

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

GORDON LESLIE; BERNARD KUAMOO;
GEORGE SHERIDAN; DEANGELO
DIXON; and FELICIANO SAMSON,

Complainants,

and

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

Respondent.

CASE NO(S). 20-CU-10-381

ORDER NO. 3770

PRETRIAL ORDER AND NOTICES

- (1) NOTICE TO RESPONDENT(S) OF
AMENDED PROHIBITED
PRACTICE COMPLAINT;
- (2) NOTICE TO PARTIES OF
EXTRAORDINARY
CIRCUMSTANCES
- (3) NOTICE OF FILING
REQUIREMENTS;
- (4) NOTICE OF APPEARANCE AND
ACCESSIBILITY OR
ACCOMMODATIONS;
- (5) NOTICE OF STRUCTURE FOR
REMOTE HEARINGS BEFORE
THE BOARD
- (6) NOTICE OF PREHEARING
CONFERENCE
- (7) NOTICE OF PRETRIAL
CONFERENCE
- (8) NOTICE OF WITNESS
REQUIREMENTS WHILE
TESTIFYING REMOTELY
- (9) NOTICE OF HEARING ON THE
MERITS; AND SCHEDULE OF
HEARINGS, CONFERENCES, AND
DEADLINES

In the Matter of

CASE NO(S). 20-CE-10-943

GORDON LESLIE; BERNARD KUAMOO;
GEORGE SHERIDAN; DEANGELO
DIXON; WYATT LEE; and FELICIANO
SAMSON,

Complainants,

and

DAVID Y. IGE, Governor, State of Hawai‘i;
NOLAN P. ESPINDA, Director, Department
of Public Safety, State of Hawai‘i; SCOTT
HARRINGTON, Warden, Halawa
Correctional Facility; LYLE ANTONIO,
Deputy Warden, Halawa Correctional
Facility; CALVIN MOCK, Chief of Security,
Halawa Correctional Facility; JANE AND
JOHN DOE 1-25, State of Hawai‘i,
Department of Public Safety,

Respondents.

In the Matter of

CASE NO(S). 20-CU-10-382

GORDON LESLIE; BERNARD KUAMOO;
GEORGE SHERIDAN; DEANGELO
DIXON; WYATT LEE; and FELICIANO
SAMSON,

Complainants,

and

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

Respondent.

AMENDED PRETRIAL ORDER AND NOTICES

THE PARTIES ARE HEREBY NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document controls the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns include the others as the context may require.

(1) NOTICE TO RESPONDENTS OF AN AMENDED PROHIBITED PRACTICE COMPLAINT

The attached amended prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **June 28, 2021**.

PURSUANT TO HAWAI'I REVISED STATUTES (HRS) § 377-9(b) AND HAWAI'I ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

YOU ARE DIRECTED to file a written answer to the Complaints within ten (10) days after service of the Complaints. One copy of the answer must be served on each party, and the original with certificate of service on all parties must be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, that failure constitutes an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

(2) NOTICE OF EXTRAORDINARY CIRCUMSTANCES

Due to the current concerns regarding COVID-19, the Governor of the State of Hawai'i (Governor) issued a series of Emergency Proclamation, with the first being signed on March 5, 2020. These proclamations, among other things, gave agencies the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at the same location, and suspend certain rules, statutory requirements, and administrative hearing procedures as needed to deal with the emergency situation brought on by COVID-19.

On March 29, 2020, the Governor issued Executive Order No. 20-02, which, among other things, gave the Board the sole discretion to waive the requirement in HRS § 377-9 to hold a

hearing on the complaint not more than 40 days after the filing of the complaint or amendment thereof. The Board hereby waives this requirement in this case.

Accordingly, the Board is holding remote, videographic hearings and is mandating electronic filing during the emergency period, unless terminated by separate proclamation, whichever occurs first. (See Order Nos. 3605 and 3647)

(3) NOTICE OF FILING REQUIREMENTS

1) Electronic Filing

All filings in this case must be made electronically through the Board's filing service FileandServeXpress (FSX). There is no charge to the parties for use of this electronic filing service. Should any party not have access to the Internet, or for any other concerns or complications, please contact the Board via electronic mail or (808) 586-8616.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrb/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

2) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party must make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" includes social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board's consideration of this case, the submitting party must submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party must, by motion, request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, pursuant to HAR § 12-42-8(g)(11), "The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document."

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

(4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS

All parties have the right to appear and to be represented by counsel or any other authorized person in all Board proceedings, subject to the Extraordinary Circumstances set forth in Section (2) above. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The parties should be aware that the Board is in a secured State of Hawai‘i building, which may not be accessible to the public during the emergency period referenced in the Notice of Receipt of Notice of Contest.

(5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD

The Board currently uses Zoom as its platform for online proceedings. The Board hereby orders all parties to follow the requirements laid out in this Order for all Remote Zoom Hearings before the Board.

Parties and representatives should familiarize themselves with Zoom in preparation for all online Board proceedings. For security purposes, the Board will utilize the “waiting room” function.

Prior to the hearing:

1. The Board will provide Zoom login information to the parties in advance of the hearing.
2. A party who shares the Zoom login information with any other group or individual (Sharing Party) must provide the Board and the other party/parties with a complete list of participants they have invited to attend the proceedings, including any support staff and witnesses. Failure to inform the Board of these participants may result in the participants being excluded from the hearing. **This list must be emailed to the Board at dlir.laborboard@hawaii.gov.**
3. **Sharing Parties are responsible for ensuring that any participant they invite complies with this Order. An invitee’s failure to comply with this Order will be regarded as the Sharing Party and/or their representative’s failure to comply with this Order, during a hearing.**

Failure to comply with this Order may be grounds for the Board to commence proceedings regarding that party or representative under HAR § 12-42-8(g)(9)(A).

4. Any Sharing Party must inform non-witness participants:
 - 1) that they must keep their microphones muted at all times; and
 - 2) that they must keep their cameras off at all times.
5. Any Sharing Party must inform **all** participants:
 - 1) that they must submit their full name as their username when requesting entry to the Zoom conference, to allow the Board to ensure compliance with the witness exclusion rule, unless the party sets up a device specifically for witness use only, in which case that device may log in with the username “witness”; and
 - 2) **that they may not record, screen shot, record conversations, and/or use third party software to record the proceeding.**

(6) NOTICE OF PREHEARING CONFERENCE

PURSUANT TO HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

NOTICE IS HEREBY GIVEN that the Board will conduct a Prehearing Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: July 6, 2021 at 11:00 a.m.

LOCATION: Remote Zoom Hearing

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; to identify witnesses and file applications for the issuance of subpoenas; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing Conference telephonically and to be represented by counsel or any other authorized person. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

(7) NOTICE OF PRETRIAL CONFERENCE

PURSUANT TO HRS §§ 89-5(i)(4) and (i)(5), and 377-9:

NOTICE IS HEREBY GIVEN that the Board will conduct a Pretrial Conference on the date listed below and in the Schedule in this document.

DATE AND TIME: July 26, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

1) Pretrial Statement

Both the Complainant(s) and the Respondent(s) must file a Pretrial Statement with the Board as listed in the Schedule set forth below. The Pretrial Statement must include the following:

1. Statement of Issues
2. Witness List

The witness lists must include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability.

The summary for each witness must include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1). The summary, therefore, must include sufficient information to show the Board that the testimony of each witness will be different, and so the summary for each witness must be individualized.

Failure to include individualized summaries for any witness may be grounds for the Board to strike that witness and not allow them to testify at the *de novo* hearing.

The witness list must also include information regarding the location where the party expects the witness to testify from. This location may include the witness' home, a party's office, or any other location from which the witness can testify remotely, without assistance or interference from any other party, and can access the relevant exhibits.

If a party intends to file a request for a subpoena for a witness, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the witness list.

3. Exhibit List

The exhibit lists must include copies of the proposed exhibits. The parties are required to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day, as ordered in Board Order No. 3605. The exhibits must be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes, with each exhibit bookmarked.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the exhibit list.

The Complainant must identify his exhibits using alphabetical letters (A, B, C, D, etc.). Union Respondent(s) must identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.).

If there are any duplicative exhibits, the parties must designate them as Joint Exhibits, the parties must designate one party to file these exhibits, and the Exhibits must be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

All Exhibits are to be bates-stamped in the upper right-hand corner.

Additionally, the Exclusive Representative, unless no Exclusive Representative is party to the case, in which case the Employer, must submit to the Board the full applicable collective bargaining agreement(s), including any Memoranda of Understanding, Memoranda of Agreement, or any other supplemental agreement that has any bearing on these proceedings. These documents must be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc. and must be bates-stamped in the upper-right hand corner.

2) Pretrial Conference

At the pretrial conference, the Parties must be prepared to discuss, raise, and present their position regarding the presentation of the anticipated evidence (witnesses, exhibits) to be introduced at the Hearing on the Merits (HOM), including but not limited to any stipulations, evidentiary issues, objections, or confidentiality issues that require protection from public disclosure and the narrow tailoring of methods to protect that information (e.g. sealing or redaction).

While all parties have the right to appear at the Pretrial Conference and to be represented by counsel or any other authorized person, all parties are required to either appear or have a representative appear. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(8) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY

Due to the situation with COVID-19, unless otherwise ordered by the Board, all witnesses must testify videographically. Accordingly, the Board **orders all parties** to inform their witnesses that, unless otherwise directed or allowed, when the witness testifies:

1. The witness must be in a location without anyone else in the room with them, and there should be no one at the location who can overhear their testimony;
2. The device from which the witness appears must be used during the witness' testimony solely for the purpose of the witness appearing by video;
3. The witness may not consult with anyone during testimony;
4. The party calling the witness must ensure that the witness has access to all exhibits in the case;
5. The witness must not look at or make reference to notes or any other documents or materials other than the exhibits, and may look at the exhibits only when directed to do so by a party or the Board;
6. At all times while testifying, the witness must be clearly visible, face the camera, and speak directly and audibly into the microphone;
7. The witness may not use a virtual background; and
8. The witness must not have any communication with third parties while they are on the stand and under oath.

(9) NOTICE OF THE HEARING ON THE MERITS

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49 that the Board will conduct an HOM on the instant Complaint at the place, time and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: August 4, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

Subject to the Board's discretion due to the Extraordinary Circumstances listed above in Section 2, all parties have the right to appear at the Hearing on the Merits and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear at the hearing on the merits.** Please note that this requirement may be altered due to the Extraordinary Circumstances listed above in Section 2 by Board Order.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(10) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Prehearing Conference</u>	7/6/21	11:00 a.m.
<u>Dispositive Motion Deadline</u>	7/12/21	
<u>Response to Dispositive Motion Deadline</u>	7/19/21	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	7/19/21	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	7/26/21	9:00 a.m.
<u>Hearing on the Merits</u>	8/4/21	9:00 a.m.

All submissions must be filed on or before 4:30 p.m. on the deadline date.

DATED: Honolulu, Hawai'i, June 28, 2021.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Eric A. Seitz, Esq.

Richard Thomason, Deputy Attorney General

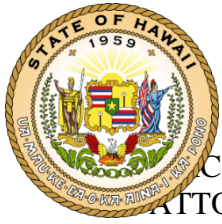
Jonathan Spiker, Esq.

LESLIE ET AL. v. UPW & IGE, ET AL.

CASE NOS. 20-CU-10-381; 20-CE-10-943; 20-CU-10-382

PRETRIAL ORDER AND NOTICES

ORDER NO. 3770



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Attorneys for Complainants

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

GORDON LESLIE; JAMES AKAU; MARC
S. AMERINO; ANTHONY BAYSA;
DANIEL J. BRYANT; LEVI
CHRISTENSON; MICHAEL COSTA;
NEEMIA FEAGAI; LEE FIELDS, JR.;
WILLIAM T.K. GREIG; WILLIAM S.
GONSALVES; HENRY C. HOPE; SHEEN
H. IKEGAMI; CRANSTON M.KAMAKA,
JR.; AUSTIN R. KEANU; BERNARD
KUAMOO, JR.; JOHN P. LALOTOA;
WYATT G. LEE; ALTON LORICO, JR.;
RAYMOND R. LYMAN, SR.; RAYMOND
A. MAAE; CHAD K. MAHUKA; GARY D.
MENDONCA; DAVID MURRAY; DALE
U. NEWCOMB; POTUMOE OLOMUA;
ROBERT L. PRADO; STEVEN PREZA;
ADRIAN P. SALAS; FELICIANO
SAMSON; FIAFIA S. SATARAKA;
IAFETA SAVE; DEBORAH SEGICH;
GEORGE SHERIDAN, III; KENNETH
SIILATA; MICHAEL TAAMILO;
WILLIAM TAAMU-PERIFANOS; JARED

CASE NO(S). 20-CE-10-943

**AMENDED PROHIBITED PRACTICES
COMPLAINT; DECLARATION OF
ERIC A. SEITZ IN LIEU OF
AFFIDAVIT; EXHIBITS 1-6;
CERTIFICATE OF SERVICE**

**EFiled: Jun 28 2021 12:54PM HAST
Transaction ID 66722606
Case No. 20-CU-10-381, 20-CE-10-
943, 20-CU-10-382**

TAJON; THOMAS TAUM; MARIA ELENA
Y.L.W. TOM; PILIPO TUITAMA;
EDWARD F. VAOVASA; BRADLEY
WAKUTA; MARK M. WATANABE; and
LANCE F.P. WONG,

Complainants,

and

DAVID Y. IGE, Governor, State of Hawaii;
NOLAN P. ESPINDA, Former Director,
Department of Public Safety, State of Hawaii;
MAX N. OTANI, Director, Department of
Public Safety, State of Hawaii; SCOTT
HARRINGTON, Warden, Halawa
Correctional Facility; FRANCIS SEQUEIRA,
Warden, Oahu Community Correctional
Center; DEBORAH TAYLOR, Warden,
Maui Community Correctional Center; LYLE
ANTONIO, Deputy Warden, Halawa
Correctional Facility; LYLE KAWABATA,
Deputy Warden, Oahu Community
Correctional Center; & JANE AND JOHN
DOES 1-25, State of Hawaii, Department of
Public Safety,

Respondents.

