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Case No. CU-10-331

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

LEROY MAMUAD,

Complainant,

and

DAYTON NAKANELUA, State Director,
United Public Workers, AFSCME, Local 646,
AFL-CIO,

Respondent.

CASE NO. CU-10-331

ORDER NO. 3037

ORDER DEFERRING HEARING AND
DIRECTING THE PARTIES TO FILE
PROPOSED CONCLUSIONS OF LAW
AND LEGAL ARGUMENTS IN SUPPORT
OF THEIR POSITIONS

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CONCLUSIONS OF LAW AND LEGAL ARGUMENTS IN SUPPORT OF THEIR POSITIONS

On November 24, 2014, Complainant LEROY MAMUAD (Complainant or Mamuad) filed with the Hawaii Labor Relations Board (Board) a Prohibited Practice Complaint (Complaint) against Respondent DAYTON NAKANELUA, State Director, United Public Workers, AFSCME, Local 646, AFL-CIO (Respondent or UPW). The Complaint alleged violation of Hawaii Revised Statutes (HRS) § 89-13(b)(1), (4), and (5)ⁱ, and a breach of duty of fair representation by failing to represent Complainant relating to his termination of employment by the Department of Public Safety.

On November 25, 2014, the Board issued a Notice to Respondent(s) of Prohibited Practice Complaint' Notice of Prehearing/Settlement Conference and Notice of Hearing on the Prohibited Practice Complaint (Notice), and attached a copy of the Complaint. The Notice directed Respondent to file a written answer to the Complaint within ten days after service of the Complaint, and further stated "[i]f you fail to timely file and serve an answer, such failure shall constitute an admission of the material facts alleged in the Complaint and a waiver of hearing." The Prehearing/Settlement Conference was scheduled for December 18, 2014, and the Hearing on the Complaint was scheduled for December 29, 2014.

The USPS Tracking Information retained in the Board's records indicates that the Notice was delivered to the UPW on November 26, 2014. Respondent did not file an answer to the

Complaint within ten days after service of the Complaint, nor did Respondent file any motions related to the Complaint, such as a motion for particularization, a motion to dismiss, or a motion for extension of time in which to file an answer.

On December 18, 2014, Respondent filed an untimely Answer to Prohibited Practice Complaint, as well as its Prehearing Statement.

Where no timely answer to a prohibited practice complaint is filed, Hawaii Administrative Rules (HAR) § 12-42-45(a) and (g) mandates that the material facts alleged in the complaint shall be deemed admitted and a hearing shall be waived. The rule states in relevant part:

A respondent shall file a written answer to the complaint within ten days after service of the complaint. One copy of the answer shall be served on each party, and the original and five copies, with certificate of service on all parties, shall be filed with the board.

* * *

If the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing.

However, although the material facts in the complaint are deemed to be true, that does not, in itself, require the Board to hold that Respondent wilfully committed a prohibited practice pursuant to HRS § 89-13(b)(1), (4), or (5).

On December 23, 2014, Complainant notified the Board that he waived the right to a hearing within forty days after the filing of the Complaint, as provided by HRS § 377-9(b) and HAR § 12-42-46(b). At the Prehearing/Settlement Conference held on December 18, 2014, Respondent indicated that it would have no objection to such a waiver.

Accordingly, the Hearing scheduled for December 29, 2014, is hereby deferred and taken off the Board's calendar. The parties are directed to file with the Board proposed conclusions of law and legal arguments in support of their positions. The Board notes that, pursuant to HAR § 12-42-45(g), the failure to file an answer only constitutes an admission of the material facts alleged in the Complaint and a waiver of hearing; however, the rule does not require the Board to make any particular legal conclusion regarding whether a prohibited practice was or was not committed, nor does the rule prohibit the Board from holding a hearing on a complaint in its discretion.

The parties' proposed conclusions of law and legal arguments in support of their positions shall be filed no later than close of business **January 26, 2015**.

Dated: Honolulu, Hawaii December 23, 2014.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



ROCK B. LEY, Member

Copies sent to:
Leroy Mamuad, Pro Se
Rebecca L. Covert, Esq.

ⁱ HRS § 89-13(b) provides in relevant part that it shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

* * *

- (4) Refuse or fail to comply with any provision of this chapter; or

- (5) Violate the terms of a collective bargaining agreement.

Case No. CU-10-331 – Mamuad v. Nakanelua – Order Deferring Hearing and Directing the Parties to Filed Proposed Conclusions of Law and Legal Arguments in Support of their Positions.
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