

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

SUSAN ANDERSON,

Complainant,

and

MEREDITH MAEDA, Principal, Castle High
School, Department of Education, State of
Hawaii,

Respondent.

CASE NO. CE-05-458

DECISION NO. 428

FINAL DECISION ADOPTING
HEARINGS OFFICER'S PROPOSED
FINDINGS OF FACT, CONCLU-
SIONS OF LAW, AND ORDER

In the Matter of

SUSAN ANDERSON,

Complainant,

and

SAM MOORE and JOAN HUSTED, Hawaii
State Teachers Association,

Respondents.

CASE NO. CU-05-176

FINAL DECISION ADOPTING HEARINGS OFFICER'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On September 11, 2001, the Hearings Officer filed her Proposed Findings of Fact, Conclusions of Law, and Order which recommended that the instant complaints be dismissed. As the time limit for the filing of exceptions to the proposed order has passed without exceptions being filed by any party, the Hawaii Labor Relations Board hereby adopts the Hearings Officer's Proposed Findings of Fact, Conclusions of Law, and Order and dismisses the instant complaints.

DATED: Honolulu, Hawaii, October 3, 2001

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair

SUSAN ANDERSON v. MEREDITH MAEDA; SUSAN ANDERSON v. SAM MOORE and
JOAN HUSTED
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PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

On November 15, 2000, SUSAN ANDERSON (ANDERSON) filed a prohibited practice complaint against MEREDITH MAEDA (MAEDA), Principal, Castle High School, Department of Education, State of Hawaii with the Hawaii Labor Relations Board (Board) in Case No. CE-05-468. ANDERSON contends that she was not rehired as a special education teacher because she pursued a school-level grievance and was retaliated against. ANDERSON contends that MAEDA engaged in or is engaging in prohibited practices in violation of Hawaii Revised Statutes (HRS) § 89-13.¹

¹In her complaint against MAEDA, ANDERSON alleged violations of:

§ 89-13 Prohibited practices; evidence of bad faith including
a)#4, a)#7, a)#8 and b)#4 and #5; & a) #1 & a)#2.

However, in her closing arguments, ANDERSON contends only that MAEDA

On the same day, ANDERSON filed a complaint against SAM MOORE (MOORE) and JOAN HUSTED (HUSTED), Hawaii State Teachers Association (collectively HSTA or Union) with the Board in Case No. CU-05-176. ANDERSON alleged that the Union did not properly represent her when she was not re-hired as a special education teacher at Castle High School. ANDERSON contends that the HSTA has engaged in or is engaging in prohibited practices in violation of HRS § 89-13.²

In Order No. 1958, dated November 17, 2000, the Board consolidated the complaints for disposition pursuant to Hawaii Administrative Rules (HAR) § 12-42-8(g)(13).

violated HRS § 89-13(a)(4). Thus, the Hearings Officer views ANDERSON's complaint against MAEDA as alleging violations of HRS § 89-13(a)(4), which provides:

§89-13 Prohibited practices, evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

* * *

- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;

²The Hearings Officer views ANDERSON's complaint against the Union as alleging a breach of the Union's duty of fair representation provided in HRS § 89-8(a) which constitutes a violation of HRS § 89-13(b)(4).

HRS § 89-13(b)(4) provides:

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

* * *

- (4) Refuse or fail to comply with any provision of this chapter;

HRS § 89-8(a) provides, in part:

The employee organization which has been certified by the board as representing the majority of employees in an appropriate bargaining unit shall be the exclusive representative of all employees in the unit. 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.

Thereafter in Order No. 1968, dated November 30, 2001, the Board appointed the undersigned Hearings Officer to conduct a hearing on the instant complaints. The issues framed by the parties are:

1. Whether MEREDITH MAEDA, Principal, Castle High School, Department of Education, State of Hawaii, engaged in a prohibited practice against Ms. Anderson when she was not re-hired as a special education teacher at Castle High School because she pursued a grievance and is being retaliated against.
2. Whether SAM MOORE and JOAN HUSTED, Hawaii State Teachers Association, engaged in a prohibited practice against Ms. Anderson and failed to properly represent her when she was not re-hired as a special education teacher at Castle High School.

At the hearings conducted on December 21, 2000 and February 1, 2001, Shawn A. Luiz, Esq., represented Complainant ANDERSON; Deputy Attorney General Francis Paul Keeno represented Respondent MAEDA, and Vernon Yu, Esq., represented Respondent HSTA. The parties were ably represented and had full opportunity to present their evidence and arguments. On March 15, 2001, the parties submitted post-hearing briefs.

