

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.: CE-01-201
	)	CU-01-96
ALBERT A. DOLORES,	)	
	)	ORDER NO. 1007
Complainant,	)	
	)	ORDER GRANTING RESPONDENTS'
and	)	MOTIONS TO DISMISS
	)	
BOARD OF REGENTS, University	)	
of Hawaii and UNITED PUBLIC	)	
WORKERS, AFSCME, LOCAL 646,	)	
AFL-CIO,	)	
	)	
Respondents.	)	

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ORDER GRANTING RESPONDENTS' MOTIONS TO DISMISS

On October 13, 1993, Complainant ALBERT A. DOLORES (DOLORES) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) in Case Nos. CE-01-201 and CU-01-96. Complainant alleged that on July 15, 1993, he received notice of his alleged improper conduct. Thereafter, on July 23, 1993, Employer BOARD OF REGENTS, University of Hawaii (BOR) gave Complainant a notice of termination, effective July 30, 1993. On July 27, 1993, DOLORES received a notice that the Employer would withhold \$243 from his paycheck.

On October 21, 1993, Respondent BOR filed a motion to dismiss the complaint against the Employer with the Board. On October 25, 1993, Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) also filed a motion to dismiss the complaint against the Union. On November 5, 1993, the Board heard oral arguments on both motions.

At the hearing, Complainant stated that he has no complaint against the Union. Transcript (Tr.), page 13. Based upon Complainant's representation, the Board dismissed the prohibited practice complaint against the Union.

With respect to the Employer's motion to dismiss, the BOR argues that DOLORES fails to state a claim for relief since Complainant failed to cite a violation of Section 89-13(a), HRS, in his complaint.

At the hearing, Complainant contended that he was coerced by financial inducements into signing the settlement agreement which permitted him to resign in lieu of termination. Complainant also contended that he was not afforded an opportunity to confront witnesses who made allegations against him.

Based upon a review of the record and the arguments presented, the Board finds that the parties entered into a settlement agreement, dated September 1, 1993, which provides that the Employer had cause to terminate Complainant but agreed to permit Complainant to resign from employment effective September 15, 1993 rather than be terminated. Further, the agreement provides that Complainant would be placed on paid status from July 27, 1993 to September 15, 1993. The agreement also provides that the Employer would rescind derogatory documentation against Complainant and that Complainant would withdraw all grievances filed against the Employer. Complainant also agreed to release the Employer from all claims concerning the subject grievance. The Board further finds Complainant received the proper payments from the Employer in

accordance with the settlement agreement, after the complaint was filed.

After consideration of the arguments advanced by Complainant and counsel for Respondent BOR, the Board finds that DOLORES' complaint fails to state a claim for relief and should be dismissed. In his prohibited practice complaint, DOLORES contended that the BOR did not properly pay him after his termination. After receiving the payments from his Employer, DOLORES now contends that because of his financial condition as a result of the termination, he was coerced to accept the settlement agreement.

If the agreement were in fact invalidated, DOLORES would be in the position he was in prior to the agreement. He would be terminated effective July 30, 1993 and would have to repay the monies he received pursuant to the agreement. Moreover, there are no facts in the record to colorably support DOLORES' claim of coercion. He was merely induced to settle his claims by the financial terms of the settlement agreement. This does not constitute unlawful coercion.


In addition, contrary to Complainant's assertions, at the time of his termination, he was not entitled to confront adverse witnesses. If Complainant had not settled the matter and filed a grievance which proceeded to arbitration, DOLORES would have had the opportunity to confront witnesses at that stage. Thus, the prohibited practice complaint against the Employer is dismissed for failure to state a claim for relief.

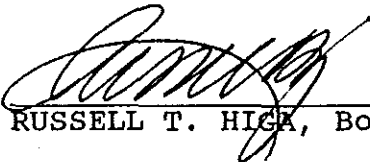
ORDER

The Board hereby dismisses the prohibited practice complaints filed against both the Union and Employer.

DATED: Honolulu, Hawaii, January 6, 1994.

HAWAII LABOR RELATIONS BOARD

  
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BERT M. TOMASU, Chairperson

  
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RUSSELL T. HIGA, Board Member

  
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SANDRA H. EBESU, Board Member

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