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Case No. 16-CE-05-888

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

JULIE M. CANDELARIA-LAWRENCE,

Complainant,

and

DEPARTMENT OF EDUCATION; MARK HACKLEBERG, Principal; Kealakehe Intermediate School, Department of Education, State of Hawaii; HANNAH LOYOLA, Vice Principal; Kealakehe Intermediate School, Department of Education, State of Hawaii; and GENA BONACCORSI, Department Head, Kealakehe Intermediate School, Department of Education, State of Hawaii,

Respondents.

CASE NO.: 16-CE-05-888

ORDER NO. 3210

ORDER ACCEPTING FIRST AMENDED PROHIBITED PRACTICE COMPLAINT; NOTICE TO RESPONDENTS OF FIRST AMENDED PROHIBITED PRACTICE COMPLAINT; NOTICE OF PREHEARING CONFERENCE; AND NOTICE OF HEARING ON FIRST AMENDED PROHIBITED PRACTICE COMPLAINT

ORDER ACCEPTING FIRST AMENDED PROHIBITED PRACTICE COMPLAINT;
NOTICE TO RESPONDENTS OF FIRST AMENDED PROHIBITED
PRACTICE COMPLAINT; NOTICE OF PREHEARING CONFERENCE; AND
NOTICE OF HEARING ON FIRST AMENDED PROHIBITED PRACTICE COMPLAINT

PART I

ORDER ACCEPTING FIRST AMENDED PROHIBITED PRACTICE COMPLAINT

On November 14, 2016, Complainant JULIE M. CANDELARIA-LAWRENCE (Complainant), utilizing the File & ServExpress electronic filing system, filed with the Hawaii Labor Relations Board (Board) a prohibited practice complaint (Complaint), Statement of Facts, and supporting documents. However, the Complaint appears to be a duplicate of the Statement of Facts, and does not include the Board's prohibited practice complaint form, Form HLRB-4, which is available at the Board's office and on the Board's official website.

A prohibited practice complaint must be filed on a form provided by the Board. Hawaii Revised Statutes (HRS) § 89-14 provides that “[a]ny controversy concerning prohibited practices may be submitted to the board *in the same manner* and with the same effect *as provided in section 377-9*” (emphases added). In turn § 377-9(b) provides that “[a]ny party in interest may file with the board a written complaint, *on a form provided by the board*, charging any person with having engaged in any specific unfair labor practice” (emphasis added). Additionally, Hawaii Administrative Rules (HAR) § 12-42-42, governing prohibited practice complaints, provides in § 12-42-42(b), in relevant part, that a “prohibited practice complaint *shall be prepared on a form furnished by the board*” (emphasis added).

On November 17, 2016, Complainant, utilizing the File & ServExpress system, filed a first amended prohibited practice complaint (First Amended Complaint) against the above-named respondents (collectively, Respondents or DOE), utilizing the Board’s Form HLRB-4. A copy of the First Amended Complaint is attached hereto.

The amendment of a document filed with the Board is subject to HAR § 12-42-8, governing proceedings before the Board. Pursuant to § 12-42-8(g)(10), the Board, on its own initiative, may require a document’s amendment. HAR § 12-42-8(g)(10) provides, in relevant part:

Amendment of documents:

- (A) Any document filed in a proceeding may be amended, in the discretion of the board, at any time prior to the issuance of a final order thereon.
- (B) If such document is not in substantial conformity with the applicable rules of the board as to the contents thereof, or is otherwise insufficient, the board, on its own initiative or upon motion of a party, may strike or dismiss such document, or require its amendment. A party moving for amendment of a document shall file a motion for leave to amend together with the proposed amended document.
- (C) If amended, the document shall be effective as of the date of the original filing, if it relates to the same proceeding.

The amendment of a complaint is also governed by HAR § 12-42-43, which provides that “[a]ny complaint may be amended in the discretion of the board at any time prior to the issuance of a final order thereon.”

In the present case, the Board finds that the original Complaint was insufficient under the Board’s administrative rules; further, had Complainant not filed an amended complaint on November 17, 2016, the Board would have issued an order, *sua sponte*, requiring Complainant to file an amended complaint that complies with HAR § 12-42-42(b). The Board exercises its discretion based upon the Board’s knowledge and information that Complainant is or was a self-represented litigant; that the original Complaint was filed using the File & ServExpress electronic filing system; and that at least one party in another proceeding before the Board reported technical difficulties using the File & ServExpress electronic filing system on the same day that Complainant filed her original Complaint.

