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Case No. 22-CU-05-390, 22-CE-05-970**

STATE OF HAWAII

HAWAII 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. 3880

ORDER GRANTING, IN PART, AND
DENYING, IN PART, MOTION TO
DISMISS OR, IN THE ALTERNATIVE,
FOR SUMMARY JUDGMENT AND
DISMISSING ALLEGATIONS FOR LACK
OF STANDING

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 GRANTING, IN PART, AND DENYING, IN PART,
MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR
SUMMARY JUDGMENT AND DISMISSING ALLEGATIONS FOR LACK OF STANDING**

1. Introduction and Statement of the Case

In or about January 2017, Respondent JANETTE SNELLING, Honoka'a-Kealakehe-Kohala-Konawaena Complex Area Superintendent, Department of Education, State of Hawai'i

(Ms. Snelling or Employer) discharged Complainant JANET WEISS (Ms. Weiss or Complainant) from her bargaining unit 5 (BU 5) position. Respondent HAWAII STATE TEACHERS ASSOCIATION (HSTA and collectively with Ms. Snelling, Respondents) filed a grievance on Ms. Weiss' behalf, which proceeded through the grievance process.

After submitting a notice of intent to arbitrate Ms. Weiss' grievance, HSTA negotiated a settlement agreement with the Department of Education, State of Hawai'i (DOE) to settle Ms. Weiss' grievance.

Christina M. Kishimoto (Dr. Kishimoto), then-Superintendent for the DOE, signed the settlement agreement on or about June 9, 2020, and Ray Camacho, UniServ Director, (Mr. Camacho) signed the settlement agreement for HSTA on or about July 1, 2020.

HSTA was unable to contact Ms. Weiss for a period until approximately April 2022 because Ms. Weiss was "off the grid."

On or about April 12, 2022, Ms. Weiss signed the settlement agreement. HSTA submitted the settlement agreement to DOE on or about April 20, 2022.

Ms. Weiss filed a prohibited practice complaint (CU Complaint) with the Hawai'i Labor Relations Board (Board) alleging, among other things, that HSTA breached the duty of fair representation owed to Ms. Weiss as a bargaining unit 05 (BU 5) member in settling the grievance.

HSTA filed a Motion to Dismiss the CU Complaint (MTD), arguing, among other things, that the CU Complaint is untimely, that the settlement agreement precluded Ms. Weiss' ability to bring the CU Complaint, and that the CU Complaint failed certain pleading standards. Ms. Weiss opposed the Motion to Dismiss the CU Complaint.

The Board held a hearing on the MTD and listened to oral arguments from the parties. After the oral argument, the Board took the MTD under advisement and proceeded to the hearing on the merits (HOM).

After beginning the HOM, Ms. Weiss filed a prohibited practice complaint (CE Complaint and collectively with the CU Complaint, Complaints) alleging that Ms. Snelling committed prohibited practices against Ms. Weiss when the Employer discharged Ms. Weiss.

In lieu of submitting an Answer, Ms. Snelling filed a joinder to HSTA's MTD.

After Ms. Snelling filed the joinder, Ms. Weiss filed a memorandum opposing the MTD. Because this memorandum was filed outside the five days provided for by Hawai'i Administrative Rules (HAR) § 12-42-8(g)(3)(C)(iii), the Board strikes it from the record and will not consider the arguments contained in the document.

After considering the record, the pleadings, and the oral arguments, the Board issues this Order granting, in part, and denying, in part the MTD. More specifically, the Board dismisses certain claims based on untimely filing, as explained more fully in Section 3.1.1 and denies the MTD on all other grounds.¹ The Board further dismisses Ms. Weiss' Hawai'i Revised Statutes (HRS) § 89-13(a)(6) claim for lack of standing.

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. Findings of Fact and Allegations Accepted as True

The Board accepts the allegations of the complaint as true for the purposes of considering the MTD/MSJ and construes them in the light most favorable to Ms. Weiss. Haw. Gov't Emp. Ass'n, AFSCME, Local 152, AFL-CIO v. Kishimoto, Board Case Nos. 20-CE-02-947a-f, Decision No. 503, at *2 (April 9, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/05/Decision-No.-503.pdf>) *citing* Tupola v. Univ. of Haw. Prof'l Assembly, Board Case Nos. CU-07-330; CE-07-847, Order No. 3054, at *18 (February 25, 2015) (<https://labor.hawaii.gov/hlrp/files/2019/01/HLRB-Order-3054.pdf>) (Tupola).

The DOE² employed the Complainant³ until Ms. Weiss' discharge in or about January 2017. In her position with the DOE, Ms. Weiss was a member of BU 5.⁴ HSTA is BU 5's exclusive representative.⁵

HSTA and the relevant employer group⁶ for BU 5 are parties to a CBA for the bargaining unit.

In or about February 2017, HSTA filed a grievance on Ms. Weiss' behalf, challenging her discharge. The grievance proceeded through the grievance process in the BU 5 CBA, culminating in HSTA notifying the DOE of its intent to submit Ms. Weiss' grievance to arbitration.

