

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS
ASSOCIATION,

Complainant,

and

BOARD OF EDUCATION, Department of
Education, State of Hawaii; KATHERINE
TOLENTINO, Principal, Honoka`a
Elementary School, Department of
Education, State of Hawaii; and SHANE
SAIKI, Personnel Regional Officer,
Department of Education, State of Hawaii,

Respondents.

CASE NO. CE-05-658

ORDER NO. 2607

ORDER GRANTING HSTA'S MOTION
TO AMEND THE FIRST AMENDED
COMPLAINT, FILED MARCH 10, 2009

ORDER GRANTING HSTA'S MOTION TO AMEND
THE FIRST AMENDED COMPLAINT, FILED MARCH 10, 2009

On March 10, 2009, Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA or Union) filed a Motion to Amend the First Amended Complaint with the Hawaii Labor Relations Board (Board). The HSTA seeks to include allegations of a supplemental claim relating to the transfer of Cindy Sharp (Sharp) to Paauilo Elementary School in December 2008. In addition, the HSTA seeks to add Complex Area Superintendent Arthur Souza (Souza) as a Respondent in this case.

On March 16, 2009, Respondents BOARD OF EDUCATION, Department of Education, State of Hawaii; KATHERINE TOLENTINO, Principal, Honokaa Elementary School, Department of Education, State of Hawaii; and SHANE SAIKI, Personnel Regional Officer, Department of Education, State of Hawaii (collectively Respondents), by and through their counsel, filed a Memorandum in Opposition to HSTA's Motion to Amend the First Amended Complaint, filed March 10, 2009. Respondents contend that the motion is untimely as the HSTA is requesting to amend the complaint for a second time over a year after the original complaint was filed and after hearings have been held; that the supplemental claim is inconsistent with the evidence in the record; that Mr. Souza had no involvement in the December 2008 incident; and that Mr. Souza already testified as a witness

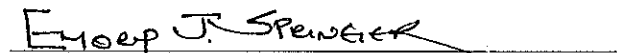
and Complainant could have amended the complaint when he testified to provide Respondents an opportunity to elicit testimony of Mr. Souza at the time.

Based upon a review of the motion and the arguments in opposition to the motion, as well as the record in this case, the Board finds that an additional claim based on Sharp's transfer would have been timely if filed as a new Prohibited Practice Complaint and addressing the additional claim in this proceeding would be more efficient and cost-effective than processing another separate Prohibited Practice Complaint on that issue. In addition, whether the evidence thus far supports the claim is a matter of proof for hearing. With regard to adding Mr. Souza as a Respondent in this matter, the Board finds that while Mr. Souza has testified in this matter, Complainant has not yet rested its case and Complainant, as well as Respondent, is free to recall Mr. Souza for additional testimony. Moreover, as the BOARD OF EDUCATION, State of Hawaii, which is the public employer, is already named as a Respondent and other departmental employees are named in their official capacities, the addition of Mr. Souza does not unduly prejudice Respondents. Accordingly, the Board in its discretion, hereby grants Complainant's motion to amend the First Amended Prohibited Practice Complaint pursuant to Hawaii Administrative Rules § 12-42-43.¹

Complainant shall forthwith file its Second Amended Prohibited Practice Complaint with the Board. The Board will thereupon issue a Notice to Respondents of the Second Amended Prohibited Practice Complaint.

DATED: Honolulu, Hawaii, April 20, 2009.

HAWAII LABOR RELATIONS BOARD


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

Copies sent to:

Danny J. Vasconcellos, Esq.
James E. Halvorson, Deputy Attorney General

¹Hawaii 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.