

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

SHELLY L. RODRIGUES,

Complainant,

and

DARRYL PERRY, Chief of Police, Kauai
Police Department, County of Kauai and
MICHAEL CONTRADES, Deputy Chief of
Police, Kauai Police Department, County of
Kauai,

Respondents.

CASE NO. CE-12-822

ORDER NO. 2942

ORDER DENYING COMPLAINANT'S
MOTION FOR SUMMARY JUDGMENT,
DENYING RESPONDENTS' MOTION TO
STRIKE COMPLAINANT'S EXHIBITS
AND DOCUMENTS FILED ON JULY 1,
2013, DENYING IN PART AND
GRANTING IN PART RESPONDENTS'
MOTION TO DISMISS PROHIBITED
PRACTICE COMPLAINT, AND DENYING
RESPONDENTS' MOTION FOR
PARTICULARIZATION; and NOTICE OF
PREHEARING

ORDER DENYING COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT,
DENYING RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S EXHIBITS AND
DOCUMENTS FILED ON JULY 1, 2013, DENYING IN PART AND GRANTING
IN PART RESPONDENTS' MOTION TO DISMISS PROHIBITED PRACTICE
COMPLAINT, AND DENYING RESPONDENTS' MOTION FOR PARTICULARIZATION

For the reasons discussed below, the Board hereby denies the Motion for Summary Judgment filed by Complainant SHELLY L. RODRIGUES (Complainant or Rodrigues) on July 2, 2013; denies the Motion to Strike Complainant's Exhibits and Documents Filed on July 1, 2013, filed by Respondents DARRYL PERRY (Perry), Chief of Police, Kauai Police Department, County of Kauai and MICHAEL CONTRADES (Contrades), Deputy Chief of Police, Kauai Police Department, County of Kauai (collectively Respondents) on July 16, 2013; grants in part and denies in part Respondents' Motion to Dismiss Prohibited Practice Complaint (Motion to Dismiss) filed by Respondents on July 16, 2013, and denies Respondents' Motion for Particularization filed on May 17, 2013.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Complaint

Complainant is a member of bargaining unit (BU) 12, which consists of police officers (Hawaii Revised Statutes (HRS) § 89-6(a)(12)).

On May 7, 2013, Complainant filed a Prohibited Practice Complaint (Complaint) against Respondents, alleging violation of HRS §§ 89-1, 89-13(a)(1), 89-13(a)(7) and 89-13(a)(8).¹ For purposes of Respondent’s Motion to Dismiss, the allegations in the Complaint are deemed as true; for purposes of Complainant’s Motion for Summary Judgment, the allegations in the Complaint are viewed in the light most favorable to Respondents.

The Complaint alleges, *inter alia*, that Complainant filed a formal grievance on August 20, 2012, pursuant to Article 32.I.1 (“Grievance Procedure/Step I”) of the collective bargaining agreement (Agreement) between the employer group that includes the County of Kauai and the State of Hawaii Organization of Police Officers (SHOPO or Union). The grievance was processed without Union assistance. The Complaint alleges that Contrades “willfully refused to render a decision on the grievance as required pursuant to Article 32.I.4.”

The Complaint further alleges that the Kauai Police Department (KPD) set a meeting to discuss the grievance on September 14, 2012, but that date exceeded the time limit for KPD to respond to the grievance. On September 12, 2012, Complainant submitted the grievance to Step II by filing a letter of appeal with Perry pursuant to Article 32.J.1.

On September 12, 2012, Complainant submitted a request to Perry for “Relevant Information” pursuant to Article 32.F.2.

On September 24, 2012, Contrades transmitted KPD’s decision to Complainant’s Step II grievance, stating, in part, “While the charges were sustained, no administrative action”; “your grievance is moot”; and “Your grievance is denied and all subsequent requests for relevant information will not be provided at this time.”

