

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

JONATHAN TAUM; CHAD ROSS; CARL
L. KAHAWAI; QUINCY G.K. PACHECO;
BRADFORD J. LEIALOHA; and
JULIEANN L. SALAS,

Complainant(s),

and

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

Respondents.

CASE NO(S). CE-10-737
CU-10-284

ORDER NO. 3921

ORDER GRANTING DEPARTMENT OF
HUMAN RESOURCES DEVELOPMENT,
STATE OF HAWAI'I'S MOTION TO
STRIKE SECOND AMENDED
COMPLAINT; GRANTING
COMPLAINANTS' MOTION TO FILE
SECOND AMENDED COMPLAINT; AND
SETTING DEADLINES FOR FILING OF
SECOND AMENDED COMPLAINT AND
ANSWER

ORDER GRANTING DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT,
STATE OF HAWAI'I'S MOTION TO STRIKE SECOND AMENDED COMPLAINT,
FILED ON JULY 19, 2021; GRANTING COMPLAINANTS' MOTION TO FILE
SECOND AMENDED COMPLAINT; AND SETTING DEADLINES
FOR FILING OF SECOND AMENDED COMPLAINT AND ANSWER

In its Pretrial Statement, Respondent DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, State of Hawai'i (DHRD or Respondent) asserts that the Amended Complaint is flawed because the department-wide searching and bumping processes that allegedly violated the collective bargaining agreement (CBA) § 12 were conducted by the Department of Public Safety, State of Hawai'i (PSD) not DHRD.

Accordingly, at the July 8, 2021 Pretrial Conference, the Hawai'i Labor Relations Board (Board) raised the issue of whether PSD should be added as a named respondent in this case. Complainants' attorney agreed to file a Motion to File a Second Amended Complaint (Motion for Second Amended Complaint) to add PSD as a named respondent by Monday, July 19, 2021.

By Order No. 3777, the Board ordered and set a deadline for Complainants to file the Motion for Second Amended Complaint.

On July 19, 2021, Complainants filed a Second Amended Complaint without the Motion for Second Amended Complaint.

DHRD filed a motion to strike the Second Amended Complaint (Motion to Strike), which Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW and collectively Respondents with DHRD) joined.

Complainants opposed the Motion to Strike based on inadvertent error.

The Board grants the Motion to Strike the Second Amended Complaint filed on July 19, 2021 based on Hawai'i Administrative Rules (HAR) § 12-42-8(g)(10)(B) and Order No. 3777 because Complainants were required to file a motion for leave to amend with the proposed amended document.

However, subsequently, Complainants CARL L. KAHAWAI (Kahawai or Complainant); QUINCY G.K. PACHECO (Pacheco or Complainant); BRADFORD J. LEIALOHA (Leialoha or Complainant); and JULIEANN L. SALAS (Salas or Complainant) filed a Motion for Second Amended Complaint and to Amend the Caption to include the Department of Public Safety, State of Hawai'i as a named Respondent, accompanied by the proposed Second Amended Complaint. Complainant CHAD ROSS (Complainant or Ross and collectively Respondents with Kahawai, Pacheco, Leialoha, and Salas) filed a joinder in the Motion for Second Amended Complaint.

DHRD opposed the Motion for Second Amended Complaint, which UPW joined. In the opposition, while acknowledging that the filing of Motion for Second Amended Complaint one day late created no significant material prejudice, DHRD argued that there was significant material prejudice by adding PSD to this case over a decade after the filing of the original complaint.

Based on HAR §§ 12-42-8(g)(10)(A) and 12-42-43, the Board has the discretion to permit a complaint to be amended at anytime prior to issuance of a final order.

A review of the complaints involved show that the allegations against the employer in the Amended Complaint were against the State of Hawai'i and the allegations against the employer in the Second Amended Complaint were brought more specifically against DHRD and [PSD]. While not identical, those allegations and employer parties in the Second Amended Complaint are sufficiently similar to those in the Amended Complaint. The Board further notes that the filing of the Motion for Second Amended Complaint was triggered by DHRD raising the issue that PSD was the party responsible for the departmental searching and bumping policy that allegedly violated the CBA. Under these circumstances, the Board, in its discretion, finds no significant material prejudice, and therefore, grants the Motion for Second Amended Complaint.

The Board orders Complainants to refile the Second Amended Complaint by December 7, 2022, and that Respondents file their Answer within 10 days of service of the Second Amended Complaint.

DATED: Honolulu, Hawai'i, _____ December 1, 2022 _____.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

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TAUM et al. v. DHRD and UPW
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