

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

RICHARD CONDON,

Complainant,

and

DEPARTMENT OF HUMAN SERVICES,  
State of Hawaii,

Respondent.

CASE NO. CE-10-670

ORDER NO. 2516

ORDER CONSOLIDATING CASES  
FOR DISPOSITION; AND NOTICE TO  
RESPONDENTS OF PROHIBITED  
PRACTICE COMPLAINTS

In the Matter of

RICHARD CONDON,

Complainant,

and

UNITED PUBLIC WORKERS, AFSCME,  
LOCAL 646, AFL-CIO,

Respondent.

CASE NO. CU-10-264

ORDER CONSOLIDATING CASES FOR DISPOSITION; AND  
NOTICE TO RESPONDENTS OF PROHIBITED PRACTICE COMPLAINTS

On June 5, 2008, Complainant RICHARD CONDON (CONDON), pro se, filed a Prohibited Practice Complaint against Respondent DEPARTMENT OF HUMAN SERVICES, State of Hawaii (DHS) with the Hawaii Labor Relations Board (Board) in Case No. CE-10-670. CONDON alleged that he filed a grievance on February 26, 2008 citing violations of Sections 11, 14, 17 and 64 of the applicable collective bargaining agreement (CBA) and the issue of discipline was resolved during the grievance process. CONDON alleges that the remaining issues pertain to staffing and workload, in Sections 14 and 64. CONDON requested the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) to take the grievance to arbitration but his request was denied on or about April 18, 2008. CONDON alleges that he has exhausted the grievance procedure and contends that DHS breached Sections 14 and 64 of the CBA.

Also on June 5, 2008, CONDON filed a Prohibited Practice Complaint against the UPW in Case No. CU-10-264. CONDON alleged that he filed a grievance on February 26, 2008 claiming that the employer failed to provide adequate staffing and disciplined him without cause. CONDON alleged that the issue of discipline was resolved during the grievance process, but that the staffing and workload issues remain. CONDON alleges that he requested the UPW to take his grievance to arbitration and the UPW refused his request. CONDON thus contends that the UPW's decision not to pursue his grievance to arbitration is inconsistent, arbitrary and without rational basis.

After reviewing these complaints, the Board finds that these complaints involve substantially the same parties and issues and that consolidation of the proceedings would be conducive to the proper dispatch of business and the ends of justice and will not unduly delay the proceedings. Pursuant to Hawaii Administrative Rules (HAR) §12-42-8(g)(13), the Board, on its own initiative, hereby consolidates these complaints and the proceedings thereon for disposition.

### Notice to Respondents

NOTICE IS HEREBY GIVEN that CONDON filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board), a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of Hawaii Revised Statutes § 89-13.

YOU ARE DIRECTED to file with this Board the original and five (5) copies of your answer, with proof of service upon Complainant, no later than 4:30 p.m. of the tenth day after service of the complaint. If you fail to timely file and serve an answer, such failure may constitute an admission of the material facts alleged in the complaint and a waiver of a hearing.

DATED: Honolulu, Hawaii, June 5, 2008.

HAWAII LABOR RELATIONS BOARD

  
\_\_\_\_\_  
JAMES B. NICHOLSON, Chair

  
\_\_\_\_\_  
EMORY J. SPRINGER, Board Member

  
\_\_\_\_\_  
SARAH R. HIRAKAMI, Board Member

RICHARD CONDON v. DEPARTMENT OF HUMAN SERVICES, State of Hawai  
CASE NO. CE-10-670  
RICHARD CONDON v. UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO  
CASE NO. CU-10-264  
ORDER NO. 2516  
ORDER CONSOLIDATING CASES FOR DISPOSITION AND NOTICE TO RESPONDENTS  
OF PROHIBITED PRACTICE COMPLAINTS; PROHIBITED PRACTICE COMPLAINTS

Copies sent to:

Richard Condon  
Department of Human Services  
Mark J. Bennett, Attorney General  
Dayton Nakanelua, UPW

2000 JUN -5 AM 8:49



STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD  
Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813  
HLRB-4 PROHIBITED PRACTICE COMPLAINT

Case No. CB-10-070

File the original and five copies of this Complaint, by U.S. Mail or in person, to the Hawaii Labor Relations Board, Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14, and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.

2. Complainant

(a) Name, address and telephone number.

Richard Condon, Pro Se  
1301 Lusitana Street, 803  
Honolulu, Hawaii 96813  
Ph# 638-3367

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

NA

**HLRB-4 PROHIBITED PRACTICE COMPLAINT**

Page 2 of 3

**3. Respondent (Public Employer and/or Employee Organization or its Agents Against Whom Complaint is Filed)**

(a) Name, address and telephone number.

State of Hawaii  
Department of Humane Services  
1390 Miller Street  
Honolulu, Hawaii 96813  
Ph# 586-4961

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Unknown at this time

**4. Indicate the appropriate bargaining unit(s) of employee(s) involved.**

UPW BU 10

**5. Allegations**

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

Complainant believes Respondent's are breaching the collective bargaining agreement, sections 14 and 64.

On 26 February 2008 Complainant filed a Union Grievance. Complainant cites a violation of sections 11, 14, 17 and 64.

While exhausting the grievance procedure the issue of discipline has been resolved.

At this point the remaining issues are staffing and workload, sections 14 and 64.

