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Case No. 17-CE-13-904**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

Case No. 17-CE-13-904

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION AFSCME LOCAL 152,
AFL-CIO,

ORDER NO. 3369

ORDER GRANTING, IN PART,
RESPONDENTS' MOTION FOR
SUMMARY DISPOSITION AND
DISMISSING, IN PART, PROHIBITED
PRACTICE COMPLAINT

Complainant,

and

DAVID IGE, Governor, State of Hawaii;
VIRGINIA PRESSLER, M.D., Director,
Department of Health, State of Hawaii;
KEITH KAWAOKA, Deputy Director,
Environmental Health Administration,
Department of Health, State of Hawaii;
LYNN NAKASONE, Administrator,
Environmental Health Services Division,
Department of Health, State of Hawaii;
NANCY BARTTER, Administrative
Officer, Environmental Resources Office,
Department of Health, State of Hawaii,

Respondents.

ORDER GRANTING, IN PART, RESPONDENTS' MOTION FOR SUMMARY
DISPOSITION AND DISMISSING IN PART, PROHIBITED PRACTICE COMPLAINT

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 28, 2017, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION AFSCME LOCAL 152, AFL-CIO (HGEA) filed with the Hawaii Labor Relations Board (Board) a prohibited practice complaint (Complaint) against DAVID IGE, Governor, State of Hawaii; VIRGINIA PRESSLER, M.D., Director, Department of Health, State of Hawaii; KEITH KAWAOKA, Deputy Director, Environmental Health Administration,

Department of Health, State of Hawaii; LYNN NAKASONE, Administrator, Environmental Health Services Division, Department of Health, State of Hawaii; NANCY BARTTER, Administrative Officer, Environmental Resources Office, Department of Health, State of Hawaii (Respondents) alleging violations of Hawaii Revised Statutes (HRS) § 89-13(a)(1), (2), (3), (5), (7), and (8) arising out of, among other things, a failure to finalize or complete the official reorganization of the Food and Drug and Sanitation Branches or to complete consultation for the reorganization of these branches with the HGEA.

On December 1, 2017, the Board issued a Notice to Respondents of Prohibited Practice Complaint; Notice of Prehearing Conference and Notice of Hearing on the Merits of the Prohibited Practice Complaint.

On December 8, 2017, the Board issued Order No. 3309 Stipulation and Order Extending the Prehearing Deadlines and Hearing on the Merits with Regards to the Prohibited Practice Complaint Filed November 28, 2017.

On December 18, 2017, Respondents filed Respondents' Answer to the Prohibited Practice Complaint Filed November 28, 2017.

On May 14, 2018, Respondents filed Respondents' Motion for Summary Disposition (Motion) arguing dismissal of: the claim based on the alleged failure to consult; the claims based on a purported failure to comply with DHRD Policies regarding classification documents and failure to make pay adjustments; the claims based on the alleged failure to offer training opportunities; the claims based on the purported failure to comply with the merit principle; and the claims based on the purported interference with employee rights to participate in collective bargaining.

On May 21, 2018, HGEA filed Union's Memorandum in Opposition to Respondents' Motion for Summary Disposition (HGEA Opposition).

On May 30, 2018, the Board held a hearing on the Motion and took the matter under advisement.

Based on the standards set forth below, for purposes of considering the motion for summary disposition, all facts alleged in the Complaint are accepted as true and construed in the light most favorable to the [Complainant]. The gravamen of the Complaint alleges, among other things, that the Respondents violated HRS § 89-13(a)(1), (2), (3), (5), (7) and (8) based on the following:

15. At all times relevant herein, the HGEA and the State of Hawaii were and are parties to a collective bargaining agreement covering employees in Unit 13.

16. At all times relevant herein, the Unit 13 Collective Bargaining Agreement ("CBA" or "Agreement") for the period July 1, 2013 to June 30, 2017, as amended, extended or renegotiated, contained Article 3 - Maintenance of Rights and Benefits, which provides:

Except as modified herein, Employees shall retain all rights and benefits pertaining to their conditions of employment as contained in the departmental and Civil Service rules and regulations and Hawaii Revised Statutes at the time of the execution of the Agreement, but excluding matters which are not negotiable under Chapter 89, HRS.

