

SUBTITLE 7 BOARDS

CHAPTER 41

HAWAII EMPLOYMENT RELATIONS BOARD

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Historical Note: This chapter is based substantially upon State of Hawaii, Hawaii Employment Relations Board General Rules and Regulations. [Eff. 1/3/66; R NOV 10 1983]

SUBCHAPTER 1

GENERAL PROVISIONS

§12-41-1 Scope and construction of rules. This chapter is adopted to aid the Hawaii employment relations board (hereinafter called the board) and interested persons in proceedings under the Hawaii employment relations act, chapter 377, Hawaii Revised Statutes, as amended. This chapter shall be construed liberally to effectuate the purposes and provisions of chapter 377, HRS. Proceedings authorized under chapter 377 may be combined. [Eff. NOV 10 1983] (Auth: HRS §377-11) (Imp: HRS §§377-11, 377-16)

§12-41-2 Policy. The policy of the State is primarily to promote peace in labor relations. Nothing in this chapter shall be construed to prevent the board from using its best efforts to adjust any dispute arising between employees and employers. [Eff. NOV 10 1983] (Auth: HRS §377-11) (Imp: HRS §377-16)

§12-41-3 Definitions. As used in this chapter:
"All union agreement" shall be as defined in section 377-1, HRS.
"Board" shall be as defined in section 377-1, HRS.

"Collective bargaining" shall be as defined in section 377-1, HRS.

"Collective bargaining unit" shall be as defined in section 377-1, HRS.

"Election" shall be as defined in section 377-1, HRS.

"Employer" shall be as defined in section 377-1, HRS.

"Labor dispute" shall be as defined in section 377-1, HRS.

"Person" shall be as defined in section 377-1, HRS.

"Person employed in an executive or supervisory capacity" shall be as defined in section 377-1, HRS.

"Representative" shall be as defined in section 377-1, HRS.

"Secondary boycott" shall be as defined in section 377-1, HRS.

"Unfair labor practice" shall be as defined in section 377-1, HRS. [Eff. Nov 10 1963] (Auth: HRS §377-11) (Imp: HRS §§377-11, 377-16)

§12-41-4 Timeliness of filing. When by this chapter or order of the board an act is required or allowed to be done at or within a specified time, the board for cause shown, at any time, may:

- (1) With or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by previous order; or
- (2) Upon motion made after the expiration of the specific period, permit the act to be done where the failure to act was the result of excusable neglect. [Eff. Nov 10 1963] (Auth: HRS §377-11) (Imp: HRS §§377-11, 377-16)

SUBCHAPTER 2

PREVENTION OF UNFAIR LABOR PRACTICES

§12-41-5 Filing of complaint. A complaint that a person has engaged or is engaging in an unfair labor practice may be submitted by any party in interest. The complaint shall be in writing upon a form provided by the board. The original and four copies of the complaint shall be signed and filed with the board, the original being sworn to before any person authorized to administer oaths or acknowledgments. Any complaint may be withdrawn prior to the hearing, at the hearing, or at any time prior to the issuance of an order based there-

on, upon motion, with the consent of the board. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-6 Contents of complaint. The complaint shall include:

- (1) The full name and address of the person making the complaint, hereinafter referred to as the complainant;
- (2) The full name and address of the person against whom the complaint is made, hereinafter referred to as the respondent;
- (3) If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit;
- (4) A clear and concise statement of the facts constituting the alleged unfair labor practice or practices, including the time and place of occurrence of particular acts and names of persons involved; and
- (5) The specific sections, subsections, or both, of the laws which are alleged to have been violated. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-7 Service of complaint and hearing notice. On the filing of a complaint, the board shall immediately serve upon the respondent a copy thereof and a notice of the time and place of hearing. The hearing shall be not less than ten nor more than forty days after the filing of the complaint or amendment thereof. Service may be by delivery to the person, or by mail, or by telegram. If the board has reasonable cause to believe that the respondent is a member of or represented by a labor union, then service upon an officer of the union shall be deemed to be service upon the respondent. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-8 Answer. (a) Each respondent, within ten days from the service of the complaint, may file an answer thereto. An original and four copies of the answer shall be filed with the board. Immediately upon the filing of this answer, the respondent shall serve a copy thereof on each of the other parties. An answer of a party represented by counsel shall be signed by at least one attorney of record in the attorney's individual name. The attorney's address shall also be stated.

