



EFiled: Jun 20 2017 08:59AM HAST
Transaction ID 60755301
Case No. CE-05-661

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS
ASSOCIATION,

Complainant,

and

PATRICIA HAMAMOTO, Superintendent,
Department of Education, State of Hawaii;
BOARD OF EDUCATION, Department of
Education, State of Hawaii; LINDA LINGLE,
Governor, State of Hawaii; and MARIE
LADERTA, Director, Department of Human
Resources Development, State of Hawaii,

Respondents.¹

CASE NO. CE-05-661

ORDER NO. 3269

MINUTE ORDER GRANTING
RESPONDENTS' MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT
AND DIRECTING RESPONDENTS TO
SUBMIT FINDINGS OF FACT AND
CONCLUSIONS OF LAW

MINUTE ORDER GRANTING RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT AND DIRECTING
RESPONDENTS TO SUBMIT FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 12, 2008, Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA or Complainant) filed with the Hawaii Labor Relations Board (Board) a Prohibited Practice Complaint (Complaint) against Respondents PATRICIA HAMAMOTO (Hamamoto), Superintendent, Department of Education (Superintendent or DOE), State of Hawaii; BOARD OF

¹ Pursuant to Hawaii Rules of Civil Procedure (HRCPP) Rule 25(d)(1), when a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party; proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. Although the Board does not amend the caption in this matter, the Board, pursuant to HRCPP Rule 25(d)(1), deems the successors to the named Respondents to be parties in this matter.

EDUCATION (BOE), Department of Education, State of Hawaii; LINDA LINGLE (Lingle), Governor, State of Hawaii (Governor or State); and MARIE LADERTA (Laderta), Director, Department of Human Resources Development (DHRD), State of Hawaii (collectively, Respondents). The Complaint alleged prohibited practices pursuant to Hawaii Revised Statutes (HRS) § 89-13(a)(1), (3), (5), (7), and (8).²

The Complaint alleged, *inter alia*, the following:

11. Article XVII of the [unit 5] collective bargaining agreement [(CBA or Agreement)] states in relevant portions as follows:

Article XVII – Salaries

* * *

- B. Effective the first day of the second semester of the 2007-2008 school year, teachers compensated on Steps 5-14A of the salary schedule designated as Exhibit 1 shall move to the next highest Step within their respective classification. However, new employees who entered service during the

² HRS § 89-13(a) provides in relevant part:

- (a) It shall be a prohibited practice for a public employer or its designated representative willfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

* * *

- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;

* * *

- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

* * *

- (7) Refuse or fail to comply with any provision of this chapter; [or]

- (8) Violate the terms of a collective bargaining agreement[.]

2007-2008 school year and teachers in Step 14B will remain in place to this school year.

Additionally, Instructors who are those employees who do not hold a degree in a State Approved Teacher Education Program (SATEP) in Instructor Steps 1 and 2 of the salary schedule designated as Exhibit 1 shall also move to the next higher Step within their respective classification. However, new employees who entered service during the 2007-2008 school year and Instructors in Step 3 will remain in place for this school year.

[* * *]

K. The parties recognize that annual incremental step movements are a viable recruiting and retention tool. Teachers who are not at the top of the salary schedule and who have satisfactory revaluations shall move to the next highest step of the corresponding class at the beginning of each school year. Annual incremental step movements are subject to funding.

12. Article XXI of the collective bargaining agreement assures bargaining unit 5 employees that prior rights and benefits as set forth in Section 302A-626, HRS, shall be maintained.
13. In accordance with Article XVII, Section K [R]espondents Hamamoto and BOE “were required to complete annual evaluations of teachers for the school year 2006 to 2007, and move those with “satisfactory evaluations” to the next highest step of their corresponding class at the beginning of the school year for 2007 to 2008, i.e., on July 26, 2007, and to submit (jointly with [R]espondents Lingle and Laderta) an appropriate funding request for said annual incremental step movements to appropriate legislative bodies under Section 89-10(b), HRS, during the 2008 legislative session.
14. On January 14, 2008 (the first day of the second semester of the 2007-2008 school year) Hamamoto and BOE were further required to grant those who were entitled to the annual step movements on

July 26, 2007 . . . an additional movement to the next highest step in accordance with Article XVII, Section B, and to submit (jointly with Respondents Lingle and Laderta) a funding request on cost items to appropriate legislative bodies under Section 89-10(b), HRS, during the 2008 legislative session for said adjustment in salaries.

