

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: CE-10-182
)	CU-10-90
LOT KALUAU,)	
)	ORDER NO. 1026
Complainant,)	
)	ORDER GRANTING RESPONDENTS
and)	UPW'S AND EMPLOYER'S MOTIONS
)	TO DISMISS
JOHN WAIHEE, Governor of the)	
State of Hawaii; DEPARTMENT OF)	
PUBLIC SAFETY, State of Hawaii;)	
GEORGE SUMNER, Director, Depart-)	
ment of Public Safety, and)	
UNITED PUBLIC WORKERS, LOCAL)	
646, AFSCME, AFL-CIO,)	
)	
Respondents.)	

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

In the instant prohibited practice case filed by Complainant LOT KALUAU (KALUAU), the Hawaii Labor Relations Board (Board) granted in part, Respondents JOHN WAIHEE, Governor of the State of Hawaii; DEPARTMENT OF PUBLIC SAFETY, State of Hawaii; and GEORGE SUMNER, Director, Department of Public Safety's (collectively Employer) motion to dismiss by Order No. 980, dated October 21, 1993.¹ However, the Board denied the Employer's motion to dismiss on the basis that it was filed beyond the applicable limitations period. In addition, the Board reserved ruling on Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO's

¹To avoid reiteration of the procedural history in this case, Order No. 980, dated October 21, 1993, is incorporated herein by reference.

(UPW) motion to dismiss for failure to state a claim because there was insufficient evidence in the record to determine 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 KALUAU'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,


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 KALUAU failed to present sufficient evidence to support a contrary conclusion. Therefore, the Board hereby grants the Employer's motion to dismiss.

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. KALUAU 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

LOT KALUAU and JOHN WAIHEE, Governor of the State of Hawaii;
DEPARTMENT OF PUBLIC SAFETY, State of Hawaii; GEORGE SUMNER,
Director, Department of Public Safety, and UNITED PUBLIC WORKERS,
LOCAL 646, AFSCME, AFL-CIO; CASE NOS.: CE-10-182 and CU-10-90
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