

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CU-05-78
	)	
ROBERT H. GARNER,	)	DECISION NO. 334
	)	
Complainant,	)	FINDINGS OF FACT, CON-
	)	CLUSIONS OF LAW AND
and	)	ORDER
	)	
HAWAII STATE TEACHERS	)	
ASSOCIATION,	)	
	)	
Respondent.	)	
_____	)	

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On August 26, 1991, ROBERT H. GARNER (Complainant or GARNER) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against the HAWAII STATE TEACHERS ASSOCIATION (HSTA or Union). Complainant alleged that the HSTA breached its duty of fair representation when it filed a grievance on his behalf, then resolved and withdrew the grievance without terms favorable to the Complainant; and failed to provide him with a copy of the Department of Education (DOE)'s written response explaining how the grievance was resolved.

A hearing was held on October 3, 1991 at which time all parties were afforded full opportunity to call and cross-examine witnesses, submit exhibits and present oral arguments. Post-hearing briefs were submitted by the Complainant and the HSTA on November 4, 1991.

Upon a thorough review of all exhibits, testimony at the hearing, and arguments made orally and in writing, the Board makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

Complainant is a former employee of the DOE and was a member of HSTA and bargaining unit 5.

The HSTA is the exclusive representative as defined in Section 89-2, Hawaii Revised Statutes (HRS), of employees in bargaining unit 5.

By letter, dated May 14, 1990, Complainant was notified of his termination from employment by the DOE. Complainant's (C's) Exhibit (Ex.) 1.

The HSTA filed a grievance with the DOE appealing his dismissal from employment. Id.

The DOE, the HSTA, and Complainant reached a settlement of the grievance which culminated in a Memorandum of Understanding dated September 25, 1990. The written agreement provided, in part, for the following: 1) the DOE would compensate Complainant the sum of \$1,000.00; and 2) documents pertaining to his employment and grievance file would not be released to any person outside the DOE, except for Employer's legal counsel or an authorized agent of the Employer or pursuant to a court order or subpoena. Id.

On October 23, 1990, Complainant submitted an application for unemployment insurance benefits with the Department of Labor and Industrial Relations (DLIR). Id.; Respondent's (R's) Ex. 1.

The DLIR commenced an inquiry into Complainant's employment record with the DOE, which initially refused to provide documents to the DLIR. C's Ex. 1.

On November 30, 1990, the DOE released the documents pursuant to Complainant's authorization on his application for unemployment insurance benefits. R's Ex. 1. The information included a copy of his dismissal notice. C's Ex. 1.

Complainant was denied unemployment compensation benefits.

On December 14, 1990, HSTA Uniserv field representative Mary Cochran filed a grievance with the DOE as an "agent for Robert L. Garner". The HSTA alleged that the information contained in the grievance file of Robert Garner was released to a state agency outside of the DOE. The HSTA contended that the DOE violated Articles V (I) and XXI of the Unit 5 collective bargaining agreement (contract). As a remedy, the grievance sought to have the DOE rescind the grievance information released to the DLIR and allow for unemployment benefits based on non-renewal of Complainant's employment contract. Board Ex. 1.

By letter dated February 11, 1991 to Ms. Emiko Sugino, DOE, Cochran, on behalf of the HSTA, withdrew the grievance filed on December 14, 1990. The letter further recites the following understanding between the DOE and the HSTA:

1. Information contained in a teacher's grievance file is separate from information contained in the personnel file;
2. Information contained in a teacher's grievance file is not subject to



release outside of the Department of Education or any of its agents at all times;

3. That the facts of Robert Garner's dispute with the State Departments of Labor and Education so far as the Department of Education is concerned falls outside of the protection of paragraph 2, supra.

R's Ex. 2.

Complainant requested that the HSTA to release a copy of the written response from the DOE. Board Ex. 1.

By letter dated June 6, 1991, Joan Lee Husted, HSTA Director of Programs, informed the Complainant that the HSTA grievance concerning the separation of grievance material from personnel files was not a grievance filed on his behalf. Rather, the grievance was filed on behalf of all teachers in the State and that material within that grievance file would not be distributed to anyone outside of the HSTA. The letter further states that the resolution of the grievance was between the HSTA and the DOE. Board Ex. 1.

#### DISCUSSION

The Complainant alleges that the HSTA violated Section 89-13, HRS. Although Complainant does not specify the statutory subsection alleged to have been violated, since the complaint was filed against an exclusive representative, Section 89-13(b), HRS, would be applicable.

