

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. 2817

ORDER GRANTING RESPONDENT  
NEIL DIETZ'S MOTION TO  
RECONSIDER THE EXCLUSION OF  
NEIL DIETZ PURSUANT TO HAWAII  
RULES OF EVIDENCE RULE 615  
EXCLUSION OF WITNESSES, FILED  
ON AUGUST 31, 2011; ORDER  
GRANTING COMPLAINANT'S  
MOTION TO STRIKE RESPONDENTS  
NEIL ABERCROMBIE, KALBERT  
YOUNG, NEIL DIETZ, KATHRYN  
MATAYOSHI, DONALG (sic) G.  
HORNER, AND JAMES D. WILLIAMS'  
AUGUST 26, 2011 SUBMISSION TO  
THE BOARD'S CONTAINING CASE  
CITATIONS, FILED ON SEPTEMBER 1,  
2011; AND ORDER GRANTING  
COMPLAINANT'S MOTION TO  
STRIKE RESPONDENTS NEIL  
ABERCROMBIE, KALBERT YOUNG,  
NEIL DIETZ, KATHRYN MATAYOSHI,  
DONALG (sic) G. HORNER, AND  
JAMES D. WILLIAMS' POSITION  
STATEMENT REGARDING §89-  
12(b)(2), HRS, FILED ON AUGUST 1,  
2011

ORDER GRANTING RESPONDENT NEIL DIETZ'S MOTION  
TO RECONSIDER THE EXCLUSION OF NEIL DIETZ PURSUANT TO HAWAII  
RULES OF EVIDENCE RULE 615 EXCLUSION OF WITNESSES, FILED ON  
AUGUST 31, 2011; ORDER GRANTING COMPLAINANT'S MOTION TO STRIKE  
RESPONDENTS NEIL ABERCROMBIE, KALBERT YOUNG, NEIL DIETZ, KATHRYN  
MATAYOSHI, DONALG (sic) G. HORNER, AND JAMES D. WILLIAMS' AUGUST 26,  
2011 SUBMISSION TO THE BOARD'S CONTAINING CASE CITATIONS, FILED  
ON SEPTEMBER 1, 2011; AND ORDER GRANTING COMPLAINANT'S MOTION  
TO STRIKE RESPONDENTS NEIL ABERCROMBIE, KALBERT YOUNG, NEIL DIETZ,  
KATHRYN MATAYOSHI, DONALG (sic) G. HORNER, AND JAMES D. WILLIAMS'  
POSITION STATEMENT REGARDING §89-12(b)(2), HRS, FILED ON AUGUST 1, 2011

On August 31, 2011, Respondent NEIL DIETZ (Dietz), Chief Negotiator,  
Office of Collective Bargaining, State of Hawaii, by and through his counsel, filed a  
Motion to Reconsider the Exclusion of Neil Dietz Pursuant to Hawaii Rules of Evidence  
Rule 615 Exclusion of Witnesses (Motion to Reconsider) with the Hawaii Labor

Relations Board (Board). Dietz requests that the Board reconsider its decision to exclude him from the evidentiary hearings in the present case, pursuant to Hawaii Rules of Evidence (HRE), Rules 615, Exclusion of Witnesses, which does not authorize exclusion of a party who is a natural person. Dietz's counsel states in a Declaration dated August 31, 2011, that on August 30, 2011, the HAWAII STATE TEACHERS ASSOCIATION (HSTA or Complainant) requested that Dietz be excluded from the hearing based on the witness exclusionary rule and that the HRE 615 does not authorize his exclusion.

On September 8, 2011, Complainant, by and through its counsel, filed a Memorandum in Opposition to Respondent Neil Dietz's Motion to Reconsider the Exclusion of Neil Dietz Pursuant to Hawaii Rules of Evidence Rules 615 Exclusion of Witnesses Filed 8/3/11 with the Board. Complainant contends that Dietz is named in his official capacity and does not retain a personal interest in the matter; Respondents have designated the Employer's representative who has been approved by the Board and Dietz's presence is not essential or necessary to the presentation of Respondents' case; the Board retains discretion to manage its proceedings to preserve the integrity of the trial process and is not bound by the technical rules of evidence; and there is no evidence that the Board failed to consider when previously rendering its ruling and Respondents have not presented any new evidence or arguments that could not have been presented when the motion was adjudicated.