A party who is not represented by an attorney shall sign the party's name and state the party's address.

(b) The answer, when one is filed, shall contain a short and plain statement of the facts or the law, or both, which constitute a defense. When an answer is filed, the respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint unless the respondent is without knowledge, in which case the respondent shall so state, and the statement shall operate as a denial. Any allegation in the complaint not specifically denied or explained in the answer, unless it is stated in the answer that the respondent is without knowledge, may be deemed to be admitted to be true, and may be so found by the board. For cause shown, the board may waive any requirement of this section, upon application prior to or at the beginning of a hearing. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-9 Failure to appear. If any party or person, after being served with the notice of hearing, fails or neglects to appear on the time and at the place designated in the notice, the board may apply to a circuit judge for an order for the party or person to appear before the board as provided for in section 377-9(b), HRS. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-10 Amendments. Any party may amend pleadings prior to the hearing, at the hearing, or at any time prior to the issuance of an order based thereon, upon motion, with the consent of the board. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-11 Motions by parties. All motions made previous to or subsequent to a hearing shall be filed in writing with the board and shall state briefly the grounds for the motion and the relief applied for. The original and four copies shall be signed by the moving party and a copy thereof served immediately upon each of the other parties. Motions made at a hearing may be stated orally and shall be included in the stenographic report of the hearing. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-12 Ruling or order. Any ruling or order announced outside of a hearing shall be in writing and a copy thereof shall be served upon each of the parties.

Rulings and orders announced at a hearing may be stated orally, and shall be included in the stenographic report of the hearing. [Eff. ~~10~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-13 Intervention. Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which the person claims an interest. An original and four copies of written motions shall be filed. Immediately upon filing such motion, the moving party shall serve a copy thereof upon each of the other parties. The board shall rule upon all such motions and, by order, may permit intervention in person or by counsel or other representative to such extent and upon such terms as it may deem proper. [Eff. ~~10~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-14 Witnesses and depositions. Witnesses shall be examined orally under oath or upon affirmation, except that for good cause shown after the issuance of a complaint, their testimony may be permitted to be taken by deposition under oath or upon affirmation in the manner and effect prescribed by the Hawaii Rules of Civil Procedure. [Eff. ~~10~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-15 Application for subpoenas. A party may make written application for subpoenas requiring the attendance and testimony of witnesses and production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. An application for a subpoena requiring the production of evidence shall not be granted unless the evidence is described with sufficient particularity to enable it to be identified by the producer. An application for a subpoena whether ad testificandum or duces tecum prior to a hearing shall be made to the board. An application during a hearing shall be made orally to the person conducting the hearing. Application for subpoenas may be made ex parte. Upon application, the board or the person to whom the application is made shall forthwith issue the subpoena. [Eff. ~~10~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-16 Revocation of subpoenas. Any person, when served with a subpoena, whether ad testificandum or duces tecum, who does not intend to comply with the

subpoena, within five days after the date of service of the subpoena, shall petition in writing to revoke the subpoena. The petition to revoke a subpoena shall be filed with the board and served upon the party at whose request the subpoena was issued. Notice of the filing of petitions to revoke shall be given promptly by the board to the party at whose request the subpoena was issued. The board shall revoke the subpoena if in its opinion:

- (1) The evidence required to be produced does not relate to any matter in the complaint or in question in the proceedings; or
- (2) The subpoena does not describe with sufficient particularity the evidence whose production is required; or
- (3) If for any other reason sufficient in law the subpoena is otherwise invalid.

