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Case No. CE-01-808/CU-01-317

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of MICHAEL HIKALEA, Complainant, and DEPARTMENT OF ENVIRONMENTAL SERVICES, City and County of Honolulu, DAVID SHIRAISHI, Department of Environmental Services, City and County of Honolulu; KIRK CALDWELL, Mayor, City and County of Honolulu; HOWARD KAHUE, United Public Workers, AFSCME, Local 646, AFL-CIO; BRANDON MCCONNELL, United Public Workers, AFSCME, Local 646, AFL-CIO; LAURIE SANTIAGO, United Public Workers, AFSCME, Local 646, AFL-CIO; and DAYTON NAKANELUA, United Public Workers, AFSCME, Local 646, AFL-CIO, Respondents.	CASE NOS.: CE-01-808 CU-01-317 ORDER NO. 3023 ORDER DENYING UNION RESPONDENTS' MOTION TO DISMISS FOR LACK OF JURISDICTION AND GRANTING IN PART AND DENYING IN PART CITY RESPONDENTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT; NOTICE OF STATUS CONFERENCE

ORDER DENYING UNION RESPONDENTS' MOTION TO DISMISS FOR LACK OF JURISDICTION AND GRANTING IN PART AND DENYING IN PART CITY RESPONDENTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

On August 13, 2012, Complainant MICHAEL HIKALEA (Hikalea or Complainant) filed a Prohibited Practice Complaint (Complaint) against the above-named Respondents with the Hawaii Labor Relations Board (Board). Complainant alleged, *inter alia*, that Respondent Kirk Caldwell,[i] Mayor, City and County of Honolulu and his agents (collectively Employer or City), and Respondent Dayton Nakanelua (Nakanelua), State Director, United Public Workers, AFSCME, Local 646, AFL-CIO, and his agents (collectively Union or UPW), committed prohibited practices against him by ignoring his seniority, improperly denying him overtime opportunities and failing to process his grievances. Complainant also alleged, *inter alia*, that since October 15, 2011, the Employer created and maintained a hostile work environment with UPW's designated agent and steward, Respondent Howard Kahue (Kahue), to discourage membership in the Union or undermine his confidence in the Union, and acted in derogation of Complainant's Uku Pau contract rights, thereby violating Hawaii Revised Statutes (HRS) § 89-13(a)(3); that the Employer violated HRS § 89-13(a)(8) by violating the terms of the Uku Pau Contract and various provisions of the Unit 01 Collective Bargaining Agreement (CBA); that the Employer violated HRS § 89-13(a)(5) by bargaining in bad faith with a corrupt Union official to alter Complainant's Uku Pau contract rights under Section 51.04 and agreeing to the Clarification of Operating Procedures (COP); that the Employer deliberately failed to process Complainant's written grievance, dated May 17,[ii] 2012, in violation of HRS § 89-13(a)(1); and that each day after May 17, 2012, is a separate count or violation. As against UPW, Complainant alleged, *inter alia*, that since October 15, 2011, Union steward Kahue and other Union agents interfered with Complainant's statutory rights by discriminating against him and deliberately failing to process Complainant's verbal and written grievances in violation of HRS §§ 377-9(d) and 89-13(b)(1) and (2); that the Union improperly withdrew the grievance by letter dated May 23, 2012; and that the Union failed to bargain in good faith by "rigging" the overtime work schedule by the COP in violation of HRS § 89-13(b)(2).

Union Respondents' August 22, 2012, Motion to Dismiss and/or for Summary Judgment

On August 22, 2012, the UPW filed a Motion to Dismiss and/or for Summary Judgment with the Board. The UPW contended that the Complaint should be dismissed for (1) lack of jurisdiction with respect to any claims which occurred more than 90 days prior to August 13, 2012; (2) failure to state a hybrid claim for relief for breach of a

collective bargaining agreement by the employer and a breach of the duty of fair representation by the union; and (3) lack of standing. Alternatively, the UPW contended there are no material issues of fact in dispute and the Union is entitled to judgment as a matter of law.

Attached to the motion was Mr. Nakanelua's declaration, which stated in part (emphasis added):

> The grievance in case LS-12-02 was carefully and fully investigated by the union, and **on or about May 23, 2012 I determined that the grievance and the claims for overtime presented by Michael Hikalea should not be arbitrated** because there was inadequate proof of a violation of section 5 of the policies and procedures on task work for refuse collection or about April 3, 7, 10, 16, and 17, 2012 as alleged.
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> * * *
>
> The decision not to proceed to arbitration on grievance case number LS-12-02 was based solely and exclusively upon my judgment that the claims presented by Michael Hikalea lacked merit under the collective bargaining agreement and the relevant provisions of the policies and procedures on task work for refuse collection.

On August 24, 2012, the City Respondents filed a Substantive Joinder in Union Respondents' Motion to Dismiss and/or for Summary Judgment Filed on August 22, 2012, with the Board.

On August 29, 2012, Complainant filed his Memorandum in Opposition to Motion to Dismiss and/or for Summary Judgment, Filed August 22, 2012, with the Board.

