

# Takahashi and Covert

Herbert R. Takahashi (A Law Corporation) | Rebecca L. Covert | Davina W. Lam COMMISSION

ATTORNEYS AT LAW

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May 16, 2011

OFFICE OF GENERAL  
COUNSEL

Via e-mail (polaya@fec.gov) and hard copy

Phillip A. Olaya, Esq.

Office of General Counsel

Federal Election Commission

999 E Street, NW

Washington, DC 20463

Re: Complaint before the Federal  
Election Commission by Georgette  
Yaindl against UPW L. 646, Dayton  
Nakanelua, Clifford Uwayne, and  
Laurie Santiago; MUR 6344; Our file  
no: 2010-094

Dear Sir:

On April 5, 2011 the Federal Election Commission found specific to Respondents Dayton M. Nakanelua, Clifford Uwayne, and Laurie Santiago no reason to believe that the individual respondents violated 2 U.S.C. § 441b (a) or 11 C.F.R. § 114.2 (f) related to the above-entitled matter.

With respect to Respondent United Public Workers, AFSCME, Local 646, AFL-CIO ("UPW" or "Union"), on April 5, 2011 the Commission found no reason to believe the Union violated 2 U.S.C. § 441b (a) and 11 C.F.R. § 114.2 (f) by coercing employees into making financial contributions to Hanabusa 2010 or violated 2 U.S.C. § 441b (a) by making corporate in-kind contributions in the form of coordinated expenditures.

The commission did find reason to believe with respect to the allegation in the complaint specific to the Union related to filing of independent expenditure reports pursuant to 2 U.S.C. § 434 (g) (2). The period of time in question is the Special Election held May 22, 2010 for the U.S. Representative for Hawaii's 1st Congressional District in which Colleen Hanabusa ("Hanabusa") was a candidate. The specific campaign activities were sign-waving, phone banking and door-to-



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door canvassing in support of Hanabusa. The Union denies that expenditures for sign-waving, phone banking and door-to-door canvassing reached the threshold for reporting under the statute.

On May 10, 2011 you wrote to me and identified the type of information that would be helpful in determining the extent of any related expenditures UPW made between March 1, 2010 and May 22, 2010.

In the past two weeks I requested information from the Union and any receipts they could provide related to the sign-waving, phone banking, and canvassing within the relevant time period. The following is a summary of the information I obtained from the Union.

#### Sign-Waving

The Union was unable to locate any sign up sheets for the sign waving for Hanabusa in the Special Election 2010. As best they can reconstruct, sign waving was scheduled to be held on the following dates, times, and locations:

	Date	Times	Location
1.	3/5/10	4:30-6 pm (estimate)	Liliha/Vineyard
2.	3/12/10	4:30-6 pm (estimate)	Liliha/Vineyard
3.	3/19/10	4:30-6 pm (estimate)	Liliha/Vineyard
4.	4/9/10	4:30-6 pm (estimate)	Undetermined
5.	4/16/10	4:30-6 pm (estimate)	Undetermined
6.	4/21/10	4:00-5 pm (estimate)	Ainakoa/ Kalaniana'ole
7.	4/23/10	4:30-6 pm (estimate)	Liliha/Vineyard
8.	4/26/10	4:30-5:30 pm (estimate)	Waiakamilo/ Dillingham
9.	4/27/10	4:30-5:30 pm (estimate)	Waiakamilo/ Dillingham
10.	4/28/10	4:30-5:30 pm (estimate)	Waiakamilo/ Dillingham
11.	4/29/10	4:30-5:30 pm (estimate)	State Capitol
12.	5/3/10	4:30-5:30 pm (estimate)	State Capitol
13.	5/4/10	4:30-5:30 pm (estimate)	Waiakamilo/

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			Dillingham
14.	5/6/10	4:30-5:30 pm (estimate)	Waiakamilo/ Dillingham
15.	5/7/10	4:30-5:30 pm (estimate)	Waiakamilo/ Dillingham

The Union estimates the turn out on any given day could have been in a range of 11 to 17 individuals from UPW.

The Union disputed that any salaries should be attributed for the sign waving. UPW hours of operation are 8 a.m. to 4:30 p.m. Employees whose workday ends at 4:30 p.m. and who participated in the sign waving did not leave work early except on one occasion (see below) and would get to the sign waving location after the start times indicated above. Business agents and some other staff are on flex-time and are required to be working from 8:30 a.m. to 2:30 p.m. They are expected to work during times before or after those hours, at their own discretion. These individuals had the flexibility to be present for the sign waving starting at 4:30 p.m. while not on work time.

On April 21, 2010 the office did close at 3:30 p.m. (one hour early) to allow staff who wanted to participate in the sign waving make the 4:00 start time. Again, for those on flex time, the sign waving started after the required hours of work. Some staff did not participate in the sign waving and they remained at the Hall but since the Hall was closed they would have been able to leave work early and still be paid for a full day.