The board shall make a simple statement of procedural or other grounds for the ruling on the petition to revoke. The petition to revoke, any answer filed there-to, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling. [Eff. 5/10/83] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-17 Enforcement of subpoenas. Upon the failure of any person to comply with a subpoena issued upon the request of a private party, the hearings officer, in the name of the board but on behalf of the private party, shall institute proceedings in the appropriate circuit court for the enforcement thereof, unless in the judgment of the board the enforcement of such subpoena would be inconsistent with law and with the policies of chapter 377, HRS. Neither the hearings officer nor the board shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court. [Eff. 5/10/83] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-18 Witness fees. Witnesses summoned by the board shall be paid the same fees and mileage that are paid witnesses in the courts of the State of Hawaii, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the State of Hawaii. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken. [Eff. 5/10/83] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-19 Hearings on complaint. The hearing for the purpose of taking evidence upon a complaint shall be conducted by a hearings officer designated by the board, unless the board or any member thereof presides. At any time, the board may designate a hearings officer to take the place of the hearings officer previously designated. Hearings may be adjourned from time to time in the discretion of the board and hearings may be held at such places as the board shall designate. The hearings shall be public unless otherwise ordered by the board. [Eff. ~~10 1983~~] (Auth: HRS §377-11)
(Imp: HRS §377-9)

§12-41-20 Duty and authority of hearings officer. It shall be the duty of the hearings officer to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice as set forth in the complaint or amended complaint. When hearing cases, the hearings officer, subject to this chapter, may:

- (1) Administer oaths and affirmations;
- (2) Grant applications for subpoenas;
- (3) Rule upon petitions to revoke subpoenas;
- (4) Rule upon offers of proof and receive relevant evidence;
- (5) Cause depositions to be taken whenever the ends of justice would be served thereby;
- (6) Conduct and regulate the course of the hearing, and, if appropriate or necessary, to exclude persons, including counsel, from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;
- (7) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (8) Dispose of procedural requests or similar matters, including all motions referred to the hearings officer by the board; also to dismiss complaints or portions thereof, and to order hearings reopened prior to issuance of the report and recommended order;
- (9) Call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;
- (10) Make and file the report and recommended order; and
- (11) Take any other action necessary under this section and authorized by this chapter, and perform such other functions as may be delegated by the board to the hearings

officer from time to time. [Eff. NOV 10 1953]
(Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-21 Transfer of case. In the event the hearings officer designated to conduct the hearing becomes unavailable to the board after the hearing has been concluded and before the filing of the report, the board may transfer the case to itself for purposes of further hearing or issuance of a report, or both, on the record as made or may designate another hearings officer for those purposes. [Eff. NOV 10 1953] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-22 Disqualification of hearings officer. A hearings officer may withdraw from a proceeding whenever disqualification is deemed necessary. Any party may request the hearings officer, at any time and before filing of the report, to withdraw on grounds of personal bias or prejudice, by filing promptly upon the discovery of the alleged facts a timely affidavit setting forth in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the hearings officer, the affidavit is filed with due diligence and is sufficient on its face, the hearings officer shall be disqualified and withdraw from the proceeding. If the hearings officer is not disqualified and shall not withdraw from the proceeding, it shall be so ruled upon the record, setting the grounds for the ruling, and the hearings officer shall proceed with the hearing or, if the hearing has closed, shall proceed with the issuance of the report. [Eff. NOV 10 1953] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-23 Appearance by legal counsel or representative. Any party shall have the right to appear at a hearing in person, by legal counsel, or by other representative; to call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence. [Eff. NOV 10 1953] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-24 Stipulation of facts. At any hearing stipulations of fact may be introduced in evidence with respect to any issue. [Eff. NOV 10 1953] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-25 Objections to conduct of hearing. Any