On 10 April 2008 Respondents provide an answer to Complainant's grievance. Respondents claimed Complainant never offered evidence of the violation.

(Continued on attached sheet)

## 5. ALLEGATIONS (Cont.)

Complaint offered;

- 1) The official schedule stating only 4 YCOs to be on duty when a minimum of 9-10 YCO are required.
- 2) Testimony reminding Respondents that they are already under review by the U.S. Department of Justice for staff shortages
- 3) Testimony reminding Respondents that 24hr/7days shift-work requires 1 YCO for every 4 YCOs to relieve days off, sick and vacation leave.

Also in the response it implies shortages are a result of other YCOs calling in sick.

Based on the schedule, before any YCO calls in sick we are already 60% short of the minimum required staff.

In addition, there are programs to address the abuse of sick leave. Complaint believes it is unfair to place the burden of relieving sick leave on a select few.

On 18 April 2008 Complainant request UPW to take grievance to arbitration.

On or about 19 April 2008 Complainant received a response from UPW denying arbitration.

At this point Complainant has exhausted grievance remedies.

### REMEDY

- 1) Provide adequate staff
- 2) Cease all orders requiring YCOs to work beyond their assigned shifts (except in emergencies)
- 3) Evenly distribute the burden of work
- 4) Any fair and just monetary award the Board feels is appropriate
- 5) Terminate pending investigation and allow Complainant to return to work (see section 6, other relevant facts)

HLRB-4 PROHIBITED PRACTICE COMPLAINT

Page 3 of 3

6. Provide a clear and concise statement of any other relevant facts.

On 17 May 2008 Complainant was involved in a physical confrontation with a ward. On that day we were operating at about 60% below the required staffing. Respondents have a policy called Handle with Care to restrain wards. This method would require a minimum of 5 staff members to perform. On the day in question we had 3 YCOs. Because of the lack of staff the Handle with Care method was not applicable. I used a more progressive method of restraining the ward to protect him from hurting himself.

On 23 May 2008 I was placed on leave without pay pending investigation for misconduct, for using a "non-approved" method of restraining the ward.

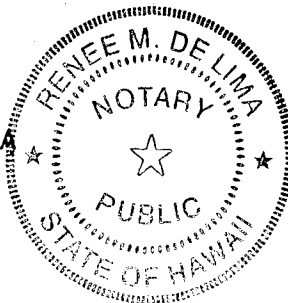
STATE OF HAWAII )
CITY AND COUNTY OF ) ss.

Richard Condon, being first duly sworn on oath, deposes and says: that he is the Petitioner above named, or WA representative, and that he has read the above Petition consisting of this and 14 additional page(s), and is familiar with the facts alleged therein, which facts he knows to be true, except as to those matters alleged on Information and belief, which matters he believes to be true.

Richard Condon (Signature)
YCO (Title)

Subscribed and sworn to before me this 5 day of June 20 08

Notary Public, First Circuit
State of Hawaii
RENEE M. DE LIMA



JUN 29 2011

My Commission expires:

REFERENCES

Complainant's Grievance- - - - - 1

Employer's Response to Grievance- - - - - 2-5

Staff Schedule- - - - - 6

Complainant's Request to take Grievance  
to Arbitration- - - - - 7

Respondent's Refusal to Pursue Grievance- - - 8

Pending Investigation (other relevant facts)- 9-10



18 FEBRUARY 2008

Kale Au, Administrator  
Hawaii Youth Correctional Facility  
42-477 Kalaniana'ole Highway  
Kailua, Hawaii 96734

RE: Union Grievance of Richard Condon, Youth Corrections  
Officer, HYCF, Unit 10

SECTIONS VIOLATED

11 DISCIPLINE

14 PRIOR RIGHTS, BENEFITS, AND PERQUISITES

17 OFFICIAL PERSONNEL FILE

64 STAFFING AND WORKLOAD

Background

On 16 February 2008 Grievant received a verbal reprimand for taking his 9 year old daughter to the doctor on his "OFF HOURS."

Grievant contends his due process rights were violated and the Employer had no cause to render any disciplinary action.

Employer claims they have the authority to impose a condition of "involuntary servitude" to new employees.

The above is a Class C Felony, or at the very least a Misdemeanor therefore violating section 14.

Grievant contends based on section 64, it is the sole responsibility of the Employer to provide adequate staff.

REMEDY

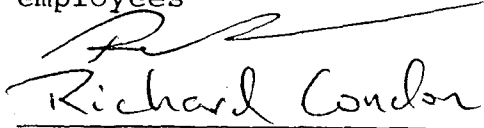
Remove all disciplinary documentation concerning this incident from Grievant's work and official personnel file.

Cease all orders forcing employees to work beyond their assigned shift.

"Employer will endeavor to provide adequate staff."

Reinstate ACO contract.

Evenly distribute "burden of work" to all employees

  
Richard Condon

LINDA LINGLE  
GOVERNOR



LILLIAN B. KOLLER, ESQ.  
DIRECTOR

HENRY OLIVA  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339  
Honolulu, Hawaii 96809-0339

April 10, 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Richard Condon  
1301 Lusitana Street, #803  
Honolulu, Hawaii 96813

Dear Mr. Condon:

This responds to your self-filed Bargaining Unit (BU) 10 Step 2 grievance dated February 26, 2008, which includes a written explanation of alleged violations and the remedy sought dated February 18, 2008. The grievance addresses a verbal reprimand you allege you received on February 16, 2008, as well as your disagreement with the manner in which Youth Corrections Officers at the Hawaii Youth Correctional Facility (HYCF) are being held back to perform work on an overtime basis at the end of their regular work shifts.