After reviewing the record and the arguments presented, the Board notes that at the hearing on August 15, 2011, Respondents' counsel designated Annette Anderson as the "DOE representative." Respondents did not request or argue that Dietz or any other of the named Respondents should be permitted to remain in the hearing in their capacity as a party to the proceeding. The Board does not have a rule pertaining to witness exclusion and we look to guidance from the Hawaii Rules of Evidence. HRE Rule 615 pertains to the exclusion of witnesses and the rule does not authorize the exclusion of a party or representative designated by the attorney.

HRE Rule 615, Exclusion of Witnesses, provides as follows:

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's case.

Based on the foregoing rule, the Board finds that Dietz is a party to this proceeding and the witness exclusion rule does not authorize Dietz's exclusion.

Therefore, the Board hereby grants Respondents' Motion to Reconsider.

On September 1, 2011, Complainant, by and through its counsel, filed a Motion to Strike Respondents Neil Abercrombie, Kalbert Young, Neil Dietz, Kathryn Matayoshi, Donalg (sic) G. Horner and James D. Williams' August 26, 2011 Submission to the Board Containing Case Citations (Motion to Strike Case Citations) with the Board. Complainant contends that the Respondents' August 26, 2011 submission fails to conform to the Board's express request for only the case citations relied on by the parties at oral argument and not already cited in the parties' briefs related to the Respondents' August 12, 2011 Motion in Limine and Motions to Quash Subpoenas issued to Respondents James E. (sic) Williams and Neil Dietz and issued to Bruce Coppa. Complainant's counsel's affidavit states that on August 26, 2011, Respondents submitted what appears to be a 3-page single-spaced brief styled as a memorandum where Respondents provided the Board with additional cases and an opinion letter from the Office of Information Practices in support of Respondents' motion to quash. Complainant requests that all supplemental briefing portions of Respondents' August 26, 2011 submission be stricken and Respondents resubmit only a list of their case citations relied on at oral argument and not previously cited.

Respondents did not file a response to Complainant's Motion to Strike Case Citations.

Based on a review of the record and the argument presented, the Board finds that Respondents' submission does not conform to the Board's request at the hearing held on August 25, 2011 for case citations relied on, but not previously provided. Therefore, the Board hereby grants Complainant's Motion to Strike Case Citations and directs Respondents to resubmit only the case citations relied upon in oral argument before the Board on August 25, 2011.

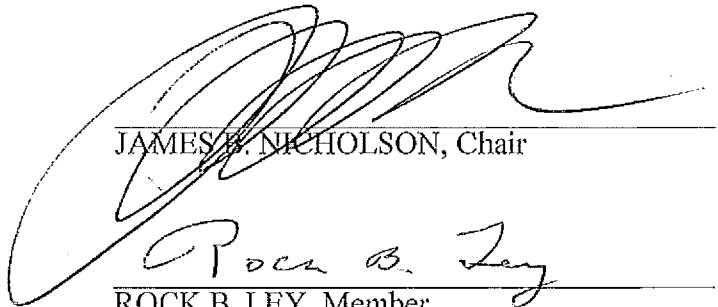
Also on September 1, 2011, Complainant filed a Motion to Strike Respondents Neil Abercrombie, Kalbert Young, Neil Dietz, Kathryn Matayoshi, Donalg (sic) G. Horner and James D. Williams' Position Statement Regarding § 89-12(b)(2), HRS (Motion to Strike Position Statement) with the Board. Complainant contends that the Respondents' August 29, 2011 position statement fails to conform with the Board's page limit requirements expressly ordered at the hearing on August 18, 2011 and therefore Complainant moves to strike the Position Statement or alternatively, to strike portions exceeding 25 pages. Complainant's counsel states in an affidavit that at the hearing on August 18, 2011, the Board instructed the parties to submit written briefs on the interpretation and application of Chapter 89-12(b)(2) on August 29, 2011 and expressly set a page limit of 25 pages, including exhibits. Complainant argues that on August 29, 2011, Respondents filed their Position Statement consisted of 69 pages, which clearly exceeded the Board's order.

Respondents did not file a response to Complainant's Motion to Strike Position Statement.

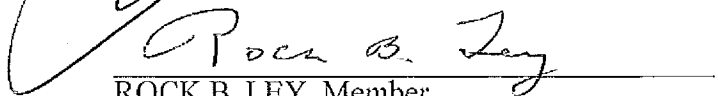
Based on a review of the record and the argument presented, the Board finds that the Respondents' Position Statement exceeds the page limit expressly set by the Board at its August 18, 2011 hearing and hereby grants Motion to Strike Position Statement in its entirety.

DATED: Honolulu, Hawaii, September 14, 2011.

HAWAII LABOR RELATIONS BOARD



JAMES E. NICHOLSON, Chair



ROCK B. LEY, Member

Copies sent to:

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