

STATE OF HAWAII
TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
SUBTITLE 7 BOARDS
CHAPTER 42
HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD
RULES OF PRACTICE AND PROCEDURE

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SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§12-42-1 Scope. These rules govern procedure before the Hawaii public employment relations board under chapter 89, HRS, as amended, and such other statutes as may now or hereafter be administered by the board. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-2 Construction of rules. This chapter shall be liberally construed to effectuate the purpose of chapter 89, HRS, and to secure the just and speedy determination of every proceeding. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-3 Subchapters. (a) Each of the subchapters sets forth special rules applicable to the type of proceeding described in the caption of the subchapter.

(b) This subchapter sets forth general rules applicable to all proceedings conducted pursuant to chapter 89, HRS, and should be read in conjunction with the subchapter governing the particular proceeding.

(c) In any conflict between a general rule in this subchapter and a special rule in another subchapter, the special rule shall govern. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-4 Definitions. As used herein:

“Arbitration” shall be as defined in section 89-2, HRS.

“Appropriate bargaining unit” shall be as defined in section 89-2, HRS.

“Board” means the Hawaii public employment relations board created pursuant to section 89-5, HRS.

“Certification” shall be as defined in section 89-2, HRS.

“Collective bargaining” shall be as defined in section 89-2, HRS.

“Cost items” shall be as defined in section 89-2, HRS.

“Employee” or “public employee” shall be as defined in section 89-2, HRS.

“Employee organization” shall be as defined in section 89-2, HRS.

“Employer” or “public employer” shall be as defined in section 89-2, HRS.

“Essential position” shall be as defined in section 89-2, HRS.

“Exclusive representative” shall be as defined in section 89-2, HRS.

“Fact-finding” shall be as defined in section 89-2, HRS.

“Hearings officer” means any person appointed by the board to act in such capacity pursuant to section 89-5, HRS.

“Impasse” shall be as defined in section 89-2, HRS.

“Legislative body” shall be as defined in section 89-2, HRS.

“Mediation” shall be as defined in section 89-2, HRS.

“Party” means any person, employee organization, or public employer filing a complaint, petition, request, or application under chapter 89, HRS, or this chapter, and any person, employee organization, or public employer named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in a complaint, petition, request, or application filed under chapter 89, HRS, or this chapter.

“Professional employee” shall be as defined in section 89-2, HRS.

“Service fee” shall be as defined in section 89-2, HRS.

“Strike” shall be as defined in section 89-2, HRS.

“Supervisory employee” shall be as defined in section 89-2, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-2, 89-5)

§12-42-5 The board. (a) The office of the board is at Honolulu, Hawaii.

(b) Unless otherwise specifically directed, all communications to the board shall be addressed to the Hawaii Public Employment Relations Board, 830 Punchbowl Street, Room 434,¹ Honolulu, Hawaii, 96813, or at such other address as the board may be located from time to time.

(c) The office of the board shall be open from 7:45 a.m. to 4:30 p.m. of each weekday unless otherwise provided by statute or executive order.

(d) Sessions of the board shall be held as follows:

(1) The board shall meet and exercise its powers in any part of the State of Hawaii.

(2) All meetings of the board shall be open to the public.

(3) The board may meet in executive session, from which the public may be excluded, by a recorded vote of not less than two-thirds or the total membership of the board, and no order, regulation, ruling, contract, appointment, or decision shall be finally acted upon at such executive session.

(e) The administration of the board shall be as follows:

(1) The chairman of the board shall be responsible for the administrative functions of the board.

(2) In the event that the board shall appoint an executive officer, such executive officer shall:

(A) Have charge of the board’s official records and be responsible for the maintenance and custody of the docket, files and records of the board, including the transcripts of testimony

¹This is the current address of the Board.

and exhibits, all papers and requests filed in any proceeding, findings, determinations, reports, opinions, orders, rules, regulations, and approved forms.

- (B) Prepare for the board a draft of the annual report of the board's activities, including the cases coming before the board and their disposition, and the names, duties, and salaries of its officers and employees, for submission to the governor and to the legislative bodies pursuant to section 89-5(2), HRS.
- (C) Perform such other duties and functions as the board may assign from time to time. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-6 Public records. (a) The term "public record," as used in this chapter, shall be as defined in section 92-50, HRS, and shall include all rules, regulations, written statements of policy, or interpretations formulated, adopted, or used by the board, all complaints, opinions and orders, written testimony, and any other material on file in the office of the board unless accorded confidential treatment pursuant to law or this chapter.

(b) All public records shall be available for inspection in the office of the board during established office hours, unless public inspection of such records is in violation of any state or federal law; provided that, except where such records are open under any rule of court, the board may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the board, the State, or any governmental agency or sub-division is or may be a party, or when such records do not relate to a matter in violation of law and nondisclosure is deemed necessary for the lawful protection of the character, reputation, or business of any person.

(c) Public records printed or reproduced by the board in quantity shall be made available to any person requesting the same and paying the required cost thereof. Photocopies of public records shall be made and given to any person upon request and upon payment of the fees prescribed by law, and certified copies of extracts from public records shall also be given upon request and upon payment of the fees prescribed by law.

(d) Requests for public information, for permission to inspect official records, or for copies of public records shall be handled with due regard for the dispatch of the board's primary public duties. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-5, 92-50)

§12-42-7 Appearance and practice before the board. (a) A public employee may appear in his own behalf; an employee organization may be represented by a person or persons duly designated and authorized by the em-

ployee organization; and a public employer may appear on its own behalf or through a person or persons duly designated and authorized by such employer.

(b) In any proceeding under this chapter, any public employee, employee organization, or public employer may be represented by counsel or any other authorized person.

(c) When a person acting in a representative capacity appears in person or signs a paper in practice before the board, that individual's personal appearance or signature shall constitute a representation to the board that under the provisions of this chapter and the law such individual is authorized and qualified to represent the particular person on whose behalf the individual acts. The board may at any time require any person transacting business before the board in a representative capacity to show authority and qualification to act in such capacity.

(d) Bar to appearance:

(1) No person who has been associated with the board as a member, officer, employee, or counsel shall be permitted at any time to appear before the board in behalf of any party in connection with any proceeding or matter which such person has handled or passed upon while associated in any capacity with the board.

(2) No person appearing before the board in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would himself be precluded by this section from appearing before the board in such proceeding or matter.

(e) No person who has been associated with the board as a member, officer, employee, or counsel thereof shall be permitted to appear before the board in behalf of, or to represent in any matter, any party in connection with any proceeding or matter which was pending before the board at the time of such person's association with the board unless such person shall first have obtained the written consent of the board upon a verified showing that such person did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during such person's association with the board. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-8 Proceedings before the board. (a) Filing of documents:

(1) All complaints, pleadings, submittals, petitions, reports, exceptions, briefs, memoranda, and other papers required to be filed with the board shall be filed at the board's office.

(2) Such papers may be sent by mail or hand-carried to the board's office within the time limit, if any, for such filing.

(3) The date on which the papers are actually received by the board shall be deemed to be the date of filing.

(4) All papers filed with the board shall be written in ink, typewritten, mimeographed, or printed, shall be plainly legible, and shall be on

strong durable paper, not larger than 8½ X 14 inches in size, except that tables, charts, and other documents may be larger, if folded to the size of the documents to which they are attached.

- (5) All papers must be signed in ink by the party or the party's duly authorized representative or attorney. The signature of the person signing the document constitutes a certification that such person has read the document; that to the best of such person's knowledge, information, and belief every statement contained in the instrument is true and correct and no such statements are misleading; and that the document is not interposed for delay.
- (6) Unless otherwise specifically provided by a particular rule, regulation, or order of the board, the original and five copies of the papers, with certificate of service on all parties, shall be filed.
- (7) The initial documents filed in any proceeding shall state on the first page thereof the name, mailing address, and telephone number of the person or persons who may be served with any documents filed thereafter in the proceeding.

(b) The board shall maintain a docket of all proceedings and each proceeding shall be assigned a number.

(c) In computing any period of time prescribed or allowed by these rules or by order of the board, or by any applicable statute, 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, a Sunday, or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a 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. As used in this section, "holiday" shall mean any day designated as such pursuant to section 8-1, HRS.

