

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

BOARD OF EDUCATION, State of Hawaii,
and BENJAMIN J. CAYETANO, Governor,
State of Hawaii,

Complainants,

and

HAWAII STATE TEACHERS ASSOCIA-
TION,

Respondent.

CASE NO. CU-05-179

ORDER NO. 2001

ORDER GRANTING HSTA'S
MOTION TO EXPEDITE PROCEED-
INGS AND FOR CONSOLIDATION
OF PROHIBITED PRACTICE COM-
PLAINTS; FIRST AMENDED NOTICE
OF PREHEARING CONFERENCE
AND HEARING ON PROHIBITED
PRACTICE COMPLAINTS

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On March 21, 2001, Respondent HAWAII STATE TEACHERS ASSOCIATION (HSTA) filed a Motion to Expedite Proceedings and for Consolidation of Prohibited Practice Complaints with the Hawaii Labor Relations Board (Board) in Case No. CU-05-179 and Case No. CU-05-180, respectively. The HSTA moved the Board for an order to consolidate the proceedings on these complaints and expedite the proceedings herein so that a decision is issued before April 5, 2001.

The Board heard arguments on the foregoing motion on March 23, 2001. Both parties were represented by counsel and were given full opportunity to present evidence and argument to the Board. Based upon a consideration of the arguments and the record in this matter, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. On March 13, 2001, the HSTA membership authorized a strike commencing on or after April 5, 2001.
2. In Order No. 1998, dated March 15, 2001, in Case Nos. CE-07-461, CE-07-462, and CE-07-463, University of Hawaii Professional Assembly, the Board, inter alia, construed HRS § 89-12(b)¹ to require the completion of pending prohibited practice proceedings on matters germane to the dispute between the parties before an employee can participate in a strike.
3. On March 16, 2001, Complainants BOARD OF EDUCATION, State of Hawaii and BENJAMIN J. CAYETANO, Governor, State of Hawaii (collectively Employer) filed a prohibited practice complaint against the HSTA with the Board in Case No. CU-05-179. The Employer alleged, inter alia, that the HSTA failed to submit a new wage proposal during negotiations from October 12, 2000 to March 8, 2001 and summarily rejected the Employer's March 8, 2001 proposal without any good faith consideration. The Employer contended that the Respondent refused to bargain in good faith and engaged in prohibited practices in violation of Hawaii Revised Statutes (HRS) § 89-13(b)(2).
4. On March 19, 2001, the Employer filed a prohibited practice complaint against the HSTA with the Board in Case No. CU-05-180 alleging, inter alia, that the Respondent issued Picket Instructions for Teachers and Detailed Picket Instructions for Teachers which interfere with and restrain Unit 05 employees

¹HRS § 89-12(b) provides as follows:

It shall be a lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (1) the requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith, (2) the proceedings for the prevention of any prohibited practices have been exhausted, (3) sixty days have elapsed since the fact-finding board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

in the exercise of their rights. The Employer contended that the HSTA engaged in prohibited practices in violation of HRS § 89-13(b)(1).

5. On March 21, 2001, the Board issued notices in these cases scheduling prehearing conferences on March 29, 2001 and hearings on April 5, 2001.
6. Also, on March 21, 2001, the HSTA filed the instant motions with the Board.
7. On March 22, 2001, the HSTA filed answers to the instant complaints with the Board.
8. At the hearing on the instant motions on March 23, 2001, the HSTA, by and through its counsel, argued that the cases should be consolidated because they involve the same parties. The HSTA further argued that the Employer is attempting to block its announced April 5, 2001 strike by the filing of the instant complaints. Thus, the HSTA requested the Board to expedite the hearing in accordance with Hawaii Administrative Rules (HAR) § 12-42-46(b)² in order to resolve the complaints before April 5, 2001.
9. The Employer opposed consolidation of the complaints contending that the issues in the complaints were unrelated; the Employer however was willing to have the complaints heard back-to-back. While conceding that the hearings should not be extensive, the Employer contended that the expedited schedule proposed by the HSTA was unrealistic given that two complaints had to be resolved and in accordance with the Board's practice, counsel requested the opportunity to submit written briefs to the Board three weeks after the receipt of transcripts. The Employer argued that since the HSTA was responsible for the timetable since it set the date of the strike, the HSTA would not be prejudice by postponing the strike date.

CONCLUSIONS OF LAW

1. Pursuant to HAR § 12-42-8(g)(13), the Board may consolidate two or more proceedings which involve substantially the same parties or issues if it finds that such consolidation will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. The Board hereby finds that these complaints involves the same parties and that

²HAR § 12-42-46(b) provides as follows:

The hearing shall be held not less than ten nor more than forty days after the filing of the complaint or amendment thereof.

consolidation will be conducive to the proper dispatch of its business and to the ends of justice. In addition, consolidation of these proceedings for disposition will not delay the proceedings. Accordingly, the Board hereby consolidates these complaints for disposition.

