

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DANIEL EDWARD PARKER,

Complainant,

and

UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO,

Respondent.

CASE NO. 18-CU-10-370

ORDER NO. 3463

ORDER GRANTING
COMPLAINANT'S MOTION FOR
LEAVE TO FILE SECOND AMENDED
PROHIBITED PRACTICE
COMPLAINT AND ACCEPTING
UNION'S MOTION TO DISMISS
AND/OR FOR SUMMARY
JUDGMENT AND COMPLAINANT'S
OPPOSITION TO MOTION TO
DISMISS AND/OR FOR SUMMARY
JUDGMENT AS APPLICABLE TO THE
SECOND AMENDED COMPLAINT

ORDER GRANTING COMPLAINANT'S MOTION FOR LEAVE
TO FILE SECOND AMENDED PROHIBITED PRACTICE COMPLAINT
AND ACCEPTING UNION'S MOTION TO DISMISS AND/OR FOR SUMMARY
JUDGMENT AND COMPLAINANT'S OPPOSITION TO MOTION TO DISMISS AND/OR
FOR SUMMARY JUDGMENT AS APPLICABLE TO SECOND AMENDED COMPLAINT

On December 17, 2018, Complainant DANIEL EDWARD PARKER (Complainant or Parker), as a self-represented litigant, filed with the Hawai'i Labor Relations Board (Board), a Prohibited Practice Complaint against UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Respondent) for alleged violations of Hawai'i Revised Statutes (HRS) § 89-13(b)(3).

On December 19, 2018, the Board issued Order No. 3433 Pretrial Order and Notices; (1) Notice to Respondent(s) of Prohibited Practice Complaint; (2) Notice Regarding Protection of Social Security Numbers and Personal Information; (3) Notice of Prehearing Conference; (4) Amended Notice of Pretrial Conference; (5) Notice of Hearing on the Merits; and (6) Schedule of Hearings, Conferences, and Deadlines.

On December 24, 2018, Respondent filed a pre-hearing statement, which stated, among other things, that it would not waive its statutory right to a hearing within 40 days of the date the Complaint was filed pursuant to Hawai‘i Administrative Rules (HAR) § 12-42-46(b).

On January 4, 2019, the Board issued Order No, 3437 Amended Pretrial Order and Notices, which amended certain dates.

On January 11, 2019, Complainant, by and through counsel retained after the filing of the initial Prohibited Practice Complaint, filed COMPLAINANT DANIEL EDWARD PARKER’S MOTION (1) FOR LEAVE TO AMEND PROHIBITED PRACTICE COMPLAINT AND (2) TO CONTINUE HEARING ON THE MERITS (Motion for Leave to Amend Complaint) with the Board, pursuant to HAR § 12-42-43. Complainant, among other things, requested permission to amend his complaint to clarify that his claim is against both the Public Union, namely UPW, and the Public Employer, namely the State of Hawai‘i, and that the nature of his “hybrid action” and his action against the UPW for breach of the duty of fair representation.

On January 14, 2019, Complainant filed the DECLARATION OF RICHARD B. ROST with Complainant’s Proposed First Amended Prohibited Practice Complaint (Proposed First Amended Complaint), attached as Exhibit A. The Proposed First Amended Complaint added the Public Employer, State of Hawai‘i, Department of Public Safety, as a Respondent. The Proposed First Amended Complaint alleges, among other things, a violation of HRS § 89-13(a)(8) against the Employer and alleges violations of HRS §§ 89-8(a) and 89-13(b)(4) against the UPW.

On January 15, 2019, the Respondent filed RESPONDENT UPW’S OPPOSITION TO MOTION TO AMEND COMPLAINT AND TO CONTINUE HEARING ON THE MERITS, contending that it is unnecessary and futile to amend the Complaint, that Parker and his counsel have been dilatory and should not be allowed to disregard the deadlines set by the Board, and undue delays and prejudice to the UPW based on HRS §§ 377-9 and 89-5(i)(10).

On January 17, 2019, the Board issued Order No. 3440 Granting in Part Complainant’s Motion for Leave to Amend Complaint and to Continue Hearing on the Merits. Order No. 3440 granted the Complainant’s request to amend the Complaint and ordered the Complainant to file with the Board a re-executed copy of the Proposed First Amended Complaint submitted on January 14, 2019 as the First Amended Complaint by 4:30 p.m. January 23, 2019. The parties were further noticed that the Pretrial Conference scheduled for January 22, 2019 was cancelled and that all deadlines and dates would be rescheduled.

