

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
EDGAR H. W. LUM,)	Case No. <u>CE-13-65</u>
)	<u>CU-13-39</u>
Complainant,)	
)	
and)	Order No. <u>351</u>
)	
FRANK F. FASI, Mayor of the)	
City and County of Honolulu,)	
)	
and)	
)	
HAWAII GOVERNMENT EMPLOYEES')	
ASSOCIATION, LOCAL 152,)	
AFSCME, AFL-CIO,)	
)	
Respondents.)	

ORDER AMENDING ORDER GRANTING
DEPOSITIONS AND SUBPOENAS DUCES TECUM

On September 3, 1980 this Board granted, by Order No. 348, Complainant's application to take depositions upon oral examination of two persons and for issuance of subpoenas duces tecum to said persons to appear and testify at the proposed deposition and at the hearing scheduled before the Board in the above-entitled matter. Also on September 3, 1980, shortly after Order No. 348 was issued, Respondent Hawaii Government Employees' Association (hereafter HGEA) filed objections to Complainant's aforementioned application. On September 4, 1980 Respondent Mayor of the City and County of Honolulu (hereafter City) filed a joinder in HGEA's objections.

A hearing on Respondents' objections was held on September 5, 1980, at which time attorneys for all parties appeared and presented oral arguments.

Complainant's application for depositions and subpoenas was based on Board Rules 1.08(g)(13) and (14). Relevant portions of said rules provide as follows:

1.08(g)(13) DEPOSITIONS.

a. WRITTEN APPLICATION. Upon written application and for good cause shown, the Board or hearings officer may permit the parties to take deposition upon oral examination or written interrogatories in the manner prescribed under the Hawaii Rules of Civil Procedure.

1.08(g)(14) SUBPOENAS.

a. ISSUANCE. The Board or hearings officer may issue subpoenas to require the attendance of witnesses in the State and the production of books and papers at a hearing held under the provisions of the rules.

Respondent HGEA stated the following objections to Complainant's application: (1) Complainant failed to show good cause for the taking of depositions; (2) Board rules do not provide for the issuance of subpoenas duces tecum at depositions; and (3) Complainant failed to specify the books and papers he wished to have produced.

HGEA argued that Board Rule 1.08(g)(13) is patterned after Section 102.30, Rules and Regulations of the National Labor Relations Board (NLRB), and that NLRB has applied its rule to permit the taking of depositions for the purpose of obtaining and preserving evidence for trial, but not for the purpose of discovery. The majority of the Board sees no merit in the argument that NLRB's interpretation of its rule should apply to the Board's rule. Good cause was shown in Complainant's application, and the Board's grant to Complainant of the taking of depositions stands.

At the hearing attorneys for Respondents HGEA and City agreed to produce the documents requested by Complainant, thereby rendering his request for subpoenas duces tecum moot.

Order No. 348 is hereby reaffirmed as to the taking of depositions upon oral examination and amended by eliminating the grant of issuance of subpoenas duces tecum.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


John E. Milligan, Board Member

Dated: September 10, 1980
Honolulu, Hawaii

DISSENT OF MEMBER CLARK

I am of the opinion that the depositions as requested herein should not be used for discovery purposes because discovery may be had at hearing.


James K. Clark, Board Member

Dated: September 10, 1980
Honolulu, Hawaii