

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

MARIE LADERTA, Director,
Department of Human Resources
Development, State of Hawaii; and
VALERIE PACHECO, Personnel
Program Administrator, Department
of Human Resources Development,
State of Hawaii,

Respondents.

CASE NO(S). CE-01-605a
CE-10-605b

ORDER NO. 3510

ORDER GRANTING COMPLAINANT'S
MOTION TO CONTINUE DEADLINE TO
FILE EXCEPTIONS TO PROPOSED
DECISION AND ORDER ADOPTING
RESPONDENTS' PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND
PROPOSED DECISION AND ORDER;
NOTICE OF HEARING ON EXCEPTIONS

**ORDER GRANTING COMPLAINANT'S MOTION TO
CONTINUE DEADLINE TO FILE EXCEPTIONS TO PROPOSED DECISION
AND ORDER ADOPTING RESPONDENTS' PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND PROPOSED DECISION AND ORDER**

On April 22, 2019, the Hawaii Labor Relations Board (Board) issued Proposed Decision and Order Adopting Respondent's Proposed Findings of Fact, Conclusions of Law, and Proposed Decision and Order in the above-entitled case (Proposed D & O), which among other things provided:

FILING OF EXCEPTIONS

Any person adversely affected by the Proposed Order and Decision may file exceptions with the Board, pursuant to HRS § 91-11, within ten days after service of a certified copy of this document. The exceptions shall specify which findings

or conclusions are being excepted to with citations to the factual and legal authorities therefor. A hearing for the presentation of oral arguments will be scheduled should any party file exceptions, and the parties will be notified thereof.

On April 25, 2019, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Complainant, Union, or UPW) filed Complainant's Motion to Continue Deadline to File Exceptions to Proposed Decision and Order Adopting Respondents' Proposed Findings of Fact, Conclusions of Law, and Proposed Decision and Order (Motion to Extend) requesting that the deadline to file exceptions to the Proposed D & O currently scheduled for on or about May 2, 2019 be extended to June 4, 2019 due to conflicts in the Union counsel's calendar for the months of May, June, and July.

On April 26, 2019, the Board issued Order No. 3491 Granting Complainant's Motion to Continue Deadline to File Exceptions to Proposed Decision and Order Adopting Respondents' Proposed Findings of Fact, Conclusions of Law, and Proposed Decision and Order, which granted the Complainant's request for an extension to file exceptions to the Proposed D & O from May 2, 2019 to June 4, 2019.

On May 23, 2019, Complainant filed a second Complainant's Motion to Continue Deadline to File Exceptions to Proposed Decision and Order Adopting Respondents' Proposed Findings of Fact, Conclusions of Law, and Proposed Decision and Order requesting another extension of the deadline to file its exceptions to the Proposed D & O from June 4, 2019 to July 22, 2019 due to conflicts in the Union counsel's calendar for May, June, and July 2019 (2nd Motion to Extend). In her Declaration supporting the 2nd Motion to Extend, UPW's counsel Rebecca L. Covert (Covert) declares that, "Since the time the first extension was allowed, review of the case was started, however, unexpected events and deadlines arose subsequent to the Board's Order No. 3491 that necessitated this motion for a further extension." Covert further declared that she spoke with Respondents' counsel Jeffrey Keating, who informed her that Respondents would have no objection to an extension of the June 4, 2019 deadline requested by UPW. She attached to her Declaration an email exchange with Keating confirming Respondents' lack of objections to the continuance but requesting that any exceptions hearing be noticed after the first week of August 2019 to accommodate his vacation schedule (Attachment 2). Accordingly, Covert further requests that the exceptions hearing be noticed after the first week of August 2019.

While the Board's administrative rules do not specifically provide for an extension for the filing of exceptions to proposed findings, Hawai'i Administrative Rules (HAR) § 12-42-8(g)(17)(D) provides for extensions for the filing of proposed findings:

- (D) A request for extension of time within which to file a brief or proposed findings shall be made in writing to the board at least three days before the expiration of the required time for filing, and shall be accompanied by an affidavit setting

forth the grounds upon which it is based and indicating the position of the other parties with regard to such request.

(Emphasis added)

The Board finds that because the foregoing administrative provision allows for an extension to file proposed findings and the extension requested relates to proposed findings, HAR § 12-42-8(g)(17)(D) will be construed to apply to the UPW's request. The Board further finds that UPW's 2nd Motion to Extend meets the requirements for an extension under this provision because it was made in writing at least three days before the required time for filing and accompanied by a declaration setting forth the grounds for the Motion and providing the opposing parties' position agreeing to the request.

Accordingly, for the reasons set forth above, the Board grants the UPW's Motion to Extend the deadline for filing of exceptions to the Proposed D & O. The Board will grant no further extensions.

ORDER

The Board grants the UPW's Motion to Extend and hereby orders that the deadline for submission of exceptions be extended from June 4, 2019 to July 22, 2019 at 4:30 p.m.

NOTICE OF HEARING ON EXCEPTIONS

NOTICE IS HEREBY GIVEN that a hearing for the presentation of oral arguments on any exceptions filed to the Proposed D & O in this case will be held on Wednesday, August 28, 2019 at 9:00 a.m. in the Board's hearings room located at 830 Punchbowl Street, Room 434; Honolulu, Hawai'i 96813.

All parties have the right to appear in person and to be represented by counsel or any other authorized person.

Auxiliary aids and services are available upon request to parties and representatives with disabilities. For TTY, dial 711; then, ask for (808) 586-8616, the Hawai'i Labor Relations Board. For any other reasonable accommodations, or to make arrangements to appear telephonically, call the Board at (808) 586-8616 within seven (7) days prior to the hearing.

DATED: Honolulu, Hawai'i, _____ May 31, 2019 _____.

HAWAI'I 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

Copies to:
Rebecca L. Covert, Esq.
Jeffrey A. Keating, Deputy Attorney General

UPW v. LADERTA, et al., CASE NOS. CE-01-605a, CE-10-605b
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