

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS  
ASSOCIATION,

Complainant,

and

NEIL ABERCROMBIE, Governor, State of  
Hawaii; KALBERT YOUNG, Director,  
Department of Budget and Finance, State of  
Hawaii; NEIL DIETZ, Chief Negotiator, Office  
of Collective Bargaining, State of Hawaii;  
KATHRYN MATAYOSHI, Superintendent,  
Department of Education, State of Hawaii;  
DONALD G. HORNER, Chairperson, Board of  
Education, State of Hawaii; and JAMES D.  
WILLIAMS, Member, Board of Education,  
Human Resources Committee, State of Hawaii.

Respondents.

CASE NO. CE-05-781

ORDER NO. 2808

ORDER REQUIRING COMPLAINANT TO  
AMEND ITS MOTION FOR  
INTERLOCUTORY RELIEF AND  
EXTENDING THE TIME FOR  
RESPONDENTS' RESPONSE

ORDER REQUIRING COMPLAINANT TO  
AMEND ITS MOTION FOR INTERLOCUTORY RELIEF  
AND EXTENDING THE TIME FOR RESPONDENTS' RESPONSE

On July 18, 2011, Complainant, by and through its counsel, filed a Motion for Interlocutory Relief (Complainant's Motion) with the Hawaii Labor Relations Board (Board). Complainant's Motion was accompanied by the Declaration of Wilfred Okabe (Okabe).

On July 20, 2011, Respondents filed a Motion for Extension of Time to Respond to HSTA's Motion for Interlocutory Relief with the Board. Respondents requested an extension to file their response to Complainant's Motion to five days after the service of a legal memorandum.

In reviewing the record and Complainant's Motion, the Board, however, found that the Motion did not conform to the following Board rule.

Hawaii Administrative Rules (HAR) § 12-42-8(g)(3) refers to Motions and provides in part as follows:

(C) All motions other than those made during a hearing shall be subject to the following:

\* \* \*

- (i) Such motions shall be made in writing to the board, shall briefly state the relief sought, and shall be accompanied by affidavits or memoranda setting forth the grounds upon which they are based.
- (ii) The moving party shall serve a copy of all motion papers on all other parties and shall, within three days thereafter, file with the board the original and five copies with certificate of service on all parties.
- (iii) Answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise. (*emphasis added.*)

The Board acknowledges that in the past declarations have been accepted by the Board in lieu of affidavits. However, Mr. Okabe's Declaration does not attest to the veracity of his statements as required by affidavits or declarations. We look to guidance from applicable court rules and Hawaii Circuit Court Rule 7(g) allows the use of declarations in lieu of affidavits and states:

In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

I, (name of person), do declare under penalty of law that the foregoing is true and correct.

After reviewing Mr. Okabe's Declaration the Board finds that it does not substantially conform to the requirements of an affidavit or a declaration to support Complainant's Motion.

HAR § 12-42-8(10) states as follows:

(10) Amendment of documents:

- (A) Any document filed in a proceeding may be amended, in the discretion of the board, at any

time prior to the issuance of a final order thereon.

- (B) If such document is not in substantial conformity with the applicable rules of the board as to the contents thereof, or is otherwise insufficient, the board, on its own initiative or upon motion of a party, may strike or dismiss such document, or require its amendment. A party moving for amendment of a document shall file a motion for leave to amend together with the proposed amended document.
- (C) If amended, the document shall be effective as of the date of the original filing, if it relates to the same proceeding. (*emphasis added.*)

Pursuant to HAR § 12-42-8(10), the Board orders the Complainant to amend its Motion for Interlocutory Relief filed on July 18, 2011 to conform to HAR § 12-42-8(g)(3)(C)(i), *supra*, which requires such motions to be accompanied by “. . . affidavits or memoranda setting forth the grounds upon which they are based.”

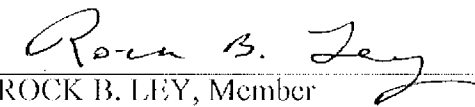
The Board further orders an extension of time for Respondents to file their response to Complainant’s Motion for Interlocutory Relief filed on July 18, 2011 of five working days from the date of service of a filed copy of Complainant’s amended Motion for Interlocutory Relief filed on July 18, 2011.

DATED: Honolulu, Hawaii, July 22, 2011.

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

  
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SESNITA A. D. MOEPONO, Member

  
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ROCK B. LEY, Member

HAWAII STATE TEACHERS ASSOCIATION v. NEIL ABERCROMBIE, Governor, State of  
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RELIEF AND EXTENDING THE TIME FOR RESPONDENTS' RESPONSE

Copies sent to:

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