In the Matter of

GORDON LESLIE; JAMES AKAU; MARC
S. AMERINO; ANTHONY BAYSA;
DANIEL J. BRYANT; LEVI
CHRISTENSON; MICHAEL COSTA;
NEEMIA FEAGAI; LEE FIELDS, JR.;
WILLIAM T.K. GREIG; WILLIAM S.
GONSALVES; HENRY C. HOPE; SHEEN
H. IKEGAMI; CRANSTON M.KAMAKA,
JR.; AUSTIN R. KEANU; BERNARD
KUAMOO, JR.; JOHN P. LALOTOA;
WYATT G. LEE; ALTON LORICO, JR.;
RAYMOND R. LYMAN, SR.; RAYMOND
A. MAAE; CHAD K. MAHUKA; GARY D.
MENDONCA; DAVID MURRAY; DALE

CASE NO(S). 20-CU-10-382

U. NEWCOMB; POTUMOE OLOMUA;
ROBERT L. PRADO; STEVEN PREZA;
ADRIAN P. SALAS; FELICIANO
SAMSON; FIAFIA S. SATARAKA;
IAFETA SAVE; DEBORAH SEGICH;
GEORGE SHERIDAN, III; KENNETH
SIILATA; MICHAEL TAAMILO;
WILLIAM TAAMU-PERIFANOS; JARED
TAJON; THOMAS TAUM; MARIA ELENA
Y.L.W. TOM; PILIPO TUITAMA;
EDWARD F. VAOVASA; BRADLEY
WAKUTA; MARK M. WATANABE; and
LANCE F.P. WONG,

Complainants,

and

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

Respondent.

AMENDED PROHIBITED PRACTICES COMPLAINT

I. INTRODUCTION

Complainants, by and through their undersigned attorneys, file this Amended Prohibited Practices Complaint pursuant to the April 22, 2020, Minute Order issued herein by the Hawaii Labor Relations Board.

Complainants allege that the following circumstances exist and request that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes (“HRS”) Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of HRS Chapter 89.

II. COMPLAINANTS

A. The following Complainants are public employees who have provided their written authorizations for ERIC A. SEITZ, ESQ. and ERIC A. SEITZ, AAL, ALC, to serve as their representative in this matter:

1. GORDON LESLIE
2. JAMES AKAU
3. MARC S. AMERINO
4. ANTHONY BAYSA
5. DANIEL J. BRYANT
6. LEVI CHRISTENSON
7. MICHAEL COSTA
8. NEEMIA FEAGAI
9. LEE FIELDS, JR.
10. WILLIAM T.K. GREIG
11. WILLIAM S. GONSALVES
12. HENRY C. HOPE
13. SHEEN H. IKEGAMI
14. CRANSTON M. KAMAKA, JR.
15. AUSTIN R. KEANU
16. BERNARD KUAMOO, JR.
17. JOHN P. LALOTOA
18. WYATT G. LEE
19. ALTON LORICO, JR.

20. RAYMOND R. LYMAN, SR.
21. RAYMOND A. MAAE
22. CHAD K. MAHUKA
23. GARY D. MENDONCA
24. DAVID MURRAY
25. DALE U. NEWCOMB
26. POTUMOE OLOMUA
27. ROBERT L. PRADO
28. STEVEN PREZA
29. ADRIAN P. SALAS
30. FELICIANO SAMSON
31. FIAFIA S. SATARAKA
32. IOFETA SAVE
33. DEBORAH SEGICH
34. GEORGE SHERIDAN III
35. KENNETH SIILATA
36. MICHAEL TAAMILO
37. WILLIAM TAAMU-PERIFANOS
38. JARED TAJON
39. THOMAS TAUM
40. MARIA ELENA Y.L.W. TOM
41. PILIPO TUITAMA
42. EDWARD F. VAOVASA

- 43. BRADLEY WAKUTA
- 44. MARK M. WATANABE
- 45. LANCE F.P. WONG

True and correct copies of the written authorizations of the above-identified
Complainants are attached hereto as Exhibit 1.

- B. The principal representative to whom correspondence is to be directed is:

GORDON LESLIE
c/o ERIC A. SEITZ, ESQ.
820 Mililani Street, Ste. 502
Honolulu, HI. 968913
(808) 533-7434
E-mail: eseitzatty@yahoo.com

III. RESPONDENTS

The following Respondents are Public Employers as agents and/or representatives of the
State of Hawaii:

- A. DAVID Y. IGE, Governor, State of Hawaii;
- B. NOLAN P. ESPINDA, Former Director, Department of Public Safety, State of
Hawaii;
- C. MAX N. OTANI, Director, Department of Public Safety, State of Hawaii
- D. SCOTT HARRINGTON, Warden, Halawa Correctional Facility;
- E. FRANCIS SEQUIERA, Warden, Oahu Community Correctional Center;
- F. DEBORAH TAYLOR, Warden, Maui Community Correctional Center;
- G. LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility;
- H. LYLE KAWABATA, Deputy Warden, Oahu Community Correctional Center;
- I. JANE AND JOHN DOES 1-25, State of Hawaii, Department of Public Safety.

The following is the principal representative of the above Public Employer Respondents to whom correspondence is to be directed:

J. DAVID Y. IGE
 c/o RICHARD THOMASON, ESQ.
 Deputy Attorney General
 State of Hawaii
 235 South Beretania Street, 15th Floor
 Honolulu, HI 96813
 (808) 587-2900
 Richard.H.Thomason@hawaii.gov

The following Respondent is the Public Union or Public Employee Organization:

K. UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO
 (hereinafter “UPW”)
 1426 North School Street
 Honolulu, HI. 96817
 (808) 847-2361

The following is the principal representative of the above Public Union Respondent to whom correspondence is to be directed:

L. ELIZABETH HO, Administrator
 United Public Workers, AFSCME, LOCAL 646, AFL-CIO
 1426 North School Street
 Honolulu, HI. 96817
 (808) 847-2361

IV. BARGAINING UNITS INVOLVED

Complainants are members of UPW Bargaining Unit (“BU”) 10. All Complainants are Adult Correctional Officers (“ACO”) IV or V and are either Sergeants or Lieutenants.

V. ALLEGATIONS

Complainants allege that the above-named Respondents have engaged in or are engaged in prohibited practices within the meaning of Hawaii Revised Statutes (“HRS”) Section 89-13.

Former Director of the Department of Public Safety (“PSD”), NOLAN ESPINDA and Former UPW State Director DAYTON NAKANELUA collaborated and entered into a

Settlement Agreement dated June 12, 2015 (hereinafter “2015 Settlement Agreement” that violated HRS Sections 89-13(a)(8) and (b)(5) by violating the terms of the Unit 10 collective bargaining agreement. *See* Exhibit 5, a true and correct copy of the 2015 Settlement Agreement, attached hereto. Ongoing enforcement of that 2015 Settlement Agreement by both former PSD Director ESPINDA, current PSD Director OTANI, former UPW Director NAKANELUA, and current UPW Administrator HO constituted and continue to constitute violations of HRS Sections 89-13(a)(8) and (b)(5).

Public Employer and Public Union Respondents also violated HRS Sections 89-13(a)(7) and (b)(4), respectively, because UPW Respondents failed to ratify the 2015 Settlement Agreement and both sets of Respondents implemented and continue to implement the 2015 Settlement Agreement in non-compliance with the requirements of HRS Section 89-10(a), *inter alia*.

VI. OTHER RELEVANT FACTS

A. 1998 Arbitrator’s Decision and Order

On February 17, 1998, arbitrator Keith W. Hunter executed the “Arbitrator’s Decision and Award” in a Class Grievance involving Overtime Section 26.12 (Bargaining Unit 10) entitled *In the Matter of the Arbitration between United Public Workers, AFSCME, Local 646, AFL-CIO, Union, and State of Hawaii, Department of Public Safety, Women’s Correctional Center, Employer*. *See* Exhibit 2, a true and correct copy of Arbitrator Keith W. Hunter’s “Arbitrator’s Decision and Award,” attached hereto.

Arbitrator Hunter concluded and found, in relevant part, that UPW “Captain Lee’s attempt to isolate and restrict ACO IVs and Vs from the ‘opportunity’ to work overtime at an ACO III post does not conform with the requirement that ‘the Employer shall endeavor to assign

such overtime work on a fair and equitable basis giving due consideration to the needs of the work operation and the abilities and desires of the employees.” *See* Exhibit 2 at p.13

Arbitrator Hunter further concluded that “[i]f the Employer and the Union intended to create classes or divisions within the scope of Section 26.12 [of the BU 10 Collective Bargaining Agreement], they could have and would have done so. The fact that they did not do so is indicative of their mutual intention to have section 26.12 apply to all Bargaining unit members under the Unit Agreement.” *See* Exhibit 2 at p.13.

Arbitrator Hunter also concurred with UPW’s contention that “the issue of overtime clearly falls under the rubric of wages, hours and working conditions” and concluded that “the Employer and Union have a duty to consult and negotiate with regard to changes in policy relating to wages, hours and working conditions.” *See* Exhibit 2 at pp.16-17.

Finally, Arbitrator Hunter specifically found that “(a) Section 26.12 requires the Employer to distribute overtime opportunities ‘fairly and equitably’ among all Bargaining unit 10 members and (b) Section 1.05 requires the Union and the Employer to consult and reach mutual consent for a change in policy relating to an issue like overtime work.” *See* Exhibit 2 at p.17.

B. UPW 2011 Grievance, 2015 Settlement Agreement, and Ongoing Harmful Effects of Implementation of Settlement Agreement on Retirement

On July 11, 2011, Respondent UPW filed a Step 1 Grievance in UPW Case #JM-11-15 against Employer State of Hawaii addressing temporary assignments to the ACO VI Captain and ACO VII Chief of Security positions at Halawa Correctional Facility (“HCF”). *See* Exhibit 4, a true and correct copy of Class Grievance UPW Case #JM-11-15, attached hereto. On March 12, 2013, this grievance was moved to arbitration. *See* Exhibit 5 at p.D-2.

Respondents entered into the 2015 Settlement Agreement on June 12, 2015, to resolve UPW Case #JM-11-15. *See* Exhibit 5 at p.D-1. This Agreement violates BU 10's past contract, effective from July 1, 2012 through June 30, 2017, and BU 10's current contract, effective from July 1, 2017 through June 30, 2021. Respondents entered into the 2015 Settlement Agreement to reduce overtime by excluding two classes of workers, ACO IV Sergeants and ACO V Lieutenants, from the overtime equation. ACO III correctional staff are still allowed to work overtime. ACO IIIs are temporarily assigned to all overtime openings for ACO IV Sergeants and ACO IVs are temporarily assigned to all overtime openings for ACO V Lieutenants. This violates HRS Section 89-9(d) which states that "the employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or principle of equal pay for equal work pursuant to Section 76-1."

Pursuant to past practice and following the execution of Arbitrator Hunter's 1998 Decision and Award, adequate staffing allowed temporary assignments of ACO IIIs to ACO IV positions without creating overtime ("OT"). The practice implemented pursuant to the 2015 Settlement Agreement denied *and continues to deny* ACO IV Sergeants and ACO V Lieutenants equitable access to overtime work and thereby discriminates against them for fair and equitable pay. By excluding the entire classes of ACO IVs and ACO Vs "from participating in fair and equitable offerings of available overtime," Respondents' continued implementation of the 2015 Settlement Agreement violates HRS Section 89-9(d) regarding the merit principle or the principle of equal pay for equal work provision and CBA 26.12. *See* HRS Section 89-19.

The 2015 Settlement Agreement and Respondents force ACO III staff to involuntary holdbacks and have compelled *and continue to compel* them to work 16 hour shifts repeatedly to the point of exhaustion, even though there are ACO IV and ACO V staff requesting and willing

to work the shifts. This practice endangers the good operation of the facility and the safety of inmates, staff, and the public.

Equally important, this practice does not save money for the Employer Respondents. If an ACO III is temporarily assigned up to ACO IV, Employer Respondents are required to pay them ACO IV pay. This temporary assignment may create overtime work in the ACO III post left vacant, and Employer Respondent will have to pay an ACO III overtime to cover that post. Employer Respondent ends up paying overtime *and* temporary assignment pay instead of simply paying overtime for an ACO IV and ACO V.

This situation and practice results in dangerous ACO III burnouts because ACO IIIs face holdbacks to temporary assignments for ACO IV or to fill vacant ACO III positions created by the ACO III temporary assignments. This creates a burnout cycle where ACO IIIs call in sick or are afraid to come to work because they might be held back which results in more vacancies.

The 2015 Settlement Agreement further denies Complainants' past practice rights of working overtime, rank for rank, which they enjoyed for many years at Halawa Correctional Facility, Oahu Community Correctional Center, and Maui Community Correctional Center. *See* BU 10 CBA 26.12 relating to the distribution of overtime. The inability to work overtime, rank for rank, also negatively impacts the calculation of retirement benefits of Complainants because their annual salaries are reduced significantly even when Complainants were willing to and are entitled to work overtime.

C. UPW Representatives Violate Oaths and Members' Rights

Lastly, the 2015 Agreement "falls within the written agreements set forth in HRS Section 89-10(a) as a written agreement reached as a result of 'collective bargaining.'" *See* "Findings of Fact; Conclusions of Law; Decision and Order," Decision No. 497, Case No. 16-CU-10-344, *In*

the Matter of Stacy K. Paio, et al. and UPW, AFSCME, Local 646, AFL-CIO, and Case No. 16-CU-345, *In the Matter of Fern Kathryn Wheeless and UPW, AFSCME, Local 646, AFL-CIO*, dated Feb. 21, 2020, (hereinafter “*Paio Decision & Order*”) at p.34. HRS Section 89-10(a) requires that the 2015 Settlement Agreement be ratified by the employees concerned, but no such ratification ever occurred by the employees in BU 10. *See id.* Ultimately, the Hawaii Labor Relations Board in *Paio* and *Wheeless* has concluded that the 2015 Settlement Agreement “is a collective bargaining agreement subject to and required to be ratified under HRS Section 89-10(a)” and that “[b]ased on the lack of ratification, the [2015 Settlement Agreement] fails to comply with the requirements of HRS Section 89-10(a) and is invalid.” *See Paio Decision & Order* at p.36.

Both former UPW Director NAKANELUA and current UPW Administrator HO have violated their oaths and BU 10’s members’ rights pursuant to UPW Local 646 and AFSCME International’s Constitutions. The Bill of Rights No.7 of both Constitutions provide, *inter alia*,

“Members shall have the right to full participation through discussion and vote, in the decision-making process of this Union, and to pertinent information for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.”

