

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

STEPHANIE C. STUCKY,

Complainant,

and

WILFRED OKABE, President Hawaii State Teachers Association; WILBERT HOLCK, UniServ, Hawaii State Teachers Association; ERIC NAGAMINE, Maui UniServ, Hawaii State Teachers Association; DAVID FORREST, Oahu UniServ, Hawaii State Teachers Association; and HAWAII STATE TEACHERS ASSOCIATION,

Respondents.

CASE NO(S). CU-05-303

ORDER NO. 3727

MINUTE ORDER DIRECTING RESPONDENT TO SUBMIT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER IN THIS MATTER

MINUTE ORDER DIRECTING RESPONDENT TO SUBMIT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER IN THIS MATTER

On April 7, 2011 Complainant STEPHANIE C. STUCKY (Complainant) filed a Prohibited Practice Complaint against Respondents WILFRED OKABE, President Hawaii State Teachers Association; WILBERT HOLCK, UniServ, Hawaii State Teachers Association; ERIC NAGAMINE, Maui UniServ, Hawaii State Teachers Association; DAVID FORREST, Oahu UniServ, Hawaii State Teachers Association; and HAWAII STATE TEACHERS ASSOCIATION (Respondents or HSTA). The Complainant alleges violations Under Sections §89-13 (b), Hawaii Revised Statutes (HRS).

On July 22, 2011, the Hawaii Labor Relation's Board (Board) issued Order No. 2807, Granting in Part and Denying in Part Respondents' Motion to Dismiss Complaint, filed on April 15, 2011.

On March 15, 2012, the Board issued Order No. 2835, Granting in Part and Denying in Part HSTA's Motion for Summary Judgment, filed August 11, 2011.

On May 24, 2012, Respondents filed Respondents' Second Motion to Dismiss Complaint.

On May 30, 2012, Complainant filed Memorandum in Opposition to Respondents' Second Motion to Dismiss Complaint.

On June 4, 2012, the Board issued Notice of Hearing on Respondents' Motion to Dismiss Complaint filed on May 25, 2012.

On January 27, 2016, Notice of Appearance was filed by Shawn A. Luiz, Esq., as counsel of record for Stephanie C. Stucky, Complainant.

On February 11, 2016, the Board filed Order No. 3145, Order Denying Respondents' Second Motion to Dismiss Complaint.

On March 10, 2016, the Board filed Notice of Prehearing Schedule, which set the Hearing of Merits to be held on September 19, 20, and 21, 2016.

On September 20, 2016, Respondents filed Respondents' Motion for Decision and Order Against the Complainant for Failing to Meet Her Burden of Proof by Conclusion of Her Case-in-Chief.

On December 12, 2018, Respondents filed Respondents' First Supplement Submission in Support of Respondents' Motion for Decision and Order Against the Complainant for Failing to Meet Her Burden of Proof by Conclusion of Her Case-in-Chief. The Supplemental Submission included Respondents' Exhibit 23 and Exhibit 24.

On May 14, 2019, attorney for Respondents filed Notice of Withdrawal and Substitution of Counsel. The Notice stated that HSTA designates Vladimir P. Devens, Esq., Law Office of Vladimir P. Devens LLC, as counsel in this matter.

The Board finds the Complainant did not carry her burden of proof that Respondents violated the provisions of "HRS 89-13(b)3,4,5" as stated in the Prohibited Practice Charge filed on August 7, 2011. Therefore, the Board grants the September 20, 2016, Respondents' Motion for Decision and Order Against the Complainant for Failing to Meet Her Burden of Proof by Conclusion of Her Case in Chief.

All other motions are then either denied or rendered moot.

Accordingly, pursuant to HRS § 91-11,ⁱ the Board enters the following order and decision.

Hawaii Administrative Rules § 12-42-8(g)(17)(C) provides that the "[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).

The Board hereby finds the HSTA is the prevailing party and orders Respondents to submit a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

Accordingly, this minute order directs the Respondents to submit to the Board proposed findings of fact, conclusions of law, and decision and order, incorporating the Board's oral rulings in this matter and providing findings of fact and conclusions of law pertinent to the Board's oral rulings. The Respondents shall submit the proposed findings of fact, conclusions of law, and decision and order to the Board with copy to Complainant no later than **the close of business at 4:30 pm on May 7, 2021**.

The Board further notifies the parties that after May 7, 2021, the Board will issue its own Proposed Findings of Fact, Conclusions of Law, and Decision and Order which may or may not incorporate all, some, or none of Respondent's submission. However, following the Board's issuance, any party adversely affected will thereafter be given the opportunity to file exceptions thereto and to present argument to the Board, in accordance with the provisions of HRS § 91-11.

DATED: Honolulu, Hawai'i, March 25, 2021.

HAWAI'I LABOR RELATIONS BOARD

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:
Shawn A. Luiz, Esq.
Vladimir P. Devens, Esq.

ⁱ HRS § 91-11 states:

§91-11 **Examination of evidence by agency.** Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.