

STATE OF HAWAI‘I
HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

RALPH R. FUKUMOTO,

Complainant(s),

and

DEPARTMENT OF PUBLIC SAFETY,
State of Hawai‘i; and HAWAII
GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Respondent(s).

CASE NO(S). 22-CU-14-389
22-CE-14-966

DECISION NO. 512

FINDINGS OF FACT, CONCLUSIONS OF
LAW, DECISION AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

1. Introduction and Statement of the Case

Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union) filed two grievances with Respondent DEPARTMENT OF PUBLIC SAFETY, State of Hawai‘i (PSD or Employer, and collectively with HGEA, Respondents) 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.

HGEA filed a Motion to Dismiss the Complaint, which Mr. Fukumoto objected to. Mr. Fukumoto moved to amend the Complaint at the prehearing conference, and HGEA did not

object. The Board granted Mr. Fukumoto's motion to amend and found that the amendment mooted HGEA's Motion to Dismiss.

Mr. Fukumoto filed his Amended Prohibited Practice Complaint (Amended Complaint) which added, among other things, allegations that PSD committed prohibited practices by willfully violating the bargaining unit 14 (BU 14) collective bargaining agreement (CBA), as laid out in Mr. Fukumoto's grievances.

Due to an issue with the form filed with the Amended Complaint, the Board permitted Mr. Fukumoto to file a Second Amended Prohibited Practice Complaint (Second Amended Complaint) with the same allegations.

HGEA and PSD both filed dispositive motions to the Second Amended Complaint, which Mr. Fukumoto opposed.

The Board heard oral arguments on the dispositive motions at the pretrial conference and granted them, in part, and denied them, in part. The Board reduced its oral ruling to writing in Order No. 3890.

After the Board's rulings on the dispositive motions, the Board found that the remaining issues in the case were:

- Whether PSD committed a prohibited practice by willfully violating the BU 14 CBA, as laid out in Mr. Fukumoto's two grievances; and
- Whether HGEA committed a prohibited practice by breaching the duty of fair representation owed to Mr. Fukumoto in the processing and handling of Mr. Fukumoto's grievance.

The Board held hearings on the merits (HOMs) on November 9-10, 2022 and heard testimony from witnesses and entered evidence into the record. Mr. Fukumoto rested his case; HGEA moved for judgment on the remaining claims (HGEA Motion); and PSD moved for a directed verdict (PSD Motion).

Upon review of the entire record, including the pleadings and arguments made in this case, the Board grants, in part, both the HGEA Motion and the PSD Motion for the reasons contained in this Decision and Order.

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

2. Findings of Fact

2.1. Findings of Fact

Mr. Fukumoto¹ is employed by PSD² and is a member of BU 14.³ HGEA is BU 14's exclusive representative.⁴ HGEA and the relevant employer group⁵ for BU 14 are parties to a CBA for the bargaining unit.

In October of 2019, HGEA filed a grievance (2019 Grievance) on Mr. Fukumoto's behalf, alleging, among other things, that Mr. Fukumoto was being harassed and retaliated against, and that PSD failed to provide a harassment and discrimination free workplace. The 2019 Grievance alleged violations of several articles of the BU 14 CBA.

PSD denied the 2019 Grievance, and HGEA informed PSD that it intended to pursue the 2019 Grievance through arbitration.

In 2019, Mr. Fukumoto filed a case in civil court related to the facts that gave rise to the harassment grievance.

In October of 2020, PSD disciplined Mr. Fukumoto. HGEA filed a grievance (2020 Grievance, and collectively with the 2019 Grievance, Grievances) on Mr. Fukumoto's behalf alleging, among other things, that PSD did not have just cause for the discipline.

Throughout 2021, Mr. Fukumoto met with, called, and emailed HGEA to discuss his Grievances.

On or about February 2, 2022, HGEA sent Mr. Fukumoto an email stating that PSD made an oral settlement offer that would, among other things, reduce the discipline challenged in the 2020 Grievance and require the withdrawal of the 2019 Grievance. Mr. Fukumoto rejected the offer and told HGEA that he did not want to consolidate his Grievances.

