

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

JONATHAN TAUM,

Complainant,

and

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

Respondents.

CASE NOS. 17-CU-10-357
17-CE-10-906

ORDER NO. 3537

NOTICE OF ORDER STRIKING
JONATHAN SLOAN AND
ENTERTAINING OF STIPULATION

NOTICE OF ORDER STRIKING
JONATHAN SLOAN AND ENTERTAINING OF STIPULATION

Before the end of the July 3, 2019 continued hearing on the merits (HOM) during Respondent UNITED PUBLIC WORKERS, AFSCME LOCAL 646, AFL-CIO's (UPW) presentation of its case, UPW's counsel informed the Board of his intention to call two witnesses Chawn Kaili and Jonathan Sloan (Sloan) at the next continued HOM. UPW's counsel further stated that while he has been unable to locate Mr. Kaili, both witnesses' last known locations were in Hilo, Hawai'i. Regarding Sloan, UPW's counsel represented that he had not yet decided if he was going to call Sloan. However, UPW's counsel further stated that in light of questions by the Board regarding various issues, he may have to "call him [Sloan] for a limited purpose."

Accordingly, the Board scheduled a continued HOM on August 7, 2019 at 9:30 a.m. in Hilo, Hawai'i.

Subsequently, the Board has reviewed the record in this case and notes the following.

At the April 11, 2018 HOM, the Board, through its presiding officer J N. Musto (Musto), addressed the representation made by Complainant's counsel's regarding his inability to perfect service on Sloan.

HEARINGS OFFICER MUSTO: Yes.

And Jon Sloan.

MR. HONG: He's ducking our subpoena. You have the declaration of our process server that document the, I think pretty consistent behavior by the UPW about ducking subpoenas.

HEARINGS OFFICER MUSTO: He is - -

MR. HONG: Business agent.

HEARINGS OFFICER MUSTO: In Hilo?

MR. HONG: That's correct.

HEARINGS OFFICER MUSTO: . . .With respect to Jon Sloan, Jon Sloan is also listed as a witness under the Respondent UPW's witness list. The Board would suggest that you continue to try and make service on Mr. Sloan. If the UPW is not going to assist or willingly help show that Mr. Sloan becomes present, then he will be stricken from the UPW list; but, again, the evasion of the service is not something the Board has authority over. Once served, we can take some action.

(Transcript, Volume 1, at 16-20) (Tr. __, at __) (Emphasis added)

At the July 18, 2018 HOM, Board Member Musto then noted

. . . The transcript on April 11, 2018 during the hearing on the merits states that if UPW is not going to assist or willingly help in producing Mr. Sloan, then Mr. Sloan will be stricken from the UPW witness list. When we return to receive the testimony of Nosaka and Paleka, if Sloan is evading service, then his name shall be struck from the UPW list of witnesses, and the Board will consider his testimony would have been adverse to the Respondent UPW.

Tr. 3, at 565-566.

Based on the record set forth above, the Board finds that at the April 11, 2018 and July 18, 2018 HOMs, the Board orally ordered that Mr. Sloan's name be stricken off the UPW witness list. Therefore, Respondent UPW cannot call Mr. Sloan as a witness in this case.

However, the Board will allow the UPW to call Sloan to testify providing that all parties enter into a Stipulation signed by all parties and filed by the UPW on or before July 23, 2019 at 4:30 p.m., with the following conditions. The Stipulation is required to:

- (1) Request that the Board amend the April 11, 2018 and July 18, 2018 oral orders set forth above to allow Sloan's testimony before the Board;
- (2) Provide that Complainant's counsel will proceed first with any direct examination of Sloan followed by any cross and redirect examination; and
- (3) Provide that Respondent UPW's counsel may then follow Complainant's counsel's direct examination (with cross and redirect) with any direct examination of Sloan followed by any cross and redirect examination.

If the Stipulation is not filed with the Board by this deadline, then the Board orders UPW to inform the Board either of its next witnesses to be called in the presentation of its case and their known locations or of the resting of its case by July 23, 2019 at 4:30 p.m.

DATED: Honolulu, Hawai'i, July 11, 2019.

HAWAI'I LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J.N. MUSTO, Member

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