

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO,

Complainant,

and

MARIE LADERTA, Chief Negotiator, State of
Hawaii,

Respondent.

CASE NO. CE-10-718

ORDER NO. 2741

ORDER GRANTING COMPLAINANT'S
SECOND MOTION TO AMEND
COMPLAINT FILED ON AUGUST 3,
2010

ORDER GRANTING COMPLAINANT'S SECOND
MOTION TO AMEND COMPLAINT FILED ON AUGUST 3, 2010

On August 3, 2010, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Complainant) filed a Motion to Amend Complaint (Second Motion to Amend Complaint) with the Hawaii Labor Relations Board (Board) requesting leave to amend its complaint to clarify and supplement its claims based upon occurrences since the initial complaint was filed. The UPW seeks to challenge, *inter alia*, the untimely designations of employer panelists by Respondent as a refusal to participate in good faith in the arbitration procedures set forth in Hawaii Revised Statutes (HRS) § 89-11, thereby constituting prohibited practices in violation of HRS §§ 89-13(a)(1) and (6), as well as its prior claim of violations of HRS §§ 89-13(a)(7) and (8).

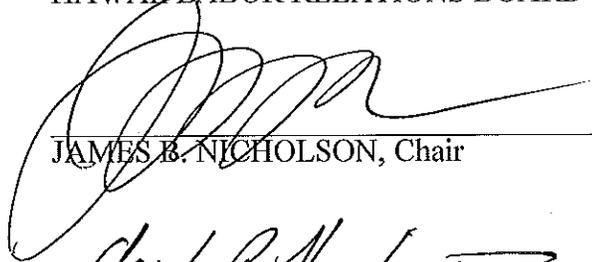
On August 9, 2010, Respondent filed a Memorandum in Opposition to UPW's Motion to Amend Complaint Filed August 3, 2010 with the Board. Respondent contends that UPW's motion causes undue prejudice to Respondent because it adds new allegations and supplemental claims unrelated to the allegations of the original Complaint and is therefore a new Complaint unrelated to the claims made in the original Complaint; and UPW's motion is futile because it cannot survive a motion to dismiss and/or for summary judgment. Respondent argues that the proposed amendment questions the Respondent's subsequent designation of Stanley Shiraki (Shiraki) by the Employer group to replace Georgina Kawamura (Kawamura) as the Employer panelist on the interest arbitration panel; and the untimely selections of both Kawamura and Shiraki. Respondent contends that the proposed issues regarding the selection of the employer panelist on the arbitration panel are moot because the interest arbitration proceeded to hearing; an arbitration decision was rendered on January 14, 2010; the arbitration award was confirmed by the court in S.P. No. 09-1-0305 with no challenge to the employer panelist and a judgment was filed on May 18, 2010.

On September 3, 2010, the Board heard arguments on Complainant's Second Motion to Amend Complaint. After review of the record, and consideration of Complainant's motion and Respondent's arguments, the Board in its discretion hereby grants the UPW's Second Motion to Amend its Complaint pursuant to Hawaii Administrative Rules (HAR) § 12-42-43.¹ The Board finds that the proposed supplemental allegations are related to the employer's designations of its interest arbitration panelist and puts Respondent on notice that the UPW seeks expanded remedies in this matter consistent with HRS § 89-13(a)(1) and HRS 377-9(d).

Accordingly, Complainant shall immediately file its Second Amended Prohibited Practice Complaint with the Board, in the format as attached to its Motion to Amend Complaint filed on August 3, 2010.² The Board will thereupon issue a Notice to Respondents of the Second Amended Prohibited Practice Complaint.

DATED: Honolulu, Hawaii, September 29, 2010.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

Copies sent to:

Claire S. Chinn, Deputy Attorney General
Herbert R. Takahashi, Esq.

¹Hawaii Administrative Rules (HAR) § 12-42-43 provides as follows:

Any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order thereon.

²As stated *supra*, the Board in granting Complainant's Second Amended Prohibited Practice Complaint recognizes the substance of HAR § 12-42-43; however, the Board decides each request to amend based on the particular facts and circumstances of each case.