

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

JOSEPH H. CAMPOS II, Ph.D.,

Complainant,

and

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY (UHPA);
UHPA BOARD OF DIRECTORS;
KRISTEEN HANSELMAN, Executive
Director,

Respondents.

CASE NO. 18-CU-07-368

ORDER NO. 3453

ORDER DISMISSING PROHIBITED
PRACTICE COMPLAINT *SUA SPONTE*
FOR LACK OF JURISDICTION,
RENDERING RESPONDENTS'
UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY (UHPA),
UHPA BOARD OF DIRECTORS, AND
KRISTEEN HANSELMAN,
EXECUTIVE DIRECTOR'S MOTION
TO DISMISS PROHIBITED PRACTICE
COMPLAINT AND RESPONDENTS
UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY, UHPA
BOARD OF DIRECTORS, AND
KRISTEEN HANSELMAN,
EXECUTIVE DIRECTOR'S MOTION
IN LIMINE AS MOOT

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT *SUA SPONTE*
FOR LACK OF JURISDICTION, RENDERING RESPONDENTS'
UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA), UHPA BOARD OF
DIRECTORS, AND KRISTEEN HANSELMAN, EXECUTIVE DIRECTOR'S MOTION TO
DISMISS PROHIBITED PRACTICE COMPLAINT AND RESPONDENTS UNIVERSITY OF
HAWAII PROFESSIONAL ASSEMBLY, UHPA BOARD OF DIRECTORS, AND
KRISTEEN HANSELMAN, EXECUTIVE DIRECTOR'S MOTION *IN LIMINE AS MOOT*

I. BACKGROUND AND FINDINGS OF FACT

A. Procedural History

On October 26, 2018, JOSEPH H. CAMPOS II, Ph.D. (Complainant or Campos), self-represented litigant, filed a Prohibited Practice Complaint (Complaint) with the Hawai'i Labor Relations Board (Board). In the Complaint, Complainant alleges violations of Hawai'i Revised Statutes (HRS) § 89-13(b)(4) and (5).

On October 29, 2018, the Board notified Respondents UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA), UHPA BOARD OF DIRECTORS, and KRISTEEN HANSELMAN, Executive Director (collectively, Respondents) of receipt of the Complaint. In addition to providing notice of the Complaint, the Board scheduled a Pre-Trial Conference (Conference) on November 28, 2018 and a Hearing on the Merits (HOM) for December 3, 2018. The Board further set deadlines for dispositive motions on November 21, 2018 and responses to dispositive motions on November 28, 2018.

On November 7, 2018, Respondents filed RESPONDENTS UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY, UHPA BOARD OF DIRECTORS, AND KRISTEEN HANSELMAN, EXECUTIVE DIRECTOR'S ANSWER TO PROHIBITED PRACTICE COMPLAINT FILED OCTOBER 26, 2018 (Answer). On November 15, 2018, Respondents then filed RESPONDENTS UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY, UHPA BOARD OF DIRECTORS, AND KRISTEEN HANSELMAN, EXECUTIVE DIRECTOR'S MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER TO PROHIBITED PRACTICE COMPLAINT FILED OCTOBER 26, 2018 (Motion for Leave to Amend), which the Board granted on November 27, 2018 in Order No. 3426.

Prior to the Conference, on November 21, 2018, Respondents filed RESPONDENTS UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY, UHPA BOARD OF DIRECTORS, AND KRISTEEN HANSELMAN, EXECUTIVE DIRECTOR'S MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT FILED OCTOBER 26, 2018 (Motion to Dismiss), and on November 27, 2018, Respondents filed RESPONDENTS UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY, UHPA BOARD OF DIRECTORS, AND KRISTEEN HANSELMAN, EXECUTIVE DIRECTOR'S MOTION *IN LIMINE* FOR CLAIM AND ISSUE PRECLUSION TO BAR AND COLLATERALLY ESTOP COMPLAINANT FROM RELITIGATING PREVIOUSLY ADJUDICATED CLAIMS AND FINDINGS FROM HLRB CASE NOS. 18-CE-07-917 AND 18-CU-07-362, FILED JUNE 12, 2018 (Motion in Limine).

