

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of )  
JOHN MUSSACK, )  
 )  
Complainant, )  
 )  
and )  
 )  
MICHAEL HARANO, Former Principal, )  
Kailua Elementary School, Department of )  
Education, State of Hawaii and LANELLE )  
HIBBS, Current Principal, Kailua Elementary )  
School, Department of Education, State of )  
Hawaii, )  
 )  
Respondents. )

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CASE NO. CE-05-485  
ORDER NO. 2063  
ORDER CONSOLIDATING CASES  
FOR DISPOSITION; AND NOTICE  
OF PREHEARING CONFERENCE  
AND HEARING ON PROHIBITED  
PRACTICE COMPLAINTS

In the Matter of )  
JOHN MUSSACK, )  
 )  
Complainant, )  
 )  
and )  
 )  
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, )  
 )  
Respondents. )

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CASE NO. CE-05-486

In the Matter of )  
JOHN MUSSACK, )  
 )  
Complainant, )  
 )  
and )  
 )  
HAWAII STATE TEACHERS )  
ASSOCIATION, )  
 )  
Respondent. )

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CASE NO. CU-05-193

In the Matter of )  
JOHN MUSSACK, )  
Complainant, )  
and )  
HAWAII STATE TEACHERS ASSOCIA- )  
TION, )  
Respondent. )

CASE NO. CU-05-194

In the Matter of )  
JOHN MUSSACK, )  
Complainant, )  
and )  
HAWAII STATE TEACHERS ASSOCIA- )  
TION, )  
Respondent. )

CASE NO. CU-05-195

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

In Case No. CE-05-485, Complainant JOHN MUSSACK (MUSSACK) filed on October 25, 2001, a prohibited practice complaint against MICHAEL HARANO (HARANO), former principal of Kailua Elementary School, Department of Education (DOE), State of Hawaii and Windward District Superintendent LEA ALBERT (ALBERT) charging violations under Hawaii Revised Statutes (HRS) § 89-13(a)(8). MUSSACK alleged that HARANO refused to arrange meetings with certain DOE employees who complained about him that resulted in 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."

In Case No. CE-05-486, MUSSACK filed a complaint on November 2, 2001 against DEBRA FARMER, Administrator, Special Education Section, Department of Education, State of Hawaii (FARMER) 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 the DOE School Code and rules in investigating his complaints, i.e., by not disclosing written testimony of witnesses in case #01060801 which incorporated the review of case #01041001 relating to district resource teachers and alleged violations of a federal special education law. MUSSACK alleges that the DOE's investigation was in retaliation for his "advocacy on behalf of children with disabilities." His complaint alleges that Respondents committed a prohibited practice in violation HRS § 89-13(a)(8) and the Unit 05 agreement.

On January 11, 2002, the Board heard arguments on Respondents HARANO and ALBERT's motion to dismiss filed on December 18, 2001 in Case Nos.: CE-05-482,<sup>1</sup> CE-05-483,<sup>2</sup> and CE-05-484,<sup>3</sup> 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 and CE-05-486.

On January 22, 2002, MUSSACK filed a complaint against the HAWAII STATE TEACHERS ASSOCIATION (HSTA) in Case No. CU-05-193 alleging that the HSTA breached its duty of fair representation by refusing to demand arbitration of a grievance involving HIBB's alleged refusal to arrange meetings with certain complaining parties on or about February 22, 2001. This complaint relates to allegations made in Case No. CE-05-485.

On January 30, 2002, MUSSACK filed a complaint against the HSTA in Case No. CU-05-194 alleging violations under HRS §§ 89-13(b)(1) and (5), and the Unit 05 agreement. MUSSACK alleged that 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 Complainant and others; and HSTA 02-056, involving FARMER's alleged refusal to disclose information in case # 01060801. This complaint relates to allegations made in Case No. CE-05-485 and Case No. CU-05-193.

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<sup>1</sup>Case No. CE-05-482 was filed on October 19, 2001 by MUSSACK charging that HARANO and ALBERT issued an oral warning without proper cause on November 1, 2000 in violation of the Unit 05 agreement and HRS § 89-13(a)(8).

<sup>2</sup>Case No. CE-05-483 was filed on October 19, 2001 by MUSSACK charging that HARANO issued a written reprimand to MUSSACK without proper cause on January 11, 2001 in violation of the Unit 05 agreement and HRS § 89-13(a)(8).

<sup>3</sup>Case No. CE-05-484 was filed on October 19, 2001 by MUSSACK charging that ALBERT inappropriately extended MUSSACK's probationary period on June 20, 2001 for the school year 2001-2002 as a special education teacher.

On February 11, 2002, MUSSACK filed another complaint against the HSTA in Case No. CU-05-195 again alleging that 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 complaint relates to allegations made in Case No. CE-05-486 and Case No. CU-05-194.

Initially, on January 11, 2002, after hearing oral arguments on Respondents' motion to dismiss, the Board was inclined to dismiss without prejudice MUSSACK's 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 brought under HRS § 89-13(b)(4). However, in light of subsequent complaints filed,<sup>4</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-05-485 and CE-05-486.

Accordingly, pursuant to Hawaii Administrative Rules (HAR) § 12-42-8(g)(13), the Board hereby consolidates for disposition: Case Nos. CE-05-485 and CE-05-486 with Case Nos. CU-05-193, CU-05-194, and CU-05-195.<sup>5</sup>

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<sup>4</sup>On January 14, 2002, before filing complaints against the HSTA in Case Nos. CU-05-193, CU-05-194 and CU-05-195, MUSSACK filed a prohibited practice complaint, Case No. CU-05-190, charging the HSTA with abuse of 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.

<sup>5</sup>Under a separate order, the Board has reserved its ruling on Respondents' motion to dismiss Case Nos. CE-05-482, CE-05-483 and CE-05-484. Order No. 2062, dated February 15, 2002 consolidates these cases with CU-05-190. Allegations in Case No. CU-05-190 relating to Case No. CE-05-485 will be considered in the consolidated Case Nos. CU-05-193, CU-05-194 and CU-05-195.

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 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 18, 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

JOHN MUSSACK and MICHAEL HARANO, et al.  
CASE NO. CE-05-485  
JOHN MUSSACK and DEBRA FARMER, et al.  
CASE NO. CE-05-486  
JOHN MUSSACK and HAWAII STATE TEACHERS ASSOCIATION  
CASE NO. CU-05-193  
JOHN MUSSACK and HAWAII STATE TEACHERS ASSOCIATION  
CASE NO. CU-05-194  
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CASE NO. CU-05-195  
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Copies sent to:

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