

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-05-231
STEPHANIE CROWELL STUCKY,)	ORDER NO. 2302
Complainant,)	ORDER GRANTING RESPONDENTS'
and)	MOTION FOR SUMMARY JUDG-
JOAN LEE HUSTED, Executive Director, Hawaii State Teachers Association;)	MENT
ROCHELLE GREGSON, Deputy Executive Director; Hawaii State Teachers Association;)	
ERIC NAGAMINE, UniServ Director, Hawaii State Teachers Association; and HAWAII)	
STATE TEACHERS ASSOCIATION,)	
Respondents.)	

ORDER GRANTING RESPONDENTS'
MOTION FOR SUMMARY JUDGMENT

On May 6, 2004, Complainant STEPHANIE CROWELL STUCKY (STUCKY) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). STUCKY alleges that Respondents JOAN LEE HUSTED (HUSTED), Executive Director, Hawaii State Teachers Association (HSTA), ROCHELLE GREGSON (GREGSON), Deputy Executive Director, HSTA, ERIC NAGAMINE (NAGAMINE), Uniserv Director, HSTA and the HSTA have breached their duty of fair representation in violation of Hawaii Revised Statutes (HRS) §§ 89-13(b)(3), (4), and (5), when they failed to file a demand for arbitration as requested by STUCKY.

On July 15, 2004, Respondents filed Respondents' Motion for Summary Judgment. Respondents contend that there are no issues of material fact and that Respondents' are entitled to judgment as a matter of law.

On July 22, 2004 STUCKY filed Complainant's Response to Respondents' Motion for Summary Judgment.

On July 23, 2004, the Board held a hearing on Respondents' motion for summary judgment. The parties were allowed full opportunity to argue their respective positions. After a thorough review of the record in these proceedings, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. STUCKY was for all relevant times, a teacher employed by the Board of Education, State of Hawaii (Public Employer) and an employee within the meaning of HRS § 89-2.
2. The HSTA is an employee organization and the exclusive representative as defined in HRS § 89-2 of teachers, including STUCKY, in bargaining unit (BU) 05.
3. HUSTED is the HSTA Executive Director; GREGSON is the HSTA Deputy Executive Director, and NAGAMINE is an HSTA Uniserv Director for the island of Maui. They were for all times relevant, designated agents, within the meaning of HRS § 89-13(b), of the HSTA.
4. For all relevant times, the public employer and the HSTA were parties to a collective bargaining agreement which contains a grievance procedure culminating in arbitration.
5. On May 5, 2003, STUCKY filed a Step 1 grievance in M 03-40 at the Department of Education's (DOE) district level alleging violations of Articles V, VII, XXI and XXII of the collective bargaining agreement. Thereafter, on or about May 13, 2003, STUCKY filed a grievance in accordance with the BU 05 Contract for improperly denying her the second band line teaching position in violation of the Contract and pursuant to a prior arbitration decision by Walter Ikeda, dated November 23, 1999. After no decision was received at Step 1, the District Superintendent's level, the grievance was filed at Step 2, the DOE Superintendent's level, within the time lines of the Contract.
6. On or about October 2003, in the course of resolving Grievance M 03-40 with the DOE at the Superintendent's level, the HSTA, on STUCKY's behalf and with her approval, entered into a written settlement agreement providing STUCKY the second band line teaching position to take effect on or about October 27, 2003. Prior to implementation, STUCKY and the District Superintendent changed the terms of the written agreement reached without the HSTA's knowledge or participation. Thereafter, STUCKY alleged she was coerced into agreeing not to teach the second band line and informed HSTA that she did not wish to have the second settlement implemented. The

HSTA filed Grievance M 04-06 with the Employer alleging direct dealing and seeking the implementation of the original settlement agreement.¹

7. On January 21, 2004, the HSTA filed a prohibited practice complaint against the DOE in Case No. CE-05-551 alleging direct dealing with STUCKY that arose in the course of resolving Grievance M 03-40. The Board takes notice of Decision No. 450, in Case No. CE-05-551, Stephanie Stucky, 6 HLRB ____ (December 13, 2004), wherein the Board held that the employer committed prohibited practices by directly dealing with STUCKY and ordered reinstatement of the first settlement agreement.
8. As a consequence of the filing of Case No. CE-05-551 by the HSTA and with STUCKY's knowledge and consent, Grievance M 03-40 was held in abeyance pending the resolution of the complaint before the Board.
9. By fax dated March 30, 2004, STUCKY requested NAGAMINE file a demand for arbitration regarding Grievance M 03-40.²
10. In order to proceed to arbitration, NAGAMINE contacted the DOE to set up a Step 2 meeting on June 22, 2004, as required by the collective bargaining agreement since one had not occurred.
11. On June 22, 2004, NAGAMINE and STUCKY met with representatives of the DOE for the Step 2 hearing. Because STUCKY objected to holding a Step 2 hearing, the HSTA and the DOE Superintendent agreed that the prior meetings between the parties which had initially resulted in a written settlement agreement, but failed to be implemented by the DOE District Superintendent,

¹Upon the filing of a prohibited practice complaint on the same issue the HSTA withdrew Grievance M 04-06, with STUCKY's approval. Grievance M 04-06 was subsequently rendered moot, by Decision No. 450, Case No. CE-05-551, Stephanie Stucky, 6 HLRB ____ (December 13, 2004).

