

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of  
DAVID TONG,  
  
                    Complainant,  
  
                    and  
  
HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION,  
Department of Business, Economic  
Development and Tourism, State of Hawaii,  
  
                    Respondent.

CASE NO. CE-04-764  
  
ORDER NO. 2724  
  
ORDER CONSOLIDATING CASES  
FOR DISPOSITION; AND NOTICE TO  
RESPONDENTS OF PROHIBITED  
PRACTICE COMPLAINTS;  
PROHIBITED PRACTICE  
COMPLAINTS

In the Matter of  
DAVID TONG,  
  
                    Complainant,  
  
                    and  
  
HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO,  
  
                    Respondent.

CASE NO. CU-04-295

ORDER CONSOLIDATING CASES FOR DISPOSITION; AND  
NOTICE TO RESPONDENTS OF PROHIBITED PRACTICE COMPLAINTS

Case No. CE-04-764

On July 14, 2010, Complainant DAVID TONG (Tong), pro se, filed a Prohibited Practice Complaint (Complaint) against the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, Department of Business, Economic Development and Tourism, State of Hawaii (HHFDC or employer) in Case No. CE-04-764 with the Hawaii Labor Relations Board (Board). Complainant alleged, inter alia, that he was placed at the HHFDC in RIFT (sic) conditions by the Department of Human Resources Development in 2007; he has major medical problems and limitations on his physical ability which his employer was aware of; the employer deliberately assigned him

work which was very physical and caused him severe pain and discomfort; he believes the work was assigned to punish him in retaliation for being placed at HHFDC; and despite his complaints about the pain and injury, the employer created a hostile work environment to force him to quit his job.

**Case No. CU-04-295**

Also on July 14, 2010, Complainant filed a Prohibited Practice Complaint against the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) with the Board. Complainant alleged, *inter alia*, that his HGEA business agent knew that the employer was engaged in deliberate wrongful work, creating a hostile work environment, using false information to cause him pain, and trying to terminate him; that his case was prepared for arbitration and the business agent retired; his new business agent did not arbitrate the case; and he received written notice from the employer that he would be terminated. Complainant contends that the HGEA failed to fairly represent him.

**Consolidation**

After reviewing these complaints, the Board finds that the complaints involve substantially the same parties, i.e., Complainant, the HHFDC and HGEA, and issues, including allegations of the violation of Complainant's rights leading to his termination and the HGEA'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 §12-42-8(g)(13), the Board, on its own initiative, hereby consolidates these complaints and the proceedings thereon for disposition.

**NOTICE TO RESPONDENTS OF  
PROHIBITED PRACTICE COMPLAINTS**

NOTICE IS HEREBY GIVEN that DAVID TONG filed prohibited practice complaints with the Board, copies of which are attached, alleging that you have engaged in or are engaging in prohibited practices in violation of Hawaii Revised Statutes § 89-13.

YOU ARE DIRECTED to file with this Board the original and five (5) copies of your answer to the respective Prohibited Practice Complaint, with proof of service upon the parties, no later than 4:30 p.m. of the tenth day after service of the complaint. If you fail to timely file and serve an answer, such failure may constitute an admission of the material facts alleged in the complaint and a waiver of a hearing.

DAVID TONG v. HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION,  
Department of Business, Economic Development and Tourism, State of Hawaii,  
CASE NO. CE-04-764  
DAVID TONG v. HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,  
LOCAL 152, AFL-CIO  
CASE NO. CU-04-295  
ORDER NO. 2724  
ORDER CONSOLIDATING CASES FOR DISPOSITION; AND NOTICE TO  
RESPONDENTS OF PROHIBITED PRACTICE COMPLAINTS; PROHIBITED PRACTICE  
COMPLAINTS

DATED: Honolulu, Hawaii, July 19, 2010.

HAWAII LABOR RELATIONS BOARD

  
\_\_\_\_\_  
JAMES B. MICHOLSON, Chair

  
\_\_\_\_\_  
NORMAN K. KATO II, Member

Copies sent to:

David Tong  
DBEDT  
Karen Seddon, DBEDT  
Mark J. Bennett, Attorney General  
Randy Perreira, HGEA  
HGEA



STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD  
Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813  
HLRB-4 PROHIBITED PRACTICE COMPLAINT

Case No. CE-04-764

File the original and five copies of this Complaint, by U.S. Mail or in person, to the Hawaii Labor Relations Board, Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14, and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.

2. Complainant

(a) Name, address and telephone number.

David Tong  
767 Paani Street  
Honolulu, HI 96826  
(808) 256-0472

2010 JUL 14 PM 4:23  
HAWAII LABOR  
RELATIONS BOARD

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

HLRB-4 PROHIBITED PRACTICE COMPLAINT

Page 2 of 3

3. Respondent (Public Employer and/or Employee Organization or its Agents Against Whom Complaint is Filed)

(a) Name, address and telephone number.

DBEDT

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

677 Queen Street, #300; Honolulu, HI 96813

Telephone: 808-587-0620

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Karen Seddon, Executive Director

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

677 Queen Street, #300; Honolulu, HI 96813

Telephone: 808-587-0620

4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

Bargaining Unit: 4 [four]

5. Allegations

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 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.)