(d) The board may at any time institute investigations on its own motion. The board shall serve its notice of investigation upon the public employee, employee organization, or public employer being investigated or having a direct interest or concern in the matter under investigation and shall designate the time and place for the investigation.

(e) In any proceeding before the board, the board may obtain the assistance or solicit the views of other governmental agencies, employee organizations, public employers, or private organizations where necessary or desirable to effectuate the purposes of chapter 89, HRS.

(f) An official reporter shall make the only official transcript of such proceeding. Copies of the official transcript shall not be provided by the board.

(g) Hearings:

- (1) All hearings shall be conducted by the board. However, when the board finds it necessary to appoint a hearings officer to conduct a hearing, the board may confer upon such hearings officer the

necessary powers, subject to chapter 89, HRS, and this chapter, to conduct such hearing and procedural matters related thereto.

- (2) Hearings shall be open to the public unless otherwise provided by this chapter, or ordered, for good cause by the board.
- (3) Motions:
 - (A) All motions made during a hearing shall be made part of the record of the proceedings.
 - (B) Motions to dismiss a case shall be filed at least forty-eight hours before the time of hearing of the case, and shall conform to the requirements in section 12-42-8(g)(3)(c).
 - (C) All motions other than those made during a hearing shall be subject to the following:
 - (i) Such motions shall be made in writing to the board, shall briefly state the relief sought, and shall be accompanied by affidavits or memoranda setting forth the grounds upon which they are based.
 - (ii) The moving party shall serve a copy of all motion papers on all other parties and shall, within three days thereafter, file with the board the original and five copies with certificate of service on all parties.
 - (iii) 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.
 - (iv) The board may decide to hear oral argument or testimony thereon, in which case the board shall notify the parties of such fact and of the time and place of such argument or the taking of such testimony.
- (4) The provisions of section 12-42-7 shall govern appearances at the hearing.
- (5) All witnesses shall appear in person and shall be examined under oath or affirmation. All witnesses summoned by the board shall be paid by the board and all witnesses summoned by a party shall be paid by the party. Witnesses shall be paid the same witness and mileage fees as witnesses in the courts of the State of Hawaii.
- (6) Discovery, depositions, and interrogatories:
 - (A) Upon written application and for good cause shown, the board may permit the parties to take deposition upon oral examination or written interrogatories in the manner prescribed under the Hawaii Rules of Civil Procedure.
 - (B) A copy of the deposition or interrogatories shall be filed with the board.
 - (C) Witness fees and mileage shall be paid by the party at whose instance the witness appears and the person taking

the deposition shall be paid by the party at whose instance the deposition is taken.

- (7) Subpoenas:
- (A) The board may issue subpoenas to require the attendance of witnesses in this State and the production of books and papers at a hearing held under the provisions of this chapter.
 - (B) Any party may file a written application for subpoenas with the board before the hearing.
 - (C) Motion to revoke subpoenas:
 - (i) A motion to revoke a subpoena may be filed with the board not later than five days from the date of service of the subpoena.
 - (ii) The board shall give notice of the filing of a motion to revoke to the applicant for subpoena.
 - (D) Ruling on motion to revoke:
 - (i) The board may revoke a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry, or hearing; that the subpoena does not describe with sufficient particularity the evidence sought or that the evidence sought from the witness is privileged under the law or the provisions of this chapter.
 - (ii) The board shall make a statement as to the basis for its ruling.
 - (iii) An aggrieved party may request that the motion to revoke a subpoena, the answer thereto, if any, and the board's statement of the basis for its ruling be made part of the record.
 - (E) Witnesses:
 - (i) No person served with a subpoena issued by the board shall refuse or neglect to appear, to testify, or to produce books and papers relevant to such investigation, inquiry, or hearing as commanded in such subpoena without the timely filing of a motion to revoke a subpoena with the board.
 - (ii) A failure to comply with, or neglect of, a subpoena issued by the board may be certified by the board to a court of competent jurisdiction for an order of compliance.
- (8) Rules of evidence:
- (A) In any proceeding before the board, the board shall not be bound by technical rules of evidence.
 - (B) All irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
 - (C) The board shall give effect to the rules of privilege recognized by law.
 - (D) 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.
- (E) Each party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence.
 - (F) The board may take notice of judicially recognizable facts.
 - (G) The board may take notice of generally recognizable technical or scientific facts within its specialized knowledge; however, 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.
- (9) Contemptuous conduct:
- (A) Contemptuous conduct at any hearing shall be grounds for summary exclusion from the hearing. Such misconduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the board after due notice and hearing.
 - (B) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper may, in the discretion of the board, be grounds for striking all testimony previously given by such witness on related matters.
- (10) Amendment of documents:
- (A) Any document filed in a proceeding may be amended, in the discretion of the board, at any time prior to the issuance of a final order thereon.
 - (B) If such document is not in substantial conformity with the applicable rules of the board as to the contents thereof, or is otherwise insufficient, the board, on its own initiative or upon motion of a party, may strike or dismiss such document, or require its amendment. A party moving for amendment of a document shall file a motion for leave to amend together with the proposed amended document.
 - (C) If amended, the document shall be effective as of the date of the original filing, if it relates to the same proceeding.
- (11) Retention of documents by the board:
- (A) All documents filed with or presented to the board shall be retained in the files of the board.
 - (B) The board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents.
- (12) Upon motion and for good cause shown, the board may order substitution of parties, except that in the case of death of a party substitution may be ordered without the filing of a motion.

- (13) The board, on its own initiative or upon motion, may consolidate for hearing or other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues if it finds that such consolidation of proceedings or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.
- (14) Intervention in proceeding:
- (A) In any proceeding other than representation proceedings, a petition to intervene and become a party thereto shall be submitted in writing to the board.
- (B) The petition shall contain the following:
- (i) Nature of petitioner's statutory or other right.
- (ii) Nature and extent of petitioner's interest.
- (iii) Effect of any decision in the proceeding on petitioner's interest.
- (iv) Other means available whereby petitioner's interest may be protected.
- (v) Extent petitioner's interest may be represented by existing parties.
- (vi) Extent petitioner's participation can assist in development of a sound record.
- (vii) Extent petitioner's participation will broaden the issue or delay the proceeding.
- (viii) Extent petitioner's interest in the proceeding differs from that of the general public.
- (ix) How the petitioner's intervention would serve the public interest.
- (C) The original and five copies of the petition with certificate of service on all parties, shall be filed with the board.
- (D) Intervention shall not be granted except on averments which are reasonably pertinent to the issues already presented but do not unduly broaden them. If intervention is granted, the petitioner thereby becomes an intervenor and a party to the proceeding to the degree indicated by the order allowing intervention.
- (15) In any proceeding an agreed statement of facts may be introduced into the record with respect to any issue. An agreed statement of facts may be accepted by the board without a hearing. The parties to an agreed statement of facts may agree to a waiver of hearing.
- (16) The charging party, in asserting a violation of chapter 89, HRS, or this chapter, shall have the burden of proving the allegations by a preponderance of the evidence. The party raising any subsequent issue shall have the burden of proving that issue by a preponderance of the evidence.

- (17) Argument, briefs, proposed findings:
- (A) Any party shall be entitled, upon request made before the close of the hearing, to present oral argument.
 - (B) Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings of facts and conclusions of law, or both, within such time as may be fixed by the board, but not in excess of fifteen days from the close of the hearing.
 - (C) The board may direct oral argument or the filing of briefs or proposed findings of facts, conclusions of law, or both, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein.
 - (D) A request for extension of time within which to file a brief or proposed findings shall be made in writing to the board at least three days before the expiration of the required time for filing, and shall be accompanied by an affidavit setting forth the grounds upon which it is based and indicating the position of the other parties with regard to such request.
- (18) Decisions and orders of the board:
- (A) Every decision and order rendered by the board shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party has filed proposed findings of fact, the board shall incorporate in its decision a ruling upon each proposed finding so presented. A certified copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed to each party or his attorney or representative, and shall be released for public information.
 - (B) Copies of such documents shall be available for public inspection in the office of the board or may be obtained upon request and upon payment of costs, if any.
- (19) Unauthorized ex parte communications:
- (A) Unauthorized ex parte communications are defined as private communications with members of the board as to the merits of a proceeding with a view towards influencing the outcome of the cause, except that the following classes of ex parte communications shall not be prohibited:
 - (i) Those which relate solely to matters which a board member is authorized to dispose of on an ex parte basis.
 - (ii) Requests for information with respect to the status of a proceeding.