On October 9, 2012, Complainant submitted the grievance to Step III by filing a letter of appeal pursuant to Article 32.K.1 with Bernard P. Carvalho, Jr., Mayor, County of Kauai. On January 24, 2012, the Step III decision was rendered by Thomas Takatsuki, Department of Personnel Services, County of Kauai. The Complaint alleges that the “decision granted the remedy sought to rescind the discipline and to make the Complainant whole.” The Complaint also alleges that on January 25, 2013, Contrades provided Complainant with a response to the

Step III decision, and the response “clearly indicates KPD’s willful refusal to accept the step III decision and comply with the Agreement to make the Complainant whole.”

The Complaint further alleges that on February 17, 2013, Complainant made a request to Perry to comply with the Step III decision, including an accounting of the financial losses that occurred as a result of Complainant being denied F.T.O. assignments by KPD, which included the denial of at least one F.T.O. assignment. It was explained at hearing on the motions that “F.T.O.” refers to “Field Training Officer” which involves the assignment of recruits who complete training to specific officers for field training, and that it entails additional compensation for the officers assigned. The request further asked for information that was requested on September 12, 2012, and that application of the “G.O. 95-05 Dress Code policy” cease until the definition of “beyond the shirt collar” is determined without the current discrepancy between male and female officers. The Complaint alleges that as of the date of the Complaint, Perry had not responded to the February 17, 2013, request, and further alleges that “[t]he information continues to be important to the Complainant for other pending issues.”

2. Respondents’ Motion for Particularization

On May 17, 2013, Respondents filed a Motion for Particularization of the Complaint, asserting the Complaint was vague and failed to allege how the County of Kauai has engaged in, or is engaging in, prohibited practices and failed to specify in detail any particular alleged violations of law and facts supporting the Complaint.

At the May 31, 2013, Prehearing/Settlement Conference in this matter, the Board denied the Motion for Particularization of the Complaint, and on June 10, 2013, Respondents filed their Answer to the Complaint.

3. Complainant’s Motion for Summary Judgment

On July 2, 2013, Complainant filed a Motion for Summary Judgment. Complainant asserts that there are no genuine issues of material fact in dispute. Complainant argues that (1) there was a willful refusal to provide relevant information; and (2) there was a willful refusal to comply with the Step III Decision, which constitutes prohibited practices pursuant to § 89-13(a)(1), (7), and (8) and a violation of § 89-1.

Complainant also argues that the Administrative Review Board (ARB) that is responsible for hearing and reviewing administrative charges against KPD employees and recommending appropriate disciplinary action violates due process because it only permits the accused the opportunity to verbally submit statements, or the union representative to speak on the accused’s behalf, for a maximum of five minutes; does not permit the accused and union to be present

when an officer verbally presents an investigation report; denies access to the investigation report during the hearing; does not permit questioning of witnesses or the officer who conduct investigation; and does not permit the submission of written statements.

Attached to the Motion for Summary Judgment were various exhibits, including a copy of the Step I grievance, which included, under “REMEDY SOUGHT,” the following:

Employer to rescind discipline and to make Grievant whole. Cease and desist from violating the SHOPO Agreement by not misinterpreting, misapplying the Agreement. Comply with U.S. Supreme case *Wolf v. McDonald* – 418 U.S. 539 (1974).

Also attached as an exhibit (“C-7”) to the Motion for Summary Judgment was a copy of the Step III Decision, which stated, in relevant part, “finding a conflict of interest with members serving on the ARB there is no quorum, therefore, the decision of the ARB should be voided”; “the Grievant did not attend the scheduled [Step II] hearing, which hopefully would have provided answers to her questions”; “we agree with the ARB’s decision of [sic] ‘however, after careful review of all the facts, no action will be taken’ but disagree with the recommendation in sustaining the charges”; and “based on the above findings, **remedy sought to rescind discipline and to make Grievant whole is granted**” (emphasis added).

On July 16, 2013, Respondents filed their Memorandum in Opposition to Complainant’s Motion for Summary Judgment. Respondents assert, *inter alia*, that the County has rescinded discipline and removed material relevant to the grievance from Complainant’s file, thereby making the grievant whole, and further, that the non-remedy recommendations made by the hearings officer are being implemented as well.

On July 30, 2013, Complainant filed her Reply memorandum in response to Respondents’ memorandum in opposition.

