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Case No. 16-DR 00-108**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

MERIT APPEALS BOARD, STATE OF
HAWAII,

Petitioner,

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO; DEPARTMENT OF PUBLIC
SAFETY, State of Hawaii; and KEIRON
PRATT,

Intervenors.

CASE NO. DR-00-108

ORDER NO. 3182

ORDER GRANTING PETITIONS FOR
INTERVENTION FILED BY
HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO; DEPARTMENT OF PUBLIC
SAFETY, STATE OF HAWAII;
AND KEIRON PRATT; DENYING
PETITION FOR INTERVENTION FILED
BY UNITED PUBLIC WORKERS,
AFSCME, LOCAL 626, AFL-CIO; AND
FIRST AMENDED NOTICE OF
SUBMISSION OF BRIEFS

ORDER GRANTING PETITIONS FOR INTERVENTION FILED BY
HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL
152, AFL-CIO; DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAII;
AND KEIRON PRATT; DENYING PETITION FOR INTERVENTION
FILED BY UNITED PUBLIC WORKERS, AFSCME, LOCAL 626,
AFL-CIO; AND FIRST AMENDED NOTICE OF SUBMISSION OF BRIEFS

On May 31, 2016, the MERIT APPEALS BOARD, STATE OF HAWAII (MAB) filed a Petition for Declaratory Ruling (DR Petition) with the Hawaii Labor Relations Board (Board) alleging, among other things, the following facts, that: on March 4, 2016, Kieron Pratt (Pratt) filed an internal complaint with the Department of Public Safety (DPS) for an “other adverse employment action that cannot be processed through the Collective Bargaining Process,” claiming violations of Hawaii Revised Statutes (HRS) § 134-7(c)(1) and 18 U.S.C. § 922(g)(3); on April 12, 2016, the DPS denied Pratt’s internal complaint and directed him to file an appeal to the MAB if he disagreed with the decision; on May 10, 2016, Pratt submitted the appeal to MAB regarding an examination of his suitability, claiming that “he should have been given his firearm back and be restored to full status as Sheriff Deputy[;]” and that Pratt’s claim of DPS violations of HRS § 134-7 regarding the ownership or possession of a firearm and 18 U.S.C. § 922(g)(3) regarding firearms in possession of an unlawful user or addicted to a controlled substance may not be proper under Hawaii Administrative Rules (HAR) § 14-25.1-1(b)(4)(c) as MAB is unsure whether it has jurisdiction to hear this “other employment action.” The DR Petition further alleges that HRS § 76-14(c)(2) provides that, “The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until

the controversy is resolved by the Hawaii labor relations board.” The DR Petition finally alleges that:

Under the facts presented and the relief claims, there is an issue whether the MAB has jurisdiction over this matter as there is no indication as to how Mr. Pratt is affected regarding 1) recruitment and examination, 2) classification or reclassification of a particular position, 3) initial pricing of classes, and 4) other employment actions (see HRS § 76-14(a)).

The DR Petition requests:

As set forth previously, the MAB is seeking guidance from the HLRB pursuant to HRS Section 76-14(c)(2). In the instance case, the MAB does not believe it has jurisdiction to hear Mr. Pratt’s claim.

Section 14-25.1-1, HRS [HAR], provides, in relevant part:

(b) The merit appeals board shall decide appeals from actions taken by the Chief Executive [sic], the director, an appointing authority, or a designee acting on behalf of one of these individuals, as follows to:

.....

- (4) Other employment actions taken against civil service employees who are excluded from collective bargaining coverage under Section 89, HRS, [sic] if the employooyee [sic] suffers a legal wrong by the action. These actions include:

.....

(C) other employment actions if the employee suffers a legal wrong by the action.

Although the PSD [DPS] instructed Mr. Pratt to seek appeal of the denial of his internal complaint with the MAB, the MAB does not believe it has jurisdiction under tha [sic] claims presented.

On June 2, 2016, the Board issued a Notice of Filing of Petition for Declaratory Ruling; Notice of Deadline for Filing Petitions for Intervention; and Notice of Board Conference (Notice of Filing). The Board set June 13, 2016 as the deadline for filing Petitions for Intervention in this matter and scheduled a Board conference for June 24, 2016.