17. At all times relevant herein, the Unit 13 CBA contained Article 4-Personnel Policy Changes, which provides:

A. All matters affecting Employee relations, including those that are, or may be, the subject of a regulation promulgated by the Employer or any Personnel Director, are subject to consultation with the Union. The Employer shall consult with the Union prior to effecting changes in any major policy affecting Employee relations.

B. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

18. At all times relevant herein, the Unit 13 CBA contained Article 14-Compensation Adjustments, that provides for the adjustment of compensation due to the reallocation upward of a position assigned to a higher pay range in the salary schedule.

19. At all times relevant herein, the Unit 13 CBA contained Article 15-Training Opportunities, which provides that evidence of satisfactory completion of any training courses or programs shall be placed in the Employee's personnel file and may be used as a factor in giving consideration in the Employee's future promotion (or in meeting the minimum qualifications to the reallocation upward of a position assigned to a higher pay range in the salary schedule).

20. At all times relevant herein, the Unit 13 CBA contained Article 17 - Personal Rights and Representation, which allows an Employee to refuse for good cause as determined by the Employer to perform any work not representative of the Employee's class.

21. At all times relevant herein, Respondents were required to comply with the terms and conditions contained in the Unit 13 CBA.

22. At all times relevant herein, Respondents were required to comply with the terms and conditions contained in Administrative Directive 95-06, Interim Policy and Procedures for Effecting Changes in Organization prior to implementing changes, and in implementing changes to the organization of the Food and Drug and Sanitation Branches.

23. At all times relevant herein, Respondents were required to comply with Department of Human Resources Development ("DHRD"), Policies and Procedures prior to implementing changes, and in implementing changes to the organization of the Food and Drug and Sanitation Branches.

24. At all times relevant, DHRD Policies and Procedures required the development and maintenance of an objective, consistent and timely classification system for all civil services positions that is founded upon job analysis on a statewide basis.

25. A statewide classification and compensation system that is fair and equitable contributes to the attraction and retention of a merit based public workforce.

26. At all times relevant, DHRD Policy No. 200.001 "Position Classification and Compensation System" required Respondents to take timely and necessary action to ensure that the duties and responsibilities assigned to positions in the Food and Safety Branch are accurately reflected in official position descriptions, and that re-descriptions are submitted on a timely basis if significant changes in the duties and responsibilities of positions are made.

27. At all times relevant, Respondents were required to comply with DHRD Policy No. 200.001, and "not use the classification process to evade the principles of the merit system and effect personnel changes for which other personnel processes exist."

28. At all times relevant, Respondents were required to comply with DHRD Policy No. 200.002 "Basic Policies and Practices in Position Classification" and re-describe position descriptions on a timely basis when significant changes of work occur.

29. DHRD Policy No. 200.003 "Effective Dates of Classification Actions" provides in pertinent part that "[t]he uniform application of effective dates for classification actions to recognize the assignment and reassignment of duties and responsibilities is necessary to provide consistency and a fair basis for the proper administration of the personnel program."

30. At all times relevant herein, Respondents were required to comply with DHRD Policy No. 200.003 and take actions in a timely manner in accordance with State classification policies, procedures and guidelines to ensure that the effective dates for classification actions are assigned in a uniform manner.

31. At all times relevant herein, Respondents were required to comply with DHRD Policy 200.006 that delegates DHRD authority to employing departments to take position classification actions. One of the reasons behind delegating authority to take classification actions to employing departments like the Department of Health is that it would result in more timely classification actions.

32. In or around 1969, DHRD adopted the Food and Drug Inspector series (Job Code 8.329 to 8.337) to perform professional and scientific work in inspections or investigations relating to the discovery of potential and existing violations of State food and drug laws and regulations. Food and drug violations are broadly classified into those involving danger to health; those involving conditions repugnant to the consumer, such as the presence of insects, rodents and insect excreta and decomposition; and those involving economic cheats, such as short weight, the omission of valuable ingredients, the use of inferior substitutes or deceptive packaging or labeling and false or misleading advertisements. To accomplish the objectives of the program, the Food and Drug Inspector maintains a surveillance program in an assigned geographic or specific survey work area. The Inspector reviews in the assigned work area the production, processing, packaging, labeling, transportation, storage, sale and use of foods, drugs, cosmetics and devices for compliance to existing food and drug laws. Authorized enforcement powers of the Food and Drug Inspector include embargo, condemnation and disposal of misbranded or substandard food and drug commodities.

