

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-01-125
)	
MICHAEL L. LAST,)	ORDER NO. 1887
)	
Complainant,)	ORDER DENYING RESPONDENT'S
)	MOTION FOR ATTORNEY'S FEES
and)	AND DENYING COMPLAINANT'S
)	MOTION FOR COSTS
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Respondent.)	

ORDER DENYING RESPONDENT'S MOTION FOR ATTORNEY'S
FEES AND DENYING COMPLAINANT'S MOTION FOR COSTS

On May 13, 1996, Complainant MICHAEL L. LAST (LAST) filed the instant prohibited practice complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) with the Hawaii Labor Relations Board (Board). LAST alleged that on May 6, 1996, he obtained a copy of an article about him in the November/December 1995 issue of Malama Pono, a newsletter published and distributed by the UPW to its members. LAST contended that the article contained false statements and the Union thereby violated § 3.01 of the Unit 01 collective bargaining agreement (contract) and § 89-13(b)(5), Hawaii Revised Statutes (HRS).

Thereafter, on May 24, 1996, the UPW filed a motion to dismiss the instant complaint or in the alternative, for summary judgment with the Board. The UPW contended that the complaint failed to state a claim for relief and it was time-barred. Alternatively, the UPW contended that there were no genuine issues

of fact in dispute and the UPW was entitled to judgment as a matter of law.

By Order No. 1775, dated September 16, 1999, the Board granted the UPW's motion to dismiss the complaint. The Board held that the article in the Union newsletter did not constitute discrimination under the contract.

On September 27, 1999, the UPW filed a motion to award Respondent attorney's fees with the Board. The UPW contends that the Union is entitled to attorney's fees because the instant complaint and LAST's opposition to the UPW's motion to dismiss were patently frivolous. The UPW contends that LAST's conduct in this case forecloses access to the Board for meritorious cases and is contrary to the purpose of Chapter 89, HRS. The UPW further argues that LAST brought this complaint against the UPW for improper purpose and his complaint and opposition to the UPW's motion to dismiss were without proper basis in fact or warranted by applicable law.

In its five-page memorandum filed in support of the motion, the UPW admitted that normally litigation expenses are not recoverable by either party in proceedings before the labor board, but argued that the reimbursement of attorney's fees and costs for frivolous litigation brought by a party is clearly authorized and appropriate. The UPW relied upon federal labor law cases, i.e., Care Manor of Farmington, 318 NLRB 330, 150 LRRM 1033 (1995); Heck's Inc., 215 NLRB 765, 88 LRRM 1049 (1974); and Tiidee Products, 194 NLRB 1234, 1236-1237, 79 LRRM 1175 (1972) as authority for its contentions. The UPW argued that LAST is responsible for bringing more than one frivolous action against the

UPW and has decided to crowd the docket of the Board with meritless claims. The UPW also cites to writings on envelopes to counsel allegedly by LAST to support its contentions that LAST has an improper purpose for bringing the complaints. The UPW further argues that unless the Board takes appropriate action, LAST will continue to bring frivolous complaints against the Union so that the Union pays out more than what will be deducted from LAST's paycheck as a valid agency fee. Thus, the UPW requested fees in the amount of \$1,925.00.

On October 4, 1999, LAST filed a motion to dismiss Respondent's motion for fees with the Board. LAST contends that Respondent's memorandum contains allegations which are not supported by the facts or are otherwise false; that Respondent is attempting to restrict Complainant from exercising his constitutional rights; and is attempting to restrict Complainant from lawfully seeking redress against Respondent for matters which Complainant believes to be true.

Also on October 4, 1999, Complainant filed a motion to award fees and costs with the Board. Complainant requested reasonable costs because of Respondent's malice and disregard for the rights and privileges of Complainant and the disregard for the Board's Administrative Rules.

After considering the record before the Board and the authorities cited by the UPW, the Board denies both the UPW's motion for attorney's fees and LAST's motion for costs. The Board is not persuaded by the authorities cited by the UPW that the Union is entitled to fees for successfully defending a complaint which it claims to be frivolous. In addition, with respect to LAST's motion

for costs, LAST fails to provide any basis for an award of costs where he did not prevail in the instant action.

In Order No. 1865, dated May 16, 2000, in Case No. CU-01-113, Michael L. Last, the Board held, based on the same arguments advanced in this case that the UPW was not entitled to attorney's fees against Complainant because this jurisdiction follows the rule that attorney's fees are not recoverable unless authorized by statute, rule of court, stipulation, agreement, or Hawaiian precedent. Ariyoshi v. HPERB, 5 Haw.App. 533, 704 P.2d 917 (1985). The UPW failed to cite any statute, rule of court, stipulation, agreement or Hawaiian precedent as authority in its request for fees. The Board also declined to adopt the National Labor Relations Board's (NLRB) holding in Tiidee Products, Inc., 194 NLRB 1234, 79 LRRM 1175 (1972), because of the differences in the underlying statutes and the policies considered by the NLRB and the appellate courts. Moreover, the Board is reluctant to award fees in a case of this nature as it may have a chilling effect on employee complainants and foreclose the filing of meritorious claims against the union or employer with the Board under Chapters 89 and 377, HRS.

Assuming arguendo, however, that the Board has the authority to award attorney's fees to Respondent for successfully defending claims filed against them, the Board finds that the UPW failed to prove that the instant complaint was frivolous. In Coll v. McCarthy, 72 Haw. 20, 804 P.2d 881 (1991), the Court defined a "frivolous" claim or defense justifying an award of fees as being manifestly and palpably without merit so as to indicate bad faith on the pleader's part.

Here, LAST appears pro se and filed the instant complaint because he objected to what he believed were false statements made by the UPW about him in the Union newsletter. LAST contended that such statements constituted discrimination. After reviewing the article, the Board noted that the article was "one-sided" because it focused on the dismissal of the alleged violations and ignored the finding of a violation. The Board concluded that the article was not discriminatory and that the UPW presented its side of a controversy in the newsletter which could be considered "self-serving and slanted towards the Union's position." If LAST found the statements to be false, the Board noted that LAST was free to take legal action against the Union. Given the Board's findings, the Board, in its discretion, does not find LAST's complaint to be patently frivolous on the arguments presented.

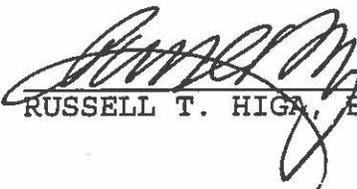
Based on the foregoing, the Board hereby denies Respondent's motion for an award of attorney's fees and Complainant's motion for costs.

DATED: Honolulu, Hawaii, June 20, 2000.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

Copies sent to:

Michael L. Last
Herbert R. Takahashi, Esq.
Joyce Najita, IRC