

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

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

ORDER NO. 2072

ORDER GRANTING COMPLAINANT'S  
MOTION TO WITHDRAW CASE  
NOS. CE-05-485, CU-05-193 AND  
CU-05-194, IN PART, AND GRANTING  
COMPLAINANT'S MOTION TO AMEND  
ORDER NO. 2063 TO CONSOLIDATE  
THIS CASE WITH CASE NO. CU-05-190  
PART G; NOTICE OF HEARING ON  
DISPOSITIVE MOTIONS AND NOTICE  
OF HEARING ON PROHIBITED PRACTICE COMPLAINTS

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

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CASE NO. CU-05-194

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

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CASE NO. CU-05-195

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

CASE NO. CU-05-190 (PART G)

ORDER GRANTING COMPLAINANT’S MOTION TO WITHDRAW CASE NOS.  
 CE-05-485, CU-05-193 AND CU-05-194, IN PART, AND GRANTING COMPLAINANT’S  
 MOTION TO AMEND ORDER NO. 2063 TO CONSOLIDATE THIS CASE  
 WITH CASE NO. CU-05-190 PART G; NOTICE OF HEARING ON DISPOSITIVE  
 MOTIONS AND NOTICE OF HEARING ON PROHIBITED PRACTICE COMPLAINTS

On March 11, 2002, Complainant JOHN MUSSACK (MUSSACK), pro se, filed a Motion to Dismiss Some Cases Without Prejudice; Motion to Amend Orders Consolidating the Remaining Cases for Disposition in the above-consolidated cases with the Hawaii Labor Relations Board (Board). MUSSACK moved this Board to dismiss without prejudice, inter alia:

- a. Case No. CE-05-485, in toto;
- b. Case No. CU-05-193, in toto, relating to the HAWAII STATE TEACHERS ASSOCIATION’s (HSTA) failure to arbitrate a grievance concerning allegations of February 23, 2001 and LANELLE HIBBS (HIBBS), Current Principal, Kailua Elementary School, Department of Education, State of Hawaii’s failure to provide teacher-protection meetings; and
- c. Case No. CU-05-194 relating to the HSTA’s failure to arbitrate grievance in part (a) concerning HIBBS’ alleged retaliation for MUSSACK’s participation in the grievance process and part (b) HIBBS’ failure to provide teacher-protection meetings for MICHAEL HARANO (HARANO), former Principal, Kailua Elementary School, Department of Education, State of Hawaii’s oral warning.

Respondents HARANO and HIBBS in Case No. CE-05-485 and DEBRA FARMER (FARMER), Administrator, Special Education Section, Department of Education, State of Hawaii and DONNA TAMASESE (TAMASESE), Educational Specialist, Special Education Section, Department of Education, State of Hawaii in Case No. CE-05-486 (collectively DOE), by and through their counsel, filed their Statement of No Objections to Complainant’s Motion to Dismiss Some Cases Without Prejudice and Statement of No

Objections to Complainant's Motion to Amend Orders Consolidating Remaining Cases for Disposition, as well as Objections to Board's Proceedings on March 14, 2002.

On March 15, 2002, MUSSACK and counsel for the DOE and the HSTA appeared before the Board for a Show Cause Hearing of Complainant's Application for Issuance of Subpoenas filed on March 11, 2002 in Case No. CE-05-486. At the hearing, the Board agreed to consider Complainant's Motion to Dismiss Some Cases Without Prejudice; Motion to Amend Orders Consolidating the Remaining Cases for Disposition which was scheduled for hearing on March 18, 2002.

Having advised MUSSACK that neither a dismissal without prejudice nor withdrawal of his complaints tolls the running of the statute of limitations, MUSSACK agreed to treat his motion to dismiss without prejudice as a motion to withdraw.

There being no objection by the DOE or the HSTA to the withdrawal of the complaints in Case Nos. CE-05-485, CU-05-193, CU-05-195 parts (a) and (b), the Board hereby grants the withdrawal of the complaints pursuant to Hawaii Administrative Rules (HAR) § 12-42-44.

In addition, pursuant to MUSSACK's Motion to Amend the Order Consolidating the Cases, the Board hereby amends Order No. 2063, Order Consolidating Cases for Disposition; and Notice of Prehearing Conference and Hearing on Prohibited Practice Complaints, issued on February 15, 2002 to reflect the consolidation of Case Nos. CE-05-486, CU-05-190 part (g); CU-05-194 part (c), and CU-05-195.<sup>1</sup>

NOTICE IS HEREBY GIVEN that the Board will conduct a hearing pursuant to Hawaii Revised Statutes (HRS) §§ 89-5(b)(4) and 89-14 and HAR § 12-42-8(g) on any dispositive motions filed by Respondents by the close of business on March 25, 2002 and MUSSACK's opposition to Respondents' motions to dismiss filed by the close of business

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<sup>1</sup>On March 18, 2002, MUSSACK filed an Amended Prohibited Practice Complaint (Amended Complaint) against FARMER and TAMASESE and the HSTA reflecting the withdrawal of his claims and the clarification of the issues in this consolidated case. MUSSACK alleged that FARMER and TAMASESE violated the Complaints Office Rules in handling his case thereby violating HRS § 89-13(a)(8) and the Unit 05 agreement which incorporates School Code # 5003(4)(d). MUSSACK alleged that the HSTA breached its duty of fair representation by refusing to demand arbitration for the two grievances in this dispute thereby violating HRS §§ 89-13(b)(1) and (5) and the Unit 05 agreement. Thus, MUSSACK confirmed that he intended the consolidation of Case Nos. CE-05-486, CU-05-190 part (g), CU-05-194 part (c), and CU-05-195. As MUSSACK's Amended Complaint does not add or amend the charges already pending before the Board, the Board will not require Respondents to file Answers to the Amended Complaint.

on April 1, 2002 on April 4, 2002 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii,

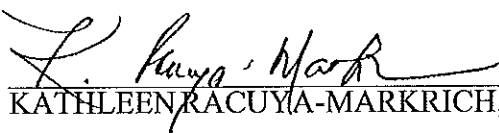
NOTICE IS ALSO GIVEN that the Board will conduct a hearing, pursuant to HRS §§ 89-5(b)(4), and 89-14, and HAR §§ 12-42-49 and 12-42-8(g) on the instant complaints on April 15, 2002 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The hearing may continue from day to day until completed.

DATED: Honolulu, Hawaii, March 21, 2002.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
CHESTER C. KUNITAKE, Member

  
KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

John Mussack  
Francis Paul Keeno, Deputy Attorney General  
Vernon Yu, Esq.  
Joyce Najita, IRC