

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DEBORAH TAYLOR; CANDICE SIGRAH;  
COLEEN RAFFERTY-STAMPER; MARIE  
AHUNA; SHELLY FERNANDEZ;  
DOROTHY GALIA; MELANIE  
MANARPAAC; and GAIL TORRES,

Complainants,

and

EDDIE ESPIRITU; ALBERT MURASHIGE;  
and UNITED PUBLIC WORKERS, AFSCME,  
LOCAL 646, AFL-CIO,

Respondents.

CASE NO. CU-10-184

ORDER NO. 2056

ORDER GRANTING WITHDRAWAL  
OF COLEEN RAFFERTY-STAMPER  
AND DOROTHY GALIA AS COMPLAIN-  
ANTS AND DISMISSING ALBERT  
MURASHIGE AS A RESPONDENT;  
AND ORDER GRANTING UNION  
RESPONDENTS' MOTION FOR  
SUMMARY JUDGMENT, IN PART

ORDER GRANTING WITHDRAWAL OF COLEEN RAFFERTY-STAMPER  
AND DOROTHY GALIA AS COMPLAINANTS AND DISMISSING  
ALBERT MURASHIGE AS A RESPONDENT; AND ORDER GRANTING  
UNION RESPONDENTS' MOTION FOR SUMMARY JUDGMENT, IN PART

On July 25, 2001, DEBORAH TAYLOR (TAYLOR), CANDICE SIGRAH, COLEEN RAFFERTY-STAMPER, MARIE AHUNA, SHELLY FERNANDEZ, DOROTHY GALIA, MELANIE MANARPAAC, and GAIL TORRES (collectively Complainants) filed a prohibited practice complaint against EDDIE ESPIRITU (ESPIRITU) and the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) (collectively Union) and ALBERT MURASHIGE (MURASHIGE) with the Hawaii Labor Relations Board (Board). Complainants alleged that on or about June 26, 2001, the Chief of Security told two Adult Corrections Officers (ACOs) that they would be moved from previously selected posts to the posts vacated by transfers. After complaining to the Union representative, the representative suggested the ACOs reselect posts which was done on July 29, 2001. Complainants contend that the reselection violated the collective bargaining agreement.

Thereafter on July 30, 2001, Respondents ESPIRITU and UPW filed a Motion for Particularization with the Board contending that the complaint was so vague that it is difficult for the Union Respondents to formulate an answer. The Union requested that Complainants specify, inter alia, the provisions of the collective bargaining agreement and statutes alleged to have been violated by respondents and the underlying factual bases of the

violations. On August 1, 2001, Respondent MURASHIGE filed a Motion for Particularization with the Board.

In Order No. 2025, dated August 3, 2001, the Board granted the respective Respondents' motions for particularization. The Board directed the Complainants to particularize the complaint by specifying:

- 1) the appropriate dates of the actions by the specific Respondents which allegedly constitute prohibited practices and clarify the dates in the complaint;
- 2) the actions by Respondents which allegedly violate which specific provisions of the collective bargaining agreement, if any;
- 3) the statutory provisions allegedly violated by the Respondents; and
- 4) the meaning of the reference, "Which would be the two female Emergency hires."

In response, Complainants, by TAYLOR, filed their Response to the Order of Particularization Requested by the Hawaii Labor Relations Board on August 13, 2001. Complainants stated in their Particularization filed on August 13, 2001 stated:

2.) Respondent ESPIRITU violated the Unit 10 collective bargaining agreement Section 61 Correction Officers and Section 66 Entirety and Modification

**61.04a 9.** The employer shall have two (2) calendar weeks to review the choices made by the Employees to ascertain whether (sic) any choices would violate the Agreement. In the event it is necessary to modify choices to avoid violations of this Agreement, the Employer shall contact Employees to have them modify their choices.

\* \* \*

**61.04a 4. 2) ESSENTIAL POSTS:** An absence shall be filled by reassignment of an Employee from posts other than "Essential Posts" or by overtime as determined by the employer.