[See attached sheet(s)]

I was job forced placed in RIFT conditions by the Department of Human Resource Development [DHRD], at Hawaii Housing Finance Development [HHFDC], State of Hawaii, in late 2007. I have major medical problems with my back, vertebrae, spinal cord, nerves, etc., due to accident in 1994, and which is well documented. The employer and people at the Hawaii Housing Finance Development [HHFDC], was clearly informed of my medical problems and the limitations of my physical ability. The employer and people at the Hawaii Housing Finance Development [HHFDC], including but not limited to, Marsha Umamoto, Karen Seddon, etal, deliberately created and gave me work which was very physical [probably more than most any job at the office] to do. I informed Marsha Umamoto, Karen Seddon, etc., etal, and the employer, that this work every day was causing me severe pain, discomfort, suffering, and injury. This information fell on deaf ears. I believe the employer was giving me this type of work in retaliation for being placed there. I also believe the work was to punish me, cause me additional pain, discomfort, suffering, and injury, so that I would be forced to quit the job.

I informed Marsha Umamoto, Karen Seddon, etc., that the required work that they assigned me was causing me severe pain, discomfort, suffering, and injury. I asked Marsha Umamoto, and Karen Seddon for accommodations of other work that was less physical, and having less movements. No accommodation of alternate work of any kind was given by the employer that was less physically demanding and had fewer movements, as I asked. Lifting a box off the floor and giving me another used chair to sit on was the accommodation.

In response to me complaining about the work, Marsha Umamoto, assigned me required work that was even more physical and having lots of movement, which in turn caused me even more severe pain, discomfort, suffering, and injury.

I informed Marsha Umamoto and the employer that pain, was a sign of the body saying something is bad, and I should not be doing that. Again Marsha Umamoto and the employer ignored what I said and continued to assign me very physical work with a lot of movement. Marsha Umamoto and the employer told me at meetings that if I did not like and could not do the work then I should voluntarily quit the job. Marsha Umamoto told me at meetings, "I am tired of hearing about your pain, discomfort, suffering, and injury. I don't care about your pain, discomfort, suffering, and injury!"

I became sick or could not do the highly physical work that Marsha Umamoto and the employer forced me to do. Marsha Umamoto also began creating and making up false information and negatively writing me up for work that my medical problems did not allow me to do.

Marsha Umamoto told me at meetings with me that she and the employer were going to use these things to fire and terminate me from my job.

The employer was deliberately giving me work and working conditions which was beyond my medical scope of abilities, making up false information, etc., and using this as a "set-up for failure" . . . so they could wrongfully fire and terminate me from my job. The employer was engaged in deliberate wrongful work, hostile work environment, and false information was being used to cause me severe pain, discomfort, suffering, and injury, and to try to wrongfully fire and terminate me from my rightful job. The employer was engaged in deliberately creating hostile work and a hostile work environment in a deliberate effort to cause the employee pain, discomfort, suffering, and injury, in a deliberate effort to force the employee to quit the job.

HLRB-4 PROHIBITED PRACTICE COMPLAINT

Page 3 of 3

6. Provide a clear and concise statement of any other relevant facts.

[See attached sheet(s)]

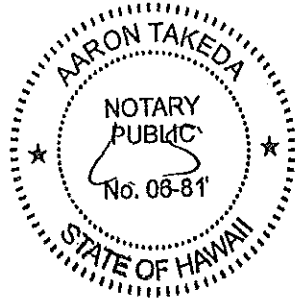
STATE OF HAWAII                    )  
 CITY AND COUNTY OF            ) ss.

DAVID TONG, being first duly sworn on oath, deposes and says: that he is the Petitioner above named, or        representative, and that he has read the above Petition consisting of this and 3 additional page(s), and is familiar with the facts alleged therein, which facts he knows to be true, except as to those matters alleged on information and belief, which matters he believes to be true.

David Tong  
 (Signature)  
Petitioner  
 (Title)

Subscribed and sworn to before me  
 this 17<sup>th</sup> day of July, 2010.

Aaron Takeda Aaron Takeda  
 Notary Public, First Circuit  
 State of Hawaii



My Commission expires: 02/12/2014



STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD  
Princess Keelikolani Building, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813  
HLRB-4 PROHIBITED PRACTICE COMPLAINT

Case No. CU-04-295

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RELATIONS BOARD

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.



**HLRB-4 PROHIBITED PRACTICE COMPLAINT**  
Page 2 of 3

**3. Respondent (Public Employer and/or Employee Organization or its Agents Against Whom Complaint Is Filed)**

(a) Name, address and telephone number.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION [HGEA] Union / AFSCME  
888 Mililani Street, #601; Honolulu, HI 96813  
Telephone: 808-543-0000

(b) Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Randy Perreira, Executive Director  
HAWAII GOVERNMENT EMPLOYEES ASSOCIATION [HGEA] Union / AFSCME  
888 Mililani Street, #601; Honolulu, HI 96813  
Telephone: 808-543-0011

**4. Indicate the appropriate bargaining unit(s) of employee(s) involved.**

BARGAINING UNIT: 4

df

**5. Allegations**

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 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.)

