

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

UNIVERSITY OF HAWAII  
PROFESSIONAL ASSEMBLY,

Complainant,

and

BOARD OF REGENTS, University of  
Hawaii, State of Hawaii,

Respondent.

CASE NO. CE-07-805

ORDER NO. 2905

ORDER CLARIFYING BOARD ORDER  
NO. 2893; NOTICE OF HEARING AND  
FILING DEADLINES

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NOTICE OF HEARING AND FILING DEADLINES

On March 7, 2013, the Hawaii Labor Relations Board (Board) issued Order No. 2893 (Order) which stated in relevant part:

\* \* \* \* \*

After deliberating on the issues, the Board indicated that it would hold the subpoena duces tecum in abeyance and take the motions under advisement. The Board finds, *inter alia*, that there are material facts in dispute as to whether:

\* \* \* \* \*

(4) Respondent's actions informing the students that they could file a non-disclosure form before March 16, 2012 were acts to obstruct UHPA's investigation of the incident and a violation of HRS §§ 89-13(a)(5) and (8).<sup>1</sup>

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<sup>1</sup> Order No. 2893, Hawaii Labor Relations Board, (March 7, 2013), p. 4.

On March 14, 2013, Respondent Board of Regents (BOR), University of Hawaii, filed with the Board its motion entitled "Respondent Board of Regents, University of Hawaii's Motion For Clarification of Order Denying Respondent's Motion To Dismiss or In The Alternative For Summary Judgment, Filed On July 13, 2012; Denying Complainant's Counter-Motion For Summary Judgment, Filed July 20, 2012; And Denying Respondent's Motion To Revoke Subpoena Duces Tecum, Filed On July 20, 2012, Order No. 2893." (Motion)

BOR stated that the reason for filing the Motion is for the limited and express purpose of requesting the Board to clarify BOR's obligations, if any in responding to the Subpoena Duces Tecum (subpoena) that was the subject of BOR's Motion to Revoke Subpoena Duces Tecum filed on July 20, 2012. BOR also noted that on March 10, 2013, Complainant University of Hawaii Professional Assembly (UHPA) had "re-noticed" the records deposition for March 14, 2013. In its Motion, BOR also asked the Board to clarify its ruling to state that BOR's Motion to Revoke Subpoena Duces Tecum will be considered on the merits at the hearing. BOR argued, *inter alia*, that to the extent UHPA contends it needs the directory information to subpoena the students to testify at the Board's hearing, the Board can address that at the hearing since none of the issues identified in the Board's March 7, 2013 Order No. 2893 (Order) require the testimony of the students, and UHPA should be required to make an offer of proof regarding the students' testimony.

On March 21, 2013, UHPA filed its Memorandum in Opposition to the Motion, stating that Order No. 2893 is clear and the Board should specifically order the Respondent to produce the University Registrar for a records deposition pursuant to the Subpoena Duces Tecum filed with the Board on July 20, 2012 and rescheduled by UHPA after the Board's ruling on the Motion. UHPA, argued, *inter alia*, that the information sought by the Subpoena is directly related to two issues cited in the Order.

\* \* \* \* \*

- (2) Respondent wrongly determined that the students' interest in confidentiality outweighed the faculty member and UHPA's rights;

\* \* \* \* \*

- (4) Respondent's action informing the students that they could file a nondisclosure form before March 16, 2012 were acts to obstruct UHPA's investigation of the



incident and a violation of HRS §§ 89-13(a)(5) and (8).

UHPA further stated that the information sought by the subpoena is necessary to determine the witnesses to be called and the order of the witnesses to be called at hearing by the March 28, 2013 deadline established in Order No. 2893 for filing and exchanging witness and exhibit lists and filing applications for subpoenas.

On April 4, 2013, the Board held a hearing on the Motion and heard oral arguments by the parties. BOR offered to make arrangements with the students, whose directory information is sought by UHPA, to meet in a conference room on the University of Hawaii – Manoa Campus on Monday, April 8, 2013, at a convenient time, for UHPA to serve the students with subpoenas to appear before the Board to testify. BOR also offered to provide to UHPA the information requested in the subpoena duces tecum that is unrelated to the students' directory information. BOR had been informed that the students had no classes on Thursdays and suggested the students could be called to testify on April 25, 2013. UHPA rejected BOR's offer and reasserted its request to obtain the addresses of the students in order to serve the subpoenas. UHPA also requested that the Board set the hearing on the merits after the University semester ends on May 11, 2013 because counsel had an arbitration hearing scheduled on April 25, 2013 and was, therefore, unavailable.

The Board finds, *inter alia*, that Order No. 2893 stated that the Board held the subpoena duces tecum in abeyance. The Board also finds that the students' testimony is relevant for UHPA to prove its allegations in the complaint. Based upon a thorough review of the record and the arguments presented, the Board hereby orders BOR to provide UHPA, on or before the close of business on April 19, 2013, the last known physical address of the students for the limited purpose of serving subpoenas on the students to appear before the Board to testify. The Board further orders BOR to provide to UHPA copies of the "Non-disclosure of Directory Information" form signed by each student on or about March 16, 2012 and all electronic mail (e-mails), memoranda, letters, or other communication between Stuart Lau and/or the following individuals: Reed Dasenbrock; Trisha Kimura; Mary Boland; Marla Acosta; Daniel Amimoto; Kristen Simon; Nicholas Sakanishi aka Nicholas Sakanashi; Cara Yim; Janelle Lamosao; Amy Doles; or Sheila Claudio, concerning the disclosure of directory information for the students between March 14, 2012, and the July 13, 2012.

NOTICE OF HEARING AND FILING DEADLINES

NOTICE IS HEREBY GIVEN that the Board will conduct a hearing on the merits of the instant prohibited practice complaint on May 13, 2013 at 9:00 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. Other hearing dates, if needed, will be determined at the hearing on the merits.

NOTICE IS ALSO GIVEN that the deadline to file and exchange witness and exhibit lists is May 6, 2013 at 12:00 p.m. The witness lists should contain a short summary of each witness' anticipated testimony. Complainant shall also list the order of its first five witnesses. The deadline to file applications for subpoenas is May 6, 2013 at 12:00 p.m and a Return of Service for each subpoena shall be filed with the Board on or before May 13, 2013.

DATED: Honolulu, Hawaii, April 8, 2013.

HAWAII LABOR RELATIONS BOARD



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JAMES B. NICHOLSON, Chair

*Sesnita A.D. Moepono*  
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SESNITA A.D. MOEPONO, Member

*Rock B. Ley*  
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ROCK B. LEY, Member

Copies sent to:  
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