On or about February 16, 2022, HGEA emailed Mr. Fukumoto another offer from PSD that would, among other things, further reduce the discipline challenged in the 2020 Grievance and require the withdrawal of the 2019 Grievance.

Mr. Fukumoto rejected this offer.

On or about March 7, 2022, HGEA emailed Mr. Fukumoto another offer from PSD that would, among other things, further reduce the discipline challenged in the 2020 Grievance and require the withdrawal of the 2019 Grievance. HGEA believed the offer was reasonable, recommended that the offer be accepted, and informed Mr. Fukumoto that they had until March 11, 2022 to respond to the offer.

Mr. Fukumoto stated that he would not accept any offer to settle the 2020 Grievance that involved withdrawing the 2019 Grievance and rejected the offer.

HGEA reviewed the relevant files and determined that the settlement was reasonable, given the severity of the issues, and the fact that Mr. Fukumoto was addressing the harassment issues through a different forum in his civil case.

Based on HGEA's analysis of the case, it determined that a written reprimand was a reasonable resolution for the suspension grievance, and that the harassment grievance issues did not involve violations of the CBA. Therefore, HGEA notified Mr. Fukumoto that it would not be taking the harassment grievance to arbitration.

HGEA and PSD executed the settlement agreement reducing the suspension to a written reprimand and withdrawing the harassment grievance. Mr. Fukumoto did not sign the settlement agreement.

3. Discussion and Conclusions of Law

3.1. Standards for Directed Verdict

The Board can hear motions such as a motion for directed verdict as long as the party opposing the motion has a full and fair opportunity to be heard on the motion after reasonable notice and the Board's rules are not otherwise violated. Guzman v. Honolulu Police Dep't, Board Case Nos. 19-CE-03-925, 19-CU-03-371, Decision No. 512 at *3 (July 8, 2022) (<https://labor.hawaii.gov/hlrp/files/2022/07/Decision-No.-512.pdf>) (Guzman).

Motions for directed verdicts are made after the non-moving party—in this case, Mr. Fukumoto—has been fully heard on the issue. *See* Kamaka v. Goodsill Anderson Quinn & Stifel, 117 Hawai'i 92, 102 n.14, 176 P.3d 91, 101 n.14 (2008).

Under HRS § 91-10(5) and HAR § 12-42-8(g)(16), the complainant—Mr. Fukumoto—has the burden or obligation to prove that his allegations are more likely than not (also known as by a preponderance of the evidence). He is required to produce enough evidence and to support that evidence with arguments in applying the relevant legal principles. Mamuad v. Nakanelua, Board Case No. CU-10-331, Order No. 3337F, *25 (May 7, 2018) (Mamuad) (<https://labor.hawaii.gov/hlrp/files/2019/01/HLRB-Order-3337F.pdf>).

Mr. Fukumoto's claims comprise a "hybrid case," as defined by the HSC in Poe v. Haw. Lab. Rels. Bd., 105 Hawai'i 96, 102, 94 P.3d 656, 657 (2004) (Poe II). The claim that the Employer violated the terms of the CBA and the claim that HGEA breached its duty of fair representation are "inextricably independent." *Id.* This means that Mr. Fukumoto must prove both parts to succeed in a hybrid case. *Id.*, *see also* Guzman, Decision No. 512, at *7. Failure to prove one part means that Mr. Fukumoto has no standing to pursue the other. *Id.*

3.2. HGEA Did Not Breach Its Duty of Fair Representation Owed to Mr. Fukumoto

The Board can find a breach of the duty of fair representation only if HGEA's conduct towards Mr. Fukumoto was arbitrary, discriminatory, or in bad faith. Poe II, 105 Hawai'i at 104, 94 P.3d at 659. To determine which of these three elements apply, the Board has adopted a two-step analysis, first looking at whether the alleged union misconduct involved the union's judgment or whether it was 'procedural or ministerial.' Mamuad, Order No. 3337F, at *31.

Mr. Fukumoto argues that HGEA acted in bad faith when it accepted the settlement agreement without Mr. Fukumoto's consent. Accordingly, the Board must consider the union's judgment in its actions.

