

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-05-152
)	
JEAN FAUSTINO,)	ORDER NO. 1755
)	
Complainant,)	ORDER GRANTING RESPONDENTS'
)	MOTION TO DISMISS COMPLAINT
and)	
)	
JOAN HUSTED and HAWAII STATE)	
TEACHERS ASSOCIATION,)	
)	
Respondents.)	

ORDER GRANTING RESPONDENTS' MOTION TO DISMISS COMPLAINT

On July 30, 1999, Respondents JOAN HUSTED and HAWAII STATE TEACHERS ASSOCIATION (HSTA) (collectively Union), by and through their counsel, filed a motion to dismiss complaint with the Hawaii Labor Relations Board (Board). Respondents contend that the instant complaint should be dismissed because Complainant JEAN FAUSTINO (FAUSTINO) failed to comply with the Board's Notice of Intent to Dismiss Complaint for Lack of Prosecution, dated February 4, 1999. In addition, Respondents contend that more than 40 days have elapsed since the filing of the complaint and any hearing would be untimely under § 377-9(b), Hawaii Revised Statutes (HRS)¹.

¹Section 377-9(b), HRS, provides in part:

The board shall fix a time for the hearing on the complaint, which shall be not less than ten nor more than forty days after the filing of the complaint or amendment thereof, and notice shall be given to each party by service on the party personally or by

On August 4, 1999, Complainant filed a Response in Opposition to the Motion to Dismiss Complaint with the Board.

On August 12, 1999, the Board conducted a hearing on Respondents' motion to dismiss complaint. Both parties were present and had full opportunity to present evidence and argument to the Board.

Based upon a thorough review of the record in this case, the Board hereby grants Respondents' motion to dismiss the complaint.

JEAN FAUSTINO is a teacher, and an employee within the meaning of § 89-2, HRS. FAUSTINO is included in bargaining unit 05.

The HSTA is the exclusive representative of the employees included in bargaining unit 05.

The Board takes administrative notice that JOAN HUSTED is the Executive Director of the HSTA.

On December 8, 1998, FAUSTINO filed the instant complaint with the Board against the Respondents alleging that they committed a prohibited practice by refusing her request to change her Uniserv representative.

By notice, dated January 15, 1999, the Board scheduled a prehearing conference on February 2, 1999 at 10:00 a.m. and a hearing on February 10, 1999 at 9:00 a.m. The notice further required the parties to file a Prehearing Statement with the Board two days prior to the prehearing conference.

mailing a copy thereof to the party at the party's last known post office address at least ten days before the hearing.

FAUSTINO failed to file a prehearing statement with the Board prior to February 2, 1999. FAUSTINO failed to appear at the prehearing conference as scheduled and Respondents' counsel made an oral motion to dismiss the complaint.

Thereafter, on February 4, 1999, the Board issued a Notice of Intent to Dismiss Complaint for Lack of Prosecution. The notice states that a Board representative attempted to contact Complainant at her telephone number on file with the Board but was told that Complainant was unavailable. The notice also states that Respondents' counsel made an oral motion to dismiss the complaint for lack of prosecution. The notice further states that the Board would dismiss the instant complaint unless it received written notification from the Complainant stating the reasons why the case should not be dismissed within ten days of the issuance of the notice.

On February 17, 1999, FAUSTINO filed an unsigned letter, dated February 13, 1999, with the Board stating as follows:

I have just finished resolving crucial issues between my principal and myself. The road has been very devastating and painful and I am utterly exhausted. At this time, I would like to postpone one month this hearing.

If this is not possible, please call me at 672-3261. This hearing is important to me because I am disabled. Other disabled people could be treated as cruelly as I was. I suspect that Mrs. Alvaro, Miss Husted and their lawyers know almost nothing about Manic Depression and that is my point. People make decisions with no forethought of the consequences to the members of the union. In addition they get their salaries and I am refused services of a Uniserv Representative with whom I can relate.

My case number is CU-05-152.

