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HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7

BOARDS

CHAPTER 41

HAWAII LABOR RELATIONS BOARD  
RULES OF PRACTICE AND PROCEDURE

Month Day, Year

Chapter 41, Title 12, Hawaii Administrative Rules, is amended to add new Subchapters 9 and 10.

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Chapter 41, Title 12, Hawaii Administrative Rules, is amended by adding new Subchapters 9 and 10 as follows:

## "Subchapter 9 Streamlining Union Certification

- §12-41-69 Scope of streamlining union certification
- §12-41-70 Definitions
- §12-41-71 Streamlining Union Certification
- §12-41-72 Application of streamlining union certification
- §12-41-73 Filing of petition
- §12-41-74 Notice of petition
- §12-41-75 Investigation of petition
- §12-41-76 Notice of hearing
- §12-41-77 Hearing
- §12-41-78 Eligibility and validity of authorization
- §12-41-79 Decision and Order
- §12-41-80 Certification of representative

## Subchapter 10 Facilitating Initial Collective Bargaining Agreements Subject to Chapter 377, Hawaii Revised Statutes

- §12-41-81 Request to bargain
- §12-41-82 Notice of dispute and request for conciliation
- §12-41-83 Contents of notice
- §12-41-84 Board determination of jurisdiction and the possibility of settlement and termination of dispute
- §12-41-85 Appointment of conciliator
- §12-41-86 Duties of conciliator
- §12-41-87 Confidential information
- §12-41-88 Report of conciliator
- §12-41-89 Certification of termination
- §12-41-90 Arbitration
- §12-41-91 Selection and certification of arbitration panel

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§12-41-92 Findings and decision of arbitration panel  
§12-41-93 Payment for conciliation and arbitration  
§12-41-94 Closing of dispute in an initial collective  
bargaining agreement case"

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## "SUBCHAPTER 9

### STREAMLINING UNION CERTIFICATION

§12-41-69 Scope of streamlining union certification. This subchapter governs the general procedure relating to selection and certification of an exclusive representative for the purposes of collective bargaining pursuant to section 377-4.6, HRS. [Eff. ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-41-70 Definitions. As used in this subchapter:

"Appropriate unit" means a unit that is appropriate for the purposes of collective bargaining and that is the subject of a petition filed pursuant to this subchapter.

"Exclusive representative" means an individual or labor organization certified by the board under section 377-4.6, HRS, as the exclusive collective bargaining agent to represent all employees in an appropriate unit without discrimination and without regard to employee organization membership.

"Petition", means a petition that is filed pursuant to this subchapter. [Eff. ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

#### §12-41-71 Streamlining Union Certification.

(a) An employee, group of employees, or any individual or labor organization acting on their behalf may collect signed valid authorization cards from employees as defined in section 377-4.6(c), HRS, designating the individual or labor organization as their exclusive representative.

(b) The authorizations shall include the following:

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- (1) The full name, address, and job title of the employee;
- (2) The name and address of the employer;
- (3) The identification of the individual or labor organization that is collecting authorization cards as the exclusive representative;
- (4) An indication that the employee designates the individual or labor organization as his or her exclusive representative;
- (5) A statement that by signing the card, the employee is acknowledging that if a majority of the employee's co-workers in an appropriate unit sign similar cards showing majority support, the card may be used by the individual or labor organization to obtain certification as the employees' exclusive representative without an election similar to that under section 377-1(11);
- (6) An acknowledgement by the employee that the information given to the employee is in a language understandable to the employee;
- (7) The declaration of the employee that the information contained in the authorization cards is true and correct; and
- (8) The legible signature or mark of the employee, and if using a mark a signature of a witness, and the date of the signature or mark.

