

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. 2851

ORDER DENYING HSTA'S MOTION
FOR RECONSIDERATION OF
BOARD'S PAGE LIMIT ON
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW, FILED ON
MAY 29, 2012

ORDER DENYING HSTA'S MOTION FOR RECONSIDERATION
OF BOARD'S PAGE LIMIT ON PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW, FILED ON MAY 29, 2012

At a status conference held on May 17, 2012 at the Hawaii Labor Relations Board (Board) in the above-captioned matter, Board Chair James B. Nicholson informed the parties that pursuant to Hawaii Administrative Rules (HAR) § 12-42-8 (17)(C), the Board directed the filing of simultaneous post-hearing briefs by the parties on or before June 15, 2012, with a page limit of fifty (50) pages per brief (not including a table of contents). In response to a prior request by counsel for Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA) before the close of the hearing in the above-captioned matter on May 12, 2012, the Board Chair recognized that pursuant to HAR § 12-42-8(17)(B) the parties

are also entitled to file proposed findings of fact and conclusions of law. The Chair stated that the filing, on or before June 15, 2012, would be limited to twenty-five (25) pages per party. At the May 17, 2012 status conference, neither party formally objected to the page limitations imposed by the Board.

On May 29, 2012, HSTA filed a Motion For Reconsideration of Board's Page Limit On Proposed Findings of Fact and Conclusions of Law (Motion). In the Motion, Complainant's counsel argued that a 25 page limit on the proposed findings of fact and conclusions of law is "restrictive" for Complainant because the evidentiary hearings in this matter lasted approximately 35 days. Counsel requested the parties be allowed to submit proposed findings of fact and conclusions of law "without page restrictions or at a minimum at least 50 pages". In support of Complainant's position, counsel cited to statutes and case law which pertain only to the adequacy of an agency's findings of fact and conclusions of law which accompany every Board decision and order, and not to any statutory provision, rule or opinion regarding page limits established by an agency as to a party's proposed findings of fact and conclusions of law.

On May 31, 2012, Intervenor UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA), by and through its counsel, filed a Statement of No Position to Complainant HSTA's Motion for Reconsideration of Page Limits for Proposed Findings of Fact and Conclusions of Law with the Board.

On June 1, 2012, Respondents NEIL ABERCROMBIE, KALBERT YOUNG, NEIL DIETZ, KATHRYN MATAYOSHI, DONALD G. HORNER and JAMES D. WILLIAMS, by and through their counsel, filed a Memorandum in Opposition to HSTA's Motion for Reconsideration of Board's Page Limit on Proposed Findings of Fact and Conclusions of Law Filed May 29, 2012 with the Board. Respondents opposed the instant motion on the basis that the issues revolve around a few discrete incidents which can be covered in a few pages of findings of fact and thus Respondents believed the page limitations set by the Board are reasonable.

The Board's purpose in establishing the aforementioned page limits for post-hearing briefs and proposed findings of fact and conclusions of law in this matter is to encourage cogent, concise submissions addressing the relevant issues presented. The submission of proposed findings of fact and conclusions of law "without page restrictions" or a minimum of 50 pages, in addition to 50 page briefs, requested by Complainant's counsel, would impose an unnecessary administrative burden and constraint on the Board's resources. Page limitations on briefs imposed by rule in other forums are instructive. Pursuant to Rule 28(a), Hawaii Rules of Appellate Procedure, opening and answering briefs are limited to 35 pages except after leave granted. Under Rule 32(a)(7)(A), Federal Rules of Appellate Procedure, a principal brief may not exceed 30 pages (unless, pursuant to Rule 32(a)(7)(B), the principal brief contains no more than 14,000 words or no more than 1,300 lines of single-spaced text). By comparison, the Board's allowance of 50 page briefs in addition to 25 pages

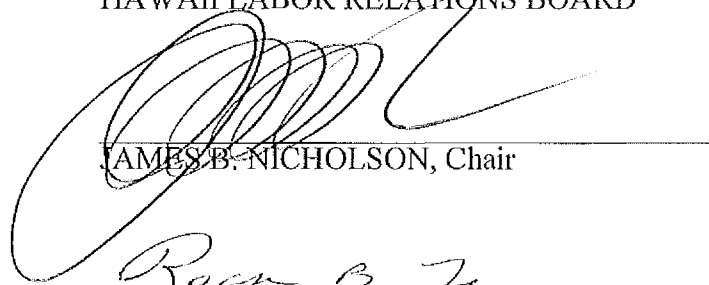
of proposed findings of fact and conclusions of law per party appears more than reasonable. Importantly, the page restriction imposed on the parties by the Board does not affect the Board's duty to prepare separate findings of fact and conclusions of law as part of its decision and order to follow, in addition to ruling upon each proposed finding presented by the parties. Therefore, the Board denies HSTA's Motion for Reconsideration of Board's Page Limit on Proposed Findings of Fact and Conclusions of Law.

ORDER

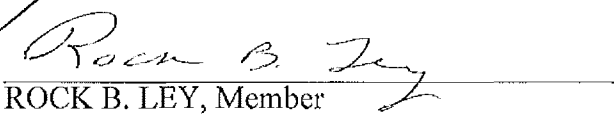
For the reasons discussed above, the Board hereby denies HSTA's Motion for Reconsideration of Board's Page Limit on Proposed Findings of Fact and Conclusions of Law.

DATED: Honolulu, Hawaii, June 1, 2012.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



ROCK B. LEY, Member

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