

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

DANIEL EDWARD PARKER,

Complainant,

and

UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO; and
DEPARTMENT OF PUBLIC SAFETY,
State of Hawai'i,

Respondents.

CASE NOS. 18-CU-10-370
19-CE-10-923

ORDER NO. 3511

ORDER DENYING COMPLAINANT
DANIEL EDWARD PARKER'S
MOTION TO STRIKE UNION
RESPONDENT'S UNTIMELY
EXHIBITS; NOTICE OF HEARING

ORDER DENYING COMPLAINANT DANIEL EDWARD PARKER'S
MOTION TO STRIKE UNION RESPONDENT'S UNTIMELY EXHIBITS

On February 22, 2019, the Hawai'i Labor Relations Board (Board) issued Order No. 3465, Second Amended Pre-Trial Order and Notices, which among other things, set a deadline of March 19, 2019 for the parties to exchange exhibit lists and exchange and file proposed exhibits.

On April 3, 2019, Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed Union Respondent's Motion to Withdraw Exhibits and Replace Exhibits on or Before May 13, 2019 (Motion to Withdraw and Replace). The Motion to Withdraw and Replace requests permission for the UPW to withdraw and replace its filed exhibits with bates stamped copies of those exhibits, with the bates stamp on the upper right corner, beginning with the number 00348. UPW's Motion also requests leave to submit additional exhibits identified as "notes of [UPW] business agent Julie Miyagawa and other documents referenced in the cross-examination of Daniel Parker on April 2, 2019."

On April 5, 2019, the Complainant DANIEL EDWARD PARKER (Complainant or Parker) filed a Memorandum in Opposition to UPW's Motion to Withdraw and Replace

(Opposition to UPW's Withdrawal and Replacement). In the Opposition to UPW's Withdrawal and Replacement, the Complainant does not object to UPW resubmitting its previously submitted exhibits with bates stamps but does object to UPW's request to submit additional exhibits. Complainant argues that there was a March 19, 2019 deadline to submit exhibits and that the Motion to Withdraw and Replace is, in effect, a motion for leave to file additional, previously undisclosed exhibits with no explanation of the basis for submission of additional exhibits at this stage of the proceedings. Finally, Complainant asserts, among other things, that it is prejudicial to allow UPW to submit exhibits at this point in the proceedings due to the lack of opportunity to utilize these exhibits during the hearing on the merits (HOM) on Maui held in April 2019.

Respondent PSD did not file a response to UPW's Motion to Withdraw and Replace within five days after the service of the Motion to Withdraw and Replace¹.

On April 15, 2019, the Board issued Order No. 3484, granting, in part, and denying, in part, UPW's Motion to Withdraw and Replace. Specifically, Order No. 3484 granted UPW's request to withdraw its previously submitted exhibits and replace with copies of the identical exhibits with bates stamps on the upper right corner, beginning with the number 00348; and denied the Union Respondent's Motion regarding the request to submit any additional exhibits.

On May 9, 2019, UPW filed with the Board an Application for Issuance of Subpoena to order the appearance of Julie Miyagawa before the Board on June 18, 2019 at 1:30 p.m., and for her to produce "[a] true and accurate copy of any and all notes, records, and documents regarding the grievance you filed and processed in [sic] behalf of Daniel Edward Parker in case number JCM-18-10." On the same day, the Board issued the requested Subpoena Duces Tecum.

On May 13, 2019, UPW filed Union Respondent's First Revised Exhibit List (First Amended Exhibit List) and Exhibits 00348 to 00614. This First Amended Exhibit List includes Exhibit RR, bates stamped 00570 to 00573, which is identified as "[d]ocuments subpoenaed or voluntarily produced by Melanie Saito." The First Amended Exhibit List also includes Exhibit SS, bates stamped 00574 to 00614, and identified as "[s]ubpoena duces tecum issued to Julie Miyagawa, September 5, 2018 inter office memorandum, hand written notes of Julie Miyagawa."

On May 17, 2019, Parker filed Complainant Daniel Edward Parker's Motion to Strike Untimely Exhibits (Motion to Strike). In support of the Motion, Parker contends, other things, that UPW was required to file its exhibits by March 19, 2019 and disregarded Board Order No. 3484 by adding Exhibits RR and SS. Complainant further requests that Exhibits RR and SS be stricken and that UPW be barred from submitting additional exhibits, listed as HH – QQ and TT, which have not been disclosed or filed.