33. In 2009, DHRD amended the Sanitarian series (Job Codes 8.391 to 8.401) to maintain a sanitary and healthful environment for the public through the provisions of inspectional, educational and enforcement activities to implement the statutes, ordinances and rules and regulations relating to environmental health sanitation. Work areas under the control and development of the Sanitarian extends to restaurants and drinking establishments, dairy farms and milk processing plants, supermarkets, tenements, hotels, schools, barber shops, laundries, farms, subdivision sites, industrial plants, water sources or any type of establishment or environmental condition that may affect the life, health and welfare of the people living and working in the State. To carry out the program, Sanitarians are assigned to geographic or defined specialty areas. In the assigned area, the Sanitarian is held responsible for the application of the sanitary sciences and the development of environmental health conditions.

34. On or about July 1, 2012, the Environmental Health Program Manager and Secretary II positions for the Food and Drug Branch were abolished. The remaining positions in the Food and Drug Branch were administratively assigned to the Sanitation Branch, headed by the Environmental Health Program Manager.

35. On or about July 10, 2012, Respondent Lynn Nakasone, Division Administrator, for the Environmental Health Services Division ("EHSD") sent a letter to HGEA to consult on their restructuring plans affecting the Environmental Health Administration, EHSD, Sanitation Branch, Vector Control Branch and Food and Drug Branch. Respondent Nakasone stated that an EHSD reorganization was in the planning stages, and that the HGEA would be consulted during this process.

36. On or about July 27, 2012, HGEA responded to Respondent Nakasone's letter, with comments and concerns.

37. On or about August 3, 2012, Respondent Nakasone responded to HGEA's letter dated July 27, 2012. In her letter, Respondent Nakasone assured HGEA that as the official reorganization of the three programs neared completion, HGEA would be consulted and provided the opportunity to express their concerns and/or comments before the reorganization was finalized.

38. Respondents never finalized or completed the official reorganization of the Food and Drug and Sanitation Branches, which they consulted on in 2012 and represented to HGEA and affected BU 13 employees would be finalized. Instead,

Respondents implemented an unofficial reorganization of the two branches, and continue to operate under this unofficial reorganization of the two branches, contrary to representations made by the Department of Health.

39. On or about August 1, 2013, the functions of the Sanitation and Food and Drug Branches were combined to reflect the proposed new branch. Work performed by the Food and Drug Inspectors now included Sanitarian duties and work performed by Sanitarians now included work of Food and Drug Inspectors.

40. The administrative assignment that combined the Sanitation and Food and Drug Branches was implemented by providing training of the Food and Drug Inspectors conducted for newly hired Sanitarians. Each Food and Drug Inspector received months of in-office and field training of the standards governed by Chapter 11-50, Hawaii Administrative Rules and the U.S. Food and Drug Administration's Voluntary National Retail Food Regulatory Program Standards. Training also involved the Food and Drug Inspectors satisfactory completion of a battery of online courses.

41. All Food and Drug Inspectors and Sanitarians satisfactorily completed in-office training by the middle of February 2014, and commenced field training. Field training included conducting multiple inspections of food establishments shadowing a Sanitarian IV. Final evaluation of their inspectional skills were conducted by the Standards Officer and their immediate supervisor.

42. Respondents failed to properly consult and negotiate with HGEA over the merger of the Food and Drug and Sanitation Branches and its effect on the wages, hours and other terms and conditions of employment of Sanitarians and Food and Drug Inspectors.

43. Respondents' failure to take timely and required actions to complete the formal reorganization of the Food and Drug and Sanitation Branches, and failure to timely re-describe and process the position descriptions of affected BU 13 employees to reflect the significant changes in their duties and responsibilities since August 2013 deprived, and continues to deprive affected BU 13 employees who are working out of class and performing higher level duties, of upward reallocations, higher pay, creditable training and experience, promotional opportunities, and other terms and conditions of employment.

