

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

JOSEPH KUA, JR.,

Complainant,

and

DEPARTMENT OF PUBLIC WORKS, County of Kauai; BERNARD CARVALHO, JR., Mayor, County of Kauai; EDMOND RENAUD, Deputy County Engineer, Department of Public Works, County of Kauai; CRYSTAL FUJIKAWA, Personnel Officer, Department of Public Works, County of Kauai; RYAN NISHIKAWA, Chief, Field Operations and Maintenance, Department of Public Works, County of Kauai; KEN MORIKAWA, Overseer, Department of Public Works, County of Kauai; PATRICK SHIMAMOTO, Kapaa District Road Overseer, Department of Public Works, County of Kauai; PATRICK LABUGUEN, Kapaa Construction Supervisor, Department of Public Works, County of Kauai; ROBERT CREMER, Kapaa Construction Supervisor, Department of Public Works, County of Kauai; HENRY KUPIHEA, Bushwacker Operator, Department of Public Works, County of Kauai; MALCOLM FERNANDEZ, Director, Department of Personnel Services, County of Kauai; THOMAS TAKATSUKI, Deputy Director, Department of Personnel Services, County of Kauai; DAYTON NAKANELUA, State Director, United Public Workers, AFSCME, Local 646, AFL-CIO; UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO; LEILANI MINDORO, Kauai Division Director, United Public Workers, AFSCME, Local 646, AFL-CIO; and TRINA HORNER, Business Agent, Kauai Division, United Public Workers, AFSCME, Local 646, AFL-CIO,

Respondents.

CASE NOS: CE-01-732
CU-01-281

ORDER NO. 2655

ORDER GRANTING COUNTY OF
KAUAI RESPONDENTS' MOTION
FOR PARTICULARIZATION OF THE
COMPLAINT

ORDER GRANTING COUNTY OF KAUA`I RESPONDENTS`
MOTION FOR PARTICULARIZATION OF THE COMPLAINT

On October 9, 2009, Complainant JOSEPH KUA, JR. (Kua), pro se, filed a Prohibited Practice Complaint (Complaint) with the Hawaii Labor Relations Board (Board) against the above-named Respondents.

On October 19, 2009, Respondents DEPARTMENT OF PUBLIC WORKS, County of Kaua`i; BERNARD CARVALHO, JR., Mayor, County of Kaua`i; EDMOND RENAUD, Deputy County Engineer, Department of Public Works, County of Kaua`i; CRYSTAL FUJIKAWA, Personnel Officer, Department of Public Works, County of Kaua`i; RYAN NISHIKAWA, Chief, Field Operations and Maintenance, County of Kaua`i; KEN MORIKAWA, Overseer, Department of Public Workers, County of Kaua`i; PATRICK SHIMAMOTO, Kapa`a District Road Overseer, Department of Public Works, County of Kaua`i; PATRICK LABUGUEN, Kapaa Construction Supervisor, Department of Public Works, County of Kaua`i; ROBERT CREMER, Kapaa Construction Supervisor, Department of Public Works, County of Kaua`i; HENRY KUPIHEA, Bushwacker Operator, Department of Public Works, County of Kaua`i; MALCOLM FERNANDEZ, Director, Department of Personnel Services, County of Kaua`i; and THOMAS TAKATSUKI, Deputy Director, Department of Personnel Services, County of Kaua`i (hereafter Kaua`i Respondents), filed a Motion for Particularization of the Complaint with the Board. Kaua`i Respondents contend that the Complaint fails to allege how the Respondents have engaged in prohibited practices, fails to specify in detail the particular alleged violation of Hawaii Revised Statutes (HRS) § 89-13, and fails to provide a complete statement of facts supporting the Complaint. Kaua`i Respondents thus request that the Board issue an order requesting Complainant to file a statement supplying specific information for the Kaua`i Respondents to adequately answer the Complaint.

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, Kua alleges, in part, as follows:

Documents have been given to Department of Personal [sic] **Thomas Takasuki**, on May 21, 2009 at 9:30 am on Second step to Grievance meeting. (Present at this Meeting UPW Business Agent Trina Horner and I Joseph Kua Jr.)

It's now over a month and is past due for follow up! I Joe Kua is seriously considering filing suit against all of the following individuals. **Mayor Bernard Carvalho, Road Division Head Ryan Nishikawa, Kapaa District Overseer Patrick Shimamoto, Kapaa District work Supervisor Patrick Labuguen, Robert Cremer, Personal [sic] Officer Crystal Fujikawa, Deputy County Engineer Edmond P.K. Reynaud, Henry Kupihea and State Director Dayton M. Nakanelua, Director of Kauai Division UPW Leilani Mindoro, UPW Business Agent Trina Horner.**

Each of you have add [sic] more stress and anxiety to my injury that already exist [sic] from the Work Violence! My reason for filing suit is **failure of Due Process & Collusion**. Breaking the Code of Ethics, Policy, Contract. Please respond to this letter with in **seven days** to resolve this serious issues or all Documents, Policy, Contract, along with Code of Ethics will be filed into Court. **I Joseph Kua Jr. is a victim of work Violence and a Victim of Innocence.**

This is to inform you that I Joseph Kua Jr. an employee of an **Equal Opportunity** Employer of the County of Kauai still **feels in fear of retaliation and discrimination** due to misrepresentation. Violation of my UPW rights, my Constitutional rights, my Civil right along with my Living Human Rights and Violation of the Code of Ethics have been Violated! **From 1 to 100 are included. ...**

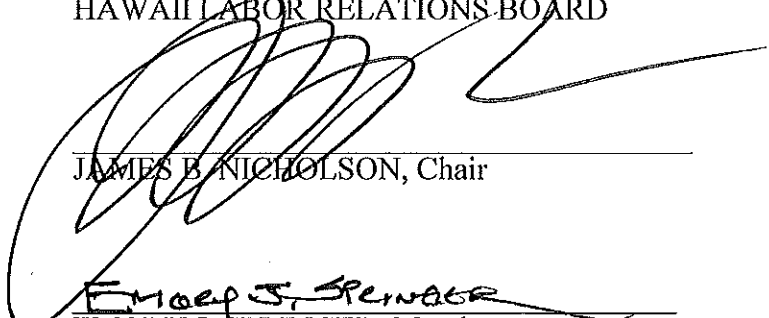
After reviewing the pleadings in the record, the Board agrees with the Kaua'i Respondents that the Complaint fails to specifically allege how each Respondent violated Hawaii Revised Statutes (HRS) § 89-13 and fails to provide a complete statement of facts supporting the Complaint. Accordingly, the Board hereby orders Complainant to file with the Board a particularized statement of his Complaint, identifying the specific actions which each Kaua'i Respondent 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 22, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Copies sent to:

Joseph Kua, Jr.
Mauna Kea Trask, Deputy County Attorney
Herbert R. Takahashi, Esq.