On June 13, 2016, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 626, AFL-CIO (UPW) filed a Petition for Intervention (UPW Petition) alleging, among other things, that: UPW is the exclusive representative of workers in bargaining unit 10 (Unit 10); the Board’s ruling on the Federal Gun Control Act of 1968 and Section 76-14, HRS will affect the statutory and contractual rights and remedies of bargaining unit employees similarly situated. Regarding the nature and extent of UPW’s interest in the proceeding, UPW states, “Petitioner has negotiated over the subject matter of Merit Appeals Board’s request for declaratory ruling and order.” As to the effect of any decision on UPW’s interest, UPW states, “The Board’s ruling on the Federal Gun

Control Act of 1968 and Section 76-14, HRS will affect the statutory and contractual rights and remedies of bargaining unit employees similarly situated.” Further, regarding the extent to which UPW’s participation can assist in the development of a sound record, UPW alleges that its participation “will assist in developing a sound record regarding what statutory and contractual rights and remedies extend to PSD [DPS] employees who are required to have the ability to carry or possess firearms and who may lose such a privilege.”

On June 13, 2016, HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) filed a Petition for Intervention (HGEA Petition) alleging, among other things, that HGEA is the exclusive representative for bargaining unit 14 (Unit 14); Pratt is a Deputy Sheriff II with the Criminal Investigations Unit, Sheriff Division, DPS and a member of Unit 14; on March 8, 2016, HGEA filed a grievance on behalf of Pratt after DPS informed Pratt that he was deemed unsuitable to carry a firearm and continue in his position as a Deputy Sheriff and offered him the option of a job search, retirement, or resignation; and the grievance is being held in abeyance pending the outcome of the internal complaint filed by Pratt because they both involve similar issues arising out of the same facts. Regarding the nature and extent of HGEA’s interest in the proceeding, the HGEA Petition alleges, among other things, that the outcome of Pratt’s MAB appeal will affect the pending grievance that HGEA filed on behalf of Pratt, and the Board’s ruling will have an impact on future cases involving employees in bargaining units 2, 3, 4, 6, 9, 13, and 14. Regarding the effect of any decision on HGEA’s interest, the HGEA alleges that as the exclusive representative for these bargaining units, it is important for HGEA to have the opportunity to present evidence and argument on the issues raised by the [DR] Petition because of its effect on other employees in similar situations, and that there are no other means to protect this interest.

On June 15, 2016, the Board issued a Notice of Hearing establishing a June 24, 2016 hearing date on UPW’s Petition and HGEA’s Petition.

On June 22, 2016, UPW filed UPW’s Memorandum in Support of Petition for Intervention Filed on June 13, 2016 (UPW’s Memorandum). In its Memorandum, UPW takes the position that under Hawaii Rules of Civil Procedure (HRCP) Rule 24 (a)(2),ⁱⁱ UPW meets the four part criteria for an intervention as of right. Most significantly, UPW contends, among other things, that its interest is sufficient because of its representation of adult correctional officers “who have substantive and procedural rights by statute and contract where they may be subject to adverse personnel actions like Mr. Pratt who allegedly failed to meet performance requirements relating to the carrying and possession of firearms and ammunition in the course of his employment the Department of Public Safety.” In support of those substantive rights, UPW relies on Unit 10 collective bargaining agreement (Unit 10 CBA) and HRS § 89-10.8.ⁱⁱⁱ In addition, UPW maintains that unions have sufficient interest to intervene to protect wages, hours, and conditions of work under statutes and collective bargaining agreements. Finally, UPW asserts that a Board ruling that MAB has jurisdiction over such disputes will not only affect but may impair the rights of Unit 10 employees. Alternatively, UPW argues that the Board should allow UPW’s permissive intervention under HRCP Rule 24 (b).

On June 24, 2016, a hearing was held on the UPW and HGEA Petitions. At the hearing, the Board orally notified counsel for UPW, HGEA, and MAB that the Board failed to send the Notice of Filing to Pratt and DPS. Accordingly, Pratt and DPS had no opportunity to file a petition for intervention in this proceeding. After arguments from counsel regarding proceeding with this

matter, the Board orally informed the attendees at the hearing of the following: 1) because of its failure, the Board would follow protocol and send the Notice of Filing to and provide Pratt and DPS with the opportunity to intervene; 2) the briefing would be scheduled; and 3) that the UPW and HGEA Petitions would be taken under advisement.

On June 24, 2016, the Board issued a Supplemental Notice of Filing of Petition for Declaratory Ruling; and Supplemental Notice of Deadline for Filing Petitions for Intervention; and Attachment 1 (Supplemental Notice). The Supplemental Notice notified both Pratt, through his attorney Peter Hsieh, and DPS of the filing of the DR Petition and a July 5, 2016 deadline for filing a petition for intervention.

On June 27, 2016, the Board issued a Notice of Submission of Briefs, which, among other things, incorporated the Board's oral rulings and scheduled the filing and serving of briefs regarding the jurisdiction of MAB to adjudicate the dispute between Pratt and DPS for August 31, 2016.

