STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO, Complainant, and BOARD OF REGENTS, University of Hawaii and JOHN D. WAIHEE, III, Governor of the State of Hawaii, Respondents.	CASE NOS.: CE-02-167a CE-03-167b CE-04-167c CE-08-167d CE-09-167e CE-13-167f ORDER NO. 1117 ORDER DENYING HGEA'S MOTION FOR INTERLOCUTORY ORDER AND GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

ORDER DENYING HGEA'S MOTION FOR INTERLOCUTORY ORDER AND GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

On July 8, 1992, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). Complainant alleges that on or about May 6, 1992 Respondents BOARD OF REGENTS, University of Hawaii (BOR) and GOVERNOR JOHN D. WAIHEE, III (collectively Employer) violated Section 89-13(a)(5), Hawaii Revised Statutes (HRS), by unilaterally implementing a procedure concerning the discipline of bargaining unit members without first bargaining with the HGEA. Specifically, the HGEA objects to Respondents' implementation of the University of Hawaii-Manoa Complaint Procedures for Executive Policy E1.203 on Sexual Harassment (Complaint Procedures).

In addition, Complainant alleges that on or about June 3, 1992, Respondents violated Section 89-13(a)(5), HRS, by directly

soliciting employees to serve on an investigation panel without first bargaining with the HGEA.

At the prehearing conference held on August 19, 1992, counsel for the parties represented that there were no material facts in dispute in the instant matter and agreed to submit the case to the Board on cross-motions for summary judgment. Counsel for Respondents also indicated that she would rely upon the testimony of certain witnesses from the transcript of the hearing held on July 22, 1992 in Case No. CE-07-164, University of Hawaii Professional Assembly, 5 HLRB _____ (1993) (UHPA case), in which the Complaint Procedures were challenged by the faculty union. The parties thereafter filed cross-motions for summary judgment and reply memoranda.

On August 5, 1994, the HGEA filed a Motion for Interlocutory Order Staying Action of Respondents. The HGEA sought an interlocutory order from the Board directing the Respondents to cease and desist from implementing the new policy. The Board conducted a hearing on HGEA's motion on September 16, 1993.

Based upon a thorough review of the record in this case, the Board makes the following findings and order.

Complainant HGEA is the exclusive representative, as defined in Section 89-2, HRS, of the employees in bargaining units 02, 03, 04, 08, 09 and 13 who are employed at the University of Hawaii at Manoa (UH).

Respondent BOR is the public employer, as defined in Section 89-2, HRS, of employees of the UH who are included in bargaining unit 08.

Respondent WAIHEE is the Governor of the State of Hawaii and the public employer, as defined in Section 89-2, HRS, of employees of the UH who are included in bargaining units 02, 03, 04, 09 and 13.

The HGEA and the BOR and WAIHEE are parties to the respective collective bargaining agreements for bargaining units 02, 03, 04, 08, 09 and 13 for the relevant time periods at issue in this case.

By letter dated August 19, 1991, Dr. Madeleine J. Goodman, Assistant Vice President for Academic Affairs at the UH, sent a draft of the UH Manoa Campus Interim Complaint Procedures for Sexual Harassment (Interim Procedures) which implements the University Executive Policy E1.203, Sexual Harassment Policy and Procedural Guidelines to the HGEA for comments. Complainant's (C's) Exhibit (Ex.) A. Dr. Goodman indicated that the HGEA had already submitted comments on a previous draft but that the UH was unsuccessful in obtaining funding for the program. Dr. Goodman further indicated that the UH intended to implement the procedure in September on a pilot basis and evaluate its effectiveness on or before July 1, 1992. Id.

By letter dated August 26, 1991, the HGEA requested then UH President Albert J. Simone to suspend plans to implement the Interim Procedures (Respondents' [Rs'] Ex. 2). C's Ex. B and Rs' Ex. 3. The HGEA stated that the public law provides that the UH must meet and negotiate any procedures to implement the University Executive Policy E1.203, Sexual Harassment Policy and Procedural Guidelines (July 1991) with the HGEA. Id.

By letter dated September 20, 1991, President Simone postponed the initial implementation of the Interim Procedures and invited representatives from the HGEA and the University of Hawaii Professional Assembly (UHPA) to meet and discuss the unions' concerns. Rs' Ex. 4.