15. Respondents failed to comply with the aforementioned contractual statutory requirement in spite of a reported shortage of nearly 1,600 teachers as indicated in a Teacher Employment Report for the years 2006 and 2007 published by [R]espondent Hamamoto.
16. In violation of Section 89-10(b), HRS, [R]espondent Lingle failed to include in the [G]overnor's "operating budget" cost items for funding of annual incremental movements and accompanying increases of annual salaries as provided by Article XVII, Sections B and K of the unit 5 [A]greement at the commencement of the 2008 legislative session.
17. On January 29, 2008 HSTA requested [R]espondents to comply with their statutory and contractual obligations regarding the aforementioned annual incremental and longevity step movements (consistent with public policy), to submit funding requests to the legislature on the cost items, and to bargain in good faith with HSTA over the subject matter. . . .
18. On February 7, 2008 [R]espondents requested HSTA to afford them additional time to examine the January 29, 2008 request and to respond by March 7, 2008. . . .
19. On or about February 14, 2008 [R]espondents Hamamoto and BOE failed to include in their supplemental budget request for DOE cost items for the funding of annual incremental movements and accompanying increases in salaries as provided by Article XVII, Sections B and K of the unit 5 agreement.
20. On March 7, 2008 and thereafter [R]espondents refused to comply with their statutory and contractual obligations, repudiated the existence of statutory entitlements as provided by public policy in Section 302A-626, HRS, admitted to making unilateral changes to the terms and provisions of the collective bargaining agreement,

refused to negotiate in good faith as requested by HSTA, and declined to submit requests for funding of the aforementioned annual incremental and longevity step movements and accompanying adjustments in salaries and compensation for qualified bargaining unit 5 employees. . . .

On April 8, 2008, Respondents filed a Motion to Dismiss or in the Alternative for Judgment on the Pleadings, asserting that the legislature appropriated funding to take effect on July 1, 2007, for fiscal biennium 2007-2009 for all collective bargaining cost items in the Unit 5 CBA for the contract period covering 2007-2009; that the Board lacks jurisdiction to decide policy issues based upon HRS chapter 302A-626; and that the alleged contractual violations are untimely and were not submitted through the grievance process as required by the Unit 5 CBA.

On July 1, 2008, the HSTA filed a Motion to Amend Complaint, to include supplemental claims and allegations, such as adding “and for purposes of enforcement and compliance with the collective bargaining agreement against the State of Hawaii consistent with public policy as set forth in Section 302A-626, HRS” to the designation of Respondents’ status as “public employer”; removing a reference to Article XXI of the Unit 5 CBA and broadening a reference to “their respective collective bargaining agreements” (from the previous language of “the July 1, 2007 to June 30, 2009 collective bargaining agreement”); adding Paragraphs A, C, and I to the quotation of Articles XVII’s provisions; and adding or amending the following allegations:

11. Article XVII of the current collective bargaining agreement states in relevant portions as follows:

Article XVII – Salaries

- A. Effective the first working day of the first semester of the 2007-2008 school year, the salary schedule identified as Exhibit A shall be amended to reflect an across-the-board increase of four percent (4%). This amended schedule shall be designated as Exhibit 1.
- B. Effective the first day of the second semester of the 2007-2008 school year, teachers compensated on Steps 5-14A of the salary schedule designated as Exhibit 1 shall move to the next highest Step within their respective classification.

However, new employees who entered service during the 2007-2008 school year and teachers in Step 14B will remain in place to this school year.

Additionally, Instructors who are those employees who do not hold a degree in a State Approved Teacher Education Program (SATEP) in Instructor Steps 1 and 2 of the salary schedule designated as Exhibit 1 shall also move to the next higher Step within their respective classification. However, new employees who entered service during the 2007-2008 school year and Instructors in Step 3 will remain in place for this school year.

- C. Effective the first day of the second semester of the 2008-2009 school year, the salary schedule designated in Exhibit 1 shall be amended to reflect an across-the-board increase of four percent (4%). This amended salary shall be designated Exhibit 2.

* * *

- I. No teacher shall be denied a salary increment as provided by statute without proper cause.