4. Respondents’ Motion to Dismiss

On July 16, 2013, Respondents filed a Motion to Dismiss Prohibited Practice Complaint, (Motion to Dismiss) asserting, *inter alia*, that Complainant received the decision to the Step III grievance on January 24, 2013, and the time elapsed from January 24, 2013, until the filing of the Complaint on May 7, 2013, is 104 days, and thus the Complaint is untimely; that Complainant was aware of the alleged violation regarding relevant information as of December 12, 2012, and thus the Complaint is untimely; and that the issue of alleged back pay for missed

temporary assignments from September 23, 2008, through January 24, 2013, is untimely and was not addressed during the whole of the grievance process.

On July 30, 2013, Complainant filed a Memorandum in Opposition to Respondent's Motion to Dismiss Prohibited Practice Complaint, asserting, *inter alia*, that the term "make whole" requires the undoing of damage done and does not have to be detailed; that Complainant was not aware of a specific date of violation because Respondents did not respond to her February 17, 2013, request; that adverse ruling on the information request here will negatively affect future grievances; and that reimbursement for F.T.O. did not require a separate grievance to be filed.

5. Respondents' Motion to Strike Complainant's Exhibits and Documents Filed on July 1, 2013

On July 16, 2013, Respondents filed a Motion to Strike Complainant's Exhibits and Documents Filed on July 1, 2013 (Motion to Strike Exhibits), asserting that Exhibits C-12 and C-13 attached to Complainant's Motion for Summary Judgment should be stricken as irrelevant and immaterial. Exhibit C-12 consists of a May 17, 2013, article from the Garden Island Newspaper which contains statements by Perry, discussing employee disciplinary matter, interaction with the Union, and arbitration, and was published after the Complaint was filed. Exhibit C-13 consists of a letter from Assistant Chief Quibilan, dated June 21, 2013, relating to a new grievance filed by the Complainant, and relates to a new and different controversy.

6. Motions Hearing

On August 6, 2013, the Board held a hearing on the afore-mentioned motions, with the parties appearing via telephone. During oral argument, Complainant explained certain assertions in her pleadings that were simply a chronology or sequence of events rather than part of the prohibited practice here. Complainant argued, *inter alia*, that the failure to comply with the Step III Decision includes the on-going retaliation and failure to address additional compensation for lost FTO assignments; that it violates due process to withhold the information necessary to process a grievance; and that the grievance process was on-going such that the Complaint was not untimely. Respondents argued, *inter alia*, that Complainant "won" at Step III and there is no longer a grievance for which the requested information is necessary; that F.T.O. assignment is based on many factors including the needs of the division and not just seniority, and F.T.O. is not available when there is an on-going investigation; and that documents have been purged as required by the Step III decision.

LEGAL STANDARDS

1. Legal Standard for Motion for Summary Judgment

With respect to the Motion for Summary Judgment, the Hawaii Supreme Court articulated the well-established standards and burden of proof in Thomas v. Kidani, 126 Hawaii 125, 129-130, 267 P.3d 1230, 1234-1235 (2011):

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(Quoting Fujimoto v. Au, 95 Hawaii 116, 136, 19 P.3d 699, 719 (2001). A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. Id. The court reviews the evidence in the light most favorable to the party opposing the motion for summary judgment. Id. At 137, 19 P.3d at 720.

The burden is on the party moving for summary judgment to show the absence of any genuine issue as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. This burden has two components. First, the moving party has the burden of producing support for its claim that: (1) no genuine issue of material fact exists with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions; and (2) based on the undisputed facts, it is entitled to summary judgment as a matter of law. Only when the moving party satisfies its initial burden of production does the burden shift to the non-moving party to respond to the motion for summary judgment and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial. Second, the moving party bears the ultimate burden of persuasion. This burden always remains with the moving party and requires the moving party to convince the court that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law. French v. Hawaii Pizza Hut, Inc., 105 Hawaii 462, 470, 99 P.3d 1046 , 1054 (2004) (internal quotes omitted).

