



STATE OF HAWAII

**EFiled: Feb 23 2016 09:12AM HAST**  
**Transaction ID 58616217**  
**Case No. CE-01-808/CU-01-317**

HAWAII LABOR RELATIONS BOARD

In the Matter of

MICHAEL HIKALEA,

Complainant,

and

DEPARTMENT OF ENVIRONMENTAL SERVICES, City and County of Honolulu, DAVID SHIRAISHI, Department of Environmental Services, City and County of Honolulu; KIRK CALDWELL, Mayor, City and County of Honolulu; HOWARD KAHUE, United Public Workers, AFSCME, Local 646, AFL-CIO; BRANDON MCCONNELL, United Public Workers, AFSCME, Local 646, AFL-CIO; LAURIE SANTIAGO, United Public Workers, AFSCME, Local 646, AFL-CIO; and DAYTON NAKANELUA, United Public Workers, AFSCME, Local 646, AFL-CIO,

Respondents.

CASE NOS.: CE-01-808  
CU-01-317

ORDER NO. 3151

ORDER (1) DENYING COMPLAINANT MICHAEL HIKALEA'S MOTION FOR SUMMARY JUDGMENT; (2) DENYING UNION RESPONDENTS' CROSS MOTION FOR SUMMARY JUDGMENT; AND (3) NOTICE OF CONTINUED HEARING ON THE MERITS

ORDER (1) DENYING COMPLAINANT MICHAEL HIKALEA'S MOTION FOR SUMMARY JUDGMENT; (2) DENYING UNION RESPONDENTS' CROSS MOTION FOR SUMMARY JUDGMENT; AND (3) NOTICE OF CONTINUED HEARING ON THE MERITS

On August 13, 2012, Complainant MICHAEL HIKALEA (Hikalea or Complainant) filed a Prohibited Practice Complaint (Complaint) against the above-named Respondents with the Hawaii Labor Relations Board (Board). Complainant alleged, *inter alia*, that

Respondent Kirk Caldwell,<sup>1</sup> Mayor, City and County of Honolulu and his agents (collectively Employer or City), and Respondent Dayton Nakanelua (Nakanelua), State Director, United Public Workers, AFSCME, Local 646, AFL-CIO, and his agents (collectively Union or UPW), committed prohibited practices against him by ignoring his seniority, improperly denying him overtime opportunities and failing to process his grievances. Complainant also alleged, *inter alia*, that since October 15, 2011, the Employer created and maintained a hostile work environment with UPW's designated agent and steward, Respondent Howard Kahue (Kahue), to discourage membership in the Union or undermine his confidence in the Union, and acted in derogation of Complainant's Uku Pau contract rights, thereby violating Hawaii Revised Statutes (HRS) § 89-13(a)(3); that the Employer violated HRS§ 89-13(a)(8) by violating the terms of the Uku Pau Contract and various provisions of the Unit 01 Collective Bargaining Agreement (CBA); that the Employer violated HRS § 89-13(a)(5) by bargaining in bad faith with a corrupt Union official to alter Complainant's Uku Pau contract rights under Section 51.04 and agreeing to the Clarification of Operating Procedures (COP); that the Employer deliberately failed to process Complainant's written grievance, dated May 17, 2012,<sup>2</sup> in violation of HRS § 89-13(a)(1); and that each day after May 17, 2012, is a separate count or violation. As against UPW, Complainant alleged, *inter alia*, that since October 15, 2011, Union steward Kahue and other Union agents interfered with Complainant's statutory rights by discriminating against him and deliberately failing to process

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<sup>1</sup> Kirk Caldwell, Mayor, City and County of Honolulu, is substituted for Peter Carlisle. See, Rule 25(d), Hawaii Rules of Civil Procedure("[ w]hen a public officer is a party to an action in an official capacity and during its pendency ... ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party").

<sup>2</sup> The Complaint references its attached "Exhibit ' I'" as the May 17, 2012, grievance.

