

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-03-213
RICHARD K. CONDON,)	ORDER NO. 2151
Complainant,)	ORDER DENYING COMPLAINANT'S
and)	MOTION TO WAIVE HEARING; AND
MARVIS TAUALA, Union Agent, Hawaii)	NOTICE OF PREHEARING CONFER-
Government Employees Association, AFSCME,)	ENCE AND HEARING ON PROHIBITED
Local 152, AFL-CIO and HAWAII GOVERN-)	PRACTICE COMPLAINT
MENT EMPLOYEES ASSOCIATION,)	
AFSCME, LOCAL 152, AFL-CIO,)	
Respondents.)	

**ORDER DENYING COMPLAINANT'S
MOTION TO WAIVE HEARING; AND NOTICE OF PREHEARING
CONFERENCE AND HEARING ON PROHIBITED PRACTICE COMPLAINT**

On January 9, 2002, Complainant RICHARD K. CONDON (CONDON) filed a complaint with the Hawaii Labor Relations Board (Board) against the above-mentioned Respondents alleging, *inter alia*, that the union failed to file a grievance on his behalf against his employer on a number of issues. CONDON thus contends that Respondents violated Hawaii Revised Statutes (HRS) §§ 89-13(b)(2), (3), (4), and (5). Thereafter, on January 21, 2003, Complainant filed a Motion to Waive Hearing with the Board. CONDON alleged that he received his copy of the Notice to Respondents on January 10, 2003 and Respondents failed to serve an answer to the complaint by January 20, 2003 at 4:30 p.m. CONDON argued that since Respondents' answer was not timely, all material facts were admitted and pursuant to Hawaii Administrative Rules (HAR) §12-42-45,¹ he waived his right to hearing.

On January 28, 2003, Respondents filed a Memorandum in Opposition to Complainant's Motion to Waive Hearing filed on January 21, 2003 with the Board.

¹HAR § 12-42-45(g) provides:

If the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing.

Respondents contend that they received the instant complaint on January 10, 2003 and its answer was timely filed on January 21, 2003 because January 20, 2003 was a holiday and excluded in the computation of time in accordance with HAR § 12-42-8(c).²

After reviewing the instant motion and arguments presented, the Board agrees with Respondents that their answer was due and timely filed on January 21, 2003 because of the intervening Martin Luther King, Jr. holiday on January 20, 2003. The Board thus denies Complainant's motion to waive hearing filed on January 21, 2003.

NOTICE IS HEREBY GIVEN that the Board, pursuant to HRS §§ 89-5(i)(4) and (i)(5) and HAR § 12-42-47, will conduct a prehearing conference on the above-entitled prohibited practice complaint on February 11, 2003 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 February 19, 2003, at 9:30 a.m. in the above-referenced hearing room. The purpose of the hearing is to receive evidence and arguments on whether Respondents committed prohibited practices as alleged by the Complainant. 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.

²HAR 12-42-8(c) provides:

In computing any period of time prescribed or allowed by these rules or by order of the board, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. As used in this section, "holiday" shall mean any day designated as such pursuant to section 8-1, HRS.

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, January 29, 2003.

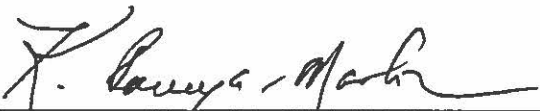
HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Richard K. Condon
Lisa Anne Gruebner, Esq.
Joyce Najita, IRC