2. Legal Standard for Motion to Dismiss

In considering a motion to dismiss, the Board's consideration is strictly limited to the allegations of the Complaint, which are deemed to be true. See County of Kauai v. Baptiste, 115 Hawaii 15, 24, 165 P.3d 916, 925 (2007) (citing In re Estate of Rogers, 103 Hawaii 275, 280-81, 82 P.3d 1190, 1195-96 (2003), *reconsideration denied*, 115 Hawaii 231, 116 P.3d 991.

Dismissal is improper unless it appears beyond doubt that the complainant can prove no set of facts in support of the claim which would entitle the complainant to relief. Id.

Additionally, when considering a motion to dismiss, the Board may review any evidence, such as affidavit and testimony, to resolve factual disputes concerning the existence of jurisdiction. Yamane v. Pohlson, 111 Hawaii 74, 81, 137 P.3d 980, 9987 (2006) (citing McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988); 5A C. Wright & A. Miller, Federal Practice and Procedure § 1350, at 213 (1990)).

3. Legal Standard for Motion to Strike Exhibits

Pursuant to HRS § 91-10(1), in contested cases:

Except as provided in section 91-8.5ⁱⁱ, any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law[.]

DISCUSSION

1. Motion to Strike Exhibits

Respondents argue that Complainant's Exhibits C-12 and C-13 should be stricken because Exhibit C-12 consists of a May 17, 2013, article from the Garden Island Newspaper that was published after the Complaint was filed, and Exhibit C-13 relates to a new grievance that is not a part of the Complaint, and therefore the exhibits are irrelevant.

The rules of evidence governing administrative hearings are much less formal than those governing judicial proceedings. Loui v. Board of Medical Examiners, 78 Hawaii 21, 31, 889 P.2d 705, 715 (1995) (citing Price v. Zoning Board of Appeals, 77 Hawaii 168, 176 n.8, 883 P.2d 629, 637 n.8 (1994)). Nevertheless, HRS § 91-10(1) provides that an agency *shall* exclude irrelevant, immaterial, or unduly repetitious evidence. Hawaii Rules of Evidence defines relevant evidence as “[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

Complainant has asserted that her request for information may affect new and future grievances, and also asserts that Respondents' failure to make Complaint "whole" as required by the Step III Decision is on-going.

The Board concludes that newspaper articles carry little evidentiary value, and Complainant does not dispute that Exhibit C-13 relates to a different grievance; however, given Complainant's assertions that the prohibited practice is on-going, the Board denies the motion to strike exhibits and will give the exhibits their proper weight. When an agency is faced with evidence of doubtful admissibility, it is preferable that it allow the admission of such evidence rather than to exclude the same. Dependents of Cazimero v. Kohala Sugar Co., 54 Haw. 484, 510 P.2d 89, 93 (1973).

2. Motion to Dismiss

As a preliminary matter, the Board notes that at the prehearing conference in this matter held on May 31, 2013, the Board set the following deadlines:

Deadline to file motions:	July 2, 2013
Deadline to file responses:	July 16, 2013
Deadline to file replies:	July 30, 2013

Respondents did not file their Motion to Dismiss until July 16, 2013. However, to the extent the Motion to Dismiss asserts the Complaint was untimely, the motion raises jurisdictional issues, and challenges to subject matter jurisdiction may be raised at any time. Chun v. Employees' Retirement System, 73 Haw. 9, 13, 828 P.2d 260, 263 (1992) ("lack of subject matter jurisdiction can never be waived by any party at any time") (citation omitted).

The Board's jurisdiction is governed by HRS chapters 89 and 377. Pursuant to HRS § 89-14, "[a]ny controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided in section 377-9[.]" In turn, HRS § 377-9(1) provides that "[n]o complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence." The Board has construed the ninety-day limitations period strictly and will not waive a defect of even a single day. Alvis W. Fitzgerald, 3 HPERB 186, 199 (1983). The beginning of the limitations period does not depend upon actual knowledge of a wrongful act; instead, the period begins to run when an aggrieved party knew or should have known that the party's statutory rights were violated. Metromedia, Inc., KMBC TV v. N.L.R.B., 586 F.2d 1182, 1189 (8th Cir. 1978).