Based upon a thorough review of the record in this case and consideration of the arguments presented, the Hearings Officer makes the following proposed findings of fact, conclusions of law, and order.

PROPOSED FINDINGS OF FACT

1. Complainant ANDERSON was at all relevant times, a temporary special education teacher at Castle High School, Department of Education (DOE), State of Hawaii and a public employee within the meaning of HRS § 89-2. ANDERSON was a member of bargaining unit 05 while she was employed at Castle High School.
2. Respondent MAEDA is the principal of Castle High School and a representative of the public employer within the meaning of HRS § 89-2.
3. Respondent MOORE is the HSTA Uniserv representative for the Windward District and represents the employee organization within the meaning of HRS § 89-2.

4. Respondent HUSTED is the Executive Director of the HSTA and represents the employee organization within the meaning of HRS § 89-2.
5. The HSTA is an employee organization and the certified exclusive representative, within the meaning of HRS § 89-2, of employees in bargaining unit 05.
6. Former Castle High School principal Mrs. Teruya hired ANDERSON as a special education teacher on a Temporary Teacher Appointment Agreement (TTAA or agreement) from February 3, 1999 to August 17, 1999. Mrs. Teruya subsequently hired ANDERSON on a TTAA from August 18, 1999 to August 17, 2000 to teach four classes of special education English. In the fall of 1999, MAEDA replaced Mrs. Teruya as principal.
7. According to the agreement, the appointee is a temporary teacher in the public schools "with no commitment for employment continuance beyond the expiration date indicated." ANDERSON qualified as a Type A teacher - does not meet licensing requirements and/or position qualifications. In accordance with the Special Provisions of the TTAA, ANDERSON was required by the DOE to actively pursue the completion of a teacher education program in each year, for a maximum of three years.
8. According to the DOE's General Information on Temporary Teacher Appointment Agreement:

EMPLOYMENT None. Employed only for the period indicated. Type A -

GUARANTEE: No priority for reemployment unless holding previously accrued probation service credit. ...

* * *

PROBATION: None for Type A Status. ...

TENURE: None for Type A Status. ...
9. The DOE requires the filling of teacher vacancies on a priority basis. The General Priority Order for filling teacher vacancies is as follows:
 1. Unassigned tenured teachers
 2. Tenured teachers seeking transfer during the Assignment and Transfer Period
 3. Probationary teachers
 4. Project RISE graduates (Special Education)

5. Offer letter applicants in the Department's designated shortage teaching areas
 6. Qualified new hire applicants who have met licensing requirements and tenured teachers who need practicum placements
 7. Tenured teachers with recognized areas of teacher preparation in one of the specialist areas (SPED/counselors/librarians) completed after the Assignment and Transfer Period
 8. Teacher trained/No PRAXIS
 9. Degree, not teacher trained/no SATEP
-
10. In order to fill a teacher vacancy, the higher priority level must be exhausted before considering candidates with a lower priority level.
 11. ANDERSON has a bachelor of science degree in anthropology and a master's degree in English literature. ANDERSON does not have an undergraduate degree in education and thus is not considered to be "teacher-trained."
 12. ANDERSON is enrolled in the post-baccalaureate certificate in secondary education program at the University of Hawaii with a dual preparation in special education and secondary English. ANDERSON completed her course work in May 2000 but did not pass the PRAXIS which is a battery of tests required for graduation. Specifically, she did not pass the math PRAXIS subtest and a test on Subject Assessments - Special Education. ANDERSON thus does not have a teaching degree from a State-Approved Teacher Education Program (SATEP). She is therefore considered by the DOE as having a hiring priority of 9, having a "degree, not teacher trained, no SATEP."
 13. In the fall of 1999, ANDERSON learned from an in-service presentation by the Union that special education funds should be allocated to each classroom. She spoke to her department head and other special education teachers as well as Castle HSTA grievance representative Willis Motooka (Motooka) about the lack of the designated funds. Motooka raised questions of funding with HSTA and mentioned it to MAEDA.
 14. ANDERSON never raised the issue with MAEDA and MAEDA was not aware that ANDERSON had questioned the allocation of funding. Ultimately, the HSTA filed a statewide class grievance on the funding which was eventually resolved by the DOE. MAEDA was not involved with special education funding and did not know who was involved in the class grievance.

