

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

JASMINE L. KAPESI,

Complainant,

and

DEPARTMENT OF PUBLIC SAFETY,
State of Hawaii, and, UNITED PUBLIC
WORKERS, AFSCME, Local 646, AFL-
CIO,

Respondent(s).

CASE NO(S): 17-CE-10-908
17-CU-10-359

ORDER NO: 3725

MINUTE ORDER DIRECTING
RESPONDENT TO SUBMIT PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER IN
THIS MATTER

**MINUTE ORDER DIRECTING RESPONDENT TO SUBMIT PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER IN THIS MATTER**

On December 26, 2017, Complainant JASMINE L. KAPESI, *pro se* (Kapesi or Complainant) filed a Prohibited Practice Complaint (PPC or Complaint) against Respondent DEPARTMENT OF PUBLIC SAFETY, State of Hawaii, (PSD), alleging violations of Hawaii Revised Statutes (HRS) § 89-13(a) (1), (5), (6), (8) when on December 30, 2016, PSD terminated Kapesi as an Adult Correctional Officer III, and Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) alleging violations of HRS § 89-13(b) (1), (2), (3), (4) based on the December 1, 2017 UPW decision not to pursue the grievance over the termination of Kapesi as an Adult Correctional Officer III.

On January 16, 2018, the Board held a Pre-Hearing Conference in the Board's Hearing Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The Complainant Jasmine L. Kapesi was a self-represented litigant. Respondent PSD was represented by Deputy Attorney General Miriam P. Loui. Respondent UPW was represented by Rebecca L. Covert, Esq.ⁱ

On January 22, 2018, Respondent UPW filed its Motion to Dismiss Complaint and for Summary Judgment.

On January 23, 2018, Respondent PSD filed its Motion for Summary Disposition.

On January 30, 2018, Complainant Kapesi filed a "...letter to oppose the dismissal of this case." The Board construed this letter to be in opposition to the January 22, 2018, Respondent UPW filed Motion to Dismiss Complaint and for Summary Judgment, and the January 23, 2018, Respondent PSD's Motion for Summary Disposition.

On February 2, 2018, the Hearing on Merits commenced over the PPC filed by the Complainant on December 26, 2017. The Complainant Kapesi was represented by Jessica Sphar, an individual. Respondent PSD was represented by Deputy Attorney General (DAG) Miriam P. Loui. Respondent UPW was represented by Herbert R. Takahashi, Esq.

Mr. Takahashi presented oral arguments in support of the January 22, 2018 UPW Motion to Dismiss and for Summary Judgment.

Ms. Sphar, representing the Complainant, presented oral arguments in opposition to the oral arguments made by the Respondent UPW in support of the January 22, 2018 UPW Motion to Dismiss and for Summary Judgment.

DAG Loui presented oral arguments in support of the January 23, 2018, PSD Motion for Summary Disposition. DAG Loui stated:

The Employer respondent Department of Public Safety or Respondent PSD at this time concurs with the arguments of the Union. Certainly the arguments with respect to whether there is a viable claim or viable claims have been asserted.

The respondent Public Safety also concurs with the Union's position that there was no breach of the duty of fair representation. [TR p. 28 lines 7-15]

Ms. Sphar, representing the Complainant, presented oral arguments in opposition to the oral arguments made by PSD in support of the January 23, 2018, PSD Motion for Summary Disposition.

On January 23, 2018, the Board took the dispositive motions under consideration, and proceeded with the Hearing on the Merits. The Board provided the Complainant's representative with procedural instructions on the manner of presenting the Complainant's case-in-chief including the calling of witness and entering exhibits into the record.

On February 6, 2018, the Board filed its Notice of Continued Hearing on the Merits to commence on April 3, 2018.

On April 3, 2018 the Hearing on the Merits continued with the Complainant's representative's presentation of the case-in-chief. At the close of the Complainant's case, Respondent UPW orally made a motion for a directed verdict and, or dismissing complaint for Complainant's failure to establish that she was not discharged for just and proper cause and the

union did not breach its duty of fair representation. PSD joined in support of the UPW's oral motion and requested that the Board proceed with the PSD motion for summary disposition.

On April 12, 2018, the Board issued Board Order 3341, setting May 2, 2018 for hearing on dispositive motions and deadlines.

On April 24, 2018, the Respondent UPW filed Motion for Directed Verdict and to Dismiss Complainant.

