

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

MATTHEW KEIKILANI TINAY,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Respondent.

CASE NO. CU-03-276

ORDER NO. 2624

ORDER GRANTING HGEA/
AFSCME'S MOTION FOR
PARTICULARIZATION OF THE
COMPLAINT FILED JUNE 24, 2009

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On June 30, 2009, Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA/AFSCME or Union) filed a Motion for Particularization of the Complaint filed June 24, 2009 (Motion) with the Hawaii Labor Relations Board (Board). Respondent alleges that the Complaint refers to promises made by a former Union agent regarding an arbitration in May and that Complainant asked an HGEA Field Services Officer to look into an incident where he was allegedly "kicked out of a meeting by Department of Land and Natural Resources Chairperson Laura Thielen". Respondent contends that the Complaint is vague, ambiguous, and so indefinite that Respondent cannot reasonably be required to frame an answer thereto. Respondent requests that Complainant be required to identify the specific claim he is asserting and what he believes are Respondent's failures under Hawaii Revised Statutes (HRS) § 89-13.

Pursuant to Hawaii Administrative Rules (HAR) § 12-42-42(b), a prohibited practice complaint shall be prepared on a form furnished by the Board. The Board's form requires a complainant to specify in detail the particular alleged violation, including the subsection or subsections of HRS § 89-13 alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper. HAR § 12-42-45(b) provides that if the 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.

Based upon a review of the Complaint and the instant motion, the Board finds that Complainant alleged that he asked Respondent to pursue a further remedy after being "kicked out" of a meeting on May 29, 2009 and to take action on "DLNR/DOCARE" grievances; and that he was told by HGEA representatives on June 17, 2009 that there would be no arbitration of the grievances or that it wouldn't be "any time soon." While there are specific references to the dates, times, and attendees of the meetings, the Board finds that the Complaint is vague because it does not specifically identify the grievances which were discussed and which Complainant wished HGEA would pursue to arbitration. Respondent also contends the Complaint is vague because Complainant alleged that Respondent violated HRS § 89-13(b)(3) by refusing to participate in good faith in the mediation and arbitration procedures set forth in HRS § 89-11 but that the statutory provision relates to impasses procedures and is not applicable to the Complaint. The Board agrees with Respondent that HRS § 89-13(b)(3) does not appear applicable to the Complaint and that Complainant should specify the nature of his claims under HRS § 89-13.

Accordingly, the Board hereby orders Complainant to file with the Board a particularized statement of his Complaint, identifying the specific grievances or actions which the Union allegedly failed to pursue, along with the specific subsection(s) of HRS § 89-13 alleged to have been violated. The Particularization must include a complete statement of the facts supporting the Complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.

The original plus five copies of the Particularization, with certificate of service on all parties, must be filed with the Board within five days after service of this Order. If Complainant fails to timely file and serve the Particularization, the Board shall dismiss the Complaint.

Within five days after service of the Particularization, the Respondent shall file with the Board the original plus five copies of its, with certificate of service on all parties. Failure of Respondent to timely file and serve an answer may constitute an admission of the material facts alleged in the Complaint, and a waiver of a hearing.

DATED: Honolulu, Hawaii, July 22, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

MATTHEW KEIKILANI TINAY v. HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO

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EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

Copies sent to:

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