

STATE OF HAWAI‘I
HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

DAVIS T. PILI,

Complainant,

and

DEPARTMENT OF PUBLIC
SAFETY, State of Hawai‘i, NOLAN
P. ESPINDA, Director, Department
of Public Safety, State of Hawai‘i,

Respondents.

CASE NO. 20-CE-10-938

ORDER NO. 3632

ORDER GRANTING MOTION TO
AMEND PROHIBITED PRACTICE
COMPLAINT

ORDER GRANTING MOTION TO AMEND PROHIBITED PRACTICE COMPLAINT

On January 3, 2020, Complainant DAVIS T. PILI (“Complainant”)ⁱ filed a prohibited practice complaint (“Complaint”) with the Hawai‘i Labor Relations Board (“Board”) alleging that Respondents DEPARTMENT OF PUBLIC SAFETY, State of Hawai‘i (“PSD”) AND NOLAN ESPINDA, Director, Department of Public Safety, State of Hawai‘i (“Espinda” and collectively with PSD referred to as “ PSD Respondents”) violated Hawai‘i Revised Statutes (HRS) § 89-13 for their conduct regarding, among other things, his discharge under the PSD’s Memorandum of Understanding Attendance Program; the investigation resulting in his discharge; and their failure to comply with his request for a review of his leave without pay record.

On January 24, 2020, Respondents filed RESPONDENTS ANSWER TO PROHIBITED PRACTICE COMPLAINT, FILED JANUARY 14, 2020.

On January 31, 2020, Respondents filed RESPONDENT DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAII'S MOTION TO DISMISS AND IN THE ALTERNATIVE, MOTION FOR SUMMARY [JUDGMENT] FILED ON JANUARY 31, 2020.

On February 5, 2020, Respondents filed RESPONDENTS DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAII, AND NOLAN P. ESPINDA, DIRECTOR, DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAII'S PRETRIAL STATEMENT.

On February 5, 2020, Complainant filed PRETRIAL STATEMENT OF COMPLAINANT DAVIS T. PILI; STATEMENT OF ISSUES; EXHIBIT LIST.

On February 7, 2020, Complainant filed COMPLAINANT RESPONSE TO RESPONDENTS MOTION TO DISMISS CASE OR SUMMARY JUDGEMENT

On March 16, 2020, the Board issued Order No. 3592, ORDER CANCELLING HEARING DATES AND DIRECTING THE PARTIES TO SUBMIT STATUS REPORTS. Order No. 3592 cancelled the previously scheduled Status Conference and Hearing on the Merits and ordered the parties to file a status report no later than April 17, 2020 with the following information: (1) the current state of the case in terms of arbitration; and (2) the party's perspective on the current issues in the case.

On March 16, 2020, Complainant filed a Form HLRB-4 Prohibited Practice Complaint ("HLRB-4") which, among other things, alleged violations of HRS § 89-13(a)(1), (3), (5), (7), and (8) against the PSD Respondents. The HLRB-4 was not accompanied by a Motion to Amend as required by Hawaii Administrative Rules (HAR) §§ 12-43-10 and 12-43-43.

On March 23, 2020, the Board issued Order No. 3595, EMERGENCY ORDER REGARDING ALL PROCEEDINGS BEFORE THE HAWAII LABOR RELATIONS BOARD. The order contained, among others, "All filing or other deadlines establish by Pretrial Orders, including any amendments, or other Board orders are hereby suspended until rescheduled by the Board."

On April 17, 2020, Complainant filed STATUS REPORT OF COMPLAINANT DAVIS T. PILI that stated, "Up to date, complainant has not received any update of the direction of his case or arbitration decision from UPW." Regarding his position on the current issues, Complainant asserted, among others, that the Memorandum of Understanding Attendance Program (MOU) was not ratified by the employees concerned, and it should not have been implemented; Complainant was not given reasonable accommodations due to his unique case; and that the investigating

officers were not properly trained on how to conduct investigations for alleged violations of the MOU, which caused Complainant's termination, financial loss and emotional distress.

On May 13, 2020, Complainant filed a MOTION TO AMEND PROHIBITED PRACTICE COMPLAINT (Motion to Amend) with Exhibit 1, 2nd Amended PROHIBITED PRACTICE COMPLAINT; and Exhibit 2, Continuation of 2nd Amended Prohibited Practice Complaint.

The proposed amended complaint was filed against the PSD Respondents and further, names as Respondents UNITED PUBLIC WORKERS ("UPW") and DAYTON NAKANELUA, Executive Director, United Public Workers ("Nakanelua" and collectively with UPW referred to as "UPW Respondents", and collectively with the PSD Respondents as "Respondents"). The proposed amended complaint alleges violations of HRS § 89-13(a) (1), (3), (5), (7), and (8).

In support of those allegations, Complainant alleges, among other things, that PSD failed to provide Complainant: with copies of the MOU and an updated MOU; an opportunity to give input, ratify, and receive orientation regarding the MOU; and an opportunity to fully review the MOU until he was presented with a last chance agreement (LCA) without retroactive leave and pay. Complainant further alleges that PSD erred by failing to investigate whether the MOU was followed, verify his LWOP (leave without pay) prior to his discharge, and properly train the investigating officers regarding the proper conduct of a thorough investigation for MOU violations. The proposed amended complaint claims that these errors constituted wrongful termination and discrimination and caused him financial loss, financial burden, and emotional distress.