The Union did provide bottled water to the sign wavers. Because the tracking of the bottled water used for sign waving was combined with the phone banking activities, the Union is unable to identify the specific amount spent on bottle water for sign waving.<sup>1</sup> The combined total for sign waving and phone banking during the special election period is \$100.35. (Exhibit 1). The

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<sup>1</sup> Each case of bottled water (48 small bottles/case) typically costs \$11.80 (\$11.27 plus tax of \$0.53)

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Union staff I spoke to do not recall that UPW provided transportation to the sign waving locations and staff who participated made arrangements for their own transportation.

#### Phone Banking

During the Special Election the Union did conduct phone banking in April 2010 to members on Oahu who were registered voters. Since non-members were not included in the phone banking, reports were not required for this activity.

The Union was unable to locate any sign up sheets for the phone banking for Hanabusa in the Special Election 2010. As best they can reconstruct, phone banking was scheduled to be held on the following dates and times, all at the Union hall. Refreshments were provided and the amount for refreshments is shown (except bottled water covered under sign waving):

	Date	Times (estimates)	Refreshments
1.	4/26/10	6-8 pm	\$105.60
2.	4/27/10	6-8 pm	\$176.34
3.	4/28/10	6-8 pm	\$175.16

The total spent on refreshments for the phone banking (plus water for sign waving) was \$457.10. (Exhibit 2). The Union provided me with two other documents that may or may not be related to refreshments spent on the Hanabusa Special Election. They total \$46.35. If the funds were expended related to the campaign, I will also produce those as a supplement.

The Union pays a flat monthly rate for local telephone call service (covering calls placed to anywhere on the island of Oahu). Therefore there was no additional cost in the monthly telephone bill for making phone calls after hours at the Hall.

The phone calls were made from the Union's conference room. The Union did purchase cables to allow it to add

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additional lines (using extra phones at the Hall). The initial purchase of cables was \$845.84, however, the Union returned some of the cables and was reimbursed \$408.23 and so the total expended was \$437.61. (Exhibit 3).

#### Canvassing

The union is aware of three occasions, the weekend of April 24 and 25, 2010 and Saturday, May 1, 2010, where the Union informed UPW staff of dates and times of locations for canvassing. The Union cannot locate any sign up sheets for Special Election canvassing. However, because the activities were all held on the weekend, any UPW staff who participated did so as volunteers.

The scheduled dates and times of the canvassing are:

1.	4/24/10	Kaewai Elementary	11:30 am-1 pm
2.	4/25/10	Pearl City Gateway	2-4 pm
3.	5/1/10	Geiger Neighborhood Park	9:30 am-??
4.	5/2/10	Cancelled	

State Director Dayton M. Nakanelua recalls that the April 25, 2010 canvassing was a joint effort with two other unions in the Pearl City area. This canvassing targeted union-registered voters from a list of union members. One of the unions selected the sight.

The Union did not provide any refreshments for the UPW staff that participated in the union canvassing.

The Union staff I spoke to do not recall that UPW provided any refreshments or transportation for the UPW staff to the canvassing location and staff who participated made arrangements for their own transportation. The flyers distributed during the canvassing were not provided by UPW. UPW does not have any sample flyers.

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Mr. Nakanelua recalls in addition to the joint union canvassing, on two occasions the candidate's campaign notified someone at UPW of the dates, times and locations the Hanabusa campaign would be out canvassing and then UPW got word out to the staff to let them know of the dates and times if the staff wanted to participate.

The Union staff I spoke to do not recall that UPW provided transportation to the candidate's canvassing activities and any staff who participated made arrangements for their own transportation. Refreshments were provided by the campaign.

Additional responses to your May 10, 2011 letter

1. I have attached a list of UPW staff. Again, most likely some never participated in any activities described above. Others participated at some but not all the activities.
2. It is unclear why salary and wage information is required. The only time any activity arose during potentially working time was the sign waving that started at 4:00 p.m. and the Union closed its Hall at 3:30 p.m. Everyone on staff was paid for a full day whether they sign waved or not.
3. I have listed above the dates and hours that are estimates of how much time was spent on the activities of sign waving, phone banking and canvassing. These were the planned times and I am informed that as the phone banking and sign waving continued the calling was canceled before the projected end time. Therefore the Union does not have definite hours spent on the activities.
4. The sign waving, phone banking, and canvassing activities in question are described above to the best the Union can reconstruct.
5. The Union did not purchase or make signs for the sign waving. The Union did not pay for use of the telephone calls (with the exception of the cables discussed above). The food and beverages (including water) expended are discussed above.

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I have provided receipts for the refreshments and the cables. The dates on the receipts for the refreshments correspond with the phone banking dates. UPW did not pay for any food related to the phone banking nor the canvassing.

In light of the above information, the Union does not agree that it's expenditures for sign waving, phone banking and canvassing during the Special Election violated any campaign reporting laws. The expenditures from March 2010 until May 2, 2010 (up to 20 days before the May 22, 2010 election) for sign waving and phone banking would not exceed \$10,000. The only activity after May 2, 2010 before the election was sign waving where water was provided. Specific to the phone banking, everyone who participated were not only volunteers but were communicating solely to UPW members. See 11 C.F.R. § 104.6.

Upon review of the material and my letter, please let me know if clarification is required.

Very truly yours,



Rebecca L. Covert

RLC:

Enclosures (Exhibits 1 through 3)

cc: Dayton M. Nakanelua (without enclosures)

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