

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20, SUBREGION 37

STEPHENS MEDIA, LLC, d/b/a
HAWAII TRIBUNE-HERALD

and

Cases 37-CA-7043
37-CA-7045
37-CA-7046
37-CA-7047
37-CA-7048
37-CA-7084
37-CA-7085
37-CA-7086
37-CA-7087
37-CA-7112
37-CA-7114
37-CA-7115
37-CA-7186

HAWAII NEWSPAPER GUILD,
LOCAL 39117, COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO

OPPOSITION TO RESPONDENT'S MOTION TO CHANGE HEARING LOCATION

Counsel for the Acting General Counsel (General Counsel) hereby opposes Respondent's Motion to Change Hearing Location (Respondent's Motion). The United States Court of Appeals for the District of Columbia Circuit on April 20, 2012, enforced an Order of the National Labor Relations Board dated February 14, 2011,¹ directing Stephens Media, LLC, c/b/a Hawaii Tribune-Herald (Respondent) to make whole Reporters Hunter Bishop (Bishop) and David Smith (Smith) for any loss of earnings and other benefits that they suffered as a result of Respondent's unfair labor practices in

¹ 356 NLRB No. 63 (2011), enfd. 677 F.3d 1241 (2012).

violation of Sections 8(a)(3) and (1) of the National Labor Relations Act. At issue in this compliance hearing is the backpay owed by Respondent to Bishop and Smith resulting from their unlawful discharge.

General Counsel's decision to hold the compliance hearing in Honolulu was based on several factors. Since this is a compliance hearing General Counsel must establish that the gross backpay formula and amount is reasonable. The primary witness is the compliance officer in this case who is located in Honolulu. Counsel for the Acting General Counsel is also based in Honolulu. Respondent's attorneys are based in Nashville, Tennessee and must travel to Hawaii for the hearing. Accordingly holding the hearing in Honolulu does not present an additional burden for Respondent's counsel. Although Smith and Bishop will be called as witnesses by General Counsel, who will bear their travel expenses, the timing of their testimony may be arranged in a pre-hearing conference call so that Respondent also may have the opportunity to examine them. Respondent's Answer to the Compliance Specification does not indicate any defense or argument that would require witnesses other than the compliance officer, Bishop, or Smith.²

In addition, Respondent has offered no valid reason in support of its argument that the hearing should take place in Hilo, Hawaii. Respondent claims it intends to subpoena 10 witnesses who reside in Hilo. However, Respondent has not identified the witnesses in its Motion nor explained the relevance of their testimony to this compliance hearing.

² Contrary to Respondent's assertion, there is no longer Federal Building space available in Hilo for a hearing. Although there is limited conference room space in Hilo state office buildings, it is difficult to schedule consecutive hearing days because the rooms are often reserved for meetings. A call to the Hilo Hawaiian Hotel revealed that its conference room costs three hundred dollars (\$300.00) per day, with an additional one hundred fifty dollar (\$150.00) break down fee for room clean up.

Respondent states in its January 25, 2013, letter which is attached as Appendix 6 to Respondent's Motion that "[w]e fully expect that Mr. Smith, Mr. Bishop, Mr. Bock, and others will testify." It is impossible to surmise what relevant testimony Editor Bock, or any other "employee witness" would have to offer in a compliance hearing, where the underlying facts that form the basis for the violations are not at issue. It is well-established that "[i]ssues litigated and decided in an unfair labor practice proceeding may not be relitigated in the ensuing backpay proceeding." *Paolicelli*, 335 NLRB 881, 883 (2001) (citing *Aroostook County Regional Ophthalmology Center*, 332 NLRB 1616, 1617 (2001) and *Arctic Framing*, 313 NLRB 798, 799 (1994)). Respondent has not identified the names of these witnesses or the purpose for their testimony and thus has provided no valid reason that the hearing should take place in Hilo, Hawaii.

In conclusion and in consideration of the above, Counsel for the General Counsel respectfully requests that the Judge deny Respondent's Motion to Change Hearing Location.

Dated at Honolulu, Hawaii, this 6th day of February, 2013.

Respectfully submitted,



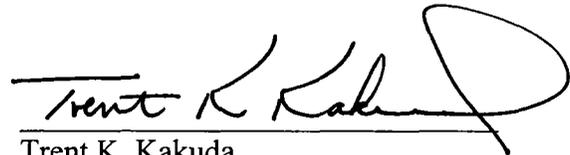
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of Opposition to Respondent's Motion to Change Hearing Location has this day been served as described below upon the following persons at their last-known address:

1 copy	L. Michael Zinser, Esq. Glenn Plosa, Esq. The Zinser Law Firm 414 Union Street, Suite 1200 Bank of America Plaza Nashville, TN 37219	VIA U.S. Mail and E-Mail
1 copy	Barbara Camens, Esq. Barr & Camens 1025 Connecticut Avenue, NW Suite 712 Washington, DC 20036	VIA U.S. Mail and E-Mail
1 copy	Heather Ahue, Business Manager Hawaii Pacific Media Workers Guild (Local 39521) 888 Mililani St, Ste 303 Honolulu, HI 96813	VIA U.S. Mail and E-Mail
1 copy	Carl Hall, Executive Officer Pacific Media Workers Guild (Local 39521) 433 Natoma St, 3 rd Floor San Francisco, CA 94103	VIA U.S. Mail and E-Mail

DATED at Honolulu, Hawaii, this 6th day of February, 2013.



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