- (iii) Those which all parties to the proceeding agree, or which the board has formally ruled, may be made on an ex parte basis.
- (iv) Those with representatives of any news media on matters intended to inform the general public.
- (B) No public employee, employee organization, public employer, or any other person or organization, whether or not a party to a proceeding before the board, shall make any unauthorized ex parte communication either orally or in writing about the proceeding to any member of the board. [Eff. Feb. 6, 1981] (Auth: HRS §89-5)(Imp: HRS §§89-5, 91-1, 91-2, 91-9, 91-10 to 12)

§12-42-9 Declaratory rulings by the board. (a) Any public employee, employee organization, public employer, or interested person or organization may petition the board for a declaratory order as to the applicability of any statutory provision or of any rule or order of the board.

(b) The petition shall be prepared on a form furnished by the board, and the original and five copies shall be filed with the board.

(c) The petition shall contain the following:

- (1) The name, address, and telephone number of the petitioner.
- (2) A statement of the nature of the petitioner's interest, including reasons for submission of the petition.
- (3) A designation of the specific provision, rule, or order in question.
- (4) A clear and concise statement of the position or contention of the petitioner.
- (5) A memorandum of authorities, containing a full discussion of the reasons, including legal authorities, in support of such position or contention.
- (6) The signature of each petitioner.

(d) Any petition which does not conform to the foregoing requirements may be rejected.

(e) Any party may intervene subject to the provisions of section 12-42-8(g)(14) insofar as they are applicable.

(f) The board may, for good cause, refuse to issue a declaratory order.

Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.

- (3) The issuance of the declaratory order may adversely affect the interests of the board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.
- (4) The matter is not within the jurisdiction of the board.
- (g) The board shall consider each petition submitted and, within a reasonable time after the submission thereof, either deny the petition in writing, stating its reason for such denial, or issue a declaratory order on the matters contained in the petition.
 - (h) Hearing:
 - (1) Although in the usual course of processing a petition for a declaratory ruling no formal hearing shall be granted to the petitioner, the board may, in its discretion, order such proceeding set down for hearing.
 - (2) Any petitioner who desires a hearing on a petition for declaratory ruling shall set forth in detail in a written request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda or legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts.
 - (i) An order disposing of a petition shall be applicable only to the factual situation alleged in the petition or set forth in the order. The order shall not be applicable to different factual situations or where additional facts not considered in the order exist. Such order shall have the same force and effect as other orders issued by the board. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

§12-42-10 Adoption, amendment, or repeal of rules. (a) Any public employee, employee organization, public employer, or interested person or organization may petition the board for adoption, amendment, or repeal of any rule of the board.

- (b) The petition need not be in any special form but it shall contain the following:
 - (1) The name, address, and telephone number of each petitioner.
 - (2) The signature of each petitioner.
 - (3) A statement of the nature of the petitioner's interest.
 - (4) A draft or the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.
 - (5) A statement of the reasons in support of the proposed rule, amendment, or repeal.
 - (6) Any other information pertinent to the petition.
- (c) The original and five copies of the petition shall be filed with the board.

(d) Any petition which does not conform to the requirements specified herein may be rejected and the petitioner shall be so notified.

(e) The board shall, within thirty days after the filing of the petition, either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with section 91-3, HRS, and the procedures provided herein for the adoption, amendment, or repeal of rules.

(f) Public hearing:

(1) The public hearing on the proposed adoption, amendment, or repeal of any rule shall be held in the hearings room of the board or such other place as the board may designate, and shall be presided over by the board chairman, a board member, or such other person as the board may designate. Additional hearings may be conducted at selected locations within the State.

(2) The notice of hearing shall set forth a statement of the substance of the proposed rule, amendment, or a designation of the provisions sought to be repealed, and the date, time, and place of the public hearing.

(3) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline the procedures to be followed. The presiding officer shall have the authority to administer the oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

(4) Interested persons and agencies shall, in such order as the presiding officer may prescribe, be given a reasonable opportunity to offer testimony on matters specified in the notice of hearing. Before proceeding to testify, persons and agencies shall state their names, addresses, organizations, and such other information respecting their appearance as the presiding officer may request. Every witness shall be subject to questioning by the presiding officer or any other authorized person or agency. Questioning by other persons or agencies shall not be permitted except when authorized by the presiding officer.

(5) Any person or agency unable to attend the public hearing who desires to submit written testimony shall submit such testimony to the board at its office by the date and time specified in the notice of hearing.

(g) The board may at any time, on its own initiative, institute proceedings in accordance with section 91-3, HRS, and the procedures provided herein for the adoption, amendment, or repeal of rules. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-5, 91-1, 91-2, 91-3, 91-6)

§§12-42-11 to 15 (Reserved)

SUBCHAPTER 2

DETERMINATION OF OPTIONAL APPROPRIATE BARGAINING UNIT, SELECTION OF EXCLUSIVE BARGAINING REPRESENTATIVE, AND DECERTIFICATION PURSUANT TO SECTIONS 89-6 AND 89-7, HRS

§12-42-16 Scope. This subchapter governs the general procedure relating to determination of an optional appropriate bargaining unit, to elections of an exclusive bargaining representative, and to decertification of an exclusive bargaining representative pursuant to sections 89-6 and 89-7, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-6, 89-7)

§12-42-17 Petition for determination of optional appropriate bargaining unit. (a) The following occupational groups are designated as optional appropriate bargaining units:

- (1) Registered professional nurses.
- (2) Nonprofessional hospital and institutional workers.
- (3) Firefighters.
- (4) Police officers.
- (5) Professional and scientific employees, other than registered professional nurses.

(b) A petition to determine an optional appropriate bargaining unit may be filed by an employee organization or anyone authorized to act in its behalf.

(c) The petition shall be prepared on a form furnished by the board. The original and five copies shall be signed and filed with the board.

- (d) The petition shall include the following:
- (1) The name, address, and affiliation, if any, of the petitioner, and the name and telephone number of its principal representative to be contacted.
 - (2) The name and address of the public employer involved, and the name and telephone number of its principal representative to be contacted.
 - (3) The approximate number of public employees employed by the public employer involved.
 - (4) A description of the claimed optional appropriate bargaining unit, specifying inclusions and exclusions, as well as the approximate number of employees in the unit.

- (5) The name and address of any known employee organizations who claim to represent any of the public employees in the claimed optional appropriate bargaining unit.
- (6) A clear and concise statement of any other relevant facts. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-18 Petition for selection of exclusive bargaining representative. (a) A petition to select an exclusive bargaining representative of an appropriate bargaining or optional appropriate bargaining unit may be filed by an employee organization or anyone authorized to act in its behalf.

(b) The petition shall be prepared on a form furnished by the board. The original and five copies shall be signed and filed with the board.

(c) The petition shall include the following:

- (1) The name, address, and affiliation, if any, of the petitioner, and the name and telephone number of its principal representative to be contacted.
- (2) The name and address of the public employer involved, and the name and telephone number of its principal representative to be contacted.
- (3) The approximate number of public employees employed by the public employer involved.
- (4) A description of the appropriate bargaining or optional appropriate bargaining unit, specifying inclusions and exclusions, as well as the approximate number of employees in the unit.
- (5) The name and address of any known employee organization who claims to represent any of the public employees in the claimed appropriate bargaining or optional appropriate bargaining unit.
- (6) A clear and concise statement of any other relevant facts. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-19 Petition for decertification. (a) A petition for decertification of an exclusive bargaining representative may be filed by any public employee, or representative authorized to act in the employee's behalf, alleging that the certified exclusive bargaining representative is no longer the majority representative of the employees in the appropriate bargaining or optional appropriate bargaining unit.

(b) The petition shall be prepared on a form furnished by the board. The original and five copies shall be signed and filed with the board.

(c) The petition shall include the following:

- (1) The name, address, and affiliation, if any, of the petitioner, and the name and telephone number of its principal representative to be contacted.