Both NAKANELUA and HO are aware of Resolution No. 3 which was adopted in the 34th State Convention by UPW, AFSME, Local 646, AFL-CIO, on or about December 15-16, 2003, at the Sheraton Waikiki Hotel. *See* Exhibit 3, a true and correct copy of Resolution #3, 2003 UPW State Convention, attached hereto.

AFSCME International Executive Board Case No. 19-07 *Akau v. Nakanelua* states that the MOU at issue was entered into without ratification vote in violation of Local 646 and

AFSCME's Constitutions, Bill of Rights No.7. *See* Exhibit 6, a true and correct copy of *Akau v. Nakanelua*, April 3, 2019, attached hereto, at pp. O-12. Hawaii state law and the master agreement/Collective Bargaining Agreement are clear that UPW is allowed to make mid-term changes to "wages, hours, or other conditions of work" provided that there is "mutual consent." *Id.* at pp. O-7 and O-12. It is undisputed that the Attendance MOU was not submitted for a ratification vote. *Id.* at pp. O-4.

Similar to the Attendance MOU in *Akau*, the 2015 Agreement has never been submitted for or ratified by a BU 10 vote in violation of the Bill of Rights No. 7 of UPW Local 646 and AFSCME International's Constitutions. *See Paio* Decision & Order at p.34.

E. Efforts to Mediate and Settle

Throughout the litigation of this matter, Complainants have been willing to participate in alternative dispute proceedings that may facilitate settlement of their claims and, in particular, for the significant monetary damages Complainants are entitled to based upon the continued unlawful and wilfull implementation of the 2015 Settlement Agreement after the issuance of this Board's Decision and Order in *Paio*. Following the issuance of this Board's Order No. 3600 on April 22, 2020, Complainants engaged in good faith efforts to arbitrate this matter before the Honorable Victoria A. Marks (Ret.) through Dispute Prevention & Resolution, Inc. but the parties were unsuccessful at resolving the disputed matters.

F. Relief Requested

Complainants seek the following relief:

1. Cease and desist enforcement order of 2015 Settlement Agreement and immediately allow Complainants to be able to work overtime rank for rank in any and all

available temporary assignments appropriate to their rank at the Halawa Correctional Facility, Oahu Community Correctional Center, or Maui Community Correctional Center;

2. Calculation and payment of all lost wages and/or back pay, including interest, to make Complainants whole for the times they were entitled to work overtime, rank for rank, for all the temporary assignments that could have been assigned to them since the implementation of the 2015 Settlement Agreement;

3. Calculation of Complainants' annual salaries for the purposes of calculating their retirement benefits and making Complainants whole for the times they were entitled to work overtime, rank for rank, for all the temporary assignments that could have been assigned to them from the implementation of the 2015 Settlement Agreement to the present;

4. Civil penalties of up to \$10,000 for each wilfull or repeated commission of unfair or prohibited practices committed by Respondents in allowing for the continued implementation of the 2015 Settlement Agreement after the filing of the 2020 *Paio* decision; and

5. Reimbursement for reasonable costs and attorneys' fees.

DATED: Honolulu, Hawaii, June 28, 2021.

/s/ Eric A. Seitz
ERIC A. SEITZ
GINA SZETO-WONG
JONATHAN M.F. LOO
KEVIN Y. YOLKEN
Attorneys for Complainants

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

<p>In the Matter of</p> <p>GORDON LESLIE; et al.,</p> <p style="text-align:right">Complainants,</p> <p style="text-align:center">and</p> <p>DAVID Y. IGE, Governor, State of Hawaii; et al.,</p> <p style="text-align:right">Respondents.</p>	<p>CASE NO(S). 20-CE-10-943</p> <p>DECLARATION OF ERIC A. SEITZ IN LIEU OF AFFIDAVIT; EXHIBITS 1-6; CERTIFICATE OF SERVICE</p>
<p>In the Matter of</p> <p>GORDON LESLIE; et al.,</p> <p style="text-align:center">and</p> <p>UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,</p> <p style="text-align:right">Respondent.</p>	<p>CASE NO(S). 20-CU-10-382</p>

DECLARATION OF ERIC A. SEITZ IN LIEU OF AFFIDAVIT

I, ERIC A. SEITZ, the person described below, do declare under penalty of law that the foregoing is true and correct.

I, further declare under penalty of perjury as follows:

1. I am the principal attorney for Complainants in this case.
2. I am familiar with the records and files in this case.
3. Attached hereto as Exhibit 1 are true and correct copies of Complainants' "Proof of Participation & Representation" authorizations.

4. Attached hereto as Exhibit 2 is a true and correct copy of Arbitrator Keith W. Hunter's "Arbitrator's Decision and Award," *In the Matter of the Arbitration between United Public Workers, AFSCME, Local 646, AFL-CIO, and State of Hawaii, Department of Public Safety, Women's Correctional Center*, dated February 17, 1998.

5. Attached hereto as Exhibit 3 is a true and correct copy of "Resolution #3," 2003 UPW State Convention, dated December 15-16, 2003.

6. Attached hereto as Exhibit 4 is a true and correct copy of Class Grievance UPW Case #JM-11-5, from Jamilyn Makaehu, Business Agent of UPW/Oahu Division, dated July 11, 2011.

7. Attached hereto as Exhibit 5 is a true and correct copy of the 2015 Settlement Agreement entered into by NOLAN ESPINDA, former Director of the Hawaii Department of Public Safety and DAYTON NAKANELUA, former UPW State Director, dated June 12, 2015.

8. Attached hereto as Exhibit 6 is a true and correct copy of *Akau v. Nakanelua*, AFSMCE International Executive Board Case No. 19-07, dated April 3, 2019.

DATE: Honolulu, Hawaii, June 28, 2021.

/s/ Eric A. Seitz
ERIC A. SEITZ, ESQ.
eseitzatty@yahoo.com
820 Mililani Street, Ste. 502
Honolulu, HI 96813
(808) 522-7434
Attorney for Complainants

EXHIBIT 1

PROOF OF PARTICIPATION & REPRESENTATION

I, GORD ~~ON~~K. LESLIE, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, March 8, 2021



Signature

GORDON K. LESLIE

Printed Name

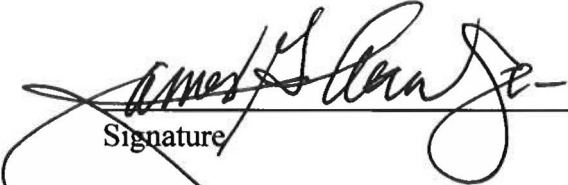
PROOF OF PARTICIPATION & REPRESENTATION

I, JAMES AKAU, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3/12/21


Signature

JAMES AKAU

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, MARC S. AMERINO, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3-10-2021

3-10-2021



Signature

MARC S. AMERINO
Printed Name

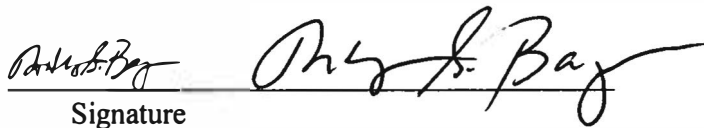
PROOF OF PARTICIPATION & REPRESENTATION

I, ANTHONY BAYSA, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, March 10, 2021


Signature

ANTHONY BAYSA
Printed Name

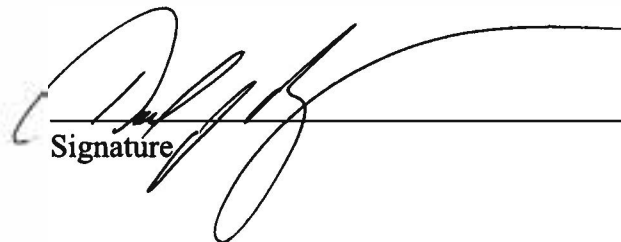
PROOF OF PARTICIPATION & REPRESENTATION

I, DANIEL J. BRYANT, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3-11-2021


Signature

DANIEL J. BRYANT
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Levi Christenson, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/21/21

Levi Christenson
Signature

Levi Christenson
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Michael Costa, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, March 25, 2021

Michael Costa
Signature

Michael Costa
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Nelma Feagai, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/7/2021

Nelma Feagai
Signature

Nelma Feagai
Printed Name


PROOF OF PARTICIPATION & REPRESENTATION

I, LEE FIELDS, JR., hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3/8/2021



Signature

LEE FIELDS, JR.

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, William T.K. Greig

hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, April 9, 2021

William T.K. Greig
Signature

William T.K. Greig
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, William S. Gonsalves, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/7/21


Signature

William S. Gonsalves
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, HENRY C. HOPE, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3/12/2021


Signature

HENRY C. HOPE
Printed Name

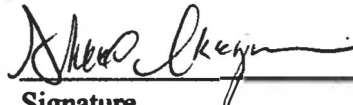
PROOF OF PARTICIPATION & REPRESENTATION

I, SHEEN H. IKEGAMI, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 03/10/2021.


Signature

SHEEN H. IKEGAMI
Printed Name

MAY 20 2021

PROOF OF PARTICIPATION & REPRESENTATION

I, C. RANSON M. KAMIKAWA JR. hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 5-25-21


Signature

C. RANSON M. KAMIKAWA JR.
Printed Name


PROOF OF PARTICIPATION & REPRESENTATION

I, AUSTIN R. KEANU, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 03/22/2021



Signature

AUSTIN R. KEANU

Printed Name

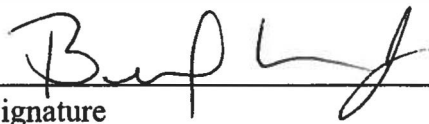
PROOF OF PARTICIPATION & REPRESENTATION

I, BERNARD KUAMOO, JR., hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, March 10, 2021



Signature

BERNARD KUAMOO, JR.

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, JOHN P. LALOTOA, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3/9/2021


Signature

JOHN P. LALOTOA

Printed Name

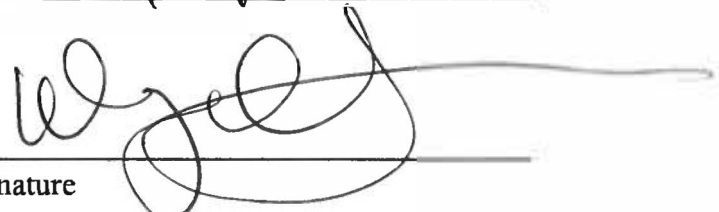
PROOF OF PARTICIPATION & REPRESENTATION

I, WYATT G. LEE, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3/19/21



Signature

WYATT G. LEE
Printed Name


PROOF OF PARTICIPATION & REPRESENTATION

I, ALTON LORICO, JR., hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 03/10/2021



Signature

ALTON LORICO, JR.

Printed Name

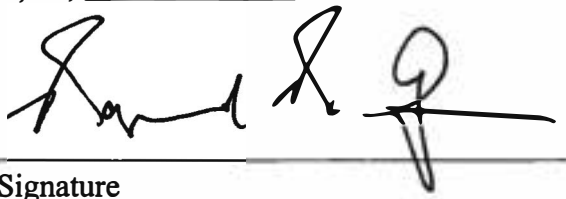
PROOF OF PARTICIPATION & REPRESENTATION

I, RAYMOND R. LYMAN, SR., hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 9-10-21


Signature

RAYMOND R. LYMAN, SR.
Printed Name


PROOF OF PARTICIPATION & REPRESENTATION

I, RAYMOND A. MAAE, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, MARCH 09, 2021



Signature

RAYMOND A. MAAE

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Chad K Mahuka, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, MARCH 28, 2020

Chad K Mahuka
Signature

Chad K Mahuka
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, GARY D. MENDONCA, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO, GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI. 3-29-21

Gary D. Mendonca
Signature

GARY D. MENDONCA
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, DAVID MURRAY, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4-5-21



Signature

DAVID MURRAY

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, DALE U. NEWCOMB, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO, GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3/11/21

Dale U. Newcomb
Signature

DALE U. NEWCOMB
Printed Name


PROOF OF PARTICIPATION & REPRESENTATION

I, POTUMOE OLOMUA, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 09 MARCH 21.


Signature

POTUMOE OLOMUA
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, ROBERT L. PRADO, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 9, March 2021

A handwritten signature in black ink, appearing to read "Robert L. Prado", written over a horizontal line.

Signature

ROBERT L. PRADO

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, STEVEN PREZA, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE I-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3-8-21



Signature

STEVEN PREZA

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, ADRIAN P. SALAS, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, March 14, 2021



Signature

ADRIAN P. SALAS

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, FELICIANO SAMSON, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 03/14/2021


Signature

FELICIANO SAMSON
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, FIAFIA S. SATARAKA, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO, GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI. 3-26-2021



Signature

FIAFIA S. SATARAKA

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Eric A. Seitz, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/9/2021


Signature

Eric A. Seitz
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Deborah Segich, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/8/21



Signature

Deborah Segich

Printed Name

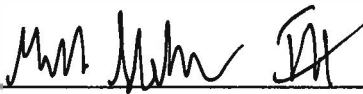
PROOF OF PARTICIPATION & REPRESENTATION

I, GEORGE SHERIDAN III, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 12 May 21



Signature

GEORGE SHERIDAN III

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, KENNETH SIILATA, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawaii; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawaii, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, June 14, 2021

Kenneth Siilata
Signature

KENNETH SIILATA
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, MICHAEL TAAMILO, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 18-Mar-2021


Signature

MICHAEL TAAMILO Michael P Ta'amilo
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, William Taamu-Perifanos, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/6/21



Signature

William Taamu-Perifanos

Printed Name


PROOF OF PARTICIPATION & REPRESENTATION

I, JARED TAJON, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Maui, HI, 3/9/2021


Signature

JARED TAJON
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, THOMAS TAUM, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3/09/21



Signature

THOMAS TAUM
Printed Name

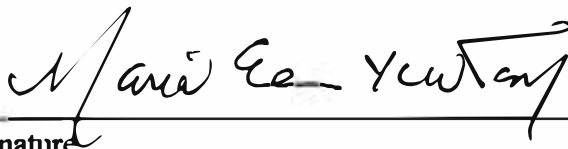
PROOF OF PARTICIPATION & REPRESENTATION

I, MARIA ELENA Y.L.W. TOM, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 03/12/21


Signature

MARIA ELENA Y.L.W. TOM
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Piliopo Tuitama, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/7/21


Signature

Piliopo Tuitama
Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Edward Vaovasa, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/9/2021



Signature

Edward F. Vaovasa

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, Bradley Wakuta, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 4/7/2021



Signature

Bradley Wakuta

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, MARK M. WATANABE, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 03-16-21



Signature

MARK M. WATANABE

Printed Name

PROOF OF PARTICIPATION & REPRESENTATION

I, LANCE F.P. WONG, hereby authorize my participation in Consolidated Case No. 20-CE-10-943, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and DAVID Y. IGE, Governor, State of Hawai'i; NOLAN P. ESPINDA, Director, Department of Public Safety, State of Hawai'i; SCOTT HARRINGTON, Warden, Halawa Correctional Facility; LYLE ANTONIO, Deputy Warden, Halawa Correctional Facility; CALVIN MOCK, Chief of Security, Halawa Correctional Facility; JANE AND JOHN DOE 1-25, State of Hawai'i, Department of Public Safety, Respondents; and Case No. 20-CU-10-382, In the Matter of GORDON LESLIE; BERNARD KUAMOO; GEORGE SHERIDAN; DEANGELO DIXON; WYATT LEE; and FELICIANO SAMSON, Complainants, and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Respondent.

