

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

RICHARD CONDON,

Complainant,

and

PAULA OTA, Union Agent, United Public Workers, AFSCME, Local 646, AFL-CIO; LAURIE SANTIAGO, Oahu Division Director, United Public Workers, AFSCME, Local 646, AFL-CIO; DAYTON NAKANELUA, State Director, United Public Workers, AFSCME, Local 646, AFL-CIO; and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,

Respondents.

CASE NO. CU-10-263

ORDER NO. 2511

ORDER GRANTING COMPLAINANT'S MOTION TO AMEND PROHIBITED PRACTICE COMPLAINT AND DENYING RESPONDENTS' MOTION TO DISMISS COMPLAINT

ORDER GRANTING COMPLAINANT'S MOTION
TO AMEND PROHIBITED PRACTICE COMPLAINT AND
DENYING RESPONDENTS' MOTION TO DISMISS COMPLAINT

On April 23, 2008, Complainant RICHARD CONDON (CONDON), pro se, filed a Prohibited Practice Complaint against PAULA OTA (OTA), LAURIE SANTIAGO (SANTIAGO), and DAYTON NAKANELUA (NAKANELUA) with the Hawaii Labor Relations Board (Board) alleging, inter alia, that Respondents failed to provide him fair representation by refusing to pursue his grievance to arbitration.¹ On May 2, 2008, OTA, SANTIAGO, and NAKANELUA, by and through their counsel, filed a Motion to Dismiss Complaint with the Board for failure to state a claim for relief contending that the union, rather than individual union officers, owe a duty of fair representation to members and thus the individual union officers are not proper Respondents in a duty of fair representation complaint and the complaint should be dismissed. Also on May 2, 2008, Respondents OTA, SANTIAGO, and NAKANELUA, by and through their counsel, filed an Answer to the complaint.

The Board conducted a hearing on the motion to dismiss complaint on May 20, 2008. CONDON appeared, pro se, and Herbert R. Takahashi, Esq. represented

¹The Board included the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) in the caption of the case and served the Notice to Respondents of Prohibited Practice Complaint on the UPW.

OTA, SANTIAGO and NAKANELUA. At the hearing, CONDON agreed with Respondents OTA, SANTIAGO and NAKANELUA's position that the union officers were not proper Respondents in a breach of duty of fair representation complaint. CONDON indicated that he made a harmless typographical error in his complaint and that he meant to include the union in his complaint. The Board took the motion to dismiss under advisement.

On May 20, 2008, CONDON filed a Motion to Amend Prohibited Practice Complaint with the Board to remove OTA, SANTIAGO, and NAKANELUA as Respondents and naming the UPW as the only Respondent. CONDON requested that the Board consider his initial complaint as a harmless error and grant his motion to amend the complaint.

On May 27, 2008, Respondents filed a Memorandum in Opposition to Motion to Amend Complaint Filed by Complainant Richard Condon on May 20, 2008 with the Board. Respondents allege that the Amended Prohibited Practice Complaint attached to CONDON's motion retains the identical allegations contained in his April 23, 2008 filing. Respondents contend that CONDON's motion to amend the complaint should be denied because the amendment prejudices the rights of the current Respondents on its face and fails to state a claim for relief. Respondents argue that the allegations in the amended complaint contain the same defect which led to the motion to dismiss and would be prejudicial to the individual Respondents; the amended complaint refers to the "United Public Workers Union" which is not the duly certified agent for bargaining unit 10; and the proposed amended complaint is legally insufficient on its face since it fails to name a proper respondent and fails to state a hybrid claim for relief.

Hawaii Administrative Rules § 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.

After reviewing the record and the arguments presented, the Board, in its discretion, grants CONDON's motion to amend the complaint. In his proposed amended complaint,² CONDON named the UPW as the Respondent rather than the individual union officers despite the specific references to "Respondents" in the complaint. The

²The rules of notice pleading in Hawaii require only that a complaint set forth a short and plain statement of the claim that provides the defendant with fair notice of what the plaintiff's claim is and the grounds upon which the claim rests. Laeroc Waikiki Parkside, LLC v. K.S.K. (Oahu), Ltd. Partnership, 115 Hawai'i 201, 216, 116 P.3d 961, 976 (2007); In re Genesys Data Technologies, Inc. v. Meindl, 95 Hawai'i 33, 41, 18 P.3e 895, 903 (2001). Pleadings are to be liberally construed. Au v. Au, 63 H. 210, 220, 626 P.2d 173, 181 (1981).

proposed amended complaint provides the UPW with fair notice that CONDON is challenging the UPW's April 11, 2008 decision not to take his grievance to arbitration based upon an alleged breach of duty of fair representation. The Board finds that the individual Respondents are not prejudiced by the amendment because they are no longer named as Respondents. In addition, the UPW is not prejudiced by the proposed amendment as CONDON could have sought to withdraw the instant complaint and file a new timely complaint against the UPW alleging the breach of duty of fair representation. Lastly, while the Board appreciates Respondents' arguments as to the legal sufficiency of the complaint, those arguments are more properly raised in a motion to dismiss rather than in contesting the amendment of a complaint.

Based on the foregoing, the Board hereby grants the Complainant's motion to amend his complaint pursuant to Hawaii Administrative Rules § 12-42-43. Complainant shall forthwith file his First Amended Prohibited Practice Complaint with the Board. The Board will thereupon issue a Notice to Respondent of the First Amended Prohibited Practice Complaint.

In view of the CONDON's amendment of the complaint, the Board denies Respondents' motion to dismiss filed on May 2, 2008 as moot.

DATED: Honolulu, Hawaii June 2, 2008.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

EMORY J. SPRINGER, Member

SARAH R. HIRAKAMI, Member

Copies sent to:

Richard Condon
Herbert R. Takahashi, Esq.