15. Thereafter, ANDERSON failed to complete a student's qualifications on a registration card and Vice Principal Larry Biggs (Biggs) met with her and her department head to discuss the matter. Biggs wrote a summary of the conference which was included in ANDERSON's personnel file.
16. ANDERSON considered the summary of conference to be derogatory and Motooka assisted her in filing a school-level grievance against Biggs to remove the allegedly derogatory summary of conference document from her personnel file.
17. In considering ANDERSON's grievance, MAEDA indicated that if she corrected the card and documented it, he would delete the summary from her file. ANDERSON completed the card for the student as instructed and MAEDA resolved the grievance by rescinding the summary of conference. ANDERSON thereupon withdrew her grievance. Later in June 2000, Motooka and ANDERSON reviewed her file and confirmed that the summary was no longer there.
18. Sometime prior to the end of the school year, Kevin Ham, a teacher at Castle High School and Special Education department head, told ANDERSON that she would be hearing from the school in the summer, she should relax, and need not worry about a job. He also told her she could store her things in a classroom for the summer.
19. ANDERSON told MAEDA that she wanted to be rehired and he told her to make sure she was not on the DOE's N-list (No-hire list). ANDERSON called the District Office which indicated that she was not on the N-list.
20. As principal, MAEDA has the authority to hire teachers at Castle High School but must hire from the priority list provided by the DOE.
21. Castle had two special education (English) teacher vacancies for the 2000-2001 school year.
22. In the spring of 2000, MAEDA hired Muriel Clack (Clack) who completed the SATEP in special education and was an offer letter teacher recruited from the mainland pursuant to the Felix Consent Decree. As such, Clack was a priority level 5.
23. In June or July of 2000, MAEDA hired William Lee (Lee) to teach special education English. Lee had a degree in secondary English from an SATEP and thus was teacher-trained. Lee had not completed certain subtests of the PRAXIS but was a priority level 8 because he was teacher trained. Lee was

subsequently fully certified and fully licensed. Lee was the only referral on the list at the priority being hired and thus the only candidate for the job.

24. MAEDA never considered ANDERSON for the special education vacancies because her name was not referred to him on the priority list. MAEDA hired candidates with a higher priority level than ANDERSON to fill the two special education English vacancies.
25. During the summer, ANDERSON visited her parents out-of-state. When she returned she called the school and was told that her name was not on the list of teachers.
26. On August 22, 2000 after the semester began, ANDERSON called MOORE for assistance indicating she had just returned from the mainland, discovered she did not have a job at her school and needed to work. While ANDERSON represented that she was a probationary teacher, MOORE concluded from the conversation that she was not licensed and not a probationary teacher. MOORE understood that the reason ANDERSON was not rehired was because of her qualifications.
27. ANDERSON also indicated to MOORE that she had not notified the DOE that she had completed her course work or kept the DOE apprised of where she was when jobs became available. ANDERSON indicated that she had not communicated with her principal, the District or the State Office about reemployment; instead, she had relied upon her department head's statement that she would have a job. MOORE informed ANDERSON that her department head is not authorized to hire teachers.
28. ANDERSON speculated whether she was not rehired in retaliation for a problem with MAEDA in the previous year and MOORE responded that he had known MAEDA since he was a principal at Kailua in 1986 and had not known him to be that kind of person. ANDERSON did not explain the basis for her speculation and conceded that she did not ask MOORE to file a grievance. Transcript of hearing 12/21/00, p. 112.
29. MOORE explained her lack of reemployment rights as a priority 9 and offered to make sure that she was referred to job interviews. MOORE indicated he would try to get her referred for interviews and told ANDERSON to call Wendell Staszkw (Staszkw), regional personnel officer with the DOE Windward District.
30. MOORE also called Staszkw and asked him to refer ANDERSON for interviews for remaining teaching vacancies in the Windward District.

Staskow sent an e-mail to MOORE stating that he had sent ANDERSON out on interviews and subsequently informed MOORE that she had declined a position.

