

STATE OF HAWAI‘I

HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

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

Complainant(s),

and

DEPARTMENT OF AGRICULTURE, State of
Hawai‘i,

Respondent(s).

CASE NO(S). 20-CE-13-944

ORDER NO. 3652

PRETRIAL CONFERENCE MINUTE ORDER

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Complainant Hawaii Government Employees’ Association, AFSCME, Local 152, AFL-CIO (HGEA) filed this case with the Hawai‘i Labor Relations Board (Board) based on allegations that Respondent DEPARTMENT OF AGRICULTURE, State of Hawai‘i, (HDOA) committed certain prohibited practices by designating the January 10, 2020 meeting a “Step 1 Meeting”, and/or by refusing to extend the time limits for the Step 2 Meeting.

Undisputed Facts

At the pretrial conference before the Board, the parties agreed to the following undisputed facts:

1. HDOA demoted Balignasay, a BU 13 member and an Environmental Health Specialist (EHS), from EHS VI to EHS III, and the stated reason for the demotion was failure to meet performance requirements. (Complaint ¶ 1 [pg. 1, beginning “BU 13 member...”]; Answer ¶ 4)
2. HGEA sent HDOA a Step 1 Letter and request for information on December 30, 2019, and HDOA received the Step 1 Letter on January 2, 2020. (Complaint ¶ 2 [pg. 1, beginning “12/30/2019”]; Answer ¶ 2)

3. HDOA's designee for the grievance was Kevin Hoffman (Hoffman), and HGEA's designee for the grievance was Kainua Hopkins (Hopkins). (Complaint ¶ 3 [pg. 1, beginning "1/2/2020"]; Answer ¶ 2)
4. Hoffman emailed Hopkins on January 2, 2020 to schedule the initial meeting for the Step 1 Grievance. Hopkins was out of the office when Hoffman sent the email and was not due back to the office until January 7, 2020. Hoffman's email proposed dates and times for the Step 1 Meeting based on the availability of both Hoffman and John McHugh (McHugh), Balignasay's immediate supervisor. (Complaint ¶ 3 [pg. 1, beginning "1/2/2020"]; Answer ¶ 2)
5. On January 7, 2020, Hopkins replied to Hoffman's email, stating that, prior to scheduling the initial meeting, he would like to review the information requested in the Step 1 Letter and that Hopkins and Hoffman could schedule the initial meeting after HGEA received the requested information. (Complaint ¶ 4 [pg. 1 beginning "1/7/2020"]; Answer ¶ 2)
6. Hoffman and Hopkins met on January 10, 2020 at 2:00 pm. The same day, HDOA delivered the requested grievance information to HGEA. (Complaint ¶ 7 [pg. 2 beginning "Hoffman and Hopkins met..."]; Answer ¶ 7)
7. During the January 10, 2020 meeting, Hopkins stated that it was not the Step 1 meeting, did not argue the merits of the case, or present any evidence regarding the case. (Complaint ¶ 8 [pg. 2 beginning "Hopkins opened the meeting..."]; Answer ¶ 8)
8. HGEA received a Step 1 Denial Letter from HDOA on January 21, 2020. The Step 1 Denial Letter was dated January 16, 2020. (Complaint ¶ 11 [pg. 2 beginning "1/21/2020"]; Answer ¶ 2)
9. HGEA sent a response to the Step 1 Denial Letter to HDOA on January 22, 2020, asserting the position that a Step 1 Meeting had not taken place. (Complaint ¶ 12 [pg. 2 beginning "1/22/2020"]; Answer ¶ 2)
10. Mayeshiro, HR Officer for HDOA, emailed Hopkins on January 27, 2020 and asserted the position that HDOA was in compliance with the CBA. During subsequent phone conversations between Mayeshiro and HGEA, Mayeshiro continued to assert the same position. She also asserted the position that HDOA does not ask for, nor grant, extensions. (Complaint ¶ 13 [pg. 2-3 beginning "1/27/2020"]; Answer ¶ 11)

11. HGEA filed a Step 2 Grievance on January 28, 2020. (Complaint ¶ 14 [pg. 3 beginning “1/28/2020”]; Answer ¶ 12)
12. HDOA, through Mayeshiro, acknowledged receipt of the Step 2 Grievance via a January 30, 2020 email to Hopkins and proposed four dates for the Step 2 Meeting. Mayeshiro reiterated the position that HDOA would comply with the grievance deadlines established in the BU 13 CBA. (Complaint ¶ 15 [pg. 3 beginning “1/30/2020”]; Answer ¶ 2)
13. On January 31, 2020, Hopkins replied to Mayeshiro’s email and asserted that he was unavailable for the proposed dates due to an arbitration. Hopkins further stated that he would contact Mayeshiro to schedule a meeting after he received additional requested information and had a reasonable opportunity to review the material. (Complaint ¶ 16 [pg. 3 beginning “1/31/2020”]; Answer ¶ 2)
14. On January 31, 2020, Mayeshiro replied to Hopkins’ email and stated that HDOA did not agree to HGEA’s request for extending the time limits for the Step 2 Meeting. Mayeshiro stated that HDOA was available to hold the Step 2 Meeting by teleconference or after hours. (Complaint ¶ 17 [pg. 3-4 beginning “1/31/2020”]; Answer ¶ 2)
15. On February 6, 2020, Hopkins replied to Mayeshiro and stated that he was not available for HDOA’s proposed dates for the Step 2 Meeting due to a previously scheduled arbitration. Hopkins cited to Articles 11 and 11A of the BU 13 CBA, regarding extending time limits by mutual consent. Hopkins further asserted HGEA’s position that scheduling the Step 2 Meeting on a date that was mutually agreeable would be appropriate. Hopkins proposed two dates. (Complaint ¶ 18 [pg. 4 beginning “2/6/2020”]; Answer ¶ 2)
16. In Hopkins’ February 6, 2020 email, Hopkins reiterated HGEA’s ongoing objection to HDOA’s characterization of the January 10, 2020 meeting as a Step 1 Meeting and subsequent response to the meeting. Hopkins stated that HGEA filed the Step 2 Grievance as a formality to preserve Balignasay’s rights. Hopkins further asserted that the Step 2 Meeting would be premature without reasonable opportunity to review the requested additional information. (Complaint ¶ 18 [pg. 4 beginning “2/6/2020”]; Answer ¶ 2)
17. HDOA issued a Step 2 Grievance Denial, dated February 13, 2020, which was received by HGEA on February 18, 2020. (Complaint ¶ 20 [pg. 5 beginning “2/14/2020”]; Answer ¶ 13)