The Step 2 grievance meeting was conducted on March 28, 2008. Present at the meeting were you; Mr. Mike Nitta, United Public Workers Business Agent; Mr. Edwin Nose, Departmental Personnel Officer and my designee to hear the grievance; Mr. William Keahi, Office of Youth Services Personnel Management Specialist; and Ms. Yvonne Tanaka, Department of Human Services Personnel Management Specialist. Mr. Nitta was present only as an observer, not as your representative.

You provided the following information to explain the basis for your grievance:

- On February 16, 2008, you reported to work at 6:00 a.m. and at approximately 7:00 a.m., informed your supervisor in writing of your inability to perform overtime work at the end of your shift at 2:00 p.m. due to your lack of child care for your ill daughter.
- At approximately 10:00 a.m., you allege that temporarily assigned (TA) Youth Corrections Supervisor (YCS), Regino Punahale called you on the phone and informed you that you were being required to perform overtime on Shift 3, beginning at 2:00 p.m. When you informed TA YCS Punahale that you were unable to do so, you stated that he allegedly issued you a verbal reprimand, in the presence of Youth Corrections Officers (YCOs) Tony Hoolulu, Phil Elizara, and possibly another YCO whose identity you could not recall.
- With regard to being held back and required to perform overtime after completion of your regular shift, you stated that you disagreed with the HYCF's practice of "holding back" the least senior YCOs everyday, with no relief. You expressed your belief that it would be more equitable to develop a system whereby all YCOs on shift might be subject to being held back to perform overtime work after the end of their regular shift, not just the least senior ones.

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Mr. Richard Condon  
April 10, 2008  
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During the March 28, 2008 meeting, you explained the basis for alleged violations of the BU 10 Agreement as follows:

- Section 11 – Discipline. You believe this Section was violated because the Employer verbally reprimanded you without just and proper cause. You further alleged that the verbal disciplinary action was issued without privacy, but in the presence of other YCOs.
- Section 14 – Prior Rights, Benefits and Perquisites. You explained this alleged violation by stating that you knew you had to link the subject Employer action to a Statute. You did not identify any Hawaii Revised Statute (HRS) you felt was violated in relation to your situation. However, when asked, you explained your attachment of a copy of HRS §707-720, Kidnapping; and §707-721, and §707-722, Unlawful Imprisonment, to your grievance by stating that you did not feel it proper that employees may be held back, and that you were informed that such employees would be barred from leaving the Facility. Notwithstanding your intent to link your situation to the foregoing statutes addressing criminal conduct, you acknowledged not having filed any complaints related to alleged violations of the identified HRS citations.
- Section 17 – Official Personnel File. You asserted violation of this Section because you are aware of an arbitration decision that bans the Employer's retention of a "black book," and wondered if there might be something filed somewhere. You did not specifically describe the nature of documentation you felt was filed without your knowledge. During the Step 2 meeting, your official personnel file was produced for your review, and you acknowledged the absence of any documentation of disciplinary action.
- Section 64 – Staffing and Workload. You focused on the requirement that the Employer must endeavor to provide adequate staffing, but did not offer evidence of violation. When asked, you acknowledged that other YCOs continue to be absent from work, resulting in the need for least senior YCOs to be held back and perform work on an overtime basis.

You offered the following as remedies for this grievance:

- Continuation of the use of Adult Corrections Officers from the Department of Public Safety to perform overtime work at the HYCF.
- Consideration of a system or procedure whereby the requirement to be held back is not limited to the least senior YCOs, but instead, allows for more senior YCOs to also be held back, thereby providing some relief rather for least senior YCOs instead of being required to work double shifts with no relief.

In our review of your grievance, we found:

- On February 16, 2008, at approximately 7:00 a.m., you verbally informed TA YCS Punahale of your unavailability to perform overtime at the end of your shift at 2:00 p.m., due to your need to care for you ill daughter. TA YCS Punahale states that he informed you that you would be required to remain on work status until you were properly relieved and that there might be disciplinary consequences if you did not remain at work if directed to do so and you

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Mr. Richard Condon  
April 10, 2008  
Page 3

were not properly relieved. He also states that he instructed you to develop a written explanation for your request to be excused from performing overtime work. This conversation occurred via a telephone call to TA YCS Punahale, who was situated in Central Control.

- At approximately 12:00 p.m. on the same day, TA YCS Punahale states that you submitted a written explanation for your not being able to remain at work after the end of your regular work shift at 2:00 p.m. on February 16, 2008. Since your reason for not being able to work on an overtime basis on February 16, 2008 was accepted, you were not required to remain at work and you were not disciplined.
- As discussed previously, your own examination of your official personnel file did not result in the discovery of any documentation of your having been disciplined.
- With regard to your disagreement with the manner in which YCOs are held back and required to perform work on an overtime basis, there is no evidence to support an argument of uneven application of the HYCF's established practice and procedure.