2. The Employer submits that the instant complaints have not been brought to delay the announced strike but rather to raise the issues of alleged prohibited practices before the Board. The Board, however, is mindful of the HRS § 89-12(b)(2) prohibition against employee participation in a strike while prohibited practice complaints are pending and concerned with the possibility

of an abuse of process to forestall an otherwise lawful strike,³ and therefore

³The Board stated in Order No. 1998:

The question for the Board in interpreting HRS § 89-12(b)(2) is how broadly or narrowly to construe "any prohibited practices." UHPA submits a reading that includes "germane to compliance with the requirements of § 89-11." UHPA contends that without some restriction, the Board invites "abuse of the impasse procedure" either by employees free to file complaints before, during, and after the impasse procedure, or on the eve of a strike, even if the charges have no conceivable connection to the process of collective bargaining or by the employer filing a complaint as a delaying tactic.

The BOR agrees with UHPA that "any" ought not to be construed to mean that all prohibited practice complaints would bar a strike. The BOR further agrees that in order to prevent a strike, the prohibited practice "should bear a relationship, or be 'germane' to the dispute between the parties." Therefore, the BOR would construe the provision "to mean that before a Unit 07 faculty member can participate in a lawful strike, the process for any prohibited practice complaint related to the dispute between the parties must be completed," i.e., a Board hearing is conducted and decision rendered. The Board agrees.

* * *

The Board thus concludes that the instant prohibited practice complaints filed by UHPA are germane to the impasse declared by the Board pursuant to HRS § 89-11, and fall within the prohibition of HRS § 89-12(b)(2). Therefore, UHPA's Unit 07 members involved in the impasse are prohibited from participating in a strike until the proceedings in the instant prohibited practice complaints have been exhausted.

The Board appreciates that the barring of an otherwise lawful strike is perhaps a disproportionately substantial consequence to flow from the good faith filing of prohibited practice complaints. We are constrained, however, to give effect to the express language of the law, In Re City and County of Honolulu, 54 Haw. 356 (1973) (a statute ought to be construed so that, if possible, no clause, sentence or word shall be superfluous, void, or insignificant), and while in doing so, giving expression to the intent of the legislature. See, HRS § 1-15(2) (legislative intent may be considered in construing ambiguous statutory language). It is clear that the legislature intended that the parties to a possible strike "utilize every available means to resolve the disputes," SCR No. 745-70, supra, prior to the commencement of a strike. Since prohibited practice proceedings are specifically identified as among the means to resolve the disputes, we have no alternative than to give the language effect.

This is not to say that the Board will permit parties to indefinitely forestall otherwise legal strikes simply by filing germane prohibited practice complaints. Any attempts to do so will be

hereby grants the HSTA's motion to expedite these proceedings.

ORDER

1. The Board hereby consolidates Case No. CU-05-179 and Case No. CU-05-180 for disposition.
2. The Board hereby grants the HSTA's motion to expedite proceedings. The dates scheduled in the Board's Notice of Prehearing Conference and Hearing on Prohibited Practice Complaint, dated March 21, 2001, in the respective cases are amended as follows:

NOTICE IS HEREBY GIVEN that the Board shall conduct a prehearing conference in the consolidated cases on March 26, 2001 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The parties may file Prehearing Statements with the Board immediately prior to the scheduled prehearing conference. The parties are encouraged to discuss the settlement of the complaints and, if possible, to enter into a stipulation of undisputed facts.

NOTICE IS ALSO GIVEN that the Board shall conduct a hearing on the instant complaints on March 27, 2001 at 9:30 a.m. in the Board's hearing room, continuing day-to-day until completed. The parties may file written briefs with the Board by the close of business on March 30, 2001.

Appropriate provisions of the Notices issued on March 21, 2001 remain applicable.

DATED: Honolulu, Hawaii, March 23, 2001

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair

summarily dismissed and subsequently prosecuted to the full extent of the law. See, HRS § 92-16 (false swearing before boards and commissions punishable as perjury).

BOARD OF EDUCATION, State of Hawaii, et al. v. HAWAII STATE TEACHERS
ASSOCIATION

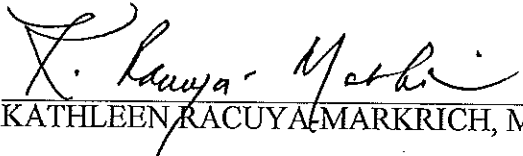
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CHESTER C. KUNITAKE, Member


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