- (2) The name and address of the exclusive bargaining representative in an appropriate bargaining or optional appropriate bargaining unit, and the expiration date of any collective bargaining agreement covering such employees.
- (3) The name and address of the public employer involved, and the name and telephone number of its principal representative to be contacted.
- (4) A description of the appropriate bargaining or optional appropriate bargaining unit and the approximate number of employees in the unit.
- (5) A statement that the exclusive bargaining representative no longer represents the majority of the employees in the appropriate bargaining unit.
- (6) A clear and concise statement of any other relevant facts. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-20 Petition for clarification or amendment of certification.

(a) A petition for clarification of an appropriate bargaining or optional appropriate bargaining unit or amendment of certification may be filed by the exclusive bargaining representative or any public employer at any time.

(b) The petition shall be prepared on a form furnished by the board.

The original and five copies shall be signed and filed with the board.

(c) The petition shall include the following:

- (1) The name, address, and affiliation, if any, of the petitioner, and the name and telephone number of its principal representative to be contacted.
- (2) The name and address of the public employer involved, and the name and telephone number of its principal representative to be contacted.
- (3) A description of the appropriate bargaining or optional appropriate bargaining unit and the date of certification.
- (4) The proposed clarification or amendment.
- (5) A statement setting forth reasons why clarification or amendment is requested.
- (6) A clear and concise statement of any other relevant facts. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-21 Petition for inclusion or exclusion of supervisory employees.

(a) A petition for inclusion or exclusion of supervisory employees may be filed by any public employee or representative authorized to act in the employee's behalf.

(b) The petition shall be prepared on a form furnished by the board.

The original and five copies shall be signed and filed with the board.

- (c) The petition shall include the following:
 - (1) The name, address, and affiliation, if any, of the petitioner, and the name and telephone number of its principal representative to be contacted.
 - (2) The name and address of the exclusive bargaining representatives of the affected appropriate bargaining and optional appropriate bargaining unit, and the expiration dates of any collective bargaining agreements covering such units.
 - (3) The name and address of the public employer involved, and the name and telephone number of its principal representative to be contacted.
 - (4) A description of the affected appropriate bargaining and optional appropriate bargaining units, and the number of supervisory and nonsupervisory employees involved.
 - (5) A clear and concise statement of any other relevant facts.
- (d) The petition shall be supported by a showing of interest of at least thirty percent of the supervisory or at least thirty percent of the nonsupervisory employees, whichever group the petitioner represents. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-22 Filing of petition for determination of optional appropriate bargaining unit, selection of exclusive bargaining representative, or decertification. (a) No valid determination; no valid election; no collective bargaining agreement:

- (1) A petition for determination of an optional appropriate bargaining unit, or petition for selection of an exclusive bargaining representative in an appropriate bargaining or optional appropriate bargaining unit, or petition for decertification may be filed at any time, provided there has been no valid determination or election within the preceding twelve months and, provided further, there is no collective bargaining agreement in current effect.
- (2) Showing of interest:
 - (A) A petition for determination, selection, or decertification shall be supported by a showing of interest of at least thirty percent of the employees in the claimed appropriate bargaining or optional appropriate bargaining unit.
 - (B) The showing of interest may be filed simultaneously with, or within forty-eight hours after, the filing of the petition.
- (3) A timely petition to intervene in a determination, selection, or decertification proceeding shall be supported by a showing of interest of at least ten percent of the employees in the appropriate bargaining or optional appropriate bargaining unit. The showing of interest may be filed simultaneously with, or within forty-eight hours after, the filing of the petition.

- (b) Valid determination; valid election; collective bargaining agreement:
- (1) Where there has been a valid determination of an optional appropriate bargaining unit or election to select the exclusive bargaining representative in an appropriate bargaining or optional appropriate bargaining unit, the board shall not entertain a petition for determination, selection, or decertification until the expiration of twelve months after such determination or election.
 - (2) Where there is a collective bargaining agreement in current effect, a petition for determination, selection, or decertification shall be filed not more than ninety nor less than sixty days prior to the expiration of the agreement.
 - (3) Showing of interest:
 - (A) A petition for determination, selection, or decertification shall be supported by a showing of interest of at least thirty percent of the employees in the appropriate bargaining or optional appropriate bargaining unit.
 - (B) The showing of interest may be filed simultaneously with, or within forty-eight hours after, the filing of the petition.
 - (4) A timely petition to intervene in a determination, selection, or decertification proceeding shall be supported by a showing of interest of at least ten percent of the employees in the appropriate bargaining or optional appropriate bargaining unit. The proof of showing of interest may be filed simultaneously with, or within forty-eight hours after, the filing of the petition.
 - (5) An employee organization shall be regarded as satisfying the showing of interest requirement as an intervenor if it is the exclusive bargaining representative, or if it is the party to a currently effective or recently expired collective bargaining agreement covering the employees in such petitioned bargaining unit. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-23 Evidence of showing of interest. (a) In determining whether the evidence submitted to establish a showing of interest is sufficient, the board shall accept evidence of dues check-offs which have not been revoked, evidence of membership, authorization cards, or petitions which were signed within six months of the filing of the petition with the board, or a combination of these.

(b) The determination of the sufficiency of showing of interest is a ministerial act and shall not be reviewed by the board.

(c) The evidence of showing of interest shall not be furnished to any of the parties. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-24 Withdrawal of petitions. Any petition may be withdrawn with the consent of the board under such conditions as the board may impose to effectuate the policies of chapter 89, HRS. Whenever the board approves withdrawal of any petition, the case shall be closed. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-25 Notice of pending petitions. Upon the filing of a petition under this subchapter, notice thereof, including the date when such petition was filed, the name and address of the petitioner, the name and address of the public employer involved, and the appropriate bargaining or optional appropriate bargaining unit shall be posted by the chairman on a public docket to be maintained by the board at its office. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-26 Investigation. (a) After the filing of a petition, the board may conduct an investigation.

- (b) The purpose of the investigation shall be to resolve the following:
 - (1) Whether the showing of interest requirement under this subchapter has been satisfied.
 - (2) Whether more than one employee organization seeks to represent the employees in the appropriate bargaining or optional appropriate bargaining unit.
 - (3) Whether there is agreement among the parties as to the composition of the appropriate bargaining or optional appropriate bargaining unit.
 - (4) Whether the parties desire to enter into a stipulation for a consent election. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-27 Stipulation for consent election. (a) The stipulation for consent agreement shall be prepared and signed by the parties, subject to the approval of the board.

(b) The parties to the stipulation for a consent election shall be the public employer, the petitioner, and any intervenor. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-28 List of eligible voters. Upon request from the board, the public employer shall submit to the board a list of names and addresses of all employees in the appropriate bargaining or optional appropriate bargaining unit who are eligible to vote, not less than ten days before the scheduled date of election. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-29 Notice of hearing. (a) If it appears to the board after investigation that a hearing is warranted, the board shall issue written notice of hearing upon the parties. The initial notice of hearing shall be served personally or by registered or certified mail with return receipt requested.

(b) The notice shall include a statement of the date, time, place and nature of hearing, and such other information in accordance with section 91-9, HRS.

(c) The hearing shall be held not less than ten nor more than twenty days after service of such notice of hearing, except by agreement of the parties in extraordinary circumstances as determined by the board.

(d) A notice of hearing may be withdrawn or amended. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7, 91-1, 91-9.5)

§12-42-30 Prehearing conference. At least five days prior to the scheduled date for hearing under section 12-42-30 or section 12-42-33, the board may hold a prehearing conference for the purpose of arriving at a settlement or clarification of the issues and, to the extent possible, an agreement on facts, matters, or procedures as may facilitate and expedite the hearing or adjudication of the issues. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-31 Hearing. Except as otherwise provided in this subchapter, the procedure for hearing on determination of an optional appropriate bargaining unit, selection of an exclusive bargaining representative, or decertification shall be governed by the provisions of subchapter 1. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-32 Notice of election. (a) The public employer shall post notices of election, on forms furnished by the board, where notices are normally posted affecting all employees in the appropriate bargaining or optional appropriate bargaining unit not less than seven days before the scheduled date of election.

(b) The public employer shall certify to the board that the notices of election have been posted where notices are normally posted.

(c) The reproduction of any document purporting to be a copy of the board's official ballot, other than one completely unaltered in form and content and clearly marked "Sample" on its face, which suggests either directly or indirectly to public employees that the board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-33 Election procedure. (a) All elections shall be by secret ballot.