Given the information presented above, the Employer denies violations of the BU 10 Agreement, as presented by you during the Step 2 meeting, for the following reasons:

- Section 11 – Discipline, has not been violated because there is no evidence that any disciplinary action was taken against you. What, from your presentation, it appears you perceived as a verbal reprimand was in fact a verbal notification to you of the possible consequences of your failing to remain at work if directed to do so.
- No information was presented to substantiate violation of Section 17, Official Personnel File. As such the Employer must deny alleged violation of this Section.
- No information was presented to substantiate violation of Section 14, Prior Rights, Benefits and Perquisites; therefore the Employer must deny alleged violation of this Section. Further, and notwithstanding your position that Section 14 incorporates the Hawaii Revised Statutes into the BU 10 Agreement, the Employer takes an opposite position. We believe that Section 14 serves to ensure that the BU 10 Agreement does not abridge, amend or waive rights, benefits or perquisites covered by constitutions, statutes or rules and regulations that BU 10 members previously enjoyed, except as expressly superseded by the Agreement.
- Regarding alleged violation of Section 64, Staffing and Workload, no information was presented to support the allegation that the Employer failed to comply with the requirements contained therein. While it is abundantly clear that you disagree with the historically established practice of holding back YCOs to perform work on an overtime basis, that alone does not substantiate violation of this Section. Despite the foregoing position, please be assured that the Employer acknowledges the concerns you raised in relation to your assertion of alleged violation. Given this, the Employer is committed to examining current practices and to working cooperatively with the United Public Workers, your exclusive representative, to determine whether there may be alternatives to those current practices, which would include minimizing the requirement for only the least senior YCOs to be held back when other YCOs fail to report to work.

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Mr. Richard Condon  
April 10, 2008  
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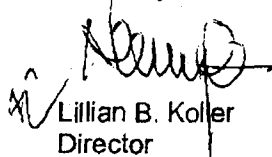
With regard to your proposition to continue utilizing Adult Corrections Officers to perform work on an overtime basis, a mutual agreement between the United Public Workers and the State Departments of Public Safety and Human Services precludes consideration of such suggestion.

Based on the above information and discussion, the Employer must respectfully deny alleged violations of the BU 10 Agreement.

Please also be informed that the subject grievance was accepted and processed at the Step 2 level for administrative reasons. However, please be aware that future grievances you may file on your own will be processed in accordance with Section 15, Grievance Procedure. This means that Step 1 grievances should be filed with the Office of Youth Services' Executive Director (the department head's designee), who will also conduct the Step 1 grievance meeting. Step 2 grievances are properly filed with the Department of Human Services Director (the Employer's designee), with the Departmental Personnel Officer conducting the Step 2 grievance meeting. If you have questions regarding the proper filing of grievances, it is suggested that you contact your representative at the United Public Workers.

Thank you for the opportunity to review and respond to the matters raised by this grievance.

Sincerely,



Lillian B. Koller  
Director

c: United Public Workers

May 04 to May 10  
2008

	SCF			Ho'okipa Makai			O & A		
Day/ Date	Shift 1	Shift 2	Shift 3	Shift 1	Shift 2	Shift 3	Shift 1	Shift 2	Shift 3
SAT 10-May	YCS Mapu 1	YCS	YCS Cavaco	YCS Heffernan	YCS	YCS	YCS	YCS	YCS Hubbell
	YCS Francisco#		Lepule						
	Balina 1	Koehler	Mauga	Melton	Ricasa	Marciel	Brooks	Silva	Brock
		Lemau	McMoore						
	Viliamu* 1	Condon	Koa		Mondragon	Adams		Ledet	
		Danielson	Holloway						
	Gooch		Johnson						
Days Off	Lovett 1	YCS Elisaara	YCS Gumpfer		YCS Neal		YCS Alvaro		YCS Passmore
	Manyak 1	Biutanaseva	Lai	Meredith	Gonsalves	Paiva		Cruz	Badiyo
	1	Ho'oiulu	Kahawai						
	1	Nasau	Ha'o						
	1	Napuelua							
VAC		Punahele						Kim	
VAC									
W/C								Redding	
S/L		Watai	Kumukoa						
L			Atuatasi						
L/D									
Adm		Duvauchelle	Vidinha			Su'e			
Adm		S.Rosete	Manliguis/Pelefoti					Josiah	
Other	Holakeituai-Rec	Yadao-ACS1	Alovao-REC						
									53

\* Astericks indicate 8 hour notes



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18 APRIL 2008

Dayton Nakanelua, State Director  
1426 North School Street  
Honolulu, Hawaii 96817-1914

RE: Intent to Arbitrate Grievance dated 26 February 2008

Dear Mr. Nakanelua,

I received a response from the Employer dated 10 April 2008.

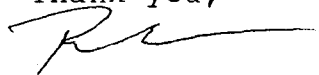
They claim section 64 staffing has not been violated.

I along with the US Department of Justice do not agree.

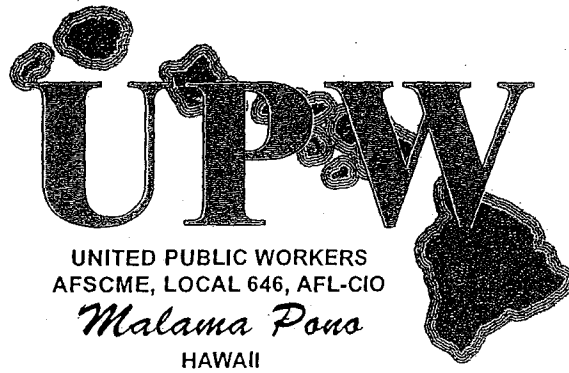
I would like to ask the Union to take my grievance to arbitration. If the Union will represent me in this matter please provide me a copy of the Intent to Arbitrate by 10 May 2008.

