

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Complainant,

and

WESLEY LO, Regional Chief Executive
Officer, Hawaii Health Systems Corporation -
Maui Region, dba Maui Memorial Medical
Center; EDDIE ESPIRITU, Regional Labor
Relations Officer, Hawaii Health Systems
Corporation - Maui Region, dba Maui
Memorial Medical Center; LISA KNUTSON,
Regional Human Resources Director, Hawaii
Health Systems Corporation - Maui Region,
dba Maui Memorial Medical Center; and
TRUDI TOBIN, Director of Ancillary
Services, Hawaii Health Systems Corporation
- Maui Region, dba Maui Memorial Medical
Center,

Respondents.

CASE NO. CE-13-786

ORDER NO. 2855

ORDER GRANTING HGEA'S
MOTION TO AMEND THE
COMPLAINT, FILED ON JUNE 6,
2012

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On June 6, 2012, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA), by and through its counsel, filed a Motion to Amend the Complaint with the Hawaii Labor Relations Board (Board). HGEA sought to add and clarify facts and claims relating to the implementation of a 10-hour overnight shift at Maui Memorial Medical Center without negotiating the impact of the shift on pharmacists' wages, hours, and other terms and conditions of employment to conform to the evidence and to modify its prayer for relief, *inter alia*, to include additional violations of the Unit 13 collective bargaining agreement, Supplemental Agreements regarding 10-hour shifts, and Hawaii Revised Statutes (HRS) Chapter 89, occurring on and after September 11, 2011, and to request back pay and other make whole relief for affected employees. HGEA contends that the proposed amendments are a result of Respondents' unilateral implementation of the overnight shift

and that Respondents suffer no undue prejudice because the allegations stem from the original Complaint and Respondents have not yet begun their case-in-chief.

On June 14, 2012, Respondents, by and through their counsel filed an Opposition to HGEA's Motion to Amend Complaint with the Board relying, in part, on their arguments contained in their Motion for Decision and Order in Favor of Respondents on Any Claims for Violations of Any Contract or Agreement Based on Actions after 9/11/11 Implementation of 10-hour Overnight Shift, filed on May 15, 2012. In addition, while Respondents concede that HRS Chapter 89 provides the Board with jurisdiction over alleged contractual violations, Respondents contend that the Board should defer the alleged contractual violations to the grievance procedure provided in the Unit 13 collective bargaining agreement and permit the HGEA to file grievances through the grievance and arbitration process for the specific contract violations alleged.

After reviewing the record, the instant motion and arguments in opposition, the Board finds that the amendments add to and clarify Complainant's allegations to conform to the evidence in the record. In addition, the Board finds that the HGEA's allegations of contractual violations raised in its proposed Amended Prohibited Practice Complaint arise from the alleged unilateral implementation of the overnight shift which also gave rise to the alleged statutory violations in this case. Accordingly, the Board finds that it would be more efficient to resolve the alleged contractual claims in this proceeding rather than defer the claims to the contractual grievance procedure as they arise from the same set of facts giving rise to the statutory claims raised. The Board, in its discretion, therefore grants HGEA's Motion to Amend the Complaint, filed on June 6, 2012, pursuant to HAR § 12-42-43.¹

HGEA shall immediately file its First Amended Prohibited Practice Complaint with the Board, as attached to its Motion to Amend the Complaint, filed on June 6, 2012. The Board will thereupon issue a Notice to Respondents of the First Amended Prohibited Practice Complaint.

DATED: Honolulu, Hawaii, June 19, 2012

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

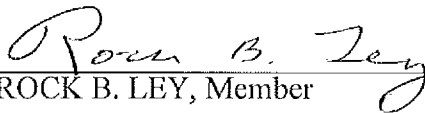
¹Hawaii Administrative Rules (HAR) § 12-42-43 provides as follows:

Any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order thereon.

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SESNITA A.D. MOEPONO, Member



ROCK B. LEY, Member

Copies sent to:

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