

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

JOSEPH KUA, JR.,

Complainant,

and

CRYSTAL FUJIKAWA, Personnel Officer,  
Department of Public Works, County of  
Kauai and MALCOLM FERNANDEZ,  
Director, Department of Personnel Services,  
County of Kauai,

Respondents.

CASE NO. CE-01-745

ORDER NO. 2682

ORDER CONSOLIDATING CASES FOR  
DISPOSITION; NOTICE OF  
PREHEARING/SETTLEMENT  
CONFERENCE AND HEARING ON  
UPW'S MOTION TO DISMISS  
COMPLAINT AND/OR FOR SUMMARY  
JUDGMENT, FILED ON JANUARY 13,  
2010

In the Matter of

JOSEPH KUA, JR.,

Complainant,

and

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 NO. CU-01-289

ORDER CONSOLIDATING CASES FOR DISPOSITION;  
NOTICE OF PREHEARING/SETTLEMENT CONFERENCE  
AND HEARING ON UPW'S MOTION TO DISMISS COMPLAINT  
AND/OR FOR SUMMARY JUDGMENT, FILED ON JANUARY 13, 2010

Case No. CE-01-745

On January 5, 2010, Complainant JOSEPH KUA, JR. (Complainant or Kua), pro se, filed a prohibited practice complaint (Complaint) in Case No. CE-01-745, against Respondents CRYSTAL FUJIKAWA, Personnel Officer, Department of Public Works, County of Kauai and MALCOLM FERNANDEZ (Fernandez), Director,

Department of Personnel Services, County of Kauai (collectively Kauai Respondents) with the Hawaii Labor Relations Board (Board). Kua alleged, inter alia, that on December 1, 2009, a UPW business agent came to the Kapaa baseyard to hold a meeting for UPW blue collar members and Kauai Respondents ordered that white collar employees attend the meeting to remedy any concerns; the business agent questioned the white collar workers and made everyone uncomfortable and the white collar workers angry; that Kua is fighting for policies, contract, and guidelines; and that he filed a grievance on December 9, 2009 and an internal complaint. Kua contends that County Respondents violated Hawaii Revised Statutes (HRS) §§ 89-13(2) (sic) and (3).

On January 12, 2010, County Respondents, by and through their counsel, filed an answer to the Complaint.

Case No. CU-01-289

On January 6, 2010, Kua, pro se, filed a Complaint against UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and TRINA HORNER (Horner), Business Agent, Kauai Division, United Public Workers, AFSCME Local 646, AFL-CIO (collectively UPW or Union) in Case No. CU-01-289, alleging inter alia, that Horner should not have brought white collar employees into the blue collar meeting; that he feels the Union does not represent him; that he experienced a work violence incident which created a hostile environment in 2009 which has not been resolved; that he went on stress leave; and when he appeared at a hearing before the Board on November 30, 2009, and the UPW did not represent him. Kua contends that the UPW violated HRS §§ 89-13(1) (sic), (2), (3), and (8).

On January 13, 2010, the Union filed a Motion to Dismiss and/or for Summary Judgment with the Board alleging, inter alia, that Kua lacks standing to bring the Complaints and fails to state a claim for relief. In addition on January 13, 2010, the UPW filed an answer to the Complaint.

Consolidation

After reviewing these Complaints, the Board finds that the complaints involve substantially the same parties, i.e., Kua, the UPW and the Kauai Respondents and issues, including a violation of Kua's rights following a meeting of employees at the baseyard. The Board also finds that consolidation of the proceedings would be efficient, conducive to the proper dispatch of business and the ends of justice and will not unduly delay the proceedings. Pursuant to Hawaii Administrative Rules (HAR) §12-42-8(g)(13), the Board, on its own initiative, hereby consolidates these complaints and the proceedings thereon for disposition.

**Notice of Prehearing/Settlement Conference**

NOTICE IS HEREBY GIVEN that pursuant to HRS § 377-9 and/or §§ 89-5(i)(4) and (i)(5) and Hawaii Administrative Rules (HAR) § 12-42-47, the Board will conduct a prehearing/settlement conference in this matter by conference call on **February 8, 2010 at 9:30 a.m.** Complainant and Kauai Respondents shall be called by the Board at their respective telephone numbers on file and the UPW's counsel shall appear in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii at the designated time. The purpose of the prehearing conference is to arrive at a settlement or clarification of issues, to identify and exchange witness and exhibit lists, if any, and to the extent possible, reach an agreement on facts, matters or procedures which will facilitate and expedite the hearing or adjudication of the issues presented. **The Board encourages the parties to have a representative with settlement authority and/or is familiar with the dispute appear at the prehearing/settlement conference.** The parties shall file a Prehearing Statement which addresses the foregoing matters with the Board two days prior to the prehearing conference.

**Notice of Hearing**

NOTICE IS ALSO GIVEN that the Board, pursuant to HRS §§ 89-5(i)(4) and (i)(5) and HAR § 12-42-8(g)(3), will conduct a hearing on the UPW's Motion to Dismiss Complaint and/or for Summary Judgment, filed on January 13, 2010, on **February 16, 2010 at 10:30 a.m.** in the above-referenced hearing room.

The parties shall submit to the Board four copies of all exhibits identified and offered into the record. Additional copies for opposing counsel shall also be provided.

All parties have the right to appear in person and to be represented by counsel or other representative.

Auxiliary aids and services are available upon request, call Mrs. Nora Ebata at (808) 586-8610, (808) 586-8847 (TTY), or 1 (888) 569-6859 (TTY neighbor islands). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

DATED: Honolulu, Hawaii, January 26, 2010.

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

JOSEPH KUA, JR. and CRYSTAL FUJIKAWA, Personnel Officer, Department of Public Works, County of Kauai. et al.

Case No. CE-01-745

JOSEPH KUA, JR. and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, et al.

CASE NO. CU-01-289

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SARAH R. HIRAKAMI, Member

Copies sent to:

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