

by specifying the statutory and contractual sections which were alleged to have been violated. On July 7, 1998, Complainant filed a particularization with the Board setting forth the alleged statutory violations, an answering affidavit in response to Respondent's motion to dismiss and/or for summary judgment, an ex-parte motion to enlarge time to submit answering affidavits in light of the particularized Complaint filed, and a Motion for Leave to file a First Amended Complaint in this matter.

Complainant contends in her memorandum attached to the Motion for Leave to file a First Amended Complaint that the amended complaint responds to Respondent's motion for particularization and resolves the concerns of the Respondent. According to the First Amended Complaint attached as an exhibit to the motion, Complainant contends that Respondents violated only §§ 89-13(b)(2) and (4), HRS.

On July 8, 1998, Respondent, by and through his counsel, filed a Memorandum in Opposition to Complainant's Motion for Leave to File a First Amended Complaint. Respondent contends that contrary to Complainant's contentions, the First Amended Complaint does not address Respondent's concerns. Further, Respondent contends that the First Amended Complaint adds two new paragraphs which reference the violation of the negotiation ground rules and since negotiations were over before March 10, 1998, those new allegations in the complaint are time-barred. Thus, Respondent contends that Complainant failed to establish good cause to amend her complaint.

After reviewing Complainant's motion to amend her complaint and considering Respondent's arguments in opposition

thereto, the Board finds that the First Amended Complaint adds an allegation of the violation of negotiation ground rules¹ but reduces the number of prohibited practice violations to two subsections of § 89-13, HRS, i.e., §§ 89-13(b)(2) and (4), HRS. Thus, the Board views Complainant's withdrawal of the other prohibited practice charges as the direct result of Respondent's motion for particularization. Moreover, if Respondent contends that any additional allegation is time-barred, he may file a supplemental memorandum in support of his Motion to Dismiss Complaint and/or for Summary Judgment filed on June 26, 1998. As Complainant seeks the amendment of her complaint at this early stage of the proceeding, the Board hereby grants Complainant's Motion for Leave to File First Amended Complaint for good cause shown.

As indicated above, on June 26, 1998, Respondent filed a Motion to Dismiss and/or for Summary Judgment with the Board. Respondent contends, inter alia, that the complaint should be dismissed and/or that summary judgment should be entered in Respondent's favor because LINGLE lacks standing, the complaint fails to state a claim for relief, and the complaint is moot or barred by the doctrines of res judicata and collateral estoppel. On July 7, 1998, Complainant filed an answering affidavit in opposition to Respondent's motion.

At the same time, Complainant filed an Ex-parte Motion to Enlarge Time to Submit Answering Affidavits with the Board.

¹The Board notes that the negotiation ground rule violation allegation arises from the same publication of the letter which is the gravamen of this complaint.

Complainant requested an additional ten days to provide answering affidavits in light of the particularized Complaint and a further Board order requiring Respondent to either maintain his current Motion to Dismiss and/or for Summary Judgment or withdraw the motion and provide an opportunity to file an amended motion. Complainant contends that Respondent's motion to dismiss was untimely and additional time is needed to respond because the complaint essentially changed as a result of Respondent's Motion for Particularization which rendered the arguments in Respondent's Motion to Dismiss and/or for Summary Judgment inaccurate and irrelevant.

On July 8, 1998, Respondent filed a memorandum in opposition to Complainant's Ex-parte Motion to Enlarge Time to Submit Answering Affidavits. Respondent contends that his arguments raised in his Motion to Dismiss for lack of standing, failure to state a claim, and for mootness are not affected by Complainant's Particularization and therefore do not justify granting Complainant additional time to file answering affidavits. Respondent further submits that the time to file appropriate papers has passed and the Board should not permit the Complainant additional time to file a further response.

Complainant contends in her motion that she was confused by the timing of Respondent's motions and believed that the particularization affected the nature of the responsive affidavits. After reviewing Complainant's motion and the grounds therefor, the Board cannot find that the particularization of the complaint ordered by the Board changed the nature of the initial complaint. Respondent merely sought the specification of Complainant's

statutory and contractual violations allegations. Respondent affirms that his arguments are still applicable to the particularized Complaint and the First Amended Complaint and additional time to respond should not be granted by the Board. However, since the Board has granted Complainant's motion to file a First Amended Complaint, supra, in the interests of justice, the Board will permit Complainant to respond to Respondent's arguments and hereby grants Complainant's motion to enlarge time, in part. First, the Board will permit Respondent to file a supplemental memorandum in support of his Motion to Dismiss and/or for Summary Judgment with the Board by the close of business on August 6, 1998. Complainant may file any response to Respondent's arguments within five days of service of any memorandum.

YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing on Respondent's Motion to Dismiss and/or for Summary Judgment filed on June 26, 1998 on August 17, 1998 at 9:00 a.m. by conference call. Complainant's counsel will be contacted at his telephone number on file with the Board. Respondent's counsel is requested to appear at the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii at the designated time.

Auxiliary aids and services are available upon request, call Mrs. Kato at 586-8610, (808) 586-8847 (TTY), or 1-888-569-6859 (TTY neighbor islands). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

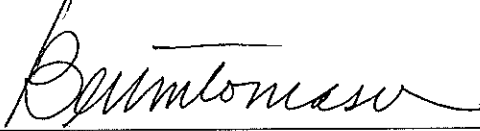
LINDA LINGLE, Mayor, County of Maui and GARY RODRIGUES, State
Director, United Public Workers, AFSCME, Local 646, AFL-CIO;
CASE NO. CU-01-145

ORDER NO. 1654

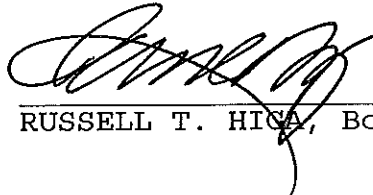
ORDER GRANTING COMPLAINANT'S MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT AND GRANTING COMPLAINANT'S MOTION FOR LEAVE
TO FILE ANSWERING AFFIDAVITS, IN PART

DATED: Honolulu, Hawaii, July 30, 1998.

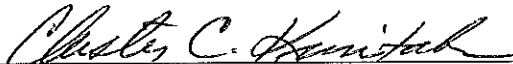
HAWAII LABOR RELATIONS BOARD



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RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

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