On October 1, 1991, HGEA representative Dale Osorno, Dr. Goodman, UH Equal Employment Opportunity/Affirmative Action (EEO/AA) Director Mie Watanabe, UH Personnel Officer James Takushi, Chief Negotiator James Yasuda, Deputy Chief Negotiator Henry Kanda, a Deputy Attorney General and UHPA representative John Radcliffe met to discuss the unions' concerns over the procedures. Transcript of hearing held on July 22, 1992 in Case No. CE-07-164 (Tr.) at p. 113.

Dr. Goodman was the principal drafter of the Interim Procedures dated September 1991 and the Complaint Procedures which were later implemented effective August 1, 1992. Tr. pp. 110-12. Dr. Goodman's role was to explain any provisions over which the union representatives had concerns; to discuss the specific language of the document; and to listen to UHPA's and the HGEA's concerns. Tr. pp. 114-15. At the end of the meeting, it was agreed that UHPA and HGEA would submit their written comments to the Interim Procedures. Tr. p. 154.

On December 4, 1991, the HGEA submitted its proposed changes to the Interim Procedures which eliminated the investigating panel option provided under Section III.E of the Interim Procedures. Rs' Ex. 8.

On April 15, 1992, Dr. Goodman, Mie Watanabe, James Takushi and Henry Kanda met with HGEA representative Dale Osorno and UHPA representatives J.N. Musto and Sinikka Hayasaka "for a further round of consultation prior to having the administration finalize the procedures."[1] Tr. p. 120. According to the Employer, the purpose of the meeting was to further consult with the unions "to clarify the remaining areas of contention or disagreement with the procedures," (Tr. pp. 120-21) and as UH President Simone testified, "see how close [the University] could come [to] get consensus." Tr. p. 94. Deputy Chief Negotiator Henry Kanda attended the meeting to facilitate discussions which began October 1, 1991. Tr. pp. 153-54. During the meeting, Dr. Goodman, Henry Kanda and Mie Watanabe caucused to decide how to proceed and whether to continue the discussion. Tr. p. 121. They decided they had a firm understanding of the unions' perspective; they had done a good job of explaining the procedures; and they felt they would present it to President Simone for him to make a decision.[2]

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[1]The HGEA contends that the meetings with the Employer representatives were for the purposes of negotiating over the Interim Procedure and the Employer maintains that the meetings were held for consultation purposes. The Board notes the parties' dispute over the intent of the meetings, but does not consider it a dispute over an issue of material fact. The record indicates that the parties met and discussed the policy and procedures to receive input and clarification of the parties' respective positions. The contradiction in the subjective intent of the parties does not preclude the Board's summary judgment finding in the instant case.

[2]Dale Osorno, in her affidavit submitted in support of HGEA's Motion for Summary Judgment, states that during a brief recess of the April 15, 1992 meeting she and others came across President Simone. During the casual meeting, President Simone indicated that the Respondents had already reached a final decision concerning the

Tr. p. 121. According to Dr. Goodman, when the April 15, 1992 meeting ended, the unions' primary objection was directed at the investigative panel option. See Affidavit of Madeleine Goodman attached to Respondents' Reply in Opposition to Complainant HGEA/AFSCME's Motion for Summary Judgment.

President Simone was advised that the unions were against the investigating panel option and he had to make a determination whether to keep that aspect of the procedure intact or not. Tr. pp. 140-41.

By memorandum dated May 6, 1992, President Simone distributed the Complaint Procedures for Executive Policy E1.203 on Sexual Harassment and directed that it become effective on a pilot basis from August 1, 1992 to June 30, 1993. C's Ex. C and Rs' Ex. 1. The procedures preserved the panel option but restricted its role to fact-finding. Rs' Ex. 1. President Simone's decision to implement the Complaint Procedures was based on his belief that it was necessary "to improve the environment at the university with respect to sexual harassment in all of its forms: for students, faculty, staff and administrators; that after three years in consultation with varied and numerous organizations, it was time

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amendments to the harassment policy and that the final version had already been promulgated.

Dr. Goodman stated in her affidavit submitted in support of the Respondents' Reply Memorandum that the final version of the Procedures containing all of the incorporated changes was not presented to President Simone until after the meeting on April 15, 1992.

Again, while the parties disagree with respect to when President Simone decided to promulgate the Procedures as drafted by Dr. Goodman, this does not create a material issue of fact to defeat the Board's conclusion as to whether summary judgment is appropriate in this case.

for action; and the document was as close as the university could come to being acceptable." Rs' Ex. 9.

Section III of the Complaint Procedures contains various options and procedures available both on and off campus for any student or employee with a sexual harassment complaint. Most of the options and procedures listed in Section III are not new and have been in place and available through the EEO/AA Office under the directorship of Mie Watanabe. Tr. p. 148.

