



## FINDINGS OF FACT

1. On March 17, 2003, COMPLAINANT filed a prohibited practice complaint against the STATE, in Case No. CE-03-256 alleging that derogatory statements were placed in his personnel file and interfered with his right to have representation during a grievance hearing. ENG also alleged that information was provided to a third party and the UNION but not to him, in violation of Hawaii Revised Statutes (HRS) §§ 89-13(a)(1), (2), and (8).
2. Also on March 17, 2003, COMPLAINANT filed a prohibited practice complaint against the UNION in Case No. CU-03-216 alleging the HGEA withheld evidence from him and failed to act on his grievances. ENG contended that the HGEA interfered with his rights under HRS Chapter 89 and the applicable collective bargaining agreement and violated HRS §§ 89-13(b)(1) and (5).
3. By Order No. 2180, issued March 18, 2003, the Board consolidated both complaints in accordance with Hawaii Administrative Rules (HAR) § 12-42-8(g)(13).
4. On March 21, 2003, the STATE filed a Motion for Particularization of the Complaint pursuant to HAR § 12-42-45(b)<sup>1</sup> which was granted, in part, in Order No. 2183 issued on March 31, 2003. The Board directed COMPLAINANT to file the Particularization no later than the fifth working day after service of the Order. The Board stated that if COMPLAINANT failed to file and serve the Particularization, the Board would dismiss the complaint. On April 22, 2003, the Board re-mailed Order No. 2183 to COMPLAINANT by certified and regular mail because the original order sent by certified mail was return to the Board.

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part: <sup>1</sup>HAR § 12-42-45(b) of the Board's Rules of Practice and Procedure provides in relevant

[R]espondent may, within five days after service of the complaint, file with the board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information. If the board grants such motion, the complainant shall file with the board the original and five copies of the requested particularization with certificate of service on all parties, within five days after service of the board's granting order, unless the board directs otherwise. If the complainant fails to timely file and serve the particularization, the board shall dismiss the complaint.

5. On March 31, 2003, the UNION answered the instant complaint pursuant to Order No. 2180 and in accordance with the Board's Rules of Practice and Procedure.
6. On April 14, 2003, the STATE filed a motion to dismiss the complaint based on HAR § 12-42-45(b) and Board Order No. 2183, because ENG failed to particularize the complaint.
7. On April 25, 2003, the Board issued a Notice of Prehearing Conference and Hearing on STATE Respondent's Motion to Dismiss Complaint and Notice of Hearing on Prohibited Practice Complaint. The Board noticed a prehearing conference on May 16, 2003 at 9:30 a.m. and a hearing on the State's motion to dismiss immediately following the prehearing conference. The Board also noticed a hearing on the instant complaint on May 23, 2003 at 9:30 a.m. The Board's notice required the parties to file a Prehearing Statement two days prior to the scheduled prehearing conference. The notice was sent to Complainant by regular and certified mail. The notice sent by certified mail was returned unclaimed to the Board on May 15, 2003. The notice sent by regular mail has not been returned and the Board presumes receipt by COMPLAINANT.
8. On April 30, 2003, the HGEA filed a motion to dismiss the instant complaint as barred by the 90-day statute of limitations set forth in HRS § 377-9 and made applicable to proceedings before the Board pursuant to HRS § 89-14.
9. On May 2, 2003, the Board issued a Notice of Hearing on Respondent HGEA's Motion to Dismiss Prohibited Practice Complaint Filed on March 19, 2003, filed on April 30, 2003, and scheduled the motions hearing on May 23, 2003 immediately following the prehearing conference.
10. On May 5, 2003, the STATE filed a Supplemental Memorandum in Support of Respondent HGEA's Motion to Dismiss Prohibited Practice Complaint Filed on March 19, 2003.
11. The HGEA filed a Prehearing Statement on May 13, 2003 and the STATE filed its Prehearing Statement on May 14, 2003.
12. On May 16, 2003 at 9:45 a.m. the Board convened the prehearing conference and motions hearing as scheduled. Counsel for the STATE and HGEA appeared. COMPLAINANT failed to appear at the scheduled prehearing conference and motions hearing. In addition, the Board noted that COMPLAINANT had failed to file a Particularization of his Complaint against the STATE as required by Order No. 2183, dated March 31, 2003; failed to respond to the STATE and HGEA's respective motions to dismiss the complaints; and failed to file a prehearing statement in response to the Board's notice, dated April 25, 2003.