44. Respondents' failure to take timely and required actions to complete the formal reorganization of the Food and Drug and Sanitation Branches, and failure to timely re-describe and process the position descriptions of affected BU 13 employees who have been, and are working out of class and performing higher level duties since August 2013 interferes with affected employees' rights and benefits under Chapter 76, HRS, Chapter 89, HRS and the Unit 13 CBA. For example, negotiated rights under the Compensation Adjustment article for upward reallocations have not been and cannot be triggered because of Respondents' failure to comply with State policies, procedures, directives and guidelines for reorganizations and classification actions.

45. The training and in-field experience of Food and Drug Inspectors and Sanitarians as a result of the consolidation of the Food and Drug and Sanitation Branches significantly affects their wages, hours and terms and conditions of employment, and is subject to mandatory bargaining pursuant to Section 89-9(a), HRS.

46. Respondents' acts and failure to act, as described above, constitutes a failure to properly consult and/or negotiate regarding the consolidation of the Food and Drug and Sanitation Branches, in violation of Sections 89-9(a) and 89-9(c), HRS.

47. Respondents' acts and failure to act, as described above, interferes with and deprives affected BU 13 employees of negotiated rights under the Unit 13 CBA, including but not limited to Articles 3, 4, 14, 15, and 17 of the Unit 13 CBA.

48. Respondents' acts and failure to act, as described above, violated their duties and responsibilities under Sections 89-9(a) and 89-9(c), HRS.

49. Respondents' acts and failure to act, as described above, interfered with, restrained or coerced employees in the exercise of their rights guaranteed in HRS Chapter 89, including HRS Sections 89-1 and 89-3.

50. HGEA anticipates that continued refusal and/or failure and/or delay by Respondents to engage in the consultation process contemplated by HRS Section 89-9(c), and negotiate over the impact of the consolidation of the Food and Drug and Sanitation Branches on affected employees' wages, hours, and conditions of employment pursuant to HRS Section 89-9(a), will irreparably deprive affected Unit 13 employees of their statutory and contractual rights, and circumvent fundamental principles of collective bargaining established by law.

51. Based on the foregoing, the HGEA is unable to afford affected Unit 13 employees whose positions have not been timely and properly re-described and/or classified, with greater protection and employment rights and benefits under the Unit 13 CBA, civil service laws, rules, regulations, policies and procedures that they would otherwise be entitled to.

In the Memorandum in Support of Motion, Respondents makes the following assertions in support of dismissal:

In 2013, the HGEA filed a class grievance on behalf of the Food and Drug Inspectors alleging violations of Article 4, and other violations. But the Department of Health denied the employer violated Article 4 or any other article of the agreement. Exhibits 5-8. However, this grievance did not progress to arbitration. Declaration of Jan K. Munemitsu, ¶¶ 3-4.

Also, in 2013, the HGEA filed a class grievance on behalf of both the Sanitarians and the Food and Drug Inspectors alleging a violation of Article 4 and other violations. The Department of Health denied that the employer violated Article 4 or any other article of the agreement. Exhibits 1-4. This grievance did not proceed to arbitration. Declaration of Jan K. Munemitsu, ¶¶ 5-6.

Finally, in 2016, the HGEA filed a class grievance on behalf of Sanitarians for a violation of Article 4 and other violations. Exhibit 9. This grievance did not proceed to arbitration. Declaration of Jan K. Munemitsu, ¶ 7.

II. STANDARDS FOR REVIEW

Respondents have not addressed the standards for review in this case for a summary disposition, for a motion to dismiss, or for summary judgment. The Board notes that its own administrative rules are silent regarding motions for summary disposition, to dismiss, and for summary judgment. While the Board has addressed motions to dismiss and for summary judgment, the Board has not recognized motions for summary disposition, which are provided for by HRS § 658A-15(b).ⁱ

In its Opposition, HGEA addressed this Motion as a motion to dismiss, citing Hawaii Rules of Civil Procedure (HRCP) Rule 12(b) (Rule 12(b)). Accordingly, the Board agrees with HGEA that this Motion requesting dismissal of claims is subject to HRCP Rule 12(b) and should be treated as a motion to dismiss. Accordingly, the Board will adhere to the legal standards set forth by the Hawaii appellate courts in reviewing motions under Rule 12(b).ⁱⁱ

A motion to dismiss for lack of subject matter jurisdiction pursuant to HRCP Rule 12(b)(1) is based on the contents of the complaint, the allegations of which must be accepted as true and construed in the light most favorable to the plaintiff. Dismissal is improper unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." In considering a motion to dismiss for lack of subject matter jurisdiction, the Board is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony to resolve factual disputes concerning the existence of jurisdiction. Casumpang v. ILWU, Local 142, 94 Hawaii 330, 337, 13 P.3d 1235, 1242 (2000); Right to Know Committee v. City Council, City and County of Honolulu, 117 Hawaii 1, 7, 175 P.3d 111, 117 (App. 2007).