The Complaint Procedures are the result of a Task Force report which included ideas on how the UH wished to have sexual harassment complaints handled and formulated policy and procedures to permit the UH to conform with state and federal laws, BOR and UH policies and appropriate contractual regulations. Rs' Ex. 6.

According to Section III.E of the Procedures a student or employee filing a formal sexual harassment complaint with the UH EEO/AA Office has two options for the investigation of the complaint, Option A or Option B. The complainant may have the complaint investigated by the EEO/AA Office alone (Option B) or have a panel hear the matter after an investigation by the EEO/AA Office (Option A). The EEO/AA Office or the panel submits its findings of fact to the appropriate Vice President who reviews the case and renders a "cause" or "no cause" determination as to whether or not the record supports the allegations of the complaint. The Vice President then determines any sanction or remedial action to be taken and a written decision is issued.

Option A provides for an investigating panel of three persons selected from a pool of volunteers to do a fact-finding

report after the EEO/AA Director's investigation is completed. Rs' Exs. 1 and 6. The fact-finding panel option was developed to address the needs of students who believed, rightly or wrongly, that the EEO/AA Director's "bias towards protecting the reputation of the university" could not possibly permit her to investigate complaints fairly and objectively because as between the students and the University, the University's interests would be paramount. Rs' Ex. 9.

In addition, the panel option came about because the students wanted additional people participating in the fact-finding process. Rs' Ex. 6. Thus the panel was designed for students and UH staff who felt that they needed the "extra advantage, the extra protection of a peer group that would view them fairly and independently, hopefully they would get a fair shake." Rs' Ex. 9.

Option B is the existing procedure where the EEO/AA Director investigates the complaint and submits a fact-finding report to the appropriate Vice President for a decision. Rs' p. 11.

The only difference between the Complaint Procedures and the prior procedure followed by the EEO/AA Director is that the Complaint Procedures gives the complainant an option (A) to have a peer panel complete the fact-finding report. Rs' Ex. 11.

According to Dr. Goodman, the Complaint Procedures are not a disciplinary procedure. The Complaint Procedures set forth how complaints of sexual harassment will be handled to insure that the UH meets its duty to investigate complaints of sexual harassment and takes corrective action which is necessary to insure

that such conduct does not recur. It is not a procedure which sets forth how employees will be disciplined. See Affidavit of Madeleine Goodman in support of Respondents' Reply in Opposition to Complainant HGEA/AFSCME's Motion for Summary Judgment.

In addition, by practice, the respondent is either given a copy of the complaint or a summary at the start of an investigation by the EEO/AA Director of a formal or informal complaint of sexual harassment. Also, the respondent is given the opportunity to respond or make a statement and is advised that she or he may have their union representative present before the EEO/AA Director begins her investigation. If disciplinary action is imposed based on a cause determination of sexual harassment, the collective bargaining grievance procedure remains intact and may be pursued by the employee. Any information concerning the discipline of an employee will not be disclosed to the fact-finding panel, the person who files the complaint or any co-employees. See Affidavit of Madeleine Goodman attached to Respondents' Reply in Opposition to Complainant HGEA/AFSCME's Motion for Summary Judgment.

By memorandum dated June 3, 1992, Interim Senior Vice President for Academic Affairs Paul C. Yuen requested students, faculty and staff to volunteer to serve in the investigating panel pool provided under Section III.E of the Complaint Procedures. C's Ex. D and Rs' Ex. 10.

At the outset, the Board denies Complainant's Motion for Interlocutory Order. According to the HGEA's motion, while the Union does not seek to prevent the Respondents from the investigation and possible punishment of employees who are accused

of sexual harassment, the HGEA seeks a cease and desist order from implementing the Respondents' new policy.

HGEA alleges that the Respondents have established a committee made up of students, employees, supervisory and managerial employees who are given disciplinary information in contravention of the confidentiality and privacy guarantees set forth in the respective collective bargaining agreements.

The Board relies on the analysis for interlocutory relief set forth by the Hawaii Intermediate Appellate Court in Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. 272 (1981). The three requirements for the granting of interlocutory injunctive relief are: 1) Is the party seeking the relief likely to prevail on the merits? 2) Does the balance of irreparable damage favor issuance of injunctive relief? 3) Does the public interest support the granting of injunctive relief? The Court also noted that:

> The more the balance of irreparable damage favors the issuance of the injunction, the less the party seeking the injunction has to show the likelihood of success on the merits. [Citations omitted.] Likewise, the greater the probability the party seeking the injunction is likely to prevail on the merits, the less he has to show that the balance of irreparable harm favors the issuance of the injunction.

