

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

CARMAEL KAMEALOHA STAGNER,

Complainant,

and

ROBERT DOI, Field Agent, Hawaii
Government Employees Association,
AFSCME, Local 152, AFL-CIO and
JARNETT LONO, Field Agent, Hawaii
Government Employees Association,
AFSCME, Local 152, AFL-CIO; and
HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Respondents.

CASE NO. CU-13-296

ORDER NO. 2739

ORDER GRANTING
COMPLAINANT'S MOTION TO
AMEND COMPLAINT

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On August 13, 2010, Complainant CARMAEL KAMEALOHA STAGNER (Stagner or Complainant) filed a prohibited practice complaint (Complaint) with the Hawaii Labor Relations Board (Board) against the above-named Respondents.¹ Complainant indicated that Daphne Barbee-Wooten, Esq. was her representative.

The Board issued a Notice of Prehearing/Settlement Conference and Hearing on Prohibited Practice Complaint on August 24, 2010.

On August 31, 2010, Respondents filed a Pre-Hearing Settlement Conference Statement and a Motion to Dismiss Prohibited Practice Complaint Filed on August 13, 2010 (Motion to Dismiss) with the Board.

¹Complainant's Declaration, dated September 14, 2010, states that Complainant filed an unfair labor practice complaint on August 3, 2010 and received a certified return receipt indicating that the Hawaii Labor Relations Board received the complaint on August 4, 2010.

However, upon receipt, the Board's staff noted that the Notary Seal on the Prohibited Practice Complaint form submitted by Complainant was incomplete and Complainant was telephoned and advised to cure the defect. Complainant returned the corrected Complaint form and filed it with the Board on August 13, 2010.

On September 7, 2010, Complainant, by and through her counsel, Daphne E. Barbee, Esq. (Barbee or Barbee-Wooten) filed a Pre-hearing Settlement Conference Statement with the Board. On September 8, 2010, Complainant, by and through her counsel, filed a Memorandum in Opposition (sic) Respondent's Motion to Dismiss Prohibitive (sic) Practice Complaint Filed on August 13, 2010.

The Board conducted a prehearing/settlement conference on September 9, 2010.

The Board scheduled a hearing on Respondents' Motion to Dismiss on October 4, 2010 at 1:30 p.m.

Thereafter on September 15, 2010, Complainant, by and through her attorney, filed a Motion to Amend Unfair Labor Practices Complaint (Motion to Amend) and Complainant stated in a Declaration, dated September 14, 2010, *inter alia*, that she drafted the Complaint without benefit of an attorney; that she hired counsel on September 3, 2010, to represent her in the unfair labor practices complaint; and that she requests to amend the Complaint to include the statutory basis and relief requested.

On September 20, 2010, Respondents, by and through their counsel, filed a Memorandum in Opposition to Complainants' (sic) Motion to Amend Unfair Labor Practices Complaint Filed August 13, 2010. Respondents contend that Complainant's Declaration is inconsistent with facts suggesting Complainant was represented by counsel prior to September 3, 2010 as Respondent JARNETT LONO (Lono) was informed that Complainant was represented by Ms. Barbee on or about May 11, 2010; the Complaint, dated August 3, 2010 but filed on August 13, 2010, indicates that Complainant's principal representative is Daphne Barbee-Wooten, Esq.; and correspondence between Ms. Barbee and Department of Public Safety Departmental Hearings Officer Frank Lopez confirms Ms. Barbee's activity as Ms. Stangers' attorney prior to May 11, 2010. Respondents argue that considered together, these facts undermine Complainant's representation that she was without counsel when she drafted the Complaint. In addition, Respondents contend they will be prejudiced by permitting Complainant to amend her Complaint as Respondents have already answered the Complaint, filed their Prehearing Settlement Conference Statement and Motion to Dismiss, as well as allow Complainant to make claims which would otherwise be outside the statute of limitations.

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.

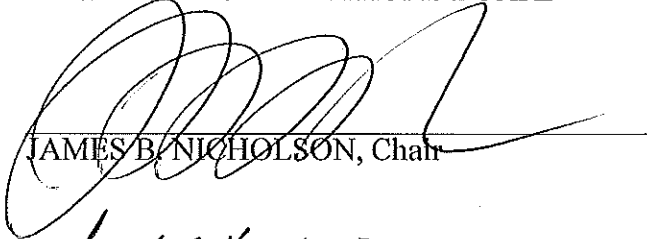
Based upon the records and pleadings in this case, as Complainant's Motion to Amend her Complaint was filed early in these proceedings and seeks to clarify her

claims, the Board exercises its discretion in accordance with the foregoing rule, and hereby grants Complainant's Motion to Amend. However, the Board notes that Complainant's Motion to Amend is defective as it incorrectly refers to an Unfair Labor Practice Complaint rather than a Prohibited Practice Complaint as initially filed by Complainant. Thus, the Board directs Complainant to immediately file a First Amended Prohibited Practice Complaint under Hawaii Revised Statutes (HRS) Chapter 89 (rather than an Unfair Labor Practices Complaint under HRS Chapter 377), and include the allegations contained in her Motion to Amend.

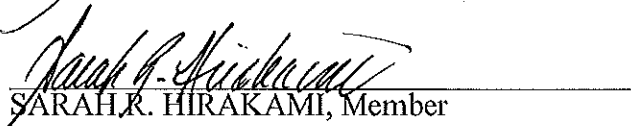
The Board will thereupon issue a Notice to Respondents of the First Amended Prohibited Practice Complaint. After Respondents file their answer to the First Amended Prohibited Practice, the Board will provide Respondents with the opportunity to supplement their motion to dismiss prior to the hearing on the motion. Accordingly, the hearing previously scheduled on October 4, 2010 at 1:30 p.m. to hear Respondents' Motion to Dismiss Prohibited Practice Complaint filed on August 13, 2010, filed on August 31, 2010, is hereby taken off of the calendar.

DATED: Honolulu, Hawaii, September 27; 2010.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

Copies sent to:

Daphne E. Barbee, Esq.
Peter Liholiho Trask, Esq.