

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,

and

UNIVERSITY OF HAWAII PROFESSIONAL
ASSEMBLY,

Intervenor.

CASE NO. CE-05-781

ORDER NO. 2814

ORDER DENYING COMPLAINANT'S
MOTION TO SHORTEN TIME TO HEAR
MOTION FOR INTERLOCUTORY
RELIEF AND TO EXPEDITE ISSUES
BEFORE THE BOARD, FILED ON JULY
26, 2011

ORDER DENYING COMPLAINANT'S MOTION TO SHORTEN
TIME TO HEAR MOTION FOR INTERLOCUTORY RELIEF AND
TO EXPEDITE ISSUES BEFORE THE BOARD, FILED ON JULY 26, 2011

On July 26, 2011, the Hawaii Labor Relations Board (Board) issued a Notice of Prehearing/Settlement Conference; Notice of Hearing on Complainant's Amended Motion for Interlocutory Relief and Hearing on Prohibited Practice Complaint in this matter. The Board scheduled the prehearing/settlement conference on August 4, 2011, the hearing on Complainant's Amended Motion for Interlocutory Relief on August 10, 2011, and the hearing on the instant Prohibited Practice Complaint (Complaint) on August 15-17, 2011.

Also on July 26, 2011, Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA) filed a Motion to Shorten Time to Hear Motion for Interlocutory Relief and to Expedite Resolution of Issues Before the Board (Motion to

Shorten Time) with the Board. The HSTA moved the Board to shorten the time for hearing its Motion for Interlocutory Relief filed on July 18, 2011, as amended on July 25, 2011, and to facilitate and expedite a resolution of the issues presented by convening the hearings on motions, by conducting a timely hearing on the merits of the prohibited practice complaint, by rendering timely and appropriate rulings on the pending motions, and to render findings of fact, conclusions of law and order on the prohibited practices after a prompt hearing pursuant to Hawaii Revised Statutes (HRS) § 377-9(d) and Hawaii Administrative Rules (HAR) § 12-42-50. Complainant's counsel stated in an affidavit, dated July 26, 2011, *inter alia*, that the HSTA seeks to shorten the time for hearing on its Amended Motion for Interlocutory Relief because absent a timely hearing on the motion, teachers and other personnel will be effectively deprived of due process and a right to be heard before Respondents implement changes in their wages, hours, and working conditions on July 28, 2011 and July 29, 2011 which were unilaterally designated by Superintendent KATHRYN MATAYOSHI (Matayoshi), Department of Education, State of Hawaii on June 23, 2011 as non-instructional days where teachers will be on directed leave without pay. Complainant's counsel further stated in his affidavit that a hearing had not as yet been set and the 40th day after the filing of the Complaint on July 8, 2011 is August 17, 2011.

On August 10, 2011, the Board conducted a hearing on pending motions, including Complainant's Amended Motion for Interlocutory Relief, and the Board took Complainant's instant Motion to Shorten Time under advisement.

After reviewing the record and considering the arguments presented, the Board denies the instant motion as moot since the Board already scheduled the prehearing/settlement conference, the hearing on Complainant's Amended Motion for Interlocutory Relief and the hearing on the merits of the Complaint¹ contemporaneously

¹HRS § 377-9(b) provides that the hearing on the complaint shall be held not more than forty days after the filing of the complaint and states in part:

The board shall fix a time for the hearing on the complaint, which shall be not less than ten nor more than forty days after the filing of the complaint or amendment thereof, and notice shall be given to each party by service on the party personally or by mailing a copy thereof to the party at the party's last known post office address at least ten days before the hearing.

The instant Prohibited Practice Complaint was filed on July 8, 2011 and the fortieth day after the filing of the complaint was August 17, 2011. Thus, the initial scheduling of the hearing on the merits on August 15, 2011 was well within the statutory timeframe.

with the filing of Complainant's Motion to Shorten Time.²

In addition, on August 12, 2011, Complainant filed a Motion for Order Prohibiting Employer from Engaging in Unauthorized Ex-Parte Communications with the Board. In the Board's view, Complainant's Motion for Order Prohibiting Employer from Engaging in Unauthorized Ex-Parte Communications raised serious concerns as to its integrity and impartiality which had to be resolved prior to conducting further proceedings in this matter. Thus, on August 15, 2011, the Board, in its discretion, recessed the scheduled hearing on the merits to permit Respondents and Intervenor to file written responses to Complainant's foregoing motion by August 17, 2011 and scheduled a hearing on Complainant's Motion for Order Prohibiting Employer from Engaging in Unauthorized Ex-Parte Communications for August 18, 2011. On August 18, 2011, the Board heard arguments on Complainant's motion and orally denied the motion finding, *inter alia*, that the communications objected to by Complainant were not ex-parte. Thereafter, the Board scheduled hearings on three (of approximately thirty-four) motions to quash subpoenas and a motion in limine on August 25, 2011, as well as the hearing on the merits to commence on August 30, 2011.

DATED: Honolulu, Hawaii, August 31, 2011

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



ROCK B. LEY, Member

²The Board also notes that Complainant's Motion for Interlocutory Relief was filed on July 18, 2011 and its Amended Motion for Interlocutory Relief was filed on July 25, 2011. The instant Motion to Shorten Time was filed on July 26, 2011, two days prior to the July 28, 2011 directed leave without pay which Complainant's counsel states was established by Matayoshi on or about June 23, 2011. As the Board's procedural rule, Hawaii Administrative Rules § 12-42-8(g)(3)(iii), permits an opposing party to submit answering affidavits within five days after service of motion papers unless the Board directs otherwise, Complainant's request to schedule a hearing on Complainant's Amended Motion for Interlocutory Relief prior to the scheduled July 28, 2011 non-instructional date without providing opposing counsel the opportunity for a written opposition on a day's notice was both unreasonable and impracticable. On August 1, 2011, Respondents filed their opposition to HISTA's Amended Motion for Interlocutory Relief Filed July 26, 2011.

HAWAII STATE TEACHERS ASSOCIATION v. NEIL ABERCROMBIE, et al.
CASE NO. CE-05-781
ORDER NO. 2814
ORDER DENYING COMPLAINANT'S MOTION TO SHORTEN TIME TO HEAR MOTION
FOR INTERLOCUTORY RELIEF AND TO EXPEDITE ISSUES BEFORE THE BOARD,
FILED ON JULY 26, 2011

Copies sent to:

Herbert R. Takahashi, Esq.
James E. Halvorson, Deputy Attorney General
Thomas Anthony Gill, Esq.