

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

BERT SAM FONG,

Complainant,

and

TED SAKAI, Director, Department of Public Safety, State of Hawaii and ALBERT MURASHIGE, Warden, Maui Community Correctional Center, State of Hawaii,

Respondents.

CASE NO. CE-10-503

ORDER NO. 2097

ORDER CONSOLIDATING CASES FOR DISPOSITION; AND NOTICE OF HEARING ON RESPONDENTS' MOTIONS TO DISMISS COMPLAINTS

In the Matter of

BERT SAM FONG,

Complainant,

and

GARY RODRIGUES, State Director, United Public Workers, AFSCME, Local 646, AFL-CIO and EDDIE ESPIRITU, Business Agent, United Public Workers, AFSCME, Local 646, AFL-CIO,

Respondents.

CASE NO. CU-10-201

ORDER CONSOLIDATING CASES FOR DISPOSITION; AND NOTICE OF HEARING ON RESPONDENTS' MOTIONS TO DISMISS COMPLAINTS

On June 13, 2002, Complainant BERT SAM FONG (SAM FONG) filed a Prohibited Practice Complaint against TED SAKAI, Director of Public Safety, State of Hawaii and ALBERT MURASHIGE, Warden, Maui Community Correctional Center (collectively State or PSD) in Case No. CE-10-503. SAM FONG alleges that the State violated Hawaii Revised Statutes (HRS) §§ 89-13(6) (sic) and 89-13(8) (sic) by allowing supervisory Adult Correctional Officers perform overtime in non-supervisory positions.

Also on June 13, 2002, SAM FONG filed a Prohibited Practice Complaint against GARY RODRIGUES, State Director, United Public Workers, AFSCME, Local 646,

AFL-CIO and EDDIE ESPIRITU, Business Agent, United Public Workers, AFSCME, Local 646, AFL-CIO (collectively UPW or Union) in Case No. CU-10-201. SAM FONG alleged that the UPW, inter alia, violated HRS §§ 89-13(1), (3), and (5) (sic) in its handling of SAM FONG's complaints regarding supervisors performing overtime work in non-supervisory positions.

After reviewing these complaints, the Board finds that these complaints involve substantially the same parties and issues and that consolidation of the proceedings would be conducive to the proper dispatch of business and the ends of justice and will not unduly delay the proceedings. Pursuant to Hawaii Administrative Rules (HAR) § 12-42-8(g)(13), the Board hereby consolidates these complaints and the proceedings thereon for disposition.

On June 14, 2002, the UPW filed a Motion to Dismiss and/or for Summary Judgment contending that the complaint failed to state a claim for relief or alternatively, that the UPW is entitled to summary judgment. Thereafter on June 25, 2002, the State filed a Motion to Dismiss the Complaint for failing to state a claim upon which relief could be granted, failing to exhaust contractual remedies, and for lack of jurisdiction.

NOTICE IS HEREBY GIVEN that pursuant to HRS §§ 89-5(b)(4) and (5) and 89-14 and HAR § 12-42-8(g)(3), the Board will conduct a hearing on the UPW and State's respective motions to dismiss the complaints on July 16, 2002 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

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) for assistance. A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

DATED: Honolulu, Hawaii, June 27, 2002

HAWAII LABOR RELATIONS BOARD

  
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BRIAN K. NAKAMURA, Chair

BERT SAM FONG v. TED SAKAI, Director, Department of Public Safety, State of Hawaii, et al.  
CASE NO. CE-10-503  
BERT SAM FONG v. GARY RODRIGUES, State Director, United Public Workers, AFSCME,  
Local 646, AFL-CIO


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CHESTER C. KUNITAKE, Member

  
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KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Bert Sam Fong  
Herbert R. Takahashi, Esq.  
Jennifer R. Salvador, Deputy Attorney General  
Joyce Najita, IRC