

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-07-152
)	
UNIVERSITY OF HAWAII)	ORDER NO. 1086
PROFESSIONAL ASSEMBLY,)	
)	ORDER GRANTING IN PART,
Complainant,)	DENYING IN PART, RESPONDENT'S
)	MOTION TO DISMISS
and)	
)	
BOARD OF REGENTS, University)	
of Hawaii,)	
)	
Respondent.)	

ORDER GRANTING IN PART, DENYING IN PART,
RESPONDENT'S MOTION TO DISMISS

The Hawaii Labor Relations Board (Board) issued Order No. 884, Order Granting Amendment of Complaint, dated June 17, 1992, permitting Complainant UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA) to amend its prohibited practice complaint to include the following allegation:

Complainant has demanded bargaining over any changes in the practice of the parties pertinent to confidentiality, as it may have been affected by the provisions of HRS, Chapter 92F, as interpreted by the Office of Information Practices, State of Hawaii. The Respondent has failed or refused to bargain in violation of Section 89-13(a)(5), HRS.

Thereafter, on September 28, 1993, Respondent BOARD OF REGENTS, University of Hawaii (BOR), by and through its counsel, filed a motion to dismiss the instant complaint with prejudice. The BOR asserted that the complaint is moot because there is no actual controversy for the Board to consider.

On October 19, 1993, UHPA filed a partial opposition to the BOR's motion to dismiss. UHPA indicated that it did not oppose dismissal of the present case on the ground of mootness; however, UHPA requested the Board to adopt Order No. 869, granting UHPA's motion for partial summary judgment, issued on March 23, 1992, and Order No. 878, clarifying the Board's Order No. 869, issued on May 29, 1992, as the final judgment of the Board.¹

On November 16, 1993, the BOR filed a reply to UHPA's partial opposition to the BOR's motion to dismiss with prejudice. Thereafter, on November 22, 1993, the Board held a hearing on the BOR's motion to dismiss.

Based upon a review of the record in this case, the Board finds that the law upon which the instant complaint is premised has changed and therefore, the instant complaint is moot.

Specifically, at the time the instant complaint was filed, § 92F-14(b)(4), Hawaii Revised Statutes (HRS), provided as follows:

§92F-14 Clearly unwarranted invasion of personal privacy.

* * *

(b) The following are examples of information in which the individual has a significant privacy interest:

* * *

¹To avoid reiteration of the procedural history in this case, Order No. 869, Order Granting Motion for Partial Summary Judgment, dated March 23, 1992 and Order No. 878, Order Clarifying Board's Order No. 869 Granting Motion for Partial Summary Judgment, dated May 29, 1992 are incorporated herein by reference.

- (4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except information relating to the status of any formal charges against the employee and disciplinary action taken
(Emphasis added.)

Subsequently, Act 191, Session Laws of Hawaii 1993, amended § 92F-14(b)(4), HRS, to read as follows:

§92F-14 Clearly unwarranted invasion of personal privacy.

* * *

(b) The following are examples of information in which the individual has a significant privacy interest:

* * *

- (4) Information in an agency's personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:

(A) Information disclosed under section 92F-12(a)(14); and

(B) The following information related to employment misconduct that results in an employee's suspension or discharge:

(i) The name of the employee;

(ii) The nature of the employment related misconduct;

(iii) The agency's summary of the allegations of misconduct;

(iv) Findings of fact and conclusions of law; and

(v) The disciplinary action taken by the agency; when the following has occurred:

the highest non-judicial grievance adjustment procedure timely invoked by the employee or the employee's representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision;
(Emphasis added.)

The Board finds that the BOR's actions in announcing its intent to release certain information to the public relating to sexual harassment complaints filed against University of Hawaii (UH) faculty members was based on the Office of Information Practices's (OIP) interpretation of § 92F-14(b)(4), HRS, prior to the 1993 amendment. OIP's analysis focused on the release of information in connection with "any formal charges" against an employee. This language was subsequently eliminated by Act 191 and replaced with a procedure that provides for the disclosure of certain information in instances of employment misconduct that result in an employee's suspension or discharge. Therefore, it appears that the BOR is no longer compelled to release information concerning sexual harassment complaints filed against UH faculty members. In fact, the Board notes that the BOR never actually released any information concerning any sexual harassment complaint.

Moreover, the Board considers significant the fact that UHPA and UH and Kenneth Mortimer, in his capacity as UH President and successor to Albert Simone, entered into a settlement agreement dated July 27, 1993, in which both parties agreed as follows:

2. Effective upon the Circuit Court's approval of the dismissal with prejudice of this case [Civil No. 91-0035-01] and dissolution of the injunction as aforesaid, the parties agree that any and all pending requests by third parties for disclosure of information relating to the identity of or discipline imposed upon members of the faculty of the University of Hawaii, who have been accused of sexual harassment, shall be treated by the University of Hawaii according to the provisions of Hawaii Revised Statutes Chapter 92F, as amended by Act 191, Session Laws of Hawaii 1993 (SLH 1993). The parties note that Senate Bill 1363, which became Act 191, SLH 1993, was approved by the Governor of the State of Hawaii on June 9, 1993, and that it became effective upon approval.

In view of the foregoing, the Board concludes that UHPA's allegation that the BOR violated § 89-13(a)(5), HRS, by failing to bargain over any changes in the practice of the parties pertinent to confidentiality, as they may be affected by the OIP's interpretation of Chapter 92F, HRS, is moot. Also in view of the foregoing, the Board concludes that UHPA's allegation that the BOR violated § 89-13(a)(8), HRS, by breaching the collective bargaining agreement, is also moot.


• Furthermore, with respect to UHPA's request that the Board adopt Order Nos. 869 and 878 as the final judgment in this case, the Board in its discretion declines to do so. In this case, there has been no final determination of the rights of the parties. Therefore, the Board finds that a final judgment in the form of its prior orders is not appropriate here. In this regard, however, the Board also denies the BOR's request to dismiss the instant complaint with prejudice so as to allow the parties to raise the issues in this complaint at a later date, if necessary.

ORDER

The instant prohibited practice complaint is dismissed without prejudice.

DATED: Honolulu, Hawaii, August 4, 1994.


HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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