

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)) BERT J.K. SAM FONG,)) Complainant,)) and)) GEORGE IRANON, Director,) Department of Public Safety,) State of Hawaii and UNITED) PUBLIC WORKERS, AFSCME,) LOCAL 646, AFL-CIO,)) Respondents.) _____)	CASE NOS.: CE-10-303 CU-10-123 ORDER NO. 1477 ORDER GRANTING RESPONDENT UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO'S MOTION TO DISMISS AND NOTICE OF PREHEARING CONFERENCE
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ORDER GRANTING RESPONDENT UNITED
PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO'S
MOTION TO DISMISS AND NOTICE OF PREHEARING CONFERENCE

On April 17, 1997, the Hawaii Labor Relations Board (Board) issued Order No. 1446 which granted, in part, and denied, in part, Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO's (UPW or Union) motion to dismiss and/or for summary judgment. In that order, the Board noted that during the hearing held on the motions by conference call on July 9, 1996, Complainant's counsel indicated that he would review the complaint and consider whether amendments should be filed with the Board but no motions to amend had been filed with the Board. The Board nevertheless permitted the Complainant to amend his complaint to cite the appropriate statutory sections. The Board directed Complainant to file an Amended Complaint against the Union within ten days from the receipt of the order. The Board indicated that if Complainant failed to file the Amended Complaint, the Board

would dismiss the instant complaint as against the Union. The Board also scheduled a further hearing in this matter to resolve several factual disputes in order to rule on the statute of limitations issues raised by the Union.

Thereafter, Complainant, by and through his attorney, faxed a copy of an Amended Complaint to the Board on April 28, 1997. On April 30, 1997, Complainant, by and through his attorney, filed the Amended Complaint and a motion to continue the hearing scheduled on May 14, 1997 with the Board. Complainant requested a continuance of the scheduled hearing because he would be out-of-state on that date.

Also on April 30, 1997, Respondent UPW filed a Motion to Dismiss the Complaint with the Board contending that the instant complaint should be dismissed because there was no Amended Complaint filed on a timely basis pursuant to the Board's Order. Respondent's counsel states in an affidavit filed in support of the motion that in accordance with the Order, Complainant was to file an Amended Complaint no later than ten days after receipt of the order. Respondent contends that Complainant should have filed the Amended Complaint with the Board on April 28, 1997.

On May 6, 1997, the UPW filed a Motion for Particularization with the Board. The UPW's counsel states in an affidavit that on May 5, 1997, he received a copy of Complainant's Amended Complaint, Affidavit of Bert J.K. Sam Fong, and Complainant's Motion to Continue Hearing which were filed with the Board on April 30, 1997. However, in reviewing Complainant's Amended Complaint, counsel states that the allegations do not

specify when the alleged violations occurred. Thus, the UPW requested clarification of the Amended Complaint.

On May 9, 1997, Respondent GEORGE IRANON, Director, Department of Public Safety, State of Hawaii, by and through his attorneys, filed a Statement of No Opposition to Complainant's Motion to Continue Hearing.

On May 12, 1997, Respondent UPW filed a Supplementation Memorandum in Support of its Motion to Dismiss with the Board. Counsel for UPW states in an affidavit attached to the memorandum that he received an Amended Complaint from Complainant with a file stamp of April 30, 1997. UPW's counsel states that the file stamp differs from the file stamp of the Amended Complaint transmitted by the Board on May 6, 1997. The UPW contends that the Board apparently permitted Complainant's counsel to file a document by fax contrary to Administrative Rules § 12-42-8, which requires all papers to be filed with the Board by mail or hand-carried to the Board's office within the time limit. The UPW contends that there is no provision in the rule for filing documents by fax. Thus, under the clear and unambiguous provision of the applicable Board rule, the Amended Complaint must be deemed to have been filed on April 30, 1997. As such, Respondent UPW contends that the Amended Complaint was not timely filed and the Complaint should be dismissed.

On May 14, 1997, Respondent IRANON filed an Answer to the Amended Prohibited Practice Complaint with the Board. Subsequently, on May 19, 1997, Respondent UPW filed an Answer to

the Amended Complaint with the Board without prejudice to its Motion for Particularization previously filed with the Board.

Administrative Rules § 12-42-8(g)(3)(C) provides with respect to motions other than those made during a hearing that answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the Board within five days after service of the motion papers, unless the Board directs otherwise. In accordance with the foregoing rule, Complainant had five working days to respond to Respondent UPW's motions. In this case, Complainant failed to respond to Respondent UPW's Motion to Dismiss, Respondent UPW's supplementation memorandum filed in support of its motion to dismiss, and UPW's Motion for Particularization. Thus, having received no opposition to the UPW's motion to dismiss, the Board is constrained to grant the motion and dismiss the complaint as to the Union.

With respect to the Complainant's case against Respondent IRANON, the Board shall conduct a prehearing conference by conference call on July 17, 1997 at 9:00 a.m. Counsel for Respondent IRANON is requested to appear at the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii at the designated time. Counsel for Complainant will be contacted at his telephone number on file with the Board.

DATED: Honolulu, Hawaii, June 12, 1997 .

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson

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RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

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