

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-01-118
)	(ON REMAND)
MICHAEL L. LAST,)	
)	ORDER NO. 1893
Complainant,)	
)	ORDER DENYING RESPONDENT'S
and)	MOTION FOR ATTORNEY'S FEES
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Respondent.)	

ORDER DENYING RESPONDENT'S MOTION FOR ATTORNEY'S FEES

Previously, in Order No. 1760, dated September 8, 1996, the Hawaii Labor Relations Board (Board) denied Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO's (UPW or Union) motion for an award of fees indicating, inter alia, that such an award was inappropriate in this case. The UPW appealed the Board's order, with four similar orders, to the First Circuit Court in Civil No. 99-3543-09, United Public Workers, AFSCME, Local 646, and Michael L. Last and Hawaii Labor Relations Board, et al. Upon review, the Court found insufficient findings and conclusions to indicate the basis and reasons for the decisions and orders of the Board under review and remanded the cases to the Board. The Court instructed the Board to render findings and conclusions in each case indicating the reason and basis for the agency's decision and order on the request for attorney's fees in accordance with § 91-12, HRS. Pursuant to the Court's order, the Board makes the following findings of fact, conclusions of law, and order.

On November 17, 1995, Complainant MICHAEL L. LAST (LAST) filed the instant prohibited practice complaint against the UPW with the Board. LAST alleged that on November 9, 1995, Respondent held a meeting to elect certain persons to positions within the Union organization and the UPW withheld vital information which was required for the vote. Complainant further contended that the UPW excluded Complainant from casting an informed ballot thereby violating § 89-7, Hawaii Revised Statutes (HRS).

Thereafter, on November 21, 1995, the UPW filed a motion to dismiss the instant complaint for lack of jurisdiction because the matter is subject to the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 401, et seq. In addition, the UPW contended that LAST lacks standing to challenge the election because he is not a Union member, and failed to state a claim for relief under § 89-7, HRS.

By Order No. 1319, dated April 11, 1996, the Board granted the UPW's motion to dismiss the complaint. The Board held that it lacked jurisdiction over the internal union elections as it was preempted by the LMRDA. In addition, the Board found that Complainant lacked standing to challenge the procedures of an internal Union election because he is not a member of the Union and therefore not entitled to vote in the election. In addition, the Complainant failed to state a claim under § 89-7, HRS, because the statute was not applicable to an election of Union officers.

On April 19, 1996, the UPW filed a motion to award Respondent attorney's fees with the Board. The UPW contends that the Union is entitled to attorney's fees because the instant complaint and LAST's opposition to the UPW's motion to dismiss were

patently frivolous. The UPW contends that LAST's conduct in this case forecloses access to the Board for meritorious cases and is contrary to the purpose of Chapter 89, HRS. The UPW further argues that LAST brought this complaint against the UPW for improper purpose and his complaint and opposition to the UPW's motion to dismiss were without proper basis in fact or warranted by applicable law.

In its five-page memorandum filed in support of the motion, the UPW admitted that normally litigation expenses are not recoverable by either party in proceedings before the labor board, but argued that the reimbursement of attorney's fees and costs for frivolous litigation brought by a party is clearly authorized and appropriate. The UPW relied upon federal labor law cases, i.e., Care Manor of Farmington, 318 NLRB 330, 150 LRRM 1033 (1995); Heck's Inc., 215 NLRB 765, 88 LRRM 1049 (1974); and Tiidee Products, 194 NLRB 1234, 1236-1237, 79 LRRM 1175 (1972) as authority for its contentions. The UPW argued that LAST is responsible for bringing more than one frivolous action against the UPW and has decided to crowd the docket of the Board with meritless claims. The UPW also cites to writings on envelopes to counsel allegedly by LAST to support its contentions that LAST has an improper purpose for bringing the complaints. The UPW further argues that unless the Board takes appropriate action, LAST will continue to bring frivolous complaints against the Union so that the Union pays out more than what will be deducted from LAST's paycheck as a valid agency fee. Thus, the UPW requested fees in the amount of \$1,925.00.

On April 29, 1996, LAST filed a motion to dismiss Respondent's motion for fees with the Board. LAST contends that Respondent's memorandum contains allegations which are not supported by the facts or are otherwise false; that Respondent is attempting to restrict Complainant from exercising his constitutional rights; and is attempting to restrict Complainant from lawfully seeking redress against Respondent.

On May 6, 1996, the UPW filed a two-page supplemental submission in support of its motion with the Board which included copies of envelopes with disparaging comments against the Union which LAST allegedly sent to UPW's counsel. The UPW contends that the exhibits support its contention that LAST filed a frivolous complaint against the UPW for improper purpose.

On May 28, 1996, the Board held a hearing on UPW's motion to award Respondent attorney's fees by conference call. All parties were afforded a full and fair opportunity to present evidence and argument.

After considering the record before the Board and the authorities cited by the UPW, the Board denies the UPW's motion for attorney's fees. The Board is not persuaded by the authorities cited by the UPW that the Union is entitled to fees for successfully defending a complaint which it claims to be frivolous.

In Order No. 1865, dated May 16, 2000, in Case No. CU-01-113, Michael L. Last, the Board held, based on the same arguments advanced in this case that the UPW was not entitled to attorney's fees against Complainant because this jurisdiction follows the rule that attorney's fees are not recoverable unless authorized by statute, rule of court, stipulation, agreement, or

Hawaiian precedent. Ariyoshi v. HPERB, 5 Haw.App. 533, 704 P.2d 917 (1985). The UPW failed to cite any statute, rule of court, stipulation, agreement or Hawaiian precedent as authority in its request for fees. The Board also declined to adopt the National Labor Relations Board's (NLRB) holding in Tiidee Products, Inc., 194 NLRB 1234, 79 LRRM 1175 (1972), because of the differences in the underlying statutes and the policies considered by the NLRB and the appellate courts. Moreover, the Board is reluctant to award fees in a case of this nature as it may have a chilling effect on employee complainants and foreclose the filing of meritorious claims against the union or employer with the Board under Chapters 89 and 377, HRS.

Assuming arguendo, however, that the Board has the authority to award attorney's fees to Respondent for successfully defending claims filed against them, the Board finds that the UPW failed to prove that the instant complaint was frivolous. In Coll v. McCarthy, 72 Haw. 20, 804 P.2d 881 (1991), the Court defined a "frivolous" claim or defense justifying an award of fees as being manifestly and palpably without merit so as to indicate bad faith on the pleader's part.

Here, LAST appears pro se and filed the instant complaint because he objected to the manner in which a Union election was conducted. In his complaint, LAST alleged that he was not aware of the purpose for the Union meeting and the UPW failed to inform the employees of the qualifications of the candidates for Union office. LAST contended that he was denied the opportunity to cast an informed ballot. In its motion for fees the UPW argues that LAST's complaint is frivolous and unsupported by the facts and the law.

The UPW appears to assume that LAST was aware that internal Union elections are governed by the LMRDA and that he had no standing to bring his complaint before the Board. Given the complex nature of LAST's allegations before the Board, however, the Board, in its discretion, does not find LAST's complaint to be patently frivolous on the arguments presented.

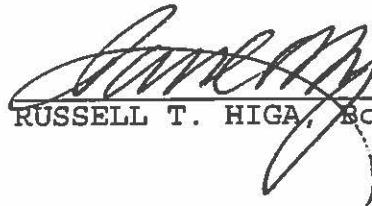
Based on the foregoing, the Board hereby denies Respondent's motion for an award of attorney's fees.

DATED: Honolulu, Hawaii, June 28, 2000.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

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