

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of) STATE OF HAWAII ORGANIZATION) OF POLICE OFFICERS (SHOPO)) and FRANCIS C. DeMORALES,) et al.,)	Case No. <u>CE-12-63</u>
Complainants,) and) FRANK F. FASI, Mayor of the) City and County of Honolulu,) et al.,) Respondents.)	Order No. <u>403</u>

ORDER DENYING APPLICATION
FOR REQUESTS FOR ADMISSION

On March 10, 1981, the Complainants State of Hawaii Organization of Police Officers (SHOPO) and Francis C. DeMorales, et al. (hereafter Complainants), by and through their attorney, filed in the above-entitled case applications for requests for admissions from each of the Respondent Mayors of the Counties of Honolulu, Hawaii, Kauai, and Maui, respectively, (hereafter Counties or Respondents) pursuant to Section 12-42-8(g)(6), HPERB Rules and Regulations and for an order shortening time for response. In his affidavit in support of said applications, the attorney for the Complainants stated as grounds for the application that the requests would help to narrow the issues in dispute, conserve judicial resources and expedite the hearing. On March 12, 1981, the Complainants also filed memoranda in support of said applications.

On March 17, 1981, the County of Maui submitted objections to the foregoing applications. In the memorandum in support of its objections, the County of Maui argued that the

applications should be denied because: 1) HPERB rules and regulations do not provide for such admissions; 2) the allowance of such admissions in the absence of applicable rules would violate Chapter 91, HRS; and 3) the allowance of such admissions would transfer costs and burdens to the Respondent.

On April 2, 1981, a hearing was held on the applications and on the objections. At said hearing, the Complainants further argued in support of the applications that the admissions would help to minimize the element of surprise in the proceedings and save the cost and time of presenting certain witnesses at the hearing. The Complainants also argued that Section 12-42-8(g)(6), HPERB Rules and Regulations, should be read broadly to include requests for admissions. Moreover, the Complainants stated that said admissions were necessary to expedite the proceedings because of the Respondents' refusal to stipulate as to certain facts.

Respondents contended in response to the foregoing arguments that there is no element of surprise in these proceedings because depositions have already been taken in this case, that the HPERB rules and regulations do not provide for admissions and that the use of admissions will preclude the Respondents from the opportunity for cross-examination. Respondents also stated that they have never been approached by Complainants with respect to stipulations of fact and accordingly, have never taken the position that they are unwilling to stipulate.

At the close of oral arguments on the motion, the Board orally denied the above-stated motion for requests for admissions and to shorten time. The Board further stated, however, that it would reduce said order denying the motions to writing and set forth the reasons underlying the order.

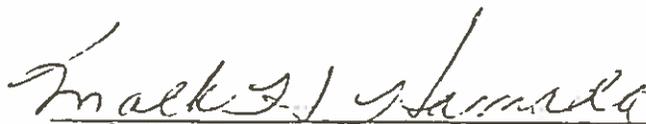
Pursuant to this statement, the Board has fully considered all of the arguments presented by the parties, both

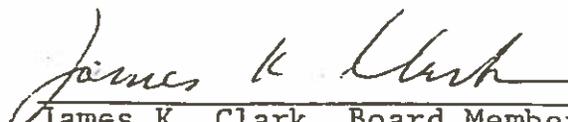
written and oral, and denies the motions for the following reasons. First, the Board agrees with the position of the Respondents that the Complainants have had more than adequate opportunity to secure information with respect to relevant evidence in the instant prohibited practice case through the depositions which have already been permitted in the case. Consequently, the Board is unable to find that the Complainants would be unduly surprised by the evidence, defenses or issues arising at a hearing on the merits if their request for admissions is denied.

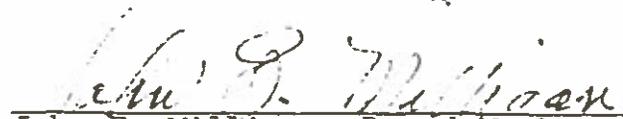
Secondly, the Board is of the opinion that if the Complainants are seeking to conserve judicial resources that a stipulation of facts rather than admissions would be a more appropriate device. Such a stipulation would encourage the objective of judicial economy in these proceedings but would not preclude the Respondents from designating what facts are in dispute and from cross-examining certain witnesses.

As stated above, the Complainants' applications for requests for admissions are hereby denied.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: April 24, 1981

Honolulu, Hawaii