

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

STEPHANIE C. STUCKY,

Complainant,

and

JOAN LEE HUSTED, Executive Director,
Hawaii State Teachers Association; and
HAWAII STATE TEACHERS ASSOCIA-
TION,

Respondents.

CASE NO. CU-05-232

ORDER NO. 2316

ORDER GRANTING RESPONDENTS'
MOTIONS FOR SUMMARY JUDG-
MENT

In the Matter of

STEPHANIE C. STUCKY,

Complainant,

and

JOAN LEE HUSTED, Executive Director,
Hawaii State Teachers Association;
ERIC NAGAMINE, UniServ Director, Hawaii
State Teachers Association; WILBERT HOLCK,
UniServ Director; Hawaii State Teachers Associ-
ation; MARK NAKASHIMA, HSTA UniServ
Director; Hawaii State Teachers Association;
and HAWAII STATE TEACHERS
ASSOCIATION,

Respondents.

CASE NO. CU-05-233

ORDER GRANTING RESPONDENTS'
MOTIONS FOR SUMMARY JUDGMENT

On July 28, 2004, Complainant STEPHANIE C. STUCKY (STUCKY) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) in Case No. CU-05-232. STUCKY alleged that Respondents JOAN LEE HUSTED (HUSTED), Executive Director, Hawaii State Teachers Association (HSTA or Union), and the HSTA breached the duty of fair representation in violation of Hawaii Revised Statutes (HRS) § 89-

13(b)(3), (4) and (5) when they filed a request for arbitration for grievance M 03-40 with the employer before submitting the request to the HSTA Board of Directors for approval or disapproval to proceed to arbitration.

On August 5, 2004, STUCKY filed another prohibited practice complaint in Case No. CU-05-233 with the Board against HUSTED, ERIC NAGAMINE (NAGAMINE), HSTA Uniserv Director, WILBERT HOLCK (HOLCK), HSTA Uniserv Director, MARK NAKASHIMA (NAKASHIMA), HSTA Uniserv Director, and the HSTA. STUCKY alleges that Respondents breached their duty of fair representation when they failed to timely submit her request for arbitration on grievances M 04-23, M 04-24, M 04-25, M 04-35 and M 04-36 to the HSTA Board of Directors for approval thus violating the provisions of HRS § 89-13(b)(3), (4) and (5).

On September 1, 2004, the Board held prehearing conferences on both cases. At the prehearing conferences the Board noted that both cases involved the submission of cases to arbitration and the subsequent process involved with the request for arbitration being brought to the HSTA Board of Directors. Thus the Board consolidated the two cases for hearing and determination based upon the similarity of parties and issues presented.

On September 10, 2004, Respondents filed Respondents' Motion for Summary Judgement. Respondents claimed that there were no material issues of fact in dispute and Respondents were entitled to judgment as a matter of law.

On September 17, 2004, STUCKY filed a Memorandum in Opposition to Respondents' Motion for Summary Judgment.

On September 24, 2004, the Board held a hearing on the motion for summary judgment. The parties were afforded full opportunity to argue their respective positions. After a thorough review of the record in the case the Board makes the following findings of fact, conclusions of law and order granting Respondents' motion for summary judgment.

FINDINGS OF FACT

1. STUCKY was for all relevant times, a teacher employed by the Board of Education, State of Hawaii and an employee within the meaning of HRS § 89-2.
2. The HSTA is an employee organization and the exclusive representative as defined in HRS § 89-2 of bargaining unit 05, composed of teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent.

3. HUSTED is the HSTA's Executive Director and NAGAMINE, HOLCK and NAKASHIMA are Uniserv Directors for the HSTA. They were for all relevant times, designated agents of the HSTA, within the meaning of HRS § 89-13(b).
4. For all relevant times, the public employer and the HSTA were parties to a collective bargaining agreement which contained a grievance procedure culminating in arbitration.
5. In Grievance M 03-40, the subject of two other prohibited practices by STUCKY against the Union, the HSTA requested arbitration of the grievance by letter of July 6, 2004. STUCKY alleges the matter was still pending a recommendation to the HSTA Board of Directors. STUCKY contends the lack of action by the HSTA renders her remediless.
6. In Grievances M 04-23, M 04-24, M 04-25, M 04-35 and M 04-36, after a lack of response from the employer, STUCKY requested the HSTA to arbitrate the cases on or about June 24, 2004 and July 20, 2004, respectively. STUCKY alleges the lack of action of the HSTA to timely take the request up with the HSTA Board of Directors renders her remediless.
7. NAGAMINE states, in a declaration, dated September 10, 2004:

3. Exhibits (sic) "A" is a true and correct copy of a letter he sent to Ms. Stucky confirming a telephone conversation he held with her on July 23, 2004. He spoke with Ms. Stucky on July 26, 2004 and she told him to proceed.

