

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of
KEITH J. KOHL,

Complainant,

and

RUSSELL OKATA, RANDY PERREIRA, and
WAYLEN TOMA, Hawaii Government
Employees Association, Local 152, AFSCME,
AFL-CIO,

Respondents.

CASE NO. CU-13-142

ORDER NO. 2042

ORDER GRANTING RESPONDENTS'
MOTIONS TO REVOKE SUBPOENAS

In the Matter of

KEITH J. KOHL,

Complainant,

and

JAMES TAKUSHI, Director, Department of
Human Resources Development, State of
Hawaii and KEITH KANESHIRO, Director,
Department of Public Safety, State of Hawaii,

Respondents.

CASE NO. CE-13-392

In the Matter of

KEITH J. KOHL,

Complainant,

and

RUSSELL OKATA, RANDY PERREIRA, and
WAYLEN TOMA, Hawaii Government
Employees Association, Local 152, AFSCME,
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In the Matter of
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JAMES TAKUSHI, Director, Department of
Human Resources Development, State of
Hawaii and KEITH KANESHIRO, Director,
Department of Public Safety, State of Hawaii,

Respondents.

CASE NO. CE-13-395

ORDER GRANTING RESPONDENTS' MOTIONS TO REVOKE SUBPOENAS

On April 24, 1998 and May 8, 1998, Complainant KEITH J. KOHL (KOHL) filed prohibited practice complaints against the above-named Respondents with the Hawaii Labor Relations Board (Board). KOHL contends that Respondents RUSSELL OKATA, RANDY PERREIRA and WAYLEN TOMA of the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (collectively HGEA) breached their duty to fairly represent KOHL in seven grievances. KOHL contends that HGEA wilfully violated Hawaii Revised Statutes (HRS) §§ 89-13(b)(1), (2), (3), (4), and (5).

KOHL also alleged that Respondents JAMES TAKUSHI, Director, Department of Human Resources Development, State of Hawaii and KEITH KANESHIRO, Director, Department of Public Safety, State of Hawaii (collectively Employer) improperly terminated KOHL and failed and/or refused to process his seven grievances. Thus, Complainant contends that the Employer violated HRS §§ 89-13(a)(1), (3), (4), (6), (7), and (8).

On September 4, 2001, Complainant filed an application for issuance of 14 subpoenas for the hearing on the merits scheduled on October 8, 2001 in this matter.

On September 10, and 11, 2001, the HGEA and Employer filed their respective Motions to Revoke Subpoenas pursuant to Hawaii Administrative Rules (HAR) § 12-42-8(g)(7)(D) based on KOHL's failure to describe the evidence sought with sufficient particularity or that the evidence sought from the witness is privileged under the law or the provisions of HRS Chapter 89.

The Board conducted a hearing the Employer's Motion to Revoke Subpoenas on September 13, 2001.¹ At the hearing, the Board indicated that rather than review the subpoenas for technical sufficiency, the Board would apply a relevance standard to review the subpoenas. KOHL objected to the hearing contending that he did not receive proper notice of the hearing. The Board then asked KOHL if he requested a delay of the hearing. KOHL reiterated his request for proper notice of the hearing. The Board thereupon requested KOHL to explain the relevance of certain witnesses subject to subpoena. KOHL refused to specifically respond to the Board's inquiry.

Hawaii Administrative Rules (HAR) § 12-42-8(g)(7)(D) provides:

(i) The board may revoke a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry, or hearing; that the subpoena does not describe with sufficient particularity the evidence sought or that the evidence sought from the witness is privileged under the law or the provisions of this chapter.

Based on the absence of any description of the evidence sought and KOHL's refusal to respond to the Board's request to provide specific information regarding the relevance of the witnesses subpoenaed, the Board granted Respondents HGEA's and Employer's motions to revoke subpoenas.

ORDER

Based on the foregoing, the Board grants Respondents' Motions to Revoke Subpoenas.

DATED: Honolulu, Hawaii, October 25, 2001.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member

¹The hearing was held in conjunction with the hearing on similar motions to revoke subpoenas in companion cases, Keith J. Kohl, Case Nos. CE-13-385, CU-13-140, which was scheduled for a hearing on the merits on September 18, 2001.

KEITH J. KOHL, Complainant v. RUSSELL OKATA, et al.

CASE NO. CU-13-142

KEITH J. KOHL, Complainant v. JAMES TAKUSHI, Director, Department of Human Resources
Development, State of Hawaii, et al.

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KATHLEEN RACUYA-MARKRICH, Member

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