objections with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of the objection, and shall be included in the record. No objection shall be deemed waived by further participation in the hearing. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-26 Rules of evidence. In any hearing, the board or the hearings officer shall not be bound by technical rules of evidence. However, no hearsay evidence shall be admitted or considered; and all irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Rules of privilege recognized by law shall be given effect. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-27 Judicial notice. The board or the hearings officer may take notice of judicially recognizable facts. In addition, it may take notice of generally recognized technical or scientific facts within its specialized knowledge; but parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-28 Contemptuous conduct at hearing. Contemptuous conduct at any hearing before a hearings officer or the board shall be ground for exclusion from the hearing. The refusal of a witness at any hearing to answer any question which has been ruled to be proper, in the discretion of the person conducting the hearing, shall be ground for striking all testimony previously given by the witness on related matters. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-29 Oral arguments and briefs. Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing, unless so directed by the person conducting

the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the person conducting the hearing who may fix a reasonable time for filing. Copies of the brief or proposed findings and conclusions shall then be served upon all opposing parties. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-30 Report and recommended order. After the final hearing, the hearings officer or any member of the board conducting the hearing shall promptly make and file a report and recommended order incorporating findings of fact upon all the issues involved in the hearing and the determination of the rights of the parties; but the decision shall be made by the board. No matters outside the record shall be considered in making its report, except as provided in this chapter. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-31 Interlocutory order. Pending the final determination of the hearing, the hearings officer or any member of the board conducting the hearing, after the hearing, may make an interlocutory order which may be enforced in the same manner as a final order. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-32 Contents of report and recommended order. The report shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record. The recommended order shall contain the disposition of the case which may include the dismissal of the complaint or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend rights, immunities, privileges, or remedies granted or afforded by chapter 377, HRS, for not more than one year, and require to take such affirmative action as will effectuate the policies of chapter 377, HRS, including reinstatement of employees with or without pay as may be deemed proper. Any recommended order may further require such person to make reports from time to time showing the extent to which the person has complied with the order. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-33 Consultation on issues of facts. No member of the board, or its designated hearings officer, who renders a report on a contested case shall consult any person on any issues of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [Eff. ~~1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-34 Filing of report and recommended order. The hearings officer or any member of the board conducting the hearing shall file the original of the report and recommended order with the board and cause a copy thereof to be served upon each of the parties. Service of the report shall be complete upon mailing. [Eff. ~~1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-35 Exceptions to report and recommended order. (a) Within ten days, or within such period as the board may allow, from the date of service of the report, any party may file with the board one original and four copies of a statement in writing setting forth exceptions to the report and recommended order or to any other part of the record or proceedings (including rulings upon a motion or objections) together with one original and four copies of a brief or legal memorandum in support of the exceptions and immediately upon filing, copies shall be served on each of the other parties. Any party, within the same period, may file one original and four copies of a brief or legal memorandum in support of the report and recommended order. Copies of the exceptions and briefs or legal memoranda shall immediately be served on each of the other parties. Requests for extension of the time in which to file exceptions or briefs or legal memoranda under authority of this section shall be in writing and copies thereof shall be immediately served on each of the other parties. Requests for an extension shall be made to the board not later than three days prior to the due date.

(b) No matter not included in a statement of exceptions may thereafter be urged before the board, or on any further proceeding.

(c) Should any party desire permission to argue orally before the board, request therefor shall be made in writing to the board simultaneously with the statement of any exceptions filed pursuant to the provisions of subsection (a) with a statement of service on all other parties furnished with such request. The board shall notify the parties of the time and place of oral argument, if permission is granted. [Eff. ~~1983~~]

§12-41-36 Decision and order. (a) In the event no statement of exceptions is filed as provided in this chapter, the findings, conclusions, and recommendations of the hearings officer or any member of the board conducting the hearing as contained in the report and recommended order shall be adopted by the board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes. However, the board may order the case closed upon compliance.

