

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of) STATE OF HAWAII ORGANIZATION) OF POLICE OFFICERS (SHOPO)) and FRANCIS C. DeMORALES,) et al.,) Complainants,) and) FRANK F. FASI, Mayor of the) City and County of Honolulu,) et al.,) Respondents.) <hr style="width: 50%; margin-left: 0;"/>	Case No. <u>CE-12-63</u> Order No. <u>415</u>
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ORDER DENYING COMPLAINANTS' APPLICATIONS FOR
TAKING DEPOSITIONS UPON WRITTEN INTERROGATORIES
AND FOR THE ISSUANCE OF SUBPOENA DUCES TECUM

On May 28, 1978, the Complainants State of Hawaii Organization of Police Officers (hereafter SHOPO) and Francis C. DeMorales et al. (hereafter Complainants), by and through their counsel, filed Applications for Taking Depositions Upon Written Interrogatories and for Issuance of Subpoena Duces Tecum (hereafter Applications) directed to the Custodians of Records of various departments of the Respondent Counties of Honolulu, Hawaii, Maui and Kauai (hereafter Respondents or Counties).

On June 5, 1981, Respondent City and County of Honolulu (hereafter City) filed Objections to Complainants' Application for Taking Deposition Upon Written Interrogatories and for Issuance of Subpoena Duces Tecum (hereafter Objections). In said Objections, the City requested that the Board deny the Application directed at the City because: 1) the Complainants failed to show good cause for reopening discovery during the

course of the hearings, and 2) the granting of the Complainants' Application would be burdensome, costly and prejudicial to the City's position on the issues in the case.

The County of Kauai and the County of Maui filed joinders in the City's Objections on June 8, 1981. The County of Hawaii similarly filed a joinder in the City and County's Objections on June 9, 1981.

On June 18, 1981, the Complainants filed a Memorandum In Support of Application For Taking Deposition Upon Written Interrogatories. In said Memorandum, the Complainants made several arguments against the Objections filed by the various Counties. First, the Application was filed and mailed on May 28, 1981, and the Objections of Hawaii County were filed on June 9, 1981. Complainants assert that such a filing is outside the five-day period provided for in Section 12-42-8(g)(3)(c)(iii) even taking into account the two days allowed for mail service pursuant to Rule 6(c), Hawaii Rules of Civil Procedure. Secondly, the Complainants argue that the letter sent by the County of Maui to the Board requesting permission to join in the City and County's Objections is not a proper legal objection because the letter was not filed as an original with five copies and certificate of service in accordance with Section 12-42-8(g)(3)(c)(iii), HPERB Rules and Regulations. Furthermore, SHOPO contends that the copy of the letter sent to SHOPO was addressed to its General Counsel, Gregory M. Sato who was not the SHOPO attorney of record. Thirdly, the Complainants assert that SHOPO was requested to produce documents during the course of the hearings over objections that such requests were in the nature of discovery. Consequently, Respondents assert that the Application should

be granted based upon principle of justice and fair play.

On June 22, 1981, the Board held a hearing on the foregoing Applications and on the Respondents' Objections thereto. At said hearing, prior to addressing the merits of the Applications and Objections, the attorney for the City and County requested leave from the Board to represent the other Counties for the purposes of this hearing. In support of this request, the attorney for the City stated that all of the other county attorneys involved in these proceedings had scheduling conflicts with this hearing. The attorney for the Complainants objected to this request on the grounds that the charters of each of the Counties at issue require approval from the County Council before retaining special counsel for any purposes. The Board took the matter under advisement after the conclusion of oral argument.

As to the merits of the Applications to take discovery, at the hearing Complainants reiterated the argument made in its Memorandum that their request for discovery should be granted because Respondents' request to take discovery was permitted during the hearings on the merits of the prohibited practice charge. The Complainants also argued that the discovery is necessary to refute the Respondents' defense that no past practice existed.

The City orally opposed the Application on the grounds that: 1) the proceedings have already been delayed over a year for the purposes of engaging in discovery and further delay would result in prejudice to the Respondents' case; and 2) the documents which the Complainants were required to produce during the hearings on the merits were not discovery but were merely proper documentation of the prohibited practice charges.

After a review of all of the foregoing arguments, both oral and written, the Board first finds that the attorney for the City may represent the other Counties for the purposes of this hearing on the discovery applications because the requests submitted by the Counties with respect to the discovery were merely joinders in the City's Objections. Moreover, the attorneys for the other Counties specifically requested that the attorney for the City represent their respective Counties only for the limited purpose of this hearing.

Secondly, with respect to the merits of the Applications, the Board finds that pursuant to Section 12-42-8(g) (6), HPERB Rules and Regulations, Complainants have failed to demonstrate that sufficient good cause exists to support the taking of depositions. The Board agrees with the Respondents that the taking of discovery is inappropriate at this juncture of the proceedings. The Complainants have had more than sufficient opportunity to take discovery with respect to the issues in this case before the onset of the hearings. Furthermore, the Respondents' defense with respect to the past practice is not a new or different issue which has arisen during the course of the hearings on the merits and which could not have been reasonably anticipated by the Complainants.

Accordingly, the Applications for Taking Depositions Upon Written Interrogatories and For Issuance of Subpoena Duces Tecum directed against Respondents are hereby denied.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman

STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO)
and FRANCIS C. DeMORALES, et al. v. FRANK F. FASI, et al.
Case No. CE-12-63
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SITIONS UPON WRITTEN INTERROGATORIES AND FOR THE ISSUANCE
OF SUBPOENA DUCES TECUM


James K. Clark, Board Member

Dated: June 29, 1980

Honolulu, Hawaii