

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of )  
JOHN MUSSACK, )  
 )  
Complainant, )  
 )  
and )  
 )  
MICHAEL HARANO, Principal, Kailua )  
Elementary School, Department of Education, )  
State of Hawaii, )  
 )  
Respondent. )

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CASE NO. CE-05-482  
ORDER NO. 2062  
ORDER CONSOLIDATING CASES  
FOR DISPOSITION; AND NOTICE  
OF PREHEARING CONFERENCE  
AND HEARING ON PROHIBITED  
PRACTICE COMPLAINTS

In the Matter of )  
JOHN MUSSACK, )  
 )  
Complainant, )  
 )  
and )  
 )  
MICHAEL HARANO, Principal, Kailua )  
Elementary School, Department of Education, )  
State of Hawaii, )  
 )  
Respondent. )

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CASE NO. CE-05-483

In the Matter of )  
JOHN MUSSACK, )  
 )  
Complainant, )  
 )  
and )  
 )  
LEA ALBERT, District Superintendent, )  
Windward District Office, Department of )  
Education, State of Hawaii, )  
 )  
Respondent. )

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CASE NO. CE-05-484

In the Matter of )  
JOHN MUSSACK, )  
 )  
Complainant, )

CASE NO. CU-05-190

and )  
HAWAII STATE TEACHERS )  
ASSOCIATION, )  
Respondent. )

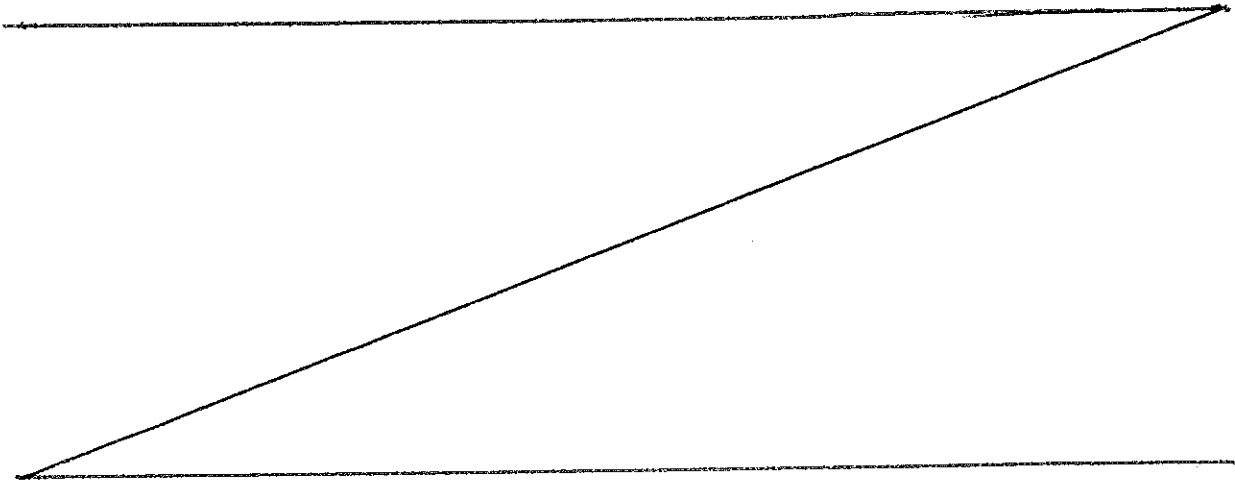
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ORDER CONSOLIDATING CASES FOR  
DISPOSITION; AND NOTICE PREHEARING  
CONFERENCE AND HEARING ON PROHIBITED PRACTICE COMPLAINTS

The Hawaii Labor Relations Board (Board) previously consolidated Case Nos.: CE-05-482, CE-05-483, and CE-05-484 for disposition in Order No. 2040 dated October 23, 2001.