On November 28, 2018, the Board held the Conference. Campos appeared on behalf of himself and David A. Sgan, Esq. appeared for Respondents. At that time, Campos had not filed a response to the Motion to Dismiss or the Motion in Limine.

At the Conference, the parties agreed to waive the requirements of HRS § 377-9(b) and Hawai‘i Administrative Rules (HAR) § 12-42-46(b), mandating that the hearing on the Complaint “be held no less than ten nor more than forty days after the filing of the complaint or amendment thereof...” Based on that waiver, the parties agreed to cancel the HOM previously scheduled for December 3, 2018 by Order No. 3414 and scheduled a hearing on the Motion to Dismiss on December 5, 2018.

On November 28, 2018, Campos filed a REBUTTAL TO RESPONDENT UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY’S MOTION TO DISMISS (Rebuttal to Motion to Dismiss), and on December 4, 2018, Campos filed a REBUTTAL TO RESPONDENT UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY’S MOTION *IN LIMINE* (Rebuttal to Motion in Limine).

The Board conducted a hearing on the Motion to Dismiss on December 5, 2018. After hearing oral arguments on the Motion to Dismiss, the Board adjourned the hearing.

On December 7, 2018, Complainant filed a RESPONSE TO HLRB BOARD MEMBERS’ QUESTION DURING THE HEARING ON D[I]SPPOSITIVE MOTIONS, which discussed the requirement of exhaustion for claims brought under HRS § 89-13(a)(8).

On December 12, 2018, Respondents filed RESPONDENTS UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY, UHPA BOARD OF DIRECTORS, AND KRISTEEN HANSELMAN, EXECUTIVE DIRECTOR’S FIRST AMENDED ANSWER TO PROHIBITED PRACTICE COMPLAINT FILED OCTOBER 26, 2018.

On December 17, 2018, Complainant filed RESPONSE TO RESPONDENT UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY’S AMENDED ANSWER FROM DECEMBER 12, 2018.

In accordance with HRS § 91-12¹, the Board issues the following findings of fact, conclusions of law, and written order to accompany the Board’s ruling set forth in the record.

Any conclusion of law that is improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact that is improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

B. Findings of Fact

Until his termination on July 1, 2018, Campos was an “employee” or “public employee”, as defined in HRS § 89-2 of the University of Hawai‘i (UH) and a member of Bargaining Unit 7 (Unit 7) (faculty of UH and the community college system), as provided in HRS § 89-6(a)(7).

The University of Hawai'i Professional Assembly (UHPA) is the “exclusive representative”, as defined in HRS § 89-2, for Unit 7.

On or about June 12, 2018, Campos filed a prohibited practice complaint with the Board (Campos I) that, among other things, alleged that UHPA had committed violations of HRS Chapter 89 due to UHPA's refusal to represent him on a retaliation complaint against the University of Hawai'i (UH). Campos I also raised alleged violations by the UH. The alleged violations by UH in Campos I are also the subject of a grievance that UHPA is currently considering whether to take to arbitration.

On or about June 27, 2018, Campos received a letter from UHPA stating that his request for arbitration would be an “agenda item for deliberations and action by the Board of Directors,” that the next Board of Directors meeting was scheduled for August 25, 2018, and that UHPA had requested an extension of the deadline to request to proceed to arbitration.

On or about July 1, 2018, Campos was no longer employed by the University and thus was no longer a member of Bargaining Unit 7.

On or about August 21, 2018, Campos emailed the UHPA Board of Directors, informing them of facts and providing them with documents to assist in their planned deliberations and action regarding his grievance.

UHPA determined that they would hold their deliberations and actions in abeyance until HLRB issued its final ruling in Campos I and confirmed this to the Board at the December 5, 2018 Motion Hearing.

II. CONCLUSIONS OF LAW

Complainant alleges prohibited practices under HRS § 89-13(b)(4) and (5).

