

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of  
  
MYLES Y. EMURA,

Complainant,

and

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

Respondent.

CASE NO. CU-03-328

ORDER NO. 3004

ORDER GRANTING  
RESPONDENT HAWAII  
GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL  
152, AFL-CIO's MOTION FOR  
PARTICULARIZATION OF  
COMPLAINT FILED ON JUNE 24,  
2014

ORDER GRANTING RESPONDENT HAWAII GOVERNMENT  
EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO's MOTION  
FOR PARTICULARIZATION OF COMPLAINT FILED ON JUNE 24, 2014

On June 18, 2014, Complainant, MYLES YOSHIO EMURA (Complainant or Emura), represented by Robert Doi, filed a Prohibited Practice Complaint (Complaint) with the Hawaii Labor Relations Board (Board) against Respondent, HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Respondent).

On June 24, 2014, Respondent, by and through its counsel, filed a Motion for Particularization of Complaint (Motion) with the Board. HGEA asserts, *inter alia*, that "the Complaint alleges that Respondent violated Sections 89-13(a)(8), 89-13(b)(5), 89-13(a)(7) and 89-13(b)(4) of the Hawaii Revised Statutes ("HRS"), but fails to specify "how Respondent violated such provisions of HRS Chapter 89." HGEA also contends that "Complainant fails to articulate what provision(s) of the Unit 3 Collective Bargaining Agreement ("CBA") Respondent violated, and how Respondent violated said provisions." In addition, HGEA states that "Complainant alleges that prior to receiving a letter from HGEA's Deputy Executive Director dated March 21, 2014 informing Complainant that HGEA was not pursuing his grievance to arbitration, he was led to believe by Union Agent Dale Shimomura that his grievance would be pursued to arbitration, but fails to include any facts detailing when and what Union Agent Shimomura allegedly said or did that led to Complainant's belief.

Complainant also alleges that Kevin Mulligan informed him that he would discuss his grievance with the County of Kauai, but fails to include any facts detailing when and what Mr. Mulligan allegedly did or did not do that was improper.”

In its Motion, HGEA contends that the allegations in the Complaint are so vague and indefinite that Respondent cannot reasonably be required to frame an answer thereto. HGEA requests that Complainant be ordered to file a statement supplying specific information indicating:

- “(1) what provision(s) of the Unit 3 CBA Respondent allegedly violated;
- (2) how Respondent allegedly violated each provision(s) of the Unit 3 CBA, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper;
- (3) what provision(s) of HRS Chapter 89 Respondent allegedly violated; and
- (4) how Respondent allegedly violated such provision(s) of HRS Chapter 89, including specific facts, as to names, dates, times and places involved in the acts alleged to be improper.” (Emphasis added.)

On July 1, 2014, Complainant, by and through his Representative, filed “Complainant’s Response to Respondent’s (HGEA) Motion for Particularization [sic] of Complaint” (Response). In his Response, Complainant states that Respondent violated the following provisions of the Unit 3 CBA: Article 1, Recognition, Article 3, Maintenance of Rights and Benefits, Article 8, Discipline, and Article 11, Grievance Procedure. Complainant alleges that Respondent violated said provisions “based on the following:

1. Claimant’s [sic] Union Agent, Dale Shimomura, told the Claimant that the arbitration recommendation to pursue Claimant’s grievance to arbitration had been approved. Claimant has a voice mail recording from Mr. Shimomura of this approval.
2. Mr. Shimomura, throughout the grievance process, including the pre-termination hearing, maintained that the Employer’s basis for the subject termination was “taken out of context ...” And, the Employer failed to consider all the available evidence.
3. Kevin Mulligan, through his communications with the Claimant led the Claimant to believe that his termination was proper.
4. Mr. Shimomura clearly argues that the doctor’s reports do not support the Employer’s termination of the Claimant.
5. Claimant has evidence from his doctors that contradict the basis used to terminate the Claimant. Both doctors Robert J. Brown Joseph Michael Murray [sic] state that Mr. Emura’s (Claimant) status with respect to working for the County of Kauai is neither a permanent restriction nor a temporary on [sic], but rather indeterminate at this time.



6. Based on the above, the Respondent violated their [sic] duty to fairly represent the Claimant thereby committing prohibited practice complaints as contended by the Claimant.”

Complainant also contends that given the sections of HRS Chapter 89 cited above (in addition to Sections 89-2, Definition, and 89-8, Recognition and representation; employee participation), “Complainant not only expects but is also owed and deserves to be represented fairly. “ Complainant further contends that, “Given the evidence that contradicts the Employer’s basis for terminating the Complainant and the events involving the grievance process and communications between the Respondent’s Representatives (to include Mr. Shimomura and Mr. Mulligan) and the Complainant, the Respondent’s decision not to pursue the Complainant’s grievance to arbitration violated the provisions cited above and should be considered a prohibited practice.”

Pursuant to Hawaii Administrative Rules (HAR) § 12-42-42(b), a prohibited practice complaint shall be prepared on a form furnished by the Board. The Board’s form was used by Complainant in this case. The Board’s form requires a complainant to specify in detail the particular alleged violation(s), including the subsection(s) of HRS §§ 89-8 and 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. HAR § 12-42-45(b) provides that if the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, within five days after service of the complaint, file with the Board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information.

After reviewing the Complaint and Complainant’s Response filed on July 1, 2014, the Board agrees with Respondent that the Complaint fails to specifically allege how Respondent violated HRS § 89-13 and fails to provide a complete statement of facts supporting the Complaint. Accordingly, the Board hereby orders Complainant to file with the Board a particularized statement of his Complaint, identifying the specific actions which Respondent took with violated the specific subsection(s) of HRS 89-8 and 89-13. The Particularization shall include 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.

The original plus one copy of the Particularization, with certificate of service on Respondent, must be filed with the Board within five days after service of this Order. If Complainant fails to timely file and serve the Particularization, the Board shall dismiss the Complaint.

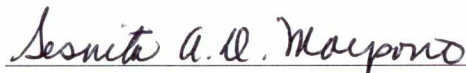
Within five days after service of the Particularization, Respondent shall file with the Board the original plus one copy of their answer, with certificate of service on Complainant and his representative. Failure of Respondent to timely file and serve an answer may constitute an admission of the material facts alleged in the Complaint, and a waiver of a hearing.

DATED: Honolulu, Hawaii, July 8, 2014.

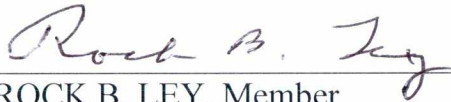
HAWAII LABOR RELATIONS BOARD

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JAMES B. NICHOLSON, Chair

A handwritten signature in black ink, written in a cursive style, appearing to read 'Sesnita A. D. Moepono'.

SESNITA A. D. MOEPONO, Member

A handwritten signature in black ink, written in a cursive style, appearing to read 'Rock B. Ley'.

ROCK B. LEY, Member

**Copies sent to:**

**Myles Y. Emura**

**Robert Doi**

**Debra Kagawa, Esq.**