

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

JANET WEISS,

Complainant,

and

HAWAII STATE TEACHERS
ASSOCIATION,

Respondent.

CASE NO(S). 22-CU-05-390

ORDER NO. 3871

ORDER CONSOLIDATING CASE NOS.
22-CU-05-390 AND 22-CE-05-970 FOR
HEARING AND DISPOSITION; NOTICE
OF STATUS CONFERENCE

In the Matter of

JANET WEISS,

Complainant,

and

JANETTE SNELLING, Honoka'a-
Kealakehe-Kohala-Konawaena Complex
Area Superintendent, Department of
Education, State of Hawai'i,

Respondent.

CASE NO. 22-CE-05-970

ORDER CONSOLIDATING

CASE NOS. 22-CU-05-390 AND 22-CE-05-970 FOR HEARING AND DISPOSITION

Case No. 22-CU-05-390

On May 20, 2022, Complainant JANET WEISS (Complainant or Ms. Weiss) filed a prohibited practice complaint (CU Complaint) with the Hawai'i Labor Relations Board (Board) alleging, among other things, that Respondent HAWAII STATE TEACHERS ASSOCIATION (HSTA or Union) committed a prohibited practice by breaching the duty of fair representation

owed to Ms. Weiss in the processing of her February 2017 grievance challenging Ms. Weiss' discharge from her position with the Department of Education, State of Hawai'i (DOE).

HSTA filed a Motion to Dismiss alleging, among other things, that Ms. Weiss' CU Complaint was untimely, barred by a settlement agreement, failed to state a claim, and failed to assert certain enumerated violations of Hawai'i Revised Statutes (HRS) § 89-13. Ms. Weiss opposed the Motion to Dismiss arguing, among other things, that HSTA failed to properly represent her in processing her grievance and negotiating the settlement agreement.

The Board heard oral argument on the Motion to Dismiss and took the matter under advisement.

The Board also ordered that Ms. Weiss' case, as a hybrid case requiring that Ms. Weiss prove her case against both the Union and her employer, would be bifurcated, with the Board would take up only the case against HSTA for the alleged breach of the duty of fair representation first. As background information, the Board took judicial notice of certain Decisions and Orders. *See* Order No. 3858, Minute Order.

The Board began the hearing on the merits (HOM) on June 27, 2022. Ms. Weiss called two witnesses to the stand, Ms. Maia Daugherty, HSTA UniServ Director, and Andrea Eshelman, HSTA Deputy Executive Director. Both witnesses provided testimony and were released.

The Board scheduled a continuing HOM to allow Ms. Weiss to call her other witnesses, Mr. Ray Camacho, HSTA UniServ Director, and the Complainant herself.

Case No. 22-CE-05-970

On July 11, 2022, Ms. Weiss filed a prohibited practice complaint (CE Complaint and, collectively with CU Complaint, Complaints) alleging, among other things, that Respondent JANETTE SNELLING, Honoka'a-Kealakehe-Kohala-Konawaena Complex Area Superintendent, Department of Education, State of Hawai'i committed prohibited practices, based on Ms. Weiss' 2017 discharge challenged in her February 2017 grievance.

Consolidation

Hawai'i Administrative Rules (HAR) § 12-42-8(g)(13) states:

(13) The board, on its own initiative or upon motion, may consolidate for hearing or other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues if it finds that such consolidation of proceedings or contemporaneous consideration

will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

Upon applying the foregoing HAR provision to the Complaints in these cases, the Board, upon its own initiative and in its discretion, finds that the criteria are met in this case.

Both cases represent a prong of the “hybrid case” defined by the Hawai‘i Supreme Court in Poe v. Haw. Labor Rels. Bd., 105 Hawai‘i 97, 102, 94 P.3d 652, 657 (2004). Because the cases are inextricably interdependent, Ms. Weiss must prove both prongs to succeed on her claim. Id.

Therefore, the Board finds that consolidation of the proceedings for hearing and disposition would be conducive to the proper dispatch of its business and to the ends of justice. Rather, than unduly delaying the proceedings, consolidation of the two cases will facilitate the expeditious handling of the proceedings of these cases.

Accordingly, for the reasons set forth above, the Board holds, on its own initiative and in its discretion under HAR § 12-42-8(g)(13), that Case Nos. 22-CU-05-390 and 22-CE-05-970 be consolidated for hearing and disposition.

ORDER

The Board orders that Case Nos. 22-CU-05-390 and 22-CE-05-970 are consolidated for hearing and disposition.

The record in Case No. 22-CU-05-390 will be applied to Case No. 22-CE-05-970, including the first day of the HOM that occurred on June 27, 2022.

Accordingly, the Board cancels the continuing HOM set for August 5, 2022 in Case No. 22-CU-05-390 and will hold a status conference to discuss with the parties how this case will proceed moving forward.

NOTICE OF STATUS CONFERENCE

NOTICE IS GIVEN that the Board will conduct a Status Conference on **August 5, 2022 at 9:00 a.m.** via a Remote Zoom Hearing. The Board will provide the relevant call-in information to the parties.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

DATED: Honolulu, Hawai'i, _____ July 13, 2022 _____.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Janet Weiss, Self-Represented Litigant

Janette Snelling, Honoka'a-Kealakehe-Kohala-Konawaena Complex Area Superintendent

Keani Alapa, Esq.

James E. Halvorson, Deputy Attorney General

WEISS v. HSTA; WEISS v. SNELLING

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