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Case No. 22-CU-14-389**

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

RALPH R. FUKUMOTO,

Complainant(s),

and

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

Respondent(s).

CASE NO(S). 22-CU-14-389

ORDER NO. 3843

MINUTE ORDER

MINUTE ORDER

1. Introduction

Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union) filed two grievances with the Department of Public Safety, State of Hawai'i (PSD or Employer) on behalf of Complainant RALPH R. FUKUMOTO (Complainant or Mr. Fukumoto). The grievances continued through the grievance process until HGEA informed Mr. Fukumoto that HGEA was accepting a settlement offer on one of the two grievances and that HGEA decided not to take the other to arbitration. Mr. Fukumoto disagreed with HGEA's decision and filed a prohibited practice complaint (Complaint) with the Hawai'i Labor Relations Board (Board) alleging that HGEA committed prohibited practices.

The Board held a prehearing conference on May 10, 2022. The Board indicated that certain information from that prehearing conference would be issued in a written order, which the Board does in this order.

2. Overview of the Board's Processes

2.1. General Information on the Board; Burden of Proof

The Board is a quasi-judicial agency, which means that it functions like a court. Therefore, when the Board receives a complaint, the complaint generally goes through full court-

like proceedings, including a hearing on the merits (HOM) where witnesses are called and evidence is presented.

In prohibited practice cases, the party that filed the complaint, also known as the “complainant”, has the burden of proving that it is more likely than not that the responding parties, also known as the “respondents”, committed prohibited practices. The complainant must prove this case against the respondents by presenting evidence in the form of exhibits and witnesses in the HOM.

The Board must construe a complaint liberally, so the general requirement that the Board follows is that the complaint must contain a “short and plain statement of the claim to provide the Respondent with fair notice of the complaint and the relevant grounds.”

2.2. The Hearing on the Merits; Witnesses and Exhibits

The Board must hold the HOM within 40 days of when the complaint was filed unless the parties choose to waive this requirement. *See* HRS § 377-9(b) and Hawai‘i Administrative Rules (HAR) § 12-42-46(b).

All parties are responsible for calling their own witnesses for direct examination during the HOM. If a witness is not willing to appear voluntarily, then the party seeking to call that witness can request a subpoena from the Board to order the witness to appear. This subpoena must then be served on the witness by an individual who is not the named complainant.

Because the complainant must present their case first, they must call their own witnesses. Even if a witness is listed by a respondent, that is no guarantee that the respondent will call that witness. Therefore, the complainant must ensure that all witnesses are either willing to appear voluntarily or that the witnesses are properly served with a subpoena.

All subpoenaed witnesses must be paid as laid out in HRS § 607-12.

The complainant must also present exhibits, which are documents or other pieces of evidence. Any proposed exhibits must be submitted to the Board as required by the Board’s Pretrial Order. There are specific requirements for how those exhibits must be submitted to the Board.

When proposed exhibits are submitted, the parties can agree to enter those proposed exhibits into the official record without objection. If the parties can do so, it helps to make the proceedings more efficient.

If the parties do not agree to enter proposed exhibits into evidence, then they can be introduced during the HOM. Exhibits are introduced during the HOM through witnesses’ testimony, setting out the authentication and relevance of the exhibits. After they are introduced,

a party may “move” to have the exhibit entered into the official record. The Board will rule on whether or not the exhibit will be entered into the official record based on, among other things, whether the other parties object to the exhibit being entered into the official record.

The Board will only consider the exhibits entered into the official record when making our decision in this case. Therefore, any proposed exhibits that are not in the official record cannot impact the Board’s decision.

3. Prohibited Practices

Prohibited practices are defined by law in Hawai‘i Revised Statutes (HRS) § 89-13.

HRS § 89-13 is broken up into two sections: first, the prohibited practices that a public employer can commit, and second, the prohibited practices that a public employee or employee organization can commit.

HGEA is an employee organization, which means that, only that second section, section (b), applies to HGEA.

4. The “Hybrid” Case

When dealing with prohibited practices arising from how a union handles grievances, this falls under what is known as a “hybrid case.” While this phrase does not appear in HRS Chapter 89, the Hawai‘i Supreme Court (HSC) laid out the hybrid case in Poe v. Haw. Labor Rels. Bd., 105 Hawai‘i 97, 102, 94 P.3d 652, 657 (2004) (Poe II).

A hybrid case alleges that the employer committed a prohibited practice under HRS § 89-13(a)(8) and that the union breached its duty of fair representation, which is a prohibited practice under HRS § 89-13(b)(4).

In a hybrid case, the complainant must prove both that the employer wilfully violated the collective bargaining agreement **and** that the union breached or violated its duty of fair representation. This type of complaint can succeed only if the complainant proves **both** parts.

The complainant may choose to bring a case against only one respondent. However, even if there is only one respondent, the complainant must still prove both parts of the case.

Further, the complainant can receive remedies only from respondents in the case. This means that, for example, to receive any remedy or relief from an employer, the complainant would have to name the employer as a respondent.

5. Right to Amend

Hawai'i Administrative Rules (HAR) § 12-42-43 states that, "Any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order thereon," and HAR § 12-42-8(g)(10)(A) further states, "Any document filed in a proceeding may be amended, in the discretion of the board, at any time prior to the issuance of a final order thereon."

At the prehearing conference, Mr. Fukumoto moved to amend his complaint, and HGEA did not object. Accordingly, the Board granted the motion and set a deadline of Friday, May 13, 2022 at 4:30 p.m. for Mr. Fukumoto to submit his amended complaint.

6. Other Matters

Although HGEA filed a motion to dismiss in this case, Mr. Fukumoto's amendment of the complaint makes this motion moot. Because HGEA's motion to dismiss applies to the initial complaint and not the amended complaint, the motion to dismiss becomes irrelevant when the amended complaint is filed. HGEA has the right to file a new motion to dismiss, if it chooses, in response to the amended complaint.

All dates and deadlines set in Pretrial Order No. 3839 are cancelled and taken off the calendar. The Board will issue a new pretrial order after Mr. Fukumoto files his amended complaint.

DATED: Honolulu, Hawai'i, May 11, 2022.

HAWAI'I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

N. Musto

N. MUSTO, Member

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