Whereby, counsel for Respondent STATE orally moved to dismiss the complaints with prejudice for lack of prosecution.

13. On May 16, 2003, by Order No. 2188, the Board issued an Order to Show Cause; and Notice of Hearing ordering COMPLAINANT to appear at a hearing scheduled on May 23, 2003 at 9:30 a.m. to show cause and explain why this case should not be dismissed, with prejudice, for lack of prosecution. The Board further ordered if COMPLAINANT failed to appear and/or establish good cause, the Board would dismiss the case for lack of prosecution. Order No. 2188 was sent to COMPLAINANT by regular and certified mail. The order and notice sent by certified mail was returned to the Board unclaimed on May 21, 2003. The order and notice sent by regular mail has not been returned and the Board presumes receipt by COMPLAINANT.
14. On May 23, 2003, counsel for the respective Respondents appeared for the order to show cause hearing; and were prepared to proceed to oral arguments on the pending motions, if COMPLAINANT appeared and the Board found there was cause not to dismiss the complaints for lack of prosecution. COMPLAINANT again failed to appear or file any response to Order No. 2188.
15. The Board finds that COMPLAINANT failed to: 1) file a Particularization of the Complaint; 2) file a Prehearing Statement; 3) file any affidavits in response to the respective Respondents' motions to dismiss the complaints; 4) appear at the Prehearing Conference; and 5) appear at the hearing on the Board's Order to Show Cause as well as the hearing on the pending motions.
16. The Board further finds that the Respondents have been prejudiced by having to expend fees and costs for their attorneys to defend these complaints.

### DISCUSSION

As in previous cases where the Board's rules are silent on procedural matters 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 particularize the complaint as ordered by the Board; failed to file a Prehearing Statement; failed to file any answering affidavits opposing the Respondents' respective motions to dismiss; failed to appear at the prehearing conference and hearing on Respondents's respective motions to dismiss scheduled on May 16, 2003; and failed to appear and respond to the Board's Order to Show Cause at the hearing scheduled on May 23, 2003.

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 motions to dismiss for lack of prosecution, with prejudice.

### CONCLUSION OF LAW

Based upon the COMPLAINANT's failure to particularize the complaint; failure to file a prehearing conference statement and appear at the prehearing conference held on May 16, 2003; failure to oppose Respondents' respective motions to dismiss and appear at the motions hearing noticed for May 16, 2003; failure to respond to, and appear at the hearing on the Board's Order to Show Cause noticed for May 23, 2003, and the prejudice to Respondents in defending these claims, the Board concludes that COMPLAINANT has failed to prosecute his complaints before this Board.

### ORDER

The Board hereby dismisses the instant complaints for lack of prosecution, with prejudice.

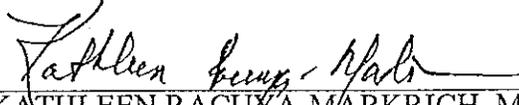
DATED: Honolulu, Hawaii, May 29, 2003.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
CHESTER C. KUNITAKE, Member

STEVE ENG and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,  
LOCAL 152, AFL-CIO  
CASE NOS.: CU-03-216, CE-03-525  
ORDER NO. 2189  
ORDER DISMISSING COMPLAINTS FOR LACK OF PROSECUTION

  
KATHLEEN RACUYA-MARKRICH, Member

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