

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

DEBORAH TAYLOR; CANDICE SIGRAH;
MARIE AHUNA; SHELLY FERNANDEZ;
MELANIE MANARPAAC; and GAIL
TORRES,

Complainants,

and

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

Respondents.

CASE NO. CU-10-184

ORDER NO. 2070

ORDER DENYING RESPONDENTS'
MOTION FOR PARTICULARIZA-
TION OF THE AMENDED COMPLAINT
AND DISMISSING CLAIMS OF
HRS §§ 89-13(b)(2), (3), and (5); NOTICE
OF PREHEARING CONFERENCE AND
HEARING ON AMENDED PROHIBITED
PRACTICE COMPLAINT

ORDER DENYING RESPONDENTS' MOTION FOR
PARTICULARIZATION OF THE AMENDED COMPLAINT AND
DISMISSING CLAIMS OF HRS §§ 89-13(b)(2), (3), and (5); NOTICE OF PREHEARING
CONFERENCE AND HEARING ON AMENDED PROHIBITED PRACTICE COMPLAINT

In Order No. 2056, dated January 29, 2002, the Hawaii Labor Relations Board (Board) granted, inter alia, Respondents EDDIE ESPIRITU and the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO's (collectively UPW or Union) motion for summary judgment, in part, and dismissed allegations of contract violations against the Union. The Board concluded that the particularized complaint contained allegations of interference and coercion with Complainants' rights guaranteed in Chapter 89 and a breach of the Union's duty of fair representation and permitted Complainants to file an amended complaint.

On February 11, 2002, Complainants, by and through their counsel, filed a First Amended Prohibited Practice Complaint alleging, inter alia, that Respondents "committed a prohibited practice within the meaning of Hawaii Revised Statutes (HRS) Section 89-13(b)(1) - (5) by wilfully coercing and/or interfering with Complainants' statutory rights as well as a breach of the Union's duty of fair representation."

On February 12, 2002, Respondents filed a Motion for Particularization of Amended Complaint with the Board contending that insofar as the amended complaint realleges a violation of HRS § 89-13(b)(5), the complaint is contrary to Order No. 2056. In addition, Respondents contend that as the amended complaint alleges violations of HRS

§§ 89-13(b)(1), 2), (3), and (4), the amended complaint is vague and indefinite. The UPW thus requested that the Complainants set forth the factual basis for each specific violation.

Also on that date, Respondents filed a Motion for Sanctions Against Counsel for Complainants and Other Relief Under HLRB Orders 2025, 2056, including the Dismissal of All Claims Arising Under § 89-13(b)(5) with the Board. In his attached affidavit, UPW's counsel stated that insofar as the amended complaint realleges a violation of HRS § 89-13(b)(5), it is contrary to Order No. 2056. UPW's counsel further contends that Complainants' counsel failed to comply with the Board's orders and accordingly should be sanctioned for contemptuous conduct. The UPW additionally requested that the allegations of HRS § 89-13(b)(5) in the amended complaint be dismissed in accordance with Order Nos. 2025 and 2056.

On February 20, 2002, Complainants filed an opposition to Respondents' motion for sanctions against Complainants' counsel and other relief and an opposition to Respondents' motion for particularization.

The Board conducted a hearing on the motions on March 7, 2002. The parties were represented by counsel and had full opportunity to present argument to the Board.

Based upon a review of the record and consideration of the arguments presented, the Board hereby denies the UPW's motion for particularization, as the amended complaint is not so vague in alleging prohibited practices based upon coercion or interference with employees' rights (HRS § 89-13(b)(1)) and a breach of the Union's duty of fair representation (HRS § 89-13(b)(4) and HRS § 89-8) that an answer cannot be framed.¹ In addition, without finding that Complainants' counsel's conduct to be contemptuous, the Board clarifies that Complainants' allegations of contract violations, i.e., HRS § 89-13(b)(5), were dismissed in this matter in Order No. 2056. Accordingly, the Board hereby dismisses Complainants' allegation of an HRS § 89-13(b)(5) violation in the amended complaint. The Board also finds merit in Respondents' arguments during the hearing on the instant motions that the amended complaint fails to state a claim for relief under HRS §§ 89-13(b)(2) and

¹In fact, Respondents filed an Answer to the Amended Complaint on March 12, 2002.

(3).² Accordingly, the Board dismisses the allegations in the amended complaint of HRS §§ 89-13(b)(2) and (3) violations.

**NOTICE OF PREHEARING CONFERENCE AND
HEARING ON AMENDED PROHIBITED PRACTICE COMPLAINT**

NOTICE IS HEREBY GIVEN THAT the Board, pursuant to HRS § 89-5(b)(4) and Hawaii Administrative Rules (HAR) § 12-42-47, will conduct a prehearing conference on the above-entitled prohibited practice complaint on April 2, 2002 at 9:30 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 April 12, 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.

DATED: Honolulu, Hawaii, March 15, 2002.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair

²HRS §§ 89-13(b)(2) and (3) provides:

It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

* * *

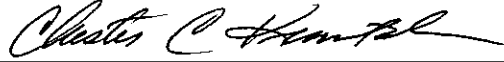
- (2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative as required in section 89-9;
- (3) Refuse to participate in good faith in the mediation, fact-finding and arbitration procedures set forth in section 89-11;

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PRACTICE COMPLAINT



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

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