

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-06-424
)	
HAWAII GOVERNMENT EMPLOYEES)	ORDER NO. 1796
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	ORDER DENYING RESPONDENTS'
)	MOTION TO DISMISS AND/OR
Complainant,)	FOR SUMMARY JUDGMENT;
)	NOTICE OF PREHEARING CON-
and)	FERENCE AND HEARING ON PRO-
)	HIBITED PRACTICE COMPLAINT
BOARD OF EDUCATION, State of)	
Hawaii and DEPARTMENT OF)	
EDUCATION, 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 March 9, 1999, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) filed the instant complaint against the BOARD OF EDUCATION, State of Hawaii (BOE) and the DEPARTMENT OF EDUCATION, State of Hawaii (DOE) (collectively State) with the Hawaii Labor Relations Board (Board). The HGEA alleges that on or about January 21, 1999, the BOE allowed Ms. Carrie Cardenas (Cardenas) to testify at a BOE meeting on a personnel matter that the State knew had been investigated and that disciplinary action had been taken against Gervacio Buenconsejo (Buenconsejo), a principal and member of Unit 06. The HGEA alleges that the State was aware that Buenconsejo had already been issued a written reprimand for an incident involving Cardenas' son and permitted Cardenas to speak, subjecting Buenconsejo to public

ridicule and embarrassment during the meeting. The HGEA contends that the State disciplined Buenconsejo without just and proper cause which was intended to place a chilling on Buenconsejo's union activities. The HGEA contends that the State violated § 89-3, Hawaii Revised Statutes (HRS) and committed prohibited practices in violation of §§ 89-13(a)(1), (3), (7), and (8), HRS. The HGEA further contends that the BOE changed its past practice to prohibit public comment on personnel matters without consulting or negotiating with the HGEA in violation of §§ 89-9(a) and (d), HRS, and §§ 89-13(a)(1), (3), (5), (7), and (8), HRS.

On March 29, 1999, Respondents filed a motion to dismiss and/or for summary judgment with the Board. Respondents contend that the complaint should be dismissed because the allegations in the complaint involve grievable matters and the HGEA failed to exhaust its contractual remedies. Respondents also contend that the HGEA fails to state a claim upon which relief can be granted because the HGEA failed to allege any connection between Cardenas and the BOE and that the State took any action to interfere with Buenconsejo's union activities. Respondents further contend that the HGEA complains that the BOE permitted a member of the public to testify at a BOE meeting and the HGEA's recourse is to pursue an action to enforce Chapter 92, HRS. As such, Respondents contend that the complaint should be dismissed.

On May 10, 1999, the Board conducted a hearing on the instant motion. The parties had full opportunity to present evidence and arguments to the Board. Based upon a review of the

record and the arguments presented, the Board hereby denies the instant motion to dismiss and/or for summary judgment.

The Board finds that the instant complaint alleges statutory violations, the State's interference with Buenconsejo's union activities and the change in policy without negotiation or consultation, as well as contractual violations involving discipline. Viewing the allegations of the complaint in the light most favorable to the Complainant, the Board finds that it has jurisdiction over the statutory violations alleged. In addition, the Respondents did not submit any facts to the Board which would be sufficient to support granting their motion to dismiss the complaint and/or summary judgment.

Accordingly, the Board directs the Respondents to file their answer to the instant 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 October 12, 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 October 21, 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 30, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO and BOARD OF EDUCATION, State of Hawaii, et al.
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HIBITED PRACTICE COMPLAINT



CHESTER C. KUNITAKE, Board Member

Copies sent to:

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