Section 89-13(b), HRS, states:

- (b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9;
- (3) Refuse to participate in good faith in the mediation, fact-finding or arbitration procedures set forth in section 89-11;
- (4) Refuse or fail to comply with any provision of this chapter; or
- (5) Violate the terms of a collective bargaining agreement. (Emphasis added).

The gravamen of GARNER's complaint is that the HSTA breached its duty of fair representation when it filed a grievance on his behalf, then resolved and withdrew the grievance without terms favorable to the Complainant; and failed to provide him with a copy of the DOE's written response explaining how the grievance was resolved.

Section 89-8(a), HRS, sets forth the Union's duty of fair representation and provides, in part:

As exclusive representative, it shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. . . (Emphasis added).

Section 89-2, HRS, defines "exclusive representative" as an employee organization which has been certified to represent all employees in an appropriate bargaining unit. The HSTA has been certified to represent employees in bargaining unit 5. Thus, the

HSTA owes a duty of fair representation to all employees who occupy positions assigned to bargaining unit 5. As such, Complainant's allegations of a breach of the Union's duty of fair representation presents allegations of a Section 89-13(b)(4), HRS, violation.

The HSTA contends that there can be no breach of the duty of fair representation where no duty exists. At the time the grievance was filed on December 14, 1990, Complainant was no longer an employee of the DOE, and consequently not a statutory dues paying member of bargaining unit 5.

The threshold issue is whether the Union's duty of fair representation expired when Complainant's initial grievance contesting his termination was resolved through a settlement agreement, or whether the duty extends to matters involving enforcement of that agreement.

When the Union files a grievance with the Employer on behalf of an employee, the Union undertakes a duty to fully and fairly represent the interests of the employee. If the grievance is resolved or settled by means of a written agreement, the parties are bound by the terms of the agreement. If the status of the employee somehow changes at a later date, e.g., he is terminated, resigns, retires, transfers to another bargaining unit or to an excluded position, the Union which represented him in the settlement agreement, is under a continuing obligation to represent him to enforce its terms. If the Employer subsequently breaches the agreement, the Union is compelled to maintain an action to enforce terms of the agreement allegedly breached unless, of course, the employee waives this duty expressly or impliedly.



The HSTA further contends that the grievance filed on December 14, 1990 was a class grievance filed on behalf of all teachers in the State and not specifically on behalf of Complainant. Therefore, HSTA alleges that the Union owed no duty to the Complainant to apprise him of the settlement or to provide copies of the file to him.

In reviewing the conduct of the HSTA, the Board finds that the grievance was initially filed on behalf of GARNER and not on behalf of a class of teachers.

On November 30, 1990, the DOE allegedly violated the terms of the settlement agreement when it released information contained in Complainant's file to the DLIR. While the Board makes no determination as to whether the DOE did in fact violate the terms of the settlement agreement, it is clear that Complainant went to the HSTA and expressed his concerns.

On December 14, 1990, Cochran filed a bargaining unit 5 grievance form with the DOE. The form reveals that the grievance is from "Hawaii State Teachers Assn. Agent for Robert L. Garner". It further recites a specific violation date of November 30, 1990, which corresponds to the date the DOE allegedly violated the agreement when it released the information from Complainant's file. In addition, the "Nature of the Grievance" portion of the form pertains specifically to the Complainant's situation: "Information contained in grievance file of Robert Garner was released to state agency outside of the Department of Education."

Finally, the remedy requested in the grievance states:

1. Rescind information concerning grievance released to State of Hawaii, Department of Labor & Industrial Relations.
2. Allow for unemployment benefits based on non-renewal of employment contract.

Based upon the foregoing, the Board is satisfied that the grievance, dated December 14, 1990, filed by the HSTA with the DOE was for and on behalf of Complainant, and not a class of teachers in the State.

Once the grievance was filed, the Union owed a duty to fully and fairly represent the Complainant. Representation includes providing information to the Complainant on the status and progress of the pending grievance.

The Board concludes that the Complainant established by a preponderance of the evidence that the HSTA breached its duty of fair representation by refusing to provide him with information concerning his grievance.