(b) Upon the filing of a statement of exceptions and briefs, the board may:

- (1) Decide the matter forthwith upon the record, or after oral argument;
- (2) Reopen the record and receive further evidence;
- (3) Close the case upon compliance with recommendations of the report; or
- (4) Make other disposition of the case. [Eff. 07/10/03] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-37 Appeal from the board. Within thirty days from the date of the decision and order of the board, any party aggrieved thereby may petition the court of the judicial circuit in which the party or any party resides or transacts business for review of the same. The appeal shall be taken in accordance with section 377-9(f) to (i), HRS. [Eff. 07/10/03] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-38 Appeal from circuit court. Any party may appeal from the decree of a circuit judge to the supreme court of the State of Hawaii. The appeal shall be taken in the manner provided in the Hawaii Rules of Civil Procedure. [Eff. 07/10/03] (Auth: HRS §377-11) (Imp: HRS §377-9)

SUBCHAPTER 3

DETERMINATION OF A COLLECTIVE BARGAINING UNIT AND ELECTION AND CERTIFICATION OF REPRESENTATIVES

§12-41-39 Determination of collective bargaining unit. A petition for determination of a collective bargaining unit under section 377-5(b), HRS, may be

filed by an employee or group of employees or any individual or labor organization acting in their behalf, or by an employer in the case of jurisdictional disputes or in any case after a union has requested recognition. [Eff. ~~10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-40 Filing of petition. The petition shall be prepared on a form furnished by the board, and the original and four copies thereof shall be signed and filed with the board. If it appears to the board or its designated hearings officer that the petition presents a question concerning the determination of a collective bargaining unit, any member of the board or its hearings officer shall hold a hearing upon notice to all parties. The notice of hearing shall be served upon the petitioner and upon any other interested parties, and shall include a copy of the petition, and shall set the time and place of such hearing. [Eff. ~~10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-41 Hearing on petition. The hearing procedure shall be governed by the provisions of sections 12-41-20 to 12-41-30, insofar as they are applicable. Any member of the board conducting the hearing or its hearings officer shall determine the facts necessary for the determination of the proper bargaining unit. Upon completion of the hearing, any member of the board conducting the hearing or its hearings officer shall make and file a report and recommended order regarding the appropriate bargaining unit and shall properly serve notice of the report to all parties involved. [Eff. ~~10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-42 Procedure following report. Upon the filing of the report by any member of the board conducting the hearing or by its hearings officer, all subsequent proceedings shall be governed by the provisions of sections 12-41-31 to 12-41-38. [Eff. ~~10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-43 Election and certification as representative. Any employee or group of employees or any individual or labor organization acting in their behalf or any employer in the case of jurisdictional disputes or in any case after a union has requested recognition may petition the board to determine a collective bar-

gaining representative for all employees in a unit appropriate for such purpose. A petition for election may be withdrawn at any time prior to the election upon approval of the board or its hearings officer. [Eff. ~~ACT 10 03~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-44 Contents of petition. The petition shall include:

- (1) The full name and address of the petitioner;
- (2) The name and address of the employer, the general nature of the business, and the approximate number of employees;
- (3) A description of the bargaining unit claimed to be appropriate, the approximate number of employees constituting the unit;
- (4) The names of any known persons or organization of employees who claim to represent any of the employees in the alleged bargaining unit;
- (5) A brief statement setting forth the nature of the question that has arisen concerning representation;
- (6) An appropriate showing that thirty per cent or more of the employees within a bargaining unit claimed to be appropriate have selected the collective bargaining representative to represent them; and
- (7) Any other relevant facts pertinent to the petition. [Eff. ~~ACT 10 03~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-45 Pre-election conference, stipulation for election, hearing, and election. If it appears to the board or its hearings officer that the petition presents a question concerning representation, a pre-election conference shall be held between the interested parties, and the parties may enter into a "Stipulation for Election", as prescribed by the board. The board or an agent of the board shall conduct the election in accordance with the stipulation. If no stipulation is consummated, the board or its hearings officer may hold a hearing, in which event it shall serve upon the petitioner and upon any other interested parties a copy of the petition and a notice of hearing upon the question of representation, at a time and place stated therein. At the hearing, the board or its hearings officer shall determine the facts necessary to conduct the election. All proceedings under this section shall be governed by the provisions of sections

