

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-01-145
)	
LINDA LINGLE, Mayor, County of Maui,)	ORDER NO. 1777
)	
Complainant,)	ORDER DENYING RESPONDENT'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT; ORDER DENYING COMPLAINANT'S APPLICATION FOR LEAVE TO REQUEST DISCOVERY; AND NOTICE OF PREHEARING AND HEARING ON PROHIBITED PRACTICE COMPLAINT
and)	
)	
GARY RODRIGUES, State Director, United Public Workers, AFSCME, LOCAL 646, AFL-CIO,)	
)	
Respondent.)	
)	

ORDER DENYING RESPONDENT'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT; ORDER DENYING COMPLAINANT'S APPLICATION FOR LEAVE TO REQUEST DISCOVERY; AND NOTICE OF PREHEARING AND HEARING ON PROHIBITED PRACTICE COMPLAINT

On June 17, 1998, Complainant LINDA LINGLE, Mayor, County of Maui (LINGLE), by and through her counsel, filed a prohibited practice complaint against GARY RODRIGUES, State Director, United Public Workers, AFSCME, LOCAL 646, AFL-CIO (RODRIGUES) with the Hawaii Labor Relations Board (Board). LINGLE alleges that RODRIGUES violated §§ 89-13(b)(1), (2), (3), (4), and (5), Hawaii Revised Statutes (HRS), by distributing letters to Unit 01 members stating, inter alia, that LINGLE hates Units 01 and 10 workers. LINGLE contends that the letters interfered with harmonious and cooperative relations between government and its employees.

On June 26, 1998, RODRIGUES, by and through his counsel, filed a motion to dismiss complaint and/or for summary judgment with the Board. RODRIGUES contends that LINGLE lacks standing to

bring this complaint; the complaint fails to state a claim for relief; and the case is moot or otherwise barred by res judicata or collateral estoppel.

Thereafter, on July 7, 1998, Complainant filed a motion for leave to file a first amended complaint with the Board. In Order No. 1654, the Board granted Complainant's motion for leave to file a First Amended Complaint. The First Amended Prohibited Practice Complaint alleges that Respondent violated §§ 89-13(b)(2) and (4), HRS, by disseminating letters to Unit 01 members which, inter alia, violated negotiation ground rules and created a hostile work environment thereby interfering with the relationship between the employer and the Unit 01 members.

On August 4, 1998, Respondent filed a supplemental memorandum in support of his motion to dismiss the complaint and/or for summary judgment with the Board. Respondent argues that LINGLE complains that Respondent violated certain ground rules applicable to bargaining over the new Unit 01 agreement which was consummated on March 10, 1998. As the complaint in this case was not filed until June 17, 1998, more than 90 days from the date on which bargaining ended, Respondent contends that the complaint was not timely filed and is time-barred. In addition, Respondent claims that LINGLE was one member of a multi-employer negotiating group and only a majority of the employer group has standing to complain of a violation of negotiating ground rules. Respondent also contends that LINGLE cannot assert the rights of the employees.

On August 12, 1998, Complainant filed a memorandum in opposition to Respondent's supplemental motion to dismiss complaint

and/or for summary judgment with the Board. Complainant contends that summary judgment is not appropriate in this case because there are many issues of material fact presented in this case. Complainant alleges that the negotiations for the Unit 01 agreement cost items are continuing and contends that the negotiation ground rules apply even after the Unit 01 contract becomes effective. Moreover, Complainant contends that she has standing as a public employer to bring a complaint.

Based upon a review of the record and consideration of the arguments of counsel, the Board hereby denies Respondent's motion to dismiss the complaint and/or for summary judgment. The Board finds that it has jurisdiction over the complaint because it was timely filed within 90 days of the dissemination of the letter and is not otherwise rendered moot by the Stipulation and Order entered into between the parties in Case No. CE-01-396. The Board also finds that LINGLE has standing to bring a complaint against the Respondent regarding the refusal or failure to comply with § 89-1, HRS. Further, viewing the facts in a light most favorable to Complainant, the Board will not dismiss her claim regarding the violation of negotiation ground rules at this stage of the proceedings. Moreover, the Board finds that there are genuine issues of material fact as to whether the newsletter interfered with LINGLE's rights as an employer and whether the dissemination of the newsletter violated the negotiation ground rules, such that an entry of summary judgment for Respondent would be inappropriate.

Turning to Complainant's application for leave to request discovery filed on October 1, 1998 with the Board, Complainant

seeks to serve Respondent with interrogatories regarding who received the letter at issue and why the letter was mailed to ascertain the wilfulness of RODRIGUES' actions.

On October 15, 1998, Respondent filed an opposition to Complainant's application for leave to request discovery with the Board. Respondent contends that Complainant failed to establish good cause for prehearing discovery.

After considering Complainant's request for discovery and the arguments in opposition thereto, the Board hereby denies Complainant's request because Complainant failed to establish good cause to justify such request.

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 October 1, 1999 at 9:00 a.m. by conference call. Counsel for Complainant will be contacted at his telephone number on file with the Board. Counsel for Respondent is requested to appear 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 October 12, 1999 at 9:30 a.m. in the above-mentioned hearings room. The purpose of the hearing is to receive evidence and arguments on whether Respondent 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.

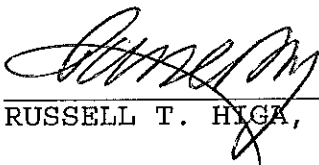
All parties have the right to appear in person and to be represented by counsel or other representative.

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.

DATED: Honolulu, Hawaii, September 20, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

LINDA LINGLE, Mayor, County of Maui and GARY RODRIGUES, State
Director, United Public Workers, AFSCME, LOCAL 646, AFL-CIO
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Copies sent to:

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Tom Pierce, Deputy Corporation Counsel
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