(b) Ballot:

- (1) Any employee organization may upon motion and with the approval of the board have its name removed from the ballot, provided the motion is filed with seven days after the signing of the stipulation for a consent election.
- (2) In a decertification proceeding the exclusive bargaining representative may not have its name removed without giving due notice in writing to the board and all parties disclaiming any representation interest among the employees in the appropriate bargaining or optional appropriate bargaining unit.

(c) Any party may be represented at the polling places by observers selected in accordance with such conditions as the board may prescribe.

(d) Challenges:

- (1) Any authorized observer or the board's agent may challenge, for good cause, the eligibility of any person to participate in the election.
- (2) The ballots of such challenged persons shall be impounded.
- (3) If the challenged ballots are insufficient in number to affect the results of the election, the challenged ballots shall not be counted.
- (4) If the challenged ballots are sufficient in number to affect the result of the election, the board shall conduct an investigation and shall, if appropriate, conduct a hearing.

(e) Objections to the conduct of the election or conduct affecting the results of the election:

- (1) Within five days after the tally of ballots has been furnished, any party may file with the board an original and five copies of a statement of objections to the conduct of the election or conduct affecting the results of the election. Such statement shall be timely filed whether or not challenged ballots, if any, are sufficient in number to affect the results of the election.
- (2) The objecting party shall serve copies of the statement of objections forthwith upon all parties and proof of service thereof shall be filed with the board.
- (3) Upon the filing of a statement of objections to the conduct of the election or conduct affecting the results of the election, the board shall conduct an investigation and shall, if appropriate, conduct a hearing.

(f) An answer may be filed within five days after service of the statement of objections. The answer shall contain a brief statement of facts refuting the objections. One copy of the answer shall be served on each party, and the original and five copies with proof of service upon all parties shall be filed with the board.

- (g) Run-off election:
 - (1) The board shall conduct a run-off election when an election in which the ballot provides for not less than three choices (i.e., at least two employee organizations and “no representation”) results in no choice receiving a majority of the valid ballots cast, or where the ballot provided for a choice between two representatives and the number of valid ballots cast for the two choices are equal in number, and no objections are filed.
 - (2) The ballot in the run-off election shall provide for a selection between the two choices receiving the largest number of valid ballots cast.
 - (3) The board may, in its discretion, maintain the same eligibility date or establish a new eligibility date. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-34 Hearing on challenges or objections. (a) Except as otherwise provided in this subchapter, the procedure for hearing on challenges or objections shall be governed by the provisions of subchapter 1.

(b) The board shall serve written notice of hearing on all parties personally or by registered or certified mail with return receipt requested. The notice shall include a statement of the date, time, place and nature of hearing, and other information in accordance with section 91-9, HRS.

(c) The hearing shall be held not less than ten nor more than twenty days after service of the notice of hearing. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: §§89-6, 89-7, 91-9, 91-9.5)

§12-42-35 Certification of new election. (a) If the board overrules a challenge, the challenged ballots shall be opened and counted and the board shall issue a revised tally of votes and forthwith issue a certification of the results of the election and a certification of exclusive bargaining representative.

(b) If the board overrules the objections to the conduct of the election or conduct affecting the results of the election, the board shall forthwith issue a certification of the results of the election and a certification of exclusive bargaining representative.

(c) If the board sustains the challenge of objections, the board shall direct a new election to be held at such time and under such conditions as it deems appropriate. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§12-42-36 Conclusive determination. Decisions and orders of the board relating to determinations on any controversy concerning the eligibility of an employee to vote or concerning the designated dates, times, and places for the

election shall be conclusive. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

§§12-42-37 to 40 (Reserved)

SUBCHAPTER 3

**PROHIBITED PRACTICES PURSUANT TO
SECTIONS 89-13 AND 89-14, HRS**

§12-42-41 Scope. This subchapter governs the general procedure relating to prohibited practices pursuant to sections 89-13 and 89-14, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14)

§12-42-42 Complaint. (a) A complaint that any public employer, public employee, or employee organization has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed by a public employee, employee organization, public employer, or any party in interest or their representatives within ninety days of the alleged violation.

(b) A prohibited practice complaint shall be prepared on a form furnished by the board. The original and five copies shall be filed with the board, and the board shall serve a copy of the complaint upon the person charged.

(c) If the board has reasonable cause to believe that the employee is a member of or is represented by an employee organization, then service upon an officer of the employee organization shall be deemed to be service upon the employee.

(d) Any other person claiming interest in the dispute or controversy, as a public employer, public employee, employee organization, or any party in interest may be made a party upon proof of interest.

(e) The board may bring in additional parties by service of a copy of the complaint.

(f) Only one complaint shall issue against a party with respect to a single controversy. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14)

§12-42-43 Amendment. Any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order thereon. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14)

§12-42-44 Withdrawal. Any complaint may be withdrawn at any time prior to the issuance of a final order thereon, upon motion and with the consent of the board. Whenever the board approves withdrawal of such complaint, the case shall be closed. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14)

§12-42-45 Answer. (a) A respondent shall file a written answer to the complaint within ten days after service of the complaint. One copy of the answer shall be served on each party, and the original and five copies, with certificate of service on all parties, shall be filed with the board.

(b) If the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, within five days after service of the complaint, file with the board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information. If the board grants such motion, the complainant shall file with the board the original and five copies of the requested particularization, with certificate of service on all parties, within five days after service of the board's granting order, unless the board directs otherwise. If the complainant fails to timely file and serve the particularization, the board shall dismiss the complaint. Within five days after the service of the complainant's particularization, the respondent shall file with the board the original and five copies of the answer, with certificate of service on all parties, unless the board directs otherwise.

(c) The answer shall contain the following:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or, if respondent is without knowledge thereof, such respondent shall so state and such statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation.

(2) A specific detailed statement of any affirmative defense.

(3) A clear and concise statement of the facts and matters of law relied upon constituting the grounds of defense.

(d) In extraordinary circumstances as determined by the board, the board may extend the time within which the answer shall be filed.

(e) All allegations of new matters in the answer shall be deemed denied without the necessity of a reply.

(f) The board may permit the respondent to amend the answer for good cause shown at any time before or during the hearing.

(g) If the respondent fails to file an answer, such failure shall constitute an admission of the material facts alleged in the complaint and a waiver of hearing. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14)

§12-42-46 Notice of hearing. (a) The board shall issue written notice of hearing upon the parties. The initial notice of hearing shall be served personally or by registered or certified mail with return receipt requested. The notice shall include a statement of the date, time, place and nature of hearing, and such other information in accordance with section 91-9, HRS.

(b) The hearing shall be held not less than ten nor more than forty days after the filing of the complaint or amendment thereof. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14, 91-9, 91-9.5)

§12-42-47 Prehearing conference. At least five days prior to the scheduled date for hearing, the board may hold a prehearing conference for the purpose of arriving at a settlement or clarification of the issues and, to the extent possible, an agreement on facts, matters, or procedures as may facilitate and expedite the hearing or adjudication of the issues. [Eff. Feb. 6, 1981] (Auth: HRS §89-5)(Imp: HRS §§89-13, 89-14)

§12-42-48 Interlocutory order. Pending the final determination of the controversy the board may, after hearing, make interlocutory orders which may be enforced in the same manner as final orders. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14, 377-9)

§12-42-49 Hearing. (a) Except as otherwise provided in this subchapter, and insofar as it is not inconsistent with section 377-9, HRS, the procedure for hearing on prohibited practices shall be governed by the provisions of subchapter 1.

(b) Where the respondent desires to waive hearing on the allegations set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding and consents that the board may make, enter and serve upon respondent an order to cease and desist.