Id. at 276.

With respect to whether the Petitioner is likely to succeed on the merits, the HGEA relies upon the Board's Order No. 912, issued in Hawaii Government Employees Association, in Case Nos. CE-03-170a, et seq. In that case which is still pending before the Board, the Board granted the union's motion for interlocutory order and stayed the implementation of the seven-day

public service schedule for the public libraries pending a final decision. The Board there noted that the employer had previously deemed the subject of employees' work hours to be negotiable, then later changed its position.

Based upon a review of the record in this case, there has been no similar change in position by the Respondents in this case. While the Union considered the meetings with the Employer representatives to be negotiating sessions, the Respondents maintain that the parties met as part of the consultation process. In addition, the HGEA raises contract violation allegations which are not part of its prohibited practice complaint. The HGEA further contends that there is the potential for injury from the implementation of the Procedures and speculates that nothing can control the investigation from turning into a public hanging whereby the information is disclosed to an auditorium full of people who vote on the appropriate findings of fact.

The Board finds that HGEA's concerns are not supported by the record and are speculative.

Further, the Respondents contend that the Complainant is unlikely to prevail on the merits of its case because of Decision No. 341 rendered in the UHPA case, Case No. CE-07-164, supra. The Board in that case concluded that negotiation over the fact-finding panel in the Complaint Procedures was not required and dismissed the prohibited practice charges filed by UHPA. The Board also held that the panel option did not alter or modify the discipline or the grievance articles of UHPA's contract. Since similar issues were presented in that case and rejected by the Board, the Respondents

argue that it is more than likely that the Board will rule in like fashion in this case.

Based upon the arguments presented, the Board agrees with the Respondents that Complainant has not established that it is likely to succeed on the merits. In addition, the Complainant HGEA has not established that irreparable damage clearly favors the issuance of an interlocutory order. At the hearing on this motion, counsel for Respondents indicated that there was no pending investigation for which a panel would be imminently convened. Tr. of hearing held on September 16, 1993 at pp. 36-37. Moreover, Respondents argue that if the confidentiality provision of the contract is breached, a grievance can be filed. If the privacy rights of the individual employees are breached, Respondents argue that the individual can pursue a § 1983 federal court action against the persons disclosing or disseminating information. Hence, the balance of irreparable damage does not tip in favor of the issuance of an injunctive order.

With respect to the public interest involved, the Board finds that the public interest also favors the denial of the instant motion for interlocutory order. The Board found in Decision No. 341 that the panel option was incorporated into the Complaint Procedures in order to assure the students of an objective review of the facts by an investigative body composed of the peers of the complainant and respondent and another neutral person. Since the panel was proposed by a Task Force in response to concerns over the perception that the facts were not being independently reviewed, the Board finds that the public interest

supports the option of having a peer panel to investigate charges of sexual harassment.

Based upon the foregoing, the Board denies the instant motion for interlocutory order.

With respect to HGEA's motion for summary judgment, the HGEA contends that the Employer violated Subsections 89-13(a)(5) and (8), HRS, when Respondents violated the collective bargaining agreement (contract) by unilaterally implementing an amended sexual harassment policy that had the effect of changing material terms and provisions of the contract without reaching agreement regarding such changes.

Section 89-13, HRS, provides in pertinent part:

> 89-13 Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:
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> * * *
>
> (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;
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> * * *
>
> (8) Violate the terms of a collective bargaining agreement; . . .

With respect to its refusal to bargain charges, the HGEA contends that the Employer must negotiate with the Union regarding the procedure by which the employee will be disciplined. The HGEA relies upon a prior Board Order No. 869 in Case No. CE-07-152, University of Hawaii Professional Assembly, where the Board found that the parameters of the grievance procedure including the confidential nature of disciplinary actions are negotiable under

Chapter 89, HRS. That case dealt with the release of information regarding sexual harassment complaints against UH employees. Thus, HGEA argues that the amended procedures likewise adversely affect the confidentiality provisions of the contracts.

Moreover, the HGEA argues that the Respondents violated Subsection 89-13(a)(5), HRS, by bypassing the HGEA and directly soliciting employees represented by the HGEA over an issue which the Respondents were obligated to bargain over. The HGEA contends that the Employer apparently recognized its duty to bargain with the Union regarding implementation of the investigating panel when the Respondents agreed to discuss the matter with the Union prior to implementation.

