

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-13-381
	)	
HAWAII GOVERNMENT EMPLOYEES	)	ORDER NO. 1768
ASSOCIATION, AFSCME, LOCAL 152,	)	
AFL-CIO,	)	ORDER GRANTING COMPLAIN-
	)	ANT'S MOTION TO AMEND COM-
Complainant,	)	PLAINT; ORDER DENYING COM-
	)	PLAINANT'S MOTION TO REOPEN
and	)	RECORD; AND ORDER DIRECTING
	)	SUBMISSION OF PROPOSED ORDER
CORA LUM, Deputy Director of	)	
Public Safety, State of Hawaii	)	
and DEPARTMENT OF PUBLIC SAFETY,	)	
State of Hawaii,	)	
	)	
Respondents.	)	
	)	

ORDER GRANTING COMPLAINANT'S MOTION TO AMEND  
COMPLAINT; ORDER DENYING COMPLAINANT'S MOTION TO REOPEN  
RECORD; AND ORDER DIRECTING SUBMISSION OF PROPOSED ORDER

On June 3, 1998, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA), by and through its counsel, filed a motion to amend its prohibited practice complaint with the Hawaii Labor Relations Board (Board). Complainant seeks to amend its complaint to add allegations of §§ 89-13(a)(1) and (5), Hawaii Revised Statutes (HRS), violations. Complainant's counsel states in an affidavit attached to the motion that during the first day of the hearing in this matter, the Board Chairperson indicated that the Board would grant the HGEA leave to amend its complaint to add allegations of § 89-13(a)(5), HRS. Complainant also seeks to include allegations of § 89-13(a)(1), HRS, violations because counsel believes it to be appropriate.

Respondents did not file a response to Complainant's motion to amend complaint. After reviewing the record, the Board notes that Complainant filed the instant motion on the date that closing briefs were due. However, as the Board previously deferred the charges of contract violations, § 89-13(a)(8), HRS, to the grievance procedure, and finds that the amendment does not change Complainant's theory of the case which would result in prejudice to Respondents, the Board hereby grants Complainant's motion to amend the complaint.

Thereafter, on September 4, 1998, Complainant filed a motion for summary judgment or in the alternative, motion to reopen the record to accept additional evidence regarding later occurrences with the Board. Complainant moves for partial summary judgment on the claim of Complainant that Xanya Sofra-Weiss, Ph.D. (Sofra-Weiss), was placed on involuntary leave without pay for an indefinite period of time in violation of Chapter 89, HRS, as Respondents admitted liability on August 27, 1998 subsequent to the closing of the record herein. Alternatively, Complainant moves the Board to reopen the record to receive evidence of the admission.

On September 14, 1998, Respondents, by and through their counsel, filed a memorandum in opposition to Complainant's motion with the Board. Respondents contend that the Board previously limited the scope of the hearing in this case as to whether the grievance procedures were frustrated in these instances and whether there was a settlement agreement which was subsequently breached by the Employer. Respondents contend that the Step 3 decision which the Complainant seeks to enter into the record deals with the

subject of the grievance and issues which were deferred to the grievance procedure. Accordingly, Respondents contend that the material is not relevant nor material to this complaint. Respondents, moreover, contend that there is no evidence as to whether the Employer interfered with or frustrated the processing of the grievances which is at issue.

After reviewing the record in this case, the Board agrees with the Respondents' contentions and hereby denies the HGEA's motion for summary judgment or alternatively, motion to reopen the record in this case.

Further, in order to assist the Board in issuing a ruling in this matter, Respondents are directed to submit a proposed order, including proposed findings of fact and conclusions of law, reflecting a Board ruling in this case that:

1) The Board has jurisdiction over the instant complaint pursuant to §§ 89-5 and 89-13, HRS.

2) The Board finds with regard to Dr. Sofra-Weiss that the Union failed to prove that Respondents entered into a binding settlement agreement with the Complainant which was later breached.

3) The Board finds with regard to Danielle Luat that the Union failed to prove that she filed a grievance with the employer.

4) The Board concludes based upon the evidence that the Respondents did not violate §§ 89-13(a)(1) and (5), HRS.


5) The prohibited practice complaint is dismissed.

Respondents have 25 days, unless such time is extended by the Board, to draft the order and secure the approval as to form of opposing counsel thereon and to file the original and five copies

of the order, accompanied by a diskette with a copy of the order, with the Board. If the form of the proposed findings of fact and conclusions of law has not been approved, a party served with the proposed order may file objections and a copy of his proposed order, accompanied by a diskette with a copy of the order, with the Board within seven working days.

DATED: Honolulu, Hawaii, September 13, 1999.

HAWAII LABOR RELATIONS BOARD

  
\_\_\_\_\_  
BERT M. TOMASU, Chairperson

  
\_\_\_\_\_  
RUSSELL T. HIGA, Board Member

  
\_\_\_\_\_  
CHESTER C. KUNITAKE, Board Member

Copies sent to:

Charles K.Y. Khim, Esq.  
James E. Halvorson, Deputy Attorney General  
Joyce Najita, IRC