I further grant permission to the following to represent me in the above-entitled matters:

Eric A. Seitz, Esq.
Eric A. Seitz, AAL, ALC
820 Mililani Street, Suite 502
Honolulu, HI 96813

Dated: Honolulu, HI, 3/10/2021.

Lance F.P. Wong
Signature

LANCE F.P. WONG
Printed Name

EXHIBIT 2

KEITH W. HUNTER, Arbitrator
1001 Bishop Street, Pauahi Tower, #1155
Honolulu, HI 96813
Telephone: (808) 523-1234
ARBITRATOR

EXHIBIT 2

GRIEVANCE ARBITRATION
BEFORE ARBITRATOR KEITH W. HUNTER
STATE OF HAWAII

IN THE MATTER OF THE ARBITRATION)
BETWEEN:)

UNITED PUBLIC WORKERS, AFSCME,)
LOCAL 646, AFL-C10,)

Union)

-and-)

STATE OF HAWAII,)
DEPARTMENT OF PUBLIC SAFETY,)
WOMEN'S COMMUNITY)
CORRECTIONAL CENTER,)

Employer)

CLASS GRIEVANCE Re: Overtime
Section; Section 26.12 (Bargaining
Unit 10)

**ARBITRATOR'S DECISION
AND AWARD**

ARBITRATOR'S DECISION AND AWARD

I. INTRODUCTION

This case came before the Arbitrator from a Class Grievance filed by the United Public Workers, AFSCME, Local 646, AFL-C10, (hereinafter "the Union" or "UPW"), on behalf of its bargaining unit members of the State of Hawaii, Department of Public Safety, Women's Community Correctional Center (hereinafter "Employer" or "WCCC").

On May 19, 1997, the UPW filed a Step 1 Class Grievance on behalf of all the Unit 10 employees at the Women's Community Correctional Center relating to Sections 1.05, 21.01a., 21.01b., 26.12, 61.04a.2, 61.04a.3, 61.04a.5.c, 61.04a.9 and 26.02c. of the Unit 10 Collective Bargaining Agreement (hereinafter "CBA" or "Agreement" or "Unit 10 Agreement").

On May 30, 1997, Edwin T. Shimoda, the Acting Warden of WCCC responded to UPW's Step 1 Class Grievance. In his response to the Step 1 Class Grievance, Acting Warden Shimoda denied UPW's grievance.

On June 2, 1997, a Step 2 Letter of Appeal was filed by UPW with Director Keith Kaneshiro of the Department of Public Safety.

On June 17, 1997, a Step 3 Letter of Appeal was filed by UPW with Mr. James H. Takushi, Director of the Human Resources Development Department. The reason for the Step 3 Letter of Appeal was that UPW did not receive a response at Step 2 from Director Kaneshiro and thus took the Step 3 appeal. On August 14, 1997, Mr. Takushi responded to UPW's Step 3 Grievance appeal and again denied the grievance.

By letter dated July 18, 1997, Gary W. Rodrigues, State Director of UPW notified Mr. Takushi that the Class Grievance was being submitted to arbitration in accordance with the CBA. In that same letter the Union withdrew Sections 1.05, 21.01a., 21.01b., 61.04a.2, 61.04a.3, 61.04a.5.c, 61.04a.9 and 26.02c. from the Grievance¹. Thus, this Class Grievance regarding overtime Section 26.12 of the CBA was submitted to arbitration before the undersigned Arbitrator pursuant to Section 15.22 of the Unit 10 Agreement.

The parties jointly appointed Keith W. Hunter as the Arbitrator from a list of Arbitrators provided to the parties by the Hawaii Labor Relations Board. The arbitration hearing was conducted on November 12, 1997 at the offices of Dispute Prevention & Resolution, Inc. During the hearing the parties were afforded a full and complete opportunity for examination of witnesses and for introduction of relevant evidence, exhibits and testimony. The parties agreed to

¹ The Arbitrator notes that the UPW's request for arbitration predates the Step 3 appeal response from Mr. Takushi.

submission of post-hearing briefs after receipt of transcripts of the hearings. The closing briefs were received by the Arbitrator on January 16, 1998 and January 17, 1998. The Arbitrator's Decision and Award is due for issuance on February 17, 1998.

A. APPEARANCES

For Union:

David M. Hagino, Esq., 737 Bishop Street, Suite 320, Honolulu, Hawaii 96813.

For Employer:

Chris N. Nakagawa, Deputy Attorney General, Department of the Attorney General, State of Hawaii, Number 1 Capitol District Building, 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813 (Marjory S. Bronster, Esq., Attorney General, State of Hawaii on the brief).

B. ISSUE(S)

During the November 12, 1997, arbitration hearing the parties attempted to stipulate to the issue(s) which are to be submitted to this Arbitrator for determination; however, the parties were unable to do so. In the absence of such a stipulation, the parties agreed that the Arbitrator shall frame the issue(s) in this arbitration proceeding. Therefore, the issue(s) for determination in this arbitration proceeding are as follows:

1. Does the April 30, 1997 memorandum from Captain Malcolm Lee, Chief of Security of WCCC prohibiting Adult Correction Officers IVs (ACOIVs) and Adult Correction Officers Vs (ACOVs) from working overtime at an Adult Correction Officer III (ACOIII) post, violate Section 26.12 of the CBA?
2. If so, what shall the appropriate remedy be?

II. JURISDICTION

In accordance with the Unit 10 Agreement, the Arbitrator has jurisdiction over this Grievance pursuant to the following sections:

- 15.22** **STEP4.** Arbitration. If the matter is not satisfactorily settled at Step 3, and the Union desires to proceed with Arbitration, it shall serve written notice on the Employer or his representative of its desire to arbitrate within thirty (3) calendar days of receipt of the decision of the Employer or his designated representative. Within ten (10) calendar days after receipt of the notice of Arbitration by the Employer, the parties shall meet and select an arbitrator. Within five (5) calendar days after the Arbitrator has been selected, the parties shall attempt to mutually agree upon the issue(s) to be arbitrated and shall submit a written statement of such issue(s) to the Arbitrator. In the event the issue(s) cannot be agreed upon, each party may submit a statement of its view as to the issue(s) to the Arbitrator with a copy to the other party. The Arbitrator shall determine the issue(s). Thereupon the Arbitrator shall set the time and place for the arbitration hearing. The date of the hearing fixed by the arbitrator shall be within twenty (20) calendar days from the receipt of the issue(s) for arbitration.
- 15.23** No grievance may be arbitrated unless it involves an alleged violation, misinterpretation, or misapplication of a specific term or provision of the Agreement.
- 15.27** The Arbitrator shall render his award in writing, no later than thirty (3) days after the conclusion of the hearings or if oral hearings are waived then thirty (30) days from the date statements and proofs were submitted to the Arbitrator.
- 15.28** The award of the Arbitrator shall be accepted as final and binding. There shall be no appeal from the Arbitrator's decision by either party, if such decision is within the scope of the Arbitrator's authority as described below:
- a. The Arbitrator shall not have the power to add to, subtract from, disregard, alter, or modify any of the terms of the Agreement.
 - b. His power shall be limited to deciding whether the Employer has violated, misinterpreted, or misapplied any of the terms of this Agreement. It is understood that any matter that is not specifically set forth in this Agreement shall not be subject to Arbitration.
 - c. The Arbitrator shall not consider any new allegations or charges which have not been presented in Steps 1, 2, and 3.

III. APPLICABLE OR PERTINENT CBA PROVISIONS

The CBA provisions which are relevant to this Grievance and arbitration proceeding are as follows:

SECTION 26.12

26.12. Whenever overtime work is assigned to employees, the Employer shall endeavor to assign such overtime work on a fair and equitable basis giving due consideration to the needs of the work operation and the ability and desire of employees.

While 26.12 is the primary contractual provision relevant to this arbitration proceeding, the parties also argued and asserted the relevance of the following contract provisions:

SECTION 1.05

1.05. The Employer agrees that it shall consult the Union when formulating and implementing personnel policies, practices and any matter affecting working conditions. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

SECTION 9 - RIGHTS OF THE EMPLOYER

9.01. The Employer reserves and retains, solely and exclusively, all management rights, powers and authority, including the right of management to manage, control and direct its work forces and operations except those that may be granted under this Agreement.

SECTION 21 – SUPERVISORS PERFORMING NON-SUPERVISORY WORK

21.01. The Employer shall not require supervisors to perform non-supervisory work assignments except:

- (a) When the duties of supervisory personnel include the performance of such work as a regular work assignment in keeping with their job description; or
- (b) When performance of non-supervisory work assignments is incidental to their supervisory responsibilities such as in an emergency, training, or temporary relief where qualified personnel

are not readily available. However, in no case shall temporary relief be for more than eight (8) hours for a specific absence.

IV. STATEMENT OF BACKGROUND AND FACTS

A description of the factual background of this Grievance shall serve as the Arbitrator's finding of facts. The Women's Community Correctional Center (WCCC) is a female correctional facility located in Kailua, Hawaii, which is staffed with approximately one hundred (100) Adult Correction Officers (ACOs). Captain Malcolm Lee is the Captain or Chief of Security at WCCC. In his capacity as Captain, he is the highest ranking Adult Correction Officer at WCCC and holds the rank of ACOVI. Captain Lee reports directly to Acting Warden Ed Shimoda. Captain Lee is not a member of the Unit 10 Bargaining unit at WCCC.

WCCC operates seven days a week, 24 hours a day and currently operates with three watches or shifts: the first watch is from 10 p.m. to 6 a.m., the second watch is from 6 a.m. to 2 p.m., and the third watch is from 2 p.m. to 10 p.m.

Presently there are four (4) Watch Commanders or lieutenants (ACOVs) under the Captain and fifteen (15) sergeants (ACOIVs) under the lieutenants at WCCC. Under the lieutenants and sergeants are approximately eighty (80) ACOIIIs. The testimony indicated that there is a minimum staffing requirement of ACOs per watch. That minimum staffing requirement is fifteen (15) ACOIIIs for the 6:00 a.m. to 2:00 p.m. and the 2:00 p.m. to the 10:00 p.m. watches respectively, and eight (8) ACOIIIs for the night watch from 10:00 p.m. to 6:00 a.m. There were approximately seventy-nine (79) authorized ACOIII positions at WCCC in April/May of 1997.

Early in 1997 there was a period of time when WCCC had a severe shortage of ACOIIs and IIIs. The testimony indicated that while there were seventy-nine (79) ACO positions approved for WCCC, only forty (40) ACOIIIs were actually available for staffing purposes. This shortage necessitated the use of a substantial amount of overtime. The shortage has been improved since early 1997 through the hiring of additional ACOs.

On April 30, 1997, Lieutenant Diane Mattos was serving as the watch commander (ACOV) during the second watch. She was serving as the offgoing watch commander for the second watch that day. Lieutenant Mattos attempted to fill the vacancies which existed on the 2:00 p.m. shift. According to her testimony the staffing was tremendously short that day. She attempted to fill the vacancies on the shift by selecting "hold backs"² first. Once she informed the staff that some of them were going to be held back and that the staff members would not be relieved, many of the hold backs indicated that they were not willing to stay. Lieutenant Mattos informed Captain Lee of the staffing situation and he proceeded to interview several of the prospective hold back staff members in his office. Following these meetings with Captain Lee a number of the female ACOs were allowed to leave and were not subjected to being held back. This left the third watch short of ACOs.

Lieutenant Mattos offered her services to backfill³ to the third watch commander on an overtime basis. She was sent to the infirmery post, which is a female ACO post. Lieutenant Mattos went to the post and was informed almost immediately by telephone that she could not work the post. The person who informed her of that was a Sergeant Pagharion, who was on duty from the second watch that day. Sergeant Pagharion informed Lieutenant Mattos of the fact that Captain Lee had told him to tell her that she could not work on the post. Lieutenant Mattos asked Sergeant Pagharion "are you ordering me to leave?" He said, "Yes, Captain Lee is ordering you to leave." She responded by saying, "Okay – as soon as you send me a reliever I will leave, and could I get that in writing." Captain Lee's memorandum of April 30, 1997 was his response to Lieutenant Mattos' request for a written response. Captain Lee's memorandum was directed to all Watch Commanders and the Watch Sergeant at WCCC and reads as follows⁴:

"Effective immediately: all supervisors (Lieutenants & Sergeants.) are not to work on any non-supervisory post. (BU10) Therefore if an female post can not be

² "Hold backs" are employees coming off of the most recent shift who are held back to serve on the next shift due to staffing shortages.

³ "Backfilling" is when an employee of a higher rank fills a position of a lower rank for overtime or emergency purposes – in this case, when an ACOV or ACOIV serves in an ACOIII post.

⁴ The copy of the April 30, 1997 memorandum is unclear in that one word is illegible. The testimony indicates that the illegible word is "all."

filled by a Female ACO III, II, recruit or Emergency Hire. The next step will be to fill the female post with a Male ACO III, II, recruit or Emergency Hire. This memo supersedes any and all memos in reference to Supervisors working on a non-supervisory post. No exceptions unless authorized by the Warden or Chief of Security."

Thereafter, Lieutenant Mattos was relieved from the infirmary post and departed the grounds. Captain Lee shut down three posts on that shift as a result of the short staffing which occurred on that day. The infirmary post which had been occupied by Lieutenant Mattos was filled by ACO Allan Riveno, a male ACO.

Captain Lee's memorandum regarding overtime dated April 30, 1997 is the basis for the Class Grievance submitted to this Arbitrator for determination.

