

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,  
LOCAL 646, AFL-CIO,

Complainant,

and

LINDA LINGLE, Governor, State of Hawaii,  
MARIE LADERTA, Director, Department of  
Human Resources Development, State of  
Hawaii, and DIANE ITO, Secretary, Labor  
Relations Division, Department of Human  
Resources Development, State of Hawaii,

Respondents.

CASE NOS.: CE-01-716a  
CE-10-716b

ORDER NO. 2627

ORDER DENYING RESPONDENTS'  
MOTION TO EXTEND TIME TO  
RESPOND TO MOTION FOR  
INTERLOCUTORY RELIEF AND  
DENYING COMPLAINANT'S  
MOTION TO SHORTEN TIME TO  
HEAR MOTION FOR  
INTERLOCUTORY RELIEF; AND  
NOTICE OF HEARING ON MOTIONS

ORDER DENYING RESPONDENTS' MOTION TO EXTEND TIME TO  
RESPOND TO MOTION FOR INTERLOCUTORY RELIEF AND DENYING  
COMPLAINANT'S MOTION TO SHORTEN TIME TO HEAR MOTION FOR  
INTERLOCUTORY RELIEF; AND NOTICE OF HEARING ON MOTIONS

Motion to Extend Time

On July 21, 2009, Respondents, by and through their counsel, filed a Motion to Extend Time to Respond to Motion for Interlocutory Relief (Motion to Extend Time) with the Board. Respondents requested leave of the Board until either July 24 or 27, 2009 to file a memorandum in opposition to Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO's (UPW or Union) Motion for Interlocutory Relief which was filed on July 9, 2009. Respondents' counsel stated in a Declaration attached to the Motion to Extend Time that he was in the process of working on an expedited briefing schedule in an unrelated agency appeal; that he is aware of the five day response time in Hawaii Administrative Rules (HAR) § 12-42(g) (sic); that on July 16, 2009 he received a copy of the Motion for Interlocutory Relief which may have been served on Respondent DIANE ITO, Secretary, Labor Relations Division, Department of Human Resources Development, State of Hawaii (Ito) on or before July 16, 2009; that he believes his deadline to respond to the motion is July 21, 2009 but requests a brief extension of time until July 24, or 27, 2009 to file a memorandum in opposition to the Motion for Interlocutory Relief because of the brief due in the pending civil matter.

On July 22, 2009, Complainant UPW, by and through its counsel, filed an Opposition to Respondents' Motion to Extend Time with the Board. The UPW contends that HAR § 12-42-8(g)(3)(iii) affords a non-moving party five days within which to file answering affidavits in response to a motion filed with the Board and HAR § 12-42-45 affords a Respondent ten days within which to file an answer to a prohibited practice complaint; that according to the respective Returns and Acknowledgments of Service filed on July 10, 2009, the Prohibited Practice Complaint and the Motion for Interlocutory Relief were served simultaneously on Respondents with the Board; that Respondents' counsel filed an answer in this matter on July 17, 2009; that although Respondents' counsel refers to one Respondent in his Declaration he does not state when he received the Motions for Interlocutory Order which were served on Respondents MARIE LADERTA, Director, Department of Human Resources Development, State of Hawaii (Laderta) and LINDA LINGLE, Governor, State of Hawaii (Lingle); that Respondents' counsel ordinarily calls opposing counsel to request a continuance on matters of this nature but did not call in this case; and that it appears from the foregoing that the motion is made for the purpose of delay as Respondents are aware that the Union considers this case an urgent matter requiring prompt disposition because it involves interference with employee rights involving numerous bargaining unit employees and the education and information meetings are occurring at a time in negotiations when the prior agreement expired and bargaining has reached a critical stage. As such, the Union contends that there will be irreparable harm to the rights of employees and to the Union for every day of delay.

On July 23, 2009, Respondents filed a Reply to the UPW's Opposition to Motion to Extend Time to Respond to Motion for Interlocutory Relief. Respondents' counsel states in a Declaration that there has been no showing of irreparable harm to the UPW or its members if the Motion for Interlocutory Relief is not granted immediately; that by not serving a copy of the Prohibited Practice Complaint on the Department of the Attorney General, UPW's counsel caused a delay in transmitting the Complaint to Respondents' counsel; that the Motion for Interlocutory Relief may have been served on Respondent Ito on or about July 9, 2009 but it did not arrive in counsel's office until July 16, 2009 because UPW's counsel did not serve the Motion for Interlocutory Relief on the Department of the Attorney General; and given these circumstances, a brief extension to extend the deadline to respond to the Motion for Interlocutory Relief is reasonable.