4. He prepared a recommendation to the HSTA Executive Director on whether Grievance Nos. M 03-40, M 04-23, 24, 25, 35 and 36 should proceed to arbitration. If the recommendation was not prepared within two (2) weeks from the date the demand for arbitration was filed, this delay was a result of trying performing (sic) a careful analysis and meaningful recommendation, and delays caused by Ms. Stucky's request to hold matters in abeyance. Any delay in his making a recommendation did not result in any prejudice to Ms. Stucky since all timelines have been met. There is no requirement that he prepare a recommendation within two (2) weeks. This is a target date and not a hard or fast requirement.

5. The HSTA Board of Directors determined, on August 28, 2004, to proceed to arbitration on Grievance Nos. M

03-40 and M 04-35. The Board of Directors has voted not to proceed to arbitration on Grievance Nos. M 04-23, 24, 25 and 36.

8. The Board finds, notwithstanding Complainant's claims that she is remediless because of HSTA's alleged noncompliance with the literal terms of the timelines and grievance procedure in the Unit 05 contract, it is undisputed that all timelines have been met and the HSTA Board of Directors met on August 28, 2004 and decided to send Grievance Nos. M 03-40 and M 04-35 to arbitration and declined to take Grievance Nos. M-04-23, 04-24, 04-25, and 04-36. Based on the foregoing, the Board concludes that Complainant was not adversely affected by any failure to comply with the literal terms of the contract.
9. The HSTA Board of Director's decisions on Complainant's requests for arbitration moots the instant complaints which allege a breach of duty of fair representation based on noncompliance with the literal terms of the contract.

DISCUSSION

In these consolidated cases, STUCKY contends that the HSTA failed to abide by the technical timelines and grievance procedures in processing her requests for arbitration. In reviewing the facts of the case, STUCKY failed to show that she has been adversely affected or prejudiced in any way by the actions of the HSTA and NAGAMINE. In fact NAGAMINE's letter of July 23, 2004 shows that he was in communication with STUCKY, and protected her rights by adhering to the timelines within the contract to request arbitration while he prepared the documentation and processed her requests through the internal procedure of the HSTA. These facts are not contested by STUCKY. Moreover, based on the record, it is uncontested that the HSTA Board of Directors met on August 28, 2004 and decided to have only Grievance Nos. M 03-40 and M 04-35 proceed to arbitration, and not Grievance Nos. M 04-23, 04-24, 04-25 and 04-36.¹

Respondents move for summary judgment contending that there are no material issues of fact in dispute and they are entitled to judgment as a matter of law. Respondents contend that they fulfilled their duty of fair representation to Complainant because all of the time limits for all grievances at issue were preserved while the matters were processed for

¹The Board of Directors' substantive decisions not to take Grievance Nos. M 04-23, 04-24, 04-25, 04-36 to arbitration are not the subject of the instant complaints before the Board. Nevertheless, Complainant's representative noted that she was in the process of appealing the Board of Directors' decision not to proceed go arbitration. Transcript of proceedings on September 24, 2004, p. 35.

approval by the HSTA Board of Directors which is the governing body of the Union with the final say to take a grievance to arbitration. All of the steps taken were within the normal procedure of the HSTA.

Duty of Fair Representation

Summary judgment is proper where the moving party demonstrates that there are no genuine issues of material fact in dispute and, therefore it is entitled to judgment as a matter of law. State of Hawai'i Organization of Police Officers (SHOPO) v. Society of Professional Journalists - University of Hawai'i Chapter, 83 Hawai'i 387, 389, 927 P.2d 386 (1996) (SHOPO). A fact is material if proof of that fact would have the effect of establishing or refuting the essential elements of a cause of action or defense asserted by the parties. Konno v. County of Hawai'i, 85 Hawai'i 61, 937 P.2d 397 (1997) (Konno). In addition, [t]he evidence must be viewed in the light most favorable to the non-moving party." State ex rel. Bronson v. Yoshina, 84 Hawai'i 179, 186, 932 P.2d 316 (1997). The court must view all of the evidence and inferences drawn therefrom in the light most favorable to the party opposing the motion. State Farm Mut. Auto Ins. Co. v. Murata, 88 Hawai'i 284, 287-88, 965 P.2d 1284 (1998) Accordingly, the controlling inquiry is whether there is no genuine issue of material fact and the case can be decided solely as a matter of law. Kajiya v. Dept. of Water Supply, 2 Haw.App. 221, 629 P.2d 635 (1981).

