

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

NICOLENE M. GEGA-CHANG,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO; WILLIAM CHAI, Union Agent, Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO; PETER YOUNG, Chair, Department of Land and Natural Resources, State of Hawaii; and BUREAU OF CONVEYANCES, Department of Land and Natural Resources, State of Hawaii,

Respondents.

CASE NOS.: CU-04-253
CE-04-633

ORDER NO. 2410

ORDER DENYING HGEA/AFSCME'S MOTION TO DISMISS COMPLAINT FILED ON NOVEMBER 27, 2006, DENYING STATE RESPONDENTS' MOTION TO DISMISS, AND GRANTING HGEA/AFSCME'S MOTION FOR PARTICULARIZATION OF THE COMPLAINT FILED ON NOVEMBER 27, 2006

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On November 27, 2006, Complainant filed a Prohibited Practice Complaint ("Complaint") against Respondents. On December 4, 2006, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO ("HGEA/AFSCME") filed its Motion to Dismiss Complaint¹ Filed on November 27, 2006, or in the Alternative HGEA/AFSCME's Motion for Particularization of the Complaint Filed on November 27, 2006. On December 5, 2006, PETER YOUNG and the BUREAU OF CONVEYANCES ("State Respondents") filed their Motion to Dismiss

¹The HGEA/AFSCME argued the Complaint failed to state a claim upon which relief can be granted, and that the Board lacked jurisdiction; in the alternative, the HGEA/AFSCME moved the Board to order particularization of the Complaint.

the Complaint.² Complainant did not file a response to HGEA/AFSCME's motion or State Respondents' motion.

The motions were heard by the Board on January 9, 2007, at 10:30 a.m. in the Board's hearing room at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. Peter Liholiho Trask represented the HGEA/AFSCME and David Fitzpatrick, Deputy Attorney General, represented the State Respondents; Complainant did not attend the hearing on the motions.

After careful consideration of the record and argument presented, the Board makes the following findings of fact, conclusions of law, and order.

FINDING OF FACT

1. On November 27, 2006, Complainant NICOLENE M. GEGA-CHANG filed a Complaint with the Board.
2. The Board, after combing through the Complaint and its lengthy attachment, finds that the attachment includes statements that may indicate a colorable and timely claim against Respondents, if read in the light most favorable to Complainant; however, the Complaint and its attachment do NOT specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes ("HRS") § 89-13, alleged to have been violated, nor a complete statement of facts supporting the Complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper, as required by the Board's form "HLRB-4 Prohibited Practice Complaint" and Hawaii Administrative Rules ("HAR") § 12-42-42.

CONCLUSIONS OF LAW

1. Review of a motion to dismiss is based on the contents of the complaint, the allegations of which are accepted as true and construed in the light most favorable to the complainant. See Yamane v. Pohlson, 111 Hawai'i 74, 81 137 P.3d 980, 987 (2006). Dismissal is improper unless it appears beyond

²State Respondents argued that the Complaint failed to state facts constituting an alleged prohibited practice, failed to identify the specific statutes which are alleged to have been violated, failed to state a claim for which relief may be granted, that venue was improper, and that Complaint was untimely, and that Complainant failed to exhaust contractual remedies available under the collective bargaining agreement.

doubt that the complainant can prove no set of facts in support of the claim which would entitle the complainant to relief. Id.

2. The applicable statutes and rules require that prohibited practice complaints be filed within 90 days of the alleged violation. See, HAR § 12-42-42, and HRS §§ 89-14 and 377-9.
3. HAR § 12-42-45(b) provides that if a “charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, within five days after service of the complaint, file with the board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information.”
4. The Board finds that the attachment to the Complaint includes statements that may indicate a colorable and timely claim against Respondents, if read in light most favorable to Complainant. However, the Board finds the Complaint and its attachment to be so vague and indefinite that Respondents cannot reasonably be required to frame an answer thereto.

ORDER

For the above-discussed reasons, the Board hereby denies HGEA/AFSCME’S Motion to Dismiss Complaint Filed on November 27, 2006, and hereby denies State Respondents’ Motion to Dismiss. The Board hereby grants HGEA/AFSCME’s Motion for Particularization of the Complaint Filed November 27, 2006.

The Board hereby orders Complainant to file the original and five copies of a particularization with the Board by January 19, 2007, with certificate of service on all parties, specifying in detail the particular alleged violation by the respective Respondent, including the subsection or subsections of the HRS § 89-13, alleged to have been violated, and a complete statement of facts supporting the Complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper. Failure to file such particularization with the Board by January 19, 2007, will result in dismissal of the Complaint.

Respondents are directed to file with this Board the original and five copies of their Answer addressing the Complaint and Particularization, with proof of service upon Complainant no later than 4:30 p.m. of the fifth working day after service of Complainant’s Particularization. Failure by the Respondents to file their respective

Answers in a timely manner may constitute an admission of the material facts alleged in the Complaint and Particularization and a waiver of a hearing.

DATED: Honolulu, Hawaii, January 10, 2007.

HAWAII LABOR RELATIONS BOARD


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Copies sent to:

Nicolene Gega-Chang
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CASE NO. CE-04-633 DECISION NO. ORDER NO. 2410 DATE SENT 1/10/07

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Nicolene Gega-Chang

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