

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

SHELLY L. RODRIGUES,

Complainant,

and

MATTHEW S.K. PYUN, JR., County Attorney, County of Kauai; KAUAI POLICE COMMISSION, County of Kauai, KAUAI POLICE DEPARTMENT, County of Kauai, DARRYL PERRY, Chief, Kauai Police Department, County of Kauai; SCOTT YAGIHARA, Captain, Kauai Police Department, County of Kauai; ALEJANDRE QUIBILAN, Captain, Kauai Police Department, County of Kauai; SHERWIN PEREZ, Lieutenant, Kauai Police Department, County of Kauai; RANDOLPH CHONG TIM, SR., Sergeant, Kauai Police Department, County of Kauai, BRANDY LEDESMA, Sergeant, Kauai Police Department, County of Kauai; GORDON ISODA, Retired Assistant Chief; and MALCOLM FERNANDEZ, Director, Department of Personnel, County of Kauai,

Respondents.

CASE NO. CE-12-765

ORDER NO. 2733

ORDER GRANTING COUNTY OF KAUAI RESPONDENTS' MOTION FOR PARTICULARIZATION OF THE COMPLAINT, FILED ON AUGUST 18, 2010

ORDER GRANTING COUNTY OF KAUAI RESPONDENTS' MOTION FOR PARTICULARIZATION OF THE COMPLAINT, FILED ON AUGUST 18, 2010

On August 5, 2010, Complainant SHELLY L. RODRIGUES (Rodrigues), pro se, filed a Prohibited Practice Complaint (Complaint) with the Hawaii Labor Relations Board (Board) against the above-named Respondents.

On August 18, 2010, Respondents MATTHEW S.K. PYUN, JR., County Attorney, County of Kauai (Pyun); KAUAI POLICE COMMISSION, County of Kauai, KAUAI POLICE DEPARTMENT, County of Kauai, DARRYL PERRY, Chief, Kauai Police Department, County of Kauai; SCOTT YAGIHARA, Captain, Kauai Police Department, County of Kauai; ALEJANDRE QUIBILAN, Captain, Kauai Police Department, County of Kauai; SHERWIN PEREZ, Lieutenant, Kauai Police Department, County of Kauai; RANDOLPH CHONG TIM, SR., Sergeant, Kauai Police Department,

County of Kauai, BRANDY LEDESMA, Sergeant, Kauai Police Department, County of Kauai; GORDON ISODA, Retired Assistant Chief; and MALCOLM FERNANDEZ, Director, Department of Personnel, County of Kauai (collectively Kauai Respondents), filed a Motion for Particularization of the Complaint with the Board. Kauai Respondents allege, *inter alia*, that the Complaint fails to specifically allege how the Respondents engaged in prohibited practices within the meaning of Hawaii Revised Statutes (HRS) § 89-13; the Complaint merely recites the history of other pending or resolved arbitrations and grievances without articulating how they relate to the various alleged violations of HRS § 89-13; and the Complaint fails to specify whether Pyun is named personally or in his official capacity. As such, Kauai Respondents contend that the Complaint is so vague and indefinite that they are unable to frame an answer to the instant Complaint, and request that the Board order Complainant to supply specific information needed by Respondents to answer the Complaint.

Pursuant to Hawaii Administrative Rules (HAR) § 12-42-42(b), a prohibited practice complaint shall be prepared on a form furnished by the Board. The Board's form requires a complainant to specify in detail the particular alleged violation, including the subsection or subsections of HRS § 89-13 alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper. HAR § 12-42-45(b) provides that if the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, within five days after service of the complaint, file with the Board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information.

After reviewing the Complaint filed in this case, the Board agrees with the Kauai Respondents that the Complaint fails to specifically allege how each Respondent violated HRS § 89-13 and fails to provide a complete statement of facts supporting the Complaint. Accordingly, the Board hereby orders Complainant to file with the Board a particularized statement of her Complaint, identifying the specific actions which each Kauai Respondent took which violated the specific subsection(s) of HRS § 89-13 and to also specify whether Pyun is being named personally or in his official capacity. The Particularization must include a complete statement of the facts supporting the Complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.

The original plus five copies of the Particularization, with certificate of service on all parties, must be filed with the Board within five days after service of this Order. If Complainant fails to timely file and serve the Particularization, the Board shall dismiss the Complaint.


Within five days after service of the Particularization, Respondents shall file with the Board the original plus five copies of their answer, with certificate of service on all parties. Failure of Respondents to timely file and serve an answer may constitute an admission of the material facts alleged in the Complaint, and a waiver of a hearing.

DATED: Honolulu, Hawaii, August 19, 2010.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

Copies sent to:

Shelly L. Rodrigues
Mauna Kea Trask, Deputy County Attorney