[Eff. \_\_\_\_\_ ] (Auth: HRS §377-4.6) (Imp:  
HRS §377-4.6)

§12-41-72 Application of streamlining union certification. Streamlining union certification under section 377-4.6, HRS, shall apply to an "employee" as defined under section 377-1, HRS, provided that the employee is employed by an employer with annual gross revenue of more than \$5,000,000. The annual gross revenue of an employer shall mean revenue derived by the employer from all sources, including parents, subsidiaries, and other affiliates wherever located

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based upon financial statements in the preceding fiscal year or, if the employer has operated for less than one year, based upon the actual or projected annual gross revenue reasonably projected by the board of said employer. [Eff.                   ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-41-73 Filing of petition. (a) An employee, group of employees, or any individual or labor organization acting on their behalf seeking certification as the exclusive representative shall file a petition on a form furnished by the board. The original shall be signed, filed with the board, and include the following:

- (1) The full names, addresses, email addresses 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 employer, the general nature of the business, the number of employees constituting the appropriate unit, and annual gross revenue of the employer;
- (3) A full description of the appropriate unit, including the job classifications or positions of employees sought to be included and excluded and the approximate number of employees in the appropriate unit;
- (4) The name and address of any known persons or organizations that claim to represent any of the employees in the appropriate unit;
- (5) An allegation that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the appropriate unit;
- (6) An allegation that more than fifty percent of the employees within the appropriate unit have designated the petitioner as their exclusive representative;

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- (7) An allegation that the employer of the appropriate unit has an annual gross revenue of more than \$5,000,000; and
- (8) Any other relevant facts pertinent to the petition.

A petition may be withdrawn at any time prior to the final issuance of a final order of the board.  
[Eff. \_\_\_\_\_] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-41-74 Notice of petition (a) Upon the filing of the petition, written notice thereof with a copy of the petition shall be sent by the Board to the employer and other interested parties. The notice shall include the date when the petition was filed, the name and address of the petitioner, the name and address of the employer involved, a description of the appropriate unit, and a statement that parties and interested persons shall have 14 days from the date of the notice to file:

- (1) Objections to the allegation that the employer has annual gross revenues of more than \$5,000,000;
- (2) Objections to the description of the appropriate unit, including the job classifications or positions to be included or excluded from the appropriate unit and the approximate number of employees in the appropriate unit;
- (3) Objections to the petitioner's designation of the question regarding representation that has arisen; or
- (4) A Petition to intervene as provided in §12-41-13, in so far as it is applicable.

(b) The employer shall post the notice where notices are normally posted affecting all employees in the appropriate unit not less than three days after receipt of the notice. [Eff \_\_\_\_\_] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

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§12-41-75 Investigation of petition. (a) Upon the filing of the petition, the board or the hearings officer shall conduct an investigation to determine whether:

- (1) Petitioner has collected valid authorization cards from more than fifty percent of the employees in an appropriate unit designating petitioner as their exclusive representative for collective bargaining purposes;
- (2) There is agreement among the parties regarding the composition of the appropriate unit;
- (3) The employer earns annual gross revenues of more than \$5,000,000; and
- (4) There is no other individual or labor organization that is certified or recognized as the exclusive representative of any of the employees in the appropriate unit.

(b) Pursuant to the investigation, the board or the hearings officer may ask the employer to submit:

- (1) Information showing the nature of the employer's business and its revenues;
- (2) Existing or recently expired collective bargaining agreements, if any;
- (3) An alphabetized list of all employees in the appropriate unit with their full names, addresses, and job classifications who are or were employed by the employer within the six months immediately preceding the petition's filing date;
- (4) Copies of the W-4 forms for each employee included on the alphabetized list as required in §12-41-75(b)(3);
- (5) An alphabetized list of all employees in the appropriate unit with their full names, addresses, and job classifications who were employed as of the petition's filing date; and
- (6) Any other information relevant to the investigation.

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§12-41-76. Notice of hearing. After the investigation, if it appears to the board or hearings officer that a hearing is warranted, the board or hearings officer shall issue written notice of hearing upon the parties. The initial notice shall be served by registered or certified mail with return receipt requested at least 15 days prior to the hearing and shall set the time and place of such hearing. The board or hearings officer may notice and hold a prehearing conference.

