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Case No. 23-CU-05-401**

STATE OF HAWAI‘I

HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

JULIE REYES ODA,

Complainant,

and

HAWAII STATE TEACHERS
ASSOCIATION,

Respondent.

CASE NO. 23-CU-05-401

DECISION NO. 528

FINDINGS OF FACT, CONCLUSIONS OF
LAW, DECISION AND ORDER

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I. INTRODUCTION

On October 6, 2023, Complainant JULIE REYES ODA (Complainant or Reyes Oda) filed a Prohibited Practice Complaint (Complaint) with the Hawai‘i Labor Relations Board (Board) alleging that Respondent HAWAII STATE TEACHERS ASSOCIATION (HSTA) violated, *inter alia*, Hawai‘i Revised Statutes (HRS) §§ 89-13(b)(1), (4), (5), 89-3, and HRS § 414D-138.

On November 1, 2023, the Board filed Order No. 4007. The Board dismissed all claims related to HRS § 414D-138 and to alleged violations of HSTA’s bylaws or governance manual, including issues of elected positions within HSTA. The Board retained jurisdiction to hear allegations of HRS §§ 89-13(b)(1), (4), (5), and 89-3 violations.

Order No. 4061 contains the Board’s recitation of the procedural history in this case. As such, the procedural history will not be repeated, but shall be incorporated into this decision by reference.

Any findings of fact improperly listed as conclusions of law are construed as findings of fact. Any conclusions of law improperly listed as findings of fact are construed as conclusions of law.

II. FINDINGS OF FACT

Reyes Oda is a public employee¹ and a member of bargaining unit 5 (BU 5).² HSTA is the exclusive representative for BU 5.³

HSTA and the relevant employer group for BU 5 are members of a CBA covering BU 5.

Reyes Oda was elected the HSTA Leeward Chapter President and Board Director to serve a term from July 1, 2021 to June 30, 2024. On or about December 22, 2022⁴ and March 11, 2022, complaints were filed with the HSTA Judicial Panel against Reyes Oda for breach of fiduciary duty, breach of confidentiality, engagement in unauthorized conduct, and engagement in conduct unbecoming a member of HSTA. On August 23, 2022, after completing an investigation, the HSTA Judicial Panel issued its decision finding that Complainant violated its bylaws and policies and recommended that the HSTA Board of Directors take any appropriate remedial action or discipline against Reyes Oda.

The HSTA Board of Directors conducted its own independent review and elected to expel Reyes Oda from HSTA and by virtue of her expulsion, removed her from her leadership position with the HSTA effective October 12, 2022. HSTA notified Reyes Oda that she may apply for

¹ HRS § 89-2, 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)].

² 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.”

³ HRS § 89-6(d)(3) defines the employer group for BU 5 as “[f]or 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[.]”

⁴ The December 22, 2022 complaint was later withdrawn.

reinstatement “one year from the date of expulsion, which shall be reviewed and decided by a majority vote of the Board of Directors.”

On October 26, 2022, Reyes Oda appealed the August 23, 2022 HSTA Judicial Panel Decision and Order.

On September 22, 2023, Judge Nishimura issued her decision. The Board previously held in Order No. 4007 that it will not take jurisdiction over arbitration decisions and internal union matters.

Reyes Oda did not reapply for HSTA membership one year from the date of her expulsion, despite being eligible to do so on or around Oct. 12, 2023.

III. QUESTIONS PRESENTED

- A. Whether HSTA violated HRS §§ 89-3 and 89-13(b)(1), (4), and (5) when Reyes Oda was expelled from HSTA and not allowed to reapply for membership HSTA until one year later.
- B. Whether HSTA violated the CBA when Reyes Oda was expelled from HSTA and not allowed to reapply for membership with HSTA until one year later.

IV. RELEVANT LAWS

HRS § 89-3

Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4.

HRS § 89-13(b)

It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

...

(4) Refuse or fail to comply with any provision of this chapter; or

(5) Violate the terms of a collective bargaining agreement.