V. THE PARTIES' POSITIONS AND ARGUMENTS

The Union contends, *inter alia*, that:

The contract is clear that ACOIVs and ACOVs must be offered the opportunity to work overtime at the ACOIII position if all available ACOIIIs and "others" (*i.e.* emergency hires and ACOIIs) have already been offered the overtime opportunity and there is still a need to fill the position. The Union bases its contention upon its belief that Section 26.12 of the CBA is clear and unambiguous.

The language in Section 26.12 of the CBA does not differentiate between the different ranks of the members of the Unit 10 CBA and the employees that are subject to that Agreement. Other sections of CBA make very clear distinctions pertaining to issues like seniority and promotions, and thus represent clear examples of the fact that the parties to the CBA have ample opportunity to customize the contract as necessary and appropriate. Since Section 26.12 makes no distinction between ACOIVs, ACOVs and the lower ranking ACOs, the Union contends that all ACOs are to be treated "fairly and equitably" pursuant to Section 26.12. Therefore, the Union contends that Captain Lee's memorandum of April 30, 1997 creates a situation in which ACOIVs and ACOVs are being deprived of fair and equitable access to overtime opportunities at WCCC.

Section 26.12 is clear and unambiguous, and no language exists in 26.12 which excludes ACOIVs and ACOVs from the fair and equitable distribution of overtime work, so long as those individuals desire to work overtime. To buttress this argument, the Union contends that, even if Section 26.12 is deemed to be ambiguous, the Arbitrator should look to the custom and practice of the application of terms on sections of this contract. The Union points to the fact that the Employer has no written policy on higher ranking ACOs performing ACOIII overtime work, and further that “past practice” has clearly corroborated the dictates of the unambiguous language. As part of this argument, the Union points out that prior to Captain Lee’s memorandum of April 30, 1997, ACOIVs and ACOVs had periodically been backfilling to the ACOIII position for overtime purposes. The limitation has been that the ACOIII and other (i.e. ACOII and temporary hire) lists have been exhausted before the overtime opportunity has been extended to ACOIVs or ACOVs.

The Union contends that the Employer’s argument that the offer of overtime is a management right is misplaced and that mutual consent is required to make a change in a policy like overtime or to deny customary rights. The Union notes that pursuant to Section 1.05 of the CBA, there is a duty to bargain, to negotiate, and to achieve mutual consent to make such a change. Critical to this argument is the question of whether overtime falls under the broad rubric of mandatory subjects of bargaining, and whether “wages, hours, and conditions of work” sufficiently describes the overtime issue which is the subject of this arbitration. In support of its position that overtime does fall within the range of mandatory subjects of bargaining, the Union cites over a dozen Arbitral decisions covering the various subjects for which bargaining consent is required. In addition, the Union cites two particular Arbitral Decisions issued by Hawaii Arbitrators regarding the application of Section 1.05. See Class Grievance re use of Department Vehicles and Ann Belasantos Class Grievance (Exhibits B and C to Union’s Memorandum Brief). In further support of this argument, the Union points to a set of written guidelines for overtime (see Union’s Exhibit 11). These guidelines on overtime for Unit 1 and Unit 10 members arose from a series of unresolved Grievances concerning

Section 26.12 and were drafted by Sharon Miyashiro, Director, Department of Personnel Services, and sent to the Union State Director of UPW for review and consent. The State Director consented; therefore, the Union contends that the Employer and the Union have mutual consent on the overtime policy as promulgated by Director Miyashiro. Thus, any change in overtime policies must be made pursuant to Section 1.05.

The Union further argues that the guidelines for Unit 1 and Unit 10 employees covering overtime were developed and agreed to by the parties and do not exempt ACOIVs and ACOVs from backfilling to ACOIII positions.

Finally, the Union contends that Captain Lee's memorandum of April 30, 1997 contradicts the guidelines on overtime, was issued unilaterally by Captain Lee in violation of Section 1.05, and, at best, is a vague policy that contradicts the clear guidelines already agreed to by the parties. The Union's response to the Employer's position that the previous overtime policy (the one in effect at WCCC prior to April 30, 1997) deprived ACOIIIs of a fair and equitable opportunity to work overtime is that, such a position is an erroneous proposition in that the Union has made it very clear that, in accordance with past practice and the aforementioned guidelines on overtime, ACOIIIs are to be given the priority to backfill overtime assignments, and other sources should be exhausted before any such assignments are to be offered to ACOIVs or ACOVs.

The Employer contends, *inter alia*, that:

Pursuant to Section 9.01 of the contract, the Employer has the inherent right to assign overtime when it chooses to do so. The Employer notes that since neither the contract nor past practice guarantees Unit 10 workers overtime, the Employer is not obligated to offer ACOIII overtime work to ACOIVs and ACOVs. Since there is no provision guaranteeing overtime to any of the employees of WCCC, the ability to determine whether or not overtime work which is normally performed by ACOIIIs can also be performed by ACOIVs and ACOVs is "solely a management prerogative."

Since ACOVs have not been assigned ACOIII overtime work on a continual basis, there is no violation of Section 26.12 of the Agreement. The Employer contends that the resolution of this Grievance hinges exclusively on the Arbitrator's interpretation of Section 26.12 of the Unit 10 CBA, and that since the intent of the parties in Section 26.12 is clear, Section 26.12 should only apply if ACOIII overtime opportunities were assigned to ACOVs. Since that it is not the case, and since ACOVs were never assigned ACOIII overtime opportunities on a continual basis, this Grievance must fail on that basis alone.

When it did assign overtime to ACOIVs and ACOVs at WCCC in 1997, it was done on a "fair and equitable" basis. The Employer points to the testimony of the original complainant, Lieutenant Mattos, in which she indicates that she was given many overtime opportunities as an ACOV. The Employer also notes that from January 2, 1997 to April 28, 1997, there were seventy (70) overtime and/or temporary assignment opportunities offered to Watch Commanders or ACOV positions by the Employer. Approximately fifty (50) of these opportunities were offered to ACOVs as overtime opportunities and thirty-eight (38) of the fifty (50) overtime opportunities were actually performed by Lieutenant Mattos herself. The Employer contends that this evidences fair and equitable overtime opportunities to employees at WCCC.

The Employer also contends that since ACOVs are in supervisory positions, it would not be fair and equitable to other ACOs to offer ACOIII (non-supervisory) overtime opportunities to ACOVs. The Employer asserts that permitting an ACOV to perform ACOIII overtime work will have a negative impact on the morale of both the ACOIIIs and ACOIIs who are denied overtime, and to the other ACOs who, because of the backfilling situation, find themselves in a position of supervising their supervisors. Further, the Employer contends that any substantial disruption to the paramilitary⁵ structure of the WCCC facility brought about by the overtime backfilling by ACOVs to

⁵ Captain Lee testified that WCCC is operated in a paramilitary fashion in that ACOs have specified ranks, wear uniforms and conduct themselves in a manner consistent with military command structure.

ACOIHI posts would create severe morale problems and a negative impact on the smooth and orderly operation of the facility.

The Employer also contends that the disallowance of an ACOV to perform ACOIHI overtime work is the correct decision and that the contract does not require ACOVs to be assigned overtime opportunities to ACOIHI positions.

Finally, the Employer contends that a reversal of the policy memorandum of April 30, 1997, would force it to "implement a practice which will create a sense of unfairness, distrust, disobedience and disloyalty."

VI DISCUSSION AND ANALYSIS

For the reasons set forth below, the Grievance is sustained. Specifically, the Arbitrator orders that Captain Lee's memorandum of April 30, 1997, be rescinded. The specific remedy is set forth later in this Decision and Award. In reaching this conclusion, I specifically find the following:

A. Captain Lee's memorandum of April 30, 1997 to Watch Commanders at WCCC and Watch Sergeants at WCCC regarding overtime female posts violates Section 26.12 of the CBA.

The language in Section 26.12 is clear and unambiguous. The Arbitrator finds that the contractual terms and the intent of Section 26.12 are clear and are intended to cover all members of the Unit 10 Bargaining Unit, not selected ranks of members within that Unit. No distinction between the applicability of Section 26.12 to ACOIIs, IIIs, IVs and Vs is made. Thus, I conclude that the intent is to cover all members of the Bargaining Unit. Elkouri and Elkouri, "How Arbitration Works" p. 470 is particularly instructive in this regard: "There is no need for interpretation unless the Agreement is ambiguous. If the words are plain and clear, conveying a distinct idea, there is no occasion to resort to technical rules of interpretation and the clear meaning will be ordinarily be applied by arbitrators."

Captain Lee's attempt to isolate and restrict ACOIVs⁶ and Vs from the "opportunity" to work overtime at an ACOIII post does not conform with the requirement that "the Employer shall endeavor to assign such overtime work on a fair and equitable basis giving due consideration to the needs of the work operation⁷ and the abilities and desires of the employees." The Union cites numerous examples of specific sections of the CBA in which differentiation of specific terms and conditions (i.e., seniority, promotions, etc.) and how they apply to different members of the Bargaining unit are set forth. Since the parties have seen fit to customize the CBA in these particular sections, the Union contends that if such specific intentions, requirements or limitations were intended to be placed on Section 26.12, they would have, in fact, been placed there. And, since, Section 26.12 makes no distinction or differentiation between its applicability to ACOIIIs, IVs or Vs and the intent of the Agreement is clear, that is that Section 26.12 applies to all members of the Bargaining Unit. The Arbitrator finds this argument compelling. If the Employer and Union intended to create classes or divisions within the scope of Section 26.12, they could have and would have done so. The fact that they did not do so is indicative of their mutual intention to have Section 26.12 apply to all Bargaining unit members under the Unit 10 Agreement.

There are several points which are critical to this finding:

The first is that, based upon past practices regarding the offer of overtime opportunities to ACOIII posts at WCCC, and the Miyashiro memorandum on overtime policy that was signed by the UPW Director, the Employer must offer the overtime opportunity to ACOIIIs, ACOIIs and temporary hires before offering such ACOIII overtime opportunities to ACOIVs or ACOVs. The credible and unrefuted testimony of Lieutenant Mattos is that ACOIVs and ACOVs are frequently asked and do agree to backfill to ACOIII positions at WCCC. Presumably, when ACOIVs and ACOVs backfill into

⁶ The testimony indicates that subsequent to the April 30, 1997 memorandum, some ACOIVs have received ACOIII overtime assignments.

⁷ Captain Lee testified that after overtime opportunities are exhausted through ACOIIIs, ACOIIs and temporary hires, WCCC will frequently go into a "lock-down" situation, rather than assign overtime to ACOIVs and Vs.

ACOIII positions, they do so only after all other qualified employees have been invited to serve in the overtime opportunity and are either unavailable or are unwilling to do so.

The second is the Employer's position which suggests that: (a) overtime is an opportunity and not a right, and (b) ACOIVs and Vs occupy supervisory positions and therefore (in particular ACOVs) should not be offered ACOIII overtime opportunity as that would not be fair and equitable to the other ACOs. This position is not convincing. If it was fair and equitable to offer ACOIVs and Vs overtime opportunities at ACOIII posts prior to the April 30, 1997 Captain Lee memorandum, which the record clearly indicates did occur, why would it now be fair and equitable to abolish the ACO III overtime opportunity for ACOIVs and ACOVs? I conclude that it is not. This Arbitrator has not been asked to opine on the Employer's practice of offering overtime opportunities to ACOIVs and Vs prior to April 30, 1997, and is not attempting to make any finding in that regard. However, in order to consider the question of whether Captain Lee's policy memorandum of April 30, 1997 is "fair and equitable," the Arbitrator must examine what overtime practice existed prior to April 30, 1997. The record indicates that ACO IVs and ACOVs backfilled to ACOIII positions at WCCC prior to April 30, 1997.

The narrow issue before this Arbitrator is whether Captain Lee's memorandum of April 30, 1997 violates the CBA. That issue raises the question of whether the issuance of the memorandum and the resultant overtime policy ramifications are fair and equitable to all Unit 10 members. I find that they are not. The Employer is obligated under the contract to offer overtime to employees on a fair and equitable basis. The sudden disallowance of overtime opportunities for ACO IVs and ACOVs to perform ACOIII overtime work is not "fair and equitable" to the class (i.e., all Bargaining unit members covered by the Unit 10 Agreement at WCCC). This is especially so when ACOVs and ACOIVs have expressed a desire to serve in ACOIII overtime posts.

The third is the issue of equalization of overtime. The Union cites Elkouri and Elkouri, "How Arbitration Works", Equalization of Overtime, pp. 742-745, and the case of Wayne County Labor Relations Board, 65 LA 520, 1975, in support of its contention that

the Employer must distribute overtime opportunities “fairly and equitably to all employees in the Unit.” As mentioned previously, there was no evidence presented to suggest that prior to April 30, 1997, the Employers overtime practices at WCCC were anything other than fair to all employees in the unit. However, I find that Captain Lee’s memorandum exceeds the bounds of reasonable flexibility on the part of the Employer to efficiently run its operation and to equitably distribute overtime opportunities among the unit members. Instead, the effect of the memorandum is that it creates a class-wide deprivation of overtime opportunities to an entire group within the Unit (ACOVs). Based on the foregoing, I conclude that Captain Lee’s memorandum of April 30, 1997 violates both the spirit and intent of Section 26.12 of the CBA and therefore must be rescinded.

B. The Union established that a custom and practice as to the offer of ACOIII overtime opportunities to ACOIVs and ACOVs at WCCC existed.

If doubt exists as to the meaning, intent or application of a particular contract provision, it is customary for Arbitrators to look to custom and practice for guidance. “Evidence of custom and practice may be introduced for any of the following major purposes: (1) to provide the basis of rules governing matters not included in the written contract, (2) to indicate the proper interpretation of ambiguous contract language, or (3) to support obligations that the clear language of the written contract has been amended by mutual action or agreement representing the intent of the parties to make their written language consistent with what they regularly do in practice in the administration of their labor agreement.” Elkouri and Elkouri, “How Arbitration Works”, 5th Ed., p. 630.

Even assuming arguendo that Section 26.12 is ambiguous, the Union established through its presentation of evidence and testimony that it is custom and practice at WCCC for ACOIVs and Vs to periodically backfill into ACOIII posts for overtime purposes. I find the testimony of Lieutenants Mattos and Akau to be convincing in this regard. In addition, the evidence submitted in this proceeding establishes that backfilling by ACOIVs and Vs for overtime purposes to ACOIII positions at WCCC is, in fact, a custom and practice of that institution. Although the Employer argues that no other prison

facility in Hawaii allows such backfilling, I conclude that since backfilling as described above is a custom and practice of WCCC the practices and customs of other prisons around the State are not relevant to this Grievance.

