

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-12-241
)	
STATE OF HAWAII ORGANIZATION)	ORDER NO. 1328
OF POLICE OFFICERS (SHOPO),)	
)	ORDER ON REMAND
Complainant,)	
)	
and)	
)	
JEREMY HARRIS, Mayor of the City)	
and County of Honolulu,)	
)	
Respondent.)	

ORDER ON REMAND

The Honorable Daniel G. Heely remanded this matter to the Hawaii Labor Relations Board (Board) by Order filed on April 3, 1996, in Civil No. 95-3285-09. The Court remanded the case to the Board to conduct appropriate proceedings to consider additional evidence which was presented to the Court in the appeal of Board Decision No. 368.

On March 15, 1996, JEREMY HARRIS, Mayor of the City and County of Honolulu (HARRIS or Employer), by and through his counsel, filed a Supplemental Answering Brief in the Circuit Court contending that Sergeant Ward Mariani (Mariani) was exempted from the rotational policy which is challenged in the instant prohibited practice complaint. Mariani requested an exemption on the basis that he would retire at the end of 1996. Police Chief Michael Nakamura (Nakamura), Honolulu Police Department, granted the exemption and permitted Mariani to remain in the Specialized Services Division. Nakamura also indicated that if Mariani did not

retire by December 31, 1996, Mariani would be rotated out of the division. Thus, the Employer argued that Appellant STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO) lacked standing to appeal the Board's Decision No. 368 and that the appeal was moot because Mariani was granted an exemption from the Honolulu Police Department's (HPD's) rotational policy.

On May 3, 1996, the Board conducted a hearing to consider the evidence presented to the Court. At the hearing, Mariani testified that on January 2, 1996 he requested an exemption from the rotational policy because he intended to retire at the end of 1996. Mariani also testified that he received an exemption from the rotational policy from Chief Nakamura. Mariani further testified, however, that he had decided not to retire at the end of 1996 and had recently submitted a memorandum, dated April 30, 1996, to that effect to Chief Nakamura.

Assistant Chief Joseph Aveiro, Bureau Commander, Specialized Field Operations Bureau, Honolulu Police Department, testified that based upon Mariani's representation that he did not intend to retire at the end of the year, Mariani would no longer be exempted from the rotational policy and would be rotated out immediately. Aveiro testified that without the exemption, Mariani would have been rotated out of the division on March 16, 1996.


Counsel for the Employer argued that based upon the evidence presented, the Board should not modify its prior decision and should submit the matter to the Circuit Court for its decision on appeal. SHOPO's counsel contends that the Board should review the arguments presented in the appeal and should reconsider its

decision on the merits. SHOPO argues that the Board should find that the Employer committed a prohibited practice with respect to Mariani.

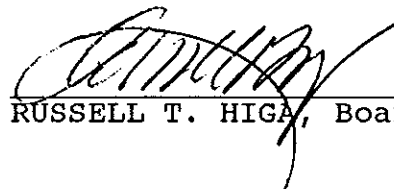
After reviewing the evidence and arguments presented, the Board finds that Mariani was exempted from the rotational policy for approximately one and one-half months pursuant to his request. Mariani will be rotated out of the division immediately pursuant to the HPD's rotational policy since he does not intend to retire at the end of the calendar year and no longer qualifies for an exemption on that basis. The Board finds that this evidence does not affect the merits of its decision which was issued in this case, and hence, the Board will not modify its prior decision.

DATED: Honolulu, Hawaii, May 10, 1996.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

Copies sent to:

Randal S. Yoshida, Esq.
Debra A. Kagawa, Deputy Corporation Counsel
Joyce Najita, IRC