Accordingly, these facts will not need to be proven at the hearing on the merits.

Issues

At the pretrial conference before the Board, the parties stated their disagreement with clarifying the issues. However, in accordance with the Board's direction, the parties agreed that the following issues are contained within the complaint and answer and are the issues that will be investigated during the hearing on the merits:

1. Whether HDOA committed a prohibited practice under HRS § 89-13(a)(1) by interfering, restraining, or coercing Mr. Balignasay in violation of his rights under HRS Chapter 89 by designating the January 10, 2020 meeting a "Step 1 Meeting", and/or by refusing to extend the time limits for the Step 2 Meeting.
2. Whether HDOA committed a prohibited practice under HRS § 89-13(a)(2) by dominating, interfering, or assisting in the formation, existence, or administration of HGEA by designating the January 10, 2020 meeting a "Step 1 Meeting", and/or by refusing to extend the time limits for the Step 2 Meeting.
3. Whether, by designating the January 10, 2020 meeting a "Step 1 Meeting", and/or by refusing to extend the time limits for the Step 2 Meeting, HDOA committed a prohibited practice under HRS § 89-13(a)(7) by violating Mr. Balignasay's right of self-organization; his right to form, join, or assist HGEA on questions of wages, hours, and other terms and conditions of employment; and/or his right to engage in lawful, concerted collective bargaining activities or other mutual aid or protection, without interference, restraint or coercion, in violation of HRS § 89-3.
4. Whether, by designating the January 10, 2020 meeting a "Step 1 Meeting", and/or by refusing to extend the time limits for the Step 2 Meeting, HDOA committed a prohibited practice under HRS § 89-13(a)(7) by violating HGEA's right to act for and negotiate agreements covering all employees in BU 13, HGEA's responsibility to represent the interests of all employees in BU 13 without discrimination and without regard to employee organization membership, in violation of HRS § 89-8(a).
5. Whether, by designating the January 10, 2020 meeting a "Step 1 Meeting", and/or by refusing to extend the time limits for the Step 2 Meeting, HDOA committed a prohibited practice under HRS § 89-13(a)(8) by violating the BU 13 collective bargaining agreement.

Accordingly, these are the issues that the Board will consider at the hearing on the merits. If any additional issues arise through the course of the hearing, a party or parties may ask for leave to amend their complaint or answer to add an additional issue(s) based on conforming to the evidence.

Witnesses

At the pretrial conference before the Board, the parties agreed that they would not object to following witnesses appearing to testify before the Board:

1. Kainua Hopkins, HGEA – to be called by both parties;
2. Kevin Hoffman, HDOA – to be called by both parties;
3. Darcie Mayeshiro, HDOA – to be called by both parties;
4. Keith Aragaki, HDOA – to be called by HGEA for the purpose of discussing the grievance at issue in the case.

Additionally, HGEA represented that Kainua Hopkins would be its first witness.

Exhibits

At the pretrial conference before the Board, the parties agreed that following exhibits will be admitted into evidence:

1. HGEA's Exhibits U1-U24; and
2. HDOA's Exhibits E1-E9

Accordingly, the listed exhibits will be moved into evidence.

Bifurcation

At the pretrial conference before the Board, the Board also informed the parties that it would be bifurcating the case. The first part of the case will focus on the Respondents' conduct or actions. If the Board finds that Respondents' conduct violated a provision or provisions of HRS Chapter 89, the Board will turn to the second part, which will focus on Respondents' wilfulness.

First, the Board will hear the evidence regarding on whether Respondents violated Chapter 89. Based on the issues agreed to this morning, this means that the Board will hear the fact specific HRS Chapter 89 issues surrounding the issue of the characterization of the January 10, 2020 meeting and the issue of the extension of time regarding the Step 2 Meeting.

HGEA, as the Complainant, bears the burden of proof in these proceedings. HGEA's burden of proof at the first stage of the proceedings is to prove a violation of HRS Chapter 89. Not a wilfull violation. That means that the Board will not consider any evidence related to the Respondents' intent at this time.

In this case, what this means is that HGEA must show that what HDOA did with its characterization of the January 10, 2020 meeting was a violation of HRS Chapter 89 and/or that what HDOA did by not extending the time regarding the Step 2 Meeting was a violation of HRS Chapter 89.

After the Board issues its decision on the question of whether or not a violation of HRS Chapter 89 occurred, the Board will then determine whether it will hear evidence of the wilfulness of those violations. This second part will be held separately, if the Board determines it is necessary.

DATED: Honolulu, Hawai'i, _____ September 8, 2020 _____.

HAWAI'I LABOR RELATIONS BOARD



Thomas R. Oshiro

THOMAS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

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