31. ANDERSON called Staskow on September 8, 2000 and informed him that she was not available for work until the second semester.
32. MOORE confirmed that teachers on a TTAA have no right to reemployment and that hiring someone with a higher priority would not violate the contract. Moreover, the nonrenewal of a TTAA is not grievable, unless a person of a lower priority was employed. MOORE testified that he would have filed a grievance if asked to and confirmed that ANDERSON never asked him to file a grievance. Further, she never explained the basis for her allegation of retaliation.
33. Several days later, ANDERSON called HUSTED describing herself as a probationary teacher at Castle who was not allowed to remain. ANDERSON represented that Ham had hired her and told her to store her things at the school. HUSTED explained that department heads do not hire teachers and learned during the conversation that actually ANDERSON was a temporary teacher who had taken course work but had not completed the PRAXIS. HUSTED explained the hiring priority system to her and believed that the reason she was not reemployed was because of her qualifications.
34. ANDERSON told HUSTED she needed a job and HUSTED told her she would call MOORE and see what could be done. HUSTED later found out from MOORE that ANDERSON had been referred out for interviews.
35. ANDERSON called HUSTED again and said that she did not like any of the jobs which she was referred out to and was entitled to return to Castle. HUSTED again explained the hiring priorities to her. ANDERSON did not ask HUSTED to file a grievance.
36. HUSTED agreed that nontenured teachers do not have an automatic right to reemployment at a particular school. HUSTED confirmed that a temporary teacher has no contractual right to reemployment if the teacher is not licensed.
37. Motooka testified that ANDERSON should have been rehired based on a Memorandum of Understanding (MOU) between the HSTA and the DOE which he believes provides for an automatic rehire provision for teachers working on their certification. The MOU was not offered into evidence but HUSTED who represented the HSTA in developing the MOU testified the MOU provides retroactive probationary credit to a teacher for the time already

spent teaching once the teacher receives certification and that there is no guarantee of rehire. Inasmuch as Motooka admitted reading the MOU only once, the Hearings Officer finds HUSTED's testimony on the interpretation and inapplicability of the MOU to be persuasive.

38. Motooka believed that ANDERSON should have been rehired at Castle because she was more qualified by her two years of experience and knew more than anyone else walking in. However, upon further inquiry, Motooka was not familiar with ANDERSON's qualifications or her status as a temporary teacher. He understood that she received or met all of the credit requirements, but did not know whether she passed the PRAXIS. Motooka did not know that she was on a TTAA which he understands to be a year-to-year contract with no probation credit for the time in service. He was aware that she was in the in-service program for certification in special education at the University of Hawaii but was not aware that she did not graduate from the program. Motooka did not know ANDERSON's priority status and did not know about the SATEP requirements.
39. The Hearings Officer finds that the Motooka was not aware of ANDERSON's qualifications when he opined that she should have been rehired at Castle.
40. From his experience in dealing with MAEDA as the HSTA grievance representative, Motooka does not believe that MAEDA has retaliated against employees for filing grievances and has not retaliated against him. Motooka's view is consistent with MOORE's and HUSTED's assessment that MAEDA does not have the reputation of retaliating against employees.

DISCUSSION

Retaliation by Employer

ANDERSON contends that MAEDA did not rehire her in retaliation for filing a grievance and questioning the allocation of special education funds. ANDERSON contends that MAEDA thereby violated HRS § 89-13(a)(4).

ANDERSON contends that this case is similar to disparate treatment cases in the employment discrimination context where the plaintiff must first establish a prima facie case of discrimination and then the burden of production shifts to the employer to articulate, through the introduction of admissible evidence, a legitimate, nondiscriminatory reason for the adverse action in order to rebut the inference of discrimination. McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

To establish her prima facie case, ANDERSON contends that she may prove the discrimination indirectly by inference establishing that she belongs to a protected class, i.e., that she applied for and was qualified for a job for which the employer was seeking applicants; that despite the plaintiff's qualifications, she was rejected, and after her rejection, the position remained open and the employer continued to seek applicants from persons of Complainant's qualifications. The burden of production then shifts to the employer to articulate through the introduction of admissible evidence, a legitimate, nondiscriminatory reason for the adverse action in order to rebut the inference of retaliation. Thereafter, in order to prevail, ANDERSON must establish that the employer's articulated legitimate, nondiscriminatory reason was a pretext to mask unlawful discrimination. ANDERSON contends that she presented credible evidence that her non-rehire was based upon retaliatory conduct for her filing a grievance and questioning the allocation of funds.

Previously the Board stated that to prevail on a retaliation theory alleging a violation of HRS § 89-13(a)(4), the burden of proof is on the Complainant to show by a preponderance of evidence that 1) there was an improper motive; 2) that there was a causal connection between the improper motive and for engaging in protected activity before this Board; and 3) that the improper motive was a motivating factor for taking action adverse against the Complainant. Thomas Lepere, 5 HLRB 123 (1993).

