

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

KEITH Y. HAYASHI, Superintendent,  
Department of Education, State of Hawai'i;  
BOARD OF EDUCATION, State of Hawai'i;  
DAVID Y. IGE, Governor, State of Hawai'i;  
and RYKER WADA, Director, Department of  
Human Resources Development, State of  
Hawai'i,

Complainant(s),

and

HAWAII STATE TEACHERS  
ASSOCIATION,

Respondent(s).

CASE NO(S). CU-05-265

ORDER NO. 3864

FINAL ORDER DISMISSING THE CASE  
FOR LACK OF JURISDICTION AND  
CLOSING THE CASE

**FINAL ORDER DISMISSING THE CASE FOR  
LACK OF JURISDICTION AND CLOSING THE CASE**

The Hawai'i Labor Relations Board (Board) issued a Proposed Order Dismissing the Case for Lack of Jurisdiction and Closing the Case (Proposed Order) in this case on June 7, 2022. The Proposed Order, among other things, found that Complainants KEITH Y. HAYASHI, Superintendent, Department of Education, State of Hawai'i; BOARD OF EDUCATION, State of Hawai'i; DAVID Y. IGE, Governor, State of Hawai'i; and RYKER WADA, Director, Department of Human Resources Development, State of Hawai'i (collectively, Employer) did not have standing to bring the instant prohibited practice complaint. The Proposed Order further provided, in relevant part:

**5. Filing of Exceptions and Motion to Set Aside**

Any person adversely affected by the above Proposed Order may file exceptions with the Board, as laid out in HRS §91-11, within ten days after service of a certified copy of this document. The exceptions must specify which findings or conclusions are being excepted to with citations

to the factual and legal authorities for such exceptions. A hearing for the presentation of oral arguments will be scheduled if such exceptions are filed, and the parties will be notified of such hearing.

No party filed Exceptions to the Proposed Order within the provided ten-day period.

Accordingly, the Board hereby adopts the Proposed Order, filed on June 7, 2022 and attached to this Order as the Final Order in this case, and dismisses the Employer's complaint. This case is closed.

DATED: Honolulu, Hawai'i, June 28, 2022.

HAWAI'I LABOR RELATIONS BOARD

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MARCUS R. OSHIRO, Chair

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SESNITA A.D. MOEPOONO, Member

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J N. MUSTO, Member

Copies sent to:

Keani Alapa, Esq.  
James Halvorson, Deputy Attorney General

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

KEITH Y. HAYASHI, Superintendent,  
Department of Education, State of Hawai'i;  
BOARD OF EDUCATION, State of Hawai'i;  
DAVID Y. IGE, Governor, State of Hawai'i;  
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CASE NO(S). CU-05-265

PROPOSED ORDER DISMISSING THE  
CASE FOR LACK OF JURISDICTION  
AND CLOSING THE CASE

**PROPOSED ORDER DISMISSING THE CASE FOR  
LACK OF JURISDICTION AND CLOSING THE CASE**

**1. Introduction**

This case arises out of a prohibited practice complaint filed with the Hawaii Labor Relations (Board) brought by Complainants PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawai'i (Hamamoto); BOARD OF EDUCATION, State of Hawai'i (BOE); LINDA LINGLE, Governor, State of Hawai'i (Lingle); and MARIE LADERTA, Director, Department of Human Resources Development, State of Hawai'i (Laderta, and collectively with Hamamoto, BOE, and Lingle, Complainants or Employer)<sup>2</sup> that Respondent HAWAII STATE TEACHERS ASSOCIATION (HSTA) committed prohibited practices, "By [HSTA's] action of filing a Prohibited Practice Complaint, Case No. CE-05-661, and its continued refusal to withdraw such complaint..."

The Board heard HSTA's Motion to Dismiss (MTD) and, at the motion hearing, granted HSTA's Motion to Strike the Employer's Opposition to the MTD (Opposition) because the Employer failed to timely file the Opposition.

After the motion hearing, the Board issued a Minute Order which, among other things, granted the MTD and ordered HSTA to file proposed findings of fact and conclusions of law. HSTA submitted the proposed findings of fact and conclusions of law, which the Employer objected to, and HSTA responded to those objections.