\* \* \*

...I [Deborah Taylor] asked ESPIRITU if what the contract stated meant nothing. ESPIRITU then stated to me with agitation, "Well we can go back to the way it was and have you and Laverne work the posts, and not get a "K". (26.02K overtime)....

**66.01** All sections contained in this Agreement constitute the entire Agreement between the parties and supersedes all previous communications, representations or agreements, either verbal or written, between the parties with respect to the subject matter herein. Negotiations shall not be reopened for the duration of this Agreement except by mutual consent.

The Bargaining Unit 10 Agreement does not allow for renegotiations and in this matter Union Representative ESPIRITU did not offer any representation or answer any of the alleged violations made by MCCC to the female ACO's. Refer to statements on June 29, 2001 and July 2, 2001 (ESPIRITU Section 61.04a 4.2.) [Emphasis added.]

On August 14, 2001, Respondents ESPIRITU and UPW filed a Motion to Dismiss and/or for Summary Judgment with the Board. Respondents contend that the complaint should be dismissed for lack of standing, failure to state a claim for relief, and failure to exhaust contractual remedies. Alternatively, the UPW contended that there are no genuine issues of material fact in dispute and that judgment should be entered in the Union's favor as a matter of law.

On August 15, 2001, the Board noticed a hearing on Respondents ESPIRITU's and UPW's motion to dismiss and/or for summary judgment to be held on August 29, 2001.

On August 24, 2001, Respondent MURASHIGE filed a Motion to Dismiss or in the Alternative for Summary Judgment with the Board. MURASHIGE contended that Complainants failed to exhaust contractual remedies and that the Board lacks jurisdiction over the matter.

On August 27, 2001, Complainants requested a 60-day continuance for the hearing because they felt they could not adequately argue the case. They indicated that they were in the process of retaining an attorney. That same day, the Union filed an opposition to the continuance contending that the motion was not in compliance with Hawaii Administrative Rules (HAR) § 12-42-9(g)(3)(C); would delay a hearing on the merits of the complaint; and that TAYLOR was already late in her response to the pending motion and there was no valid basis for a continuance.

In Order No. 2031, the Board granted Complainants' request for continuance for 30 days for good cause and rescheduled the hearing to September 28, 2001.

Thereafter on September 25, 2001, Complainants filed a Notice of Dismissal of Complaint Without Prejudice Against Respondent Albert Murashige with the Board. Also on September 25, 2001, Complainants also filed an Opposition to Respondent Eddie Espiritu and United Public Workers, AFSCME, Local 646, AFL-CIO's Motion to Dismiss and/or for Summary Judgment Filed on August 14, 2001. Complainants argue, *inter alia*, that the Union representative violated HRS § 89-13(b)(1) by coercing the employees in the exercise of their rights to file a grievance which is guaranteed under HRS Chapter 89.

In addition, on September 25, 2001, Respondents ESPIRITU and UPW filed a Motion to Strike Answering Declarations and Complainants' Opposition Papers Filed on 9/25/01 with the Board. Respondents contended that Complainants filed its opposing papers more than five days after the filing of its motion to dismiss and/or for summary judgment in noncompliance with HAR § 12-42-8(g)(3)(C)(iii).<sup>1</sup>

On September 27, 2001, Complainants filed an Opposition to the Respondent UPW's motion to strike answering declarations. Complainants argued that on August 24, 2001, TAYLOR requested a 60-day extension to retain counsel. Complainants retained counsel during the second week of September and argue that good cause exists to permit Complainants an extension of time to respond to ESPIRITU and UPW's motion to dismiss and/or for summary judgment.

