

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; MUFI HANNEMANN, Mayor, City
and County of Honolulu; CHARMAINE
TAVARES, Mayor, County of Maui;
BERNARD P. CARVALHO, Jr., Mayor,
County of Kauai; WILLIAM KENOI, Mayor,
County of Hawaii; THOMAS KELLER,
Administrative Director, The Judiciary, State
of Hawaii; and THOMAS M. DRISKILL, Jr.,
President and Chief Executive Officer,
Hawaii Health Systems Corporation,

Respondents.

CASE NOS.: CE-01-717a
CE-10-717b

ORDER NO. 2637

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

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On August 24, 2009, subsequent to the hearing on various dispositive motions on August 20, 2009, Complainant filed a Motion to Amend Complaint with the Board. Complainant contends that the claims contained in its original complaint need clarification; that events since that time have resulted in supplemental claims for violation of chapter 89; and that the need for clarification became apparent during oral argument on August 20, 2009. Complainant contends that there should be no prejudice as the hearing on the merits is scheduled on September 21 - 24, 2009.

On August 31, 2009, Respondent MUFI HANNEMANN (Hannemann), Mayor, City and County of Honolulu filed an Opposition to UPW's Motion to Amend Complaint Filed on August 24, 2009. Hannemann contends that the amendments to UPW's Complaint after filing extensive pleadings and presenting argument on various motions is prejudicial to Respondents. Hannemann contends that the UPW is acting in

bad faith because it knew of the amended allegations prior to the motions hearing on August 20, 2009, but purposefully chose not to amend its complaint even after Hannemann had requested Particularization of the Complaint. Hannemann also incorporated the arguments by Respondent CHARMAINE TAVARES (Tavares), Mayor, County of Maui.

On September 1, 2009, Respondents WILLIAM KENOI, Mayor, County of Hawaii and BERNARD P. CARVALHO, JR., Mayor, County of Kauai, filed similar arguments in opposition to UPW's Motion to Amend. Also on September 1, 2009, Respondent Tavares filed her opposition and contends that the UPW's attempt to amend the complaint would be futile as the proposed amendments do not alter the fact that the County of Maui has not taken unilateral action or breached a duty to negotiate. Thus, Tavares argues that her motion for summary judgment should still be granted, the amendments to UPW's complaint are not justified and would be futile, and the motion to amend should be denied.

On September 2, 2009, Respondents LINDA LINGLE, Governor, State of Hawaii; MARIE LADERTA, Director, Department of Human Resources Development, State of Hawaii; THOMAS KELLER, Administrative Director, The Judiciary, State of Hawaii; and THOMAS M. DRISKILL, Jr., President and Chief Executive Officer, Hawaii Health Systems Corporation (collectively State Respondents) filed a Memorandum in Opposition to UPW's Motion to Amend Complaint Filed on August 24, 2009, on grounds of bad faith and dilatory motive on the part of UPW. The State Respondents contend that UPW's dilatory motive to add new facts prejudices Respondents because the legal and factual arguments made in their dispositive motions were based on facts alleged in the complaint and that the UPW intends to create factual disputes to undermine the Respondents' previously filed and argued dispositive motions. The State Respondents also argue that the UPW's proposed amendments misstates facts. Accordingly, the Board should not reward the UPW's dilatory tactics and should properly deny the UPW's motion to amend complaint.

Based on a review of the record and consideration of the arguments regarding the instant Motion to Amend, 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) §12-42-43¹. However, given the fact that dispositive motions have already been argued before the Board, in the interest of efficiency, to develop a complete and sound record in this case, and to minimize prejudice to Respondents, the Board will continue the hearing

¹HAR § 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.

on the merits of this case presently scheduled to commence on September 21 - 24, 2009. The Board sets **September 16, 2009** as the deadline to supplement any previously filed motions and **September 21, 2009** for the filing of responses thereto.

NOTICE IS ALSO GIVEN that the Board, pursuant to HRS §§ 89-5(i)(4) and (i)(5) and HAR § 12-42-8(g)(3), will conduct a hearing on additional arguments for pending motions due to the filing of the First Amended Prohibited Practice Complaint on **September 23, 2009 at 10:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. Each party will be permitted 15 minutes to present any argument not covered in the filings.

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, _____ September 8, 2009 _____.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

Excused

EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Copies sent to:

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