(c) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena issued by the board on the ground that the testimony or evidence required may tend to incriminate such person or subject such person to penalty or forfeiture under the law of the State, but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such person may testify or produce evidence, documentary or otherwise, in such proceedings. Such person so testifying shall not be exempt, however, from prosecution and punishment for perjury committed in so testifying. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14, 377-9)

§12-42-50 Decision and order. The board shall prepare a decision setting forth findings of fact, conclusions of law, and order dismissing or sustaining the complaint, in whole or in part. The board may require the respondent to do any or all of the following: to cease and desist from the prohibited practice found to have been committed; to suspend the respondent's rights, immunities, privileges, or remedies granted or afforded by chapter 89, HRS, for not more than one year; or to require the respondent to take such affirmative action as will effectuate the purpose of chapter 89, HRS, including reinstatement of an employee with or without pay as may be deemed proper. The order may further require the respondent to make reports from time to time showing the extent of compliance. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14, 91-12, 377-9)

§12-42-51 Enforcement of order. If any party fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit judge of the judicial circuit wherein such party resides or usually transacts business for the enforcement of the order and for appropriate temporary relief or restraining order, and shall certify the file in the court the record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which the order was entered, and the decision and order of the board. Upon such filing the board shall cause notice thereof to be served upon the party by mailing a copy to the party's last known post office address, and thereupon the judge shall have jurisdiction in the premises. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-13, 89-14, 377-9)

§§12-42-52 to 55 (Reserved)

SUBCHAPTER 4

RESOLUTION OF DISPUTES, GRIEVANCES, AND IMPASSES PURSUANT TO SECTION 89-11, HRS

§12-42-56 Scope. This subchapter governs the general procedure relating to mediation, fact-finding, and arbitration in labor disputes pursuant to section 89-11, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-57 Policy. It is the policy of the board to encourage parties to any labor dispute to voluntarily settle their differences. However, if the parties are unable to resolve their differences, the board shall assist the parties in resolving

any labor dispute through mediation, fact-finding, or arbitration to promote cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-1, 89-11)

§12-42-58 Register of mediators. (a) Any person, broadly representative of the public, who has been selected by the board for listing on a register of mediators may act as a mediator.

(b) The public employers and employee organizations may, from time to time, submit in writing the names of proposed mediators to the board.

(c) The parties to a labor dispute may mutually agree and jointly request the board to petition the Federal Mediation and Conciliation Service for mediation assistance. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-59 Register of fact-finders. (a) Any person, broadly representative of the public, who has been selected by the board for listing on a register of fact-finders may act as a fact-finder.

(b) The public employers and employee organizations may, from time to time, submit in writing the names of proposed fact-finders to the board. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-60 Register of arbitrators. (a) Any person, broadly representative of the public, who has been selected by the board for listing on a register of arbitrators may act as an arbitrator.

(b) The public employers and employee organizations may, from time to time, submit in writing the names of proposed arbitrators to the board. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-61 Notice of impasse. (a) In the event a public employer and an exclusive bargaining representative have failed to reach an agreement after good faith negotiations, the public employer or exclusive bargaining representative may file with the board the original and five copies of a notice of impasse, with proof of service upon all parties.

(b) The notice of impasse shall contain the following:

(1) The name and address of the public employer who is a party to the negotiations, and the name and telephone number of its principal representative to be contacted.

(2) The name and address of the exclusive bargaining representative, and the name and telephone number of its principal representative to be contacted.

- (3) A description of the appropriate bargaining or optional appropriate bargaining unit and the approximate number of employees in the unit.
- (4) The dates and duration of negotiation sessions.
- (5) The termination date of the current agreement, if any.
- (6) Whether the request is a joint request.
- (7) A clear and concise statement of each issue on which an impasse has been reached, together with an affidavit as to the good faith of the statement and the contents therein.
- (8) A clear and concise statement of any other relevant facts.
- (c) The board on its own motion may determine that an impasse exists on any matter in a dispute. If the board determines on its own motion that an impasse exists, it may render assistance by notifying the parties to the dispute of its intent. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-62 Investigation of impasse. (a) The board may conduct an investigation upon the filing of a notice of impasse. The purpose of the investigation shall be to determine that:

- (1) Mediation is not being resorted to prematurely.
 - (2) The parties have been unable to reach agreement after good faith negotiations.
 - (3) An impasse does in fact exist concerning the terms and conditions of employment of employees in the appropriate bargaining or optional appropriate bargaining unit.
- (b) If the board conducts an investigation by hearing, the hearing shall be held not later than five days after service of the board's notice of hearing on all parties personally or by registered or certified mail with return receipt requested. The notice shall include a statement of the date, time, place and nature of the hearing, and such other information in accordance with section 91-9, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-63 Appointment of mediator. If the board finds that an impasse exists, it shall appoint a mediator within three days after the date of the impasse, which shall be deemed to be the day on which a notice of impasse is received or the day a determination is made that an impasse exists. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-64 Duties of mediator. (a) The mediator shall perform mediation duties under the guidance of the board to whom the mediator shall report.

(b) The mediator's function shall be to assist the parties in arriving at a voluntary agreement.

(c) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall be private and nonpublic in nature.

(d) Mediation meetings shall be conducted at such time and place as may be designated by the mediator.

(e) The mediator may advise the board to invoke fact-finding. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-65 Confidential information. (a) Any information disclosed by the parties to the mediator in the performance of such mediator's duties shall not be divulged voluntarily or by compulsion.

(b) All files, records, reports, or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of or testify in regard to any mediation conducted by such mediator, on behalf of any party to any cause pending in any type of proceeding. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-66 Report of mediator. The mediator shall, either orally or in writing, report the progress of mediation efforts, as well as the terms of the settlement of the dispute if any, if so requested by the board. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-67 Appointment and certification of fact-finding board. (a) If the dispute continues fifteen days after the date of the impasse, the board shall appoint within three days a fact-finding board of not more than three members, representative of the public, from the register of fact-finders maintained by the board.

(b) Upon the appointment of a fact-finding board, the board shall serve a copy of its certification of appointment of such board upon all parties. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-68 Duties of fact-finding board. (a) The fact-finding board shall perform its duties in accordance with procedures prescribed by the board.

(b) After appointment the fact-finding board shall:

(1) Meet forthwith with the parties involved in the impasse.

(2) Conduct inquiries and investigations.

(3) Hold hearings which shall not be public unless all parties and the fact-finding board agree thereto.

(4) Take such other steps as it deems appropriate to resolve the impasse.

- (c) For purposes of hearing, investigations, and inquiries, the fact-finding board shall have the power to issue subpoenas to compel the attendance of witnesses and the production of books and papers relating to any matter under inquiry, investigation, or hearing, and such other powers as the board is authorized and deems appropriate to confer on such board. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-69 Report of fact-finding board. (a) The fact-finding board, acting by a majority of its members, shall file with the board its report, the original and five copies with proof of service upon all parties, within ten days after its appointment.

- (b) The fact-finding board's report shall contain:
 - (1) A statement of findings of fact and conclusions as to all material issues.
 - (2) Recommendations for the resolution of the impasse.
 - (3) A memorandum stating the reasons and bases for such findings, conclusions, and recommendations.
- (c) Acceptance or rejection of the fact-finding board's recommendations:
 - (1) Within five days after receipt of the fact-finding board's report and recommendations, the parties to the impasse shall file a written notification of acceptance or rejection, in whole or in part, of the fact-finding board's recommendations.
 - (2) The parties shall file with the board the original and five copies of its notification with proof of service upon all parties.
 - (3) The notification of acceptance or rejection of the fact-finding board's recommendations shall contain:
 - (A) The name and address of the notifying party.
 - (B) The name and address of the parties to the impasse.
 - (C) The names of the members of the fact-finding board.
 - (D) The date when the report and recommendations of the fact-finding board were received.
 - (E) A clear and concise statement of acceptance or rejection, in whole or in part, of each recommendation of the fact-finding board.
 - (F) A statement as to whether or not the party agrees to refer the impasse to final and binding arbitration.
- (d) If the dispute remains unresolved five days after transmittal of the fact-finding board's report and recommendations to the parties, and if the parties do not refer the dispute to final and binding arbitration, the board shall publish the findings of fact and recommendations for public information. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-70 Notification of arbitration. If the dispute continues thirty days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration which shall result in a final and binding decision. Upon such mutual agreement, the parties shall forthwith file with the board the original and five copies of a written arbitration notification signed by both parties. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-71 Selection and certification of arbitration panel. (a) The public employer and exclusive bargaining representative shall each select one arbitrator, and the interest arbitrators shall select an impartial arbitrator.