While processing the grievance and preparing for arbitration, HSTA negotiated a settlement agreement with DOE. HSTA believed the settlement was reasonable under the circumstances and informed Ms. Weiss that it believed as much.

HSTA withdrew the grievance from arbitration in 2019.

Mr. Camacho went over the settlement agreement with Ms. Weiss.

HSTA notified the DOE that HSTA agreed with the draft settlement agreement, and Dr. Kishimoto signed the settlement agreement on or about June 9, 2020. Mr. Camacho signed the settlement agreement on or about July 1, 2020.

HSTA was unable to get in contact with Ms. Weiss for some time. During that time, the settlement agreement was pending Ms. Weiss' signature.

Ms. Weiss signed the settlement agreement on or about April 12, 2022, and HSTA submitted the fully executed settlement agreement to the DOE on or about April 20, 2022.

3. Discussion and Conclusions of Law

3.1. Subject Matter Jurisdiction

The Board must consider the MTD's arguments regarding lack of subject matter jurisdiction based on the Complaint, and the Board must accept the factual allegations in the Complaint as true and view those allegations in the light most favorable to Ms. Weiss. *See Ishida v. United Pub. Workers, AFSCME, Local 646, AFL-CIO*, Board Case No. 22-CU-01-387, Order No. 3876, at *3 (July 26, 2022) (<https://labor.hawaii.gov/hlrb/files/2022/07/Order-No.-3876.pdf>) (*Ishida*). The Board does not have to accept conclusory allegations about the legal effect of the facts in the complaint. *Id.*

If it appears beyond a doubt that Ms. Weiss cannot prove any set of facts that would support the claim and entitle her to relief, the Board may dismiss the claim. *Haw. State Teachers Ass'n v. Abercrombie*, 126 Hawai'i 13, 19 265 P.3d 482, 488 (App. 2011).

Ms. Weiss has the burden to establish that jurisdiction exists because she is the Complainant. *Ishida*, Order No. 3876 at *3. The Board may review evidence, such as affidavits and testimony, to resolve factual disputes regarding the Board's jurisdiction to hear the case. *Casumpang v. ILWU, Local 142*, 94 Hawai'i 330, 337, 13 P.3d 1235, 1242 (2000); *Right to Know Comm. v. City Council, City and Cnty. of Honolulu*, 117 Hawai'i 1, 7, 175 P.3d 111, 117 (App. 2007).

3.1.1. Jurisdiction

The Board can only use powers that statute expressly or implicitly grants. *Haw. Gov't Emples. Ass'n v. Casumpang*, 116 Hawai'i 73, 97, 170 P.3d 324, 348 (2007) (*Casumpang*). The Board has the "express" power over prohibited practice controversies and the "implied" powers that are "reasonably necessary" to make that express power effective. *Id.*

The Board may apply sections outside of HRS Chapter 89 to prohibited practice complaints if it is "necessary and proper" to do so to determine whether a prohibited practice has been committed. *Id.*, at 98, 170 P.3d at 349. However, this application does not permit the Board to interpret those sections or to find that those sections were violated.

Therefore, the Board does not have jurisdiction to determine whether Ms. Snelling violated any Board of Education policy, HRS § 378-62, or the Hawai‘i Whistleblower Protection Act and dismisses those claims for lack of jurisdiction.

3.1.2. Standing

The Board must also determine whether Ms. Weiss has standing to bring her claims; that is, the Board must determine whether Ms. Weiss has 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).

Standing requirements may be created or directed by legislative declarations of policy and may differ based on statutory language. Tax Foundation of Hawaii v. State, 144 Hawai‘i 175, 188, 439 P.3d 127, 140 (2019).

Under HRS § 89-13(a)(6):

- (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- (6) Refuse to participate in good faith in the mediation and arbitration procedures set forth in section 89-11;

HRS § 89-11 relates to “Resolution of disputes; impasses” and sets out the rights and responsibilities of public employers and exclusive representatives during impasse proceedings. Kapesi v. Dep’t of Pub. Safety, Case Nos. 17-CE-10-908; 17-CU-10-359, Decision No. 510, at *11 (March 2, 2022) (<https://labor.hawaii.gov/hlr/files/2022/03/Decision-No.-510.pdf>). Individual employees, such as Ms. Weiss, have no rights or responsibilities under this section. Id. Therefore, Ms. Weiss has no legislative standing to bring prohibited practice complaints under HRS § 89-13(a)(6), and the Board must dismiss those claims.

3.1.3. Timeliness

Under HRS § 377-9, the Board can only hear complaints filed within ninety days of the action that gave rise to the alleged prohibited practice. HRS § 377-9(l); Aio v. Hamada, 66 Haw. 401, 404 n.3, 664 P.2d 727, 729 n.3 (1983). The Board’s administrative rules also include this limit. HAR § 12-42-42(a).

Because the period is set by law, the Board strictly construes the limitations period strictly and cannot waive a defect of even a single day. Ishida, Order No. 3876, at *3.

Ms. Weiss filed the CU Complaint on May 20, 2022 and the CE Complaint on July 11, 2022. The relevant limitations periods began on February 18, 2022 and April 12, 2022 respectively.