C. The policies and procedures of WCCC are silent with regard to the issue of backfilling.

During Captain Lee's testimony, he pointed to the fact that the policies and procedures ("P&Ps") which the Department of Public Safety adheres to in the administration and management of the various prison facilities around the State provide that an ACOIII cannot take a temporary assignment to an ACOV position. He contends that, since such a restriction exists for ACOIIIs to temporarily assign to ACOV positions, the reverse or corollary, should also apply in that ACOVs should not backfill to ACOIII positions. Again, I conclude that if such backfilling restrictions were in fact policy, they would be contained in the policies and procedures manual. They are not. I find that backfilling and temporary assignments are two entirely different processes and do not lend themselves to absolute or identical interpretation. Since a policy exists that prohibits ACOIIIs from taking temporary assignments to ACOV positions, presumably such prohibition was discussed, negotiated and agreed to by the Union and the Employer and sound policy reasons exist for such a prohibition. The same cannot be said for any such policy on backfilling. In fact, although testimony was given which suggests that a policy on backfilling exists both at WCCC and at other facilities around the State, no such policy was produced for this Arbitrator in this arbitration proceeding. I conclude, therefore, that Captain Lee's memorandum of April 30, 1997 is an attempt to modify the existing overtime practice at WCCC, and, in the absence of mutual consent to such modifications as required by Section 1.05, must be set aside.

D. The issue of overtime at WCCC falls within the ambit of "wages, hours and working conditions."

Citing a large body of common law and Arbitral decisions, the Union contends that the issue of overtime clearly falls under the rubric of wages, hours and working conditions. I

concur. As such, under the CBA, the Employer and the Union have a duty to consult and negotiate with regard to changes in policy relating to wages, hours and working conditions. This is a requirement for any change to be instituted on a mutual basis. The Union cites specifically two Hawaii Grievances in support of its position that a broad range of issues including overtime fall under the “appropriate mandatory bargaining issues.” See Class Grievance Re the Use of Department Vehicles and Ann Belasantos Class Grievance.

E. The Employer’s right to manage is not absolute.

While this Arbitrator is sensitive to the Employer’s right to manage this facility and to assign work and overtime work when and how it chooses, I specifically find that Section 9.01 of the CBA does not confer absolute or total discretion upon the Employer “to manage, control and direct its workforces and operations.” In fact, Section 9.01 specifically states that “the right of management to manage, control and direct its workforces and operations, *except* those as may be granted under this agreement” (emphasis added). The clear and unambiguous interpretation of Section 9.01 is that there are specific exceptions to management’s rights, and those exceptions are articulated and spelled out in various sections in the CBA. I specifically find that: (a) Section 26.12 requires the Employer to distribute overtime opportunities “fairly and equitably” among all Bargaining unit 10 members and (b) Section 1.05 requires the Union and the Employer to consult and reach mutual consent for a change in policy relating to an issue like overtime work. Inasmuch as Captain Lee’s memorandum fails to meet those requirements, it must be rescinded.

While the Employer raises potentially valid concerns regarding the potential ramifications of the impact that this overtime policy (allowing ACOV’s to backfill to ACOIII posts) could have on the paramilitary command structure at WCCC as well as the additional costs associated with ACOIVs and ACOVs backfilling to ACOIII posts, I conclude that Captain Lee’s memorandum, submitted unilaterally and without

consultation with the Union, is in violation of Section 26.12 and Section 1.05 of the CBA.

Finally, although the State has raised potentially valid concerns regarding the aforementioned overtime policies, the appropriate forum to address these concerns is at the bargaining table.

VII. FINAL AWARD AND REMEDY

Based on the foregoing findings, the Grievance is sustained. The facts establish that Captain Lee's memorandum of April 30, 1997, is contrary to the fair and equitable requirement of Section 26.12 and issued unilaterally in violation of Section 1.05. For the reasons discussed in the foregoing Decision and Award, the Determination and Final Award of the Arbitrator in response to the issues presented in this arbitration is as follows:

1. Does the April 30, 1997 memorandum from Captain Malcolm Lee, Chief of Security of WCCC prohibiting ACOIVs and ACOVs from working overtime at an ACOIII post, violate Section 26.12 of the CBA?

Yes. The April 30, 1997 memorandum from Captain Malcolm Lee, Chief of Security of WCCC prohibiting ACOIVs and ACOVs working overtime in ACOIII posts, violates Section 26.12 of the CBA.

2. If so, what shall the appropriate remedy be?

Captain Lee's memorandum of April 30, 1997 is hereby rescinded. All ACOIVs and ACOVs employed at WCCC who have been deprived of the opportunity to work overtime on and after April 30, 1997 in an ACOIII position shall be duly compensated. Recognizing that this monetary remedy may pose some challenges to the parties, I am directing the parties to engage in a mutual and cooperative effort to exchange all information necessary to implement this decision.

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EXHIBIT 3

UNITED PUBLIC WORKERS
AFSCME, LOCAL 646, AFL-CIO
2003 UPW STATE CONVENTION

EXHIBIT 3

RESOLUTION

RESOLUTION #3

MEMBERS RIGHT TO PARTICIPATION

WHEREAS, the UPW Constitution has statements of members' rights under the provision "Bill of Rights For Union Members;" and

WHEREAS, #7 of the Bill of Rights states, "Members shall have the right to full participation, through discussion and vote, in the decision-making processes of the Union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight."

WHEREAS, the UPW is a Union of members; and


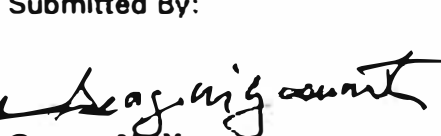
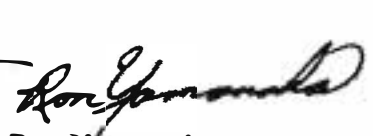
WHEREAS, the UPW belongs to the members; and

WHEREAS, the UPW members have a right to full participation, through discussion and vote, in the decision-making processes of the Union, and to pertinent information needed for the exercise of this right; now, therefore,

BE IT RESOLVED, the 2003 UPW State Convention believes all members have constitutional rights under the UPW Constitution, "Bill of Rights For Union Members"; and

BE IT FURTHER RESOLVED, a copy of this resolution be sent to the UPW State Director, State President, State Secretary-Treasurer, State Executive Board, and AFSCME International President Gerald W. McEntee.

Submitted By:

		
Dayton M. Nakanelua UPW Member	George M. Yasumoto UPW Member	Ron Yamanaka UPW Member

34TH STATE CONVENTION
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO
SHERATON WAIKIKI HOTEL

DECEMBER 15-16, 2003

MINUTES

MONDAY, DECEMBER 15, 2003

1. CALL TO ORDER

Administrator Elizabeth C. Ho called the convention to order at 10:02 a.m.

2. PLEDGE OF ALLIGENCE

UPW past President George Yasumoto led delegates in the *Pledge of Allegiance*.

3. INVOCATION

UPW past President Adaline Uhrle offered the invocation.

4. CONVENTION APPOINTMENTS AND ASSIGNMENTS

Secretary pro tem	Kalena Bowers
Parliamentarian	Al Hamai
Time Keeper	Jeanne Endo
Credentials Committee	Jerry Katada, Chair; Yvonne Gaspar, Secretary
Rules Committee	Harold Moniz, Chair; Craig Yugawa, Secretary
Elections Committee	Joseph Vegas, Chair; Galewyn Garcia, Secretary
Finance Committee	Albert Phillips, Chair; Jerome Freitas, Secretary
Resolutions Committee	Roberta Medeiros, Chair; Rowena Tachibana, Secretary
Constitution Committee	Kathryn Cabacungan, Chair; Roy Anaya, Secretary

5. INTRODUCTION OF GUESTS

Lee Saunders, Executive Assistant to International President Gerald McEntee.
Larry Weinberg, AFSCME General Counsel.

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Joseph Vegas, chair of the Elections Committee, presented the Elections Committee report.

State Director – 156 votes cast.

- Dayton Nakanelua – 89 votes
- Harold Moniz – 67 votes

State President – 156 votes cast; 78 votes needed for a majority.

- Steven DeCosta – 72 votes
- Keith Fauata – 47 votes
- George Yasumoto – 35 votes
- Andrew Kauano – 2 votes

State Secretary-Treasurer – 156 votes cast; 78 votes needed for a majority.

- Faye Hanohano-Kaawaloa 85 votes
- Ronald Yamanaka – 42 votes
- Faatea Faatea – 29 votes

Administrator Ho declared Dayton Nakanelua as the State Director and Faye Hanohano-Kaawaloa as the State Secretary-Treasurer.

A run-off election for State President between Steven DeCosta and Keith Fauata would be held at 2:15 p.m.

Candidates Steven DeCosta and Keith Fauata addressed the delegation.

Resolution No. 3 – Submitted by Dayton Nakanelua and two other members.

Relating to members right to participate.

Discussion Lani Mederios, on behalf of the Resolutions Committee, recommended that the resolution be adopted because the resolution proposes that union members have a right to full participation in the decision-making processes of the union.

Dayton Nakanelua (Oahu Division) spoke in favor of the Resolutions Committee's recommendation.

ACTION RESOLUTION NO. 3 ADOPTED BY VOICE VOTE.

Resolution No. 5 – Submitted by Dayton Nakanelua and two other members.

Relating to Unit 1 and Unit 10 full negotiation committees.

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EXHIBIT 4

UPW, AFSCME, LOCAL 646, AFL-CIO

GRIEVANCE FORM STEP 1

UPW Case #: JM-11-15

TO: Jodie Maesaka-Hirata	Public Safety	State of Hawaii
Department Director	Department	Employer
FROM: Jamilyn Makaehu	Business Agent	UPW/Oahu Division
Grieving Party or Union Representative	Classification Title	Employer/Dept./Union Division
AFFECTED: Class	All Affected Classes	SOH/PSD/HCF/Unit 10
Affected Employee	Class Title/Pay Grade	Employer/Department/Division/Unit

A. STATEMENT OF GRIEVANCE

- ☐ Date of alleged violation or;
☒ Continuous violation date first known: June 14, 2011 (Date)
- Section(s) or provision(s) of the Agreement allegedly violated:
1. 14, 15, 16, 23, 23A
- Nature of Complaint: (Date, facts, circumstances, etc.)

In accordance with Section 15.05 b. of the Unit 10 agreement, Department of Public Safety Director Jodie Maesaka-Hirata agreed on June 20, 2011 to mutually extend the timelines to file the grievance. On June 28, 2011, the UPW Division Director Laurie Santiago was informed by the Employer that the Union should proceed with filing the grievance.

This grievance is being filed on behalf of all affected employees employed with the State of Hawaii, Department of Public Safety (PSD), Halawa Correctional Facility (HCF).

On December 2, 2010, the Union and PSD signed a Memorandum of Understanding (MOU) that states, "Temporary assignments of ACO V (Lieutenant) to those positions excluded from collective bargaining, e.g., ACO VI (Captains who are either Watch Commanders at larger facilities or Chiefs of Security of smaller facilities) and ACO VII (Chiefs of Security of larger facilities) shall be done in accordance with section 16.04 of the Unit 10 Agreement".

On or about June 14, 2011, Chief Steward Robert Mielke informed the Union that in lieu of assigning temporary assignment to the Watch Captain position, the Employer opted to hire Adult Correction Officers VI (Captain), Adult Corrections Officer VII (Major) and the Deputy Warden on overtime basis instead.

On June 14, 2011, Warden Nolan Espinda stated that when they assign temporary assignment to the Captain position they will follow the MOU but the Employer retains the decision-making authority to assign temporary assignment or to hire on an overtime basis for supervisory positions.

The Employer has issued inter office memorandums illustrating the practice of temporary assignment of an ACO V (Lieutenant) to a ACO VI (Captain) position and has placed ACO V (Lieutenant) in Vice Captain positions due to long term vacancies created by incumbents on extended military leave.

The issue of temporary assignment from ACO V to ACO VI positions have been addressed and resolved in the Union's favor in prior arbitration decisions:

In the Matter of the Arbitration between United Public Workers, AFSCME, Local 646, AFL-CIO and State of Hawaii, Department of Public Safety, Kulani Correctional Facility, dated January 30, 2006 Arbitrator Allen Hoe sustained Union's grievance DP-04-19 and directed the PSD to "cease and desist from denying temporary assignments to the grievant (ACO V Hanohano-Ka'awaloa) to the Captain's position (ACO VI) while the incumbent to the ACO VI position is on temporary assignment or otherwise unavailable to perform the substantial responsibilities and duties of said position.

In the Matter of the Arbitration between United Public Workers, AFSCME, Local 646, AFL-CIO and State of Hawaii, Department of Public Safety, dated December 12, 1996 Arbitrator David Hagino sustained the grievance and directed PSD to compensate the grievant the pay he would have received on temporary assignment to the ACO IV position.

The Employer violated the following:

- | | |
|------------------|---|
| Section 1 | by failing to consult the Union when formulating and implementing personnel policies, practices and any matter affecting working conditions and by failing to obtain mutual consent before making changes to wages, hours, and other conditions of work |
| Section 14 | because the Employer abridged, amended, and waived rights, benefits, and/or perquisites presently covered by constitutions, statutes and/or rules and regulations employees have enjoyed |
| Section 15 | because the Employer is required to abide by final and binding arbitration decisions and awards |
| Section 16 | because the Employer misapplied this section & denied temporary assignment |
| Section 23 & 23A | because the Employer denied temporary assignment, resulting in loss compensation |

E. REMEDY SOUGHT:

1. Make whole remedies to restore all affected Adult Correction Officers wages, rights benefits, and status including but not limited to retroactive compensation for loss temporary assignment with interest at the rate of ten (10%) per annum.
2. Declaratory relief in favor of the Union and the Employee
3. Injunctive relief to restore the status quo and prevent future recurring violations
4. An order the Employer rescind its action and cease and desist from further action of a similar nature
5. Payment of Attorney's fees and costs
6. Other appropriate relief (from the Arbitrator)

MEETING REQUESTED: YES ☒ NO ☐



Jamilyn Makaehu

Signature of Grieving Party/Union Representative

July 11, 2011

Date


Signature of Grieving Party

Date

EXHIBIT 5

Suspense: _____

June 17, 2015

TO: Wardens/Chiefs of Security
FROM: 
Nolan Espinda, Director
SUBJECT: SETTLEMENT AGREEMENT (JUNE 12, 2015) ON TEMPORARY
ASSIGNMENT TO ACO SUPERVISING POSITIONS

PSD has entered into a Settlement Agreement to resolve outstanding filed grievances and past complaints on the application of Temporary Assignment (as opposed to assignment of overtime) to ACO Supervisory positions.

