

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-05-430
)	
JANET WEISS,)	ORDER NO. 1749
)	
Complainant,)	ORDER GRANTING RESPOND-
)	ENTS' MOTION TO DISMISS
and)	PROHIBITED PRACTICE COM-
)	PLAINT
DEPARTMENT OF EDUCATION, State)	
of Hawaii; DANIEL YOSHIDA,)	
Summer School Director, Kohala)	
High School, Department of)	
Education, State of Hawaii;)	
and CATHERINE BRATT, Principal,)	
Kohala High School, Department)	
of Education, State of Hawaii,)	
)	
Respondents.)	

ORDER GRANTING RESPONDENTS' MOTION
TO DISMISS PROHIBITED PRACTICE COMPLAINT

On June 14, 1999, JANET WEISS (WEISS) filed a prohibited practice complaint against the above-named Respondents with the Hawaii Labor Relations Board (Board). WEISS alleges that Respondents refused to hire her for a summer school position in retaliation for, inter alia, previously filing grievances and her involvement in union activities. WEISS contends that Respondents discriminated against her for exercising her rights under Chapter 89, Hawaii Revised Statutes (HRS), and thereby violated § 89-13(a)(4), HRS.

On June 28, 1999, Respondents, by and through their counsel, filed a motion to dismiss the instant complaint and/or for summary judgment with the Board. Respondents contend that the Board lacks jurisdiction over this complaint because summer school

hiring is excluded from the scope of the Unit 05 collective bargaining agreement (contract) and further, summer school teachers are not employees covered by Chapter 89, HRS. In addition, Respondents allege that Complainant failed to state a claim upon which relief can be granted; or alternatively, that Complainant failed to exhaust her contractual remedies.

In response, on August 2, 1999, Complainant filed a motion to quash Respondents' motions.

On August 6, 1999, the Board conducted a hearing on the instant motions. Respondents' counsel did not object to the filing of Complainant's response to Respondents' motions. The parties had full opportunity to present evidence and arguments before the Board. Based upon a review of the record and the arguments presented, the Board hereby grants Respondents' motion to dismiss the prohibited practice complaint.

According to the complaint filed with the Board, WEISS was an applicant for a summer school position at Kohala High School which started on June 17, 1999. WEISS was not hired for the position and WEISS alleges that Respondent CATHERINE BRATT influenced Respondent DANIEL YOSHIDA not to hire her for summer school because of her previous union activities and grievances. While WEISS cites a history of alleged discrimination by Respondents, the only other allegation in the complaint which arguably falls within the Board's jurisdictional time frame¹ is an

¹Section 377-9(1), HRS, made applicable to prohibited practice cases by § 89-14, HRS, provides that prohibited practice complaints must be filed within 90 days of the occurrence. In the instant complaint, WEISS contends that she was demoted on April 1, 1999.

allegation regarding her transfer or demotion to Halaula School which WEISS indicates is in the grievance process. Thus, while WEISS alleges a pattern of discrimination by Respondents, the gravamen of her complaint is that she was improperly denied a summer school position.

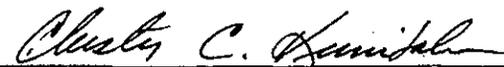
Summer school teachers, however, are specifically excluded from bargaining unit 05. Hawaii State Teachers Association, 1 HPERB 1 (1971); Hawaii Federation of Teachers, Case No. R-05-18, Order No. 413, (June 29, 1981). Thus, while the Board has jurisdiction over prohibited practice complaints alleging discrimination for the exercise of protected rights, in this instance, the Board agrees with Respondents that it has no jurisdiction over the hiring for a summer school teaching position. Accordingly, the Board hereby grants Respondents' motion to dismiss the instant complaint.

DATED: Honolulu, Hawaii, August 19, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

Copies sent to:
Janet Weiss
James E. Halvorson, Deputy Attorney General
Joyce Najita, IRC