[Eff. ] (Auth: HRS §§ 91-9, 377-4.6) (Imp: HRS §377-4.6)

§12-41-77 Hearing. The procedures for hearing shall be governed by the §§12-41-20 to 12-41-30, insofar as they are applicable. [Eff. ] (Auth: HRS §§ 91-9, 377-4.6) (Imp: HRS §377-4.6)

§12-41-78 Eligibility and validity of authorization. (a) The validity of the signatures appearing on the authorization cards shall be determined administratively by the board or hearings officer. A signature appearing on an authorization card filed in compliance with section 12-41-71 herein shall be presumed valid.

(b) The board and hearings officer shall maintain the confidentiality of all signatures and identities appearing on authorization cards. The authorization cards shall not be shown or furnished to any of the parties after acceptance by the board or hearings officer and shall be destroyed when the file is closed notwithstanding §12-42-8(g)(11)(A).

(c) A board or hearings officer's finding of the eligibility of an employee to sign an authorization card or of the validity of the signature of the employee on an authorization card, or both, shall be dispositive of the issue and not subject to litigation or collateral attack, except upon sufficient evidence that the signature was obtained improperly through

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fraud or coercion. If there is a dispositive finding by the board or hearings officer that the employee is eligible to sign an authorization card and that the signature of the employee on an authorization card is valid, the authorization of the employee shall be counted toward the final determination of certification by the board or the hearings officer conducting the investigation. [Eff. ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-41-79 Decision and Order. (a) Following the hearing, the board or hearings officer shall issue a decision and order determining whether:

- (1) The employer has annual gross revenues of more than \$5,000,0000;
- (2) No other individual or labor organization is certified or recognized as the exclusive representative of any of the employees in the unit; and
- (3) A majority of the employees in the appropriate unit have signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative.

(b) If the board or hearings officer determines that any of these requirements set forth under subsection (a) are not met, the petition shall be dismissed.

(c) If the hearing is held before the hearings officer, the decision and order rendered thereon shall be a recommended decision subject to the filing of exceptions and board review pursuant to the requirements set forth in HAR §§12-41-20 to 12-41-30, in so far as they are applicable. [Eff. ] (Auth: HRS §§ 91-12, 377-4.6) (Imp: HRS §377-4.6)

§12-41-80 Certification of representative. Upon a finding by the board or hearings officer that all of the requirements set forth in §12-41-79(a) for certification by authorization cards have been

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satisfied, the board shall certify the petitioner as the exclusive representative of the appropriate unit. The board shall issue a copy of the certificate to the employer and so notify the parties. [Eff. ]  
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

## SUBCHAPTER 10

### RULES FACILITATING INITIAL COLLECTIVE BARGAINING AGREEMENTS SUBJECT TO HAWAII REVISED STATUTES CHAPTER 377

§12-41-81 Request to bargain. An individual or labor organization that has been newly organized or certified as the exclusive representative may submit to the employer a written request to bargain. Within ten days after the employer's receipt of the request to bargain, the parties shall meet and commence bargaining collectively in good faith. The parties shall make every reasonable effort to conclude and sign a collective bargaining agreement. [Eff. ]  
(Auth: HRS §377-11) (Imp: HRS §377-4.7)

§12-41-82 Notice of dispute and request for conciliation. More than ninety days after the date on which bargaining commenced or such additional period as the parties agree upon if the parties have failed to reach an agreement, either party may notify the board of the dispute by filing a written notice of dispute and request for conciliation. The employer or exclusive bargaining representative shall file an original of the notice of dispute, with proof of service upon all parties. [Eff. ]  
(Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-41-83 Contents of notice. The notice of dispute shall contain the following:

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- (1) The names and addresses of the parties to the dispute, and the names, telephone numbers, and email addresses of their respective principal representatives to be contacted;
- (2) A description of the appropriate unit and the approximate number of employees constituting the unit;
- (3) The dates and duration of negotiation sessions, if any;
- (4) The name of the party or parties requesting conciliation; and
- (5) A clear and concise statement of any other relevant facts. [Eff.                   ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-41-84 Board determination of jurisdiction and the possibility of settlement and termination of dispute. Upon receiving notice of a labor dispute regarding the failure to reach an initial collective bargaining agreement involving a newly organized or certified representative, the board shall determine whether: the labor dispute is within the board's jurisdiction; and the possibility of settlement and termination of the dispute may be increased by conciliation. [Eff.                   ] (Auth: HRS §377-11) (Imp: HRS §377-3, 377-4.7)

§12-41-85 Appointment of conciliator. If the board determines that the labor dispute is within its jurisdiction and that the possibility of settlement and termination of the dispute may be increased by conciliation, the board shall notify the governor who shall immediately appoint a conciliator. The governor shall so notify the board of the appointment of a conciliator. Upon receipt of notice of the appointment, the board shall refer the dispute to the conciliator. [Eff.                   ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

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§12-41-86 Duties of conciliator. (a) The conciliator shall perform conciliation duties under the guidance of the board and shall report any findings to the board.

(b) The conciliator's function shall be to use his or her best efforts to resolve the dispute within twenty days immediately succeeding the date upon which the request for conciliation was made, or such additional time as is agreed upon by all parties to the dispute.

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

(d) Conciliation meetings shall be conducted at such time and place as may be designated by the conciliator. [Eff. ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-41-87 Confidential information. (a) Any information disclosed by the parties to the conciliator in the performance of such conciliator's duties shall not be divulged voluntarily or by compulsion.

(b) All files, records, reports, or other papers received or prepared by a conciliator while serving in such capacity shall be classified as confidential. The conciliator shall not produce any confidential records of or testify in regard to any conciliation conducted by such conciliator, on behalf of any party to any cause pending in any type of proceeding, unless otherwise required by law. [Eff. ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-41-88 Report of conciliator. (a) The conciliator shall, either orally or in writing, report the progress of conciliation efforts, as well as the terms of the termination of the dispute if any, if so requested by the board. [Eff. ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

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## §12-41-89 Certification of termination. (a)

If, within twenty days immediately succeeding the date upon which the request for conciliation was made, or such additional time as is agreed upon by all parties, the conciliator succeeds or does not succeed in terminating the dispute by conciliation, the conciliator shall immediately certify such fact to the board and the conciliator's appointment shall end.

(b) Upon the termination of the appointment of the conciliator, the board shall so notify the governor. [Eff. \_\_\_\_\_ ] (Auth: HRS §377-11)  
(Imp: HRS §§377-3, 377-4.7)

§12-41-90 Arbitration. If the conciliator fails to bring the parties to agreement within the period required by section 12-41-89, the board shall immediately notify the parties that the labor dispute shall be referred to a three-member arbitration panel established in accordance with section 89-11(e)(2)(A), Hawaii Revised Statutes, and rules as prescribed by the board. [Eff. \_\_\_\_\_ ] (Auth: HRS §377-11)  
(Imp: HRS §§89-11, 377-4.7)

§12-41-91 Selection and certification of arbitration panel. Two members of the arbitrator panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of the labor dispute, the board shall, request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of such

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(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. ] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

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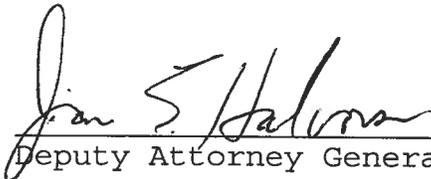
This amendment to Chapter 41, Title 12, Hawaii Administrative Rules, to add new Subchapters 9 and 10 shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Chair, Hawaii Labor Relations  
Board

\_\_\_\_\_  
Director, Department of Labor and  
Industrial Relations

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

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