The details of such Temporary Assignments (or not) to Sergeant and Lieutenant positions at the various facilities statewide are clearly described in the Agreement.

PREPARE ANY QUESTIONS/SCENARIOS YOU WANT CLARIFIED FOR DISCUSSION AT OUR MEETING THIS AFTERNOON, JUNE 17, 2015, AT 1:00 PM, IN THE DIRECTOR'S CONFERENCE ROOM.

What is not clearly described but also resolved by this Settlement Agreement (JM-11-15 on July 11, 2011) is the authority of OCCC, HCF and MCCC to continue to fill their Captain positions on an OVERTIME basis, continuing the existing practice at those facilities of assuring that a Captain or above is routinely in charge. *THA 11-15 2011*

The sooner we can apply this the better. Do not change your current SOPs for this BEFORE FRIDAY, JUNE 19, 2015.

We will be subject to penalty for not being fully compliant with this Settlement Agreement effective July 1, 2015.

Attachment

c: Dep-C, IDA, DPO, PER-LRU, IIO

Captains, explain to U's and Sergeants

**SETTLEMENT AGREEMENT
TEMPORARY ASSIGNMENT**

~~THIS~~ **SETTLEMENT AGREEMENT ("AGREEMENT")** made and entered into on this 27th day of June, 2015 by and between the State of Hawaii, Department of Public Safety (hereinafter "EMPLOYER") and the United Public Workers, Local 848, AFSCME AFL-CIO (hereinafter "UNION"), collectively referred to as "PARTIES" sets forth the agreement of the PARTIES.

WHEREAS, the UNION filed Class Grievance JM-11-15 on July 11, 2011. This grievance addressed temporary assignments to the ACO VI and ACO VII positions at the Halawa Correctional Facility. This grievance was moved to arbitration on March 12, 2013.

WHEREAS, the UNION filed Class Grievance MN-13-01 on January 30, 2013. This grievance addressed temporary assignments to the ACO IV and ACO V positions at the Womens Community Correctional Center. This grievance was moved to arbitration on June 21, 2013.

WHEREAS, notwithstanding the PARTIES' respective positions, the EMPLOYER and UNION by entering into this AGREEMENT do not admit any wrongdoing in this matter or weakness in their positions, but by entering into this Agreement wish to avoid the uncertainty, inconvenience, burden, and expense of further litigation.

WHEREAS, the PARTIES desire to effect a full and final compromise and settlement of any and all matters, claims, and causes of action arising out of the subject grievances/arbitrations and have fashioned a mutually acceptable remedy to resolve the issue of Temporary Assignment.

Settlement Agreement-Temporary Assignment

NOW THEREFORE, IT IS HEREBY AGREED the following shall be applied when filling ACO IV and ACO V vacancies:

- 1. Definition of "Vacancy":** For purposes of this Settlement Agreement, any post that is caused to be vacant due to a leave of absence of an employee (separation from employment to be included), and, the post was included in the final posted schedule.
- 2. ACO IV Vacancies:** Temporary Assignment shall be utilized to fill ACO IV vacancies, on all shifts, at all facilities. Overtime may be assigned if the ACO IV vacancy cannot be filled by Temporary Assignment.
- 3. ACO V Vacancies:**
 - a.** Temporary Assignment shall be utilized to fill ACO V vacancies, on all shifts, at the following facilities: Halawa Correctional Facility (HCF), Oahu Community Correctional Center (OCCC), and Maui Community Correctional Center (MCCC). Overtime may be assigned if the ACO V vacancy cannot be filled utilizing Temporary Assignment.
 - b.** Temporary Assignment shall be utilized to fill ACO V vacancies, but shall be limited to, the Second (2nd) and Third (3rd) Watches, Monday through Friday, at Walawa Correctional Facility (WCF), Kulani Correctional Facility (KCF), Hawaii Community Correctional Center (HCCC), Kauai Community Correctional Center (KCCC) and Womens Community Correctional Center (WCCC). Overtime may be assigned if the ACO V vacancy cannot be filled by utilizing Temporary Assignment.

Settlement Agreement-Temporary Assignment

All First (1st) Watch ACO V vacancies at WCF/KCF/HCCC/KCCC/WCCC may be filled utilizing Overtime within the same class. Temporary Assignment may be assigned if the ACO V vacancy cannot be filled utilizing Overtime.

All Second (2nd) and Third (3rd) Watch ACO V vacancies on Saturday/Sunday/Holiday Off at WCF, KCF, HCCC, KCCC, and WCCC may be filled utilizing Overtime within the same class. Temporary Assignment may be assigned if the ACO V vacancy cannot be filled utilizing Overtime.

- 4. Warden Select posts are excluded from the Temporary Assignment provision. However, individuals occupying Warden select posts are eligible for Temporary Assignment**
- 5. In the event of any emergency situations (Inmate death, riot/disturbance, fire, major equipment breakdowns, mass movements, etc.), the Temporary Assignment provision may not apply.**
- 6. The UNION agrees to withdraw Class Grievances JM-11-15 and MN-13-01 from arbitration.**

NOTHING contained herein shall be construed as an admission by any party of violations of their duties or responsibilities under the Unit 10 Agreement.

IT IS hereby expressly understood and agreed that this Agreement is entered into as a complete resolution and compromise of all disputed claims including any potential claims between the settling Parties and constitutes a complete compromise of the Grievances and Arbitrations.

IN WITNESS WHEREOF, the parties hereto through their duly authorized
~~representatives~~ have executed this Agreement on the 15th day of June, 2015.



Nolan Espinda, Director
Department of Public Safety



Dayton Nakanelua, State Director
UPW, Local 646, AFSCME, AFL-CIO

EXHIBIT 6



EXHIBIT 6

April 3, 2019

INTERNATIONAL EXECUTIVE BOARD CASE NO. 19-07
Akau v. Nakanelua

Greetings:

Enclosed is International Vice President Greg Devereux's decision in the above-captioned case.

In solidarity,


LEE SAUNDERS
President

LS/JR:sh

Enclosures

cc: Elissa McBride, Secretary-Treasurer
Judith Rivlin, General Counsel
Mike Sukal, Director, O&FS
Walter Blair, Western Regional Director, O&FS
Liz Ho, Area Field Services Director, O&FS
UPW Local 646 Executive Board

Lee Saunders
President

Elissa McBride
Secretary-Treasurer

Vice Presidents

Jody Barr
New Britain, CT

Se'Adoreia K. Brown
Miami Springs, FL

Richard L. Caponi
Pittsburgh, PA

Stacy Chamberlain
Portland, OR

Connie Derr
Albuquerque, NM

Greg Devereux
Olympia, WA

Daniel DiClemente
North Chili, NY

Danny Donohue
Albany, NY

Denise Duncan
San Dimas, CA

David R. Fillman
Harrisburg, PA

Henry A. Garrido
New York, NY

Johanna Puno Hester
San Diego, CA

Danny J. Homan
Des Moines, IA

Nicholas J. LaMorte
Commack, NY

John A. Lyall
Worthington, OH

Kathryn Lybarger
Oakland, CA

Roberta Lynch
Chicago, IL

Christopher Mabe
Westerville, OH

Glenard S. Middleton Sr.
Baltimore, MD

Douglas Moore Jr.
San Diego, CA

Frank Moroney
Boston, MA

Michael Newman
Chicago, IL

Henry Nicholas
Philadelphia, PA

Debbie Parks
Hamilton, NJ

Randy Perreira
Honolulu, HI

Steven Quick Sr.
Indianapolis, IN

Lawrence A. Roehrig
Lansing, MI

Joseph P. Rugola
Columbus, OH

Alan F. Shanahan
Los Angeles, CA

Paul Spink
Milwaukee, WI

Mary E. Sullivan
Albany, NY

Braulio Torres
San Juan, PR

Anthony Wells
New York, NY

John P. Westmoreland
South St. Paul, MN

American Federation of State, County and Municipal Employees, AFL-CIO

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INTERNATIONAL EXECUTIVE BOARD CASE NO. 19-07

AKAU v. NAKANELUA

This case involves charges filed by Edward Akau Jr., a member of United Public Workers, AFSCME Local 646 ("UPW" or "Local 646"), against Dayton Nakanelua, State Director of Local 646.

The charges were filed with Local 646 in August 2018. When the Local did not convene a trial body to consider the charges in a timely fashion, Brother Akau submitted the charges to the Chairman of the Judicial Panel. The Chairman of the Judicial Panel referred the charges to the International President, pursuant to Article XI, Section 10 of the International Constitution because the accused party is a member of the Judicial Panel. President Saunders appointed the undersigned to serve as the trial officer.

Following due notice to all interested parties, the trial was scheduled and held on February 12, 2019, in Honolulu, HI.

THE PARTIES

Charging Party Edward Akau Jr. appeared at trial and represented himself. Accused party Dayton Nakanelua appeared at trial and was represented by Herbert Takahashi, Esq.

THE CHARGES

(See Attached)

EVIDENCE IN SUPPORT OF THE CHARGE

Brother Akau works at a juvenile detention center that is part of Bargaining Unit 10. In March 2018, he suffered an injury at work. When he returned to work, his employer advised him

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about a "Pilot Attendance" Memorandum of Understanding (hereafter referred to as the "Attendance MOU") that the employer was applying to Brother Akau. It required Brother Akau to work two consecutive days after he missed scheduled work due to an injury and failed to produce a doctor's note. The employer gave Brother Akau a highlighted excerpt of the Attendance MOU but did not provide the entire document. When Brother Akau asked the employer for more information about it, the employer referred him to the union.

On April 2, 2018, Brother Akau filed a grievance over the Attendance MOU, on the grounds it was unilaterally implemented, and had not been ratified by the members. His union representative, Michele Hebblethwaite, told Brother Akau that MOUs like the Attendance MOU do not have to be ratified.

On April 12, 2018, Brother Akau asked Sister Hebblethwaite for a copy of the full Attendance MOU; he received the MOU¹ on November 16, 2018, more than seven months later. Brother Akau filed this charge in August 2018 because he had not heard anything further about the grievance he filed in April.

The Attendance MOU was intended to deal with employees who have habitual patterns of sick leave. It requires an employee taking unscheduled sick leave to report immediately to a medical facility. If the employee does not report to a medical facility or does not produce proof of illness, the employer implements a schedule of consecutive work days, with two more consecutive days of work assigned for each day missed without a doctor's note.

¹ The Attendance MOU that was provided to Brother Akau was characterized as a "Pilot Project" which was to be effective May 7, 2016 through April 30, 2017. However, the policy remained in effect after April 30, 2017 and was applied to Brother Akau in March 2018.

Brother Akau admitted that he was not subjected to discipline when he missed scheduled work. However, he explained that the Attendance MOU was still unfair because it required him to work two consecutive days after he missed a day of work based on a bona fide injury simply because he did not produce a doctor's note. The injury that caused him to miss work essentially made him bed-ridden so he could not get himself to a medical facility. Brother Akau noted that even though he did not obtain a doctor's note, he had sent photos of his swollen knees to his employer. Brother Akau asserted that even if the Attendance MOU might not be considered disciplinary, it had an adverse impact on him by requiring him to work consecutive days after returning to work after an injury; in this case, a weekend that he otherwise would not have had to work.

Brother Akau explained that he felt the Attendance MOU should have been submitted to the members for discussion and a ratification vote before it was implemented based on Paragraph 7 of the UPW Bill of Rights. Paragraph 7 of the UPW Bill of Rights provides:

Members shall have the right to full participation, through discussion and vote, in the decision-making processes of the Union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.

Despite this being part of the UPW Constitution, it is undisputed that the Bargaining Unit 10 employees did not ratify the Attendance MOU. Likewise, those employed at the juvenile detention center where Brother Akau works did not vote on the Attendance MOU.

EVIDENCE IN REFUTATION OF THE CHARGES

At the hearing, State Director Nakanelua initially raised several procedural issues and sought to have the charge dismissed. His motion to dismiss was taken under advisement.

Brother Nakanelua asserted he was not provided with timely notice of the charge. It was first filed with UPW in August, but he stated he did not receive a copy of it, nor was there a trial within 60 or 63 days as provided in Article X, Section 12 of the International Constitution. Brother Nakanelua admittedly saw the charges on October 23, 2018 in connection with a notice dated October 23, 2018 whereby the UPW President and Secretary Treasurer set a trial date in December for UPW to consider the charge. However, he notes that the Local did not convene a trial hearing within the time set forth in Article X, Section 12 of the International Constitution. Before the Local conducted a trial, the charge was submitted to the Judicial Panel and referred to President Saunders. President Saunders advised UPW that the International Union had taken jurisdiction of the charge and the Local should not convene its trial board. While Brother Nakanelua received a letter dated December 4, 2018 from International President Saunders about the charge, a hearing was not conducted within 63 days of that notice.

In his post-hearing brief, Brother Nakanelua also alleged the charge lacked the requisite specificity, and that he was improperly denied the right to be tried by the Local union. He further alleged that Brother Akau did not have "standing" to pursue his charge, insofar as he was not able to prove any injury. This argument is predicated on the fact that the Attendance MOU Brother Akau introduced as support for his charge was for the "Pilot" attendance program, and the dates for it had already passed by the time of the incident Brother Akau relied upon.

As for the merits, Brother Nakanelua raised several defenses. He asserts that the Hawaii state law expressly permits the union to make mid-term modifications, and the law does not require the union to subject such mid-term MOUs to ratification votes. He testified that the state law has long required "master agreements" to be ratified, and UPW has submitted such agreements to ratification votes. He also stated that the law changed in 2000, and since then the law has permitted "supplemental" agreements to be entered into by the union without undergoing any ratification vote. He relied on Section 89-10 (a) of the Hawaii state law in support of this argument which provides in relevant part that:

Any collective bargaining agreement reached between the employer and exclusive representative shall be subject to ratification by employees.... Ratification is not required for other agreements effective during the term of the collective bargaining agreement, whether a supplemental agreement, an agreement on reopened items, or a memorandum of agreement, and any other agreement to extend the term of the collective bargaining agreement.