A breach of the duty of fair representation occurs when the exclusive representative's conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. Vaca v. Sipes, 386 U.S. 171, 190, 87 S.Ct. 903, 916, 17 L.Ed.2d 842, 857, 64 LRRM 2369, 2376 (1967). "Arbitrary" is defined as "perfunctory." Id. at 191. This standard was discussed by the Fourth Circuit in Griffin v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, 469 F.2d 181, 183, 81 LRRM 2485, 2486 (4th Cir. 1972):

. . . Without any hostile motive of discrimination and in complete good faith, a union may nevertheless pursue a course of action or inaction that is so unreasonable and arbitrary as to constitute a violation of the duty of fair representation. A union may refuse to process a grievance or handle the



grievance in a particular manner for a multitude of reasons, but it may not do so without reason, merely at the whim of someone exercising union authority. (Emphasis added). (cited in Yamaguchi, 2 HPERB 656 at 675.) Caldeira and Malapit, 3 HLRB 523 (1989) at 539.

While the Complainant sought a copy of the DOE's written grievance response to the HSTA, the record indicates that no such document exists. However, at a minimum, Complainant was entitled to receive a copy of the February 11, 1990 letter from Cochran to Emiko Sugino of the DOE. Furthermore, he was entitled to information from the HSTA, through verbal and/or written communication, concerning ongoing discussions and possible settlement of his grievance. If, after investigating the matter the HSTA determined that it should not continue to represent GARNER's interests this should have been communicated to him.

Instead of providing the requested information, however, the HSTA acted in an unreasonable and arbitrary manner, refusing to provide information other than to say that the grievance was never an individual grievance but a class grievance and that it was resolved and settled.

Finally, by letter dated June 6, 1991, Husted wrote to the Complainant:

"The Association grievance concerning the separation of grievance material from personnel files was not a grievance filed on your behalf. It was a grievance filed by the Association on behalf of all the teachers in the state. For that reason the material within the grievance file will not be distributed to anyone outside of the Association. The resolution of the grievance is between the Association and the employer."

The HSTA's repudiation of its duty to the Complainant, after it initially and correctly filed the grievance on his behalf, further demonstrates the Union's unreasonable and arbitrary conduct in its treatment of the Complainant.

With respect to the manner in which the grievance was handled, since there is no copy of the settlement agreement in the record the Board is unable to determine whether the Employer breached the agreement. As such, the Board is unwilling to speculate on the outcome of the grievance had the Union pursued the matter, and is without sufficient evidence to conclude that the Union committed a further breach of duty when it resolved and withdrew the grievance.

#### CONCLUSIONS OF LAW

Pursuant to Sections 89-5 and 89-13, HRS, the Board has jurisdiction over this complaint.

The Board finds that the HSTA owed a continuing duty of fair representation to the Complainant, pursuant to Section 89-8(a), HRS.

The Board further finds that the HSTA acted in an unreasonable and arbitrary manner, thereby breaching its duty of fair representation, when it failed to keep Complainant informed about the progress and status of his grievance, and repudiated its duty, thereby committing a prohibited practice under Section 89-13(b)(4), HRS.

The record is devoid of sufficient evidence for the Board to make a finding as to whether Complainant's grievance is

meritorious, and is therefore unable to determine whether the HSTA committed a further breach of duty when it resolved and withdrew the grievance.

ORDER

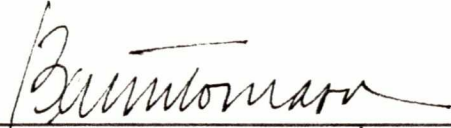
The HSTA shall cease and desist from refusing to represent GARNER in the enforcement of his prior settlement. If the Union determines that his case is unmeritorious and should not be pursued, this fact and the bases of its decision should be communicated to GARNER.

The HSTA is directed to provide the Complainant with copies of all correspondence with the DOE concerning his grievance.

The HSTA shall immediately post copies of this decision in conspicuous places on the bulletin boards at the worksites where the employees of the bargaining unit assemble, and leave such copies posted for a period of sixty (60) consecutive days from the initial date of posting.

DATED: Honolulu, Hawaii, April 2, 1993.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
GERALD K. MACHIDA, Board Member

  
RUSSELL T. HIGA, Board Member



ROBERT H. GARNER v. HAWAII STATE TEACHERS ASSOCIATION; CASE NO.  
CU-05-78  
DECISION NO. 334  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Copies sent to:

Robert H. Garner  
Sean Kim, Esq.  
Joyce Najita, IRC  
Robert Hasegawa, CLEAR  
State Archives  
Publications Distribution Center  
University of Hawaii Library  
Richardson School of Law Library  
Library of Congress