

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CU-05-164
)	
JANET WEISS,	)	ORDER NO. 1891
)	
Complainant,	)	ORDER DENYING COMPLAINANT'S
	)	MOTION TO ADVANCE HEARING
and	)	DATE AND DENYING RESPON-
	)	DENTS' MOTIONS FOR PARTIAL
JOAN LEE HUSTED, Deputy Execu-	)	DISMISSAL OF COMPLAINT AND
tive Director, Hawaii State	)	TO LIMIT TESTIMONY AND TO
Teachers Association; MARK	)	DISMISS DON MERWIN; NOTICE
NAKASHIMA, Uniserv Director,	)	OF RESCHEDULED HEARING
Hawaii State Teachers Associa-)	
tion; DON MERWIN, Uniserv)	
Director, Hawaii State Teachers)	
Association; and HAWAII STATE)	
TEACHERS ASSOCIATION,)	
)	
Respondents.)	

ORDER DENYING COMPLAINANT'S MOTION TO ADVANCE HEARING DATE AND DENYING RESPONDENTS' MOTIONS FOR PARTIAL DISMISSAL OF COMPLAINT AND TO LIMIT TESTIMONY AND TO DISMISS DON MERWIN; NOTICE OF RESCHEDULED HEARING

On May 11, 2000, Complainant JANET WEISS (WEISS) filed a motion with the Hawaii Labor Relations Board (Board). Complainant requested that the hearing date agreed to at the prehearing conference be changed to mid-May in order to permit the Board to complete the hearing and render a decision prior to June 30, 2000. Complainant also moved to raise allegations of prior prohibited practices which occurred beyond the applicable 90-day statute of limitations because the events establish a continuous course of conduct.

Thereafter on May 12, 2000, Respondents, by and through their counsel, filed a Motion for Partial Dismissal of Complaint and to Limit Testimony with the Board. Respondents move to dismiss all allegations of prohibited practices which are barred by the 90-day limitations period under § 377-9(1), Hawaii Revised Statutes (HRS), and seek an order prohibiting Complainant from introducing evidence or testimony regarding such allegations. Also on that date, Respondents filed a Motion to Dismiss Respondent DON MERWIN (MERWIN) with the Board. Respondents contend that Complainant's allegations against MERWIN relate to events occurring in 1996 and 1998. Accordingly, Respondents contend that any complaint against MERWIN is time-barred.

On May 19, 2000, Respondents, by and through their counsel, filed a Memorandum in Opposition to Motion by Complainant with the Board. Respondents objected to Complainant's motion to move the hearing which had been scheduled on July 11, 2000 to mid-May and to raise allegations of prohibited practices which could go beyond the 90-day statute of limitations.

On May 30, 2000, the Board conducted a hearing on the foregoing motions by conference call. The parties had full opportunity to present evidence and arguments to the Board.

With regard to Complainant's motion to move the hearing date, counsel for Respondents represented that he requested a continuance of the hearing originally scheduled on May 10, 2000 because of a conflict in his schedule and he further represented that he is the only attorney for Respondents and no other attorney from his firm represents Respondents. In addition, WEISS

represented that some of her witnesses were unavailable for the previously scheduled hearing date set during the prehearing conference of July / 11, 2000. Thus, the Board scheduled the hearing to the first week of August 2000. ✓

With regard to Complainant's motion to permit her to introduce evidence of a continuous pattern of conduct by Respondents and Respondents' motion to dismiss allegations of conduct prior to the limitations period and to limit testimony, the Board has consistently held that it has no jurisdiction to entertain allegations of prohibited practices occurring beyond the statutory 90-day limitations period. WEISS, however, represented that she is not seeking a remedy for Respondents' acts which occurred prior to the 90-day limitations period. WEISS only seeks to present these incidents to the Board to establish a continuous pattern of conduct and not to establish past prohibited practices. As such, the Board will not preclude WEISS at this point from introducing any evidence of Respondents' acts prior to the limitations period. The Board hereby denies Respondents' motions for partial dismissal of complaint and to limit testimony.

With respect to Respondents' motion to dismiss MERWIN as a Respondent, WEISS alleged during the hearing that MERWIN resigned from the union but continues to "collude" with Respondents to deprive Complainant of her rights. The Board therefore also hereby denies Respondents' motion to dismiss Respondent MERWIN, without prejudice.

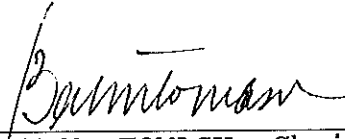
YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing in this matter pursuant to §§ 89-5(b)(4) and 89-14, HRS,

and Administrative Rules §§ 12-42-49 and 12-42-8(g) on August 1, 2000 at 9:30 a.m. in the North Kohala District Courthouse, 54-3900 Government Main Road, Kapaau, Hawaii.

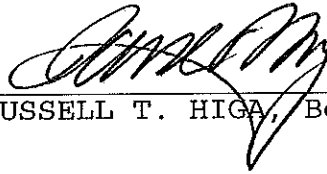
Provisions of the notice issued on April 17, 2000 remain applicable.

DATED: Honolulu, Hawaii, June 27, 2000.

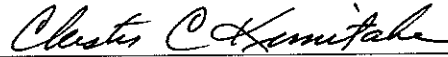
HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

Copies sent to:

Janet Weiss
Vernon Yu, Esq.
Joyce Najita, IRC