STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of KEITH J. KOHL, Complainant, and JAMES TAKUSHI, Director, Department of Human Resources Development, State of Hawaii and RUSSELL OKATA, Executive Director, Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO, Respondents.	CASE NOS.: CE-13-385 CU-13-140 ORDER NO. 2028 ORDER GRANTING COMPLAINANT'S REQUEST TO CONTINUE HEARING, IN PART; DEADLINE FOR FILING OF MOTIONS AND APPLICATIONS FOR SUBPOENAS; AND NOTICE OF RESCHEDULED HEARING

ORDER GRANTING COMPLAINANT'S REQUEST TO CONTINUE HEARING, IN PART; DEADLINE FOR FILING OF MOTIONS AND APPLICATIONS FOR SUBPOENAS; AND NOTICE OF RESCHEDULED HEARING

On August 20, 2001, Complainant KEITH J. KOHL (KOHL) filed a request to continue hearing scheduled on August 21, 2001 with the Hawaii Labor Relations Board (Board). KOHL indicated that he continued to make efforts to retain adequate counsel but has not retained counsel and requests an additional 60-day continuance of the hearing. KOHL also represented that he was willing to go forward himself at any time necessary and contends to be the only party prejudiced by a continuance in this matter.

On August 21, 2001, at the hearing scheduled in this matter, the Board heard the parties' positions on KOHL's request for continuance. Counsel for Respondent JAMES TAKUSHI, Director, Department of Human Resources Development, State of Hawaii objected to any further continuance of the hearing as an abuse of the system because KOHL has been given ample time to retain counsel. Counsel for Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (Union) indicated that while the Union has been prejudiced by the continuances in this matter because of costs incurred in preparing for hearing, it did not appear that KOHL was prepared to proceed to hearing given that he had not properly subpoenaed witnesses for the hearing. KOHL indicated that he had interviewed approximately 15 attorneys since the last conference held on May 18, 2001 and was prepared to go forward to prevent the dismissal of his complaint.

In considering KOHL's request for the continuance, the Board notes that at the status conference held on May 18, 2001 the Board allowed Complainant 90 days to retain counsel and was assured by Complainant that he would represent himself at the hearing scheduled if he was unable to retain counsel. Thereupon, one day before the scheduled hearing on August 20, 2001, KOHL filed the instant request for continuance. While the Board recognizes KOHL's right to counsel, we are sensitive to the prejudice, inconvenience, and costs imposed upon opposing counsel in their efforts to prepare for hearing as well as the passage of time on the memories of potential witnesses. To balance these interests and in order to develop a sound record in this case, the Board hereby grants a 28-day continuance of the hearing in this matter. There will be no further continuances granted in this matter. In addition, any motions or applications for subpoenas shall be filed with the Board in accordance with the Board's procedural rules[1] by September 4, 2001.

NOTICE IS HEREBY GIVEN that the Board will conduct a hearing in this matter on September 18, 2001 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The parties shall submit to the Board four copies of all exhibits identified and offered into the record. Additional copies for opposing counsel shall also be provided.

DATED: Honolulu, Hawaii, August 21, 2001.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

CHESTER C. KUNITAKE, Member

[1]In Lepere v. United Public Workers, 77 Hawai'i 471, 887 P.2d 1029 (1995), the Court held that courts should take into account a litigant's pro se status before imposing sanctions under Hawaii Rules of Civil Procedure Rule 11 for pleading in bad faith, but recognized:

> [t]he right of self-representation is not a license to abuse the dignity of the courtoom. *Faretta v. California*, 422 U.S. 806, 835 n. 46, 95 S.Ct. 2525, 2541 n. 46, 45 L.Ed.2d 562 (1975). Neither is it a license not to comply with the relevant rules of procedural and substantive law.

Id. at p. 473, fn 2. The Court in Lepere found that the pro se litigant violated Rule 11 by pursuing a prohibited practice claim against the union in civil court which was clearly precluded by statute and failing to include transcripts on appeal as required by Hawaii Rules of Appellate Procedure Rule 10.

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KATHLEEN RACUYA-MARKRICH, Member

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