

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-03-427
)	
HAWAII GOVERNMENT EMPLOYEES)	ORDER NO. 1744
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	ORDER DENYING RESPONDENTS'
)	MOTION TO DISMISS AND/OR FOR
Complainant,)	SUMMARY JUDGMENT; NOTICE OF
)	PREHEARING CONFERENCE AND
and)	HEARING ON PROHIBITED PRAC-
)	TICE COMPLAINT
BENJAMIN J. CAYETANO, Governor,)	
State of Hawaii; TIM JOHNS,)	
Chairman, Department of Land &)	
Natural Resources, State of)	
Hawaii; MASON YOUNG, Admin-)	
istrator, Bureau of Conveyances,)	
Department of Land & Natural)	
Resources, State of Hawaii;)	
and NICOLENE GEGA-CHANG,)	
Chief, Bureau of Conveyances,)	
Department of Land & Natural,)	
Resources, State of Hawaii,)	
)	
Respondents.)	

ORDER DENYING RESPONDENTS' MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT; NOTICE OF PREHEARING
CONFERENCE AND HEARING ON PROHIBITED PRACTICE COMPLAINT

On May 21, 1999, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union), by and through its counsel, filed a prohibited practice complaint against BENJAMIN J. CAYETANO, Governor, State of Hawaii; TIM JOHNS, Chairman, Department of Land and Natural Resources, State of Hawaii; MASON YOUNG, Administrator, Bureau of Conveyances, Department of Land and Natural Resources, State of Hawaii; and NICOLENE GEGA-CHANG (GEGA-CHANG), Chief, Bureau of Conveyances, Department of Land and Natural Resources, State of Hawaii

(collectively Respondents) with the Hawaii Labor Relations Board (Board). Complainant alleges that on May 5, 1999, during the time when the HGEA was conducting a Unit 03 stewards election at the Bureau of Conveyances, Respondent GEGA-CHANG instructed Unit 03 employees to first, not vote, then to "go across the hall ask questions and vote." Complainant contends that such statements by GEGA-CHANG violated §§ 89-13(a)(1), (2), and (7), Hawaii Revised Statutes (HRS).

On June 2, 1999, Respondents, by and through their counsel, filed a motion to dismiss the complaint or in the alternative, for summary judgment with the Board. Respondents contend that even if the statements attributed to GEGA-CHANG were made by her, such statements cannot be construed as interference with protected Union activities. Additionally, Respondents contend that GEGA-CHANG is not a representative of the Employer because she is a member of bargaining unit 04 and § 89-6(c), HRS, states that no representative of a public employer is permitted to be a member of a bargaining unit. Respondents argue that bargaining unit 04 is represented by the HGEA and contends that if the HGEA has a quarrel with its own member, it should be resolved by whatever procedures the HGEA has established to deal with inter-bargaining unit disputes.

On June 14, 1999, the HGEA filed a memorandum in response to Respondents' motion to dismiss the prohibited practice complaint and/or for summary judgment with the Board. The HGEA contends that the statements attributed to GEGA-CHANG violate §§ 89-13(a)(1), (2), and (7), HRS, because even if she was asked about the stewards election, she was under an obligation to remain silent and Unit 03

members who may have had questions could have inquired of the Unit 03 members conducting the election. In response to Respondents' argument that GEGA-CHANG is not a representative of the Employer, the HGEA asserts that GEGA-CHANG, as the Land Court Branch Chief in the Bureau of Conveyances, is a supervisor of Unit 03 employees and by virtue of her position has inherent authority to represent the employer in dealing with employees.

The Board held a hearing on the Respondents' motion to dismiss and/or for summary judgment on July 27, 1999. The parties had full opportunity to present evidence and arguments to the Board. Based on a review of the record and considering the arguments presented, the Board hereby denies the Respondents' motion to dismiss and/or for summary judgment.

On May 5, 1999, an election for Unit 03 stewards at the Bureau of Conveyances was held at the Bureau of Conveyances conference room.

Thereafter, by letter to GEGA-CHANG dated May 6, 1999, HGEA Union Agent Beverly Look (Look) complained that on May 5, 1999, GEGA-CHANG instructed several Unit 03 members "not to participate in the election" and later began to advise employees to "go and vote."

By letter to Ms. Look dated May 11, 1999, GEGA-CHANG denied the allegation that she instructed her employees not to vote as "not true" and further stated that she "instructed my employees to go across the hall ask questions and vote."

As recognized by Respondents in their memorandum, a motion to dismiss for failure to state a claim upon which relief can be granted should only be granted if it is beyond doubt that a

complainant can prove no set of facts in support of his or her claim. Here, the Complainant has alleged that GEGA-CHANG told Unit 03 members not to vote in a stewards election. If such a statement was made, it could be construed as interfering with the right of employees to engage in protected activity in violation of Chapter 89, HRS. Thus, the Board finds that Complainant has alleged sufficient facts to state a claim for relief and the Board denies Respondents' motion to dismiss the instant complaint.

Moreover, the Board disagrees with Respondents' contention that a supervisor who is included in a bargaining unit cannot be an employer representative in the context of a prohibited practice charge. The definition of "supervisory employee" in § 89-2, HRS, states that such an employee "acts in the interest of the employer" in dealing with employees and § 89-6, HRS, places supervisory employees in white-collar positions in bargaining unit 04. To hold that all supervisory employees who were included in a bargaining unit could not be representatives of the employer in the context of a prohibited practice complaint would thwart the enforcement of prohibited practice complaints against an employer. Therefore, the Board denies Respondents' motion for summary judgment. Accordingly, Respondents shall file their Answer to the Prohibited Practice Complaint forthwith.

YOU ARE HEREBY NOTIFIED that the Board, pursuant to § 89-5(b)(4), HRS, and Administrative Rules § 12-42-47, will conduct a prehearing conference on the above-entitled prohibited practice complaint on August 23, 1999 at 9:00 a.m., in the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The purpose of the prehearing conference is to arrive at a

settlement or clarification of issues, to identify and exchange witness and exhibit lists, if any, and to the extent possible, reach an agreement on facts, matters or procedures which will facilitate and expedite the hearing or adjudication of the issues presented. The parties shall file a Prehearing Statement which addresses the foregoing matters with the Board two days prior to the prehearing conference.

YOU ARE ALSO NOTIFIED that the Board will conduct a hearing, pursuant to §§ 89-5(b)(4) and 89-14, HRS, and Administrative Rules §§ 12-42-49 and 12-42-8(g) on the instant complaint on August 31, 1999 at 9:00 a.m. in the above-mentioned hearings room. The purpose of the hearing is to receive evidence and arguments on whether Respondents committed prohibited practices as alleged by the Complainant. The hearing may continue from day to day until completed.

The parties shall submit to the Board four copies of all exhibits identified and offered into the record. Additional copies for opposing counsel shall also be provided.

All parties have the right to appear in person and to be represented by counsel or other representative.

Auxiliary aids and services are available upon request, call Mrs. Kato at 586-8610, (808) 586-8847 (TTY), or 1-888-569-6859 (TTY neighbor islands). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO
and BENJAMIN J. CAYETANO, et al.

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JUDGMENT; NOTICE OF PREHEARING CONFERENCE AND HEARING ON PRO-
HIBITED PRACTICE COMPLAINT

DATED: Honolulu, Hawaii, August 10, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

Copies sent to:

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Joyce Najita, IRC