

STATE OF HAWAII  
 HAWAII LABOR RELATIONS BOARD

In the Matter of )  
 ADELAIDE NAKAMURA, )  
 Complainant, )  
 and )  
 HAWAII STATE TEACHERS ASSOCIATION, )  
 Respondent. )

CASE NO. CU-05-242  
 ORDER NO. 2353  
 ORDER DISMISSING COMPLAINTS  
 FOR LACK OF PROSECUTION

In the Matter of )  
 ADELAIDE NAKAMURA, )  
 Complainant, )  
 and )  
 DEPARTMENT OF EDUCATION, State of )  
 Hawaii, )  
 Respondent. )

CASE NO. CE-05-608

ORDER DISMISSING COMPLAINTS FOR LACK OF PROSECUTION

On January 9, 2006, the Hawaii Labor Relations Board (Board) convened an Order to Show Cause hearing in the above-captioned matter pursuant to Order No. 2352, issued January 3, 2006.

Complainant ADELAIDE NAKAMURA (NAKAMURA) failed to appear or respond to Order No. 2352. The respective counsel for Respondent HAWAII STATE TEACHERS ASSOCIATION (HSTA or UNION), in Case No. CU-05-242, and Respondent DEPARTMENT OF EDUCATION, State of Hawaii (DOE) in Case No. CE-05-608, appeared for the hearing.

Based upon the record, the Board makes the following findings of fact, conclusion of law, and order dismissing with prejudice the instant complaints for lack of prosecution.

## FINDINGS OF FACT

1. On November 8, 2005, NAKAMURA filed a prohibited practice complaint against the HSTA in Case No. CU-05-242 with the Board. NAKAMURA alleged that she was “terminated” by the Department of Education by letter dated August 25, 2005, and requested assistance from the UNION. NAKAMURA alleged that the UNION acted in a discriminatory manner and in bad faith and violated its duty to provide her with assistance. NAKAMURA alleged, inter alia, that the HSTA failed to respond in a timely manner to her requests for assistance; that the HSTA failed to provide her with a UniServ Director and a copy of the contract; that the HSTA terminated her UNION membership; and distorted the truth in correspondence to her. NAKAMURA contended that the HSTA thereby violated Hawaii Revised Statutes (HRS) §§ 89-13(b)(4) and (5).
2. On November 16, 2005, NAKAMURA filed a prohibited practice complaint against the DOE alleging, inter alia, that she was terminated without good cause. NAKAMURA alleged that her termination was backdated one month; that there was a two-month lag between the time she was terminated and the Employer-Union Trust Fund receiving the paperwork to initiate COBRA coverage; that she had to pay for unused COBRA coverage back to 7/25/05; that Central District Personnel Officer Calvin Shimomura has not responded to requests for information regarding her employment status and concerns; and that Assistant Superintendent Gerald Okamoto did not document her termination, denied her the opportunity to respond, and failed to follow departmental procedures for termination. NAKAMURA contended that the DOE violated HRS §§ 89-13(a)(1), (4), (5), (6), (7), and (8).
3. On November 28, 2005, Respondent DOE filed a Motion to Dismiss with the Board contending that NAKAMURA failed to state a claim for relief and/or failed to exhaust her contractual remedies.
4. By Order No. 2350, issued December 5, 2005, the Board consolidated both complaints in accordance with Hawaii Administrative Rules (HAR) § 12-42-8(g)(13) and noticed a prehearing conference for December 19, 2005.
5. On December 19, 2005, counsel for the parties and NAKAMURA appeared pro se at the prehearing conference. At the prehearing conference, the Board scheduled a hearing on Respondent DOE’s Motion to Dismiss on January 3, 2006 at 10:30 a.m. Respondent was also instructed to file a response to the motion by December 27, 2005.

6. On December 27, 2005, NAKAMURA filed Complainant's Response to the Respondent's Motion to Dismiss with the Board.
7. On January 3, 2006, the Board convened the hearing on Respondent DOE's motion to dismiss at 10:58 a.m. Counsel for Respondents DOE and HSTA appeared before the Board and NAKAMURA failed to appear. Respondent DOE requested the Board to grant its motion to dismiss because Complainant failed to appear. The Board took the motion under advisement and indicated that it would issue an Order to Show Cause to NAKAMURA to permit her to explain why she did not appear at the scheduled hearing.
8. On January 3, 2006, the Board issued Order No. 2352, Order to Show Cause, to NAKAMURA ordering her to appear before the Board on January 9, 2006 at 1:00 p.m. to show cause why the case should not be dismissed, with prejudice, for lack of prosecution.
9. On January 9, 2006, the Board convened the hearing at 1:10 p.m. Counsel for Respondents DOE and HSTA appeared and NAKAMURA again failed to appear at the time scheduled for the hearing. The Board indicated that it would dismiss the cases with prejudice for failure to prosecute the cases.
10. The Board further finds that the Respondents have been prejudiced by having to expend fees and costs for their attorneys to appear and defend these complaints.

### DISCUSSION

As in previous cases where the Board's rules are silent on procedural matters the Board looks for guidance to Rule 41(b), Rules of Civil Procedure, regarding the dismissal of actions. That rule provides as follows:

(b) *Involuntary dismissal: Effect thereof.* For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against it. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal is not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Here, NAKAMURA failed to appear at the hearing on Respondent DOE's Motion to Dismiss after filing a response and failed to appear and respond to the Board's Order to Show Cause at the hearing scheduled on January 9, 2006. Accordingly, given this record, the Board concludes that NAKAMURA has failed to prosecute these complaints and in view of the prejudice suffered by Respondents in having to defend these claims, the Board hereby grants the motions to dismiss for lack of prosecution, with prejudice.

**CONCLUSION OF LAW**

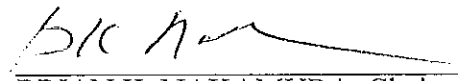
Based upon NAKAMURA's failure to appear at the hearing on Respondent DOE's Motion to Dismiss scheduled on January 3, 2006 and the hearing on the Board's Order to Show Cause noticed for January 9, 2006, and the prejudice to Respondents in defending these claims, the Board concludes that NAKAMURA has failed to prosecute her complaints before this Board.

**ORDER**

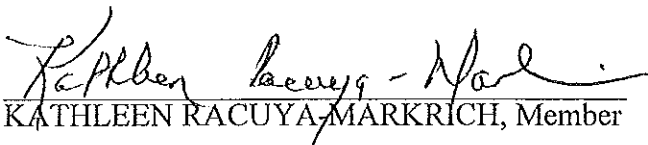
The Board hereby dismisses the instant complaints for lack of prosecution, with prejudice.

DATED: Honolulu, Hawaii, January 10, 2006.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
EMORY J. SPRINGER, Member

  
KATHLEEN RACUYA MARKRICH, Member

Copies sent to:

Adelaide Nakamura  
Claire W.S. Chinn, Deputy Attorney General  
Vernon Yu, Esq.  
Joyce Najita, IRC