

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY,

Complainant,

and

BOARD OF REGENTS, University of
Hawaii, State of Hawaii,

Respondent.

CASE NO. CE-07-708

ORDER NO. 2701

ORDER GRANTING BOR'S MOTION
TO DEFER PROHIBITED PRACTICE
PROCEEDINGS

ORDER GRANTING BOR'S MOTION
TO DEFER PROHIBITED PRACTICE PROCEEDINGS

On May 29, 2009, Complainant UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA or Union) filed a prohibited practice complaint (Complaint) against Respondent BOARD OF REGENTS, University of Hawaii (BOR or Employer), alleging the BOR committed a prohibited practice by denying a tenured faculty member (Faculty Member) a promotion from Librarian IV to Librarian V in retaliation for Faculty Member's protected union activity. The Complaint alleges prohibited practices under Hawaii Revised Statutes (HRS) §§ 89-13(a)(1), (3), (4), and (8).

On July 14, 2009, the BOR filed its Motion to Defer Prohibited Practice Proceedings, asserting that a grievance was filed on Faculty Member's behalf pursuant to the Unit 07 collective bargaining agreement (Agreement) as well as a request for review by the Promotion Review Panel (PRP), and requesting that proceedings on the Complaint be deferred until the contractual process invoked by the UHPA have been exhausted.

On July 21, 2009, the BOR filed its Memorandum in Opposition to Motion to Defer Prohibited Practice Proceedings, asserting that the PRP does not decide statutory violations, and that the Board is the proper authority to review statutory violations.

On July 22, 2009, the Board hearing oral argument on the motion to defer proceedings pursuant to HRS §§ 89-5(i)(4) and (5), and Hawaii Administrative Rules (HAR) § 12-42-8(g)(3).

After careful consideration of the record and arguments presented, the Board finds that the grievance involves the similar factual allegations as the present Complaint, including the heart of the Complaint that Faculty Member was denied promotion to Librarian V because of retaliation for protected union activity. The grievance alleges, *inter alia*, that the following provision of the collective bargaining agreement was violated:

Article II, B of the *Agreement between the University of Hawaii Professional Assembly and the Board of Regents of the University of Hawaii* states, "Neither the Employer nor the Union shall discriminate against any Faculty Member on the basis of activity or lack of activity on behalf of the Union." My participation and support of the Union is being used as a factor of consideration for whether or not I receive promotion. Mochida, as a representative for the Employer, is discriminating (retaliating) against me for my union activity in this promotion process.

Because the factual issues and the discrimination claim in the grievance are so related to those in the Complaint, the testimony of key witnesses will likely be identical, as will exhibits and legal arguments, in both the prohibited practice and grievance forums. Judicial efficiency is not served by having the parties proceed in both forums.

The Board concludes that judicial efficiency is promoted by encouraging the settlement of disputes through alternative means, and accordingly defers proceedings on the Complaint to the contractual proceedings. The Board will entertain a motion to continue proceedings in this prohibited practice action after the contractual proceedings are concluded to address issues that were not addressed or remedied by the contractual proceedings.

The Board orders BOR's counsel to prepare draft findings of fact, conclusions of law, and order for the Board's review, incorporating the Board's holding herein, and file the original and five copies of the proposed order accompanied by a disk with a copy of the order, with the Board, within ten days, unless such time is extended by the Board. UHPA's counsel may file objections thereto and a copy of their proposed order, accompanied by a disk of the order, within ten days.

UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY v. BOARD OF REGENTS,
University of Hawaii
CASE NO. CE-07-708
ORDER NO. 2701
ORDER GRANTING BOR'S MOTION TO DEFER PROHIBITED PRACTICE
PROCEEDINGS

DATED: Honolulu, Hawaii, May 6, 2010

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member

Copies sent to:

Linda M. Aragon, Esq.
Christine Tamashiro, Esq.