

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

~~GORDON LESLIE; BERNARD KUAMOO;
GEORGE SHERIDAN; DEANGELO
DIXON; and FELICIANYYO SAMSON;~~

~~Complainants,~~

~~and~~

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

~~Respondent.~~

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

ORDER NO. 3820

MINUTE ORDER

In the Matter of

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

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 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 Hawai'i; MAX N. OTANI¹, 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; 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 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.

MINUTE ORDER

The Hawai'i Labor Relations Board (Board) held a pretrial conference and hearing on certain motions in this case on December 29, 2021. Per the parties' request, the Board issues this minute order confirming what occurred at the hearing, including significant issues and rulings.

1. Motion Hearing

1.1. Motion to Dismiss

Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Motion to Dismiss on December 14, 2021, and Respondents DAVID Y. IGE, Governor, State of Hawai'i; MAX N. OTANI, 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 (collectively State Respondents) joined in the Motion to Dismiss.

Complainants GORDON LESLIE, ET AL. (Complainants) opposed the Motion to Dismiss on December 22, 2021.

The Board heard oral argument on the Motion to Dismiss and took the matter under advisement.

1.2. Motion to Quash

The State Respondents filed a Motion to Quash the *subpoena duces tecum* of Respondent MAX N. OTANI (Otani) requiring the production of the following documents:

1. Any and all records related to the 2018 suspension of Captain Manny Matao for overtime placement of Complainant Daniel J. Bryant and employee Robert Marson in work assignments at O'ahu Community Correctional Center;
2. Any and all records related to the suspension of Captain Mao for overtime placements in work assignments at Halawa Correctional Facility; and
3. Any and all records related to the suspension of Captain Pete Aquon for overtime placements in work assignments at Halawa Correctional Facility.

Complainants waived the filing of a written response to the Motion to Quash and relied on oral argument in opposition to the Motion to Quash.

After consideration, the Board issued an oral ruling granting, in part, and denying, in part, the Motion to Quash. More specifically, the Board ruled that the subpoenaed records be limited

to those pertaining to any suspensions of the named individuals for overtime placements in work assignments at their respective facilities, between **January 8, 2020** and **June 28, 2021**. These dates represent the start of the 90-day period prior to the filing of the initial prohibited practice complaint (*see* HRS § 377-9) and the filing of the Amended Complaint in this case.

2. Pretrial Conference

The Board approached the pretrial conference in three parts; first, the issues in the case; second, the proposed exhibits; and third, Complainants' proposed witnesses.

2.1. Issues

To help determine the relevant issues in this case, at the pretrial conference, the Board provided the parties with two pieces of information; first, regarding the Board's Decision No. 497, and the second, regarding the timeliness of the issues in this case, as laid out below, and asked the parties certain questions.

2.1.1. Paio Case

Preliminarily, the Board informed the parties that it would take judicial notice of Paio v. UPW, Board Case Nos. 16-CU-10-344 and 345, Decision No. 497 (February 21, 2020) (Paio) (<https://labor.hawaii.gov/hlrh/files/2020/03/Decision-No.-497.pdf>).

Paio dealt with the implementation of a June 12, 2015 settlement agreement (SA) entered into by UPW and the Department of Public Safety (PSD) to resolve class grievances brought at Halawa Correctional Facility (HCF) and the Women's Community Correctional Center (WCCC). Although the class grievances were only from HCF and WCCC, the SA was broadly applied to and altered PSD's handling of temporary assignments (TA) and overtime (OT) at all correctional facilities in Hawai'i.

The Board found, among other things, that UPW violated HRS § 89-13(b)(4) by implementing the SA without ratification in violation of the requirements of HRS § 89-10(a).

As relevant facts, the Board found, among other things, the SA was entered into on June 12, 2015 and ACOs were "generally aware of the SA and its potential effects from its inception or shortly thereafter." Paio, Decision No. 497, at *25. Therefore, the general date on which ACOs knew or should have known of the violation of their rights was on or about June 12, 2015.

However, Hawai'i Community Correctional Center (HCCC), the workplace of the Paio complainants, did not fully implement or comply with the SA until September 15, 2016. Paio, Decision No. 497, at *26. Therefore, the Board accepted that the Paio complainants did not know and/or should not have known of the violation of their rights until September 15, 2016.