Having considered the proposed findings of fact and conclusions of law, upon further review of the record, and for the reasons set forth fully below, the Board dismisses this case for lack of jurisdiction, which renders HSTA's MTD moot<sup>3</sup>. This order overrules and replaces the prior minute order.

Any finding of fact or conclusion of law submitted by HSTA but not specifically adopted in this decision is rejected. Any conclusion of law improperly designated as a finding of fact is deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law is deemed or construed as a finding of fact.

## **2. Proposed Background and Findings of Fact**

HSTA is an employee organization<sup>4</sup> and the duly certified exclusive representative<sup>5</sup> for bargaining unit 5 (BU 5)<sup>6</sup>.

During the relevant period, Hamamoto was the Superintendent of the Department of Education, State of Hawai'i; Lingle was the Governor of the State of Hawai'i; and Laderta was the Director of Human Resources Development, State of Hawai'i. Complainants are public employers<sup>7</sup> who make up the employer group<sup>8</sup> for BU 5.

HSTA and the Employer are parties to a collective bargaining agreement (CBA) covering BU 5.

On March 12, 2008, HSTA filed a Prohibited Practice Complaint in Board Case No. CE-05-661 (CE-05-661) against the Employer.

The Board dismissed CE-05-661, finding that it was untimely filed.

## **3. Proposed Conclusions of Law**

### **3.1. Motion to Strike**

HSTA filed a Motion to Strike the Employer's Opposition, arguing that the Employer failed to timely file the Opposition. While the Board's administrative rules do not specifically permit motions to strike, the Board's rules provide for motions to be made during a hearing if the motions are made part of the record of the proceedings. HAR § 12-42-8(g)(3)(A).

Accordingly, the questions raised by the Motion to Strike are whether the Opposition was timely filed and, if not, if there is any reason that the Board should not strike the Opposition. After review of the record, the Board finds that the Opposition was not timely filed, and there is no reason for the Board to permit the untimely filing.

According to the Certificate of Service attached to the MTD, HSTA served the MTD on the Employer on June 19, 2008. HSTA filed the MTD and the Certificate of Service with the Board on the same day.

The Employer filed its Opposition on July 3, 2008.

Hawai'i Administrative Rules (HAR) § 12-42-8(g)(3)(C)(iii) sets out that:

Answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise.

HAR § 12-42-8(c) sets out the Board's method of computing time for such response:

(c) In computing any period of time prescribed or allowed by these rules or by order of the board, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included... When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. As used in this section, "holiday" shall mean any day designated as such pursuant to section 8-1, HRS.

The Board's rules do not provide that service occurs when the documents are received by the non-moving party. Further, the Board's rules do not provide for any additional time after service by mail. Therefore, the Opposition was due on or by June 25, 2008. However, even using the date that the Employer received the documents, June 20, 2008, the Opposition would have been due June 27, 2008.

July 3, 2008 is after both June 25, 2008 and June 27, 2008. Therefore, the Opposition was not timely filed.

Turning to the question of whether any reason exists for the Board to permit the untimely filing, the Employer states that its counsel, Maria Cook, Deputy Attorney General<sup>9</sup>, (Ms. Cook) believed that the relevant deadlines were set by the Hawai'i Rules of Civil Procedure (HRCPP) and goes on to use HRCPP and the Federal Rules of Civil Procedure (FRCP) to argue that the Opposition should not be struck from the record.

The Employer uses the standard set by the Ninth Circuit to interpret FRCP Rule 60(b)(1) to argue that the failure to timely file the Opposition was excusable neglect. The Employer argues that HSTA faced no prejudice due to the Employer's untimeliness, the delay was short and did not impact the proceedings, that the reason for the delay was Ms. Cook's good faith belief that the HRCP and not the Board's rules of practice and procedure applied, and that Ms. Cook acted in good faith.

In the alternative, the Employer requests that the Board retroactively extend the filing deadline under HRCP Rule 6(b), due to the Employer's excusable neglect.