²STUCKY's request to Nagamine attached as Exhibit 2, to the instant prohibited practice complaint, states in part as follows:

This is not a request for you to "take you (sic) sweet time" in the paper work. The "short fuse" provisions that protect me in the Collective Bargaining Agreement have never been respected, and being in receipt of this request establishes this date for the removal of the status of "in abeyance" for M 03-40. You are official (sic) on notice that this Grievance is no longer in abeyance. The reasons and rationale for this action stated in your March 19, 2004 letter no longer apply.

would serve as the Step 2 hearing. This waiver of the Step 2 meeting procedurally cleared the way for the HSTA to proceed to arbitration.

12. By letter dated July 6, 2004, the HSTA sent a demand for arbitration to the DOE in accordance with the Arbitration Agreement in a written contract, dated February 28, 1972, on behalf of STUCKY in Grievance M 03-40.³ Because a Step 2 hearing was held and the grievance was not resolved, a demand for arbitration was filed to preserve time limits. Following established procedures, the HSTA Board of Directors will determine if this grievance proceeds to arbitration. At the time of the hearing, the submission to the HSTA Board of Directors was being prepared.

DISCUSSION

The gravamen of STUCKY's complaint is that the HSTA breached its duty of fair representation to her by failing to file a demand for arbitration when the collective bargaining agreement provides a ten day time limit. STUCKY contends that rather than immediately proceed to arbitration in accordance with her request on March 30, 2004 to essentially remove from abeyance Grievance 03-40, the Union scheduled a Step 2 meeting with the DOE. As such, STUCKY alleges that the Union's conduct in failing to adhere to the time limits provided specifically in Article V of the contract constitutes a breach of the duty of fair representation to her.

Respondents move for summary judgment contending that there are no material issues of fact in dispute and, therefore, the Union is entitled to judgment as a matter of law. Respondents contend they fulfilled their duty of fair representation to Complainant in the processing of Grievance M 03-40.

Duty of Fair Representation

Summary judgment is proper where the moving party demonstrates that there are no genuine issues of material fact in dispute and, therefore it is entitled to judgment as

³The HSTA's Demand for Arbitration includes the contractual provision as follows:

If a claim by the Association or teacher that there has been a violation, misinterpretation or misapplication of this Agreement is not satisfactorily resolved at Step 2, the Association may present a request for arbitration of the grievance within ten (10) days after receipt of the answer at Step 2. See, Exhibit 1, Declaration of Eric Nagamine, attached to Respondents' Motion for Summary Judgment, filed July 15, 2004.

a matter of law. State of Hawai'i Organization of Police Officers (SHOPO) v. Society of Professional Journalists - University of Hawai'i Chapter, 83 Hawai'i 387, 389, 927 P.2d 386 (1996) (SHOPO). A fact is material if proof of that fact would have the effect of establishing or refuting the essential elements of a cause of action or defense asserted by the parties. Konno v. County of Hawai'i, 85 Hawai'i 61, 937 P.2d 397 (1997) (Konno). In addition, [t]he evidence must be viewed in the light most favorable to the non-moving party." State ex rel. Bronson v. Yoshina, 84 Hawai'i 179, 186, 932 P.2d 316 (1997). The court must view all of the evidence and inferences drawn therefrom in the light most favorable to the party opposing the motion. State Farm Mut. Auto Ins. Co. v. Murata, 88 Hawai'i 284, 287-88, 965 P.2d 1284 (1998) Accordingly, the controlling inquiry is whether there is no genuine issue of material fact and the case can be decided solely as a matter of law. Kajiya v. Dept. of Water Supply, 2 Haw.App. 221, 629 P.2d 635 (1981).

The duty of fair representation embodied in HRS § 89-8(a) is twofold. First, the exclusive representative is mandated "to act for and negotiate agreements covering all employees in the unit." Second, the exclusive representative must "be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership."

The burden of proof is on the complainant-employee to show by a preponderance of evidence that: 1) the decision not to proceed to arbitration was arbitrary, discriminatory or in bad faith. Sheldon S. Varney, 5 HLRB 508 (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).

"A union's course of conduct may be so unreasonable and arbitrary toward an employee as to constitute a violation of its duty of fair representation, even without any hostile motive of discrimination and when conducted in complete good faith. Arbitrary conduct that might breach a union's duty of fair representation is not limited to intentional conduct by union officials. It may also include acts of omission which, while not calculated to harm union members, be so egregious, so far short of minimum standards of fairness to the employee, and unrelated to legitimate union interest as to constitute arbitrary conduct." 48 Am.Jur.2d 853 § 1529; see also, Price v. Southern Pacific Transp. Co., 586 F.2d 750 (9th Cir. 1978).

