

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.:	CE-02-245a
	)		CE-03-245b
	)		CE-04-245c
HAWAII GOVERNMENT EMPLOYEES	)		CE-09-245d
ASSOCIATION, AFSCME LOCAL 152,	)		CE-13-245e
AFL-CIO,)		
	)	ORDER NO. 1195	
Complainant,)		
	)	ORDER GRANTING HGEA'S MOTION	
and	)	TO AMEND PARTICULARIZATION;	
	)	DENYING HGEA'S MOTION TO	
JEREMY HARRIS, Mayor of the	)	CLARIFY BOARD ORDER; DENYING	
City and County of Honolulu,	)	HGEA'S MOTION TO CONSOLIDATE	
	)	CASES; AND GRANTING OIP'S	
Respondent.	)	MOTION FOR ORDER DIRECTING	
	)	HGEA TO SERVE OIP WITH	
	)	COPIES OF ALL PLEADINGS, ETC.	

ORDER GRANTING HGEA'S MOTION TO AMEND PARTICULARIZATION;
DENYING HGEA'S MOTION TO CLARIFY BOARD ORDER;
DENYING HGEA'S MOTION TO CONSOLIDATE CASES; AND
GRANTING OIP'S MOTION FOR ORDER DIRECTING HGEA TO
SERVE OIP WITH COPIES OF ALL PLEADINGS, ETC.

HGEA's Motion to Amend Particularization

On May 5, 1995, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO (HGEA), by and through its attorney, filed a Motion to Amend Complainant HGEA/AFSCME's Statement of Particularization of Complaint with the Hawaii Labor Relations Board (Board). Complainant seeks to amend its Particularization of Prohibited Practice Complaint filed on February 22, 1995 to include the allegation that Respondent JEREMY HARRIS, Mayor of the City and County of Honolulu (HARRIS), violated §§ 89-13(a)(5) and 89-13(a)(8), Hawaii Revised Statutes (HRS), by disclosing certain disciplinary information concerning an employee that should have been expunged from the employee's

personnel record in accordance with provisions of the applicable collective bargaining agreement. Counsel for Complainant indicates in an affidavit that the foregoing claim was not raised earlier because the HGEA did not become aware of the disclosure of material that should have been expunged from the employee's personnel record until counsel for Complainant met with counsel for Respondent on or about April 17, 1995.

On May 15, 1995, HARRIS filed a memorandum in opposition to Complainant's motion to amend its particularization of complaint. In an affidavit attached to the memorandum, counsel for Respondent indicates that the HGEA was aware of the information disclosed by Respondent at the time Complainant's prohibited practice complaint was filed. Counsel for Respondent further indicates that the document containing the information disclosed by Respondent and provided to counsel for Complainant on or about April 17, 1995 was a copy of the same document previously provided to the HGEA on or about December 1, 1994.

Upon a review of the record, it appears that the HGEA's additional allegation is an inadvertent omission rather than a newly discovered claim. In reaching this conclusion, the Board notes that the HGEA's original prohibited practice complaint filed with the Board on January 26, 1995 contains an allegation similar to the one raised in the instant motion. Notwithstanding this finding, the Board in its discretion will allow the HGEA to further particularize its complaint.

Accordingly, the Board hereby grants Complainant's motion to amend its statement of particularization of complaint pursuant to Administrative Rules § 12-42-8(g)(10)(A).

Complainant shall file its Amended Particularization of Prohibited Practice Complaint with the Board no later than 4:30 p.m. on the fifth working day after service of this order.

Respondent shall file his Answer with the Board no later than 4:30 p.m. on the fifth working day after service of Complainant's amended particularization.

HGEA's Motion to Clarify Board Order

On May 11, 1995, Complainant filed a Motion to Clarify HLRB Order Dated April 13, 1995 Titled Order Denying OIP's Motion for Reconsideration and Granting HGEA's Motion for Clarification. The HGEA requests that the Board clarify its Order to disallow Amicus Curiae OFFICE OF INFORMATION PRACTICES (OIP) from introducing any documentary or testimonial evidence in the instant case, including but not limited to written testimony to the State Legislature.

On May 16, 1995, the OIP filed a memorandum in opposition to the HGEA's motion for clarification. Similarly, on May 19, 1995, Respondent HARRIS filed a memorandum in opposition to Complainant's motion.

By this Order, the Board reaffirms its oral ruling and written order permitting the OIP to present documentary evidence in these proceedings and hereby denies the HGEA's motion to clarify the Board's Order dated April 13, 1995. Any objection to the

introduction of evidence in this case may be made at the appropriate time.

HGEA's Motion to Consolidate Cases

On May 12, 1995, Complainant filed a motion to consolidate the subject prohibited practice complaint with the HGEA's petition for declaratory ruling filed with the Board in Case Nos.: DR-02-58a, et seq. Thereafter, on May 22, 1995, Respondent filed a memorandum in opposition to the HGEA's motion to consolidate the two cases.

The subject prohibited practice complaint concerns alleged violations of §§ 89-13(a)(5) and 89-13(a)(8), HRS, based upon Respondent's disclosure of disciplinary information regarding employees of the Honolulu Police Department (HPD). The petition for declaratory ruling at issue, on the other hand, requests the Board to construe §§ 89-13(a)(5) and 89-13(a)(8), HRS, to prohibit Respondent from disclosing disciplinary information concerning employees in bargaining units 02, 03, 04, 09 and 13 prior to reaching agreement through negotiations with the HGEA.

While both cases before the Board involve similar issues and parties, the Board finds that the instant prohibited practice complaint focuses on Respondent's disclosure of disciplinary information regarding HPD employees, while the petition for declaratory ruling is broader in scope and involves the disclosure of disciplinary information concerning any of Respondent's employees covered by the applicable collective bargaining agreements.

In addition, the parties and amicus curiae to the instant proceedings have been working on stipulated facts and preparing to proceed to hearing on May 31, 1995, while interested parties have until May 30, 1995 to petition to intervene in the proceedings on the HGEA's petition for declaratory ruling.

Based upon the foregoing, the Board finds that consolidation of the instant prohibited practice complaint with the HGEA's petition for declaratory ruling would unduly broaden the issues at hand and unduly delay these proceedings. The Board further finds that consolidation of these cases will not be conducive to the proper dispatch of business or to the ends of justice. Accordingly, the Board hereby denies the HGEA's motion to consolidate cases pursuant to Administrative Rules § 12-42-8(g)(13).

OIP's Motion for Board Order Requiring HGEA to Serve OIP with Copies of All Pleadings, Etc.

Finally, on May 16, 1995, the OIP filed a motion for an order directing Complainant to serve the OIP with copies of all pleadings and other documents filed in the instant proceedings. In an affidavit attached to the motion, counsel for the OIP states that it is imperative that the OIP be served with copies of all documents filed by Complainant in order for the OIP to meaningfully exercise its rights granted by the Board.

With respect to service of documents, the Board's Administrative Rules § 12-42-8(a)(6) provide:

Unless otherwise specifically provided by a particular rule, regulation, or order of the board, the original and five copies of the

papers, with certificate of service on all parties, shall be filed.


Although the OIP is not technically a party in this case, the Board finds that the OIP, as an amicus curiae, should as a courtesy be served with all documents filed in these proceedings. Accordingly, the Board hereby orders Complainant to forthwith serve the OIP with copies of all documents filed by the HGEA in this case and further, to provide OIP with a copy of any documents introduced during the hearing on this matter.

DATED: Honolulu, Hawaii, May 30, 1995.

HAWAII LABOR RELATIONS BOARD



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

Copies sent to:

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