Also in its motion for summary judgment, the HGEA for the first time raises allegations of Subsection 89-13(a)(8), HRS, violations. The HGEA argues that the Employer violated the collective bargaining agreement by unilaterally implementing an amended sexual harassment policy which changed provisions in the contract without first bargaining with the Union.

Respondents argue that the Complainant is barred from raising the new allegations of contract violations and further that the Complainant had failed to submit the relevant contract provisions into evidence. The Board notes that the HGEA submitted relevant contract provisions for bargaining units 03 and 13 to support its Motion for Interlocutory Order. However, the record indicates that the HGEA failed to amend its prohibited practice complaint in accordance with the Board's Administrative Rules

Section 12-42-43. Thus, the Board concludes that the HGEA's allegations of contract violations are not properly before it.

The Employer moves for summary judgment because the HGEA's proposal to eliminate the panel option substantially interferes with the UH's rights to determine the methods, means and personnel by which complaints of sexual harassment are to be handled. Consequently, the Employer argues that the Complaint Procedures are non-negotiable under Section 89-10(d), HRS.

The Employer also argues that HGEA's proposed changes to the Interim Procedures eliminated the fact-finding panel option. Rs' Ex. 8. Respondents contend that negotiation to eliminate the panel option substantially interferes with its rights to determine the methods, means and personnel by which complaints are to be handled. Thus, Respondents contend that consultation was sufficient in this case to satisfy its bargaining obligations prior to the implementation of the Complaint Procedures.

Further, Respondents argue that the Complaint Procedures do not impact upon disciplinary procedures covered under the collective bargaining agreement. Rather, the procedures merely set forth the various means and methods by which complaints of sexual harassment may be handled and investigated. If any disciplinary action is imposed, an employee retains the right to grieve under the respective collective bargaining grievance procedure. Thus, the Respondents argue that the grievance procedure remains intact and is not changed or impacted by the Complaint Procedures.

Respondents also argue that voluntary service on the panel does not materially impact terms and conditions of

employment. Respondents stress that being in the pool is strictly voluntary and no additional wages are paid for serving as a panelist. There is no pressure to serve in the pool or on the panel and no penalty if a panelist declines to serve.

Thus, the issue presented in this case is whether the Employer has a duty to negotiate over the panel option of the Complaint Procedures. Based upon a thorough review of the record in this case, the Board finds that the Union failed to prove that the Employer violated its duty to negotiate over the panel option before implementing the Complaint Procedures.

In Decision No. 341, the UHPA case, supra, the Board considered whether the Employer had a duty to negotiate over the panel option of the Complaint Procedures at issue here. The Board stated:

> Given the parameters of the panel's function and the nature of service on the panel, the Board finds that the evidence falls short of proving that the panel option has a material or significant effect on the terms and conditions of employment.
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> UHPA argues that the panel process is inextricably intertwined with the discipline and grievance articles of the collective bargaining agreement and therefore requires negotiation prior to implementation. After reviewing the pertinent provisions of the contract, it is clear that the panel option does not alter or modify the discipline or the grievance articles. The provisions of these articles remain intact and in force and are not altered by the Complaint Procedures. Thus, the Board concludes that UHPA failed to establish that negotiation is required prior to implementation of the panel option in the Complaint Procedures.
>
> In this case, the Employer had a diligent and thorough dialogue with UHPA over a two-year period, including several meetings with the unions to discuss the aspects of the procedures in contention. The Board finds

that the BOR fulfilled its obligations under Chapter 89, HRS, to consult regarding the implementation of the Complaint Procedures.

The Board thus dismissed the prohibited practice charges brought by the UHPA. On appeal, the Honorable Wendell K. Huddy affirmed the Board's Order in Civil No. 93-3425-09 (June 28, 1994), and found that as long as the panel does not determine whether or not disciplinary action should be initiated and an employee member retains without prejudice the right to decline service on a particular panel, the employer does not commit a prohibited practice.

In the UHPA case, the union also argued that the panel option had a material and significant impact on terms and conditions of the employment to require negotiation prior to implementation. These arguments were rejected by the Board. The Board relied upon Hawaii Government Employees Association, 1 HPERB 763 (1977), where the Board stated that the test as to whether the subject matter is a condition of employment and a mandatory subject of bargaining is determined by the nature of the impact of the matter on terms and conditions of employment, i.e., whether it has a material and significant effect on terms and conditions of employment.