On June 30, 2016, Petitioner Pratt filed Petitioner Keiron Pratt's Request for Extension of Time to File Petition for Intervention requesting an extension of the deadline from July 5, 2016 up to and including July 25, 2016, which the Board granted by Order No. 3175 on July 1, 2016.

On July 5, 2016, DPS filed its Petition for Intervention (DPS Petition) alleging that DPS is a party of right in the MAB proceeding as the employer of Pratt. Further, that the decision being appealed to MAB by Pratt is DPS's decision; and as Pratt's employer and a party to the underlying proceeding, DPS has a special interest in the Board's interpretation of the MAB jurisdiction over appeals of employers' decisions on suitability for appointment or continued appointment.

On July 12, 2016, Pratt filed his Petition for Intervention (Pratt Petition) claiming that: Pratt is the DPS employee, who suffered an adverse decision denying his internal complaint on the grounds that Pratt was deemed unsuitable to carry a firearm and continue in his Deputy Sheriff position and directing him to file the MAB appeal if he disagreed; Pratt filed the MAB appeal to preserve his rights without waiving his rights and claims in the pending grievance; and while Pratt's interest may be represented by HGEA, his right to intervene is undeniable because he is a real party in interest possessing the substantive right being asserted and a legal right to adjudicate the claim.

Hawaii Administrative Rules (HAR) § 12-42-9 **Declaratory rulings by the board**, subsection (e) provides that, "Any party may intervene subject to the provisions of section 12-42-8(g)(14).

HAR § 12-42-8 (g)(14) provides:

§ 12-42-8 Proceedings before the board.

(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.

(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.

Based on a review of the DR Petition and the respective Petitions for Intervention filed by the Petitioners considered in light of the above-stated criteria for intervention, the Board makes the following findings and rulings.

First, the Board finds that Pratt and DPS have timely filed their respective Petitions for Intervention. While their Petitions were not filed by the June 13, 2016 deadline established by the June 2, 2016 Notice of Filing, these parties were not copied on and did not receive the Notice of Filing. Upon being notified by the June 24, 2016 Supplemental Notice of the DR Petition and a July 5, 2016 deadline for filing an intervention petition, DPS filed its Petition by the July 5, 2016 deadline. On June 30, 2016, Pratt filed a request for extension of time until July 25, 2016 to file his Petition, which was granted by the Board. Pratt then filed his Petition in a timely manner in accordance with the Board's order. Accordingly, the Board holds that both Pratt and DPS filed timely Petitions for Intervention.

The Board further concludes that as parties to the underlying dispute at the heart of this MAB jurisdictional issue, both Pratt and DPS meet the criteria set forth in HAR §12-42-8(g)(14), including significantly, a showing of sufficient interest to intervene and effect of any decision in these proceedings on those interests because both are parties to the MAB appeal at issue in the DR Petition. Pratt is the DPS employee who suffered the adverse decision denying his internal complaint. DPS is the employer that denied Pratt's internal complaint and allegedly told Pratt that an appeal of the adverse decision was through MAB. The Board's decision in this case resolves whether Pratt's appeal regarding the denial of his internal complaint is within MAB's jurisdiction under HRS § 76-14. Therefore, the Board grants their respective Petitions for Intervention pursuant to HAR §§ 12-42-8(g)(14) and 12-42-9(e).

After considering the HGEA's Petition, the Board determines that HGEA also alleges a sufficient interest and effect of any decision on its interest to intervene in these proceedings. As the exclusive representative for Unit 14, the bargaining unit of which Pratt is a member as a Deputy Sheriff II with DPS, HGEA filed a grievance on behalf of Pratt based on similar issues and facts to the ones involved in the MAB appeal. The decision in this proceeding may impact the pending grievance, which is being held in abeyance pending outcome of the internal complaint filed by

Pratt. The Board accordingly grants the HGEA's Petition for Intervention pursuant to HAR §§ 12-42-8(g)(14) and 12-42-9(e).

Upon review of UPW's Petition and its Memorandum, the Board finds that unlike the HGEA, the UPW is neither the exclusive representative for Unit 14, nor does UPW represent Pratt or have any relationship to the internal complaint filed by Pratt, which is the subject of the MAB jurisdictional issue raised by the DR Petition. UPW maintains that its interest in this proceeding is based on its negotiations over the subject matter of MAB's request for declaratory ruling and order. However, because UPW does not represent Pratt, UPW could not have negotiated regarding the specific subject matter of the DR Petition, which is MAB's jurisdiction over the internal complaint filed by Pratt. Further, any UPW negotiations would be regarding the Unit 10 CBA, which is obviously different from negotiations over the Unit 14 collective bargaining agreement. In addition, the Board does not agree with UPW's allegation that the Board's ruling on the Federal Gun Control Act of 1968 and HRS § 76-14 will affect the statutory and contractual rights and remedies of bargaining unit employees similarly situated for two reasons.

