

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-09-361
	)	
HAWAII GOVERNMENT EMPLOYEES	)	ORDER NO. 1780
ASSOCIATION, AFSCME, LOCAL 152,	)	
AFL-CIO,	)	ORDER GRANTING RESPONDENT'S
	)	MOTION TO DISMISS COMPLAINT
Complainant,	)	
	)	
and	)	
	)	
DEPARTMENT OF HUMAN RESOURCES	)	
DEVELOPMENT, State of Hawaii,	)	
	)	
Respondent.	)	

---

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT

On August 20, 1997, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) filed a prohibited practice complaint against the DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, State of Hawaii (DHRD) with the Hawaii Labor Relations Board (Board). Complainant alleges that during the processing of a grievance filed on behalf of Sonia Easley (Easley), Complainant requested that Respondent produce certain reports prepared by the Attorney General's Office. Complainant contends that the Respondent refused to produce information and thus violated Article 14.A of the Unit 09 collective bargaining agreement<sup>1</sup>

---

<sup>1</sup>Section 14.A of the Unit 09 contract provides as follows:

Any relevant information specifically identified by the grievant or the Union in the possession of the Employer needed by the grievant or the Union to investigate and process a grievance, shall be provided to them upon request within seven (7) working days.

(contract) and §§ 89-13(a)(5) and (8), Hawaii Revised Statutes (HRS).

On January 23, 1998, Respondent DHRD, by and through its counsel, filed a motion for summary judgment in this case with the Board. DHRD contends that the HGEA seeks two investigative reports prepared by the Medicaid Investigative Division, Office of the Attorney General, State of Hawaii (MID), which are allegedly necessary to investigate and process two grievances. DHRD contends that the reports are confidential pursuant to § 92F-13, HRS,<sup>2</sup> irrelevant to the grievances, and are not in DHRD's possession or custody. In addition, DHRD contends that Complainant failed to exhaust its administrative remedies. Thus, DHRD argues that summary judgment should be granted in its favor and/or this case should be dismissed.

On January 23, 1998, the HGEA filed a motion to amend its complaint to add Benjamin Cayetano, Governor, State of Hawaii and the Department of the Attorney General, State of Hawaii as additional parties. Complainant's counsel states in an affidavit attached to the motion that Respondent DHRD never previously indicated that it did not have possession of the investigative

---

<sup>2</sup>Section 92F-13, HRS, provides for exceptions to the disclosure of government records and provides:

This part shall not require disclosure of:

\* \* \*

(3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function; . . .

reports and that they were in the possession of the Attorney General's Office.

On January 30, 1998, Respondent filed a memorandum with the Board objecting to the HGEA's motion to amend its complaint as being untimely, unreasonable and prejudicial to Respondent. Respondent contends that the Complainant knew or should have known that the Department of the Attorney General was the custodian of the MID reports and that Governor Cayetano is the public employer under Chapter 89, HRS. Respondent contends further that it asserted in its answer as an affirmative defense that Complainant failed to name indispensable parties. DHRD thus contends that Complainant's motion should be denied or alternatively, that the Attorney General's Office should not be added as a party because it is not an employer within the jurisdiction of the Board with respect to the instant complaint.

On January 30, 1998, the HGEA filed a memorandum in opposition to Respondent's motion for summary judgment with the Board.

On April 9, 1998, the Board conducted a hearing on Respondent's motion for summary judgment. The parties had full opportunity to present evidence and arguments to the Board. Based upon a thorough review of the record, the Board makes the following findings and hereby dismisses the instant complaint and defers the matter to arbitration.

On October 4, 1995, Easley was suspended for four days for allegedly harassing and intimidating her co-workers. Thereafter, on December 5, 1996, Easley was terminated for failing

to return to work after 12 months on leave without pay. Although the suspension was later rescinded rendering the grievance allegedly moot, the Union filed a notice to arbitrate the suspension grievance. The Union also grieved Easley's termination and at the Step 3 meeting, the Union requested several MID reports from the Attorney General's Office. Respondent initially stated that it did not possess the reports and would not obtain the reports because they were irrelevant to the termination grievance. At a settlement conference held on July 16, 1997, the HGEA requested that Respondent review the report and pursuant to such request, Respondent obtained and reviewed the second report. After the grievance was denied, the HGEA filed its request to arbitrate Easley's termination and filed the instant complaint for the disclosure of documents.