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I informed Marsha Umamoto and the employer that pain, was a sign of the body saying something is bad, and I should not be doing that. Again Marsha Umamoto and the employer ignored what I said and continued to assign me very physical work with a lot of movement. Marsha Umamoto and the employer told me at meetings that if I did not like and could not do the work then I should voluntarily quit the job. Marsha Umamoto told me at meetings, "I am tired of hearing about your pain, discomfort, suffering, and injury. I don't care about your pain, discomfort, suffering, and injury!"

I became sick or could not do the highly physical work that Marsha Umamoto and the employer forced me to do. Marsha Umamoto also began creating and making up false information and negatively writing me up for work that my medical problems did not allow me to do.

Marsha Umamoto told me at meetings with me that she and the employer were going to use these things to fire and terminate me from my job.

The employer was deliberately giving me work and working conditions which was beyond my medical scope of abilities, making up false information, etc., and using this as a "set-up for failure" . . . so they could wrongfully fire and terminate me from my job. The employer was engaged in deliberate wrongful work, hostile work environment, and false information was being used to cause me severe pain, discomfort, suffering, and injury, and to try to wrongfully fire and terminate me from my rightful job. The employer was engaged in deliberately creating hostile work and a hostile work environment in a deliberate effort to cause the employee pain, discomfort, suffering, and injury, in a deliberate effort to force the employee to quit the job.

Lee Matsui, my Hawaii Government Employees Association [HGEA] Union business agent knew this was happening, and that the employer was engaged in deliberate wrongful work, and hostile work environment and false information was being used to cause me pain, discomfort, suffering, and injury, but also to try to wrongfully fire and terminate me from my rightful job, which is very important to me. Lee Matsui had prepared a case ready for arbitration on these matters.

After going through all the prior formal steps needed for arbitration, then preparing this case ready for arbitration, and formally having it filed for arbitration, and it was in the arbitration process, Lee Matsui had to retire.

This case was then passed on to his new successor, HGEA agent Brandon Lee. Mr. Lee had claimed to me that Lee Matsui had spent countless hours with him preparing him to fight this case. I am not sure what is the reason; Brandon Lee did not arbitrate the case as already planned. Brandon Lee said he was going to wait to "consolidate." I am not sure what he meant by that or why? I asked him several times, but he declined to comment. I told him that the employer had intention as told to me by Marsha Umamoto, who was creating a lot of the wrongful work situations and creating false information that she and the employer planned to use this information against me and to fire and terminate my job. I urged Brandon Lee to arbitrate the case to prove wrongful hostile work duties, hostile work environment, and the false information not to be true. Brandon Lee and ultimately the HGEA Union did nothing.

I told Brandon Lee that the employer was going to use this information they created to "set me up to fail" to fire and terminate my job. Brandon Lee said that I was overreacting, and that he talked to Marsha Umamoto and the Personnel Specialist, Alexich, who told him that I would not be terminated, and that they had no intention to do so. On the same day that Brandon Lee told me this, I received written notice from the employer that I was to be fired and terminated from my job. The hostile work conditions and false information Marsha Umamoto and the employer fabricated, which was to be arbitrated, but had not been by HGEA, was now used against me in firing and terminating me.

If the HGEA Union had followed the arbitration process that was already put in complete motion by HGEA agent Lee Matsui, the employer would not have been able to fire and terminate me using all of the matters which was to be arbitrated.

The HGEA Union failed to arbitrate the 2009, arbitration case on my behalf, for my work matters, whose proper steps had been taken, prepared, and already set to be arbitrated. Brandon Lee and the HGEA Union failed to give timely and proper Duty of Fair Representation to me, a Union member, and the Union matters involving me which they represent. Failure of the Duty of Fair Representation [DFR] applies.

HLRB-4 PROHIBITED PRACTICE COMPLAINT

Page 3 of 3

6. Provide a clear and concise statement of any other relevant facts.

[See attached sheet(s)]

STATE OF HAWAII                    )  
   ) ss.  
 CITY AND COUNTY OF            )

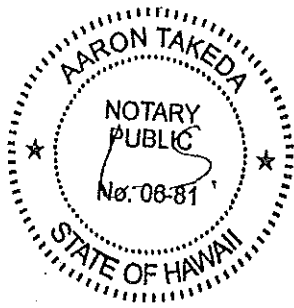
DAVID Tong, being first duly sworn on oath, deposes and says: that he is the Petitioner above named, or        representative, and that he has read the above Petition consisting of this and 4 additional page(s), and is familiar with the facts alleged therein, which facts he knows to be true, except as to those matters alleged on information and belief, which matters he believes to be true.

David Tong  
 (Signature)

Petitioner  
 (Title)

Subscribed and sworn to before me  
 this 14<sup>th</sup> day of July, 2010.

Aaron Takeda Aaron Takeda  
 Notary Public, First Circuit  
 State of Hawaii



My Commission expires: 02/12/2014