First, as the UPW is well-aware, the DR Petition is being brought because an order from the First Circuit Court determined that under HRS § 76-14(c)(2), the Board is required to resolve any controversy regarding MAB jurisdiction to hear this appeal under HRS § 76-14. *See: United Public Workers, AFSCME, Local 646, AFL-CIO v. Merit Appeals Bd., State of Hawaii*, Civil No. 13-1-1108-04 (RAN) (1/2/2014) (“[T]his Court’s plain reading of §76-14(c)(2), HRS is that the HLRB is to resolve any controversy regarding the MAB’s authority to hear this appeal.” (Emphasis added)). Therefore, the Board is limited to resolving the controversy regarding MAB’s jurisdiction over Pratt’s appeal. Moreover, there is no question that a DR Petition is limited in scope to particular factual situation alleged in the petition. The Hawaii Supreme Court clarified the limited scope of a declaratory ruling in *Fasi v. State Public Emp’t. Rels. Bd.*, 60 Haw. 436, 444, 591 P.2d 113, 118 (1979), that:

The only parties necessary to a proceeding under § 91-8 are the petitioner and the agency. The declaratory ruling so obtained has effect only as an order of the agency. With respect to parties not before the agency in the proceeding upon the petition, the ruling does not adjudicate rights and interests to any greater extent than is possible by an ex parte interpretative order of the agency. These conclusions, we think, require no more validation than is provided by the face of the statute.

Further, HAR § 12-42-8(g)(14)(D) specifically states that, “Intervention shall not be granted except on averments which are reasonably pertinent to the issues already presented but do not unduly broaden them[;]” and HAR § 12-42-9(i) also specifically provides that, “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....” Contrary to UPW’s claim in its Petition that “the Board’s ruling on the federal Gun Control Act of 1968 and Section 76-14, HRS, will affect the statutory and contractual rights and remedies of bargaining unit employees similar situated” and even HGEA’s allegation that the Board’s ruling will have an impact “on future cases involving employees in bargaining units 2, 3, 4, 6, 9, 13 and 14, in the

same or similar situations, the scope of this DR Petition does not broadly encompass the statutory and contractual rights and remedies of other employees similarly situated nor should it “unduly broaden” the issue presented.

The Board concludes that the issue based on the DR Petition is limited to whether MAB has jurisdiction over Pratt’s appeal from DPS’s denial of his internal complaint under HRS § 76-14.

ORDER

For all of the reasons set forth above, the Board grants the Petitions for Intervention filed by the HGEA, Pratt, and DPS and denies the UPW’s Petition for Intervention pursuant to HAR §§ 12-42-8(g)(14) and 12-42-9(e).

FIRST AMENDED NOTICE OF SUBMISSION OF BRIEFS

NOTICE IS HEREBY GIVEN that the Board has amended the Notice of Submission of Briefs, filed on June 27, 2016, (Notice) by changing the deadline to file briefs to **4:30 p.m. on October 31, 2016**. The briefs shall be limited to the issue of whether MAB has jurisdiction over Pratt’s appeal pursuant to HRS § 76-14.^{iv} All other requirements established by the Board in the Notice remain in effect.

DATED: Honolulu, Hawaii, August 12, 2016.

HAWAII LABOR RELATIONS BOARD



Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J N. Musto

J N. MUSTO, Member

Copies to:

John S. Mukai, Deputy Corporation Counsel, Attorney for Petitioner
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Peter Hsieh, Esq., Attorney for Mr. Keiron Pratt

ⁱ Hawaii Administrative Rule §§14-25.1-1(b), 14-25.1-1(b)(4), and 14-25.1-1(b)(4) (C) state:

(b) The merit appeals board shall decide appeals from actions taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, as follows to:

.....

- (4) Other employment actions taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes, if the employee suffers a legal wrong by the action. These actions include:

.....

