

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

KEVIN D. FLORES,

Complainant,

and

DEPARTMENT OF PUBLIC SAFETY, State of Hawaii; COLLEEN MIYASATO, Personnel Management Specialist, Department of Public Safety, State of Hawaii and WALTER HARRINGTON, Assistant Personnel Officer, Department of Public Safety, State of Hawaii,

Respondents.

CASE NO. CE-10-514

ORDER NO. 2128

ORDER GRANTING RESPONDENTS' MOTIONS TO DISMISS FOR LACK OF PROSECUTION

In the Matter of

KEVIN D. FLORES,

Complainant,

and

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and LAURIE SANTIAGO, Business Agent, United Public Workers, AFSCME, Local 646, AFL-CIO,

Respondents.

CASE NO. CU-10-207

ORDER GRANTING RESPONDENTS'
MOTIONS TO DISMISS FOR LACK OF PROSECUTION

On October 22, 2002, the Hawaii Labor Relations Board (Board) convened a hearing on pending motions, including the Motion to Dismiss for Lack of Prosecution filed by Respondents UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and LAURIE SANTIAGO, United Public Workers, AFSCME, Local 646, AFL-CIO (collectively UPW) on October 7, 2002 which was joined by Respondents DEPARTMENT OF PUBLIC SAFETY, State of Hawaii, COLLEEN MIYASATO, Personnel Management Specialist, Department of Public Safety, State of Hawaii, and WALTER HARRINGTON, Assistant Personnel Officer, Department of Public Safety, State of Hawaii (collectively PSD) on

October 11, 2002. Complainant failed to appear and the respective Respondents were represented by counsel. Based upon the record and the arguments submitted, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. On August 30, 2002, Complainant KEVIN D. FLORES (FLORES) filed a complaint against Respondents PSD in Case No. CE-10-514 with the Board alleging that PSD unjustly terminated him from Halawa Correctional Facility.
2. Also on August 30, 2002, FLORES filed a complaint against Respondent UPW in Case No. CU-10-207. FLORES contended that the UPW failed to submit his termination grievance to arbitration and thereby did not represent his "best interest."
3. The Board consolidated the complaints for disposition in Order No. 2112, dated September 4, 2002, because the cases involved the same parties or issues.
4. On September 25, 2002, the UPW filed a Motion to Dismiss and/or for Summary Judgment with the Board contending that the complaint should be dismissed for failure to state a claim for relief and for summary judgment.
5. Also on September 25, 2002, the Board noticed a prehearing conference on the instant cases on October 7, 2002 at 9:30 a.m. and required the parties to file a Prehearing Statement two days prior to the conference. In addition, the Board also noticed a hearing on the UPW's Motion to Dismiss and/or for Summary Judgment on October 22, 2002 at 9:30 a.m.
6. Hawaii Administrative Rules (HAR) § 12-42-8(g)(3)(C)(iii) provides:

(C) All motions other than those made during a hearing shall be subject to the following:

* * *

(iii) Answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise.

7. On October 3, 2002, Respondent PSD filed a Motion to Dismiss Prohibited Practice Complaint or in the Alternative for Summary Judgment. PSD contended that the complaint failed to state a claim for relief and Complainant is bound by the grievance procedure in the collective bargaining agreement and therefore barred from bringing his action before the Board.
8. On October 7, 2002, Complainant failed to appear at the prehearing conference convened by the Board. Although the Board contacted Complainant by telephone, he did not request any continuances to respond to the Respondents' respective motions to dismiss. The UPW thereupon made an oral motion to dismiss the complaint for lack of prosecution.
9. Also on October 7, 2002, the UPW filed a Motion to Dismiss for Lack of Prosecution and pursuant to the UPW's request, the Board noticed a hearing on the pending motions on the previously scheduled hearing date, October 22, 2002 at 9:30 a.m.
10. On October 11, 2002, PSD filed a Joinder in UPW's Motion to Dismiss for Lack of Prosecution. PSD contended that in addition to Complainant's failure to respond to UPW's Motion to Dismiss and/or for Summary Judgment filed on September 25, 2002, his failure to file a Prehearing Statement and his failure to appear at the scheduled prehearing conference, Complainant also failed to respond to the PSD's Motion to Dismiss or request any continuances.
11. On October 22, 2002, counsel for the respective Respondents appeared for the hearing on the pending motions. Complainant again failed to appear. When contacted by telephone, Complainant indicated he did not want to participate in the hearing.
12. The Board finds that the Complainant failed to file a Prehearing Statement; failed to file any affidavits in response to the respective Respondents' motions to dismiss the complaints and/or for summary judgment; failed to appear at the prehearing conference; failed to file any affidavits in response to the respective Respondents' motions to dismiss for lack of prosecution; failed to appear at the hearing scheduled on the pending motions, and when telephoned, refused to participate in the hearing.
13. The Board further finds that the Respondents have been prejudiced by having to expend time and attorneys' efforts to defend these complaints.

DISCUSSION

As in previous cases where the Board's rules are silent on procedural matters,¹ the Board looks for guidance to Rule 41(b), Rules of Civil Procedure, regarding the dismissal of actions. That rule provides as follows:

(b) *Involuntary dismissal: Effect thereof.* For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against it. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal is not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Here, Complainant failed to file a Prehearing Statement as required in the Board's Notice of Prehearing Conference and Hearing on Respondent UPW, et al.'s Motion to Dismiss and/or for Summary Judgment dated September 25, 2002; failed to file any answering affidavits opposing the Respondents' respective motions to dismiss and/or for summary judgment; failed to appear at the prehearing conference scheduled on October 7, 2002; failed to oppose the Respondents' respective motions to dismiss for lack of prosecution and failed to appear at the hearing on pending motions scheduled on October 22, 2002. Moreover, when contacted by telephone, Complainant declined to participate in the hearing. Accordingly, given this record, the Board concludes that the Complainant has failed to prosecute these complaints and in view of the prejudice suffered by Respondents in having to defend these claims, the Board hereby grants the instant motions to dismiss for lack of prosecution, with prejudice.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over these complaints pursuant to Hawaii Revised Statutes §§ 89-5 and 89-14.
2. Based upon the Complainant's failure to file a Prehearing Statement; failure to appear and participate in the prehearing conference held on October 7, 2002; failure to oppose Respondents' respective motions to dismiss and/or for

¹Order No. 1978, Order Granting Respondents' Motion to Dismiss and for Sanctions for Noncompliance with Board Order No. 1937, dated January 11, 2001, Luis Q. Ballera, Case Nos. 00-1(CE), 00-6(CU), where the Board consulted Rule 12 of the Rules of the Circuit Courts for guidance with respect to sanctions in the absence of procedural rules on the subject matter.

summary judgment; failure to oppose the UPW's Motion to Dismiss for Lack of Prosecution filed on October 7, 2002 and PSD's Joinder in UPW's Motion to Dismiss for Lack of Prosecution filed on October 11, 2002, failure to attend and refusal to participate in the hearing on pending motions held on October 22, 2002 and the prejudice to Respondents in defending these claims, the Board concludes that Complainant has failed to prosecute his complaints before the Board.

ORDER

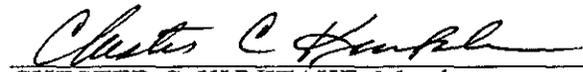
The Board hereby grants the Respondents' motions to dismiss the complaints for lack of prosecution, with prejudice.

DATED: Honolulu, Hawaii, October 24, 2002.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

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