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Case No. 16-CE-11-887, 14-CE-11-845

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO, Complainant, and KIRK CALDWELL, Mayor, City and County of Honolulu; MANUEL P. NEVES, Fire Chief, Honolulu Fire Department, City and County of Honolulu; HONOLULU FIRE DEPARTMENT, City and County of Honolulu; and CITY AND COUNTY OF HONOLULU, Respondents.	CASE NO. 14-CE-11-845 ORDER NO. 3368 FINAL ORDER ADOPTING HFFA/IAFF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER; AND ORDER SETTING DEADLINES REGARDING ANY REQUEST FOR ATTORNEY'S FEES AND COSTS

In the Matter of HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO, Complainant, and KIRK CALDWELL, Mayor, City and County of Honolulu; MANUEL P. NEVES, Fire Chief, Honolulu Fire Department, City and County of Honolulu; HONOLULU FIRE DEPARTMENT, City and County of Honolulu; and CITY AND COUNTY OF HONOLULU, Respondents.	CASE NO. 16-CE-11-887

FINAL ORDER ADOPTING HFFA/IAFF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER; AND ORDER SETTING DEADLINES REGARDING ANY REQUEST FOR ATTORNEY'S FEES AND COSTS

I. BACKGROUND

CE-11-845 Prohibited Practice Complaint

On August 27, 2014, Complainant HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO (HFFA or HFFA/IAFF) filed with the Hawaii Labor Relations Board (Board) a prohibited practice complaint in Case No. CE-11-845 (Complaint No. 845) against Respondents KIRK CALDWELL, Mayor, City and County of Honolulu (Mayor Caldwell); MANUEL P. NEVES, Fire Chief, Honolulu Fire Department, City and County of Honolulu (Chief Neves); HONOLULU FIRE DEPARTMENT (HFD); and the CITY AND COUNTY OF HONOLULU (City and County and collectively Respondents).

Complaint No. 845 alleges, *inter alia*, that the HFFA and Respondents are parties to the bargaining unit (BU) 11 collective bargaining agreement (Agreement), which provides, among other things, that the Employer shall grant to any individual certified Union representative the right to go onto the premises of the Employer to investigate grievances and to ascertain whether or not the Agreement is being observed; the Union agrees that its representative shall notify the supervisor in charge of the Company, Station or Bureau of the representative's presence; and that

the BU 11 Agreement further provides that informational and educational meetings may be held by the Union once every calendar quarter; and the "[e]mployer or its representatives shall permit its employees to attend such meetings held during working hours and such meeting shall be limited to not more than 2 hours. The Union shall give written notice to the Employer or its representative at least 5 calendar days prior to the date of the meetings."

Complaint No. 845 further alleges, *inter alia*, that on June 17, 2014, the HFD issued an email to non-bargaining unit HFD administrative staff that stated, "From the Chief's office: all station visitations from the HFFA shall cease until further notice"; that on or about June 17, 2014, at HFD Station 34, a photograph was taken of a bulletin board posting that stated, "From Fire 1 if any Union Rep comes by the station to talk story/meeting you are to ask them to leave!"; that on June 18, 2014, HFFA/IAFF Board Members were in the process of conducting a pre-arranged BU 11 Sectional Informational and Educational meeting at Station 33 when they were asked to leave by Captain Blake Takahashi, pursuant to instructions given to him by the Assistant Chief Ronald Rico; and that on June 20, 2014, Chief Neves unilaterally established a process for the conduct of contractual Informational and Educational meetings by HFFA/IAFF with its members.

Complaint No. 845 alleged that during the last twelve months, Respondents have "continually failed and/or refused to 'recognize' HFFA/IAFF as the certified employee organization for BU 11 employees"; that during the last twelve months the Respondents "continually failed and/or refused to consult with HFFA/IAFF on matters that require consultation" have under Hawaii Revised Statutes (HRS) §89-9 (c); that during the last twelve months Respondent have "continually failed and/or refused to negotiate on matters or wages, hours, and other terms and conditions of employment" under HRS §89-9 (a); that the conduct of Respondents has denied and deprived the HFFA/IAFF of its BU 11 Agreement contractual right to investigative, informational, and educational meetings.

