

HAWAII CIVIL RIGHTS COMMISSION
STATE OF HAWAII

In the Matter of

HOTEL "A"

Petitioner.

) DR No. 99-14

) ORDER REFUSING CONSIDERATION OF
) THE PETITION

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HAWAII CIVIL RIGHTS COMMISSION

ORDER REFUSING CONSIDERATION OF THE PETITION

Petitioner, HOTEL "A", filed a Petition for Declaratory Ruling on July 26, 1999. Petitioner sought a declaration that its policy, which required employees to speak only English during work hours, does not violate H.A.R. § 12-46-174(a)¹ because it is justified by a business necessity under H.A.R. § 12-46-174(b).² Petitioner contended that the purpose of the rule is to avoid any miscommunication or bad feelings among employees or guests. The Petition did not identify the Petitioner or any possible respondents. According to Petitioner, there is no present complaint under investigation or dispute regarding the rule.

Under H.A.R. § 12-46-63(a), the Commission may refuse consideration of a petition, inter alia, if it fails to

¹H.A.R. § 12-46-174(a) provides: "Any rule requiring employees to speak only English or other specific language at all times in the work place, including work breaks, shall be considered a violation of chapter 378, HRS."

²H.A.R. § 12-46-174(b) provides: "An employer may have a rule requiring that employees speak only English at certain times where the employer can show that the rule is justified by business necessity."

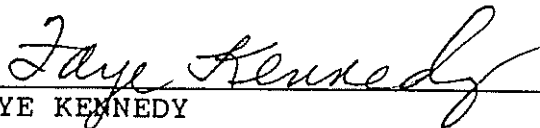
substantially conform with section 12-46-61; the petition is based upon hypothetical or speculative facts; or there is any other reason justifying denial of the petition.

Under H.A.R. § 12-46-61, a petition must include the names of any potential respondents. If the hotel's workers, subject to the rule, are unionized, the union would be interested in the application of the rule to its members and may be a potential respondent. In addition, because there is no pending complaint under investigation, there does not appear to be any reason to protect the identity of HOTEL "A".

The petition also appears to be based upon hypothetical facts because: 1) there is no pending complaint, and 2) the parameters of the English only rule and the reasons for its implementation are not fully set forth in the Petition. Finally, the Commission believes that there are other reasons justifying refusal to consider the petition under H.A.R. § 12-46-63(a)(6) based upon the proper allocation of the Commission's investigatory and legal resources given the number of pending complaints under investigation and contested cases docketed for hearing.

IT IS HEREBY ORDERED that the Commission refuses to consider the Petition and hereby dismisses the Petition without prejudice.

DATED: Honolulu, Hawaii, August 10, 1999



FAYE KENNEDY
COMMISSIONER
For HARRY YEE, CHAIRPERSON