If I do not receive one and no communication takes place I will conclude the Union does not wish to represent me in this matter.

Thank you,



Richard Condon  
1301 Lusitana Street, 803  
Honolulu, Hawaii 96813  
Ph# 638-3367



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April 11, 2008

Mr. Richard Condon  
1301 Lusitana Street #803  
Honolulu, HI 96813

**RE: GRIEVANCE DISPOSITION - EMPLOYEE GRIEVANCE DATED February 18, 2008**

Dear Mr. Condon:

By letter dated March 22, 2008, you requested that the Union submit the above-referenced grievance to arbitration. Subsequently, the Union requested of you, by letter dated March 27, 2008, to provide all grievance information that was considered in the filing and pursuing of the grievance by April 4<sup>th</sup> so that the Union could review the merits. No further information was provided except for your correspondence dated March 29, 2008.

Based on a review of the entire matter, including but not limited to, the applicable provisions of the CBA and the evidence presented, the Union has decided not to pursue the above-cited grievance because there is insufficient proof that there is a violation of the CBA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dayton M. Nakanelua', written over a white background.

DAYTON M. NAKANELUA  
State Director

DMN:si

c: Paula Ota, Business Agent  
Diann Berndt, Administrator Field Operations/Laurie Santiago, Oahu Division Director

HEADQUARTERS: 1426 North School Street, Honolulu, Hawaii 96817 (808) 847-2631  
HAWAII: 362 East Lanikaula Street, Hilo, Hawaii 96720 (808) 961-3424  
MAUI: 841 Kolu Street, Wailuku, Hawaii 96793 (808) 244-0815  
KAUAI: 4211 Rice Street, Lihue, Hawaii 96766 (808) 245-2412





**STATE OF HAWAII**  
DEPARTMENT OF HUMAN SERVICES

OFFICE OF YOUTH SERVICES  
HAWAII YOUTH CORRECTIONAL FACILITY  
42-477 KALANIANA'OLE HIGHWAY  
KAILUA, HAWAII 96734

May 23, 2008

**Hand Delivered**

Mr. Richard Condon  
c/o Hawaii Youth Correctional Facility  
42-477 Kalaniana'ole Highway  
Kailua, Hawaii 96734

Dear Mr. Condon:

This is to inform you that effective today, Friday, May 23, 2008, you are being placed on leave of absence without pay pending investigation from your job as Youth Corrections Officer at the Hawaii Youth Correctional Facility (HYCF). This action is taken in accordance with Sections 11A.01, 11A.01a., and 11A.01b., of the Unit 10 Agreement, 2007-2009.

This action is being taken based on the following:

On Saturday, May 17, 2008, at approximately 4:40 p.m., a Code Red was called in Module C to assist in responding to a non-compliant ward. Ward Steven Mata refused to enter his cell. The ward was subsequently restrained and escorted to the Holding Unit. In the Internal Communication Form (ICF) you submitted that date concerning this incident you state a "Koga neck lock was applied to keep ward from spitting in my face." A camera review of this incident shows that before leaving Module C, you appeared to apply a non-approved method of physical restraint to control the ward.

Also on Saturday, May 17, 2008, at approximately 6:10 p.m., you responded to a request to assist in the Holding Unit in controlling Ward Nico McLean. In the ICF you submitted concerning this incident you wrote "I pinned him to the ground/bunk by his neck and ordered him to 'cuff-up' which he complied." A camera review of this incident shows that you appeared to apply a non-approved method of physical restraint to control the ward.

An investigation of these allegations is being conducted and your presence at the workplace is deemed to be detrimental to the conduct of the investigation.

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Mr. Richard Condon  
May 23, 2008  
Page 2

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While you are on leave of absence from your job, you are restricted from contacting youth or staff at the HYCF or from coming on to the HYCF grounds without prior authorization from me.

You will be provided an opportunity to respond to any charges which may result from the investigation.

Should you have any questions, you may contact me at 266-9524.

Sincerely,



James "Al" Carpenter  
Youth Facility Administrator

This is to acknowledge that I have read and received a copy of the above action:

\_\_\_\_\_  
Richard Condon

\_\_\_\_\_  
Date

c: UPW  
PERS/LR  
OYS/EDIR

2008 JUN -5 AM 8:18



STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813

HLRB-4 PROHIBITED PRACTICE COMPLAINT

Case No. 01-10-264

File the original and five copies of this Complaint, by U.S. Mail or in person, to the Hawaii Labor Relations Board, Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14, and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.

2. Complainant

(a) Name, address and telephone number.

Richard Condon  
1301 Lusitana St, 803  
Honolulu, Hawaii 96813  
Ph# 638-3367  
Pro Se

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

NA

# HLRB-4 PROHIBITED PRACTICE COMPLAINT

Page 2 of 3

### 3. Respondent (Public Employer and/or Employee Organization or its Agents Against Whom Complaint is Filed)

(a) Name, address and telephone number.

