

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-01-611
UNITED PUBLIC WORKERS, AFSCME,	)	ORDER NO. 2361
LOCAL 646, AFL-CIO,	)	
	)	ORDER DENYING COMPLAINANT'S
Complainant,	)	MOTION FOR RECONSIDERATION OF
	)	THE ORDER GRANTING, IN PART,
and	)	RESPONDENTS' MOTION FOR
	)	PARTICULARIZATION OF COMPLAINT
DEPARTMENT OF ENVIRONMENTAL	)	FILED FEBRUARY 3, 2006
SERVICES, City and County of Honolulu;	)	
RAY MUMFORD, and WAYNE HAMADA,	)	
Department of Environmental Services,	)	
City and County of Honolulu,	)	
	)	
Respondents.	)	

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ORDER DENYING COMPLAINANT'S MOTION FOR RECONSIDERATION  
OF THE ORDER GRANTING, IN PART, RESPONDENTS MOTION  
FOR PARTICULARIZATION OF COMPLAINT FILED FEBRUARY 3, 2006

On February 3, 2006, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Motion for Reconsideration of Order Granting In Part Respondents' Motion for Particularization of Complaint with the Hawaii Labor Relations Board (Board). The UPW contends, *inter alia*, that the Board's Order No. 2359, dated February 1, 2006, must be reversed because the Board's rule exceeds its enabling statute and Respondents lack a right under HRS Chapter 89 to a particularization of the complaint. Alternatively, the UPW argues that the allegations in its complaint identifying the relevant facts and parties are sufficiently clear.

Thereafter, on February 8, 2006, Respondents, by their counsel, filed a Memorandum in Opposition to Complainant's Motion for Reconsideration of Order Granting In Part Respondents' Motion for Particularization of Complaint Filed February 3, 2006 with the Board. Respondents contend that they have a right to file a motion for particularization in this case under the Board's rules which were promulgated pursuant to its express statutory authority set forth in Hawaii Revised Statutes (HRS) § 89-5. Moreover, Respondents submit that if Complainant seeks to challenge the validity of the Board's rules, Complainant must proceed pursuant to HRS §§ 91-6 through 91-8. Respondents further contend that without a particularization by Complainant, the Complaint does not sufficiently identify the relevant facts and parties at issue.

The UPW alleged in its complaint that the Respondent CITY & COUNTY OF HONOLULU DEPARTMENT OF ENVIRONMENTAL SERVICES is an agent of the Mayor of the City & County of Honolulu; that the agent (the Department) became aware of Mr. Delapena's exercise of his rights under Hawaii Revised Statutes (HRS) § 89-3 on or about October 28, 2005 when Complainant filed a grievance against the employer on Mr. Delapena's behalf. Thereafter, the "aforesaid agents" retaliated against him and other employees "similarly situated" (referring to an apparent class of employees who have similarly filed grievances against the Department) by denying them temporary assignments to Equipment Operator positions.

Because of the ambiguities on the face of the complaint as to who the "agents" and potential additional respondents are, the approximate dates of the denials to establish the relevant time frames, and who the members of the similarly situated class of employees who filed grievances against the Department and were retaliated against by the denials of temporary assignments to Equipment Operators, if known, the Board granted Respondents' motion, in part in Order No. 2359. After reviewing the instant motion, the memorandum in response and the record in this case, the Board agrees with the arguments set forth by Respondents and hereby denies Complainant's motion for reconsideration.

The Board directs Complainant to file the original and five copies of the requested Particularization, with proof of service upon Respondents' counsel, no later than 4:30 p.m. of the fifth working day after service of this Order. If Complainant fails to file and serve the requested Particularization in a timely manner, the Board shall dismiss the subject Prohibited Practice Complaint.

Respondents are directed to file with this Board the original and five copies of its Answer addressing the Complaint and Particularization, with proof of service upon Complainant no later than 4:30 p.m. of the fifth working day after service of Complainant's Particularization. Failure by the Respondents to file its Answer in a timely manner may constitute an admission of the material facts alleged in the Complaint and Particularization and a waiver of a hearing.

DATED: Honolulu, Hawaii, February 10, 2006.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair


  
EMORY J. SPRINGER, Member

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. DEPARTMENT OF ENVIRONMENTAL SERVICES, City and County of Honolulu, et al.

CASE NO. CE-01-611

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ORDER DENYING COMPLAINANT'S MOTION FOR RECONSIDERATION OF THE ORDER GRANTING, IN PART, RESPONDENTS' MOTION FOR PARTICULARIZATION OF COMPLAINT FILED FEBRUARY 3, 2006

  
KATHLEEN RACUYA-MARKRICH, Member

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