During the limitations period, Ms. Weiss signed the settlement agreement and HSTA transmitted it to the DOE. Therefore, issues related to the hybrid case are timely. *See* Poe v. Haw. Lab. Rels. Bd., 105 Hawai‘i 97, 102, 94 P.3d 652, 657 (2004).

The timely hybrid case is based on the allegations in the grievance itself, challenging Ms. Weiss’ discharge⁷, and HSTA’s corresponding alleged breach of the duty of fair representation.

Any allegations of issues prior to Ms. Weiss’ discharge in or about January 2017 are untimely and will not be considered by this Board unless proven to be relevant and necessary for context.⁸

Therefore, the Board is considering the following issues:

1. Whether Ms. Snelling committed a prohibited practice by wilfully violating the BU 5 CBA when she discharged Ms. Weiss and whether such violation was retaliatory or interfered with Ms. Weiss’ HRS Chapter 89 rights; and
2. Whether HSTA committed a prohibited practice by breaching the duty of fair representation owed to Ms. Weiss in the processing and handling of Ms. Weiss’ grievance, including in the settling of the grievance.

3.1.4. Failure to State a Claim; Failure to Properly Plead

The Board follows the traditional “notice pleading” standard used by the Hawai‘i Supreme Court (HSC) to enhance citizen access to the Board and to justice. *See* Campos v. Univ. of Haw. Prof’l Assembly, Board Case No. 19-CU-07-374, Decision No. 511, at *5-6 (June 28, 2022) (<https://labor.hawaii.gov/hlrp/files/2022/06/Decision-No.-511.pdf>) (Campos II).

The Board construes pleadings liberally and requires only that Ms. Weiss provide a short and plain statement of the claim to provide the Respondents with notice of the complaint and the relevant grounds. *See* Parker v. Dep’t of Pub. Safety, State of Hawai‘i, Board Case Nos. ~~18-CU-10-370~~, 19-CE-10-923 Decision No. 502, at *54 (March 23, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/03/Decision-No.-502.pdf>) (Parker). The Board does not require that Ms. Weiss plead legal theories with precision, and the pleading of evidence, facts, or law is not dispositive. Id.

Ms. Weiss' Complaints lay out her position that HSTA violated its duty of fair representation owed to Ms. Weiss in the settlement of the grievance regarding her discharge in 2017 and that Ms. Snelling discharged Ms. Weiss without just cause.

Accordingly, the Board finds that the Complaints are sufficient to provide the Respondents with notice of Ms. Weiss' claims and the facts surrounding the claims. Therefore, the Board denies the MTD on these issues.

4. Order

Based on the above, the Board grants, in part, and denies, in part, the MTD. The remaining issues in this case are:

- Whether Ms. Snelling committed a prohibited practice by wilfully violating the BU 5 CBA when she discharged Ms. Weiss and whether such violation interfered with Ms. Weiss' HRS Chapter 89 rights; and
- Whether HSTA committed a prohibited practice by breaching the duty of fair representation owed to Ms. Weiss in the processing and handling of Ms. Weiss' grievance.

All other issues are dismissed based on untimeliness. The MTD is denied on all other grounds.⁹

The Board further orders Ms. Snelling to submit an Answer to the CE Complaint within ten days of the filing of this order.

DATED: Honolulu, Hawai'i, August 4, 2022.

HAWAII LABOR RELATIONS BOARD



Thomas R. Oshiro

THOMAS R. OSHIRO, Chair

Isaiah A. D. Moepono

ISAIAH A.D. MOEPONO, Member

J.N. Musto

J.N. MUSTO, Member

Copies sent to:

Janet Weiss, Self-Represented Litigant
Keani Alapa, Esq.
James Halvorson, Deputy Attorney General
Richard Thomason, Deputy Attorney General

¹ The Board, however, takes no position as to the enforceability of the settlement agreement because that is outside of the Board’s jurisdiction.

² In this capacity, DOE and Ms. Snelling are public employers within the definition of HRS § 89-2, which defines employer or public employer as:

“Employer” or “public employer” means...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...

³ In this capacity, Ms. Weiss was a public employee within the definition of HRS § 89-2, which defines employee or public employee as:

“Employee” or “public employee” means any person employed by a public employer, except elected and appointed officials and other employees who are excluded from coverage in section [89-6(f)].

⁴ HRS § 89-6(a)(5) defines BU 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.”

⁵ HRS § 89-2 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.

⁶ HRS § 89-6(d)(3) defines the employer group for BU 5 as:

(3) For bargaining units (5)...the governor shall have three votes, the board of education shall have two votes, and the superintendent of education shall have one vote[.]

⁷ Ms. Weiss has also alleged in the CE Complaint that Ms. Snelling committed prohibited practices under HRS §§ 89-13(a)(1) and (4). To the extent that these allegations are tied to the hybrid case, the Board finds these allegations timely and will take them up if necessary.

⁸ The Board has taken judicial notice of certain prior Board Decisions and Orders to provide context for the relationship between HSTA and Ms. Weiss. *See* Order No. 3858.

⁹ *See* Endnote 1.