(b) The board shall select arbitrators in the following situations:

- (1) If the interest arbitrators do not select the impartial arbitrator within three days after filing of the arbitrator notification, the board shall select the impartial arbitrator from the register of arbitrators.
- (2) If either the public employer or exclusive bargaining representative fails to select an arbitrator within three days after the filing of the arbitration notification, the board shall select an arbitrator from the register of arbitrators.
- (3) If the public employer and the exclusive bargaining representative fail to select arbitrators within three days after filing the notification of arbitration, the board shall select three arbitrators from the register of arbitrators.

(c) Upon the appointment of an arbitration panel, the board shall serve a copy of its certification of appointment of such panel upon all parties. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-72 Duties of arbitration panel. (a) The arbitration panel shall perform its duties in accordance with procedures prescribed by the board.

(b) After appointment the arbitration panel shall:

- (1) Meet forthwith with the parties involved in the impasse.
- (2) Conduct inquiries and investigations.
- (3) Hold hearings which shall not be public unless all parties and the panel agree to have them public.
- (4) Take whatever action is necessary to resolve the impasse.

(c) For the purposes of hearings, investigations, and inquiries, the panel of arbitrators shall have the power to issue subpoenas to compel the attendance of witnesses and the production of books and papers relating to any matter under inquiry, investigation, or hearing, and such other powers as the board is authorized and deems appropriate to confer on such panel. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-73 Findings and decision of arbitration panel. (a) If the dispute remains unresolved fifty days after the date of impasse, the arbitration panel shall file with the board the original and five copies of its findings and final and binding decision, with proof of service upon all parties.

(b) The parties shall enter into an agreement to take whatever action is necessary to carry out and effectuate the decision of the arbitration panel. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-74 Payment for mediation, fact-finding, and arbitration. The costs for mediation and fact-finding shall be borne by the board. All other costs, including those of a neutral arbitrator, shall be borne equally by the parties involved in the dispute. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-75 Firefighters' disputes. The procedure for resolution of a dispute between a public employer and the exclusive representative of optional appropriate bargaining unit 11 (firefighters) over the terms of an initial or renewed agreement shall be in accordance with the provisions of section 89-11(d), HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§12-42-76 Closing of impasse cases. (a) Upon written notification to the board by the public employer of the execution and funding of any collective bargaining agreement arising out of an impasse case filed with the board, or upon the board's own knowledge and information, the board shall issue a "Notice of Intent to Dismiss Impasse Case Because of Mootness" stating that the board will dismiss such impasse case because of mootness, unless it receives written notification from any party to the proceeding within ten days of the issuance of such notice, setting forth reasons why the case should not be dismissed.

(b) Ten days after issuance of such notice, if no objections to dismissal are received, the board shall issue an order dismissing such case. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-11)

§§12-42-77 to 80 (Reserved)

SUBCHAPTER 5

PROCEDURES RELATING TO STRIKES, RIGHTS AND PROHIBITIONS PURSUANT TO SECTION 89-12, HRS

§12-42-81 Scope. This subchapter governs the general procedure relating to employee participation in a strike, to a strike about to occur or in progress which presents an imminent or present danger to the health or safety of the public, and to a strike declared or authorized by an employee organization pursuant to section 89-12, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-12)

§12-42-82 Petition. (a) A petition alleging that employee participation in a strike is in violation of chapter 89, HRS, that a strike about to occur or in progress presents an imminent or present danger to the health or safety of the public, or that a strike declared or authorized by an employee organization is or would be in violation of chapter 89, HRS, may be filed by any public employer involved.

(b) The petition shall be in writing on a form furnished by the board. The original and five copies, with proof of service upon all parties, shall be filed with the board.

(c) The petition shall contain the following:

- (1) The name and address of the petitioner filing the petition, and the name and telephone number of its principal representative to be contacted.
- (2) The name and address of the employee organization involved, and the name and telephone number of its principal representative to be contacted.
- (3) A clear and concise statement of facts supporting allegations that:
 - (A) The employee or employees participating in the strike are in violation of chapter 89, HRS.
 - (B) The strike about to occur or in progress presents an imminent or present danger to the health or safety of the public.
 - (C) The strike declared or authorized by an employee organization is or would be in violation of chapter 89, HRS.
- (4) A clear and concise statement of any other relevant facts. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-12)

§12-42-83 Amendment of petition. Any petitioner may amend the petition in the discretion of the board at any time prior to the issuance of a final order based thereon. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-12)

§12-42-84 Withdrawal of petition. Any petition may be withdrawn at any time prior to the issuance of a final order thereon, upon motion and with the consent of the board. Whenever the board approves withdrawal of such petition, the case shall be closed. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-12)

§12-42-85 Answer. (a) The public employee or employee organization against whom the petition is filed shall file with the board the original and five copies of a written answer, with proof of service upon all parties, within two days after service of the notice of investigation.

(b) In extraordinary circumstances as determined by the board, the board may extend the time within which the answer shall be filed. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-12)

§12-42-86 Preliminary investigation. (a) After a petition has been filed the board shall conduct a preliminary investigation to establish health and safety requirements, and such preliminary investigation shall be given priority over all other cases except cases of like character.

(b) The board shall serve its notice of preliminary investigation on the parties personally or by registered or certified mail with return receipt requested. The notice shall contain the purpose, nature, time, and place of the preliminary investigation. In extraordinary circumstances as determined by the board, the board may notify the parties orally.

(c) The board shall afford all interested parties reasonable opportunity to present all relevant and material facts pertinent to the inquiry.

(d) Nature of strike:

(1) Employee participation in a strike, strike about to occur or in progress. Where the issue is employee participation in a strike, or that a strike about to occur or in progress presents an imminent or present danger to the public health or safety, the preliminary investigation may be conducted ex parte without the presence of all the parties.

(2) Strike declared or authorized. Where a strike is declared or authorized by an employee organization, the employee organization shall have an opportunity to be heard during the preliminary investigation.

(e) If the board finds that there is imminent or present danger to the health or safety of the public, the board shall establish specific requirements that must be complied with and which shall include, but not be limited to:

(1) Designation of essential positions.

(2) Any other requirement it deems necessary in order to avoid or remove any imminent or present danger to the health or safety of the public. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-12)

§12-42-87 Hearing. (a) Except as otherwise provided in this subchapter, the procedure for hearing on any petition filed herein shall be governed by the provisions of subchapter 1.

(b) The board shall serve written notice of hearing on all parties personally or by registered or certified mail with return receipt requested. The notice shall include a statement of the date, time, place and nature of the hearing, and such other information in accordance with section 91-9, HRS. In extraordinary circumstances as determined by the board, the board may notify the parties orally.

(c) The hearing shall be held not later than three days after service of the notice of hearing.

(d) The board may call on any other public employer, employee organization, or any person or organization to present testimony and evidence to assist the board in its determination of the issues. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-12)

§12-42-88 Decision and order. (a) In the matter of a petition relating to employee participation in a strike, the board may dismiss the petition or find that the employee strike is unlawful and issue an order directing the employee or employees to cease and desist from participating in the strike.

(b) In the matter of a petition relating to a strike about to occur or in progress which presents an imminent or present danger to the public health or safety, the board may dismiss the petition or, if it finds that there is imminent or present danger to the health or safety of the public, the board shall establish specific requirements that must be complied with and which shall include, but not be limited to:

- (1) Designation of essential positions; and
- (2) Any other requirement it deems necessary in order to avoid or remove any imminent or present danger to the health or safety of the public.

The board shall retain jurisdiction to amend the order made, upon good cause shown, at any time during the strike.

(c) In the matter of a petition relating to a strike declared or authorized by an employee organization, the board may dismiss the petition or find that such strike is or would be in violation of chapter 89, HRS, and issue an order directing the employee organization to withdraw such strike declaration or authorization and desist from striking. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-12)

§§12-42-89 to 95 (Reserved)

SUBCHAPTER 6

§§12-42-96 to 12-42-101 (Repealed April 12, 1982)
§§12-42-102 to 105 (Reserved)

SUBCHAPTER 7

FINANCIAL REPORTS OF EMPLOYEE ORGANIZATIONS PURSUANT TO SECTION 89-15, HRS

§12-42-106 Scope. This subchapter governs the general procedure relating to an employee organization's financial reports to its members pursuant to section 89-15, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§12-42-107 Financial report. Every employee organization shall, within sixty days after the end of its fiscal year, make available to its members a detailed written financial report thereof. The financial report shall be in the form of a balance sheet and an operating statement certified as to accuracy by a certified public accountant. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§12-42-108 Petition. (a) In the event that an employee organization fails to comply with section 12-42-107, any employee within the organization may petition the board for an order compelling such compliance.