12-41-20 to 12-41-30, insofar as they are applicable. If, upon completion of the hearing, the board concludes that a secret ballot shall be taken, it may direct that an election be conducted in the appropriate collective bargaining unit upon such terms as it may specify. The form of ballot to be used in any election shall be prepared as prescribed in section 377-5(c), HRS. [Eff. ~~REV 10 83~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-46 Conduct of election and objections.

The agent of the board conducting an election shall make a report containing a tally of votes, serve a copy of the report upon each party in interest, and transmit a copy thereof to the board. Any party to the proceeding who desires to file an objection to the conduct of the election shall do so within five days after receipt of a copy of the report. The objections shall be in writing and shall contain a brief statement of the facts upon which the objection is based. The original and four copies of the objections shall be signed and filed with the board, the original being sworn to. The objector shall serve a copy upon each of the other parties. If it appears to the board or hearings officer that any substantial question was raised thereby, the board or hearings officer may hold a hearing upon due notice and shall decide the question before proceeding to a final determination. The procedure on such a hearing shall be governed by the provisions of sections 12-41-20 to 12-41-30. [Eff. ~~REV 10 83~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-47 Certification of election. Immediately following the election, the board or its hearings officer shall make findings and shall certify the results of the election, and shall issue a copy of the certificate to the employer and each of the persons whose name appeared on the ballot, and so notify the parties. [Eff. ~~REV 10 83~~] (Auth: HRS §377-11) (Imp: HRS §377-5)

§12-41-48 Protested ballots. If a dispute arises in any election or referendum concerning the eligibility of a particular employee to vote therein, the ballot of the employee may be received under protest by the agent of the board conducting the election. All protested ballots shall be placed in individually marked envelopes. If the protested ballots are necessary to a final determination, the board or its hearings officer may hold a hearing upon due notice, and shall decide the eligibil-

ity of the employee. [Eff. MAY 10 1983] (Auth:
HRS §377-11) (Imp: HRS §377-5)

§12-41-49 Runoff elections. (a) The board shall conduct a runoff election when an election in which the ballot provided for not less than three choices (i.e., at least two representatives and "none") results in no choice receiving a majority of the valid ballots cast. Only one runoff shall be held pursuant to this section.

(b) Employees who were eligible to vote in the election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot on the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes. Upon the conclusion of the runoff election, the provisions of sections 12-41-46 to 12-41-48 shall govern, insofar as applicable. [Eff. MAY 10 1983] (Auth: HRS §377-11) (Imp: HRS §377-5)

SUBCHAPTER 4

REFERENDUM CONCERNING ALL-UNION AGREEMENT

§12-41-50 Authority for all-union agreement. An employer may enter into an all-union agreement with the bargaining representative of the employees in a collective bargaining unit, unless the board has certified that at least a majority of employees has acted to rescind the authority of its bargaining representative to negotiate an all-union agreement within one year preceding the date of the agreement. [Eff. MAY 10 1983] (Auth: HRS §377-11) (Imp: HRS §377-6)

§12-41-51 Rescission of authority and petition. A petition to rescind the authority of a labor organization to make an all-union agreement requiring as a condition of employment membership in the labor organization may be filed by an employee or group of employees on behalf of thirty per cent or more of the employees in a bargaining unit covered by such an agreement. One original and four copies of the petition shall be filed with the board. The petition may be withdrawn only with the approval of the board or its hearings officer. [Eff. MAY 10 1983] (Auth: HRS §377-11) (Imp: HRS §377-6)

