



**EFiled: Jun 29 2017 02:49PM HAST**  
**Transaction ID 60795867**  
**Case No. CU-05-265**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

PATRICIA HAMAMOTO, Superintendent,  
Department of Education; BOARD OF  
EDUCATION, State of Hawaii; GOVERNOR  
LINDA LINGLE, State of Hawaii; and  
MARIE LADERTA, Chief Negotiator, Office  
of Collective Bargaining,

Complainants,<sup>1</sup>

and

HAWAII STATE TEACHERS  
ASSOCIATION,

Respondent.

CASE NO. CU-05-265

ORDER NO. 3272

MINUTE ORDER DISMISSING THE  
PROHIBITED PRACTICE COMPLAINT,  
AND DIRECTING HSTA TO SUBMIT  
FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

**MINUTE ORDER DISMISSING THE PROHIBITED PRACTICE COMPLAINT, AND  
DIRECTING HSTA TO SUBMIT FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On June 6, 2008, Complainants, PATRICIA HAMAMOTO, Superintendent, Department of Education (Superintendent or Hamamoto); BOARD OF EDUCATION (BOE), State of Hawaii; GOVERNOR LINDA LINGLE (Governor), State of Hawaii; and MARIE LADERTA, Chief Negotiator (Laderta or Chief Negotiator), Office of Collective Bargaining (OCB), collectively "Complainants," filed with the Hawaii Labor Relations Board (Board) a Prohibited Practice Complaint (Complaint) against Respondent HAWAII STATE TEACHERS ASSOCIATION (HSTA).

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<sup>1</sup> 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 Complainants to be parties in this matter.

The gravamen of the Complaint is that “[o]n March 12, 2008, HSTA filed an untimely Prohibited Practice Complaint, Case No. CE-05-661, against Superintendent Hamamoto, the BOE, Governor Lingle, and Chief Negotiator Laderta, alleging that teachers are entitled to an additional step increase pursuant to section 302A-626, HRS [(Hawaii Revised Statutes)], in addition to what the parties agreed to in the Unit 5 CBA [(collective bargaining agreement)].”

The Complaint further alleges, *inter alia*:

17. . . . However, the parties negotiated and agreed, as memorialized in the CBA, that teachers will receive only 1 step movement for the 2007-08 period and no step movement for 2008-09 period. Step movements are subject to negotiations pursuant to section 89-9, HRS [(Hawaii Revised Statutes)], and step movements have been negotiated since 1976. Further, HSTA supported the 2007 appropriation bill covering all cost items negotiated between the HSTA and the employer for biennium 2007-2009 contract, which only funds a one-step movement negotiated by the parties.
18. After all cost-items for the 2007-2009 contract period had been funded by the 2007 legislature, a new appropriation bill (S.B. No. 2493) was introduced during the 2008 legislature for the purpose of funding an additional annual incremental step movement, which is also the primary subject matter of the HSTA Prohibited Practice Complaint, CE-05-661. [Exhibit omitted]. HSTA supported S.B. No. 2493 even though all negotiated cost-items were addressed by the 2007 legislature under SB 1385. [Exhibit omitted]. The 2008 legislature did not fund the additional incremental step movement increases sought by the HSTA. [Exhibit omitted] The failure of the legislature to fund additional incremental step movement increases sought by HSTA renders the Prohibited Practice Complaint, CE-05-661 [exhibit omitted], filed by HSTA moot.
19. By its action of filing a Prohibited Practice Complaint, Case No. CE-05-661, and its continued refusal to withdraw such

complaint, as well as other acts to be established at the hearing, HSTA has willfully:

- a. Refused to bargain collectively in good faith with the public employer as required in section 89-9, HRS;
- b. Refused or failed to comply with the provisions of sections 89-9 and 89-10, HRS;
- c. Violated the terms of the Unit 5 collective bargaining agreement covering the period from July 1, 2007 to June 30, 2009, including but not limited to Articles V, XVII, and XXIII;
- d. Wrongfully accused the Respondents in that case with failing to comply with obligations under chapter 89, HRS, and bargain in good faith; and
- e. Wrongfully accused the Respondents in that case with discrimination, interference, restraint, and coercion of unit 5 employees.