Decisions about how to pursue a particular grievance, including whether to arbitrate a grievance, are matters of judgment for the union, and unions are not liable for good faith, non-discriminatory errors of judgment in making those decisions. Tupola v. Univ. of Hawai'i Prof'l Assembly, Board Case No. CU-07-330, Order No. 3054, at *28 (February 15, 2015) (Tupola) (<https://labor.hawaii.gov/hlrp/files/2019/01/HLRB-Order-3054.pdf>); see also Mamuad, Order No. 3337F, at *31.

HGEA must retain discretion to act in what it believes to be their members' best interest. Therefore, especially when it comes to questions of judgment, the duty of fair representation is narrowly construed, and the Board must be deferential in substantively examining HGEA's performance. Caspillo, Decision No. 509, at *14. The Board is not considering whether HGEA made the right decision; rather, the Board is only asking whether HGEA made its decision rationally and in good faith. Emura, Order No. 3028, at *15-16.

The bad faith element requires the Board to subjectively determine if HGEA acted (or failed to act) due to an improper motive. Tupola, Order No. 3054, at *34. Mr. Fukumoto must corroborate any assertions of the requisite state of mind with subsidiary facts and must show substantial evidence of fraud, deceit, or dishonest conduct. *Id.* If Mr. Fukumoto fails to present subjective evidence of an improper motive and merely suggests that an improper motive is the only "reasonable explanation" for the conduct, he fails to prove his case. Emura, Order No. 3028, at *15.

Mr. Fukumoto's arguments deal primarily with disagreements with HGEA on the handling of the Grievances and his difficulty communicating with HGEA regarding the grievances.

The Board acknowledges that it is uncommon for grievances to be settled without the consent of the employee. However, such settlement does not, in and of itself, mean that HGEA acted in bad faith.

To prove that HGEA acted in bad faith, Mr. Fukumoto needed to provide evidence of fraud, deceit, or dishonest conduct. He did not do so.

In this case, HGEA filed the Grievances on Mr. Fukumoto's behalf. HGEA went through the required grievance procedures and attempted to reach a resolution that would be most beneficial to Mr. Fukumoto, in its judgment.

While it may have been preferable for HGEA to communicate more clearly with Mr. Fukumoto, Mr. Fukumoto does not allege any clear improper motive for HGEA's actions (or inactions).

Without evidence of fraud, deceit, or dishonest conduct, and without facts showing the requisite state of mind, the Board cannot find that HGEA acted in bad faith.

Accordingly, the Board cannot find that HGEA breached the duty of fair representation owed to Mr. Fukumoto.

3.3. Mr. Fukumoto Does Not Have Standing to Pursue His Case Against PSD

As discussed above, Mr. Fukumoto's claims comprise a "hybrid case." Poe II, 105 Hawai'i at 102, 94 P.3d at 657. Accordingly, because Mr. Fukumoto is required to prove both parts of the hybrid case, the fact that the Board cannot find that HGEA breached the duty of fair representation means that Mr. Fukumoto does not have standing to pursue the case against PSD. *Id.*, see also Guzman, Decision No. 512, at *7.

Therefore, the Board must dismiss the claims against PSD.

4. Order

Based on the above, the Board grants the HGEA Motion and the PSD Motion, in part, by finding that Mr. Fukumoto did not prove that HGEA breached its duty of fair representation and that, accordingly, Mr. Fukumoto does not have standing to proceed against PSD. This case is closed.

DATED: Honolulu, Hawai'i, February 6, 2024.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

Copies sent to:

Ralph Fukumoto, Self-Represented Litigant
Keani Alapa, Esq.

RALPH R. FUKUMOTO v. DEPARTMENT OF PUBLIC SAFETY, State of Hawai'i; and
HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO
CASE NO. 22-CU-14-389 22-CE-14-966
DECISION NO. 512
FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

¹ In this capacity, Mr. Fukumoto 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)].

² In this capacity, PSD is a public employer within the definition of HRS § 89-2, which defines employer or public employer as:

“Employer” or “public employer” means...the respective mayors in the case of the counties...and any individual who represents one of these employers or acts in their interest in dealing with public employees...

³ HRS § 89-6(a)(14) defines BU 14 as, “State law enforcement officers.”

⁴ 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.

⁵ HRS § 89-6(d)(1) defines the employer group for BU 14 as:

(1) For bargaining units...(14)...the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the bargaining unit[.]