



**EFiled: Aug 21 2017 02:59PM HAST  
Transaction ID 61014849  
Case No. 17-CU-03-352**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

VALERIE ASATO

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME-LOCAL 152,  
AFL-CIO AND KEVIN NAKATA

Respondents.

CASE NO. 17-CU-03-352

ORDER NO. 3287

ORDER GRANTING RESPONDENTS'  
MOTION FOR PARTICULARIZATION OF  
AMENDED COMPLAINT

**ORDER GRANTING RESPONDENT'S MOTION  
FOR PARTICULARIZATION OF AMENDED COMPLAINT**

**Background**

On July 31, 2017, the HAWAII LABOR RELATIONS BOARD (Board) held a status conference in the matter of Case No. 17-CU-03-352. During the status conference, the Board granted the oral motion made by VALERIE ASATO (Complainant) to incorporate the allegations in the original prohibited practice complaint filed on July 5, 2017 into the FIRST AMENDED PROHIBITED PRACTICE COMPLAINT, filed on July 27, 2017 (First Amended Complaint). . Any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order thereon pursuant to Hawaii Administrative Rule (HAR) §12-42-43.

On August 1, 2017, the counsel for Respondents HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME-LOCAL 152, AFL-CIO AND KEVIN NAKATA (Respondents) filed RESPONDENTS' MOTION FOR PARTICULARIZATION OF AMENDED COMPLAINT with the Board (Motion for Particularization).

In accordance with HAR § 12-42-8(g)(3)(iii), in relevant part, "Answering affidavits, if any, shall be served on all parties...with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise."

Regarding a prohibited practice charge, HAR §12-42-45(b) provides that:

(b) If the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, with five days after service of the complaint, file with the board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information. If the board grants such motion, the complainant shall file with the board the original and five copies of the requested particularization, with certificate of service on all parties within five days after service of the board's granting order, unless the board directs otherwise. If the complainant fails to timely file and service the particularization, the board shall dismiss the complaint. Within five days after service of the complainant's particularization, the respondent shall file with the board the original and five copies of the answer, with certification of service on all parties, unless the board directs otherwise.

On August 15, 2017, the Complainant filed with the Board COMPLAINANT'S RESPONSE TO PARTICULARIZATION OF AMENDED COMPLAINT (Complainant's Response).

The Board finds that Complainant's Response appears to be not a response to the Motion for Particularization in accordance with HAR § 12-42-8(g)(3)(C)(iii), but rather, a premature filing of the requested particularization in accordance with HAR § 12-42-45.

Hawaii Revised Statutes (HRS) §89-13(b) states:

It shall be a prohibited practice for a public employee or for an *employee organization or its designated agent (emphasis added)* willfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9;
- (3) Refuse to participate in good faith in the mediation and arbitration procedures set forth in section 89-11;
- (4) Refuse to fail to comply with any provision of this chapter;  
or
- (5) Violate the terms of a collective bargaining agreement.

Further, HRS §377-9(l) states, “No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence.” This 90-day requirement is made applicable to Chapter 89 prohibited practice complaints by HRS §89-14. In addition, HAR § 12-42-42(a) states:

A complaint that any public employer, public employee, or employee organization has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed by a public employee...within ninety days of the alleged violation.

Based on the foregoing and after reviewing the Complainant’s First Amended Complaint, the Board finds that it lacks in specificity sufficient to be vague and indefinite, so that the Respondents cannot properly frame an Answer to the First Amended Complaint and the allegations contained therein. Therefore, the Board **GRANTS** the RESPONDENTS’ MOTION FOR PARTICULARIZATION OF AMENDED COMPLAINT.

Further, the Board orders that the particularization include, but not be limited to, providing the following information.

- a. The dates and details of the events that gave rise to the prohibited practice complaint that occurred within ninety days prior to the filing of the Complaint on July 6, 2017.
- b. The specific violations of provisions under HRS §89-13(b) being alleged that give rise to the prohibited practice complaint.
- c. A description of the practices or acts that support the alleged violations of HRS §89-13(b) contained in the prohibited practice complaint, and the dates and name of person or persons alleged to have committed these violations as set forth in HRS §89-13(b).
- d. Set forth what makes these alleged violations of HRS §89-13(b) willful.

The Complainant shall have until 4:30 pm, Tuesday, September 12, 2017 to file the particularization of First Amended Complaint with the Board and serve it upon the Respondents. The Respondents shall have until 12:00 p.m., Monday, September 18, 2017 to submit an answer to the First Amended Complaint.

#### NOTICE OF STATUS CONFERENCE

The Board issues a notice that a Status Conference will be held on **Tuesday, September 19, 2017 at 9:00 am in the Board’s Hearing Room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813**, to review the Complainant’s particularization of First Amended Complaint and take up such other matters that might be relevant to proceeding with the disposition of the instant prohibited practice charge.

VALERIE ASATO v. HGEA  
CASE NO. 17-CU-03-352  
ORDER GRANTING RESPONDENTS' MOTION FOR PARTICULARIZATION OF  
AMENDED COMPLAINT  
ORDER NO. 3287

DATED: Honolulu, Hawaii, August 21, 2017.

HAWAII LABOR RELATIONS BOARD



*Sesnita A. D. Moepono*  
SESNITA A.D. MOEPONO, Member

*J.N. Musto*  
J.N. MUSTO, Member

Copies to:

Valerie Asato  
Debra A. Kagawa, Esq.