The duty of fair representation embodied in HRS § 89-8(a) is twofold. First, the exclusive representative is mandated "to act for and negotiate agreements covering all employees in the unit." Second, the exclusive representative must "be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership."

The burden of proof is on the complainant-employee to show by a preponderance of evidence that: 1) the decision not to proceed to arbitration was arbitrary, discriminatory or in bad faith. Sheldon S. Varney, 5 HLRB 508 (1995). See also, Vaca v. Sipes, 386 U.S. 171, 190-191, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). "[A] union's conduct is 'arbitrary' if it is 'without rational basis,'...or is egregious, unfair and unrelated to legitimate union interests." Peterson v. Kennedy, 771 F.2d 1244, 1254 (9th Cir. 1985).

"A union's course of conduct may be so unreasonable and arbitrary toward an employee as to constitute a violation of its duty of fair representation, even without any hostile motive of discrimination and when conducted in complete good faith. Arbitrary conduct that might breach a union's duty of fair representation is not limited to intentional conduct by union officials. It may also include acts of omission which, while not calculated to harm union members, be so egregious, so far short of minimum standards of fairness to the employee, and unrelated to legitimate union interest as to constitute arbitrary conduct." 48

Am.Jur.2d 853 § 1529; see also, Price v. Southern Pacific Transp. Co., 586 F.2d 750 (9th Cir. 1978).

The U.S. Supreme Court in Air Line Pilots Ass'n. Intern. v. O'Neill, 499 U.S. 65, 111 S.Ct. 1127, 113 L.Ed.2d 51 (1991) (O'Neill), held that "a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness,' . . . as to be irrational." Id., at 67. The Court's holding in O'Neill reflects that a deferential standard is employed as to a union's actions. They may be challenged only if "wholly irrational." Id., at 78. In carrying out its duty of fair representation, an unwise or even an unconsidered decision by the union is not necessarily an irrational decision. Id.

Simple negligence or mere errors in judgment will not suffice to make out a claim for a breach of the duty of fair representation. Farmer v. ARA Services, Inc., 660 F.2d 1096, 108 LRRM 2145 (6th Cir. 1981); Whitten v. Anchor Motor Freight, Inc., 521 F.2d 1335, 1341, 90 LRRM 2161 (6th Cir. 1975). Proof of union error due to negligence, inefficiency, inexperience, or even a misguided interpretation of contract provisions will not suffice. Bruce J. Ching, 2 HPERB 23 (1978).

A union does not breach its duty of fair representation when it exercises its "judgment" in good faith not to pursue a grievance further, Stevens v. Moore Business Forms, Inc., 18 F.3d 1443, 1447, 145 LRRM 2668 (9th Cir. 1994) (Stevens), or by acting negligently, Patterson v. International Brotherhood of Teamsters, Local 959, 121 F.3d 1345, 1349, 156 LRRM 2008 (9th Cir. 1997). As explained in Stevens:

...A union's decision to pursue a grievance based on its merits or lack thereof is considered an exercise of its judgment (Citations omitted). "We have never held that a union has acted in an arbitrary manner where the challenged conduct involved the union's judgment as to how best to handle a grievance. To the contrary, we have held consistently that unions are not liable for good faith, non-discriminatory errors of judgment made in processing of grievances." (Citations omitted). 18 F.3d at 1447.

And where a union's judgment is in question, complainant "may prevail only if the union's conduct was discriminatory or in bad faith." Moore v. Bechtel Power Corp., 840 F.2d 634, 127 LRRM 3023 (9th Cir. 1988).