UNITED PUBLIC WORKERS, LOCAL 646, UPW/AFSCME  
Exclusive Representative  
1426 North School Street  
Honolulu, Hawaii 96817-1914  
Ph# 847-2631

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Unknown at this time

### 4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

UPW BU 10

### 5. Allegations

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

Complainant contends Respondents breached their duty of fair representation when they refused to take grievance to arbitration.

On 26 February 2008 Complainant filed a Union grievance claiming the Employer failed to provide adequate staff and applied discipline without just cause. Complainant cites sections 11, 14, 17 and 64 in his grievance.

While exhausting the grievance process the issue of discipline has been resolved. At this point the remaining issues are staffing and workload, sections 14 and 64.

On 27 February 2008 Complainant requested representation from Union Agent Paula Ota. Ms. Ota claimed the CBA did not apply because the Employer was under review by the U.S. Department of Justice.

(Continued on attached sheet)

5. ALLEGATIONS (Cont.)

On 27 March 2008 Complainant requested representation from Ms. Ota's supervisor, Laurie Santiago, Oahu Division Director. She claimed, staffing, or lack of is not governed by the CBA.

On 10 April 2008 Complainant received his step 2 response from the Employer. Employer claims there is no staff shortage, but if there was it is because other YCOs call in sick.

On 18 April 2008 Complainant request from Respondent to take subject grievance to arbitration.

On 19 April 2008 State Director Dayton Nakanelua informs Complainant that the Union has decided not to pursue the grievance to arbitration because of insufficient evidence of a violation of the CBA.

Complainant contends the Respondents decision not to pursue the grievance to arbitration is inconsistent, arbitrary and without rational basis.

REMEDY

Any just and appropriate monetary award the Board feels is appropriate.

HLRB-4 PROHIBITED PRACTICE COMPLAINT

Page 3 of 3

6. Provide a clear and concise statement of any other relevant facts.

NA

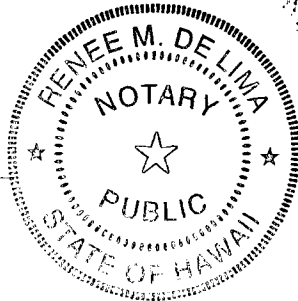
STATE OF HAWAII )
CITY AND COUNTY OF ) ss.

Richard Louder, being first duly sworn on oath, deposes and says: that he is the Petitioner above named, or NA representative, and that he has read the above Petition consisting of this and 17 additional page(s), and is familiar with the facts alleged therein, which facts he knows to be true, except as to those matters alleged on information and belief, which matters he believes to be true.

RE (Signature)
A YCW (Title)

Subscribed and sworn to before me this 5 day of June, 2008.

RENEE M. DE LIMA Notary Public, First Circuit State of Hawaii



JUN 29 2011

My Commission expires:

REFERENCES

Complainant's Grievance- - - - - 1

Employer's Response to Grievance- - - - -2, 3, 4 and 5

Complainant's request to Respondents to  
take Grievance to Arbitration- - - - - 6

Respondent's Letter denying Arbitration- - - - 7

18 FEBRUARY 2008

1

Kale Au, Administrator  
Hawaii Youth Correctional Facility  
42-477 Kalaniana'ole Highway  
Kailua, Hawaii 96734

RE: Union Grievance of Richard Condon, Youth Corrections  
Officer, HYCF, Unit 10

SECTIONS VIOLATED

- 11 DISCIPLINE
- 14 PRIOR RIGHTS, BENEFITS, AND PERQUISITES
- 17 OFFICIAL PERSONNEL FILE
- 64 STAFFING AND WORKLOAD

Background

On 16 February 2008 Grievant received a verbal reprimand for taking his 9 year old daughter to the doctor on his "OFF HOURS."

Grievant contends his due process rights were violated and the Employer had no cause to render any disciplinary action.

Employer claims they have the authority to impose a condition of "involuntary servitude" to new employees.

The above is a Class C Felony, or at the very least a Misdemeanor therefore violating section 14.

Grievant contends based on section 64, it is the sole responsibility of the Employer to provide adequate staff.

REMEDY

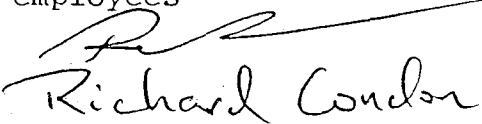
Remove all disciplinary documentation concerning this incident from Grievant' work and official personnel file.

Cease all orders forcing employees to work beyond their assigned shift.

"Employer will endeavor to provide adequate staff."

Reinstate ACO contract.

Evenly distribute "burden of work" to all employees

  
Richard Condon





STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

April 10, 2008

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Richard Condon  
1301 Lusitana Street, #803  
Honolulu, Hawaii 96813

Dear Mr. Condon:

This responds to your self-filed Bargaining Unit (BU) 10 Step 2 grievance dated February 26, 2008, which includes a written explanation of alleged violations and the remedy sought dated February 18, 2008. The grievance addresses a verbal reprimand you allege you received on February 16, 2008, as well as your disagreement with the manner in which Youth Corrections Officers at the Hawaii Youth Correctional Facility (HYCF) are being held back to perform work on an overtime basis at the end of their regular work shifts.

The Step 2 grievance meeting was conducted on March 28, 2008. Present at the meeting were you; Mr. Mike Nitta, United Public Workers Business Agent; Mr. Edwin Nose, Departmental Personnel Officer and my designee to hear the grievance; Mr. William Keahi, Office of Youth Services Personnel Management Specialist; and Ms. Yvonne Tanaka, Department of Human Services Personnel Management Specialist. Mr. Nitta was present only as an observer, not as your representative.