- (b) The petition shall contain the following:
 - (1) The name, address, and telephone number of the person filing the petition.
 - (2) The name, address and telephone number of the employee organization against whom the petition is filed.
 - (3) A statement that the employee organization has failed to make available to its members a detailed written financial report, certified as to accuracy by a certified public accountant, within sixty days after the end of the employee organization's fiscal year.
 - (4) A clear and concise statement of any other relevant facts. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§12-42-109 Amendment. Any petitioner may amend the petition, upon motion and with the consent of the board, at any time prior to the issuance of a

final order based thereon. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§12-42-110 Withdrawal. The petition may be withdrawn at any time prior to the issuance of a final order based thereon, upon motion and with the consent of the board. Whenever the board approves withdrawal of any petition, the case shall be closed. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§12-42-111 Answer. (a) Within ten days after service of the petition the employee organization shall file with the board the original and five copies of a written answer, with certificate of service upon the petitioner.

(b) The answer shall include specific admission, denial, or explanation of each allegation contained in the petition.

(c) If the employee organization fails to timely file an answer, such failure shall constitute an admission of the material facts alleged in the petition and a waiver of hearing. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§12-42-112 Prehearing conference. At least five days prior to the scheduled date for hearing, the board may conduct a prehearing conference for the purpose of arriving at a settlement or clarification of the issues and, to the extent possible, an agreement on facts, matters, or procedures as may facilitate and expedite the hearing and adjudication of the issues. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§12-42-113 Hearing. Except as provided in this subchapter, the procedure for hearing on the failure to make available a financial report by an employee organization shall be governed by the provisions of subchapter 1. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§12-42-114 Decision and order. The board may dismiss the petition or order the employee organization to make available to its members a certified written financial statement. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-15)

§§12-42-115 to 120 (Reserved)

SUBCHAPTER 8

RESOLUTION OF DISPUTES CONCERNING COST ITEMS PURSUANT TO SECTION 89-5, HRS

§12-42-121 Scope. This subchapter governs the general procedure for the resolution of any dispute concerning cost items pursuant to section 89-5, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-122 Jurisdiction of board. Jurisdiction of the board to resolve any dispute concerning cost items shall be limited to the determination of whether the matter in dispute is or is not a cost item and shall be processed upon petition by any exclusive bargaining representative or public employer pursuant to the provisions set forth in subchapter 1 relating to declaratory rulings. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§§12-42-123 to 125 (Reserved)

SUBCHAPTER 9

REFERENCE MATERIALS PURSUANT TO SECTION 89-5, HRS

§12-42-126 Scope. This subchapter governs the filing of all reference materials pertaining to public employee-management relations pursuant to section 89-5, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-127 Constitution, charter, by-laws. Upon request from the board, an employee organization shall provide and submit to the board a copy of its constitution, charter, or by-laws. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-128 Collective bargaining agreements. The public employer entering into a written collective bargaining agreement pursuant to chapter 89, HRS, shall file a copy of the agreement with the board within thirty days after execution and issuance. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-129 Statutes, ordinances, rules, regulations, orders, policies. The public employer shall file with the board, within thirty days after adoption and issuance, a copy of every statute, ordinance, rule, regulation, order, or policy statement affecting public employee-management relations applicable to all employees of such public employer. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-130 Information and data. Upon request from the board, all public employers and employee organizations shall submit information and data pertaining to public employee-management relations necessary for the board to carry out its functions and responsibilities pursuant to chapter 89, HRS. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-131 Statistical data. Upon request from the board, all public employers shall submit statistical data relating to wages, benefits, and employment practices in public employment. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §89-5)

§12-42-132 Public records. All materials and documents submitted to the board under this subchapter shall be considered to be public records. [Eff. Feb. 6, 1981] (Auth: HRS §89-5) (Imp: HRS §§89-5, 92-50)

§§12-42-133 to 135 (Reserved)

SUBCHAPTER 10

REVIEW OF REFUNDS PURSUANT TO SECTION 89-4, HRS

§12-42-136 Scope. This subchapter governs the procedures for the review of the amount to be refunded to a nonmember employee by an exclusive

representative pursuant to §89-4, HRS. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-42-137 Petition for review. (a) A nonmember employee who objects to the amount to be refunded by an exclusive representative may petition the board for a review thereof within fifteen days after receiving notice of the amount of refund from the exclusive representative.

(b) The petition shall be prepared on a form furnished by the board. The original and five copies thereof shall be filed with the board.

(c) The petition shall contain the following:

- (1) The name, address, and telephone number of the petitioner and the petitioner's attorney or representative;
- (2) The bargaining unit of the petitioner;
- (3) The name, address, and telephone number of the exclusive representative against whom the petition is filed;
- (4) The name, address, and telephone number of the public employer;
- (5) A statement of the amount deducted from the payroll of the nonmember employee which is equivalent to regular dues;
- (6) A statement of the amount to be refunded by the exclusive representative;
- (7) The date which notice of refund was received by the nonmember employee;
- (8) A complete statement of the reasons for objections to the amount of refund and any relevant underlying facts; and
- (9) The signature of the petitioner or the petitioner's representative.

(d) Any person claiming an interest in the review as a public employee, employee organization or party in interest, may intervene pursuant to §12-42-8(g)(14); provided however, that affected nonmember employees shall file a timely petition for review.

(e) Upon the filing of a petition under this subchapter, the board shall serve a copy of the petition upon the exclusive representative, personally or by mail. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-42-138 Answer. (a) The exclusive representative shall file a written answer with the board within ten days after service of a copy of the petition. One copy of the answer shall be served on each party, and the original and five copies, with certificate of service on all parties, shall be filed with the board.

(b) The answer shall contain the following:

- (1) A specific admission, denial, or explanation of each allegation of the complaint, or, if the respondent is without knowledge thereof, the respondent shall so state and the statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation;

- (2) A specific detailed statement of any affirmative defense; and
- (3) A clear and concise statement of the facts and matters of law relied upon constituting the grounds for defense.
- (c) In extraordinary circumstances as determined by the board, the board may extend the time within which the answer shall be filed upon motion filed by the respondent with an accompanying affidavit setting forth the grounds upon which the motion is based and indicating the position of the other parties with regard to the extension. Any motion for extension shall be filed prior to the expiration of the required period for filing an answer.
- (d) If the exclusive representative fails to timely file an answer, that failure may constitute an admission of the material facts alleged in the petition and a waiver of a hearing thereon. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-42-139 Amendment. Any document filed under this subchapter may be amended in the discretion of the board in accordance with the procedures set forth in §12-42-8(g)(10) at any time prior to the issuance of a final order thereon. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-42-140 Withdrawal. A petition may be withdrawn at any time prior to the issuance of a final order thereon, upon motion and with the consent of the board. Whenever the board approves the withdrawal of the petition, the case shall be closed. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-42-141 Prehearing conference. At least five days prior to the scheduled date for hearing, the board may conduct a prehearing conference for the purpose of arriving at a settlement or clarification of the issues and, to the extent possible, an agreement on facts, matters or procedures as may facilitate and expedite the hearing and adjudication of the issues. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-42-142 Notice of hearing. The board shall issue written notice of hearing to the parties. The initial notice of the hearing shall be served personally or by registered or certified mail with return receipt requested. The notice shall include a statement of the date, time, place, and nature of the hearing, and other appropriate information in accordance with §91-9, HRS. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-42-143 Hearing. Except as otherwise provided in this subchapter, the procedure for a hearing on any petition filed pursuant to this subchapter shall

be governed by the provisions of subchapter 1 of this chapter. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)

§12-42-144 Decision and order. In the disposition of petitions filed under this subchapter, the board may:

- (1) Dismiss the petition; or
- (2) Find that the exclusive representative has not returned to the nonmember employee, a pro rata share of expenditures made by the exclusive representative for activities of a political and ideological nature unrelated to the terms and conditions of employment and issue an order directing the exclusive representative to appropriately adjust the amounts to be refunded; or
- (3) Award such other relief as the board deems just. [Eff. April 12, 1982] (Auth: HRS §89-5) (Imp: HRS §89-4)