Regarding a motion to dismiss brought under HRCP Rule 12(b)(6) for failure to state a claim, "Dismissal is warranted only if the claim is clearly without any merit; and this want of merit may consist in an absence of law to support a claim of the support made, or of facts sufficient to make a good claim, or in the disclosure of some fact which will necessarily defeat the claim." Justice v. Fuddy, 125 Hawaii 104, 108, 253 P.3d 665, 669 (App. 2011) (Fuddy), (citing Rosa v. CWJ Contractors, Ltd., 4 Haw. App. 210, 215, 664 P.2d 745, 749 (1983)). "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief. We must therefore view a plaintiff's complaint in a light most favorable to him or her in order to determine whether the allegations contained therein could warrant relief under any alternative theory." Fuddy, 125 Hawaii at 107-108, 253 P.3d at 668-669; Young v. Allstate Ins. Co., 119 Hawaii 403, 412, 198 P.3d 666, 675 (2008) (Young). The Board's consideration of a motion to dismiss for failure to state a claim is strictly limited to the allegations of the complaint, and the Board must deem those allegations to be true. However, in weighing the allegations of the complaint as against a motion to dismiss, the Board is not required to accept conclusory allegations on the legal effect of the events alleged. Paysek v. Sandvold, 127 Hawaii 390, 402-403, 279 P.3d 55, 67-68 (App. 2012) (citing Marsland v. Pang, 5 Haw. App. 463, 474, 701 P.2d 175, 186 (1985)); Young, 119 Hawaii at 406, 198 P.3d at 669.

Based on the Motion, the argument of the parties, and the record herein, the Board grants the Motion, in part, and dismisses, in part, the Complaint for the following reasons.

III. DISCUSSION AND CONCLUSIONS

A. EXHAUSTION OF THE COLLECTIVE BARGAINING AGREEMENT GRIEVANCE PROCEDURE

In their Opposition, Respondents argue that HGEA's claims based on CBA requirements, including Article 4 pertaining to consultation which was the subject of grievances, should be dismissed for a failure to exhaust contractual remedies. In the Complaint and its Opposition, HGEA alleges HRS § 89-13(a)(1) - (3), (5), (7) - (8) violations based on deprivation of contractual rights based on Unit 13 CBA Articles 3, 4, 9, 10, 12, 13, 14, 15, and 17.

HRS § 89-10.8(a) provides in relevant part, "A public employer shall enter into written agreement with the exclusive representative setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. The grievance procedure shall be valid and enforceable[.]"

The relevant Unit 13 CBA, Article 11 provides, in relevant part:

A. Any complaint by an Employee or the Union concerning the application and interpretation of this Agreement shall be subject to the grievance procedure. Any relevant information specifically identified by the grievant or the Union in the possession of the Employer needed by the grievant or the Union to investigate and process a grievance, shall be provided to them upon request within seven (7) working days. The grievance shall be presented to the appropriate supervisor within twenty (20) working days after the occurrence of the alleged violation, or if it concerns an alleged continuing violation, then it must be filed within twenty (20) working days after the alleged violation first became known or should have become known to the Employee involved, except that in the case of an alleged payroll computational error, such allegation shall be presented to the department head or the department head's designee in writing within twenty (20) working days after the alleged error is discovered by the Employee, or the grievance may not be considered.

F. If the Union has a class grievance involving Employees within a department, it may submit the grievance in writing to the department head or the department head's designee. Time limits shall be the same as in individual grievances and the procedures for appeal of the unsatisfactory answer shall be the same as in Step 1.

If the Union has a class grievance involving Employees from more than one department, it may submit the grievance in writing to the Employer or the Employer's designee. Time limits shall be the same as in individual grievances and the procedures for appeal of the unsatisfactory answer shall be the same as in Step 2.