The Board may look to established court rules and cases interpreting those rules as guidance in applying the Board's rules. Hyland v. Gonzales, 139 Hawai'i 386, 393, 390 P.3d 1273, 1280 (2017). However, court rules and related case law do not govern agency proceedings unless the agency adopts the rule as provided by law. HRS §§ 91-3, 91-9.

The Board's rules do not contain provisions akin to either FRCP Rule 60(b)(1) or HRCP Rule 6(b) related to excusable neglect. The Board's rules, thus, must be interpreted within that framework.

The HSC has noted that "mere ignorance of the law" does not constitute a defense. Office of Disciplinary Counsel v. Au, 107 Hawai'i 327, 340, 113 P.3d 203, 216 (2005). When it comes to attorneys, this common saying applies with even greater emphasis because "[i]gnorance of the law, especially by a lawyer, is no defense to noncompliance with the rules of the court in which [she] appears." Id., 107 Hawai'i at 340 n.6, 113 P.3d at 216 n.6.

Accordingly, the Board granted the Motion to Strike. However, to ensure that the Employer did not suffer any prejudice based on its counsel's erroneous good faith belief, the Board permitted the Employer to present oral argument against the MTD.

### **3.2. Standing**

Before turning to the contents of the MTD, which center on the question of whether the Complaint fails to state a claim upon which relief can be granted, the Board considers relevant jurisdictional matters.

The Board may only hear cases within its jurisdiction, and the Board's jurisdiction has been defined by both statute and the courts. *See*, HRS §§ 89-14, 377-9; Aio v. Hamada, 66 Haw. 401, 404 n. 3, 664 P.2d 727, 729 n. 3 (1983) (Aio). Even if parties do not raise the issue of a jurisdictional requirement, the Board, *sua sponte*, or on its own, will raise the issue because if the Board does not have jurisdiction over a complaint, the Board cannot issue a judgment on the issue. Panganiban v. The Judiciary, Board Case No. 21-CE-03-957, Decision No. 501, at \*2

(February 3, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/03/Decision-No.-501.pdf>) citing Tamashiro v. Department of Human Services, 112 Hawai‘i 388, 398, 146 P.3d 103, 113 (2006).

Standing looks at whether parties have the right to bring a particular complaint or claim. Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai‘i 64, 67, 881 P.2d 1210, 1213 (1994). In other words, without standing, a party cannot bring a valid complaint.

In a case like this, the Board must consider whether the Employer has alleged a sufficient personal stake in the outcome to justify the exercise of the Board’s remedial powers on the part’s behalf. Tax Foundation of Hawaii vs. State, 144 Hawai‘i 175, 188, 439 P.3d 140, 144 (2019) (Tax Foundation).

When making this consideration, the Board uses the three-part injury-in-fact test adopted in Akinaka v. Disciplinary Board, 91 Hawai‘i 51, 979 P.2d 1077 (1999) (*overruled in part by Tax Foundation*) (Akinaka). See Haw. Gov’t Emples. Ass’n v. Kishimoto, Board Case Nos. 20-CE-02-947a-f, Decision No. 503, at \*3 (April 9, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/05/Decision-No.-503.pdf>). All three prongs of the Akinaka test must be met to prove standing. Akinaka, 91 Hawai‘i at 55, 979 P.2d at 1081.

The first part of the Akinaka test considers whether the Employer suffered an actual or threatened injury because of HSTA’s wrongful conduct. Id. The Employer must show an actual, direct, distinct injury to itself, and this injury cannot be abstract, conjectural, or hypothetical. Hanabusa v. Lingle, 119 Hawai‘i 341, 347, 198 P.3d 604, 610 (2008); Akinaka, 91 Hawai‘i at 55, 979 P.2d at 1081.

Considering the allegations of the Employer’s Prohibited Practice Complaint (Complaint) in the light most favorable to the Employer, the Board must conclude that the Employer has not alleged an actual injury.

According to the Complaint, HSTA’s prohibited practice complaint in CE-05-661 was moot at the time that this case was filed. The only specific wrongful conduct the Employer complains of in the Complaint is HSTA’s filing of CE-05-661 and refusal to withdraw the same.