The Board conducted a hearing on the instant motions on September 28, 2001. The parties were represented by counsel who had full opportunity to present argument and evidence to the Board. At the hearing, Complainant's counsel represented that he did not represent COLEEN RAFFERTY-STAMPER and DOROTHY GALIA who submitted notices of their withdrawal as Complainants in the proceedings with the Board. Hearing no objection, the Board grants COLEEN RAFFERTY-STAMPER and DOROTHY GALIA's withdrawal as well as MURASHIGE's dismissal as a Respondent in this matter. Based upon the record and consideration of the arguments presented at the hearing, the Board grants ESPIRITU and UPW's motion for summary judgment, in part.

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<sup>1</sup>HAR § 12-42-8(g)(3)(C)(iii) provides:

Answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise.

## FINDINGS OF FACT

1. Complainants DEBORAH TAYLOR, CANDICE SIGRAH, MARIE AHUNA, SHELLY FERNANDEZ, MELANIE MANARPAAC, and GAIL TORRES are ACOs at Maui Community Correctional Center (MCCC) and public employees within the meaning of HRS § 89-2.
2. Respondent ESPIRITU is a UPW business agent and represents the UPW which is the certified exclusive representative, as defined in HRS § 89-2, of employees included in Unit 10.
3. The UPW and the employers are parties to a collective bargaining agreement covering the members of Unit 10.
4. The instant complaint against the Union, as particularized, alleges that ESPIRITU violated various provisions of the contract as well as failed to offer any representation or represent the Complainants in a grievance. The particularization also alleges that ESPIRITU told TAYLOR that she would lose her overtime pay if the grievance was pursued and her schedule was modified.

## DISCUSSION

With respect to the UPW's motion to strike the Complainants' opposition to the UPW's motion to dismiss and/or for summary judgment, the UPW contends that under the Board's procedural rules counter-affidavits or declarations must be filed within five days of service of a motion. The UPW contends that Complainants retained counsel during the second week of September and Complainants' counsel could have entered an appearance and request an extension of time to file a response but failed to do so. Complainants contend that opposing papers could not have been timely filed because counsel was retained in the second week of September and a response under the Board's rules would have been due in late August. Complainants argue that it would be prejudicial not to allow Complainants to have their day in court and there is no prejudice to the Union. Complainants also filed a response to Respondents' motion to strike and an ex parte motion for extension of time.

Based upon the record, Complainants filed the complaint pro se on or about July 25, 2001. Thereafter, Respondents filed motions for particularization which were granted by the Board on August 3, 2001. TAYLOR filed a response to the Board's order on

behalf of the Complainants on August 13, 2001.<sup>2</sup> Thereafter, on August 14, 2001, the Union filed a motion to dismiss and/or for summary judgment with the Board and MURASHIGE filed his motion to dismiss and/or for summary judgment on August 24, 2001. On August 27, 2001 Complainants requested a 60-day continuance of the motion hearing scheduled on August 29, 2001 to retain counsel. Pursuant in part, to the Union's objection to the continuance, the Board granted Complainants a 30-day continuance of the hearing in Order No. 2031 to September 28, 2001. According to Complainants' counsel, he was retained during the second week of September. Complainants filed the opposition to the Union's motion on September 25, 2001 which included their declarations dated September 21 and 22, 2001.

The Board finds that the pro se Complainants have thus far proceeded diligently in processing their complaint and requested a 60-day continuance of the instant hearing to retain counsel. Pursuant in part to the Union's objection, the Board only granted Complainants a 30-day continuance. The Board accepts Complainants' counsel's representation that he was retained during the second week of September and in the interests of justice, denies the Union's Motion to Strike Answering Declarations and Complainants' Opposition Papers Filed on 9/25/01. The Board finds that the Union is not prejudiced from the late filing of Complainants' opposition as the Union ably argued in support of its motion at the hearing. If the Union desired additional time to respond to the arguments and declarations made by Complainants, it could have requested a continuance of the instant hearing, but it did not.