The HGEA seeks two MID investigative reports, MID Report No. 94-653-H, which was completed and closed on January 31, 1995 and MID Report No. 95-670-H, which was completed and closed on December 23, 1996. According to Respondent's counsel, he conferred with the MID and the first report pertains to alleged embezzlement of patients' trust accounts at Hilo Medical Center and was never produced to any person outside of the Attorney General's Office. The second report pertains to various other issues identified by the MID and a copy of the second report was given to the Hawaii Health Systems Corporation's counsel subsequent to completion.

DHRD contends that the disclosure of the reports would frustrate a legitimate government function pursuant to § 92F-13, HRS, i.e., the enforcement of medicaid fraud cases; the reports are

irrelevant to the grievances; and the reports are not in the possession of the Respondent. DHRD also contends that Complainant failed to exhaust its contractual remedies prior to filing the instant complaint before the Board. DHRD argues that the alleged violation of the Unit 09 contract for not disclosing several reports would most appropriately be addressed by the arbitration process. Since Complainant failed to process a grievance for an alleged violation of Article 14, DHRD contends that the instant complaint should be dismissed. DHRD contends that it neither violated Article 14 of the contract nor §§ 89-13(a)(5) and (8), HRS, and as a matter of law, the instant complaint should be dismissed.

In opposition to DHRD's motion for summary judgment, the HGEA contends that DHRD's agent, Florence Maeda, has control over the reports because she previously obtained the second report from the Hawaii Health Systems Corporation. In any event, the HGEA argues that if the Board grants the HGEA's motion to amend the complaint, the party with control over the report would be properly before the Board. The HGEA also contends that the documents sought are relevant to the grievance because the HGEA contends that Easley was discharged in retaliation for informing the Department of the Attorney General of possible embezzlement of patient accounts from Hilo Medical Center and for cooperating with the Department of the Attorney General in the investigation. The HGEA contends that the mention of Easley's name in the report would indicate that the Employer had knowledge of Easley's participation. The HGEA further contends that Chapter 92F, HRS, does not bar disclosure of the

reports and that the matter should not be deferred to arbitration since the Board has previously held that it has concurrent jurisdiction over claims of breaches of contract and will exercise its discretion on a case-by-case basis. Since the instant case involves alleged statutory violations, the HGEA contends that the instant case should not be deferred.

Based on a thorough review of the record and consideration of the arguments presented, the Board hereby grants Respondent's motion to dismiss the complaint and defers this matter to the arbitrator. The Board finds that it has jurisdiction over the statutory and contractual violations at issue in this case and has the discretion to defer the matter to the contractual grievance process. State of Hawaii Organization of Police Officers, 5 HLRB 597 (1996). It is clear from the facts presented, that the only issue before the Board is the employer's refusal to produce documents during the grievance procedure. Thus, the Board finds that the resolution of the contractual violation of § 14.A and the ultimate disclosure of the documents at issue will depend on the relevance of the documents to the Grievant's termination and to the HGEA's investigation of the grievance. As Easley's termination is before an arbitrator for a determination of just cause, the Board in this case concludes that the arbitrator is in the best position to make the determination on relevance. Accordingly, the Board, will dismiss the § 89-13(a)(5), HRS, allegation against DHRD for failure to exhaust the grievance procedure. The prohibited practice charge alleging a violation of § 89-13(a)(8), HRS, is conditionally dismissed, subject to a motion to reopen if the

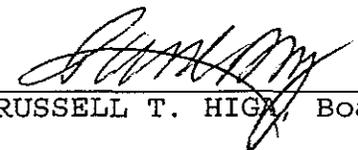
employer is unwilling to settle this dispute through the grievance arbitration procedure in the Unit 09 contract on the basis that the time limits for filing a grievance has expired. The Board notes that while there is a time limit for filing a grievance in the Unit 09 contract, it can be waived by the employer.

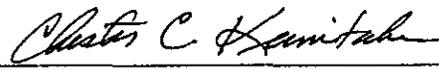
As the Board's decision does not turn on the possession or custody of the reports sought by the Union and the granting of the HGEA's motion to add Benjamin Cayetano and the Department of the Attorney General as Respondents would not affect the outcome of this case, the Board finds it unnecessary to rule on the HGEA's motion to amend complaint to add additional parties.

DATED: Honolulu, Hawaii, September 22, 1999.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
CHESTER C. KUNITAKE, Board Member

Copies sent to:

Charles K.Y. Khim, Esq.  
Kris N. Nakagawa, Deputy Attorney General  
Joyce Najita, IRC