2.1.2. Timeliness of Issues

Next, the Board reminded the parties that HRS § 377-9 sets forth a requirement that the Board can only hear complaints filed within ninety days of the action the alleged prohibited practice is based on. This ninety-day limit is jurisdictional and provided by statute and cannot be waived.

The Board informed the parties that, based on the date that the original prohibited practice complaint was filed, April 7, 2020, this case is concerned only with the events during the period between **January 8, 2020** and **June 28, 2021**, the filing date of the Amended Complaint. The Board further informed the parties that these proceedings are *not* an opportunity to relitigate Decision No. 497. Accordingly, all evidence or testimony about untimely matters is presumed to be not relevant. Further, the Board noted that any alleged damages outside the relevant period, such as any alleged damages incurred before the 90-day period, are similarly presumed not relevant.

The Board noted that none of the Complainants in this case appear to have been complainants in Paio. In addition, the Board does not entertain class action suits. Paio, thus, applies only to those named complainants in Paio.

Therefore, because Complainants were not Paio complainants and had a general awareness of the SA and its potential effects from June 12, 2015 (long before January 8, 2020), they knew or should have known that the SA violated their HRS Chapter 89 rights before January 8, 2020. Therefore, Complainants are unable to recover damages based on the same HRS Chapter 89 violations found in Paio.

Accordingly, Complainants are eligible only to recover damages based on injuries that they did not know of and should not have known of prior to January 8, 2020.

2.1.3. Other Issues

The Board clarified that Complainants are alleging that the SA is or still may be being enforced and that none of the Complainants have filed grievances about overtime issues since February 22, 2020, when the Board issued Paio.

2.1.4. The Board's Understanding of the Issues

The Board confirmed with the parties its understanding that the issues in this case focus on whether Respondents continued to enforce the 2015 Settlement Agreement after the issuance of Paio, in lieu of the actual language of the pertinent collective bargaining agreement(s), up until the filing of the amended complaint on June 28, 2021.

2.2. Proposed Exhibits

Based on a review of the submitted proposed exhibit lists, the Board entered and would file Joint Exhibits 1-4 into the record, as agreed to by the parties. No duplicates of these exhibits can be introduced or entered into the record without further Board approval.

Further, the Board ordered UPW to file the relevant collective bargaining agreement(s) as Board Exhibit 1 and entered Board Exhibit 1 into the record.

The Board further informed the State Respondents that copies of transcripts from hearings in this case are not to be used as exhibits. However, the State Respondents may reference those transcripts in any questioning of witnesses or in any written filings.

The Board noted that the remainder of the proposed exhibits may be introduced at trial but, as of now, are not admitted into evidence.

2.3. Proposed Witnesses

After considering the proposed witness lists, the Board determined that it would only address the Complainants' proposed witness list at this time because the Complainants have the initial burden of proof.

During discussion of the witnesses, Respondents did not object to any of Complainant's proposed witnesses.

Complainants listed Nolan Espinda, former Director of the Department of Public Safety, State of Hawai'i; Dayton Nakanelua, former State Director for UPW; Complainant Leslie; Complainant Bryant; Complainant Siilata; and Complainant Fields, Jr. as their first six witnesses.

3. Continuance

The parties further requested that the hearing on the merits previously scheduled for January 4-6, 2022 be continued to March 9-11, 2022. After consideration of the length of time that this case has been going on, the Board granted this continuance.

Accordingly, the Board will issue an amended pretrial order with the above dates.

DATED: Honolulu, Hawai'i, _____ December 30, 2021 _____.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

EXCUSED

J N. MUSTO, Member

Copies sent to:

Eric Seitz, Esq.

Jonathan Spiker, Esq.

Richard Thomason

ⁱ Hawai‘i Rules of Civil Procedure (HRCP) Rule 25(d)(1) provides that, when a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer’s successor is automatically substituted as a party; proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded, and the Hawai‘i Labor Relations Board (Board) has applied HRCP where its administrative rules are silent. Therefore, the Board hereby substitutes the current Director of the Department of Public Safety, MAX N. OTANI for the former Director of the Department of Public Safety, NOLAN ESPINDA.

LESLIE v. IGE, ET AL.
CASE NOS. ~~20-CU-10-381~~; 20-CE-10-943; 20-CU-10-382
MINUTE ORDER
ORDER NO. 3820