Complaint No. 845 alleged prohibited practices pursuant to HRS § 89-13(a)(1), (2), (5), (7), and (8), which provides in relevant part:

> **§89-13 Prohibited practices; evidence of bad faith.** (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:
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> (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
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> (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
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> ***

(5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

***

(7) Refuse or fail to comply with any provision of this chapter; [or]

(8) Violate the terms of a collective bargaining agreement[.]

CE-11-887 Prohibited Practice Complaint

On November 14, 2016, the HFFA filed a prohibited practice complaint against Respondents in Case No. CE-11-887 (Complaint No. 887). Complaint No. 887 alleged, *inter alia*, that on August 16, 2016, Respondent Neves "in unilateral action informed the HFFA/IAFF that he was limiting Section 6 Informational and Educational Meetings at fire station after 1700 (5:00 pm) hours; that Respondent Neves' action is a violation of the BU 11 Agreement; that Respondent Neves's unilateral modification of Section 6 is a matter requiring negotiations and prior mutual consent of the HFFA/IAFF pursuant to the BU 11 Agreement and HRS § 89-9(a); that Respondents have failed and/or refused to negotiate with HFFA/IAFF in violation of HRS § 89-9(a); in the alternative, Respondents failed and/or refused to consult with the HFFA prior to August 16, 2016, in violation of HRS § 89-9(c) and the BU 11 Agreement; that the imposition of the blanket restriction or prohibition from conducting Section 6 meeting until after 5:00 p.m. is an unwarranted intrusion, interference, obstruction and restraint to BU 11 employees engaged in protected union activity; and that on and after August 30, 2016, Respondents engaged in a series of emails through September 8, 2016, informing HFD Battalion Chiefs of the unilaterally implemented "process" for the conduct of Section 6 meetings and that the process was not negotiated or consulted with the HFFA/IAFF prior to its implementation.

Complaint No. 887 alleged prohibited practices pursuant to HRS § 89-13(a)(1), (2), (5), (7), and (8).

On November 30, 2016, the Board issued Order No. 3212, granting the HFFA's motion to consolidate Case Nos. 14-CE-11-845 and 16-CE-11-887, and, *inter alia*, providing notice of the hearing on the merits (HOM) in the consolidated proceeding to commence on December 12, 2016, beginning at 9:00 a.m.

The Board held the HOM in this consolidated proceeding on December 12, 13, 14, 19, and 22, 2016. The parties submitted their post-hearing briefs on April 28, 2017.

On September 18, 2017, Board issued Order No. 3293,[1] MINUTE ORDER DIRECTING HFFA, AS PREVAILING PARTY, TO SUBMIT PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER; AND ORDER SETTING DEADLINES REGARDING ANY REQUEST FOR ATTORNEY'S FEES AND COSTS.

On January 15, 2018, Complainant filed PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER.

On January 15, 2018, Complainant filed HFFA/IAFF MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF PETER LIHOLIHO TRASK.

On March 29, 2018, Respondents filed MEMORANDUM IN OPPOSITION TO COMPLAINANT'S MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS; DECLARATION OF COUNSEL; EXHIBIT "A."

On March 30, 2018 Respondents filed RESPONDENTS' EXCEPTIONS AND OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER.

Based on a full review of the record in these consolidated cases, including a careful review of the Respondent's Exceptions, the Board renders the following Findings of Fact and Conclusions of Law, Decision and Order. Any conclusion of law improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law shall be deemed or construed as a finding of fact. Any proposed finding of fact or conclusion of law submitted by a party not expressly adopted by the Board herein, or rejected by clearly contrary findings of conclusions, is hereby deemed denied and rejected.

II. FINDINGS OF FACT

HFFA is an employee organization within the meaning of HRS § 89-2[i] and duly certified as the exclusive bargaining representative of all fire fighters in bargaining unit 11 (BU 11), effective February 4, 1972.

The Mayor is the Mayor of the City and County of Honolulu and is an employer within the meaning of HRS § 89-2.[ii]

[1] [1] In issuing Board Order No. 3212 in the consolidated cases 14-CE-11-845 and 16-CE-11-887, the Board finds that in both cases the HFFA/IFFA was the prevailing party.

Chief Neves is the Fire Chief, HFD, and the designated representative of Mayor Caldwell and a public employer within the meaning of HRS § 89-2.[iii]

HFFA and the City and County have negotiated at least fifteen successive collective bargaining agreements setting forth the wages, hours and other terms and conditions of employment of BU 11 since February 4, 1972.