In Case No. CE-05-482 filed on October 19, 2001, Complainant JOHN MUSSACK (MUSSACK) alleged that MICHAEL HARANO (HARANO), former principal of Kailua Elementary School, Department of Education (DOE), State of Hawaii issued an oral warning without proper cause on November 1, 2000 in violation of the Unit 05 agreement and Hawaii Revised Statutes (HRS) § 89-13(8) (sic). Also on October 19, 2001, MUSSACK filed a second complaint in Case No. CE-05-483 alleging that HARANO issued a written reprimand on January 11, 2001 without proper cause. MUSSACK filed a third complaint on October 19, 2001 in Case No. CE-05-484 against Windward District Superintendent LEA ALBERT (ALBERT) alleging that ALBERT inappropriately extended to School Year 2001-2002 MUSSACK's probationary period on June 20, 2001 as a special education teacher.

On January 11, 2002, the Board heard arguments on Respondents HARANO and ALBERT's motion to dismiss filed on December 18, 2001 where the Respondents argued that the Board lacked jurisdiction over the instant complaint for failure to exhaust contractual remedies and that the complaints were barred by the 90-day statute of limitations,



Procedurally, the hearing was consolidated only for purposes of considering Respondents' similar arguments to dismiss Case Nos. CE-05-485<sup>1</sup> and CE-05-486.<sup>2</sup>

On January 14, 2002, MUSSACK filed a complaint against the HAWAII STATE TEACHERS ASSOCIATION (HSTA) in Case No. CU-05-190. MUSSACK alleged that the HSTA abused its discretion by refusing to demand arbitration of certain grievances challenging:

- (1) an oral warning as alleged in Case No. CE-05-482;
- (2) a letter of reprimand as alleged in Case No. CE-05-483;
- (3) the improper extension of his probationary period as alleged in Case No. CE-05-484;
- (4) HARANO and Hibbs' refusal to arrange meetings with persons who complained about him (grieved on January 11, 2001 and April 5, 2001, respectively) as alleged in Case No. CE-05-485; and
- (5) two improper directives issued, and for violating Article XXII.A of the collective bargaining agreement and the DOE School Code, as alleged in Case No. CE-05-485.

MUSSACK alleged that the HSTA thereby violated HRS §§ 89-13(b)(1) and (5) and the Unit 05 agreement.

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<sup>1</sup>Case No. CE-05-485 was filed on October 25, 2001 by MUSSACK charging HARANO and ALBERT with violations of HRS § 89-13(a)(8) for refusing to arrange meetings with individuals at the DOE who complained about MUSSACK and related to an oral warning issued by HARANO. MUSSACK also alleged that Kailua Elementary School Principal Lanelle Hibbs (Hibbs) refused to arrange meetings with certain DOE personnel who complained about him and that Hibbs improperly issued two directives on July 3, 2001 regarding interpersonal protocol. MUSSACK contended that the employer's actions were in retaliation for "advocating on behalf of children with disabilities."

<sup>2</sup>Case No. CE-05-486 was filed on November 2, 2001 by MUSSACK against Debra Farmer, Administrator, Special Education Section, Department of Education, State of Hawaii and Donna Tamasese, Educational Specialist, Special Education Section, Department of Education, State of Hawaii. MUSSACK alleged, *inter alia*, that the employer violated the collective bargaining agreement for failing to follow DOE school code and rules in investigating his complaints, i.e., by failing to provide written testimony of witnesses in case #01060801 which incorporated the review of case #0104100 relating to district resource teachers and alleged violations of a federal special education law. MUSSACK also alleges that the DOE's investigation was in retaliation for his "advocacy on behalf of children with disabilities."

Initially, on January 11, 2002, after hearing oral arguments, the Board was inclined to dismiss without prejudice the first five complaints alleging violations by the employer of the collective bargaining agreement under HRS § 89-13(a)(8), based on Complainant's failure to exhaust his contractual remedies, as well as failing to show he had prevailed in any prohibited practice complaint charging a breach of duty of fair representation by his union under HRS § 89-13(b)(4). However, in light of subsequent complaints filed,<sup>3</sup> the Board finds that the issues presented are interrelated; and contemporaneous consideration of these proceedings as set forth below is conducive to the proper dispatch of its business and will not unduly delay the proceedings. Therefore, the Board will reserve its ruling on the State's arguments urging dismissal of Case Nos. CE-05-482, CE-05-483, and CE-05-484.

