

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-05-448
)	
JOHN EDWARD MUSSACK,)	ORDER NO. 1892
)	
Complainant,)	ORDER DENYING RESPONDENTS'
)	MOTION FOR SUMMARY JUDG-
and)	MENT AND GRANTING COM-
)	PLAINANT'S MOTION TO AMEND
LEA ALBERT, WENDELL STASZKOW and)	COMPLAINT
DEPARTMENT OF EDUCATION, Wind-)	
ward District, Office of the)	
District Superintendent, State)	
of Hawaii,)	
)	
Respondents.)	
)	

ORDER DENYING RESPONDENTS' MOTION
FOR SUMMARY JUDGMENT AND GRANTING
COMPLAINANT'S MOTION TO AMEND COMPLAINT

On March 23, 2000, Complainant JOHN EDWARD MUSSACK (MUSSACK) filed a complaint with the Hawaii Labor Relations Board (Board) against the above-named Respondents alleging, *inter alia*, that Respondents violated § 89-13(a)(8), Hawaii Revised Statutes (HRS) by failing to process his grievance in accordance with the provisions of the bargaining unit 05 contract. MUSSACK alleged that he was prejudiced by the delays because he was subjected to further harassment by his principal.

On April 28, 2000, Respondents, by and through their counsel, filed a Motion to Dismiss and/or for Summary Judgment with the Board. Respondents contend that the instant complaint should be dismissed because Complainant failed to exhaust his contractual remedies, failed to name indispensable parties, and in the

alternative, that there are no genuine issues of material fact in dispute and Respondents are entitled to judgment as a matter of law.

On May 9, 2000, Complainant filed a motion to amend the instant complaint with the Board. Complainant seeks to add Paul G. LeMahieu as a Respondent to the complaint and add the allegations that Complainant filed a Step II grievance on March 23, 2000. Complainant further alleges that a meeting on the grievance was scheduled for June 15, 2000 which is inconsistent with Article V of the applicable contract.

Also, on May 9, 2000, MUSSACK filed a Memorandum against Respondents' Motion to Dismiss and/or for Summary Judgment with the Board. Complainant contends, inter alia, that the instant complaint is not moot since he seeks to amend the complaint to add the Step II hearing as an additional cause of action. In addition, MUSSACK claims that the Board has jurisdiction over the complaint because the Respondents are denying him access to the internal grievance process. MUSSACK disputes Respondent LEA ALBERT'S (ALBERT) declaration that she had no reason to doubt Dr. Davidson's claim that there was no informal discussion of the grievance which prompted the request for Complainant to pursue an informal discussion prior to filing a formal grievance.

The Board conducted a hearing on the Respondents' motion to dismiss and/or for summary judgment on May 11, 2000. Respondents' counsel represented that he had just received MUSSACK'S motion to amend the complaint and would not agree to have the motion heard.

During the hearing, MUSSACK represented that he filed a grievance on his own behalf on or about January 24, 2000 which the record indicates was received on January 26, 2000. The grievance was returned to MUSSACK by ALBERT, by letter dated January 28, 2000, because no informal discussion was held with the principal on the matter. MUSSACK disputed the principal's representations about the lack of an informal discussion. MUSSACK claims that his grievance was improperly returned by ALBERT and that the subsequent delays were management's attempts to frustrate the grievance process.

As the Complainant alleges that the Respondents are frustrating the grievance process, the Board will take jurisdiction over the instant complaint without the Complainant exhausting the grievance procedure. In addition, the Board finds that there are disputed issues of fact as to whether the Complainant's grievance was improperly returned by ALBERT and whether the delays in the grievance process were due to the Respondents' actions. Accordingly, the Board hereby denies the Respondents' motion for summary judgment.

With regard to the Complainant's motion to amend the complaint, Respondents did not file any opposition to the Complainant's motion. The Board therefore, pursuant to Administrative Rules § 12-42-43, grants the amendment of the instant complaint. Complainant is directed to file forthwith an Amended Prohibited Practice Complaint conforming to his allegations represented in his motion filed on May 9, 2000.

JOHN EDWARD MUSSACK and LEA ALBERT; et al.

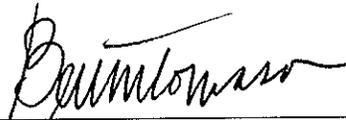
CASE NO. CE-05-448

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ORDER DENYING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND GRANTING COMPLAINANT'S MOTION TO AMEND COMPLAINT

DATED: Honolulu, Hawaii, June 27, 2000.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

Copies sent to:

John Edward Mussack

James E. Halvorson, Deputy Attorney General

Joyce Najita, IRC