Here, there are two major categories of alleged prohibited practice: the failure to provide relevant information to process a grievance, and the failure to comply with the grievance's remedy that the grievant be made whole and the alleged retaliation.

With respect to the failure to provide relevant information, the Board finds and concludes that Complainant knew or should have known of the alleged prohibited practice *at the very latest* on January 24, 2013, when Complainant received the Step III Decision, which granted Complainant her requested remedies in full and constituted the end of the grievance itself. Accordingly, the Board finds that the Complaint is untimely with respect to this issue, and grants Respondents' Motion to Dismiss with respect to this issue.

With respect to the allegations that Respondents have not made Complainant "whole" as required by the Step III decision, the Board finds that it is highly unlikely Complainant would have been aware of the alleged prohibited practice immediately after receiving the Step III decision. Specifically, Complainant has asserted that Respondents failed to make her "whole" because there has been no reimbursement for lost compensation due to lost F.T.O. opportunities. Respondents asserted at hearing that there are many factors that affect F.T.O. assignments, and assuming this assertion to be true, it is unlikely Respondents would have been able to determine the number of missed F.T.O. opportunities and provide Complainant with lost compensation immediately after the Step III decision was rendered.

The January 25, 2013, letter from Contrades to Complainant affirms that no disciplinary action has been taken and none of the material relative to the case is in her personnel file, explains KPD is working on revising the Dress Code policy, and is reviewing General Order 10-13 Administrative Review Board to address procedural concerns; the letter makes no mention of lost F.T.O. opportunities. Viewing this evidence in the light most favorable to the non-moving party, the Board cannot find that Complainant knew or should have known of the alleged prohibited practice based upon the January 25, 2013, letter. Rather, it is reasonable for a complainant to believe that calculating and providing lost F.T.O. compensation would take at least a few weeks, and Complainant's follow-up inquiry on February 17, 2013, was also reasonable. The Board finds and concludes that the Complaint is timely with respect to this issue. Additionally, the Board finds that the term "make whole" can include past compensation that was lost as a result of the action that is being overturned, and therefore disagrees with Respondents' assertion that it is too late for Complainant to raise the issue of compensation; had the Step III decision, which was rendered by the County's Department of Personnel Services, intended to exclude lost compensation or to limit the remedy to specifically enumerated items, it could have done so. Accordingly, the Motion to Dismiss is denied with respect to the issue of the failure to reimburse Complaint for lost F.T.O. opportunities and the retaliation claim.

The Board agrees with Respondents' argument that HRS § 89-1 is a statement of policy that cannot support a claim of prohibited practice. In Poe v. Hawaii Labor Relations Board, 97 Hawaii 528, 540, 40 P.3d 930, 942 (2002), the Hawaii Supreme Court held that "HRS § 89-1, the statement of policy, does not impose rights or duties upon which an enforceable claim will lie" and specifically held:

Therefore, the broad policy statement within HRS § 89-1, entitled "Statement of findings and policy," do not impose binding duties or obligations upon any parties but, rather, provide a useful guide for determining legislative intent and purpose. These statements, therefore, do not implicate the prohibited practice provision of "refus[ing] or failing to comply with any provision of [HRS] chapter [89]," as set forth in HRS § 89-13(a)(7).

Id. At 540-41, 40P.3d at 942-43. Accordingly, the Board dismisses the allegations in the Complaint with respect to violation of HRS § 89-1.

In summary, the Complaint alleges prohibited practices pursuant to HRS §§ 89-1, 89-13(a)(1), 89-13(a)(7) and 89-13(a)(8). As discussed above, claims relating to alleged violation of HRS § 89-1 (statement of policy) are dismissed. To the extent the alleged violation of § 89-1 is the basis for a prohibited practice claim pursuant to § 89-13(a)(7) (failure to comply with any provision of chapter 89), such claim is dismissed. Claims of prohibited practice pursuant to HRS §§ 89-13(a)(1) (interfere, restrain, or coerce any employee in the exercise of any right guaranteed under chapter 89), 89-13(a)(7), or 89-13(a)(8) (violate the terms of a collective bargaining agreement) that are based upon the alleged failure to provide information relevant to the processing of a grievance are dismissed as untimely. Claims of prohibited practice pursuant to HRS §§ 89-13(a)(1), (7), and (8) that are based upon the alleged failure to reimburse Complainant for lost F.T.O. opportunity and the retaliation claim, are NOT dismissed, and Respondents' Motion to Dismiss is denied in that respect.