HFFA and the public employers are parties to collective bargaining agreements with respective dates covering the period July 1, 2011 to June 30, 2017 covering BU 11 employees, in which Section 6 provides:

> Informational and educational meeting may be held by the Union once every calendar quarter, to be conducted by its duly recognized officers and/or stewards and shall be open to all Employees in the bargaining unit, including members and non-members of the Union. The Employer or its representative shall permit its Employees to attend such meetings held during working hours and such meeting shall be limited to not more than two (2) hours. The Union shall give written notice to the Employer or its representative at least five (5) calendar days prior to the date of the meetings. Such meetings shall be allowed at dates, times and places which do not interfere with the normal operations of the respective Fire Departments. These meetings may include multiple sessions in order to accommodate Employees in the bargaining unit.
>
> Matters not appropriate for information and educational meetings are conducting internal Union business, engaging in unlawful political activities or the endorsement of specific candidates and engaging in demonstrations.

Section 6 meetings are vital to the function of the union as the exclusive bargaining representative, and in the satisfaction of its statutory duty of fair representation pursuant to Section 89-8(a), HRS. During these meetings employees raised concerns they have regarding negotiations or contractual enforcement (and administration). This is where the union learns about possible grievances and violations of law. The union relies on what happens at Section 6 meetings to also keep employees informed of all developments in collective bargaining, and to develop and plan its program as the exclusive representative.

Section 6 Informational and educational meetings have been contained in the BU 11 agreements since 1976, and the meetings have remained substantially unchanged since that time up to and including the current BU 11 agreement for the period July 1, 2011 through June 30, 2017.

On or about February 25, 2011, the HFFA submitted its notice to conduct informational and educational meetings to then-HFD Fire Chief Kenneth G. Silva pursuant to Section 6 of the BU 11 agreement. The notice proposed the commencement of informational and educational meetings at the work sites beginning Monday, March 7, 2011. No objection or response was received from Chief Silva. Informational and educational meetings were conducted by HFFA.

At April 12, 2013 and on May 23, 2013 meetings with HFFA President Robert H. Lee (Lee), Chief Neves informed Lee that the HFFA had to give advance notice and get permission to conduct these meetings.

On May 29, 2013, the HFFA, in accordance with Section 6 of the BU 11 CBA, informed Chief Neves, of its intention to conduct informational and education meetings (station visits) between June 5, 2013 through December 2013 (May 29, 2013 Notice). No objection or response was received from Chief Neves. Informational and educational meetings were conducted by HFFA.

After Chief Neves received the May 29, 2013 Notice, HFD Deputy Fire Chief Lionel Camara called Lee to seek clarification regarding the Notice but no concerns were discussed.

On May 29, 2014, the HFFA, in accordance with Section 6 the BU 11 CBA, informed Chief Neves, of its intent to conduct informational and educational meetings at HFD worksites between Monday, June 16, 2014 through Monday, June 15, 2015.

By June 13, 2014, a dispute arose between the HFD and HFFA that culminated in a June 17, 2014 blanket prohibition by HFD against all HFFA station visitations.

On June 18, 2014, pursuant to the HFD' s blanket prohibition against all station visitations by HFFA, two HFFA Oahu Executive Board members were asked to leave a previously scheduled Section 6 informational and educational meeting at Station 33 in Palolo.

On June 20, 2014, Chief Neves attempted to unilaterally establish a process for the conduct of contractual Informational and Educational meetings by HFFA with its members.

On August 27, 2014, HFFA filed with the Board the CE-11-845 Complaint challenging the removal of HFFA Executive Board members from a pre-arranged and approved Section 6 informational and educational meeting, and the unilateral establishment of the Chief Neves process for the conduct of contractual informational and educational meetings.

The HFFA complaint was scheduled for hearing on December 3 and 4, 2015, but was suspended for settlement discussions, at the direction and with the assistance of the former Board Chair.

By April 2016, however, the parties had not successfully resolved all issues included in CE-11-845.

Historically, Section 6 Informational and Educational meetings have been prompted by requests to HFFA from their BU 11 members.

Historically, these member-driven Informational and Educational meetings have occurred in Fire Stations on an as requested basis with the expressed prior approval of Station Commander/Captains and/or Battalion Chiefs, with notice to the appropriate Chief in accordance with Section 6 of the BU 11 Agreement.

