

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

JANET WEISS,

Complainant,

and

JOAN LEE HUSTED, Deputy Executive
Director, Hawaii State Teachers Association;
MARK NAKASHIMA, Uniserv Director,
Hawaii State Teachers Association; DON
MERWIN, Uniserv Director, Hawaii State
Teachers Association; and HAWAII STATE
TEACHERS ASSOCIATION,

Respondents.

CASE NO. CU-05-164

ORDER NO. 2051

ORDER DENYING COMPLAINANT'S
MOTION TO COLLECT CASE COSTS
AND EXPOSE UNION DECEIT

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On August 20, 2001, Complainant JANET WEISS (WEISS) filed a Motion to Collect Case Costs per Judge Amano's Directive and to Expose Union Deceit with the Hawaii Labor Relations Board (Board). WEISS complains that the HAWAII STATE TEACHERS ASSOCIATION (HSTA) published a misleading statement regarding its counsel in its newsletter, the Teacher Advocate, from which the Board can infer that Decision No. 420 was not properly posted. In addition, WEISS requests an award of costs of \$873.95 because the union caused this case to be filed.

Thereafter, on August 24, 2001, Respondents' counsel, Vernon Yu, Esq. (Yu), filed an Affidavit in Opposition to Complainant's Motion to Collect Case Costs, Etc. with the Board. Yu stated that his win/loss record was irrelevant to Complainant's case and disputed WEISS' statements regarding the posting of the decision in this case. Yu stated that in Order No. 2023, dated July 20, 2001, the Board found that the HSTA had disseminated the decision for posting in substantial compliance with the Board's Decision No. 420. Thus, the Board's Order No. 2023 has a res judicata or preclusive effect with regard to the posting of the decision. In addition, Yu stated that Respondent MARK NAKASHIMA (NAKASHIMA) informed him that he had seen the decision posted at Honoka'a High School. Yu also stated that in Order No. 2023, the Board found that Complainant had received a payment in the amount of \$20,620.56 from Respondents which is more than sufficient to compensate Complainant for any and all costs incurred in this case. Yu further

stated that many of the costs requested by Complainant were improper on their face and none of the costs requested had been established in the record. Respondents therefore requested that the instant motion be dismissed in its entirety.

On September 7, 2001, the Board issued a notice of hearing on the instant motion for September 21, 2001 stating that “[a]ny facts shall be presented by way of sworn affidavits or witness’ testimony.”

On September 18, 2001, WEISS filed a Pre-hearing Statement with the Board requesting additional costs of \$148.54 incurred for Respondents’ appeal of Decision No. 420 to the Third Circuit Court. In her statement, WEISS indicated that “a colleague in Honoka’a will tell you that he did not see any posting either!” However, no affidavits were submitted attesting to such allegations nor supporting her request for fees.

On September 21, 2001, Respondents submitted the Affidavit of Mark Nakashima who stated that he saw Decision No. 420 posted at Honoka’a High School on or about July 17, 2001 and also at Kohala High School in May of 2001.

On September 21, 2001, the Board conducted a hearing on the instant motion. WEISS participated in the hearing by conference call and Yu appeared on behalf of Respondents. Based upon a review of the record and consideration of the arguments presented, the Board hereby denies WEISS’ motion to collect case costs and expose union deceit.

With respect to the statement in the HSTA newsletter regarding Respondents’ counsel’s win/loss record, the Board agrees with Respondents that the statement is unrelated to whether or not the Board’s decision was posted. The Board has already found in Order No. 2023, dated July 20, 2001, Order Denying Complainant’s Motion to Expedite Payment and to Delay HSTA’s Posting, that Complainant had received a check for \$20,620.56 from Respondents and the HSTA had disseminated the decision for posting at the public schools in substantial compliance with Decision No. 420. Moreover, WEISS failed to submit any affidavits to support her allegations of the HSTA’s actual failure to post the decision or refute NAKASHIMA’s statements in his affidavit that he saw the decision posted at the schools in question.

With respect to WEISS’ request for costs, the Board previously denied, inter alia, WEISS’ request for costs in Decision No. 420, dated March 9, 2001. The Board stated:

With respect to a remedy in this case, WEISS seeks to be made whole and requested, inter alia, a return to her position at Kohala High and Intermediate School, consequential and punitive damages, costs of litigation, the reimbursement of four years of Union dues, a written apology by the Respondents,

payment for WEISS' re-education, a computer, travel to the NEA convention, and special and economic damages, including compensation for jobs lost due to alleged discrimination by Bratt. With respect to the rescission of her transfer to Halaula School, since the employer is not a party to this case who has been found to have committed a prohibited practice and the arbitration award was not challenged and appears on its face to be consistent with HRS Chapter 89, the Board majority cannot order such remedy. With respect to the other remedies requested, the Board majority finds that such remedies are inappropriate either because there is an insufficient nexus between the Union's breach of duty and the alleged damages or the Board majority believes that such an award is not supported by the record. The record however does support a finding that WEISS took a leave of absence without pay from her teaching position to pursue the instant complaint before the Board. This being the case, the Board majority finds that WEISS suffered a measurable compensable loss as a direct result of the Union's breach of duty and further finds that the pursuit of her claim before the Board enured to the benefit of bargaining unit members. See, Sheldon H. Varney, 5 HLRB 369 (1995). Accordingly, the Board majority orders that in addition to a cease and desist order, the HSTA reimburse WEISS for her salary lost in pursuing the instant claim. [Emphasis added.]

It is clear therefore that the Board thus previously reviewed and denied WEISS' request for costs for litigating her cause before the Board. Further, there is no authority for this Board to reimburse WEISS' costs for defending Decision No. 420 on appeal before the Third Circuit Court.

For the foregoing reasons, the Board denies the instant motion.

DATED: Honolulu, Hawaii, January 14, 2002.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair

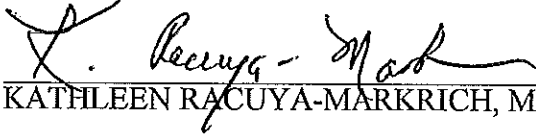

CHESTER C. KUNITAKE, Member

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KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Janet Weiss
Vernon Yu, Esq.
Joyce Najita, IRC