* * *

- K. The parties recognize that annual incremental step movements are a viable recruiting and retention tool. Teachers who are not at the top of the salary schedule and who have satisfactory revaluations shall move to the next highest step of the corresponding class at the beginning of each school year. Annual incremental step movements are subject to funding.

(Emphases added by HSTA; parenthetical omitted).

* * *

13. Article XXIII of the collective bargaining agreement prohibits unilateral changes to the collective bargaining agreement without mutual consent of the parties.
14. In accordance with Article XVII [R]espondents are required to annually evaluate teachers and educational officers in bargaining unit 5 on their anniversary dates, and to grant those with satisfactory evaluations incremental and longevity step increases, movements, and benefits as provided by statute.
 - a. Respondents failed to conduct the annual evaluations of bargaining unit 5 employees;
 - b. Bargaining unit 5 employees who performed satisfactorily were not moved to their next highest step at of the beginning of each school year; and
 - c. Respondents improperly denied salary increments as provided by Section 302A-626, HRS, without proper cause to bargaining unit 5 employees.
15. On or about January 14, 2008 (the first day of the second semester of the 2007-2008 schools [sic] year), [R]espondents failed to properly move bargaining unit 5 employees who performed satisfactorily to their next higher step within their respective classifications under Article XVII, Section B.
16. Respondents failed to comply with the aforementioned contractual and statutory requirements in spite of a reported shortage of nearly 1,600 teachers as indicated in a Teacher Employment Report for the years 2006 and 2007 published by respondent Hamamoto and as required by public policy.
17. Respondents are required by Section 89-10 (b), HRS, to submit within ten days of the date the unit 5 agreement is ratified all cost items contained in the July 1, 2007 to June 30, 2009 collective bargaining agreement, and where necessary in the next operating budget to seek and obtain funding for all cost items incurred when the legislature is not in session.

18. On January 29, 2008 HSTA requested [R]espondents to comply with their statutory and contractual obligations regarding the aforementioned annual incremental and longevity step movements, to make all employees whole for their improperly denied incremental and longevity step movements, adjustments in salaries and benefits, to submit funding requests to the legislature as needed, and to provide information relevant and needed by HSTA to comply with its statutory role and responsibilities. . . .
19. On February 7, 2008 [R]espondents requested HSTA to afford them additional time to examine the January 29, 2008 request and to respond by March 7, 2008. . . .
20. Respondents failed to comply with the HSTA's requests in willful violation of their statutory and contractual obligations. . . .
21. On or about March 7, 2008 and thereafter [R]espondents refused to take appropriate corrective action, declined to comply with Section 302A-626, HRS, or with the provisions of Article XVII of the unit 5 collective bargaining agreement, opposed funding measures during the 2008 legislative session, made unilateral changes to the existing salaries and benefits provisions of the agreement without mutual consent, and refused to provide relevant and necessary information needed by the exclusive bargaining representative.
22. On March 12, 2008 HSTA filed a prohibited practice complaint against [R]espondents in Case No. CE-05-661 with the Hawaii Labor Relations Board.
23. On or about April 10, 2008 and thereafter [R]espondents unlawfully interfered, restrained and coerced public employees in the exercise of their statutory rights as guaranteed by Section 89-3, HRS.
 - a. On April 10, 2008 Respondents threatened to file a retaliatory complaint for prohibited practices against HSTA unless its complaint in CE-05-661 was withdrawn by HSTA.
 - b. On April 10, 2008 Respondents threatened to rescind pay raises and all step movements negotiated with HSTA for the period covering July 1, 2007 to June 30, 2009, unless the complaint in CE-05-661 was withdrawn by HSTA.

