

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.: CE-13-385
	)	CU-13-140
KEITH J. KOHL,	)	
	)	ORDER NO. 1595
Complainant,	)	
	)	ORDER GRANTING, IN PART,
and	)	AND DENYING, IN PART,
	)	RESPONDENTS' MOTIONS FOR
JAMES TAKUSHI, Director,	)	PARTICULARIZATION
Department of Human Resources	)	
Development, State of Hawaii	)	
and RUSSELL OKATA, Executive	)	
Director, Hawaii Government	)	
Employees Association, AFSCME,	)	
Local 152, AFL-CIO,	)	
	)	
Respondents.	)	

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ORDER GRANTING, IN PART, AND DENYING,  
IN PART, RESPONDENTS' MOTIONS FOR PARTICULARIZATION

On February 11, 1998, Respondent JAMES TAKUSHI, Director, Department of Human Resources Development, State of Hawaii (TAKUSHI), by and through his attorneys, filed a motion for particularization with the Hawaii Labor Relations Board. Respondent TAKUSHI contends that Complainant KEITH J. KOHL (KOHL) failed to identify the specific provisions of the applicable collective bargaining agreement which were allegedly violated and also failed to specify the particular facts which support a violation of the statutory provisions designated. Thus, Respondent contends that the Complaint as drafted is vague and ambiguous and requests that Complainant identify the contract provisions which were allegedly violated as well as additional facts to support his claims, including which grievances Complainant refers to.

On February 13, 1998, Complainant KOHL filed a memorandum in opposition to TAKUSHI's motion for particularization with the Board. KOHL contends that the Board's form only requires Complainant to identify the statutory violations and not the specific provisions of the contract. In addition, Complainant contends that the Respondent is already in receipt of file-stamped copies of all seven grievances. Thus, Complainant complains that Respondent TAKUSHI is harassing him and requests that sanctions be imposed.

Also on February 13, 1998, Respondent RUSSELL OKATA, Executive Director, Hawaii Government Employees Association (HGEA), by and through his attorney, filed a motion for particularization with the Board. Respondent HGEA contends, inter alia, that the complaint fails to specifically state facts supporting the alleged violations of §§ 89-13(b)(1), (2), (3), (4), and (5), Hawaii Revised Statutes (HRS).

On February 17, 1998, Complainant filed a memorandum in opposition to the HGEA's motion for particularization with the Board. Complainant contends that the HGEA is in possession of the seven grievances referred to and thus Respondent HGEA's motion is also intended to harass Complainant. In addition, Complainant contends that Respondent HGEA's motion for particularization is untimely and further that the HGEA failed to timely file an answer to the complaint.

Addressing first Complainant's arguments regarding the timeliness of the HGEA's motion, the Board notes that the return receipt in the Board's files indicate that the HGEA received the Notice to Respondents on February 6, 1998. Administrative Rules

§ 12-42-45(b) provides that a respondent may file a motion for particularization within five days after service of the complaint. Administrative Rules § 12-42-8(c) provides in computing time, that if the period is less than seven days then only working days are computed. In this case, the Board finds that the HGEA timely filed its motion for particularization on February 13, 1998, the fifth working day after receipt of the notice.

After reviewing the motions and examining the complaint filed, the Board finds that the complaint is reasonably clear in alleging that Complainant's grievances were not properly processed by TAKUSHI and that Complainant believes that the HGEA breached its duty of fair representation to him with respect to his grievances. Thus, Complainant need not specify the facts supporting each violation of § 89-13, HRS, alleged. However, the Board believes the complaint is vague in the following respects. The Board believes that Complainant should specify which grievances he refers to because seven are referenced in the complaint. In addition, Complainant should specify which contract provisions he alleges were violated by TAKUSHI. Thus, the Board grants the Respondents' motions in part, and denies the motions, in part.

The Board directs Complainant to file a particularization with the Board identifying the seven grievances in chronological order indicating the date filed with a brief description of the allegations or circumstances giving rise to the grievance. In addition, Complainant is directed to cite to the applicable contract provisions which he alleges were violated by TAKUSHI.


The Board hereby directs the above-named Complainant to file with this Board the original and five (5) copies of the

requested particularization, with proof of service upon the Respondents, no later than 4:30 p.m. of the fifth working day after service of this order. If Complainant fails to file and serve the particularization in a timely manner, the Board shall dismiss the subject Prohibited Practice Complaint.

Respondents are directed to file with this Board the original and five (5) copies of the Answer, with proof of service upon Complainant, no later than 4:30 p.m. of the fifth working day after service of Complainant's Particularization. Failure by Respondents to file their respective answers in a timely manner may constitute an admission of the material facts alleged in the Complaint and Particularization and a waiver of a hearing.

DATED: Honolulu, Hawaii, February 24, 1998.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
CHESTER C. KUNITAKE, Board Member

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