Complainant's verbal and written grievances in violation of HRS §§ 377-9(d) and 89-13(b)(1) and (2); that the Union improperly withdrew the grievance by letter dated May 23, 2012; and that the Union failed to bargain in good faith by "rigging" the overtime work schedule by the COP in violation of HRS§ 89-13(b)(2).

On January 8, 2016, Complainant filed Complainant Michael Hikalea's Motion for Summary Judgment (Hikalea's Motion); Table of Contents Memorandum in Support of Motion; Declaration of Bert Wong; Declaration of Jack Turner; Declaration of John Saito; Declaration of Michael Hikalea; Declaration of Jacob M. Merrill; Appendix 1, and Exhibits 1-8.

Also on January 8, 2016, UPW filed Union Respondents' Cross Motion for Summary Judgment (UPW's Cross-Motion); Memorandum in Support of Motion; Declaration of Dayton M. Nakanelua; Copies of Exhibits IV-3, IV-6 to 11, IV-19, VIII-4, VIII-6 to 9, XIX, XX, XXXIII, XXXVI; Exhibits XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLVIX, L, LI, LII, LIII, LIV, LV, LVI, LVII and LVIII.

On January 21, 2016, the City filed City Respondents' Joinder in Union Respondents' Cross Motion for Summary Judgment Filed on January 8, 2016.

On January 29, 2016, UPW filed Union Respondents' Opposition to Complainant's Motion for Summary Judgment Filed January 8, 2016; Attachments 1 and 2.<sup>3</sup>

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<sup>3</sup> On February 1, 2016, UPW filed its Errata to Union Respondents' Opposition to Complainant's Motion for Summary Judgment Filed January 8, 2016; Attachments.

Also on January 29, 2016, the City filed City Respondents' Amended Joinder in Union Respondents' Opposition to Complainant Michael Hikalea's Motion for Summary Judgment filed on January 8, 2016; Filed on January 29, 2016.

Also on January 29, 2016, Complainant filed Complainant Michael Hikalea's Memorandum in Opposition to Union's Motion on the Issues Regarding the Clarification of Operating Procedures during the Period that Complainant Alleges in His Claims; Declaration of Michael Hikalea; Declaration of Jacob M. Merrill, Exhibits 1-3.

On February 12, 2016, UPW filed its Reply Brief in Support of Union Respondents' Cross Motion for Summary Judgment Filed January 8, 2016.

Also on February 12, 2016, Complainant filed Complainant Michael Hikalea's Reply Memorandum in Opposition to Union's Motion on the Issues Regarding the Clarification of Operating Procedures During the Period that Complainant Alleges in His Claims.

On February 16, 2016, the City filed City Respondents' Joinder in Union Respondents' Reply Brief in Support of Union Respondents' Cross Motion for Summary Judgment Filed January 8, 2016, Filed on February 12, 2016.

On February 22, 2016 the Board conducted a hearing on Hikalea's Motion and UPW's Cross-Motion. The following counsel were present at the hearing for arguments on Hikalea's Motion and UPW's Cross-Motion: Jacob M. Merrill, Esq. for Hikalea, Herbert R. Takahashi, Esq. for UPW, and John Mukai, Deputy Corporation Counsel, for the City.



After review of the documents filed and evidence presented by all sides, and after hearing the arguments presented at the February 22, 2016 hearing, the Board orally issued its decision at the hearing to deny both Hikalea's Motion and UPW's Cross-Motion. This order sets into writing the Board's oral ruling. The hearing on the merits which started on December 14 and 15, 2015 and was continued pending the filing and the Board's ruling on Hikalea's Motion and UPW's Cross-Motion, shall resume on March 21, 2016 at 9:00 a.m. in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The hearing shall continue up to and including March 22, 23 and 24 (i.e., continuation of the hearing on the merits shall be from March 21, 2016 to March 24, 2016).

DATED: Honolulu, Hawaii, February 23, 2016.

HAWAII LABOR RELATIONS BOARD

  
KERRY M. KOMATSUBARA, Chair

  
SESNITA A.D. MOEPONGO, Member

  
ROCK B. LEY, Member

Copies sent to:

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