

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-07-198
	)	
UNIVERSITY OF HAWAII	)	ORDER NO. 973
PROFESSIONAL ASSEMBLY,	)	
	)	ORDER GRANTING RESPONDENT'S
Complainant,	)	MOTION TO DISMISS
	)	
and	)	
	)	
BOARD OF REGENTS, University	)	
of Hawaii,	)	
	)	
Respondent.	)	

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ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On August 31, 1993, the UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA), by and through its counsel, filed a prohibited practice complaint against the BOARD OF REGENTS, University of Hawaii (BOR or Employer) with the Hawaii Labor Relations Board (Board). UHPA alleged that the BOR will imminently refer a sexual harassment complaint against a Unit 7 member to an investigative panel for further consideration. UHPA contends that the referral of allegations constitutes a breach of traditional confidentiality in the investigation of the complaint. Furthermore, Complainant contends that the referral of the investigation to the panel will increase the likelihood of disclosure of the allegations to the general public and constitutes a significant variation from the past practice in the bargaining unit. UHPA alleges that BOR's unilateral implementation of its procedure violates §§ 89-13(a)(5), (7), and (8), Hawaii Revised Statutes (HRS).

Thereafter on September 7, 1993, UHPA, by and through its counsel, filed a Motion for Interlocutory Order with the Board. UHPA moved for an interlocutory order prohibiting the BOR's use of sexual harassment investigative panels pending the final decision in this matter.

On September 10, 1993, the BOR, by and through its counsel, filed Respondent's Motion to Dismiss with the Board. In its motion, the BOR contends that the complaint is barred by the doctrine of res judicata, collateral estoppel, and otherwise violates the Board's procedural rules. The BOR argues that the Board previously dismissed a prohibited practice charge filed by the UHPA in Case No. CE-07-164, challenging the procedures concerning the sexual harassment panel in Decision No. 341, University of Hawaii Professional Assembly, 5 HLRB \_\_\_\_ (August 4, 1993). That case is presently on appeal in the First Circuit Court in Civil No. 93-3425-09. In its motion to dismiss, the BOR contends that Decision No. 341 bars the instant complaint between the same parties because it concerns the same subject matter.

A hearing was held on the foregoing motions on September 16, 1993. After a thorough review of the record, the Board makes the following findings.

UHPA is the exclusive representative, as defined in § 89-2, HRS, of employees included in bargaining unit 7.

The BOR is the public employer, as defined in § 89-2, HRS, of employees of the UH in bargaining unit 7.

In Decision No. 341, the Board dismissed the prohibited practice charges brought by UHPA which alleged violations of §§ 89-13(a)(5) and (8), HRS, by the BOR's unilateral implementation of the UH Manoa Complaint Procedures for Executive Policy E1.203 on Sexual Harassment. The Procedures provide for the option of having an investigative panel review the EEO/AA director's investigation and submit findings of fact to the appropriate Vice-President to determine whether or not the record supports the complaint. The Vice-President would then determine whether discipline was warranted. The Board held that UHPA failed to prove that the implementation of the panel option had a material and significant impact on terms and conditions of employment or altered existing terms of the collective bargaining agreement to require bargaining.

UHPA filed the instant complaint because the BOR is intending to select a panel to review the investigation of a sexual harassment complaint filed by a student against a faculty member. In this case, UHPA contends that Respondent is required to negotiate the panel option before implementation and its refusal to bargain violates §§ 89-13(a)(5) and (7), HRS. Complainant further contends that the panel's review of material in the investigation file constitutes a breach of "traditional confidentiality" in the investigation of wrongdoing which violates section 89-13(a)(8), HRS.

The Hawaii Supreme Court recently discussed the doctrine of res judicata in Pele Defense Fund v. Paty, 73 Haw. 578, 837 P.2d 1247 (1992) and stated, quoting Morneau v. Stark Enters., 56 Haw. 420, 539 P.2d 472 (1975):

The judgment of a court of competent jurisdiction is a bar to a new action in any court between the same parties or their privies concerning the same subject matter, and precludes the relitigation, not only of the issues which were actually litigated in the first action, but also of all grounds of claim and defense which might have been properly litigated in the first action but were not litigated or decided.

Id. at 599.

With regard to the doctrine of collateral estoppel, the Hawaii Supreme Court stated:

Collateral estoppel is an aspect of res judicata which precludes the relitigation of a fact or issue which was previously determined in a prior suit on a different claim between the same parties or their privies.

73 Haw. at 599.

The instant case involves the same parties, the same subject matter and the same issues as in Case No. CE-07-164. UHPA in its memorandum, however, argues that in Case No. CE-07-164, the Union represented the class of faculty selected for participation on the panels. By contrast, the class of faculty represented in this case are those who are investigated by the panel. These are distinctions with no difference. UHPA is the certified representative of the entire bargaining unit and had ample opportunity to present any and all of its claims in the previous case.

In this case, UHPA raises a claim that the confidential material to be reviewed by the panel would alter or modify the discipline or grievance articles of the contract. However, this argument could have been raised in the previous case where the Board ruled that the panel option did not alter or amend existing

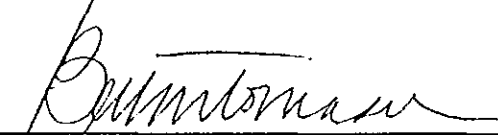
contract provisions referring to discipline or grievance procedures. The Board concludes therefore that the instant complaint is barred by the doctrine of res judicata and collateral estoppel.

In addition, Administrative Rules § 12-42-42 provides that only one (prohibited practice) complaint shall issue against a party with respect to a single controversy. In this case, the Board finds that the instant complaint is violative of the foregoing rule. UHPA is barred from filing the second complaint based upon the same subject matter considered in Case No. CE-07-164.


Based on the foregoing, the Board hereby dismisses the instant prohibited practice complaint and the Board need not rule on Complainant's Motion for Interlocutory Order.

DATED: Honolulu, Hawaii, October 8, 1993.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
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