Against UPW, the proposed amended complaint alleges a breach of the duty of fair representation. In support of those claims, Complainant alleges, among other things, that he requested his employee records through his business agent but did not receive them until the Board was involved; and that UPW notified him that the only way to regain employment was through the LCA without retroactive leave and pay while failing to inform him that arbitration had been granted. Finally, Complainant alleges, among other things, that both PSD and UPW failed to properly ratify the MOU, which discriminates against people with medical related concerns resulting in their wrongful termination; withheld his employee records from him despite multiple requests; and failed to provide him with reasonable accommodations for his medical related concerns.

On May 19, 2020, the Board issued Order No. 3605, SECOND EMERGENCY ORDER REGARDING ALL PROCEEDINGS BEFORE THE HAWAI'I LABOR RELATIONS BOARD that ordered, among others, that "All filings in all cases before the Board during the emergency

period **must be made electronically through the Board's filing service File&ServeXpress (FSX)**, unless otherwise ordered by the Board.

On June 30, 2020, the Board issued Order No. 3615 Setting Deadline for Respondents to Submit Status Reports and Response to the Amended Complaint Filed on May 13, 2020, which, among other things, set a deadline of July 13, 2020 at 4:30 p.m. to file a response, if any, to Complainant's Motion to Amend.

On July 13, 2020, Respondents filed Respondents Department of Public Safety, State of Hawaii, and Nolan P. Espinda, Director, Department of Public Safety, State of Hawaii's Answer to Complainant Davis T. Pili's Amended Prohibited Practice Complaint, Filed May 13, 2020; Respondents Department of Public Safety, State of Hawaii and Nolan P. Espinda, Director, Department of Public Safety's Case Status Report (PSD Answer to Amended Complaint).

HAR §§ 12-42-43 provides as follows:

§ 12-42-43 Amendment. Any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order thereon.

HAR § 12-43-10 provides as follows:

§ 12-43-10 Amendment of documents:

(A) Any complaint may be amended, in the discretion of the board, at any time prior to the issuance of a final order thereon.

(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.

(Emphasis added)

Regarding the March 16, 2020 HLRB-4 Prohibited Practice Complaint (HLRB-4) filed by Complainant, the Board finds that there was no motion for leave to amend attached. Accordingly, because Complainant failed to comply with HAR § 12-43-10(B), the Board takes no action on this HLRB-4 and orders that Complainant file a withdrawal of the HRLB-4.

Based on PSD Respondents' filing of PSD Answer to Amended Complaint and lack of objections to the Motion to Amend, the Board grants the Motion to Amend. Accordingly, the Board further orders that Complainant electronically file with FSX the 2nd Amended Prohibited Practice Complaint (Exhibit 1 to the Motion to Amend and referred to as "Amended Complaint") with the change to paragraph 3.a.(2) of the Amended Complaint to replace the name of the UPW Representative Dayton Nakanelua with LIZ HO, the current UPW Administrator ("Ho") **by July 28, 2020 at 4:30 p.m.**

Finally, the Board accepts PSD's Answer to Amended Complaint, filed on July 13, 2020, as Respondents' Answer to the Amended Prohibited Practice Complaint. Therefore, PSD is not required to refile this Answer.

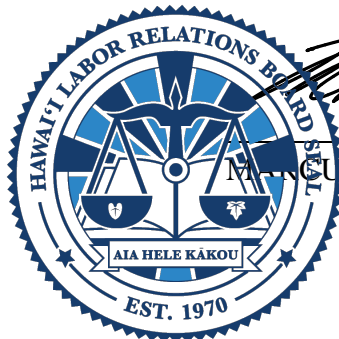
ORDER

Based on the foregoing, the Board summarizes its orders as follows:

- (1) Complainant file a withdrawal of the Form HLRB-4 Prohibited Practice Complaint filed on March 16, 2020;
- (2) The Motion to Amend is granted, and Complainant should file the Amended Complaint (Exhibit 1 to the Motion to Amend) with the change to Paragraph 3.a.(2) to delete Dayton Nakanelua's name and substitute Liz Ho's name as the UPW Representative **by August 28, 2020 at 4:30 p.m.**; and
- (3) PSD Respondents' Answer, filed on July 13, 2020, is accepted and deemed as PSD Respondents' Answer to the Amended Complaint and need not be refiled.

DATED: Honolulu, Hawai'i, _____ July 24, 2020 _____.


HAWAII LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair


SESNITA A.D. MOEPONO, Member


N. MUSTO, Member

Copies sent to:

Davis T. Pili, SRL
Quinn H. Yang, Deputy Attorney General

ⁱ Mr. Pili is represented by his spouse, Sina P. Pili, who is not an attorney, nor has she appeared before the Board. Therefore, Mr. Pili will be considered by the Board to be a self-represented litigant (SRL).

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