Based upon a review of the record and the arguments presented, it is undisputed that the Board's rules require a response to motions within five days of the service of the motion papers. HAR § 12-42-8(g)(3)(C)(iii). While there may have been confusion caused by Complainant's simultaneous service of the Motion for Interlocutory Relief with the Prohibited Practice Complaint on Respondents in this matter, the Returns and Acknowledgments of Service filed with the Board indicate that the motion was served on all of the respective Respondents on July 9, 2009. Under the Board's rules, a response to the motion was due on July 16, 2009. The instant Motion to Extend Time

was filed on July 21, 2009 well after the expiration of the due date. Accordingly, the Board hereby denies the instant Motion to Extend Time but will permit Respondents to present oral argument at the hearing on the Motion for Interlocutory Relief.

#### Motion to Shorten Time

On July 14, 2009, Complainant filed an Ex-Parte Motion to Shorten Time to Hear UPW's Motion for Interlocutory Relief with the Board. Complainant requested that the Board set the hearing on UPW's Motion for Interlocutory Relief promptly. According to Complainant's counsel's Affidavit attached to the motion, Complainant requested a shortening of the time allowed for motions to be heard by the Board because the meetings were in progress and unless there was a prompt hearing, there would be irreparable harm to the employees' rights; that after the filing of the instant Complaint, Respondent MARIE LADERTA, Director, Department of Human Resources Development, State of Hawaii, took further reactive action wilfully interfering with employee rights; and that the Board should follow the similar procedure for shortening time to hear comparable motions in the circuit courts.

On July 21, 2009, Respondents filed a Statement of Opposition to Ex Parte Motion to Shorten Time to Hear UPW's Motion for Interlocutory Relief (Motion to Shorten Time) with the Board. Respondents opposed the Motion arguing that they had filed the request for a brief extension of time to submit a memorandum in opposition to the Motion for Interlocutory Relief, supra; there is a lack of urgency with regards to the meetings scheduled during the week of July 13, 2009 as the time has already passed; Complainants failed to state sufficient legal authority for their Motion to Shorten Time; and the UPW made the request for the meetings after the expiration of the collective bargaining agreements and Respondents do not believe the informational and educational meetings provided for in Section 8 of the Units 1 and 10 collective bargaining agreements are mandatory subjects of collective bargaining, but are permissive subjects.

After reviewing the record and the arguments on the Motion to Shorten Time, the Board hereby denies the motion.

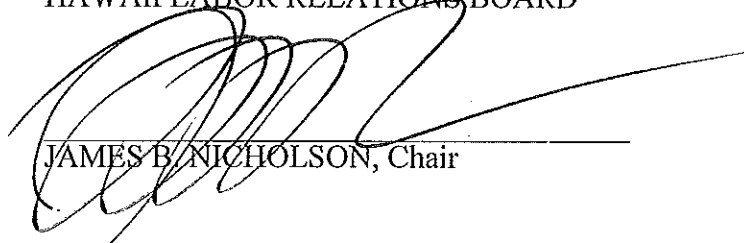
#### Notice of Hearing on Motions

NOTICE IS HEREBY GIVEN that pursuant to Hawaii Revised Statutes §§ 89-5(i)(4) and (i)(5) and HAR § 12-42-8(g)(3), the Board will conduct a hearing on Complainant's Motion for Interlocutory Relief, filed on July 9, 2009, Complainant's Motion for Summary Judgment, filed on July 21, 2009, Complainant's Motion to Amend Complaint, filed on July 28, 2009, if opposed, Respondents' Motion for Dismissal, or in the Alternative, Partial Dismissal of Motion for Interlocutory Relief, filed July 30, 2009, and any other dispositive motion on **August 6, 2009 at 1:30 p.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

As agreed upon at the prehearing/settlement conference held on July 30, 2009, the common deadline for the filing of responses to the foregoing motions and/or dispositive motions is **August 4, 2009**. Any documents filed with the Board should be served by hand-delivery and/or fax to opposing counsel.

DATED: Honolulu, Hawaii, August 3, 2009.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Copies sent to:

Herbert R. Takahashi, Esq.  
Julian T. White, Deputy Attorney General