ACCORDINGLY, the Board hereby accepts Complainant’s First Amended Complaint, for the reasons discussed above.

PART II

NOTICE TO RESPONDENTS OF FIRST AMENDED PROHIBITED PRACTICE COMPLAINT

PURSUANT TO HRS § 377-9(b) AND HAR § 12-42-42:

NOTICE IS HEREBY GIVEN TO RESPONDENTS that the above named COMPLAINANT filed a first amended prohibited practice complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

PURSUANT TO HRS § 377-9(b) and HAR § 12-42-45:

YOU ARE DIRECTED to file a written answer to the first amended complaint within ten (10) days after service of the first amended complaint. One copy of the answer shall be served on each party, and the original and one (1) copy of your answer with certificate of service on all parties shall be filed with the Board no later than 4:30 p.m. on the tenth day after service of the

first amended complaint. If 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.

PART III

NOTICE OF PREHEARING CONFERENCE

PURSUANT TO HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

NOTICE IS HEREBY GIVEN that the Board will conduct a prehearing conference in this matter on the date listed below in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. All parties shall appear in the Board's hearing room at the time designated below. The purpose of the prehearing conference is to clarify the issues, if any, and to the extent possible, reach an agreement on facts, matters or procedures which will facilitate and expedite the hearing or adjudication of the issues presented and to establish deadlines for prehearing briefing, to identify witnesses, file applications for the issuance of subpoenas, exchange witness and exhibit lists and file exhibits and such other matters as the prehearing officer(s) may raise. The Board encourages the parties to have a representative who is familiar with the dispute appear at the prehearing conference. The parties shall file a Prehearing Statement which addresses the foregoing matters with the Board no later than one business day prior to the prehearing conference.

Any party not residing on the island of Oahu may appear telephonically at the prehearing/settlement conference by calling Ms. Nora Ebata, Board Secretary at (808) 586-8616, (808) 586-8847 (TTY), or 1 (888) 569-6859 (TTY islands of Hawaii, Kauai or Maui) to make the necessary arrangements no later than two (2) business days prior to the prehearing/settlement conference.

The Prehearing Conference is scheduled on:

Tuesday, November 29, 2016, at 9:15 a.m.

Complainant's alleged violations are contained in the attached first amended complaint.

PART IV

NOTICE OF HEARING ON FIRST AMENDED PROHIBITED PRACTICE COMPLAINT

PURSUANT TO HRS §§ 377-9, 89-5(i)(4), 89-5(i)(5), and 89-14, and HAR § 12-42-46:

NOTICE IS HEREBY GIVEN that the Board will conduct a hearing on the merits of the instant complaint on **Wednesday, December 21, 2016 at 9:00 a.m.**, in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. The purpose of the hearing is to receive evidence and arguments on whether Respondents committed prohibited practices as alleged by Complainant.

All parties have the right to appear in person and to be represented by counsel or a representative.


Auxiliary aids and services are available upon request by calling Ms. Nora Ebata, Board Secretary at (808) 586-8616, (808) 586-8847 (TTY), or 1 (888) 569-6859 (TTY islands of Hawaii, Kauai or Maui). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

DATED: Honolulu, Hawaii, Nov. 21, 2016.

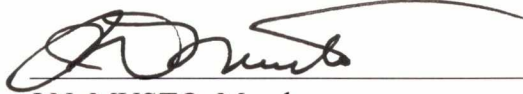
HAWAII LABOR RELATIONS BOARD

EXCUSED

KERRY M. KOMATSUBARA, Chair



SESNITA A.D. MOEPONO, Member



J N. MUSTO, Member

Copy:

Julie Candelaria-Lawrence
Department of Education, State of Hawaii
Art Souza, Complex Area Superintendent
Mark Hackleberg, c/o Art Souza
Hannah Loyola, c/o Art Souza
Gena Bonaccorsi, c/o Art Souza
Board of Education, State of Hawaii
James E. Halvorson, Supervising Deputy Attorney General