In Lepere, supra, the Board relied upon the analysis set forth in United Food and Commercial Workers Union, Local 480, 4 HLRB 568 (1988), for discrimination cases brought under HRS § 89-13(a)(4), as follows:

Under the Wright Line test, the proponent initially must demonstrate that anti-union animus contributed to the decision to discharge the employee. If this burden is satisfied, the Employer must then show by a preponderance of the evidence that the employee would have been discharged even if he had not been engaged in protected activity. We note here, that a union advocate does not cloak himself with protection from discipline or discharge by his involvement with the union. While Respondent's union animus may be apparent from the record, this does not mean that Respondent cannot discharge a union adherent so long as the discharge was not based on the adherent's union activity.

Thus, if ANDERSON establishes a prima facie case of retaliation under HRS § 89-13(a)(4) sufficient to support an inference of unlawful motive, the burden shifts to Respondent to show the same action would have been taken in any event, i.e., that there were legitimate, non-discriminatory reasons for his actions.

Protected Activity and Adverse Action

The record establishes that ANDERSON filed a grievance against Vice-Principal Biggs for including an allegedly derogatory document in her personnel file. Here, MAEDA heard the grievance against Biggs and agreed to remove the document once ANDERSON documented the completion of the registration card at issue. ANDERSON thereupon withdrew the grievance. While the record is devoid of testimony indicating that the grievance was particularly contentious or that the resolution was anything but amicable, the Board has previously found that pursuit of a grievance against the employer is protected activity under HRS § 89-13(a)(4)³ and the fact that ANDERSON pursued the grievance supports a finding that she engaged in protected activity.

It is also undisputed that ANDERSON was not rehired to teach special education at Castle in the fall of 2000. There is, however, no direct proof of any unlawful motive by MAEDA.

Unlawful Motive

We rely on a number of factors in determining unlawful motive. For instance, what the employer knew of the protected activities, the employer's attitude toward the protected activities, and whether the timing of the adverse action was suspect.

ANDERSON claimed that MAEDA retaliated against her because she questioned the special education funding allocations. Motooka confirmed that ANDERSON raised questions with him about the funds and he, in turn, raised his concerns with MAEDA. However, Complainant failed to establish that MAEDA was aware that ANDERSON had initially complained about the funds. Given MAEDA's denial of such knowledge and the lack of evidence to the contrary, the Hearings Officer finds that MAEDA did not know ANDERSON questioned the funding allocation. Thus, Complainant failed to establish that MAEDA had an unlawful motive in not rehiring her because of questioning of the special education funds.

Assuming *arguendo*, that ANDERSON established a prima facie case of discrimination, the burden shifts to the Respondent to show legitimate, nondiscriminatory reasons for not rehiring ANDERSON.

MAEDA contends that ANDERSON was not rehired because the two available special education (English) positions were filled by employees with higher priority levels. The record establishes Clack was a priority 5 and Lee was a priority 8. Therefore, MAEDA had no opportunity to consider ANDERSON who was a priority 9.

³Decision No. 425, Janet Weiss, 6 HLRB ____ (2001).

MAEDA therefore established that there were legitimate reasons not to hire ANDERSON because she was not equally qualified with the selectees. The evidence in the record shows that she was considered as a priority 9, not teacher-trained and no SATEP since she did not pass her PRAXIS or earn her post-baccalaureate certificate. Thus, ANDERSON did not have the same hiring priority as Clack and Lee. It is undisputed that the DOE requires the filling of vacancies by priority levels and that the higher priority level has to be exhausted before going to a lower level. Although Motooka felt that ANDERSON should have been hired because of her previous experience at Castle, Motooka was not aware of her qualifications in relation to the other teachers or her status as a temporary teacher.

The Hearings Officer finds that MAEDA convincingly established that he would not have hired ANDERSON even in the absence of any protected activity. Based on the record, ANDERSON was not rehired because of her comparative ranking with other applicants on the priority list and does not negatively reflect upon her past performance as a teacher at Castle High School. The record reflects that MAEDA did not exercise any discretion in her nonselection. Accordingly, the Hearings Officer finds that ANDERSON failed to prove that MAEDA violated HRS § 89-13(a)(4).

