

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

ROBERT BRETT,

Complainant,

and

WILFRED OKABE, President, Hawaii State Teachers Association; RAY CAMACHO, Deputy Executive Director, Hawaii State Teachers Association; DAVID FORREST, Central UniServ Director, Hawaii State Teachers Association; ERIC NAGAMINE, Maui UniServ Director, Hawaii State Teachers Association; DWIGHT TAKENO, Interim Executive Director, Hawaii State Teachers Association; ROGER TAKABAYASHI, Director; National Education Association; and HAWAII STATE TEACHERS ASSOCIATION,

Respondents.

CASE NO. CU-05-288

ORDER NO. 2683

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

ROBERT BRETT,

Complainant,

and

PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawaii; LINDSAY BALL, Maui Complex Area Superintendent, Department of Education, State of Hawaii; BRUCE ANDERSON, Maui Complex Area Superintendent, Department of Education, State of Hawaii; JULIE LINDBERG, Personnel Regional Officer, Maui District, Department of Education, State of Hawaii; JERI BALICK, Contracted Consultant for Hana High & Elementary School, Department of Education, State of Hawaii; RICHARD PAUL, Principal, Hana High & Elementary School, Department of Education, State of Hawaii; GARY DAVIDSON, Vice-Principal, Hana High &

CASE NO. CE-05-743

Elementary School, Department of Education
State of Hawaii; and JUDY TANAKA,
Secretary, Maui District Office, Department
of Education, State of Hawaii,

Respondents

Case No. CU-05-288

On December 24, 2009, Complainant ROBERT BRETT (Brett), *pro se*, filed a Prohibited Practice Complaint (Complaint) against WILFRED OKABE (Okabe), President, Hawaii State Teachers Association (HSTA); RAY CAMACHO, Deputy Executive Director, HSTA; DAVID FORREST (Forrest), Central UniServ Director, HSTA; ERIC NAGAMINE (Nagamine), Maui UniServ Director, HSTA; DWIGHT TAKENO, Interim Executive Director, HSTA; ROGER TAKABAYASHI, Director, National Education Association; and the HAWAII STATE TEACHERS ASSOCIATION (collectively Union Respondents or HSTA) in Case No. CU-05-288 with the Hawaii Labor Relations Board (Board). Complainant alleged, *inter alia*, that on November 2, 2009, he received a letter from Okabe indicating disappointment with Complainant's pursuing an action with the Board and that Okabe would seek attorney's fees from Complainant; that in September and October 2009, Forrest restrained Complainant in the exercise of his rights and did not properly represent him during the grievance process challenging adverse actions taken against him by his employer; that during the grievance hearing process, that Union Respondents did not properly represent Complainant in his grievances against the employer's adverse actions; that Nagamine ignored grievance timelines and neglected Complainant's grievances; that he was not properly represented in challenging a written reprimand for insubordination, a marginal job performance evaluation and the non-renewal of his contract. Brett contends that the Union Respondents violated Hawaii Revised Statutes (HRS) §§ 89-13(b)(1), (4), and (5).

On January 7, 2010, the Union Respondents filed an Answer to the Complaint with the Board. On January 19, 2010, Complainant filed a Rebuttal to Respondent's Motion for Dismissal on Grounds of Untimely Filing.

Case No. CE-05-743

On December 24, 2009, Complainant filed a Complaint against PATRICIA HAMAMOTO, Superintendent, Department of Education (DOE), State of Hawaii; LINDSAY BALL, Maui Complex Area Superintendent, DOE; BRUCE ANDERSON, Maui Complex Area Superintendent, DOE; JULIE LINDBERG, Personnel Regional Officer, Maui District, DOE; JERI BALICK (Balick), Contracted Consultant for Hana High & Elementary School, DOE; RICHARD PAUL (Paul), Principal, Hana High & Elementary School, DOE; GARY DAVIDSON (Davidson), Vice-Principal, Hana High &

Elementary School, DOE; and JUDY TANAKA, Secretary, Maui District Office, DOE (collectively Employer or DOE Respondents) in Case No. CE-05-743 with the Board. Complainant alleges, inter alia, that the Employer discriminated against Complainant “based on a collusive plan by the contracted service provider from ETS Pulliam to get rid of complainant”; that he was subjected to continuous harassment and retaliation from Paul and Davidson; that the Employer relied upon a marginal PEP-T Evaluation as the reason for the non-renewal of Complainant’s contract; that the marginal rating was based upon an improper written reprimand for insubordination from Paul; that he was denied due process and unfairly investigated based upon complaints from a parent and a teacher; that Complainant’s probationary contract was not renewed; and that on numerous occasions he was discriminated against and subject to retaliation from his Employer. Complainant contends that the Employer violated numerous contractual provisions and committed prohibited practices in violation of HRS §§ 89-13(a)(3), (4), (7) and (8).

On January 7, 2010, the DOE Respondents filed a Motion to Dismiss and, in the Alternative, Answer to Prohibited Practice Complaint Filed December 24, 2009 with the Board. The DOE Respondents contend that the Complaint is untimely.

On January 19, 2010, Complainant filed a Rebuttal to Respondent’s Motion for Dismissal on Ground of Untimely Filing with the Board.

Consolidation

After reviewing these Complaints, the Board finds that the complaints involve substantially the same parties, i.e., Complainant, the HSTA and the DOE, and issues, including allegations of the violation of Complainant’s rights leading to the non-renewal of his contract and HSTA’s failure to represent him. 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 HAR § 12-42-47, the Board will conduct a prehearing/settlement conference in this matter by conference call on **February 8, 2010 at 10:30 a.m.** Complainant shall telephone the Board at (808) 974-4000 6-6815 at the designated time and Respondents’ respective 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 Respondents' Motion to Dismiss and, in the Alternative, Answer to Prohibited Practice Complaint Filed December 24, 2009 on **February 16, 2010 at 1:30 p.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



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member

Copies sent to:
Robert Brett
Herbert R. Takahashi, Esq.
Christine Kurashige, Deputy Attorney General