Thereafter, on June 17, 1999, the Board issued another Notice of Prehearing Conference scheduling a prehearing conference on June 30, 1999.

By letter dated June 27, 1999, filed with the Board on June 28, 1999, FAUSTINO requested a continuance because she was under stress due to her husband being hospitalized. In a letter attached to the request, FAUSTINO indicated that opposing counsel did not object to the continuance.

By Order No. 1735, dated June 29, 1999, the Board rescheduled the prehearing conference to July 30, 1999.

On that date, Respondents, by and through their counsel, filed a motion to dismiss complaint with the Board. Respondents' counsel states in an affidavit attached to the motion that FAUSTINO failed to file a prehearing statement and failed to appear at the prehearing conference scheduled on February 2, 1999. Respondents made an oral motion to dismiss the complaint at that time. Thereafter, the Board issued a Notice of Intent to Dismiss Complaint for Lack of Prosecution, dated February 4, 1999, stating that the Board would dismiss the instant complaint because of lack of prosecution unless it received written notification from the Complainant within ten days of the issuance of the notice stating why the case should not be dismissed.

In his affidavit, Respondents' counsel further states that the Board received an untimely unsigned letter from FAUSTINO on February 17, 1999 requesting postponement for one month. In addition, Respondents' counsel states that more than 40 days have elapsed since the filing of the complaint and thus the hearing requirements of § 377-9, HRS, have not been complied with.

Respondents' counsel further states that he did not stipulate to continue the hearing in this matter. Respondents' counsel states that Complainant contacted him on June 28, 1999 and requested a continuance to file a prehearing conference and although Respondents did not object to the request, Respondents did not agree to waive its right to enforce the 40-day time limit for a hearing. Respondents contend that it will be prejudiced by the delay in the proceedings because the memories of witnesses will be affected by the lapse of time. Based upon the foregoing, Respondents contend that the instant complaint should be dismissed.

In response, Complainant indicates that she is being treated for bipolar manic depression and missed work on February 12 and was sick from February 9-14. Complainant indicates that she was not able to get to the post office until February 13, when she mailed her response which was due on the 14th. Complainant requests a post-hoc extension and states that she did not think that the extra few days had any negative effect on the Respondents' case.

On August 6, 1999, Complainant's treating psychiatrist Marvin G. Mathews, M.D., filed a letter with the Board, dated August 4, 1999, which states as follows:

Your disorder, your background and history and your personality predispose you to reacting to interpersonal stressful situations with anxiety, confusion and avoidance. It is understandable that in such a situation you might fail to meet deadlines or perform poorly in other ways.

Based upon the foregoing facts, the Board finds that FAUSTINO filed an unsigned letter with the Board on February 17, 1999, more than ten days after the date of the issuance of the Board's Notice of Intent to Dismiss Complaint for Lack of

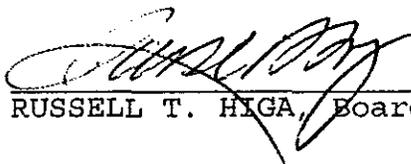
Prosecution on February 4, 1999. While FAUSTINO indicates that she was sick from February 9 through February 14 and missed work on February 12, she failed to provide any explanation as to what prevented her from responding prior to February 9. Moreover, her psychiatrist's statement speaks generally to FAUSTINO's bipolar condition and does not specifically address her condition at the relevant times in February. In the Board's view, FAUSTINO fails to indicate why she failed to appear at the prehearing conference and why her complaint should not be dismissed. Accordingly, the Board hereby grants the instant motion to dismiss complaint for failure to comply with the Board's notice, dated February 4, 1999.

DATED: Honolulu, Hawaii, September 3, 1999.

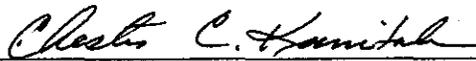
HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

Copies sent to:

Jean Faustino
Vernon Yu, Esq.
Joyce Najita, IRC