On January 22, 2019, the Complainant filed a First Amended Prohibited Practice Complaint (First Amended Complaint). However, it was not identical to the Proposed First Amended Complaint. Specifically, in the Proposed First Amended Complaint, in section three of the Board’s Prohibited Practice Complaint form, the Complainant indicated that the Respondents were a “public employer” and a “public union” by checking the corresponding boxes. However,

in the filed First Amended Complaint, in the same section on the same form, the boxes for “public employee” and “public employer” were checked.

On January 23, 2019, the Complainant filed a MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT (Motion to File Second Amended Complaint) and attached as an exhibit a Proposed Second Amended Prohibited Practice Complaint (Proposed Second Amended Complaint). The Proposed Second Amended Complaint was asserted to correct the “typographical error” in the First Amended Complaint filed on January 22, 2019, in which the “public employee” box was “mistakenly checked” rather than the “public union” box in section three of the Board’s Prohibited Practice Complaint form that identifies the respondent(s). The Proposed Second Amended Complaint is identical to the Proposed First Amended Complaint approved by the Board with the checked “public employer” and the “public union” boxes to identify the respondents.

On January 28, 2019, UPW filed Union Respondent’s Opposition to Complainant’s Motion to File Second Amended Complaint.

On January 30, 2019, UPW filed Union Respondent’s Motion to Dismiss First Amended Complaint and/or for Summary Judgment (Union’s Motion to Dismiss and/or for Summary Judgment), which noted that if the Board granted the Motion to File Second Amended Complaint, that the Union requested the motion to apply to the Second Amended Complaint.

On February 4, 2019, the Complainant filed Complainant Daniel Edward Parker’s Memorandum in Opposition to Union Respondent’s Motion to Dismiss First Amended Complaint and/or for Summary Judgment.

The Board’s administrative rule regarding amendments of documents is HAR § 12-42-8(g)(10), which provides:

(10) 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 there.
- (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.

Complainant has filed this Motion to File Second Amended Complaint because he failed to file the Proposed First Amended Complaint as his First Amended Complaint, as ordered by the Board in Order No. 3440. Essentially, this failure was a result of a clerical error in which he checked an incorrect box in designating the Respondents.

Accordingly, the Board finds that the First Amended Complaint was “insufficient”, as provided in HAR § 12-42-8(g)(10)(B). Under HAR § 12-42-8(g)(10)(A) and (B), the Board has the discretion to permit amendment of a document “at any time prior to the issuance of a final order.” As Complainant has moved for amendment of the First Amended Complaint by “fil[ing] a motion for leave to amend together with the proposed amended document [(Proposed Second Amended Complaint)]” under HAR § 12-42-8(g)(10)(B), this Board grants the Motion for Leave to File Second Amended Complaint under HAR § 12-42-8(g)(10)(A) and (B).

The Board orders the Complainant to file with the Board a re-executed and re-dated copy of the Proposed Second Amended Complaint submitted on January 23, 2019 as the Second Amended Complaint by 4:30 p.m. on Friday, February 22, 2019. All Respondents shall have ten (10) days after service of the Second Amended Complaint to file a written Answer, pursuant to HAR 12-42-45(a).

Further, because the Motion to File Second Amended Complaint was made to only fix a “typographical error” in the First Amended Complaint and no new claims or facts were alleged, the Board will accept the Union’s Motion to Dismiss and/or for Summary Judgment, including the memorandum, exhibits, and declarations filed with the motion, as applying to the Second Amended Complaint. Further, the Board will accept the Complainant’s Memorandum in Opposition to Union’s Motion to Dismiss and/or for Summary Judgment including the exhibits, and declarations filed with the memorandum, as an opposition to the Union’s Motion to Dismiss and/or for Summary Judgment.

YOU ARE FURTHER HERBY NOTIFIED that after the Second Amended Complaint is filed, the Board will issue a Second Amended Complaint Pretrial Order and Notices rescheduling the dates, including those for hearings, conferences, and deadlines. All other provisions and requirements set forth in Order No. 3437 remain in effect.

DATED: Honolulu, Hawai‘i, _____ February 19, 2019 _____.



HAWAI‘I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J.N. Musto

J.N. MUSTO, Member

Copies sent to:
Richard B. Rost, Esq.
Herbert Takahashi, Esq.