The U.S. Supreme Court in Air Line Pilots Ass'n. Intern. v. O'Neill, 499 U.S. 65, 111 S.Ct. 1127, 113 L.Ed.2d 51 (1991) (O'Neill), 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 reasonableness,' . . . as to be irrational." Id., at 67. 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 78. 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.

Simple negligence or mere errors in judgment will not suffice to make out a claim for a breach of the duty of fair representation. Farmer v. ARA Services, 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). Proof of union error due to negligence, inefficiency, inexperience, or even a misguided interpretation of contract provisions will not suffice. Bruce J. Ching, 2 HPERB 23 (1978).

A union does not breach its duty of fair representation when it exercises its “judgment” in good faith not to pursue a grievance further, Stevens v. Moore Business Forms, Inc., 18 F.3d 1443, 1447, 145 LRRM 2668 (9th Cir. 1994) (Stevens), or by acting negligently, Patterson v. International Brotherhood of Teamsters, Local 959, 121 F.3d 1345, 1349, 156 LRRM 2008 (9th Cir. 1997). As explained in Stevens:

...A union’s decision to pursue a grievance based on its merits or lack thereof is considered an exercise of its judgment (Citations omitted). “We have never held that a union has acted in an arbitrary manner where the challenged conduct involved the union’s judgment as to how best to handle a grievance. To the contrary, we have held consistently that unions are not liable for good faith, non-discriminatory errors of judgment made in processing of grievances.” (Citations omitted). 18 F.3d at 1447.

And where a union’s judgment is in question, complainant “may prevail only if the union’s conduct was discriminatory or in bad faith.” Moore v. Bechtel Power Corp., 840 F.2d 634, 127 LRRM 3023 (9th Cir. 1988).

Viewing the facts in the light most favorable to STUCKY, the Board finds that on March 30, 2004, STUCKY notified the HSTA that she no longer wanted to hold Grievance M 03-40 in abeyance. In order to proceed to arbitration, NAGAMINE contacted the DOE to set up a Step 2 meeting on June 22, 2004, as required by the collective bargaining agreement since one had not occurred. On June 22, 2004, NAGAMINE and STUCKY met with representatives of the DOE for the Step 2 hearing. Because STUCKY objected to holding a Step 2 hearing, the HSTA and the DOE Superintendent agreed that the prior meetings between the parties which had initially resulted in a written settlement agreement, but failed to be implemented by the DOE District Superintendent, would serve as the Step 2 hearing. This waiver of the Step 2 meeting procedurally cleared the way for the HSTA to proceed to arbitration.

Hence, the HSTA complied with STUCKY’s request despite a disagreement with her on the need to hold a Step 2 hearing with the DOE. By letter dated July 6, 2004, the

HSTA sent a demand for arbitration to the DOE on behalf of STUCKY in Grievance M 03-40 and in accordance with the Arbitration Agreement in a written contract, dated February 28, 1972. Following established procedures, the HSTA Board of Directors will determine if this grievance proceeds to arbitration. At the time of the hearing, the submission to the HSTA Board of Directors was being prepared.

Based on these undisputed facts, the Board concludes that NAGAMINE's conduct upon receipt of STUCKY's request to proceed to arbitration, was wholly reasonable, and not arbitrary. The Board also concludes that STUCKY cannot prove that she has been adversely affected by the HSTA's not taking her grievance "immediately" to arbitration, or that the HSTA has proceeded on her case with indifference or malice. Accordingly, based on the foregoing, there are no genuine issues of material fact in dispute and Respondents are entitled to judgment as a matter of law, i.e., that Complainant failed to prove that Respondents breached their duty of fair representation by not processing her grievance directly to arbitration.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this complaint pursuant to HRS §§ 89-5 and 89-14.
2. Summary judgment is proper where the moving party demonstrates that there are no genuine issues of material fact in dispute, and it is entitled to judgment as a matter of law. SHOPO, supra.
3. The Board concludes that NAGAMINE's conduct upon receipt of STUCKY's request to proceed to arbitration, was wholly reasonable, and not arbitrary. The Board also concludes that STUCKY cannot prove that she has been adversely affected by the HSTA's not taking her grievance "immediately" to arbitration, or that the HSTA has proceeded on her case with indifference or malice.
4. Based on the entire record, and viewing the facts in the light most favorable to the Complainant, the Board concludes there are no genuine issues of material fact in dispute to show the Union breached its duty of fair representation to Complainant by failing to immediately file a demand for arbitration on her grievance after she so demanded.

ORDER

The Board hereby dismisses the instant complaint or alternatively, concludes that there are no genuine issues of material fact in dispute and Respondents are entitled to judgment as a matter of law.

STEPHANIE CROWELL STUCKY v. JOAN LEE HUSTED, et al.
CASE NO. CU-05-231
ORDER NO. 2302
ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

DATED: Honolulu, Hawaii, January 18, 2005

HAWAII LABOR RELATIONS BOARD

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