You provided the following information to explain the basis for your grievance:

- On February 16, 2008, you reported to work at 6:00 a.m. and at approximately 7:00 a.m., informed your supervisor in writing of your inability to perform overtime work at the end of your shift at 2:00 p.m. due to your lack of child care for your ill daughter.
- At approximately 10:00 a.m., you allege that temporarily assigned (TA) Youth Corrections Supervisor (YCS), Regino Punahale called you on the phone and informed you that you were being required to perform overtime on Shift 3, beginning at 2:00 p.m. When you informed TA YCS Punahale that you were unable to do so, you stated that he allegedly issued you a verbal reprimand, in the presence of Youth Corrections Officers (YCOs) Tony Hoolulu, Phil Elizara, and possibly another YCO whose identity you could not recall.
- With regard to being held back and required to perform overtime after completion of your regular shift, you stated that you disagreed with the HYCF's practice of "holding back" the least senior YCOs everyday, with no relief. You expressed your belief that it would be more equitable to develop a system whereby all YCOs on shift might be subject to being held back to perform overtime work after the end of their regular shift, not just the least senior ones.

Mr. Richard Condon  
April 10, 2008  
Page 2

During the March 28, 2008 meeting, you explained the basis for alleged violations of the BU 10 Agreement as follows:

- Section 11 – Discipline. You believe this Section was violated because the Employer verbally reprimanded you without just and proper cause. You further alleged that the verbal disciplinary action was issued without privacy, but in the presence of other YCOs.
- Section 14 – Prior Rights, Benefits and Perquisites. You explained this alleged violation by stating that you knew you had to link the subject Employer action to a Statute. You did not identify any Hawaii Revised Statute (HRS) you felt was violated in relation to your situation. However, when asked, you explained your attachment of a copy of HRS §707-720, Kidnapping; and §707-721, and §707-722, Unlawful Imprisonment, to your grievance by stating that you did not feel it proper that employees may be held back, and that you were informed that such employees would be barred from leaving the Facility. Notwithstanding your intent to link your situation to the foregoing statutes addressing criminal conduct, you acknowledged not having filed any complaints related to alleged violations of the identified HRS citations.
- Section 17 – Official Personnel File. You asserted violation of this Section because you are aware of an arbitration decision that bans the Employer's retention of a "black book," and wondered if there might be something filed somewhere. You did not specifically describe the nature of documentation you felt was filed without your knowledge. During the Step 2 meeting, your official personnel file was produced for your review, and you acknowledged the absence of any documentation of disciplinary action.
- Section 64 – Staffing and Workload. You focused on the requirement that the Employer must endeavor to provide adequate staffing, but did not offer evidence of violation. When asked, you acknowledged that other YCOs continue to be absent from work, resulting in the need for least senior YCOs to be held back and perform work on an overtime basis.

You offered the following as remedies for this grievance:

- Continuation of the use of Adult Corrections Officers from the Department of Public Safety to perform overtime work at the HYCF.
- Consideration of a system or procedure whereby the requirement to be held back is not limited to the least senior YCOs, but instead, allows for more senior YCOs to also be held back, thereby providing some relief rather for least senior YCOs instead of being required to work double shifts with no relief.

In our review of your grievance, we found:

- On February 16, 2008, at approximately 7:00 a.m., you verbally informed TA YCS Punahale of your unavailability to perform overtime at the end of your shift at 2:00 p.m., due to your need to care for you ill daughter. TA YCS Punahale states that he informed you that you would be required to remain on work status until you were properly relieved and that there might be disciplinary consequences if you did not remain at work if directed to do so and you

were not properly relieved. He also states that he instructed you to develop a written explanation for your request to be excused from performing overtime work. This conversation occurred via a telephone call to TA YCS Punahale, who was situated in Central Control.

- At approximately 12:00 p.m. on the same day, TA YCS Punahale states that you submitted a written explanation for your not being able to remain at work after the end of your regular work shift at 2:00 p.m. on February 16, 2008. Since your reason for not being able to work on an overtime basis on February 16, 2008 was accepted, you were not required to remain at work and you were not disciplined.
- As discussed previously, your own examination of your official personnel file did not result in the discovery of any documentation of your having been disciplined.
- With regard to your disagreement with the manner in which YCOs are held back and required to perform work on an overtime basis, there is no evidence to support an argument of uneven application of the HYCF's established practice and procedure.