V. ANALYSIS

A. Burden of Proof

HRS § 91-10(5) states:

(5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

The Board's rules under Hawai'i Administrative Rule (HAR) § 12-43-34 also states that the complainant asserting a violation of HRS Chapter 89 has "the burden of proving the allegations by a preponderance of the evidence."

Preponderance of the evidence is defined as "proof which leads the factfinder to find that the existence of the contested fact is more probable than its nonexistence." Minnich v. Admin. Dir. of the Courts, 109 Haw. 220, 228 (2005). The Board requires that the party carrying the burden of proof must produce sufficient evidence "and support that evidence with arguments in applying the relevant legal principles." State of Hawaii Organization of Police Officers (SHOPO) v. Fasi, Board Case No. CE-12-66, Decision No. 161, 3 HPERB 25, 46 (1982).

As discussed below, and the record demonstrates, Reyes Oda did not meet her burden of proof that HSTA violated HRS §§ 89-13(b)(1), (4), and (5) and 89-3 when HSTA expelled her from her leadership position for a year.

B. HSTA Did Not Breach Its Duty of Fair Representation When It Expelled Reyes Oda from Union Membership Because This Action Was Initiated Pursuant to HSTA's Internal Procedures.

A complaint alleging that a union breached its duty of fair representation alleges a colorable claim of an HRS § 89-13(b)(1) and (4) violation. Poe v. Hawaii Gov't Emp. Ass'n, Board Case No. CU-03-208, Order No. 2144, at *8 (January 7, 2003). Pursuant to HRS § 89-13(b)(1) and (4), a union, as the exclusive bargaining representative of the employees in the bargaining unit, has a duty to fairly represent all those employees in its collective bargaining and in its enforcement of the CBA. Vaca v. Sipes, 386 U.S. 171, 177, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).

In its seminal decision, Vaca v. Sipes, the United States Supreme Court held that a union has a statutory duty to fairly represent all employees in collective bargaining with the employer and in its enforcement of the resulting CBA. Id. The duty of fair representation rests in union activities in its dealings with the employer. Id.

While a union's actions cannot "[i]nterfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter," nor may a union refuse to comply with the provisions of Chapter 89. United Pub. Workers, AFSCME. Local 646, AFL-CIO v. Takushi, Board Case Nos. CE-01-374a and CE-10-374b, Decision No. 404, at *49 (2000). To do so would be a breach of the union's duty of fair representation.

The Ninth Circuit Court of Appeals held that "the duty of fair representation does not apply where the union is not representing the worker in question." Simo v. Union of Needletrades, 322 F.3d 602, 614 (9th Cir. 2003). In Simo, employees of Sorrento Coats, Inc. alleged that the union violated its duty of fair representation when the union requested that Shapiro, a third-party company stop sending work to Sorrento Coats, Inc. The court found that

the union did not breach its duty of fair representation because the union was not acting in its representative capacity when it requested Shapiro to stop sending work. Id. See also, Masters v. Screen Actors Guild, Inc., 256 F. App'x 107 (9th Cir. 2007) (the union did not violate its duty of fair representation because the allegations dealt purely with internal matters that do not involve the union activities in representing its members); Shimose v. Int'l Longshore & Warehouse Union, Local 142, No. 21-00489 JAO-RT, 2023 U.S. Dist. LEXIS 56155 (D. Haw. Mar. 31, 2023) (the duty of fair representation regulates only a union's activities in dealing with employers on behalf of union members, and not its internal affairs).

A claim involving matters that concern a union's dealings with its own members, including membership requirements, are not created by statute but by a union's constitution. Therefore, merely "[c]hallenging a union's internal procedures is enough to dismiss the complaint." Shimose, at *9. "The duty of fair representation, in other words, is not available in situations where the union is not representing the employee." Id. at *10.

