

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.: CE-13-385
	)	CU-13-140
KEITH J. KOHL,	)	
	)	ORDER NO. 1778
Complainant,	)	
	)	ORDER GRANTING, IN PART,
and	)	AND DENYING, IN PART,
	)	RESPONDENT HAWAII GOVERN-
JAMES TAKUSHI, Director,	)	MENT EMPLOYEES ASSOCIA-
Department of Human Resources	)	TION, AFSCME, LOCAL 152,
Development, State of Hawaii	)	AFL-CIO'S MOTION TO DIS-
and RUSSELL OKATA, Executive	)	MISS COMPLAINT; NOTICE OF
Director, Hawaii Government	)	PREHEARING CONFERENCE AND
Employees Association, AFSCME,	)	HEARING ON PROHIBITED
Local 152, AFL-CIO,	)	PRACTICE COMPLAINT
	)	
Respondents.	)	

ORDER GRANTING, IN PART, AND DENYING, IN PART, RESPONDENT HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO'S MOTION TO DISMISS COMPLAINT; NOTICE OF PREHEARING CONFERENCE AND HEARING ON PROHIBITED PRACTICE COMPLAINT

On February 4, 1998, KEITH J. KOHL (KOHL) filed a prohibited practice complaint against the above-named Respondents with the Hawaii Labor Relations Board (Board). KOHL contends that Respondent RUSSELL OKATA, Executive Director, Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (OKATA) breached his duty to fairly represent KOHL in seven grievances. Thus, KOHL contends that the OKATA wilfully violated §§ 89-13(b)(1), (2), (3), (4), and (5), Hawaii Revised Statutes (HRS). KOHL also alleged that Respondent JAMES TAKUSHI, Director, Department of Human Resources Development (TAKUSHI) failed and/or refused to process his seven grievances. Thus, Complainant contends that TAKUSHI

wilfully violated §§ 89-13(a)(1), (3), (4), (5), (6), (7), and (8), HRS.

On April 3, 1998, the OKATA, by and through his counsel, filed a motion to dismiss the complaint with the Board. OKATA alleges that KOHL filed four grievances against his employer in 1995 which were forwarded to Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA or Union) and the HGEA indicated to KOHL that the grievances would be held in abeyance because of KOHL's medical condition until KOHL notified them that he was ready to proceed. In addition, KOHL filed three grievances in September and October of 1997. OKATA contends that since KOHL's complaint was filed more than 90 days after any alleged breach of duty of fair representation by the Union, the instant complaint is time-barred.

On June 22, 1998, the Board conducted a hearing on OKATA's motion to dismiss the complaint.

Based upon the record and the arguments presented, the Board hereby grants the OKATA's motion to dismiss KOHL's allegations concerning the 1997 grievances because the complaint is untimely. The Board finds that KOHL filed the grievances on his own in September and October of 1997. Thus, any cause of action for an alleged breach of the duty of fair representation against the Union would have occurred at that time, i.e., when KOHL knew or should have known that the Union would not represent him. Since the instant complaint was filed more than 90 days after October 1997, the allegations regarding the 1997 grievances are dismissed.

With respect to the four grievances from 1995, the record indicates that the HGEA indicated that it would represent him in

the grievances, if they had merit, but that they would be held in abeyance by the HGEA to preserve their timeliness until further notice from KOHL about his condition. There is no further evidence regarding the status of the grievances. Thus, there is nothing in the record to indicate any further action by the HGEA or any notice to the HGEA from KOHL about the grievances. Hence, viewing the facts in the light most favorable to KOHL, the Board hereby denies OKATA's motion to dismiss the allegations concerning the four 1995 grievances.

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 9:30 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 October 19, 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.

DATED: Honolulu, Hawaii, September 21, 1999.

HAWAII LABOR RELATIONS BOARD

  
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BERT M. TOMASU, Chairperson

  
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RUSSELL T. HIGA, Board Member

  
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CHESTER C. KUNITAKE, Board Member

Copies sent to:

- William H. Elkner, Esq.
- Kris N. Nakagawa, Deputy Attorney General
- Peter Liholiho Trask, Esq.
- Joyce Najita, IRC