

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

HAWAII LABOR RELATIONS BOARD

Amendments to chapter 12-41,  
Hawaii Administrative Rules

May 4, 2017

SUMMARY -

1. Subchapter 9 is added.
2. Subchapter 10 is added.

HAWAII LABOR  
RELATIONS BOARD

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SUBCHAPTER 9

STREAMLINING UNION CERTIFICATION

- §12-41-69 Scope of streamlining union certification
- §12-41-70 Definitions
- §12-41-71 Streamlining Union Certification
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- §12-41-73 Filing of petition
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- §12-41-78 Eligibility and validity of authorization
- §12-41-78 Decision and Order
- §12-41-80 Certification of representative

**§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 OCT 27 2017 ] (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 OCT 27 2017 ]  
(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 authorization cards shall include the following:

- (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 the employee's 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;
- (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 card 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 OCT 27 2017 ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§12-41-72 Application of streamlining union certification.** Streamlining union certification under 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 means revenue derived by the employer from all sources, including parents, subsidiaries, and other affiliates wherever located 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 the employer.  
[Eff **OCT 27 2017** ] (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;
- (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 issuance of a final order of the board.

[Eff **OCT 27 2017** ] (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 known interested parties. The notice shall include the date on which 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 fourteen 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 in accordance with §12-41-13, as 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 **OCT 27 2017** ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§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 section 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.



(c) Pursuant to the investigation, the board or the hearings officer shall request that the petitioner submit:

- (1) The original of each authorization card collected under section 12-41-71.
  - (A) The authorization card shall be valid only if signed within six months prior to the filing of the petition in accordance with section 12-41-73.
  - (B) The board or hearings officer will not accept copies of a signed authorization card.
- (2) A declaration authenticating that such authorization cards are valid and attesting to the following:
  - (A) The declarant's personal knowledge or inquiries that the declarant has made that the persons whose names appear on the authorization cards have personally signed or marked their own cards on the dates specified thereon as provided in section 12-41-71;
  - (B) That the persons specified as members of the appropriate unit are or were employees of the appropriate unit during the six month period immediately preceding the petition's filing date; and
  - (C) If the declaration is based upon inquiries the declarant has made, rather than upon personal knowledge, the declarant shall specify the nature of those inquiries.
- (3) Any other information relevant to the investigation.

(d) Responses to requests made under paragraphs (b) and (c) herein shall be made within ten days of the receipt of the request unless an extension of time is granted by the board or hearings officer for good cause shown. [Eff OCT 27 2017 ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§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 to 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 **OCT 27 2017** ] (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 sections 12-41-20 to 12-41-31, as applicable. [Eff **OCT 27 2017** ]  
(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 section 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 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 OCT 27 2017 ]  
(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 \$5,000,000;
- (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 authorization cards 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 the 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 sections 12-41-20 to 12-41-31, as applicable.

[Eff **OCT 27 2017**] (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 section 12-41-79(a) for certification by authorization cards have been 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 OCT 27 2017 ]  
(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
- §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
- §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

**§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 **OCT 27 2017** ] (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 **OCT 27 2017**] (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:

- (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 **OCT 27 2017**] (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 whether the possibility of settlement and termination of the dispute may be increased by conciliation. [Eff **OCT 27 2017** ]  
(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 OCT 27 2017 ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§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 the conciliator's 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 **OCT 27 2017** ] (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 the 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 confidential. The conciliator shall not produce any confidential records of or testify in regards 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 **OCT 27 2017** ] (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 **OCT 27 2017** ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§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. **OCT 27 2017**] (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), HRS, and rules as prescribed by the board.  
[Eff **OCT 27 2017** ] (Auth: HRS §377-11) (Imp: HRS §§89-11, 377-4.7)

**§12-41-91 Selection and certification of arbitration panel.** Two members of the arbitration 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 notice of the labor dispute, or such additional time as agreed to by all parties, 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 list, the parties shall alternatively strike names from the list until a single name is left, and that arbitrator named shall be immediately appointed by the board as the neutral arbitrator and chair of the arbitration panel, and the board shall serve a copy of its certification of appointment of such panel upon all parties. [Eff **OCT 27 2017** ] (Auth: HRS §377-11) (Imp: HRS §§89-11, 377-4.7)

**§12-41-92 Findings and decision of arbitration panel.** The arbitration panel shall file with the board the original of all findings and decisions, which shall be binding upon the parties for a two-year period, unless amended during that period by written consent of the parties with proof of service upon all parties. [Eff **OCT 27 2017** ] (Auth: HRS §377-11) (Imp: HRS §§89-11, 377-4.7)

**§12-41-93 Payment for conciliation and arbitration.** All costs, including those of a neutral arbitrator or conciliator, shall be borne equally by the parties involved in the dispute. [Eff **OCT 27 2017** ]  
(Auth: HRS §§377-11) (Imp: HRS §377-4.7)

**§12-41-94 Closing of dispute in an initial collective bargaining agreement case.** (a) Upon written notification to the board by the employer or exclusive representative of the execution of an initial collective bargaining agreement, where a request was made to the board for conciliation, or upon the board's own knowledge and information, the board shall issue a "Notice of Intent to Dismiss Labor Dispute Case Because of Mootness" stating that the board will dismiss such labor dispute 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 **OCT 27 2017** ] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

HAWAII LABOR RELATIONS BOARD

The Amendments to chapter 41, title 12, Hawaii Administrative Rules, on the Summary Page dated May 4, 2017, were adopted on January 17, 2017, following public hearings held in the County of Hawaii on October 3 and 4, 2016, the County of Kauai on October 27, 2016, the County of Maui on November 2, 2016, and the City and County of Honolulu on November 10, 2016, after public notice was given on September 2, 2016, in the Hawaii Tribune Herald, the Garden Island, the Maui News, and the Honolulu Star Advertiser, and an amended notice of hearing was given on October 9, 2016, in the Honolulu Star Advertiser.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.



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SESNITA A.D. MOEPONO  
Member  
Hawaii Labor Relations Board



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LINDA CHU TAKAYAMA  
Director  
Department of Labor and  
Industrial Relations



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DAVID IGE  
Governor  
State of Hawaii

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LIEUTENANT GOVERNOR'S  
OFFICE

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APPROVED AS TO FORM:

*James Halvorson*

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Deputy Attorney General

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Date Filed

