

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

ERIK DAVID BARNES,

Complainant,

and

CITY AND COUNTY OF HONOLULU;
KEALA WATSON, Administrative Services
Officer, Emergency Services, City and
County of Honolulu; JIM HOWE, Chief,
Ocean Safety/Emergency Services, City and
County of Honolulu; RALPH GOTO,
Director, Ocean Safety/Emergency Services,
City and County of Honolulu; HAWAII
GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO; NORA NOMURA, Deputy
Executive Director, Hawaii Government
Employees Association, AFSCME,
Local 152, AFL-CIO; BOB DOI, Agent,
Hawaii Government Employees Association,
AFSCME, Local 152, AFL-CIO; and
CAROLEE KUBO, Field Services Officer,
Hawaii Government Employees Association,
AFSCME, Local 152, AFL-CIO,

Respondents.

CASE NOS.: CE-03-727
CU-03-279

ORDER NO. 2651

ORDER GRANTING RESPONDENT
HGEA/AFSCME AND CITY
RESPONDENTS' MOTIONS FOR
PARTICULARIZATION OF THE
COMPLAINT FILED SEPTEMBER 9,
2009

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On September 9, 2009, Complainant ERIK DAVID BARNES (Barnes), pro se, filed a Prohibited Practice Complaint (Complaint) with the Hawaii Labor Relations Board (Board) against the above-named Respondents.

On September 21, 2009, Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO on behalf of NORA NOMURA, Deputy Executive Director, BOB DOI, Union Agent, and CAROLEE KUBO, Field Services Officer, Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (collectively HGEA/AFSCME or Union), by and through their counsel, filed a Motion for Particularization of the Complaint Filed September 4 (sic),

2009 with the Board. HGEA/AFSCME seeks an order compelling Complainant to file a statement of particularization because the Union alleges that it arbitrated Barnes' grievance and attempted to vacate the Arbitrator's Decision and Award and it is unclear who, how, when, and where the Union violated Hawaii Revised Statutes (HRS) §§ 89-13(b)(1) and (2). HGEA/AFSCME contends that the Complainant's allegations were conclusory and do not provide any factual detail as to what activity Barnes is complaining about which might provide him a basis for relief.

On September 25, 2009, Respondents CITY AND COUNTY OF HONOLULU, KEALA WATSON, JIM HOWE, and RALPH GOTO (collectively City Respondents), by and through their counsel, joined in Respondent HGEA/AFSCME's Motion for Particularization of the Complaint Filed September 4, 2009. The City Respondents allege that Complainant's grievance was arbitrated by City Respondents and the Union; Arbitrator Russell T. Higa denied the grievance in an arbitration award issued on November 5, 2008; and the Union filed a motion to vacate the arbitration award which was denied by Judge Karl K. Sakamoto on June 10, 2009. The City Respondents contend that the Complaint is so vague and indefinite as they are unable to determine who, how, when, and where City Respondents violated HRS §§ 89-13(a)(5), (6), (8), or (b)(1), if applicable.

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.

In the instant Complaint, Barnes alleges, *inter alia*, that he was terminated three days before a deadline set by his union agent for allegedly failing a drug test; that he never received chain of custody paperwork showing his test results for over a year-and-a-half and which showed he did not fail the drug test; that his rights to due process were ignored; and he was not afforded a last chance agreement to keep his job. Based upon a review of the Complaint and the instant motions, the Board finds that the Complaint is vague because the allegations fail to detail how and when each named Respondent violated the specific provisions of HRS § 89-13 in order for Respondents to frame an answer to the allegations, e.g., how and when did NORA NOMURA violate the specific provision of HRS § 89-13, etc.

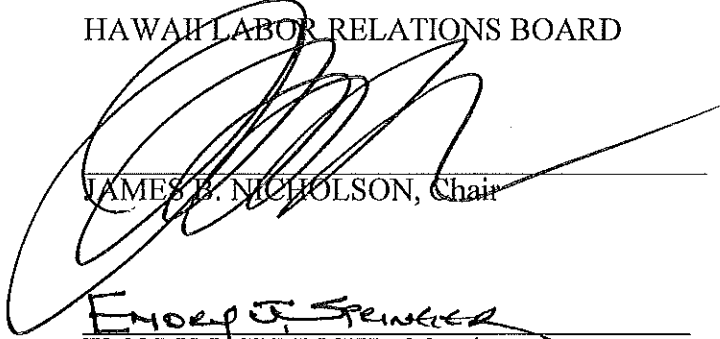
Accordingly, the Board hereby orders Complainant to file with the Board a particularized statement of his Complaint, identifying the specific actions which the Union allegedly failed to pursue, along with the specific subsection(s) of HRS § 89-13 alleged to have been violated as well as the specific actions which the City Respondents took which violated the specific subsection(s) of HRS § 89-13. 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, Respondents shall file with the Board the original plus five copies of its answer, with certificate of service on all parties. Failure of Respondents 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, October 14, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Copies sent to:

Erik David Barnes
Peter Liholiho Trask, Esq.
Elisabeth A. K. Contrades, Deputy Corporation Counsel