§12-41-52 Contents of petition. The petition

shall include:

- (1) The full name and address of the petitioner;
- (2) The name and address of the employer, the general nature of the business, and the approximate number of employees;
- (3) A description of the appropriate bargaining unit or the bargaining unit claimed to be appropriate, and the approximate number of employees within such unit;
- (4) The name and address of the labor organization whose authority it is desired to rescind;
- (5) An appropriate showing that thirty per cent or more of the employees within an appropriate unit desire to rescind the authority of the labor organization involved; and
- (6) Any other facts which the petitioner considers relevant to the petition. [Eff. 2-1-63] (Auth: HRS §377-11) (Imp: HRS §377-6)

§12-41-53 Election to rescind authority on hearing. Where a petition has been filed pursuant to section 12-41-51 and it appears to the board or its hearings officer that the petitioner has made an appropriate showing that thirty per cent or more of the employees within a unit covered by an agreement between their employer and a labor organization requiring membership in the labor organization desire to rescind the authority of the labor organization to make such an agreement, the board shall proceed to conduct a secret ballot election of the employees involved on the question whether they desire to rescind the authority of the labor organization to make such an agreement with their employer. In any case in which it appears to the board that the proceeding raises questions which cannot be decided without a hearing, the board may issue and cause to be served on the parties a notice of hearing at a time and place fixed therein. The board or its hearings officer shall fix the time and place of the election, eligibility requirements for voting, and other arrangements of the balloting, but the parties may enter into an agreement, subject to the approval of the board or its hearings officer, fixing the arrangements. In any consent agreements, provisions may be made for final determination of all questions arising with respect to the balloting by the board or its hearings officer. [Eff. ~~2-1-63~~ ^{REV 10 63?}] (Auth: HRS §377-11) (Imp: HRS §377-6)

§12-41-54 Conduct of hearing. The method of conducting the hearing and the procedure following the

hearing shall be governed, insofar as applicable by sections 12-41-20 to 12-41-30. [Eff. ~~EV 10~~]
(Auth: HRS §377-11) (Imp: HRS §377-6)

§12-41-55 Balloting and the post-balloting procedures. The method of conducting the balloting and the post-balloting procedures shall be governed by sections 12-41-46 to 12-41-48. [Eff. ~~EV 10~~]
(Auth: HRS §377-11) (Imp: HRS §377-6)

SUBCHAPTER 5

COMPUTATION OF TIME AND CERTIFICATION OF DOCUMENTS

§12-41-56 Computation of time. In computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day, which is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. [Eff. ~~EV 10~~] (Auth: HRS §377-11) (Imp: HRS §377-6)

§12-41-57 Certification of documents. The secretary of the board or, in the event of the secretary's absence or disability, whoever may be designated by the board, shall certify copies of all papers and documents which are a part of any of the files or records of the board as may be necessary or desirable from time to time. [Eff. ~~EV 10~~] (Auth: HRS §377-11) (Imp: HRS §377-6)

SUBCHAPTER 6

DECLARATORY RULINGS

§12-41-58 Petition for declaratory ruling. Any interested person may petition the board for a declaratory ruling or order as to the applicability of this chapter. The original of the petition shall be filed with the board and copies of the petition shall be immediately served upon all parties to the proceedings. Any party to the proceeding, within five days after

service thereof, may respond to the petition. [Eff. ~~NOV 10 1983~~] (Auth: HRS §91-8, §377-11) (Imp: HRS §91-8, §377-9)

§12-41-59 Motion for intervention. Any person desiring to intervene shall make a motion for intervention, stating the grounds upon which the person claims to have an interest in the petition. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

§12-41-60 Declaratory order. The board or its hearings officer shall proceed, upon the petition and responses, and submission of briefs, to make a determination. The determination shall be made by a declaratory order, with like effect as in the case of other decisions and order of the board, and shall be immediately served upon the parties. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §377-9)

