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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. 2737

ORDER DISMISSING COMPLAINT

ORDER DISMISSING COMPLAINT

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 alleging that the Complaint was so vague and indefinite that they were unable to frame an answer to the Complaint.

After reviewing the Complaint filed in this case, the Board agreed with the Kauai Respondents that the Complaint failed to specifically allege how each Respondent violated Hawaii Revised Statutes (hereinafter referred to as HRS) § 89-13 and failed to provide a complete statement of facts supporting the Complaint. Accordingly, in Order No. 2733, dated August 19, 2010, Order Granting County of Kauai Respondents' Motion for Particularization of the Complaint, Filed on August 18, 2010, the Board ordered Complainant to file a particularized statement of her Complaint with the Board, "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."

Order No. 2733 further stated:

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. [Emphasis added.]

Hawaii Administrative Rules § 12-42-45(b) also provides:

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. If the board grants such motion, the complainant shall file with the board the original and five copies of the requested particularization, with certificate of service on all parties, within five days after service of the board's granting order, unless the board directs otherwise. If the complainant fails to timely file and serve the particularization, the board shall dismiss the complaint.

Within five days after the service of the complainant's particularization, the respondent shall file with the board the original and five copies of the answer, with certificate of service on all parties, unless the board directs otherwise. [Emphasis added.]

In this case, Complainant did not file a Particularization of her Complaint with the Board within five days after service of the Order No. 2733.¹ Accordingly, pursuant to Order No. 2733, and Hawaii Administrative Rules § 12-42-45(b), the Board hereby dismisses the instant Complaint.

DATED: Honolulu, Hawaii, September 23, 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

¹By letter dated August 23, 2010, addressed to the Board members and filed on August 25, 2010, Complainant indicated that she received the Board's letter dated August 19, 2010 on August 23, 2010 after returning from the mainland and realized that she had missed the five-day deadline. She further stated, inter alia, that her 146-page Complaint was not vague.

By letter dated August 26, 2010 to Complainant with a copy to Respondents' counsel, the Board's Executive Officer, inter alia, confirmed a telephone conversation with Complainant on that date notifying Complainant that under the Board's rules regarding the computation of time, the due date for her Particularization was August 30, 2010 because of the intervening holiday, weekends and furlough days.

The Board notes that despite being notified that the due date for the Particularization was August 30, 2010, nothing further was filed by Complainant.

