

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

MARIE LADERTA, Chief Negotiator, State of
Hawaii,

Respondent.

CASE NO. CE-10-718
(ON REMAND)

ORDER NO. 2732

ORDER GRANTING COMPLAINANT'S
FIRST MOTION TO AMEND
COMPLAINT FILED ON AUGUST 10,
2009; AND NOTICE OF HEARING ON
COMPLAINANT'S SECOND MOTION
TO AMEND COMPLAINT, FILED ON
AUGUST 3, 2010

ORDER GRANTING COMPLAINANT'S
FIRST MOTION TO AMEND COMPLAINT FILED ON
AUGUST 10, 2009; AND NOTICE OF HEARING ON COMPLAINANT'S
SECOND MOTION TO AMEND COMPLAINT, FILED ON AUGUST 3, 2010

On July 15, 2009, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Complainant) filed a prohibited practice complaint (Complaint) with the Hawaii Labor Relations Board (Board) against MARIE LADERTA, Chief Negotiator, State of Hawaii (Laderta or Respondent). In its Complaint, the UPW alleged ultra vires action by Respondent, namely, selecting Georgina Kawamura (Kawamura) as the Employer panelist for the Unit 10 interest arbitration proceeding, that constitutes a willful violation of Hawaii Revised Statutes (HRS) §§ 89-6(d) and 89-11(e), and thereby committing a prohibited practice contrary to HRS §§ 89-13(a)(7) and (8).

On July 27, 2009, Respondent filed an Answer to the Complaint.

On August 10, 2009, the UPW filed a Motion to Amend Complaint (First Motion to Amend Complaint), seeking to include additional allegations, including, *inter alia*, Respondent's selection of Stanley Shiraki (Shiraki) on July 29, 2009, to replace Kawamura as the Employer's representative.

On August 10, 2009, Respondent filed a Motion to Dismiss and/or for Summary Judgment, arguing that the Complaint should be dismissed for the following reasons: (1) the Complaint is moot; (2) the UPW lacks standing to challenge the selection of the Employer panelist; (3) the plain language of HRS § 89-6(d) is clear and unambiguous such that Respondent needs only a "simple majority" of the applicable

employer group relating to the selection of the Employer panelist; and (4) the Complaint fails to state a claim upon which relief can be granted.

On August 14, 2009, the UPW filed its Memorandum in Opposition to Respondent's Motion to Dismiss and/or for Summary Judgment.

On August 17, 2009, Respondent filed a Memorandum in Opposition to UPW's First Motion to Amend Complaint.

On August 18, 2009, Respondent filed a Reply to UPW's Memorandum in Opposition to Respondent's Motion to Dismiss and/or for Summary Judgment.

On August 19, 2009, the Board convened to hear oral argument on Respondent's Motion to Dismiss and/or for Summary Judgment and the UPW's First Motion to Amend Complaint. At the hearing the UPW orally moved to strike Respondent's Reply to UPW's Memorandum in Opposition to Respondent's Motion to Dismiss and/or for Summary Judgment filed August 10, 2009 (Respondent's Reply).

On October 1, 2009, the Board issued Order No. 2644, Order Granting Respondent's Motion to Dismiss and/or for Summary Judgment; Denying Complainant's Oral Motion to Strike Respondent's Reply Memorandum; and Denying Complainant's Motion to Amend Complaint. The First Motion to Amend Complaint was denied based upon futility, as the Board concluded the Amended Complaint would not cure a lack of standing.

On October 5, 2009, the UPW filed an appeal from Board Order No. 2644 to the Circuit Court of the First Circuit (circuit court).

On May 21, 2010, the circuit court issued its Decision and Order Reversing Hawaii Labor Relations Board Order No. 2644, Dated October 1, 2009, and Remanding Case for Further Proceedings (Decision and Order). The circuit court concluded that the UPW had standing to bring the prohibited practice complaint; that the Board improperly took judicial notice of two correspondence in the Board's records; and that the Board's denial of the First Motion to Amend Complaint was made in error as the UPW had standing to present its claim of undue delay in the selection of Kawamura as alleged in the amended complaint.

On May 24, 2010, the UPW filed a Motion to Schedule Pre-Hearing Conference and Hearing, based upon the record of proceedings and the circuit court's Decision and Order.

On May 28, 2010, Respondent filed a Memorandum in Opposition to UPW's Motion to Schedule Pre-Hearing Conference and Hearing Filed May 24, 2010,

asserting the request was premature and that Respondent submitted a proposed Final Judgment and Notice of Entry of Final Judgment for action by the circuit court.

On July 22, 2010, the Board issued Order No. 2725, Order Granting Complainant's Motion to Schedule Pre-Hearing Conference and Hearing, Filed on May 24, 2010, and issued a notice of prehearing conference.

Hawaii Administrative Rules (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.

Based upon the records and pleadings in this case, the Board exercises its discretion in accordance with the Decision and Order of the circuit court, and hereby grants Complainant's First Motion to Amend Complaint filed on August 10, 2009. The First Motion to Amend Complaint filed on August 10, 2009, was denied by the Board on the basis of futility; however, the circuit court concluded that the Board's denial was made in error, as the circuit court concluded the UPW had standing to present its claim of undue delay in the selection of Kawamura as alleged in the amended complaint.

Accordingly, Complainant shall immediately file its First Amended Prohibited Practice Complaint with the Board, in the format as attached to its First Motion to Amend Complaint filed on August 10, 2009. The Board will thereupon issue a Notice to Respondents of the First Amended Prohibited Practice Complaint.

**NOTICE OF HEARING ON COMPLAINANT'S SECOND
MOTION TO AMEND COMPLAINT, FILED ON AUGUST 3, 2010**

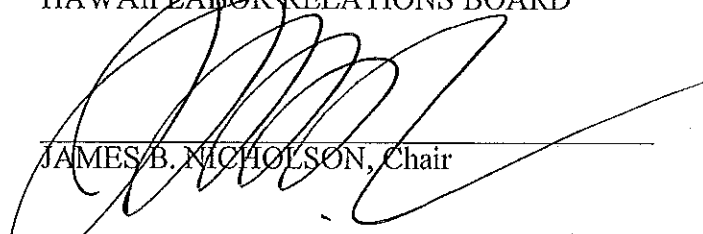
On August 3, 2010, the UPW filed a Motion to Amend Complaint (Second Motion to Amend Complaint) raising additional allegations to those contained in the First Motion to Amend Complaint, filed on August 10, 2009.

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 the Complainant's Second Motion to Amend Complaint, filed on August 3, 2010 on **September 3, 2010 at 9:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

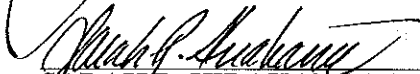
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DATED: Honolulu, Hawaii, August 17, 2010.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

Copies sent to:

Claire W.S. Chinn, Esq.
Herbert R. Takahashi, Esq.