Accordingly, pursuant to Hawaii Administrative Rules (HAR) § 12-42-8(g)(13), the Board hereby consolidates for disposition: Case Nos. CE-05-482, CE-05-483, CE-05-484 with Case No. CU-05-190.<sup>4</sup>

NOTICE IS HEREBY GIVEN THAT the Board, pursuant to HRS § 89-5(b)(4) and HAR § 12-42-47, will conduct a prehearing conference on the above-entitled prohibited practice complaints on March 6, 2002 at 10:00 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The purpose of the prehearing conference is to arrive at a settlement or clarification of issues, to identify and exchange witness and exhibit

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<sup>3</sup>In addition to Case No. CU-05-190, MUSSACK filed three subsequent prohibited practice complaints against the HSTA alleging violations of HRS §§ 89-13(b)(1) and (5), and the Unit 05 collective bargaining agreement. Case No. CU-05-193 filed on January 22, 2002, alleges a breach of duty of fair representation by refusing to demand arbitration of a grievance over Hibb's refusal to arrange meetings with persons who complained about him on or about February 22, 2001. The allegations in Case No. CU-05-193 related to those made in Case No. CE-05-485. The third complaint against the HSTA in Case No. CU-05-194 was filed on January 30, 2002, alleges the HSTA abused its discretion by refusing to demand arbitration of certain grievances, namely: HSTA 02-070, involving alleged reprisal by Hibbs; HSTA 02-061, involving Hibbs' denial of meetings between MUSSACK and other DOE employees; and HSTA 02-056, involving Debra Farmer's alleged refusal to disclose information on case #01060801. This third complaint relates to allegations made in Case No. CE-05-486 and CU-05-193. The fourth complaint against the HSTA in Case No. CU-05-195 was filed on February 11, 2002, alleges the HSTA breached its duty of fair representation by refusing to demand arbitration of a grievance involving Farmer's alleged refusal to disclose information in Case #01041001. This fourth complaint relates to allegations made in Case No. CE-05-486.

<sup>4</sup>Under a separate order, the Board has reserved its ruling on Respondents' motion to dismiss Case Nos. CE-045-485 and CE-05-486. Order No. 2063, dated February 15, 2002, consolidates Case Nos. CE-05-485 and CE-05-486 with Case Nos. CU-05-193, CU-05-194, and CU-05-195. Allegations relating to Case Nos. CE-05-485, incorporated in CU-05-190, will be considered in those cases consolidated with Case Nos. CU-05-193, CU-05-104 and CU-05-195.

lists, if any, and to the extent possible, reach an agreement on facts, matters or procedures which will facilitate and expedite the hearing or adjudication of the issues presented. The parties shall file a Prehearing Statement which addresses the foregoing matters with the Board two days prior to the prehearing conference.

NOTICE IS ALSO GIVEN that the Board will conduct a hearing, pursuant to HRS §§ 89-5(b)(4) and 89-14, and HAR §§ 12-42-49 and 12-42-8(g) on the instant complaint on March 13, 2002 at 9:30 a.m. in the Board's hearing room. The purpose of the hearing is to receive evidence and arguments on whether Respondents committed prohibited practices as alleged by the Complainants. The hearing may continue from day to day until completed.

The parties shall submit to the Board four copies of all exhibits identified and offered into the record. Additional copies for opposing counsel shall also be provided.

All parties have the right to appear in person and to be represented by counsel or other representative.

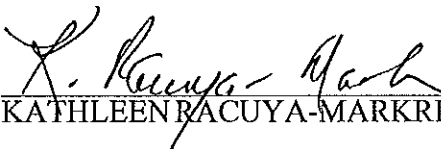
Auxiliary aids and services are available upon request, call Mrs. Ebata at (808) 586-8610, (808) 586-8847 (TTY), or 1 (888) 569-6859 (TTY neighbor islands). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

Dated: Honolulu, Hawaii, February 15, 2002.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
CHESTER C. KUNITAKE, Member

  
KATHLEEN RACUYA-MARKRICH, Member

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