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Case No. 17-CE-14-898, 17-CU-14-354**

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

CAIN AMEMIYA,

Complainant,

and

DEPARTMENT OF PUBLIC SAFETY,
STATE OF HAWAII; and HAWAII
GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Respondents.

CASE NO.: 17-CE-14-898 and
17-CU-14-354

ORDER NO.: 3306

ORDER GRANTING COMPLAINANT
LEAVE TO AMEND PROHIBITED
PRACTICE COMPLAINT

ORDER GRANTING COMPLAINANT LEAVE
TO AMEND PROHIBITED PRACTICE COMPLAINT

I. Background

On July 26, 2017, Complainant CAIN AMEMIYA (Amemiya or Complainant) filed with the Board a FORM HLRB-4 PROHIBITED PRACTICE COMPLAINT (Complaint) against Respondents DEPARTMENT OF PUBLIC SAFETY (PSD) and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION (HGEA). Under the Complaint's heading of "Complainant," Complainant listed "Sheriffs Division" "and/or" "Deputy Sheriff Cain Amemiya." On August 1, 2017, the HGEA filed an answer to the Complaint, asserting various affirmative defenses, and on August 2, 2017, PSD filed its answer to the Complaint, also asserting various affirmative defenses.

On October 18, 2017, Complainant filed a Memorandum for Record from the Department of the Air Force regarding his mandatory training, and also the first page of the Board's FORM HLRB-4 that added additional names under the heading of "Complainant": Deputy Sheriff Cain Amemiya; Deputy Sheriff Blair Wulfert (Wulfert); Deputy Sheriff Vincent Tomas (Tomas); and Deputy Sheriff SGT Colin Malani (Malani).

On October 19, 2017, the Board issued a Notice of Rescheduled Status Conference; Notice of Filing; and Notice to Complainant to Provide Authority as Representative (Notice). The Notice indicated the Board would treat the page of FORM HLRB-4 filed on October 18, 2017, as a proposed amended complaint:

The Board hereby gives notice to all parties that on October 18, 2017, Complainant filed in this matter what appears to be a proposed amended complaint, which adds the names of several individuals as complainants. Pursuant to the Board's administrative rules, specifically Hawaii Administrative Rules (HAR) § 12-42-43, any prohibited practice complaint "may be amended *in the discretion of the [B]oard* at any time prior to the issuance of a final order thereon" (emphasis added). Accordingly, the Board treats this filing as a motion to amend the Complaint that was filed on July 16, 2017. Pursuant to HAR § 12-42-8(g)(3), any opposition to the proposed amended complaint shall be filed within five days.

In response, on October 20, 2017, the HGEA filed a Memorandum in Opposition to Complainants' Motion to Amend Prohibited Practice Complaint filed on July 26, 2017; and Statement of Objection to Complainants' Submission of Documents¹ and Argument (Memorandum in Opposition). On October 23, 2017, PSD filed its (1) Joinder to the HGEA's Memorandum in Opposition; and (2) Memorandum in Opposition to Complainant's Motion to Amend Prohibited Practice Complaint Filed on July 26, 2017 (Joinder).

The Board's October 19, 2017 Notice also directed Complainant to provide evidence of authority to act on behalf of the individuals named in the proposed amended complaint. On October 19, 2017, Deputy Sheriff Tomas filed a FORM HLRB-11 – UNFAIR LABOR PRACTICE COMPLAINT in this matter, listing himself as a complainant and Complainant as the principal representative. On October 19, 2017, Deputy Sheriff Blair Wulfert also filed a FORM HLRB-11 in this matter, listing himself as complainant and Complainant as the principal representative. On October 23, 2017, a FORM HLRB-11 was filed in this matter listing Deputy Sheriff Wulfert as complainant and Complainant as the principal representative; however, the Declaration attached to the form was signed by Colin Malani, and underneath the heading "Your relationship to Complainant" was written "Former Supervisor, Co Worker, Currently affected by the Unfair Labor Practice."

¹ On October 19, 2017, Complainant filed a document entitled "Breach of Duty" and a document entitled "[Dep]artment of Public Safety Failure to Negotiate."