The Complaint does not express any injury to the Employer from HSTA’s filing of CE-05-661 or its refusal to withdraw the same. The Complaint alleges five issues arising from the filing and prosecution of CE-05-661, none of which constitute an actual injury.

HRS §§ 89-9 and 89-10 do not deal with the filing or prosecution of prohibited practice complaints. The BU 5 CBA, Articles V, XVII, and XXII do not deal with the filing or prosecution of prohibited practice complaints. Accordingly, the Employer did not and could not have suffered an injury based on these sections due to the filing and prosecution of CE-05-661.

The final two alleged issues also fail to constitute actual injuries. Whether HSTA was right or wrong in its claims in CE-05-661—a question this Board does not address here—is irrelevant. To the extent that the Employer could have been injured by a finding that it committed prohibited practices, such an injury would be speculative until the Board made such a finding. Therefore, no actual injury could possibly arise from these claims.

Therefore, as the Employer has failed to allege any actual injury, the Board must find that the Employer lacks standing and must dismiss this case<sup>10</sup>.

#### **4. Proposed Order**

Based on the above, the Board dismisses the complaint in its entirety. All motions and issues not specifically addressed in this Order are moot. This case is closed.

#### **5. Filing of Exceptions and Motion to Set Aside**

Any person adversely affected by the above Proposed Order may file exceptions with the Board, as laid out in HRS §91-11, within ten days after service of a certified copy of this document. The exceptions must specify which findings or conclusions are being excepted to with citations to the factual and legal authorities for such exceptions. A hearing for the presentation of oral arguments will be scheduled if such exceptions are filed, and the parties will be notified of such hearing.

DATED: Honolulu, Hawai‘i, June 7, 2022.

HAWAI‘I LABOR RELATIONS BOARD

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MARCUS R. OSHIRO, Chair

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SESNITA A.D. MOEPONO, Member

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J.N. MUSTO, Member

Copies sent to:

Keani Alapa, Esq.  
James Halvorson, Deputy Attorney General



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<sup>1</sup> An action does not automatically end if a party to the action who is named in their official capacity dies, resigns, or otherwise ceases to hold office while this action is pending. The officer's successor is automatically substituted as a party. Proceedings following the substitution will be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties will be disregarded. See, e.g., Salera v. Yokoyama, Board Case No. 20-CE-01-952, Order No. 3732, at \*1-2 (2021) (<https://labor.hawaii.gov/hlr/files/2021/06/Order-No.-3732.pdf>). Accordingly, the Board substitutes current office holders KEITH Y. HAYASHI (Hayashi), DAVID Y. IGE (Ige), and RYKER WADA (Wada), for Hamamoto, Lingle, and Laderta respectively.

<sup>2</sup> See, endnote 1.

<sup>3</sup> Despite the MTD being moot, the Board's prior oral ruling granting the Motion to Strike is incorporated into this final order for consistency.

<sup>4</sup> HRS § 89-2 Definitions defines "Employee organization" as:

"Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, and other terms and conditions of employment of public employees.

<sup>5</sup> HRS § 89-2 Definitions defines "Exclusive representative" as:

"Exclusive representative" means the employee organization certified by the board under section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

<sup>6</sup> HRS § 89-6(a)(5) defines bargaining unit 5 as, "Teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent."

<sup>7</sup> HRS § 89-2 Definitions defines "Employer" or "Public Employer" as:

"Employer" or "public employer" means the governor in the case of the State...the board of education in the case of the department of education...and any individual who represents one of these employers or acts in their interest in dealing with public employees.

<sup>8</sup> HRS § 89-6(d)(3) defines the relevant employer group as, "the governor shall have three votes, the board of education shall have two votes, and the superintendent of education shall have one vote..."

<sup>9</sup> Ms. Cook has since left the Attorney General's office; however, for the purposes of this Order, the Board will refer to her by her position during the relevant period.

<sup>10</sup> The issue of the Employer's motives in bringing this case have been raised but are not specifically before the Board at this time. Therefore, the Board simply notes that parties have the right to submit any controversy concerning prohibited practices to the Board. However, the Board would disapprove of the filing of a prohibited practice complaint if that complaint was filed in bad faith for the specific purpose of interfering with another party's HRS Chapter 89 rights.