SUBCHAPTER 7

PETITION FOR A TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

§12-41-61 Filing of complaint. Whenever a complaint is filed with the board pursuant to section 380-14(b) and (c), HRS, the board may petition any circuit court of the State within the circuit wherein the unfair labor practice in question is alleged to have occurred or wherein the person or persons reside or transact business for appropriate temporary relief or restraining order. Upon the filing of the complaint, the board shall cause it to be served immediately upon the respondents. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-41-62 Preliminary investigation. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of section 377-7(5), (6), (7), (8), and (9), the board shall cause a preliminary investigation to be conducted forthwith and the preliminary investigation shall be given priority over all other cases except cases of like character. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-41-63 Procedure in conducting preliminary investigation. The preliminary investigation shall be

conducted by the board or by its hearings officer in such manner and at such places as shall be deemed suitable and appropriate under the circumstances with due regard for the purpose and intent of section 380-14 (b) and (c), HRS. All proceedings conducted in the course of the preliminary investigation may be ex parte and the board or hearings officer may proceed without the presence of all parties concerned. The board or the hearings officer shall give notice immediately to all parties concerned regarding the preliminary investigation, and shall afford reasonable opportunity to all parties concerned to present all relevant and material facts pertinent to the inquiry. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-41-64 Petition for injunctive relief. If, after investigation, the board or its hearings officer has reasonable cause to believe that the charges contained in the complaint are true, and that there exists probable cause for the issuance of injunctive relief by the courts, as provided by section 380-14, HRS, it shall petition any circuit court of the State within any circuit where the unfair labor practice in question has occurred, or is alleged to have occurred, or wherein such person or persons reside or transact business, for appropriate injunctive relief pending the final adjudication of the board with respect to such matter in accordance with and subject to the provisions of section 380-14(c), HRS. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-41-65 Hearing on complaint following injunctive relief. Whenever temporary relief or a restraining order pursuant to section 380-14(b) and (c), HRS, has been procured by the board, the complaint which has been the basis for such temporary relief or restraining order shall be heard expeditiously and the case shall be given priority by the board in its successive steps following the issuance of the complaint over all other cases except cases of like character. [Eff. ~~NOV 10 1983~~] (Auth: HRS §377-11) (Imp: HRS §380-14)

§12-41-66 Disposition of injunctive relief. Upon a hearing on the complaint, concerning which the board has procured temporary relief or a restraining order pursuant to section 380-14(b) and (c), HRS, the board or its hearings officer dismisses the whole or part of the complaint, the board shall forthwith suggest to the circuit court which issued the temporary relief or

restraining order the possible change in circumstances arising out of the findings and conclusions of the board or its hearings officer. [Eff. ~~2710 80~~] (Auth: HRS §377-11) (Imp: HRS §380-14)

SUBCHAPTER 8

AMENDMENTS TO THE RULES

§12-41-67 Adoption, amendment, or repeal of rules. Any rule may be adopted, amended, or repealed by the board at any time in accordance with section 91-3, HRS. [Eff. ~~NOV 10 80~~] (Auth: HRS §§91-3, 377-11) (Imp: HRS §§91-3, 380-14)

§12-41-68 Petition for adoption, amendment, or repeal of rules. Any interested person may petition the board in writing for the adoption, amendment, or repeal of a rule. An original and four copies of the petition shall be filed with the board, and shall state the rule proposed to be adopted, amended, or repealed, together with a statement of grounds in support of such petition. Upon submission of the petition, the board shall consider the same and may thereupon either grant or deny the petition in whole or in part, conduct an appropriate hearing thereon, or make other disposition of the petition. Should the petition be denied in whole or in part, prompt notice shall be given of the denial, accompanied by a simple statement of the grounds unless the denial is self-explanatory. [Eff. ~~NOV 10 80~~] (Auth: HRS §§91-3, 377-11) (Imp: HRS §§91-3, 380-14)