

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Complainant,

and

WILLIAM P. KENOI, Mayor, Office of the
Mayor, County of Hawaii; MILTON
PAVAO, Manager, Department of Water
Supply, County of Hawaii; and RONALD
TAKAHASHI, Director, Department of
Human Resources, County of Hawaii,

Respondents.

CASE NO. CE-03-757

ORDER NO. 2705

ORDER GRANTING
COMPLAINANT'S MOTION FOR
PROTECTIVE ORDER, IN PART;
AND NOTICE OF PREHEARING/
SETTLEMENT CONFERENCE AND
HEARING ON PROHIBITED
PRACTICE COMPLAINT

ORDER GRANTING COMPLAINANT'S MOTION FOR PROTECTIVE
ORDER, IN PART; AND NOTICE OF PREHEARING/SETTLEMENT
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On April 21, 2010, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union) filed a Prohibited Practice Complaint (Complaint) with the Hawaii Labor Relations Board (Board). The HGEA alleged, *inter alia*, that on or about February 23, 2010, the HGEA filed a Step 2 grievance on behalf of an employee challenging a disciplinary action and also submitted a request for information relevant to the grievance; that the HGEA received partial responses from the Respondents and made repeated requests for the information; on March 24, 2010, the HGEA filed a grievance regarding the Respondents' continued refusal to provide the information requested to process the initial grievance; both grievances are pending at Step 2; and on April 13, 2010, the HGEA again inquired about the status of the information request and was referred to the Department of Human Resources. The HGEA contends that Respondents interfered with the grievance process and the Union's ability to investigate and evaluate the grievance and wilfully violated the terms of the collective bargaining agreement and Hawaii Revised Statutes (HRS) §§ 89-10.8 and committed prohibited practices in violation of HRS §§ 89-13(a)(7) and (8).

On May 13, 2010, Complainant filed a Motion for Protective Order in this matter, requesting that the grievant's name and other identifying information (including

his/her position title), the nature and description of the alleged misconduct, and disciplinary action taken against the grievant contained in the Complaint, be redacted, at a minimum, until the grievance process for both grievances have been exhausted, and 30 days have elapsed, because disclosure of the information would constitute an unwarranted invasion of personal privacy, pursuant to HRS § 92F-14. On May 17, 2010, Respondents filed a Statement of No Opposition to Complainant's Motion for Protective Order, Filed May 13, 2010 with the Board.

The Board notes that pursuant to HRS § 89-16, regarding public records and proceedings, prohibited practice complaints are public records. HRS § 89-16, provides, in part, as follows:

The complaints, orders, and testimony relating to a proceeding instituted by the board under section 377-9¹ shall be public records and be available for inspection or copying. All proceedings pursuant to section 377-9 shall be open to the public.

Based upon a review of the motion and argument presented, the Board finds that the grievant has a significant privacy interest in the personal information contained in the Complaint which is related to alleged misconduct resulting in the grievant's suspension pursuant to HRS § 92F-14(b)(4)(B); that the grievance is still being processed through the contractual grievance procedure; and that disclosure of the personal information may constitute an unwarranted invasion of privacy given that the grievance procedure has not yet concluded. The Board also notes that the gravamen of the instant Complaint is Respondents' alleged refusal to comply with the HGEA's request for information and does not involve the merits of the underlying disciplinary grievance. Based on the foregoing, the Board hereby grants Complainant's Motion for Protective Order, in part, for good cause shown, and orders that the grievant's personally identifying information contained in the Complaint, i.e., grievant's name and position title, be redacted.

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 on **June 14, 2010 at 11:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.² The

¹HRS § 377-9, made applicable to the Board's prohibited practice proceedings by HRS § 89-14.

²Respondents' counsel may participate in the prehearing/settlement conference by conference call by notifying the Board at least two days prior to the scheduled conference and by calling the Board's hearing room at 974-4000 6-8615 at the designated time.

purpose of the prehearing/settlement 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 IS FURTHER GIVEN that the Board, pursuant to HRS §§ 89-5(i)(4), 89-5(i)(5), and 89-14, and HAR § 12-42-8(g), will conduct a hearing on the instant complaint on **June 29, 2010 at 9:00 a.m.** in the Board's hearing room. The purpose of the hearing is to receive evidence and arguments on whether Respondents committed prohibited practices as alleged by the Complainant. The hearing may continue from day to day until completed.

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, May 21, 2010

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

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Copies sent to:

Debra A. Kagawa, Esq.
Diane A. Noda, Deputy Corporation Counsel