Fire Station visits also historically included visits by the public and community groups, and employee benefit providers, sometimes with or without prior notice.

On August 16, 2016, Respondent Chief Neves informed HFFA in writing of his unilateral implementation prohibiting all station visits, including Section 6 Information and Educational Meeting until after 5:00 p.m.

Subsequently, Respondent Chief Neves allowed station visits to occur prior to 5:00 p.m. for non-bargaining unit agencies, specifically VOYA who manages deferred compensation plans for City employees, but continued to prohibit BU 11 Section 6 Informational and Educational Meetings until after 5 :00 p.m.

As of August 16, 2016, there had been no prior incidents of BU Section 6 Informational and Educational meetings interfering with normal operations of Respondent Honolulu Fire Department (HFD).

On November 14, 2016, HFFA filed the CE-11-887 Complaint challenging the unilateral prohibition against HFFA Section 6 informational and educational meetings prior to 17:00 hours (5:00 p.m.).

III. BURDEN OF PROOF

HRS § 91-10(5) states:

> (5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

Hawaii Administrative Rules (HAR) § 12-42-8(g)(16) of the Board's rules states:

> (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.

See also: Hawaii Gov't Emp. Ass'n, Local 152 v. Keller, Board Case No. CE-13-597, Decision No. 456, 6 HLRB 421, 429 (2005); United Public Workers, AFSCME, Local 646 v. Waihee, Board Case No. CE-01-122, Decision No. 309, 4 HLRB 742, 750 (1990) (Waihee). The preponderance of the evidence is defined as "proof which leads the [trier of fact] to find that the existence of the contested fact is more probable than its existence." Minnich v. Admin. Dir. of the Courts, 109 Hawaii 220, 228 (*citing* Masaki v. Gen. Motors Corp., 71 Haw. 1, 14, 780 P.2d 566, 574 (1989)); Coyle v. Compton, 85 Hawaii 197, 202-03 (1997) (*citing* Strong, *McCormick on Evidence* § 339, at 439 (4th ed. 1992)). Further, "the party required to carry the burden of proof, must not only produce sufficient evidence but also support that evidence with arguments in applying the relevant legal principles." Waihee, 4 HLRB at 750.

The Board has further interpreted this section "to mean that the party required to carry the burden of proof, must not only produce sufficient evidence but also support that evidence with arguments in applying the relevant legal principles. Henceforth, if any party fails to present sufficient legal arguments with respect to any issue, the Board shall find that the party failed to carry its burden of proof and dispose of the issue accordingly." State of Hawaii Organization of Police Officers (SHOPO) v. Fasi, Board Case No. CE-12-66, Decision No. 161, 3 HPERB 25, 46 (1982) (Sanderson). *See also*: State of Hawaii Organization of Police Officers (SHOPO) v. Fasi, Board Case No. CE-12-63, Decision No. 162, 3 HPERB 47, 65 (1982); Hawaii Gov't Emp. Ass'n, AFSCME, Local 152, AFL-CIO v. Sasano, Board Case Nos. CE-03-222a, Decision No. 361, 5 HLRB 410, 421 (1994) (*citing* SHOPO v. Fasi, 3 HPERB 25, 46 (1982)).

IV. APPLICABLE STATUTORY PROVISIONS

HRS § 89-13(a) provides in relevant part:

§89-13 Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

> (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

(2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization[.]

V. CONCLUSIONS OF LAW

Historically, the Board and the state courts have used federal precedent to guide their interpretation of state public employment law. *See, e.g.*, Hokama v. University of Hawaii, 92 Hawaii 268, 272n.5 990 P.2d 1150, 1154n.5 (1999).

In N.L.R.B. v. Katz, 369 U.S. 736 (1962) (Katz), the United States Supreme Court upheld a determination by the National Labor Relations Board that an employer commits an unfair labor practice if, without bargaining to impasse, the employer effects a unilateral change of an existing term or condition of employment.

