

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII FIRE FIGHTERS ASSOCIATION,
IAFF, LOCAL 1463, AFL-CIO,

Complainants,

and

CHARMAINE TAVARES, Mayor, County
of Maui; JEFFREY A. MURRAY, Chief,
Fire Department, County of Maui; and
ROBERT M. SHIMADA, Deputy Fire Chief,
Fire Department, County of Maui,

Respondents.

CASE NO. CE-11-725

ORDER NO. 2662

ORDER GRANTING
COMPLAINANT'S MOTION TO
AMEND PROHIBITED PRACTICE
COMPLAINT FILED ON AUGUST 24,
2009, FILED OCTOBER 19, 2009;
NOTICE OF HEARING

ORDER GRANTING COMPLAINANT'S MOTION TO AMEND PROHIBITED
PRACTICE COMPLAINT FILED ON AUGUST 24, 2009, FILED OCTOBER 19, 2009

On August 24, 2009, Complainant HAWAII FIRE FIGHTERS ASSOCIATION (HFFA or Union) filed a Prohibited Practice Complaint (Complaint) with the Hawaii Labor Relations Board (Board) against the above-referenced Respondents alleging that, inter alia, Maui Division Chair Jeff Kihune (Kihune) was re-assigned back to the Captain's position at Lahaina Station effective August 18, 2009, due in part to Kihune's participation in protected activity. Complainant contended that Respondents violated Hawaii Revised Statutes (HRS) § 89-3 and Sections 2, 10, 21, and 25 of the Unit 11 Agreement and committed prohibited practices in violation of HRS §§ 89-13(a)(1), (3), (4), (7) and (8).

On September 18, 2009, following the prehearing/settlement conference held on September 17, 2009, the Board issued a Notice of Filing Deadlines and Notice of Hearing on Motions setting September 30, 2009 as the deadline to file dispositive motions in this case; setting October 7, 2009 as the deadline for filing responses to the motions, and scheduling the hearing on any motions filed on October 19, 2009 at 9:30 a.m.

On September 30, 2009, Respondents filed Respondents' Motion to Dismiss Complaint or in the Alternative, for Summary Judgment (Motion to Dismiss and/or for Summary Judgment) with the Board contending that the Complaint should be dismissed or summary judgment granted in Respondents' favor because the Complaint fails to state a claim and/or is unsupported by the evidence.

By letter dated October 5, 2009, Complainant's counsel requested, with the agreement of Respondents' counsel, a three-week extension of the deadline to file a response to Respondents' Motion to Dismiss and/or for Summary Judgment and the rescheduling of the hearing in order to accommodate a reply by Respondent.

On October 13, 2009, the Board issued an Amended Notice of Filing Deadlines and Notice of Hearing on Motions setting October 28, 2009 as the deadline for Complainant's response to Respondents' Motion to Dismiss and/or for Summary Judgment; November 12, 2009 as the deadline for any reply; and scheduling the hearing on Respondents' Motion to Dismiss and/or for Summary Judgment on November 18, 2009 at 9:30 a.m.

On October 19, 2009, Complainant filed a Motion to Amend Prohibited Practice Complaint with the Board.

On October 27, 2009, Respondents filed Memorandum in Opposition to Union's Motion to Amend Prohibited Practice Complaint with the Board. Respondents contend that the amendment would result in undue delay and prejudice to Respondents and would be futile because Complainant's new allegations of the unilateral modification of the contract violate management's rights to assign work.

On November 3, 2009, Complainant filed a Supplemental Submission in Support of Motion to Amend Prohibited Practice Complaint Filed on August 24, 2009 with the Board. Complainant argued that there has been no delay in this matter; that it only recently became aware of the Employer's reason to reassign Kihune by the filing of Respondents' Motion to Dismiss and/or for Summary Judgment; that it will be prejudiced in the motion to amend is denied because of Respondents' refusals to disclose the basis for Kihune's placement; and procedurally, the Union can bring a second complaint against Respondents.

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 Complainant's Motion to Amend Complaint, and hereby grants the UPW's Motion to Amend Complaint, for good cause shown pursuant to Hawaii Administrative Rules (HAR) §12-42-43¹. The Board cannot at this juncture determine that the proposed amendment would be futile. In the interest of efficiency and to minimize any prejudice to Respondents, the Board will continue the hearing on Respondents' motion previously

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.

scheduled on November 18, 2009 and permit Respondents to submit supplemental arguments to their Motion to Dismiss and/or for Summary Judgment based upon the allegations in the First Amended Complaint by **November 17, 2009**; set **December 1, 2009** as the deadline for Complainant to submit a responsive memorandum; and permit Respondents to file a reply by **December 8, 2009**.

The Board will conduct a hearing on Respondents' Motion to Dismiss and/or for Summary Judgment on **December 10, 2009 at 9:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

DATED: Honolulu, Hawaii, November 9, 2009.

HAWAII LABOR RELATIONS BOARD


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

Copies sent to:

Peter Liholiho Trask, Esq.
Cheryl Tipton, Deputy Corporation Counsel