

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY,

Complainant,

and

BOARD OF REGENTS, University of
Hawaii, State of Hawaii,

Respondent.

CASE NO. CE-07-702

ORDER NO. 2622

ORDER DENYING COMPLAINANT'S
MOTION FOR LEAVE TO FILE
SECOND AMENDED PROHIBITED
PRACTICE COMPLAINT, FILED
JUNE 19, 2009, WITHOUT
PREJUDICE

ORDER DENYING COMPLAINANT'S
MOTION FOR LEAVE TO FILE SECOND AMENDED PROHIBITED
PRACTICE COMPLAINT, FILED JUNE 19, 2009, WITHOUT PREJUDICE

On June 29, 2009, Complainant UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA), by and through its counsel, filed a Motion for Leave to File Second Amended Prohibited Practice Complaint with the Hawaii Labor Relations Board (Board). UHPA alleges that on or about June 30, 2009, the Local School Board (LSB) will become the employer of the Education Laboratory Charter School (Laboratory School) and the proposed amendment includes the LSB as a Respondent.

On June 29, 2009, Respondent BOARD OF REGENTS, University of Hawaii, State of Hawaii (BOR), by and through their counsel, filed a Memorandum in Opposition to Complainant's Motion for Leave to File Second Amended Prohibited Practice Complaint (Memorandum in Opposition) with the Board. The BOR contends that the amendment is futile as the Board should defer this matter until an Arbitrator has the opportunity to rule on whether it must be arbitrated; the amendment adding the LSB as a Respondent is not explained as there are no factual allegations regarding the School Board; and if the amendment reflects that the LSB will become the employer on or about June 30, 2009, the issue is not ripe and the Board lacks jurisdiction over the LSB.

On July 2, 2009, Complainant UHPA, by and through its counsel, filed a Reply to Respondent's Memorandum in Opposition (Reply) with the Board. Complainant's counsel states in a Declaration in support of the Reply that there is an agreement between the University of Hawaii (UH) College of Education, the LSB, the Hawaii Government Employees Association (HGGEA) and the Hawaii State Teachers

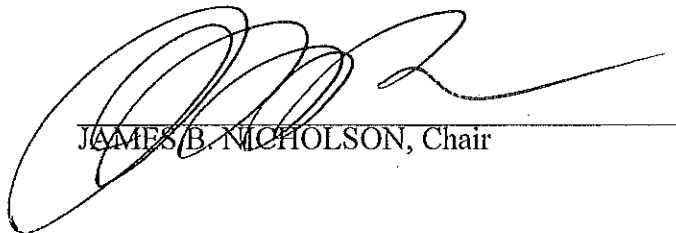
Association (HSTA); the agreement transfers the duties of the Laboratory School employer from the UH to the LSB; the agreement designates HSTA as the exclusive bargaining representative of the Laboratory School teachers; the agreement retained only 32 teachers who are included in HGEA's bargaining unit (Unit) 08; the teaching positions held by approximately 16 Unit 07 faculty members were excluded from the agreement; at a meeting on or about June 4, 2009 with Unit 07 faculty members of the College of Education, the UH College of Education Dean said that the UH had terminated all Laboratory School Unit 07 teaching positions which were in dispute in Case Nos. RA-07-233a, RA-08-233b; and at an LSB meeting on June 4, 2009, LSB members stated that the school would hire teachers to fill the positions left vacant by the terminated Unit 07 members. UHPA contends that it seeks continued employment at the Laboratory School for teachers who recently held Unit 07 positions which understandably would require the transfer of representation to the HSTA; contends that the LSB is a proper party to remedy the instant prohibited practice and that the complaint is properly before the Board as the grievance process will not address the Respondent BOR' discharging an entire class of employees for engaging in protected activity.

Based on a careful review of the record, the Board finds that Complainant's proposed amendment merely adds the LSB as a Respondent to the existing allegations against the BOR. The Board agrees with Respondent BOR that there are no specific allegations against the LSB in the proposed amendment. Without more specific allegations as outlined in Complainant's Reply, the Board finds that the proposed amendment would not give LSB fair notice as to what the claim is against it and the grounds upon which the claim is made. Suzuki v. State, 119 Hawai'i 288, 296, 196 P.3d. 290, 298 (App. 2008)

Accordingly, the Board, in its discretion,¹ hereby denies the instant motion, without prejudice.

DATED: Honolulu, Hawaii, July 13, 2009.

HAWAII LABOR RELATIONS BOARD

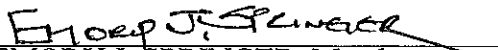



JAMES B. NICHOLSON, Chair

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.

UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY v. BOARD OF REGENTS,
University of Hawaii
CASE NO. CE-07-702
ORDER NO. 2622
ORDER DENYING COMPLAINANT'S MOTION FOR LEAVE TO FILE SECOND
AMENDED PROHIBITED PRACTICE COMPLAINT, FILED JUNE 19, 2009, WITHOUT
PREJUDICE


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

Copies sent to:

Linda M. Aragon, Esq.
Gregory M. Sato, Esq.
Richard H. Thomason, Deputy Attorney General