The Board finds that STUCKY has not shown that she has been adversely affected by the actions of Respondents in not complying with the literal timeline of the contract, or that Respondents have proceeded on her cases capriciously, with indifference or malice. Thus, STUCKY has failed to show that Respondents' actions on her behalf were arbitrary, discriminatory or in bad faith. Based on the foregoing, the Board finds that there

are no genuine issues of material fact in dispute and Respondents are entitled to judgment as a matter of law, i.e., that Complainant failed to prove that Respondents breached their duty of fair representation in their handling of Complainant's requests for arbitration.

MOOTNESS

Under the present facts, at the time of hearing of the motions in these matters, the HSTA Board of Directors had decided to take two cases to arbitration and not to pursue four other requests. Thus, at this stage of the proceedings the case has lost its character as a present, live controversy. Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81, 734 P.2d 161 (1987). In Wong v. Board of Regents, University of Hawaii, 62 Haw. 391, 616 P.2d 201 (1980), the Court dismissed the action on grounds of mootness, stating:

The mootness doctrine is said to encompass the circumstances that destroy the justiciability of a suit previously suitable for determination. Put another way, the suit must remain alive throughout the course of the litigation to the moment of final appellate disposition. Its chief purpose is to assure that the adversary system, once set in operation remains properly fueled. The doctrine seems appropriate where events subsequent to the judgment of the trial court have so affected the relations between the parties that the two conditions for justiciability relevant on appeal – adverse interest and effective remedy – have been compromised.

Id., at 394. See also, State v. Rogan, 91 Hawai'i 405, 984 P.2d 1231 (1999); State v. Fukusaku, 85 Hawai'i 462, 946 P.2d 32 (1997); AIG Hawaii Ins. Co. v. Bateman, 82 Hawai'i 453, 923 P.2d 395 (1996); In re Application of J.T. Thomas, 73 Haw. 223, 832 P.2d 253 (1992).

In this case, the Board finds that the conditions of justiciability have been compromised by the HSTA Board of Directors' decisions on Complainant's requests for arbitration which moot a determination of whether the HSTA breached its duty of fair representation by not following the literal language of the contract in processing the grievances to arbitration. The Board concludes that the issues are moot as there is no actual controversy between the parties and there is no meaningful remedy that it could impose in this matter at this stage. Accordingly, the Board hereby dismisses the instant complaints.

VIOLATION OF HAR § 12-42-42(f)

Alternatively, the Board notes that Grievance No. M 03-40 was also the subject of two previous prohibited practice charges by STUCKY against the same Respondents. Hawaii Administrative Rules (HAR) § 12-42-42(f) provides that only one complaint shall

issue against a party with respect to a single controversy. The Board finds that the instant complaint alleging prohibited practice by Respondents is substantially identical to the complaint filed in Case No. CU-05-231. Thus, Complainant's filing of Case No. CU-05-322 violates HAR § 12-42-42(f) and is accordingly, dismissed on that basis.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this complaint pursuant to HRS §§ 89-5 and 89-14.
2. Summary judgment is proper where the moving party demonstrates that there are no genuine issues of material fact in dispute, and it is entitled to judgment as a matter of law. SHOPO, supra.
3. Based on the entire record, and viewing the facts in the light most favorable to the Complainant, the Board concludes there are no genuine issues of material fact in dispute to show the Union breached its duty of fair representation to Complainant by failing to immediately file a demand for arbitration on her grievance after she so demanded.
4. A complaint is moot if the case has lost its character as a present, live controversy.
5. The HSTA Board of Director's decisions on Complainant's requests for arbitration moots the instant complaints which allege a breach of duty of fair representation based on noncompliance with the literal terms of the contract.
6. HAR § 12-42-42(f) provides that only one complaint shall issue against a party with respect to a single controversy. Based on the finding that the complaint regarding Grievance M 03-40 is substantially identical to another complaint filed by STUCKY in 2004, the instant complaint filed by STUCKY on Grievance No. M 03-40 violates the foregoing Board rule.

ORDER

The Board hereby grants summary judgment in favor of Respondents or alternatively, dismisses the instant complaints for mootness and with respect to Case No. CU-05-232, for violation of HAR § 12-42-42(f).

STEPHANIE C. STUCKY v. JOAN LEE HUSTED, et al.
CASE NO. CU-05-232
STEPHANIE C. STUCKY v. JOAN LEE HUSTED, et al.
CASE NO. CU-05-233
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DATED: Honolulu, Hawaii, February 25, 2005


HAWAII LABOR RELATIONS BOARD



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