Accordingly, Brother Nakanelua claimed the state law covers the Attendance MOU Brother Akau presented here, and it does not require ratification for this mid-term change. He further argued that if the hearing officer were to find merit with this charge and require the revocation of the agreed-upon MOU, an insurmountable problem would be created if it resulted in all MOU's being declared void. Brother Nakanelua also asserted there is an "irreconcilable" conflict between Paragraph 7 of the UPW Bill of Rights and the state law.

Brother Nakanelua claimed it would constitute a prohibited practice under the HLRB to require the ratification of mid-term MOUs insofar as the master agreement permits mid-term changes whenever there is mutual consent. He also claimed the HLRB has exclusive jurisdiction over questions alleging a union's failure to ratify an agreement and over prohibited personnel

practices, noting that a case raising a sick leave MOU was presented to the HLRB and is now on appeal.

Brother Nakanelua also provided evidence that in 2008 and again in 2010, the Local 646 Executive Board considered the issue and interpreted Paragraph 7 of the Local's Bill of Rights as not requiring the State Director to submit MOUs to membership ratification. He also claimed that to require ratification votes for mid-term MOUs would violate public policy, and it would violate the law for UPW to repudiate any MOUs that have already been agreed upon and implemented.

Brother Nakanelua stated that the current master agreement has been in effect since July 1, 2017 and continues through June 30, 2021. It was ratified by the Unit 10 Bargaining Unit employees. Section 1.05 of the master agreement states:

The Employer shall consult with the Union when formulating and implementing personnel policies, practices and any matter affecting working conditions. No changes in wages, hours, or other conditions of work contained herein may be made except by mutual consent.

In other words, the collective bargaining agreement anticipates mid-term changes if the parties achieve "mutual consent."

Brother Nakanelua testified that Section 1.05 has been in the master agreement since the early 1970's and UPW members have ratified this language many times since it was first added. Per Brother Nakanelua, there also have been many arbitration awards in which arbitrators have upheld Sec 1.05, including some that deal with sick leave. Brother Nakanelua explained that making mid-term changes pursuant to Section 1.05 is an established past practice that he has

exercised, as have prior State Directors and the Administrator when UPW was under Administratorship.

Brother Nakanelua stated that in the course of any master agreement, the state makes numerous requests for consent to changes in existing terms of work in the master agreement. He estimated that about 25% of the "requests to consult" end up getting to "mutual consent"; that is, to agreed-upon MOUs. He explained that when the employer makes a request for a mid-term change, the union assigns it to the appropriate division, and the UPW staff and stewards are then involved in follow-up meetings with the affected membership.

The Bargaining Unit 10 master agreement includes a provision on sick leave whereby abuse of sick leave can lead to discipline. Brother Nakanelua explained that the Attendance MOU at issue here created a better way to deal with absenteeism, such that it would not be treated in a disciplinary manner. He stated that before UPW agreed to it, there were labor-management meetings, which included members from the juvenile detention center. According to Brother Nakanelua, UPW staff took a draft of the employer's proposal to the juvenile detention to explain it to the employees at that worksite. He stated that a majority of the members who worked at the detention center attended a series of meetings in March 2016 to discuss the employer's proposal.² According to Brother Nakanelua, those employees raised two issues of concern. He testified that before the union agreed to this Attendance MOU, UPW went back to the employer and the parties revised it to address the members' concerns.

Brother Nakanelua then offered information about a similar internal union charge that was filed against him in 2008 over an alleged failure to ratify another MOU (dealing with sick

² These meetings occurred, and the MOU was agreed-upon in 2016, when Brother Akau was on an extended disability leave:

leave for Unit 10). Those charges were brought under Art X, Sec 2 A, D, G, and H of the International Constitution. The UPW Executive Board served as the trial body and found a) the law did not require ratification, and b) ratification would have violated the parties' past practice. The trial body found that Brother Nakanelua did not violate any provision of either the International Constitution or the UPW Constitution by entering into an MOU without first getting it ratified. This decision was not appealed to the Judicial Panel.

Brother Nakanelua stated that a similar issue arose again in December 2010. At the UPW State Executive Board meeting on December 18, 2010, there was a discussion about whether MOUs had to be ratified by the membership, based on Bill of Rights' Paragraph 7 of the UPW Constitution.³ At that time, the State Board voted to leave the practice intact; that is, no membership vote was required before the UPW could consent to an MOU. Therefore, Brother Nakanelua claims the union has already interpreted the provision Brother Akau is relying on here, and that no ratification vote is necessary before UPW is permitted to agree to a mid-term MOU, like the Attendance MOU.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned finds the procedural issues do not have merit. Brother Akau filed his charges with the Secretary of UPW, as is provided in Article X, Section 6 of the International Constitution, which is the procedure for processing charges set forth in the UPW Constitution. That the Local was tardy in sending them to the Accused Party and in setting a trial date cannot deprive Brother Akau of his right to have his charges considered. When the Local failed to set a

³ The Bill of Rights was added to the UPW Constitution in 1975, and paragraph 7 remains unchanged.

trial within the specified timeline, Brother Akau submitted his charges to the Judicial Panel. The International Union then took original jurisdiction, which is contemplated in Article X of the International Constitution. Moreover, there was no suggestion or any contention that the delay prejudiced the Accused Party, Brother Nakanelua. Finally, there was no prejudice to Brother Nakanelua regarding when the trial was convened, and he did not raise this as an issue until after the undersigned had already begun the hearing.

In addition, the charges were sufficiently specific. The charges explained the MOU at issue,⁴ and alleged that it was entered into without any ratification vote, in violation of Paragraph 7 of the Bill of Rights. Brother Nakanelua provided a robust and focused defense, supported by (57 exhibits) consisting of well over 1,000 pages in cases, law and other documentary support. There is no doubt he understood the substance and scope of the charge and was not harmed by the delay in the matter proceeding to hearing.

Turning now to the merits of the charge, it is clear that both the Hawaii state law and the master agreement permit UPW to make mid-term changes to “wages, hours, or other conditions of work”, provided there is “mutual consent”. It is also undisputed that the Attendance MOU was not submitted for a ratification vote.

UPW’s experience of not requiring ratification before agreeing to such changes is a long-standing practice and did not begin with the Accused Party. Indeed, within UPW there is significant support for the belief that the State Director may consent to any changes the employer

⁴ While Brother Nakanelua asserted that the Attendance MOU Brother Akau submitted had already expired, it was the MOU that both his employer and his union representative gave him, and it was the Attendance MOU that was applied to him. Even if it was expired, whether the MOU should have been ratified remains a live issue particularly given Brother Nakanelua’s admitted practice of not ratifying MOU’s.

proposes without submitting the proposed changes to a vote of the membership, regardless of the issue. Thus, the question raised here is whether Brother Nakanelua has improperly failed to obtain ratification of changes that affect members' wages, hours, or other conditions of work.

Paragraph 7 of the Bill of Rights in the Local 646 Constitution is identical to paragraph 7 of the Bill of Rights in the International Constitution. Paragraph 7 of the Bill of Rights in both the UPW and International Constitutions provides:

Members shall have the right to full participation, through discussion and vote, in the decision-making processes of the Union, and ~~to~~ ^{to} pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.

Paragraph 7 expressly guarantees members the right to discuss and vote on collective bargaining agreements and MOUs that affect members' wages, hours or other terms and conditions of employment, and has been so interpreted by the Judicial Panel. In addition, Article IX, Section 49 of the International Constitution provides in relevant part:

The constitution of every subordinate body and any change of any nature in the constitution of any subordinate body shall conform to the provisions of the International Constitution including the provisions of the Bill of Rights.... [I]f a conflict between such subordinate body constitution or amended constitution and the International Constitution including the provisions of the Bill of Rights is found, the provisions of the International Constitution shall prevail.

Based on this language in the International Constitution, UPW's contrary interpretation of its own Bill of Rights' Paragraph 7 simply carries no weight and cannot continue.

Thus, even if the state law permits Local 646 to make mid-term changes and Local 646 "is not required" to undergo a ratification process, the law does not prohibit UPW from submitting proposed MOU's or other mid-term agreements to a membership ratification vote.

Stated another way: Brother Nakanelua (and by extension UPW) is required to honor the democratic procedures incorporated in the Bill of Rights, as interpreted by the International Union. Thus, it must submit to a ratification vote decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. To hold otherwise would be to ignore that, as stated at Article IX, Section 54 of the International Constitution, "All subordinate bodies shall at all times be subject to the provisions of the International Constitution."

The undersigned also rejects Brother Nakanelua's argument that the HLRB is the appropriate forum for determining what actions he and UPW are required to take under the UPW and the International Union Constitutions. This is an internal union matter, involving the interpretation and application of the UPW and International Union Constitutions. As noted above, there is no conflict between Hawaii law and the UPW and International Union constitutions. Moreover, the HLRB is not empowered to delve into the internal affairs of this union.

Before agreeing to the Attendance MOU at issue here, UPW staff explained the employer's proposal to the affected members. UPW sought and received the members' feedback, after which UPW was able to negotiate changes that were responsive to what the members requested. That was all appropriate and a practice that should be continued. The undersigned notes it would not have required much for Brother Nakanelua to add one more step – that is, to hold a ratification vote among the affected members before giving UPW's "consent" to the employer. That additional step will be required, going forward, based on this decision. To be

clear: for MOUs that have already been agreed-upon and that are already in effect, those can and should remain in place. The undersigned is not requiring them to be revoked.

The undersigned recognizes that there are practical considerations involving the administration of collective bargaining agreements. Not every clarification or adjustment requires that the language be brought to the membership for discussion and a vote. This decision, rendered on one particular set of facts, cannot explain precisely which mid-term agreements should be submitted for a ratification vote, and which ones may not require that process. However, the threshold for when a vote is required turns on whether the proposed agreement affects members' "wages, hours, or other terms and conditions of employment." In this instance, the undersigned finds the threshold was crossed and that Brother Nakanelua should have held a vote among the affected members at the juvenile detention center before entering the Attendance MOU.

Finally, Paragraph 7 of the Bill of Rights requires that members receive "pertinent information" needed for the exercise of their rights, and this includes a copy of agreements they are subject to. Although this was not explicitly raised as a violation of the constitution in his charge, Brother Akau received only excerpts of the Attendance MOU from his employer when it was being applied after a covered absence. When Brother Akau requested a full copy of the Attendance MOU from UPW, it took some seven months and the filing of internal union charges before Brother Akau received the Attendance MOU. Brother Nakanelua should take steps to ensure that agreements, when requested, are provided by UPW to members on a timely basis.

DECISION

Brother Nakanelua's motion to dismiss the charges is denied. In addition, as explained in this decision, the undersigned rejects all the procedural defenses submitted at and after trial as being without merit.

On the substance of the charge, Brother Nakanelua is found guilty of a violation of Paragraph 7 of the UPW Bill of Rights. He is assessed a reprimand and a warning not to engage in the same action in the future. Going forward, UPW members must be provided with their right to discuss and vote on collective bargaining agreements and MOUs that affect their wages, hours or other terms and conditions of employment.

April 3, 2019
Olympia, WA

Greg Devereux
International Vice President
AFSCME

Wednesday, August 8, 2018

Edward Akau Jr
c/o 91-1324 Kinoaiki Street
Kapolei, Hawaii, 96707

Gerald Aqui, State Secretary/Treasurer, United Public Workers
1426 North School Street
Honolulu, Hawaii 96717-1914
Phone (808) 847.2631, Fax (808) 848.1987

Certified Mail: 7013 0046 0001 0194 9419

Aloha Gerald,

As instructed by the AFSCME, Article X- Procedure, Section 6. **Charges shall be in writing** and shall be signed by the member or members bringing the charges. The charges shall be specific, citing in detail the nature, the date, and the circumstances of the alleged offense and, where a violation of a constitutional provision is alleged, the specific section shall be cited, along with the specific act or failure to act which constitutes the alleged violation. **The charges shall be filed with the secretary** of the trial body or, if the secretary of such trial body is a directly interested party, with the presiding officer of the trial body.

Therefore as the Secretary of the trial body, I would like to file charges based on the following violations:

UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO, CONSTITUTION;

Bill of Rights for Union Members- 7. Members SHALL have the right to full participation, through discussion and vote, in the decision making processes of the Union, and to pertinent information needed for the exercise of this right. This right SHALL specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding (MOU, MOA) or any other agreements affecting their wages, hours or other terms and conditions of employment. All members SHALL have an equal right to vote and each vote cast shall be of equal weight.

Article 1, Aims and Principles- a. An injury to one is an injury to all.

Article 8, State Officers, Section 3. State President- The State President shall: g. Interpret the Constitution of the Union whenever questions arise, but the President's interpretation shall be subject to the approval of the State Executive Board.

On April 20, 2016, UPW State Director, Dayton Nakanelua entered into a Memorandum of Understanding (MOU) with the Judiciary to implement a pilot project - attendance program. The pilot program commenced in April of 2018 and continuing through April of 2019.

The members of the Detention Home were never given an opportunity to full participation, through discussion or vote in the decision making process of the above-stated MOU that directly affects our wages, hours, and other terms and conditions of employment.

To my knowledge the State Executive Board has never approved the State President's interpretation.

Via: Telephone conversation with State President James Wataru who interpreted Bill of Rights #7 as the members right to full participation in the decision making process and to vote on the agreement being agreed to.

Remedies sought: Issue 30 day notice of cancellation of MOU and utilize the ratified contract language of the BU 10 CBA section 37.17.

PLEASE RESPOND IN WRITING UPON RECEIPT OF THIS LETTER.

Signed: Edward Akau Jr



Date: 8/08/2018

cc: UPW State Executive Board Oahu Division

UPW.Wataru,

0-15

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

GORDON LESLIE; et al.,

Complainants,

and

DAVID Y. IGE, Governor, State of Hawaii;
et al.,

Respondents.

CASE NO(S). 20-CE-10-943

CERTIFICATE OF SERVICE

In the Matter of

GORDON LESLIE; et al.,

and

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

Respondent.

CASE NO(S). 20-CU-10-382

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing document was duly served electronically via File & ServeXPress, upon the following:

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Facility; FRANCIS SEQUEIRA, Warden, Oahu Community
Correctional Center; DEBORAH TAYLOR, Warden, Maui
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Attorney for Respondent
UNITED PUBLIC WORKERS, AFSCME LOCAL 646, AFL-CIO

DATE: June 28, 2021

/s/ Eric A. Seitz
ERIC A. SEITZ, ESQ.
Attorney for Complainants