- c. On June 6, 2008 [R]espondents filed a retaliatory complaint against HSTA in Case No. CU-05-265.
24. On and after June 6, 2008 respondents have continued (willfully) to refuse to conduct annual evaluations of bargaining unit 5 employees, to grant those who have performed satisfactorily annual salary increments, movements, benefits, and adjustments in salary without proper cause in violation of and in contravention of Article XVII as set forth in Section 302A-626, HRS.
25. By the aforementioned and other acts and deeds to be established during the proceedings herein, [R]espondents have willfully:
- a. Interfered, restrained, and coerced employees for exercise of protected conduct under Section 89-3, HRS, contrary to Section 89-13 (a) (1), HRS;
 - b. Discriminated in regard to tenure or other terms and conditions of employment to discourage membership in an employee organization contrary to Section 89-13 (a) (3), HRS.
 - c. Discriminated against public employees because the employees through HSTA filed a complaint with the Board under chapter 89, contrary to Section 89-13(a)(4), HRS.
 - c. Refused to bargain collectively in good faith with HSTA, by making unilateral changes in terms and conditions of employment relating to annual increments and longevity steps, movements, benefits and adjustments contrary to Section 89-13 (a) (5), HRS.
 - d. Refused to comply with statutory provisions including Sections 89-3, 89-9 (a), 89-10 (b), and Section 302A-626, HRS, contrary to Section 89-13 (a) (7), HRS.
 - f. Violated the terms and provisions of the unit 5 collective bargaining agreement including but not limited to Article XVII (Salaries), Article XXI (Maintenance of Benefits), and

Article XXIII (Entirety) contrary to Section 89-13 (a) (8),
HRS.

On July 11, 2008, the Board granted the HSTA's motion to amend the prohibited practice complaint. On July 14, 2008, the HSTA filed a First Amended Prohibited Practice Complaint (First Amended Complaint). Pursuant to Hawaii Administrative Rules (HAR) § 12-42-8(g)(10)(C), an amended document "shall be effective as of the date of the original filing, if it relates to the same proceeding."

On August 11, 2008, Respondents filed Respondents' Motion to Dismiss and/or for Summary Judgment (Motion to Dismiss or for Summary Judgment), asserting that the Board lacks subject matter jurisdiction over HRS § 302A-626; the claims arising under § 302A-626 are barred by sovereign immunity; HRS chapter 89 trumps § 302A-626; the First Amended Complaint is moot; the First Amended Complaint is time-barred; the HSTA failed to exhaust contractual remedies; and the First Amended Complaint fails to state a claim for relief.

On August 19, 2008, the HSTA filed HSTA's Memorandum in Opposition to Respondents' Motion to Dismiss and/or for Summary Judgment Filed on August 11, 2008, asserting all controversies concerning prohibited practices are within the exclusive original jurisdiction of the Board; sovereign immunity has been waived under HRS chapters 89, 377, and 661 for contractual and statutory claims; the dispute is not moot since no teacher has been evaluated and the employer made no funding request; the claims presented by the HSTA are not time-barred; the exhaustion requirement is inapplicable to statutory claims for relief; the First Amended Complaint states claims for relief for unlawful interference, restraint, coercion and unlawful discrimination; and Respondents have failed to meet their burden of proof for a dismissal of any claim or for summary judgment.

On August 28, 2008, Respondents filed a reply memorandum, asserting the Board has no jurisdiction over HRS § 302A-626; there has been no waiver of sovereign immunity; the dispute is moot; the First Amended Complaint is time-barred; the exhaustion requirement is applicable; the First Amended Complaint does not state claims for relief for unlawful interference, restraint, coercion and unlawful discrimination; and Respondent met their burden of proof for dismissal.

Based upon the pleadings and record in this case, and the arguments made by the parties, the Board finds and concludes that the First Amended Complaint, which is effective as of the March 12, 2008, filing date of the original complaint, is untimely; and, that the HSTA has failed to state a claim for relief of unlawful interference, restraint, coercion and unlawful discrimination although such claim based upon the filing of a complaint in CU-05-265 is timely.

Pursuant to HAR § 12-42-8(g)(17)(C) of the Board's rules, "[B]oard may direct oral argument or the filing of briefs or **proposed findings of facts, conclusions of law, or both**, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein" (emphases added). In the present case, the Board directs Respondents, as the prevailing party on the Motion to Dismiss or for Summary Judgment, to submit to the Board findings of fact, conclusions of law, and order granting the Motion to Dismiss or for Summary Judgment based upon untimeliness and failure to state a claim for relief, for the Board's consideration and signature. Respondents shall submit the findings of fact, conclusions of law, and order to the Board with a copy to the HSTA, no later than **July 19, 2017**. Thereafter, the Board will issue a final order in this matter.

DATED: Honolulu, Hawaii, June 20, 2017.

HAWAII LABOR RELATIONS BOARD



SESNITA A.D. MOEPONO, Member



J N. MUSTO, Member

Copy:

Herbert R. Takahashi, Esq.
Maria Cook, Deputy Attorney General