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STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

MARIE LADERTA, Director, Department of  
Human Resources Development, State of  
Hawaii,

Respondent.

CASE NOS.: CE-01-720a  
CE-10-720b

ORDER NO. 2634

ORDER GRANTING  
COMPLAINANT'S MOTION TO  
AMEND COMPLAINT; NOTICE OF  
DEADLINE TO FILE SUPPLEMENTAL  
ARGUMENTS AND MEMORANDA;  
AND NOTICE OF RESCHEDULED  
HEARING ON MOTIONS

ORDER GRANTING COMPLAINANT'S MOTION TO AMEND COMPLAINT;  
NOTICE OF DEADLINE TO FILE SUPPLEMENTAL ARGUMENTS AND  
MEMORANDA; AND NOTICE OF RESCHEDULED HEARING ON MOTIONS

On July 31, 2009, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union), by and through its counsel, filed a Prohibited Practice Complaint (Complaint) with the Hawaii Labor Relations Board (Board). The UPW alleged that Respondent failed to provide information in connection with an impending layoff of bargaining unit 01 and 10 employees.

On August 17, 2009, Respondent MARIE LADERTA (Laderta), Director, Department of Human Resources Development, State of Hawaii, by and through her counsel filed a Motion to Dismiss and/or for Summary Judgment with the Board.

The Board conducted a prehearing/settlement conference in this matter on August 18, 2009 at which time counsel for UPW represented that he intended to file a motion to amend the complaint and a motion for interlocutory relief on Monday, August 24, 2009. The Board set September 1, 2009 as the deadline to file responses to the motions and scheduled a hearing on all motions on September 2, 2009 at 11:00 a.m.

On August 24, 2009, the UPW filed a Motion to Amend Complaint and a Motion for Interlocutory Relief with the Board. UPW contends that since the Complaint was filed in this case Governor Linda Lingle decided unilaterally to implement the layoff of approximately 1,100 state employees effective on or about October 26, 2009 (for employees of Kulani Correctional Facility) and November 13, 2009 (for other

employees). The UPW requests the Board to amend the Complaint to add two necessary parties and to permit the Complainant to clarify alleged claims regarding the duty to bargain and supplement the July 31, 2009 Complaint with additional claims including violations of Hawaii Revised Statutes (HRS) § 89-13(a)(1) and (3); and clarify the scope of relief sought.

By letter dated August 25, 2009, Respondent's counsel wrote to the Board Chair requesting that the Board hear only the UPW's Motion to Amend Complaint on the scheduled September 2, 2009 hearing date and set a new hearing on the State's Motion to Dismiss (allowing the State to supplement its motion) and the UPW's Motion for Interlocutory Relief.

Also by letter dated August 25, 2009, Complainant's counsel responded that at the August 18, 2009 prehearing conference the Union represented that it intended to file a motion to amend the complaint and a motion for interlocutory relief on August 24, 2009 and it was agreed that the motions would all be heard at one time on September 2, 2009. Complainant's counsel represented at the prehearing conference that the scheduling of the motion for interlocutory relief was critical because of the impending layoffs and because the affected employees would suffer irreparable harm, the Union could not agree to continue the hearing on UPW's motion for interlocutory relief.

On August 26, 2009, Respondent filed a Memorandum in Opposition to UPW's Motion to Amend Complaint Filed on August 24, 2009 with the Board. Respondent argued that the Board should not be allowed to amend the Complaint after the State has already filed its motion to dismiss and/or for summary judgment. Since the State's motion to dismiss and/or for summary judgment addressed only the allegations in UPW's original complaint, there is prejudice to the State to permit the amendment.

On August 27, 2009, Respondent filed her Memorandum in Opposition to UPW's Motion for Interlocutory Relief Filed on August 24, 2009 with the Board.

Based on a review of the record and the written arguments presented in this case, the Board, in its discretion, finds that it does not need oral argument on UPW's Motion to Amend Complaint, and hereby grants the UPW's Motion to Amend Complaint, pursuant to Hawaii Administrative Rules (HAR) §12-42-43<sup>1</sup>. However, given the breadth of the amendments proposed by the Complainant, including the naming of additional Respondents and the requirement to serve the Amended Complaint on the parties, in the interest of efficiency and to minimize any prejudice to Respondent,

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<sup>1</sup>HAR § 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.

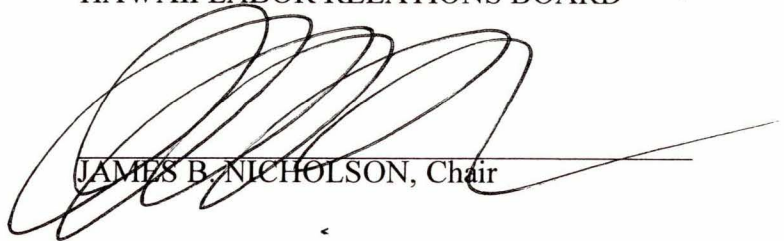


the Board will continue the hearing on the pending motions from September 2, 2009 at 11:00 a.m. to the previously scheduled hearing date, September 10, 2009 at 8:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. In addition, the Board sets September 2, 2009 as the deadline to supplement previously filed motions and September 8, 2009 for the filing of responses thereto.

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

DATED: Honolulu, Hawaii, August 27, 2009.

HAWAII LABOR RELATIONS BOARD



A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

JAMES B. NICHOLSON, Chair



A handwritten signature in black ink, appearing to read 'Sarah R. HiraKami' with a stylized flourish at the end.

SARAH R. HIRAKAMI, Member

Copies sent to:

Herbert R. Takahashi, Esq.  
Jeffrey A. Keating, Deputy Attorney General