As stated above, Complainant's prior filed prohibited practice complaint in Campos I contained alleged violations based on UHPA's refusal to represent Campos on a complaint before UH.

According to the Board's rules, “[o]nly one complaint shall issue against a party with respect to a single controversy.” Hawai'i Administrative Rules (HAR) § 12-42-42(f). Accordingly, the Board will not consider allegations duplicative of the allegations in Campos I.

As a preliminary issue, the Board must address whether it has jurisdiction over the instant case. “[I]t is well established...that lack of subject matter jurisdiction can never be waived by any party at any time.” Koga Eng'g & Constr., Inc. v. State, 122 Hawai'i 60, 84, 222 P.3d 979, 1003 (2010) (*citing* Chun v. Employees' Ret. Sys., 73 Haw. 9, 13, 828 P.2d 260, 263 (1992) (Chun); In re Rice, 68 Haw. 334, 335, 713 P.2d 426 (1986)). If the parties do not raise the issue, the Board,

sua sponte, will, as the Board requires jurisdiction in order to render a valid judgment. Tamashiro v. Dep't of Human Servs., 112 Hawai'i 388, 398, 146 P.3d 103, 113 (2006) (citing Chun, 73 Haw. at 14, 898 P.2d at 263).

The Board does not yet have jurisdiction over a controversy if it is not ripe. The Hawai'i Supreme Court (Court) has stated that:

Ripeness is peculiarly a question of timing, and a ruling that an issue is not ripe ordinarily indicates the court has concluded a later decision may be more apt or that the matter is not yet appropriate for jurisdiction...

Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp., 117 Hawai'i 174, 207, 177 P.3d 884, 917 (2008) (OHA) (overruled on other grounds, 556 U.S. 163 (2009)).

To determine whether a case is ripe for the Board to take up, the Board must “look at the facts as they exist today in evaluating whether the controversy before it is sufficiently concrete to warrant its intervention.” OHA, 117 Hawai'i at 207, 117 P.3d at 917. Those facts are analyzed under a two-pronged test, which the Court has described as follows:

The ripeness inquiry has two prongs: the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration. The fitness element requires that the issue be primarily legal, need no further factual development, and involve a final agency action. To meet the hardship requirement, a party must show that withholding judicial review would result in direct and immediate hardship and would entail more than possible financial loss.

OHA, 117 Hawai'i at 207, 117 P.3d at 917 (emphasis added).

At the Motion Hearing, the Board was informed that UHPA's decision as to whether to arbitrate the grievance at issue in Campos I had not yet been rendered. Because there is no “final agency action” and there needs further factual development, the Board cannot consider this case ripe until UHPA has rendered a decision as to whether to take Campos' grievance to arbitration. Therefore, the Board is compelled to dismiss this case.

The Board notes that it certainly does not endorse any attempt by an exclusive representative to collude with thane employer to create a “catch-22,” where an employee is prevented from filing a prohibited practice complaint due to the exclusive representative and the employer agreeing to indefinitely delay the time the exclusive representative has to demand arbitration. In the instant case, there is no evidence or anything in the record that shows proof of collusion between UHPA and UH to prevent Complainant from being able to file a prohibited practice complaint under HRS § 89-13(b)(4) and (5).

Based on the Board's dismissal of this case for lack of jurisdiction based on ripeness, the Motion to Dismiss and the Motion in Limine are rendered moot.


ORDER

For all of the reasons set forth above, the Board dismisses the case, *sua sponte*, for lack of ripeness, rendering the Motion to Dismiss and the Motion in Limine as moot.

This case is hereby dismissed and closed.

DATED: Honolulu, Hawai'i, February 1, 2019.

HAWAI'I LABOR RELATIONS BOARD


MARCUS R. OSHIRO, Chair




SESNITA A.D. MOEPONO, Member


J.N. MUSTO, Member

Copies sent to:
Joseph H. Campos, II, Ph.D., SRL
David A. Sgan, Esq.

ⁱ HRS § 91-12 states in relevant part:

Decisions and orders. Every decision adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law...