

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

KENDERSON CASPILLO,

Complainant(s),

and

DEPARTMENT OF TRANSPORTATION,
State of Hawai'i; and UNITED PUBLIC
WORKERS, AFSCME, LOCAL 646, AFL-
CIO,

Respondent(s).

CASE NO(S). 17-CE-01-899
17-CU-01-355

ORDER NO. 3739

MINUTE ORDER DIRECTING
RESPONDENT UNITED PUBLIC
WORKERS, AFSCME, LOCAL 646, AFL-
CIO TO SUBMIT PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

**MINUTE ORDER DIRECTING RESPONDENT UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO TO SUBMIT
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Introduction

This prohibited practice case arises from the termination of Complainant KENDERSON CASPILLO (Caspillo) from his position by Respondent DEPARTMENT OF TRANSPORTATION, State of Hawai'i (DOT). After his termination, Caspillo requested that Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW and, collectively with DOT, Respondents) file a grievance on his behalf. UPW did so, and, after Caspillo declined to sign a last chance agreement (LCA) that would have reinstated him, UPW decided not to take Caspillo's grievance to arbitration.

Caspillo argues, among other things, that DOT wilfully violated the terms of the applicable collective bargaining agreement, thus committing a prohibited practice under Hawai'i Revised Statutes (HRS) § 89-13(a)(8); that UPW violated its duty of fair representation; and that UPW violated the terms of the applicable collective bargaining agreement, thus committing a prohibited practice under HRS § 89-13(b)(5).

The Board held hearings on the merits (HOMs) on January 14-17, 2020, January 21 and 23, 2020 and March 10, 2020. After the HOMs, the parties submitted post-hearing briefs on November 30, 2020ⁱ.

After a full and complete review of the record and the HOMs, based on the reasons set forth below, the Board holds that UPW did not violate the applicable collective bargaining agreement, that UPW did not breach its duty of fair representation owed to Caspillo. Based on these findings, the Board dismisses the HRS § 89-13(a)(8) claim, because, having failed to prove a breach of the duty of fair representation, Caspillo cannot succeed on the HRS § 89-13(a)(8) claim. *See Poe v. Hawaii Labor Relations Board*, 105 Hawai‘i 97, 101-102, 94 P.3d 652, 656-57 (2004) (citations omitted).

2. Minute Order

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

Accordingly, this minute order directs UPW to submit to the Board proposed findings of fact and conclusions of law based on the Board’s specific rulings above. The Board orders UPW to submit these proposed findings of fact and conclusions of law to the Board, with copy to Caspillo and DOT, no later than the close of business at 4:30 pm on June 15, 2021.

Caspillo and DOT may submit objections to UPW’s proposed findings of fact and conclusions of law, based on this Minute Order, within ten days of service of UPW’s proposed findings of fact and conclusions of law.

After receiving UPW’s proposed findings of fact and conclusions of law, the Board will issue its own final findings of fact, conclusions of law, decision and order, which may or may not incorporate all, some, or none of UPW’s submission.

DATED: Honolulu, Hawai‘i, _____ May 4, 2021 _____.

HAWAI‘I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

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KENDERSON CASPILLO v. DOT & UPW

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ⁱ Although Caspillo's post-hearing brief was submitted after the deadline of November 30, 2020 at 4:30pm, the Board will permit the filing to stand, as it was only one minute late. However, the Board cautions that it expects its deadlines to be followed in all future instances, and Caspillo's counsel should take care to ensure that such timing mishaps do not reoccur.