In University of Hawaii Professional Assembly v. Tomasu, (Tomasu), 79 Hawaii 154, 900 P.2d 1161 (1995), the Court held that the University of Hawaii was duty bound to negotiate over a change in policy prompted by the drug free place act. The Court stated:

> The duty to bargain arises in two circumstances potentially applicable to this decision; First, the obligation to bargain collectively forbids unilateral action by the employer with respect to pay rates, wages, hours of employment, or other conditions of employment, during the term of a labor contract, even if the action taken in in good faith. It is well established that an employer's unilateral action in altering the terms and conditions of employment, without first giving notice to and conferring in good faith with union constitutes an unlawful refusal to bargain. *See, e.g.*, Katz, 369 U.S. at737(unilateral implementation of wage increases, changes in sick-leave benefits and numerous merit increases violated the statutory imposed duty to bargain collectively); Burlington Fire Fighters Ass 'n v. City of Burlington, 142 Vt. 434, 457 A.2d 642 (1983) (principle that unilateral imposition of terms of employment is a violation of the duty to bargain is equally applicable to public sector bargaining); First Nat'l Maint. Corp v. NLRB, 452 U.S. 666, (1981). Therefore, when the employer attempts to promulgate a policy that will affect bargainable topics, the employer cannot do so without first initiating bargaining in such topics.

The Board therefore concludes that the obligation to bargain collectively forbids unilateral action by the employer with respect to wages, hours of employment, or other conditions of employment, during the term of that agreement, even if the action taken is in good faith.

In the present case, Section 6 of the BU 11 Agreement is the provision at issue dealing with Informational and Educational Meetings. This section provides that the Employer shall

permit its Employees not more than two hours during work time to attend such informational and educational meetings that may be held by the Union once every calendar quarter, provided the Union gives the required notice, and other conditions are met.

In summary, the Board concludes that the Respondents' implementation of changes to Section 6 Informational and Educational meetings or the imposition of a requirement that Informational and Educational meetings only be held after 5:00 p.m. was a matter requiring Respondents to meet at reasonable times, to confer and negotiate in good faith, with HFFA pursuant to Section 89-9(a), HRS.

Respondents' unilateral action changing or imposing the requirement that informational and educational meetings only be held after 5:00 p.m. constitutes an unlawful refusal to bargain.

Respondents' unilateral action changing or imposing the requirement that informational and educational meetings only be held after 5:00 p.m. deprived, and interfered with BU 11 employees, and their certified employee organization to engaged in rights guaranteed under chapter 89, HRS.

Collective bargaining in public employment requires both the public employer and the exclusive representative to bargain collectively in good faith. The need for good-faith bargaining or negotiation is fundamental to bringing to fruition the legislatively declared policy "to promote harmonious and cooperative relations between government and employees and to protect the public by assuring effective and orderly operations of government." Bd. of Educ. v. Hawaii Pub. Relations Bd., 56 Haw.85 528 P.2d 809 (1974).

Section 89-13(a)(1), HRS provides that it is a prohibited practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Chapter 89, HRS. Section 89-3, HRS, guarantees employees the right to self-organize, to form, join or assist labor organizations, to bargain collectively with the representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. Employer conduct that interferes with, restrains, or coerces employees in the exercise of these rights violates § 89-13(a)(1), HRS. The test is whether the employer engages in conduct reasonably tending to interfere with the free exercise of employee rights. United Public Workers, AFSCME, Local 646, AFL-CIO v. Takushi, Board Case No. CE-01-374a and CE-10-374b, Decision No. 404, 6 HLRB 72, 74 (*citing* Ralph's Toy's, Hobbies, Cards & Gifts, Inc., 272 NLRB 164, 117 LRRM 1260 (1984)).

The Board has held that where the employer refuses to negotiate with the union and acts unilaterally on a mandatory subject of bargaining under HRS § 89-9(a), the employer commits a

prohibited practice in violation of Subsections 89-13(a)(1). Univ. of Hawaii Prof'l Assembly v. Bd. of Regents, Univ. of Hawaii, Board Case No. CE-07-34, Decision No. 83, 1 HPERB 753, 762 (1977).

Accordingly, the Board holds and concludes that HFD's refusal to negotiate with the HFFA and acting unilaterally regarding the requirement that educational and informational meetings be held after 5:00 p.m., which is a mandatory subject of bargaining, constitutes a violation of HRS § 89-13(a)(1).

Further, "an employer may not discriminate in violation of section 8(a)(1) by denying 'union access to its premises while allowing similar distribution or solicitation by nonemployee entities other than the union.'" Four B Corp. v. NLRB, 163 F.3d 1177, 1183 (10th Cir. 1998) (*citing* Lucile Salter Packard Children's Hosp. v. NLRB, 321 U.S. App. D.C. 126, 97 F.3d 583, 587 (D.C. Cir. 1996).