Given the information presented above, the Employer denies violations of the BU 10 Agreement, as presented by you during the Step 2 meeting, for the following reasons:

- Section 11 – Discipline, has not been violated because there is no evidence that any disciplinary action was taken against you. What, from your presentation, it appears you perceived as a verbal reprimand was in fact a verbal notification to you of the possible consequences of your failing to remain at work if directed to do so.
- No information was presented to substantiate violation of Section 17, Official Personnel File. As such the Employer must deny alleged violation of this Section.
- No information was presented to substantiate violation of Section 14, Prior Rights, Benefits and Perquisites; therefore the Employer must deny alleged violation of this Section. Further, and notwithstanding your position that Section 14 incorporates the Hawaii Revised Statutes into the BU 10 Agreement, the Employer takes an opposite position. We believe that Section 14 serves to ensure that the BU 10 Agreement does not abridge, amend or waive rights, benefits or perquisites covered by constitutions, statutes or rules and regulations that BU 10 members previously enjoyed, except as expressly superseded by the Agreement.
- Regarding alleged violation of Section 64, Staffing and Workload, no information was presented to support the allegation that the Employer failed to comply with the requirements contained therein. While it is abundantly clear that you disagree with the historically established practice of holding back YCOs to perform work on an overtime basis, that alone does not substantiate violation of this Section. Despite the foregoing position, please be assured that the Employer acknowledges the concerns you raised in relation to your assertion of alleged violation. Given this, the Employer is committed to examining current practices and to working cooperatively with the United Public Workers, your exclusive representative, to determine whether there may be alternatives to those current practices, which would include minimizing the requirement for only the least senior YCOs to be held back when other YCOs fail to report to work.

Mr. Richard Condon  
April 10, 2008  
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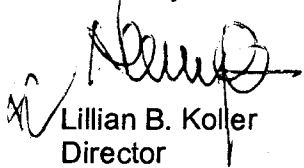
With regard to your proposition to continue utilizing Adult Corrections Officers to perform work on an overtime basis, a mutual agreement between the United Public Workers and the State Departments of Public Safety and Human Services precludes consideration of such suggestion.

Based on the above information and discussion, the Employer must respectfully deny alleged violations of the BU 10 Agreement.

Please also be informed that the subject grievance was accepted and processed at the Step 2 level for administrative reasons. However, please be aware that future grievances you may file on your own will be processed in accordance with Section 15, Grievance Procedure. This means that Step 1 grievances should be filed with the Office of Youth Services' Executive Director (the department head's designee), who will also conduct the Step 1 grievance meeting. Step 2 grievances are properly filed with the Department of Human Services Director (the Employer's designee), with the Departmental Personnel Officer conducting the Step 2 grievance meeting. If you have questions regarding the proper filing of grievances, it is suggested that you contact your representative at the United Public Workers.

Thank you for the opportunity to review and respond to the matters raised by this grievance.

Sincerely,



Lillian B. Koller  
Director

c: United Public Workers

18 APRIL 2008

Dayton Nakanelua, State Director  
1426 North School Street  
Honolulu, Hawaii 96817-1914

RE: Intent to Arbitrate Grievance dated 26 February 2008

Dear Mr. Nakanelua,

I received a response from the Employer dated 10 April 2008.

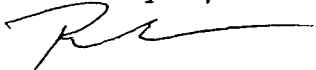
They claim section 64 staffing has not been violated.

I along with the US Department of Justice do not agree.

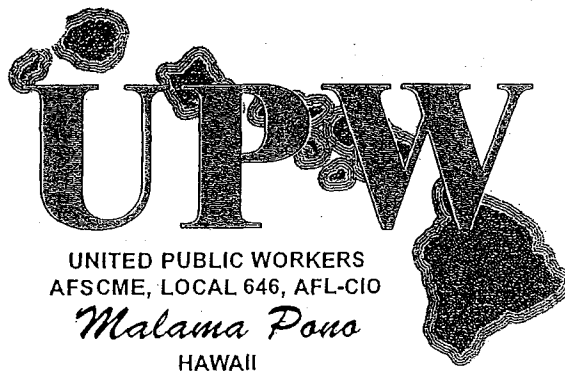
I would like to ask the Union to take my grievance to arbitration. If the Union will represent me in this matter please provide me a copy of the Intent to Arbitrate by 10 May 2008.

If I do not receive one and no communication takes place I will conclude the Union does not wish to represent me in this matter.

Thank you,



Richard Condon  
1301 Lusitana Street, 803  
Honolulu, Hawaii 96813  
Ph# 638-3367



7

April 11, 2008

Mr. Richard Condon  
1301 Lusitana Street #803  
Honolulu, HI 96813

**RE: GRIEVANCE DISPOSITION - EMPLOYEE GRIEVANCE DATED February 18, 2008**

Dear Mr. Condon:

By letter dated March 22, 2008, you requested that the Union submit the above-referenced grievance to arbitration. Subsequently, the Union requested of you, by letter dated March 27, 2008, to provide all grievance information that was considered in the filing and pursuing of the grievance by April 4<sup>th</sup> so that the Union could review the merits. No further information was provided except for your correspondence dated March 29, 2008.

Based on a review of the entire matter, including but not limited to, the applicable provisions of the CBA and the evidence presented, the Union has decided not to pursue the above-cited grievance because there is insufficient proof that there is a violation of the CBA.

Sincerely,

A handwritten signature in black ink, which appears to read 'Dayton M. Nakanelua'. The signature is fluid and cursive.

DAYTON M. NAKANELUA  
State Director

DMN:si

c: Paula Ota, Business Agent  
Diann Berndt, Administrator Field Operations/Laurie Santiago, Oahu Division Director

HEADQUARTERS: 1426 North School Street, Honolulu, Hawaii 96817 (808) 847-2631  
HAWAII: 362 East Lanikaula Street, Hilo, Hawaii 96720 (808) 961-3424  
MAUI: 841 Kolu Street, Wailuku, Hawaii 96793 (808) 244-0815  
KAUAI: 4211 Rice Street, Lihue, Hawaii 96766 (808) 245-2412