In Department of Education, 1 HPERB 311 (1973), the Board developed a balancing test to determine whether a subject matter is non-negotiable because of its interference with the employer's rights. In that case, the Board found that class size was a hybrid issue involving policy making but which had a significant impact on working conditions. However, substantial interference with the

employer's right to determine the methods, means and personnel by which it conducts its operations and its responsibility to the public to maintain efficient operations rendered the subject matter non-negotiable.

The Board finds that pursuant to the complainant procedures the complainant may elect to have a panel investigate his or her sexual harassment complaint by reviewing the material of the EEO/AA Office. The panel then makes findings of fact for the appropriate Vice President who then determines whether there is cause to mete out any discipline. As in the UHPA case, supra, the Board finds that given the parameters of the panel's function and the nature of service on the panel, the evidence falls short of proving that the panel option has a material or significant effect on terms and conditions of employment.

The HGEA relies upon Order No. 869 in Case No. CE-07-152, University of Hawaii Professional Assembly, supra, for the proposition that the parameters of the grievance procedure, including the confidential nature of disciplinary actions are negotiable under Chapter 89, HRS. In that case, the Board considered whether the public release of names of faculty members charged with sexual harassment complaints, the nature of the charges and the information regarding the discipline imposed upon the employees is subject to bargaining under Chapter 89, HRS. The Board held that the procedures governing the suspension, demotion, discharge or other disciplinary actions taken against employees are negotiable under Subsection 89-9(d), HRS, and that the confidentiality of disciplinary proceedings was intertwined with

the procedures relating to disciplinary action. Consequently, the Board granted the UHPA's motion for partial summary judgment.

Here, the HGEA argues that the confidentiality of the disciplinary action is compromised by the panel option proposed by the Employer. In reviewing the relevant discipline, grievance and bill of rights articles of the contracts, it is clear that the panel option does not alter or modify such articles. The provisions of the articles remains intact and in force. Assuming arguendo, that the contract violation allegations were properly raised before this Board, the Board would find based upon its review of the relevant contract provisions that the panel option of the Complaint Procedures does not violate such provisions of the contract. The Board is persuaded by Respondents' arguments that the Complaint Procedures are not a disciplinary procedure and do not modify existing provisions of the respective contracts.

According to the Affidavit of Dr. Goodman attached to the Employer's Reply in Opposition to Complainant HGEA/AFSCME's Motion for Summary Judgment, the Complaint Procedures do not concern the implementation of discipline. Moreover, any information concerning the discipline of an employee following a cause determination will not be disclosed to the fact-finding panel. In addition, the respondent in a complaint is either given a copy of the complaint or a summary. The respondent also has the opportunity to respond or make a statement and are further advised that he or she may have their union representative present before the EEO/AA Director begins her investigation.

In addition, the Employer contends that negotiation over the Complaint Procedures would significantly impair the Employer's rights to maintain the efficiency of its operations and determine the methods, means and personnel by which the Employers' operations are to be conducted. After reviewing the Employer's contentions, the Board is persuaded that the investigation of sexual harassment complaints is a subject matter within management's prerogative and responsibility and that negotiation of the Employer's investigatory process would impinge upon its management rights. The Employer should have control over who conducts the investigation and the manner in which the investigation proceeds. Any prejudicial unfairness or impropriety in the procedure is grievable upon the imposition of any discipline.

Thus, the Board concludes that the HGEA failed to establish that negotiation is required prior to implementation of the panel option. Likewise, the HGEA failed to establish that the Employer's request for volunteers to serve in the pool of panelists does not constitute individual bargaining with the employees in violation of Subsection 89-13(a)(5), HRS. As stated in Decision No. 341, the UHPA case, supra, the Board finds that service on the panel is purely voluntary and does not significantly impact upon the employees' working conditions.

Accordingly, based upon the foregoing, the Board grants Respondents' motion for summary judgment and hereby dismisses this prohibited practice complaint.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO and BOARD OF REGENTS, University of Hawaii and JOHN D. WAIHEE, III, Governor of the State of Hawaii; CASE NOS.: CE-02-167a, CE-03-167b, CE-04-167c, CE-08-167d, CE-09-167e, CE-13-167f
ORDER NO. 1117
ORDER DENYING HGEA'S MOTION FOR INTERLOCUTORY ORDER AND GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

DATED: Honolulu, Hawaii, October 26, 1994.

HAWAII LABOR RELATIONS BOARD

BERT M. TOMASU, Chairperson

RUSSELL T. HIGA, Board Member

SANDRA H. EBESU, Board Member

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