- (C) other employment actions if the employee suffers a legal wrong by the action.

ii The Board has looked to the Hawaii Rules of Civil Procedure for guidance when our own rules are silent. Poe v. Hawaii Gov't Emp. Ass'n., Board Case No. CU-03-214, Decision No. 446, 6 HLRB 359, 362 (2004). However, in this case, the Board's own administrative rules Hawaii Administrative Rules § 12-42-8(g)(14) set forth specific criteria for interventions in the proceedings. Consequently, the Board will follow the criteria in its own administrative rules, rather than the criteria set forth in HRCP Rule 24.

iii UPW references Unit 10 CBA, Section 11.01 providing for just and proper cause for disciplinary actions, a November 19, 2002 supplemental agreement providing that those who lose their right to carry and possess firearms are entitled to continued employment, HRS § 89.10.8 [sic], and the Unit 1 [sic] CBA, Section 15A providing for adversely affected employees subject to performance requirements to file a grievance and have a performance judge determine whether statutory and contractual "conditions" have been satisfied.

iv **§76-14 Merit appeals board; duties, and jurisdiction.** (a) The merit appeals board of each jurisdiction shall decide appeals from any action under this chapter taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:

- (1) Recruitment and examination;
- (2) Classification and reclassification of a particular position, including denial or loss of promotional opportunity or demotion due to reclassification of positions in a reorganization;
- (3) Initial pricing of classes; and
- (4) Other employment actions under this chapter, including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6.

(b) Any person suffering legal wrong by an action under subsection (a)(1) or aggrieved by such action shall be entitled to appeal to the merit appeals board. Any employee covered by chapter 76 suffering legal wrong by an action under subsection (a)(2) or (3) shall be entitled to appeal to the merit appeals board. Only employees covered by chapter 76, who are excluded from collective bargaining, suffering legal wrong by an action under subsection (a)(4) shall be entitled to appeal to the merit appeals board. Appeals under this section shall be filed within time limits and in the manner provided by rules of the merit appeals board.

(c) The rules adopted by the merit appeals board shall provide for the following:

(1) The merit appeals board shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement;

(2) The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board;

(3) The merit appeals board shall prescribe time limits for filing an appeal that require exhaustion of all internal complaint procedures, including administrative review and departmental complaint procedures, before an appeal is filed; and

(4) The merit appeals board shall use the conditions listed in section 76-41(b) in reaching a decision on whether actions taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or without merit.

DISSENTING AND CONCURRING
OPINION OF CHAIRMAN KERRY M. KOMATSUBARA

I concur with the Majority in granting intervenor status to Hawaii Government Employees Association (HGEA), Department of Public Safety (DPS) and Kieron Pratt (Pratt).

I disagree with, and dissent from, the Majority's denial of intervenor status to United Public Workers (UPW). My dissent is based on the following:

(1) It is undisputed that (a) UPW is the exclusive representative of bargaining unit 10 (BU 10) employees and (b) certain BU 10 employees are in a similar position as Pratt (i.e., employed by DPS and must be able to carry firearms as part of their jobs). Thus, UPW has a direct interest in how disputes relating to the job requirement of being able to carry firearms will be handled by DPS, i.e., whether Hawaii Revised Statutes (HRS) Chapter 76 will control such that the Merit Appeals Board (MAB) will have jurisdiction or whether the provisions of the applicable collective bargaining will control.

(2) No party objected to UPW's Petition for Intervention filed on June 13, 2016 (UPW's Petition). There is no showing that (a) UPW's participation will "broaden the issue or delay the proceeding,"¹ or (b) UPW's "interest may be represented by existing parties."²

(3) At page 4 of UPW's Memorandum in Support of Petition for Intervention Filed on June 13, 2016, UPW states that it "seeks intervention to protect the substantive and procedural rights of BU 10 employees who are subject to the same performance requirements as Mr. Pratt in the Department of Public Safety." The position taken by UPW is similar to the position taken by HGEA (which represents numerous bargaining units other than Pratt's bargaining unit).

¹ Hawaii Administrative Rules (HAR) § 12-42-8(g)(14)(A)(vii).

² HAR § 12-42-8(g)(A) (v).

(4) Finally, and most significantly, any decision rendered by the Hawaii Labor Relations Board (Board) may "as a practical matter, 'impair or impede the intervenor's ability to protect its interest'"³ regarding how disputes over job qualifications for BU 10 employees will be resolved. UPW raises legitimate concerns that its interest (protecting its members and the sanctity of its collective bargaining agreement with DPS) may not be adequately protected by MAB. The Hawaii Supreme Court held in Hoopai v. Civil Serv. Comm'n, 106 Hawai'i 205, 218 (2004), that the "burden of making a showing [of inadequacy of representation] is minimal,"⁴ and, as in this case, "UPW need only show that the Commission's representation of UPW's interest may have been inadequate." Id., 106 Hawai'i at 217.

Based on the foregoing, I would have granted UPW's Petition.


KERRY M. KOMATSUBARA, Chair

³ Ing v. Acceptance Ins. Co., 76 Hawai'i 266 at 271 (1994).

⁴ Citations omitted and brackets added.