Complainants requested “appropriate relief,” including declaratory relief in favor of Complainant; a cease and desist order prohibiting the HSTA from engaging in prohibited practices; and other affirmative relief to ensure full and complete compliance with chapter 89.

On June 19, 2008, the HSTA filed a Motion to Dismiss Complainant (Motion to Dismiss), asserting the Complaint fails to state a claim because the gravamen of the Complaint is prohibited by HRS §§ 89-3 and 89-13(a)(1) and (4)<sup>2</sup>, in that “[a]n employer may not interfere,

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<sup>2</sup> HRS§ 89-3 governs “Rights of employees” and provides:

Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except

restrain, or coerce any employee who exercises his or her right to file a complaint with the labor board.” The Motion to Dismiss also asserts, *inter alia*, that “the [C]omplaint filed in this case undoubtedly has a chilling effect on the exercise of protected conduct.”

On July 3, 2008, Complainants filed a Memorandum in Opposition to Respondent’s Motion to Dismiss Complaint (Memorandum in Opposition), asserting (1) the HSTA failed to meet its burden on a motion to dismiss for failure to state a claim for relief; (2) HRS §§ 89-3 and 89-13(a)(1) and (4) do not apply to this case because the Complaint was filed against the HSTA in response to the HSTA’s unlawful repudiation of the parties’ agreement and not directed toward restraining or discriminating against any employee in the exercise of a protected act; (3) Complainants have a statutory right to file a complaint against the HSTA under HRS § 89-13(b), where the HSTA has repudiated the agreement by positions taken and allegations made in the Complaint; and (4) the right to petition the Board for the unlawful conduct of the HSTA is not a prohibited practice even if the motive is retaliatory.

On July 7, 2008, the HSTA filed a motion to strike Complainants’ Memorandum in Opposition because it was untimely filed (Motion to Strike), contrary to Hawaii Administrative Rules (HAR) § 12-42-8(g)(3)(C)(iii), which requires any opposition to the Motion to Dismiss to be filed within five days. Also on July 7, 2008, Complainants filed a memorandum in opposition to the Motion to Strike, or in the alternative a motion to enlarge the deadline to file the Memorandum in Opposition, asserting that Complainants’ counsel was under the belief that

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for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4.

§ 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; [or]
  - \* \* \*
  - (3) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization.

deadlines relating to motion are governed by the Hawaii Rules of Civil Procedure, and was excusable neglect. On July 22, 2008, the Board heard oral arguments on the Motion to Dismiss and the Motion to Strike; at the hearing, the Board granted the Motion to Strike and took the Motion to Dismiss under advisement.

The Board finds and concludes that, pursuant to HRS § 89-14, “*Any controversy concerning prohibited practices may be submitted to the [B]oard* in the same manner and with the same effect as provided in section 377-9” (emphasis added). With respect to the prohibited practice complaint in Case No. CE-05-661, the HSTA had the statutory right to submit the dispute concerning the alleged prohibited practices to the Board, and that the HSTA’s arguments and assertions in Case No. CE-05-661 were not a “repudiation” the Unit 5 CBA, nor did they constitute a prohibited practice. Accordingly, the Board dismisses the present Complaint for failure to state a claim.

Based upon the pleadings and record in the present case, and the arguments made by the parties, as well as the pleadings and the record in Case No. CE-05-661, the Board finds and concludes that the Complainants have failed to state a claim for relief under HRS § 89-13(b).

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 the HSTA, as the prevailing party, to submit to the Board findings of fact, conclusions of law, and order dismissing the Complaint based upon a failure to state a claim for relief under HRS § 89-13, for the Board’s consideration and signature. The HSTA shall submit the findings of fact, conclusions of law, and order to the Board with a copy to Complainants, no later than **July 21, 2017**. Thereafter, the Board will issue a final order in this matter.

DATED: Honolulu, Hawaii, June 29, 2017.

HAWAII LABOR RELATIONS BOARD

*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO, Member



PATRICIA HAMAMOTO, Superintendent, Department of Education; et al. v. HSTA  
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A handwritten signature in black ink, appearing to read "J. N. Musto", written in a cursive style.

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J N. MUSTO, Member

Copy:

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