The Board notes that although Deputy Sheriffs Tomas, Wulfert, and Malani utilized a FORM HLRB-11, which is used for unfair labor practice complaints rather than prohibited practice complaints, the forms expressly listed the “Case No.” of the proceeding as “17-CE-14-898, 17-CU-14-354,” which is the present proceeding. Therefore, the Board finds that Deputy Sheriffs Tomas, Wulfert, and Malani sufficiently indicated their interests in participating in the present prohibited practice proceeding, notwithstanding the use of the FORM HLRB-11 rather than the FORM HLRB-4.

II. Order Granting Leave to Amend Complaint

Pursuant to HAR § 12-42-43, “[a]ny complaint may be amended in the discretion of the [B]oard at any time prior to the issuance of a final order thereon.” As argued by the respondents, Complainant *should have* submitted a request to the Board via motion to amend the Complaint, including the basis and justification for the amendment. However, Complainant is not an attorney and therefore the Board accepted Complainant’s filing as a motion although it was not styled as such, in the interest of due process. The Board notes that the original Complaint listed the “complainant” as including “Sheriffs Division” which ostensibly includes more individuals than just Complainant. The Board finds that permitting an amendment to the Complaint to name specific individuals does not unduly prejudice the rights of respondents.

With respect to Complainant being the representative of the additionally named complainants, HAR § 12-42-7, which governs appearances before the Board, provides in part that, “[i]n any proceeding under this chapter, **any public employee**, employee organization, or public employer may be represented by counsel **or any other authorized person**” (§ 12-42-7(b) (emphasis added)). Accordingly, the Board finds that the filings by Deputy Sheriffs Tomas, Wulfert, and Malani, sufficiently indicate their desire to be included in this proceeding with Complainant as their designated representative.

With respect to PSD’s argument regarding futility, the Board does not prejudge the merits of an amended complaint at this time; moreover, the respondents will be given opportunity to raise their legal challenges to the substance of an amended complaint, as discussed in more detail below. Accordingly, the Board hereby grants Complainant’s motion to amend the original complaint in this matter pursuant to the following.

III. Directions for Filing Amended Complaint

The Board recognizes and shares the respondents' concerns regarding adequate notice to respondents of the nature and details of all claims that the additional complainants will be alleging. Therefore, the Board, in granting leave to amend the Complaint, also requires the following:

- (1) A complete amended FORM HLRB-4 must be filed with the Board no later than **4:30 p.m. on December 4, 2017**. The form must include the names of all complainants, and must allege facts that would establish a prohibited practice has occurred.
- (2) The amended complaint form will completely take the place of the original form; therefore, any information or allegation contained in the original Complaint that complainants desire to include in the amended complaint *must be restated*.
- (3) Allegations must include sufficient details to enable the Board and respondents to determine which facts or allegations relate to which complainant. In other words, facts that are unique to any individual complainant must be expressly stated as relating to that complainant. Additional pages may be attached to the form as needed.

Additionally, the Board affirms the rights of respondents to file motions pursuant to the Board's administrative rules – for example, and only by way of example, a motion for particularization pursuant to HAR § 12-42-45.

Following the filing of an amended complaint, the Board will issue a notice to all parties of the amended complaint, and associated deadlines and hearing dates. As a reminder, at the Status Conference held on November 8, 2017, the parties agreed to a date of March 13, 2017, at 9:00 a.m., for the commencement of a hearing on the merits; a deadline of January 31, 2018, for the filing of dispositive motions, such as motions to dismiss or motions for summary judgment; and a deadline of February 14, 2018, for any response or opposition to a dispositive motion. Additionally, the Board in its discretion may schedule oral arguments on any motion that is filed, in which event the Board will notify the parties of the date, time, and place of the oral argument. The Board may also, upon its own initiative, schedule further prehearing or status conferences.

DATED: Honolulu, Hawaii, November 16, 2017.

HAWAII LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J.N. Musto

J.N. MUSTO, Member

Copy:

Cain Amemiya

Peter L. Trask, Esq.

Charlene S.P.T. Murata, Deputy Attorney General

Case No. 17-CE-14-898, 17-CU-14-354 – Amemiya v. PSD and HGEA – Order Granting Complainant Leave to Amend Prohibited Practice Complaint.

Order No.: 3306