16-17. After the initial promotions were announced, nine employees filed grievances, which prompted the UPW to challenge the

Employer's use of subjective oral interviews as part of the selection criteria. Id., pp. 17-19. Thereafter, the Employer settled the grievances by redoing the selection in 1992, but the new promotions were again challenged by the UPW in a class action grievance based on the improper use of sick leave and attendance records in the selection process. Id., pp. 19-23.

Eventually, the dispute was resolved through a settlement agreement between the UPW and the Employer which provided for the award of promotions based on seniority and temporary assignments. Id., p. 27. In the instant complaint, KAISER challenges the UPW and Employer's decision to base the promotions on this new criteria.

Specifically, KAISER contends that the UPW arbitrarily chose to represent senior applicants for the ACO IV positions. However, the weight of the evidence in this case supports the UPW's decision to advocate the seniority-based promotions, which resulted in certainty and avoided a third selection process. The evidence suggests that the UPW's intent was to arrive at a prompt and fair settlement of the promotion dispute and to prevent further delay and violation of the contract. Id., pp. 24-25, 37.

The Board finds that the UPW, in its efforts, balanced the interests of the affected employees with the collective interests of the bargaining unit. In reaching this conclusion, the Board is persuaded by evidence that indicates that the majority of the ACOs selected for promotion pursuant to the settlement agreement were also selected in the two previous rounds. Id., p. 29. In addition, the Board finds persuasive the fact that the

promotions based on seniority and temporary assignments were consistent with prior arbitration awards and in accordance with Section 16 of the Bargaining Unit 10 (BU-10) agreement. Id., pp. 25-27, 39.

Although KAISER notes that the BU-10 agreement provides for promotions based on seniority only when "other factors [are] relatively equal" and contemplates the situation where senior employees may not receive promotions, see BU-10 Agreement § 16.06 (i)-(j), the evidence indicates that the minimum qualifications for ACOs at levels III and IV are basically the same. Tr., p. 16. Moreover, the evidence indicates that this case involves a non-competitive selection procedure in which examinations are not required. Id., pp. 61-62. Therefore, the Board accords deference to the UPW and Employer's decision to select the employees for promotion rather than redo the selection process.

While the Board expresses reservations concerning the decision to disregard previous test scores, the Board finds that the actions of the UPW in this regard were not so far outside the wide range of reasonableness as to be irrational. Therefore, the Board finds that the UPW's actions in this case were within the "wide range of reasonableness" contemplated by the Supreme Court in O'Neill. Accordingly, the Board hereby grants UPW's motion to dismiss for failure to state a claim.

With respect to the Employer's motion to dismiss for failure to state a claim, the Board finds that the Employer did not conspire with the UPW to deprive KAISER of a promotion and deny him of his rights under Chapter 89, HRS. The Board reaches this


conclusion based on its finding that the UPW did not breach its duty of fair representation. In addition, the Board finds that the Employer entered into a valid settlement agreement with the UPW and that KAISER failed to present sufficient evidence to support a contrary conclusion. Therefore, the Board hereby grants the Employer's motion to dismiss for failure to state a claim.

As a final matter, on December 23, 1993, the UPW filed a motion to reopen the record for admission of a letter dated December 15, 1993, which allegedly clarifies that written examinations were administered by employees of the Department of Public Safety. Thereafter, on December 29, 1993, the Employer filed a joinder in UPW's motion to reopen the record. KAISER filed a memorandum in opposition to the UPW's motion on December 29, 1993.

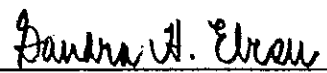
In view of the foregoing ruling, the Board finds that the requested admission is immaterial. Accordingly, the Board hereby denies UPW's motion to reopen the record and hereby dismisses the instant prohibited practice complaint.

DATED: Honolulu, Hawaii, April 4, 1994.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

JON L. KAISER and UNITED PUBLIC WORKERS, LOCAL 646, AFSCME,
AFL-CIO; JOHN WAIHEE, Governor, State of Hawaii and DEPARTMENT
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