On April 24, 2018, PSD filed Respondent PSD's Motion for Directed Verdict or, in the Alternative, Judgment as a Matter of Law.

On April 24, 2018, Complainant Kapesi filed, Complainant's Motion to Continue the Hearing and Memorandum in Opposition to Respondents' Motion to Dismiss Prohibited Practice Complaint or Summary Judgement.

On April 30, 2018, UPW filed, UPW's Opposition to Kapesi's Motion to Continue Hearing and Opposition to Dispositive Motions.

On April 30, 2018, PSD filed, Respondent PSD's Substantive Joinder in Union's Motion for Directed Verdict and to Dismiss Complainant filed on April 24, 2018.

On April 30, 2018, PSD filed, Respondent PSD's Reply to Complainant's Motion to Continue the Hearing and Memorandum in Opposition to Respondents' Motion to Dismiss Prohibited Practice Complaint or Summary Judgement, filed on April 24, 2018.

On May 1, 2018, Complainant Kapesi filed her Motion to Oppose UPW's Motion for Directed Verdict and to Dismiss Complaint, filed on April 24, 2018 and Motion to Oppose PSD's Motion for Directed Verdict, of in the Alternative, Judgment as a Matter of Law, filed on April 24, 2018.

On May 2, 2018, the Board held a hearing on the dispositive motions filed by UPW and PSD pursuant to Board Order No. 3341. Oral arguments were presented by the UPW and PSD in support of their respective motions for directed verdict, judgment as a matter of law, or summary judgment. Kapesi's representative argued in opposition to the motions for directed verdict, judgment as a matter of law, and for summary judgment.

On May 2, 2018, the Board after considering the pleadings of the parties and the oral arguments presented in the hearing on the motions for directed verdict, judgment as a matter of law, or summary judgment, made the following oral rulings.

First, the Board denies the January 22, 2018 Respondent UPW's Motion to Dismiss Complaint and for Summary Judgment.

Second, the Board finds the Complainant did not carry her burden of proof that the Union breached its duty of fair representation because its action was arbitrary, discriminatory or in bad faith.

Further, the Complainant did not prove that the Employer's investigation breached the Collective Bargaining Agreement that resulted in the Complainant's discharge.

Therefore, the Board grants the April 24, 2018 Respondent UPW's Motion for Directed Verdict to Dismiss Complaint.

All other motions are then either denied or rendered moot.

Accordingly, pursuant to HRS § 91-11,ⁱⁱ the Board enters the following order and decision.

Hawaii Administrative Rules (HAR) § 12-42-8(g)(17)(C) provides that the “[B]oard **may direct** oral argument or the filing of briefs or **proposed findings of facts, conclusions of law, or both**, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein” (emphases added).

The Hawai'i Labor Relations Board (Board) hereby finds the Respondent PSD is a prevailing party and orders Respondent PSD to submit a Proposed Findings of Fact, Conclusions of Law.

Accordingly, this minute order directs the Respondent PSD to submit to the Board proposed findings of fact, conclusions of law, and decision and order, incorporating the Board's oral rulings in this matter and providing findings of fact and conclusions of law pertinent to the Board's oral rulings. PSD shall submit the proposed findings of fact, conclusions of law, and decision and order to the Board with copy to Complainant no later than **the close of business at 4:30 pm on April 30, 2021**.

The Board further notifies the parties that after April 30, 2021, the Board will issue its own Proposed Findings of Fact, Conclusions of Law, and Decision and Order which may or may not incorporate all, some, or none of Respondent's submission. However, following the Board's issuance, any party adversely affected will thereafter be given the opportunity to file exceptions thereto and to present argument to the Board, in accordance with the provisions of HRS § 91-11.

DATED: Honolulu, Hawai'i, March 25, 2021.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Jasmine L. Kapesi, Pro Se
Miriam P. Loui, Deputy Attorney General
Koshiba, Price & Gruebner representing UPW

ⁱ On June 1, 2020, the Herbert Takahashi filed Notice of Withdrawal and Substitution of Counsel, withdrawing as attorney on behalf of UPW. The Notice stated that effective June 1, 2020, the law firm of Koshiba, Price & Gruebner would be representing UPW in the above entitled matter.

ⁱⁱ HRS § 91-11 states:

§91-11 **Examination of evidence by agency.** Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.