As to the Union's motion to dismiss and/or for summary judgment, the Board finds that the complaint as drafted and particularized contains, inter alia, alleged violations of the contract by the Union. The Board agrees with the Union that the scheduling obligations in Sections 61 and 66 of the collective bargaining agreement rests with the employer and not with the Union. Thus, the Board concludes that Complainants fail to state a claim of contract violations by the Union and accordingly dismisses those allegations of the complaint. Thomas Lepere, Case No. CU-10-94, Order No. 976, dated October 15, 1993. At the same time, the Board also finds allegations of coercion or interference with Complainants' statutory rights as well as a breach of the Union's duty of fair representation

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<sup>2</sup>Although the Union argues that TAYLOR could not represent the Complainants' interests before the Board, the Board notes that HAR § 12-42-7(b) provides:

In any proceeding under this chapter, any public employee, employee organization, or public employer may be represented by counsel or any other authorized person.

Thus, pursuant to the foregoing rule, the Board concludes that TAYLOR can properly represent the Complainants before the Board.

claim in the particularization of the complaint. The Board is mindful that all reasonable inferences should be made in favor of the party against whom the motion for summary judgment is made,<sup>3</sup> and thus the Board, with an abundance of caution, denies the Union's motion to dismiss the complaint and/or for summary judgment, in part, at this stage and will permit Complainants to amend their complaint to conform to their representations if they desire.

### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this complaint pursuant to HRS §§ 89-5 and 89-14.
2. As the instant contractual provisions do not impose any duties upon the Union, the Board concludes that the complaint fails to state a claim for relief as to the violations of the contract by the Union. Those claims are dismissed.
3. The Board concludes that the particularized complaint contains allegations of interference and coercion with Complainants' rights guaranteed under HRS Chapter 89 and a breach of the Union's duty of fair representation.

### ORDER

Based on the foregoing, the Board hereby grants the withdrawal of COLEEN RAFFERTY-STAMPER and DOROTHY GALIA as Complainants. The Board also dismisses MURASHIGE as a Respondent in this matter.

In addition, the Board hereby grants summary judgment in favor of the Union with respect to the allegations of contract violations by the Union and dismisses those claims.

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<sup>3</sup>Summary judgment is proper where the moving party demonstrates that there are no genuine issues of material fact in dispute and it is entitled to judgment as a matter of law. State of Hawai'i Organization of Police Officers v. Society of Professional Journalists - University of Hawai'i Chapter, 83 Hawai'i 378, 389, 927 P.2d 386, 397 (1996); Price v. Obayashi Hawaii Corp., 81 Hawai'i 171, 177, 914 P.2d 1364, 1370 (1996). A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Konno v. County of Hawai'i, 85 Hawai'i 61, 70, 937 P.2d 397, 406 (1997); Hulsman v. Hemmeter Dev. Corp., 65 Haw. 58, 61, 647 P.2d 713, 716 (1982). The evidence must be viewed in the light most favorable to the non-moving party (State ex rel. Bronster v. Yoshina, 84 Hawai'i 179, 186, 932 P.2d. 316, 323 (1997) citing Maguire v. Hilton Hotels Corp., 79 Hawai'i 110, 112, 899 P.2d 393, 395 (1995)) and the inferences must be drawn in the light most favorable to the party opposing the motion (State Farm Mut. Auto Ins. Co. v. Murata, 88 Hawai'i 284, 287-88, 965 P.2d 1284, 1287-88 (1998); Maguire, at 112, 899 P.2d at 395).

However, as the particularization of the complaint includes allegations of coercion or interference with statutory rights and a failure of representation or a breach of the duty of fair representation by the Union, factual issues remain for disposition. Complainants have ten days from the issuance of this order to file a First Amended Complaint. If Complainants choose not to file a First Amended Complaint in this matter, the Board will dismiss the case in toto.

DATED: Honolulu, Hawaii, January 29, 2002.

HAWAII LABOR RELATIONS BOARD

  
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CHESTER C. KUNITAKE, Member

  
KATHLEEN RACUYA-MARKRICH, Member

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