Duty of Fair Representation

With respect to the Union, ANDERSON alleged that the Union breached its duty to fairly represent its member by failing to file a grievance on her behalf. The burden of proof is on ANDERSON to show by a preponderance of evidence that MAEDA's decision not to hire her was arbitrary, discriminatory or in bad faith. Sheldon H. Varney, 5 HLRB 369 (1995). See also, Vaca v. Sipes, 386 U.S. 171, 190-191, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). "A union's conduct is 'arbitrary' if it is 'without rational basis,' ... or is 'egregious, unfair and unrelated to legitimate union interests,'" Peterson v. Kennedy, 771 F.2d 1244, 1254 (9th Cir. 1985).

Proof of union error due to negligence, inefficiency, inexperience, or even a misguided interpretation of contract provisions will not suffice. Bruce J. Ching, 2 HLRB 23 (1978). Simple negligence or mere errors in judgment will not suffice to make out a claim for breach of duty of fair representation. Farmer v. ARA Servs. Inc., 660 F.2d 1096, 108 LRRM 2145 (6th Cir. 1981); Whitten v. Anchor Motor Freight, Inc., 521 F.2d 1335, 1341, 90 LRRM 2161 (6th Cir. 1975).

The Supreme Court in Airline Pilots Ass'n, Intern. v. O'Neill, 499 U.S. 65, 111 S.Ct. 1127, 136 LRRM 2721 (1991), held that "a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonable,' as to be irrational." Id. at 1130. The Court's holding in O'Neill reflects that a deferential standard is employed as to a union's actions. They may be challenged only if "wholly irrational." Id. at 1136. In carrying out its duty of

fair representation, an unwise or even an unconsidered decision by the union is not necessarily an irrational decision. Id. at 1136.

While ANDERSON was equivocal in her testimony, she finally admitted that she never asked the Union to file a grievance on her behalf. In addition, MOORE testified that the non-renewal of a TTAA is nongrievable unless a person of a lower priority was employed. MOORE testified, however, that he would have filed a grievance if asked to and confirmed that ANDERSON never asked him to file a grievance. When ANDERSON contacted the Union representatives, she represented herself as a probationary teacher who was not rehired but both MOORE and HUSTED explained to her that she was actually a temporary teacher with no reemployment rights. Both attempted to assist her in securing employment with the DOE and followed up with DOE personnel to make sure she was referred for interviews. MOORE then learned that ANDERSON was not available for work until the second semester because she had found employment.

Further, ANDERSON never explained the basis for her allegation of retaliation to MOORE but complained that MOORE described MAEDA as being nonretaliatory. ANDERSON's own witness, Motooka, confirmed this perception of MAEDA in his dealings with him as the HSTA grievance representative. Based upon the record, the Hearings Officer concludes that the Union did not treat ANDERSON arbitrarily. Given the fact that ANDERSON was a temporary teacher whose contract had expired, the Union's primary concern was to make sure she had a job in the fall semester. To this end, the Union representatives contacted the DOE to make sure that ANDERSON was referred to available job interviews. The Hearings Officer thus concludes that ANDERSON was not treated in a perfunctory manner by MOORE and HUSTED and concludes that the Union did not breach its duty of fair representation owed to her.

CONCLUSIONS OF LAW

1. The Hearings Officer has jurisdiction over this complaint pursuant to HRS §§ 89-14 and 377-9.
2. The employer violates HRS § 89-13(a)(4) by discharging or otherwise discriminating against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization.
3. ANDERSON previously filed a grievance against the DOE and was not rehired as a special education teacher at Castle High School. MAEDA had legitimate, nondiscriminatory reasons for not hiring ANDERSON since she had a lower hiring priority than those hired.

4. ANDERSON failed to prove by a preponderance of evidence that she was not rehired as a special education teacher at Castle High School for engaging in protected activity.
5. The Union breaches its duty of fair representation when it treats a bargaining unit member in an arbitrary, capricious, or perfunctory manner.
6. The Union assisted ANDERSON by explaining her rights as a temporary teacher and attempted to find a job for her. ANDERSON never asked the Union to file a grievance on her behalf. The Hearings Officer concludes that Union did not treat ANDERSON in an arbitrary, capricious, or perfunctory manner.
7. ANDERSON failed to prove by a preponderance of evidence that the Union breached its duty of fair representation owed to her.

ORDER

Based upon the foregoing, the instant complaints are dismissed.

DATED: Honolulu, Hawaii, September 11, 2001.

HAWAII LABOR RELATIONS BOARD

Valri Lei Kunitomo
VALRI LEI KUNIMOTO, Hearings Officer

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