The Board further concludes that based on the circumstances of this case showing that HFD permitted other visitors, including VOYA, access to the fire station with or without prior notice and before 5:00 p.m., the requirement that informational and education meetings only be held after 5:00 p.m. was selectively and discriminatorily applied to HFFA further constituting a violation of HRS § 89-13(a)(1).

"The sum of this is that a § 8(a)(2) finding must rest on a showing that the employees' free choice, either in type of organization or in the assertion of demands is stifled by the degree of employer involvement at issue." Hertzka v. Knowles, 503 F.2d 625, 630 (9th Cir. 1074).

The Board further finds that the HFD's unilateral, selective, and discriminatory denial of HFFA's access to the fire station before 5:00 p.m., constitutes a stifling of the employee's free choice in violation of HRS § 89-13(a)(2).

In Aio v. Hamada, 66 Haw. 401, 410 664 P.2d 727, 733 (1983), the Hawaii Supreme Court affirmed the decision of the Board' s predecessor Hawaii Public Employment Relations Board (HPERB) to look to *Black's Law Dictionary* for assistance in defining the term "willful," in holding that "to make out a prohibited practice under Subsection 89-13(b), HRS, conscious, knowing, and deliberate intent to violate the provisions of Chapter 89, HRS, must be proven."

Based on the totality of circumstances in this case, the Board finds the actions of Respondents, set forth herein, through their representatives, to be wilfull.

The Board further finds and concludes that the actions complained of herein do not constitute a prohibited practice pursuant to HRS Section 89-13 (a) (5), (7), or (8), because as already determined in Order No. 3293, with respect to the breach of collective bargaining agreement allegations (Section 89-13(a) (8)), the HFFA was required to exhaust contractual remedies before bringing the claim before the Board; and the Board finds the remaining assertions (Sections 89-13 (a)(5) and (a) (7)) redundant and superfluous to the Section 89-13 (a)(1), (2) and (8) claims.

The Board denies all other claims and allegations brought by the HFFA in this consolidated proceeding.

VI. ORDER

Having concluded and held that Respondents committed a prohibited practice pursuant to HRS §89-13 (a) (1) and (2), the Board orders the following;

(1) HFD shall pay a penalty of $20,000 (twenty thousand dollars) or $10,000 for each wilful violation and made payable to the Director of Finance, State of Hawaii, within thirty (30) days of the Board's final order;

(2) HFFA's request for attorney's fees and costs made in HFFA/IAFF Motion for Award of Attorney's Fees and Costs, filed on January 15, 2018, will be addressed and determined in a separate order; and

(3) HFD shall cease and desist from unilaterally requiring and refusing to negotiate that educational and informational meetings be held after 5:00 p.m.; and

(4) post for at least thirty (30) days, a copy of the Board's final order in conspicuous locations where legal notices to HFFA members are customarily posted.

DATED: Honolulu, Hawaii, June 8, 2018.

HAWAII LABOR RELATIONS BOARD

HAWAII LABOR RELATIONS BOARD ★ STATE OF HAWAII ★

MARCUS R. OSHIRO, Chair

HFFA v. KIRK CALDWELL, et al.
CASE NO. 14-CE-11-845
HFFA v. KIRK CALDWELL, et al.
CASE NO. 16-CE-11-887
FINAL ORDER ADOPTING HFFA/IAFF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER; AND ORDER SETTING DEADLINES REGARDING ANY REQUEST FOR ATTORNEY'S FEES AND COSTS
ORDER NO. 3368

SESNITA A.D. MOEPONO, Member

J.N. MUSTO, Member

Copies to:
Peter Liholiho Trask, Esq.
Amanda Furman, Deputy Corporation Counsel

[i] HRS § 89-2 provides in relevant part:

> **§89-2 Definitions.** As used in this chapter:
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> ***
>
> "Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, and other terms and conditions of employment of public employees.

[ii] HRS § 89-2 provides in relevant part:

> **§89-2 Definitions.** As used in this chapter:
>
> ***
>
> "Employer" or "public employer" means…, the respective mayors in the case of the counties, …and any individual who represents one of these employers or acts in their interest in dealing with public employees….

[iii] *See* note 3, *supra*.