On May 24, 2019, UPW filed Respondent UPW's Opposition to Parker's May 17, 2019 Motion to Strike Union Exhibits. In opposing the Motion, UPW argues that: on March 19, 2019, it did identify both Exhibits RR, SS, as well as Exhibits HH – QQ and TT, and the witnesses who

would produce those exhibits via subpoena, as required by Order No. 3465; the May 13, 2019 amended exhibit list is identical to the March 19, 2019 exhibit list and was made to avoid duplication of exhibits and to ensure that Parker had ample time to review the Miyagawa and Saito documents before examining the UPW State Director; and in a contested case proceeding, the Board has no authority to preclude any party from presenting relevant and material documentary evidence or to subpoena and examine witnesses.

Respondent PSD did not file a response to Complainant's Motion to Strike within five days after the service of the Motion to Strikeⁱⁱ.

The issue raised by the Motion to Strike is simply whether a party may submit additional exhibits after the deadline established by the Board in Order No. 3465.

The denial of a motion to strike is within the discretion of the Board. Medeiros v. Westerman, Board Case No. CE-03-812, Order No. 3085 (citing Shanghai Inv. Co. v. Aletka Co., 92 Hawai'i 482, 494, 993 P.2d 516, 528 (2000)).

The Board is well-aware of the March 19, 2019 deadline for submission of exhibits established in Order No. 3465. The Board also acknowledges Complainant's argument in his April 5, 2019 Opposition to UPW's Withdrawal and Replacement, that he would be prejudiced by untimely filed exhibits because of lack of opportunity to use the exhibits at the Maui HOMs in April 2019. While, admittedly, UPW did not submit copies of all the exhibits listed on Union Respondent's Exhibit List, filed on March 19, 2019, UPW's March 19, 2019 Exhibit List did list and identify Exhibits HH –TT, and the witnesses who would produce those subpoenaed records at the HOM. At the HOM, UPW will still be required to demonstrate that these exhibits are admissible as evidence. Further, if these exhibits are admitted into evidence, Complainant will have a full opportunity to question any witnesses, including the witnesses who produce these subpoenaed records and witnesses on rebuttal, to address these exhibits. Accordingly, the Board, in its discretion, will deny the Motion to Strike.

ORDER

For all the reasons set forth above, the Board hereby DENIES, Complainant's Motion to Strike. As to UPW's Exhibits HH - TT, the Board will notice a hearing to receive any subpoenaed records on June 13, 2019 at 9:00 a.m. (June 13, 2019 hearing) in the Board's hearing room. UPW shall, at its own cost, make arrangements for a court reporter to receive the subpoenaed records at the June 13, 2019 hearing. Copies of Exhibits HH thru TT shall be sent to the parties and filed with the Board by 4:30 p.m. on June 14, 2019. UPW shall notify the Board by Monday, June 10, 2019 by 12:00 p.m. if the June 13, 2019 hearing is not necessary and request that it be canceled.

Further, the Complainant may request the Board to return to Maui to use the above exhibits in its case in chief.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Board will hold a hearing on June 13, 2019 at 9:00 a.m. in the Board's hearings room; 830 Punchbowl Street, Room 434; Honolulu, Hawai'i 96813 to receive any records, which the parties subpoena.

DATED: Honolulu, Hawai'i, June 4, 2019.

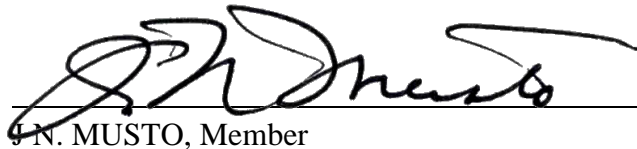
HAWAI'I LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair



SESNITA A.D. MOEPONO, Member



J.N. MUSTO, Member

Copies sent to:

Richard B. Rost, Esq.

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Dennis K. Ferm, Deputy Attorney General

ⁱ Hawai'i Administrative Rules § 12-42-8(g)(3)(C)(iii) states in relevant part:

Answering affidavits, if any, shall be served on all parties and the original and five copies, with certificate of service on all parties, shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise.

ⁱⁱ *Id.*