Reyes Oda argues that being expelled from HSTA and removal from her leadership position from the HSTA is a violation of HRS §89-13(b) (1), (4), and (5). It is not. Reyes Oda's position as an elected HSTA Leeward Chapter President and Board Director does not require union representation with her employer. Reyes Oda's position as HSTA Leeward Chapter President is also not a position controlled by a bargaining unit. HSTA's decision to expel her and removal of her leadership position was clearly based on HSTA's internal procedures and bylaws. Processes in which how unions deal with its own members, including disciplining members or union leadership positions, are controlled by union constitutions and bylaws, not by state statutes.

Just as the courts did in Simo and Masters, the Board does not find that HSTA's actions breached its duty of fair representation because it was based on HSTA's internal procedures.

C. HSTA's Expulsion of Reyes Oda for a One-Year Period Does Not Violate HRS § 89-3.

To the extent that Reyes Oda argues that her expulsion from HSTA, which subsequently made her lose her leadership position within the union is a violation of HRS § 89-3, her arguments are misplaced.

The United States Supreme Court has held that because a union is the exclusive representative of an employee, the union is required by law to provide fair representation for all unit employees - union member and non-member alike. Janus v. AFSCME, Council 31, 585 U.S. 878, 887, 138 S. Ct. 2448, 2460, 201 L.Ed.2d 924, 935 (2018). The Janus court held that nonmembers may pay for union duties that are attributable to collective bargaining activities, but may not be forced to participate in any other political and ideological projects. Id. at 887. Therefore, while nonmembers remain represented in all collective bargaining activities, they do not participate in activities not related to collective bargaining. While "union may not intentionally direct 'animosity' toward non-members based on their 'dissident union practices[,]'"⁵ a union does not violate any employee rights in treating members and non-members differently. Masters v. Screen Actors Guild, No. CV 04-2102 SVW (VBKx), 2004 U.S. Dist. LEXIS 27297, at *1 (C.D. Cal. Dec. 7, 2004).

Unions are free to select its own members. In Masters, the Ninth Circuit Court of Appeals held that because Masters was not a SAG member, he had no standing to challenge SAG's bylaws. Masters, supra at 108. Courts have held that unions have the right prescribe its own rules to choose its own members. Id.; see also Basilicato v. Int'l All. of Theatrical Stage

⁵ Id. at 878.

Emps., 479 F. Supp. 1232, 1235 (D. Conn. 1979); Hughes v. Local 11, International Association of Bridge, Structural & Ornamental Ironworkers, 287 F.2d 810, 817 (3d Cir.), Cert. denied, 368 U.S. 829, 82 S. Ct. 51, 7 L. Ed. 2d 32 (1961); Vincent v. Plumbers & Steamfitters, Local 198, 409 F. Supp. 206, 211 (M.D.La.1976); Axelrod v. Stoltz, 264 F. Supp. 536, 539 (E.D.Pa.1967), Aff'd, 391 F.2d 549 (3d Cir. 1968).

Despite being expelled for one year, pursuant to HRS § 89-3, HSTA continued to represent Reyes Oda as a bargaining unit member with her employer. She continued to receive information from HSTA regarding hours, pay, working conditions, and contract-related issues. Further, during this one-year period where Reyes Oda was a non-member with HSTA, she remained part of Bargaining Unit (BU) 5⁶ and was entitled to representation for collective bargaining matters. Reyes Oda testified that as a non-member, she received information from HSTA regarding ratification of a new contract between HSTA and employer that occurred in April 2022. While there are certain benefits that Reyes Oda did not receive because she was not a union member during that one-year period, those differences in benefits do not violate HRS § 89-3.

The Board also notes that Reyes Oda did not re-apply for membership once her one-year period expired. Reyes Oda was provided an opportunity to seek union membership but through her own inaction failed to reapply one year after the date of her expulsion. Therefore, the Union did not violate Reyes Oda's rights in her continued treatment as a non-member because it was incumbent upon Reyes Oda to change her membership status.

VI. ORDER

⁶ 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;"

Based on the above, the Board dismisses all claims against HSTA.

DATED: Honolulu, Hawai'i, October 31, 2024.

HAWAI'I LABOR RELATIONS BOARD



James R. Oshiro

JAMES R. OSHIRO, Chair

Stacy Moniz

STACY MONIZ, Member

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