G. Step 3. Arbitration. If the grievance is not resolved at Step 2 and the Union desires to proceed with arbitration, it shall serve written notice on the Employer or the Employer's representative of its desire to arbitrate within ten (10) working days after receipt of the Employer's decision at Step 2. Representatives of the parties shall attempt to select an Arbitrator immediately thereafter. If agreement on an Arbitrator is not reached within ten (10) working days after the notice for arbitration is submitted, either party may request the Hawai'i Labor Relations Board to submit a list of five (5) Arbitrators. Selection of an Arbitrator shall be made by each party alternately deleting one (1) name at a time from the list. The first party to delete a name shall be determined by lot. The person whose name remains on the list shall be designated the Arbitrator. No grievance may be arbitrated unless it involves an alleged violation of a specific term or provision of the Agreement.

If the Employer disputes the arbitrability of any grievance, the Arbitrator shall first determine whether the Arbitrator has jurisdiction to act; and if the Arbitrator finds that the Arbitrator has no such power, the grievance shall be referred back to the parties without decision or recommendation on its merits.

The Arbitrator shall render an award in writing no later than thirty (30) calendar days after the conclusion of the hearings or if oral hearings are waived then thirty (30) calendar days from the date statements and proofs were submitted to the Arbitrator. The decision of the Arbitrator shall be final and binding upon the Union, its members, the Employees involved in the grievance and the Employer. There shall be no appeal from the Arbitrator's decision by either party, if such decision is within the scope of the Arbitrator's authority as described below:

1. The Arbitrator shall not have the power to add to, subtract from, disregard, alter, or modify any of the terms of this Agreement.
2. The Arbitrator's power shall be limited to deciding whether the Employer has violated any of the terms of this Agreement.
3. The Arbitrator shall not consider any alleged violations or charges other than those presented in Step 2.

Respondents' argument that a complaint should be dismissed for lack of subject matter jurisdiction based on a failure to exhaust contractual remedies is well-recognized by this Board. *See, e.g., University of Hawaii Prof'l Assembly v. Bd. of Regents*, Board Case No. CE-07-804,

Orders No. 2939, at * 12 (8/22/2013) (*citing HNA*, 2 HPERB at 227-28 and *SHOPO I*, 6 HLRB at 27); *State of Hawaii Org. of Police Officers v. Kusaka*, 6 HLRB 26, 27 (1998) (The Board dismissed prohibited practice claims because the union bypassed a part or all of the grievance/arbitration procedure in favor of pursuing prohibited practice claims based on violations of the collective bargaining agreement.)

Based on the undisputed evidence in the record showing that HGEA filed grievances based on Article 4, which remain unresolved, and the well-established principle set forth above that contractual remedies must be exhausted before the Board can take jurisdiction, the Board defers those claims alleging contractual violations to the grievance arbitration process in the Unit 13 CBA and dismisses those claims alleging violations of HRS § 89-13(a)(8).

B. HRS § 89-13(a)(1) - (3), (5), and (7)

The Board denies the Motion to dismiss regarding the remaining HRS § 89-13(a)(1)-(3), (5), and (7) allegations in the Complaint because after deeming the allegations of the Complaint to be true and viewing the Complaint in the light most favorable to HGEA, the Board is unable to find that the claims are clearly without merit.

IV. ORDER

For the foregoing reasons, the Board grants the Motion, in part, and dismisses those claims alleging violations of HRS § 89-13(a)(8) but denies the Motion regarding the remaining claims.

DATED: Honolulu, Hawaii, June 8, 2018.

HAWAII LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesaita A. M. Moepono

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J.N. MUSTO, Member

Copies sent to:

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ⁱ HRS § 658A-15(b) provides:

- (b) An arbitrator may decide a request for summary disposition of a claim or particular issue:
- (1) If all interested parties agree;
 - (2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

ⁱⁱ When the Board rules are silent or ambiguous on procedural matters, the Board has looked for guidance to analogous provisions of court rules. Ballera v. Del Monte Fresh Produce Hawaii, Inc., Board Case No. 00-1 (CE), Order No. 1978, at *5 (January 11, 2001); United Public Workers, AFSCME, Local 646 v. Hannemann, Board Case No. CE-01-685, Order No. 2588, at *12 (February 12, 2009).