3. Motion for Summary Judgment

As discussed above, claims of prohibited practice pursuant to HRS §§ 89-13(a)(1), (7), and (8) that are based upon the alleged failure to reimburse Complainant for lost F.T.O. opportunities and the retaliation claim, are not dismissed. Accordingly, the Board hereby rules on Complainant's Motion for Summary Judgment with respect to those remaining claims. In short, there is a genuine dispute over, or an absence of, material facts that renders summary judgment inappropriate.

The parties agree that opportunity for F.T.O. assignment was provided to Complainant in the past, but it is not clear whether Complainant was provided any opportunities for the period of

2008 through 2010, approximately, or whether she was provided more than one opportunity since 2011. Additionally, the Board is unclear, among other things, as to how many F.T.O. opportunities Grievant had been provided in the past; how many opportunities she was denied since 2008; what specific factors are considered when F.T.O. assignments are made; and whether past practice resulted in reimbursement of lost F.T.O. opportunities when a grievance is sustained. Similarly, with respect to the retaliation claim, Complainant has not presented sufficient undisputed facts to support summary judgment on this claim.

4. Motion for Particularization

The Board orally denied Respondents' Motion for Particularization at the Prehearing Conference held on May 31, 2013. As a housekeeping matter, the Board hereby denies that motion in writing.

Hawaii Administrative Rules (HAR) § 12-42-45 provides in relevant part, "If the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, such respondent may, within five days after service of the complaint, file with the board a motion for particularization of the complaint, requesting that the complainant file a statement supplying specific information." The Board finds and concludes that the Complaint sufficiently alleged prohibited practices, including an attached statement that outlined the history of the grievance, the relevant language of the Step III decision, and alleged failure to comply with the Step III decision, such that Respondents could reasonably be expected to frame an answer thereto. Accordingly, the Motion for Particularization is denied.

NOTICE OF PREHEARING

NOTICE IS HEREBY GIVEN that the Board, pursuant to HAR § 12-42-47, will conduct a Prehearing Conference in this matter on **October 2, 2013**, at **10:30 a.m.**, in the Board's hearing room at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The purpose of the Prehearing Conference is to establish hearing dates; establish deadlines for the issuance of subpoenas and the exchange of witness and exhibit lists; and other procedural matters.

Auxiliary aids and services are available upon request by calling Ms. Nora Ebata of the Board at (808) 586-8610, (808) 586-8847 (TTY), or 1 (888) 569-6859 (TTY neighbor islands). A request for reasonable accommodations should be made no later than ten working days prior to the needed accommodation.

All parties have a right to appear in person and to be represented by counsel or other representative. Any party residing on a neighbor island may appear telephonically at the Prehearing Conference; any neighbor island party who wants to appear telephonically shall call

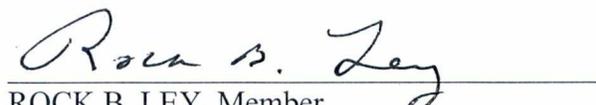
the Board at the above telephone numbers to make the necessary arrangements prior to the date of the Prehearing Conference.

DATED: Honolulu, Hawaii, August 27, 2013.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair


SESNITA A.D. MOEPONO, Member
ROCK B. LEY, Member

Copies sent to:

Gary Rodrigues
Marc E. Guyot, Esq.

ⁱ The Complaint alleges violation of HRS “Section 89-1”; “Section 89-13,1”; “Section 89-13,7”; and “Section 89-13,8.” However, as there are no sections “89-13,1”; “89-13,7”; or “89-13, 8” and because the Complaint is against the public employer, the Board reads the Complaint as alleging violations of HRS §§ 89-1, 89-13(a)(1), 89-13(a)(7), and 89-13(a)(8).

ⁱⁱ HRS § 91-8.5 governs mediation in contested cases.