On September 10, 2012, the Board conducted a hearing on the UPW's Motion to Dismiss and/or for Summary Judgment. Subsequently, the Board issued Order No. 2950 and held, *inter alia*, "the claims presented are timely since the Complaint was filed within 90 days of the date Complainant knew or should have known of the alleged prohibited practices by the Union, i.e., after receiving the letter that the Union withdrew the

grievance" (Order No. 2950, p.10). The Board further held that Complainant had standing before the Board, and that Complainant had sufficiently stated a hybrid claim; however the Board dismissed Complainant's HRS § 89-13(a)(5) and § 89-13(b)(2) (failure to bargain in good faith) claims against the Employer and Union, respectively. Finally, the Board held that material facts in dispute existed, involving the Union's processing of Complainant's grievances as well as the Employer's handling of Complainant's grievances, which needed to be resolved at hearing.

Union Respondents' April 4, 2014, Motion to Dismiss for Lack of Jurisdiction

On April 4, 2014, the UPW filed a Motion to Dismiss for Lack of Jurisdiction, asserting, *inter alia*, the following facts supported by declarations and exhibits attached to the motion: that on April 20, 2012, Laurie Santiago, the Oahu division director of UPW, filed a grievance on behalf of Complainant in case number LS-12-02 which alleged that on April 3, 7, 10, 16, and 17, 2012, Complainant was not provided overtime work opportunities; that after completing her investigation of the grievance, Ms. Santiago recommended to the UPW state director Nakanelua not to proceed with the grievance; and that on May 9, 2012, Complainant "**was notified of the state director's decision** not to arbitrate the grievance" (emphasis added). Accordingly, the UPW asserts that the Complaint, which was filed on August 13, 2012, is untimely and thus the Board lacks jurisdiction.

Mr. Nakanelua's declaration attached to the motion states in part, "I actually decided not to arbitrate the grievance in LS-12-02 **on May 9, 1012**, and I requested Laurie Santiago to notify Michael Hikalea of that decision promptly on Wednesday, May 9, 2012." (Emphasis added).

The memorandum prepared by Ms. Santiago regarding her May 9, 2012, telephone discussion with Complainant indicates that Complainant was told "**the union has taken the position** that the grievance has no merits and therefore the grievance will be dropped" as well as being told "so **in regards to the letter that UPW received on May 7, 2012** no action will be taking [sic] on your issue. Because it has no merits. No action will be taken."

On April 8, 2014, the City Respondents filed their Joinder in Union Respondents' Motion to Dismiss for Lack of Jurisdiction Dated April 4, 2014.

On July 3, 2014, Complainant filed his Response to Union Respondents' Motion to Dismiss for Lack of Jurisdiction, asserting that the Union was attempting to relitigate the issue of timeliness under the guise of explaining the evidence in support of the original motion; that a fair reading of Ms. Santiago's memorandum of telephone call suggests that it primarily focused on the rights of the parties to file a grievance rather than an outright denial to file and follow through with the grievance itself; and that the note only adds to the issues of fact in dispute. Attached to Complainant's response to the motion is his declaration, which states in part (emphasis added):

> Prior to the date of the aforementioned letter, I spoke twice with Laurie Santiago, Oahu Division Director, about the proposed grievance. She informed me that under the bargaining agreements, I had no right to bring the grievance, however, the UPW was looking into the matter further. At the time of these telephone conversations, I had not been informed or advised that the UPW would not pursue the claim on my behalf.
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> * * *
>
> **It was not until the letter from Dayton Nakanelua on May 23, 2012 was received by me that I was aware that a final decision had been made**.

On July 15, 2014, the UPW filed its Reply Brief in Support of Motion to Dismiss for Lack of Jurisdiction Filed April 4, 2014; and on July 17, 2014, the City filed City Respondents' Joinder in Union Respondents' Reply Brief in Support of Motion to Dismiss for Lack of Jurisdiction Filed April 4, 2014 Filed on July 15, 2014.

On August 8, 2014, the Board heard oral arguments on the Union Respondents' Motion to Dismiss for Lack of Jurisdiction.

Pursuant to HRS § 377-9(l), which is made applicable to prohibited practice complaints by HRS § 89-14[iii], "[n]o complaints of any specific unfair labor practice shall

be considered unless filed within ninety days of its occurrence." The failure to file a complaint within ninety days of its occurrence divests the Board of jurisdiction to hear the complaint. This limitation is jurisdictional and provided by statute, and may not be waived by either the Board or the parties (see Thomas v. Commonwealth of Pennsylvania Labor Relations Board, 483 A.2d 1016 (Pa. 1984) (failure to comply with the statute of limitations for unfair labor practices goes to the subject matter jurisdiction of the labor relations board); HOH Corp. v. Motor Vehicle Indus. Licensing Bd., Dept. of Commerce and Consumer Affairs, 69 Haw. 135, 141, 736 P.2d 1271, 1275 (1987) (agencies may not nullify statutes)).

Although the UPW previously raised the issue of timeliness in its August 22, 2012, Motion to Dismiss and/or for Summary Judgment, the Board nevertheless hereby considers the April 4, 2014, Motion to Dismiss for Lack of Jurisdiction because the UPW is presenting new or additional support in Ms. Santiago's declaration and memorandum of May 9, 2012, telephone conversation. The lack of subject matter jurisdiction cannot be waived by the parties (In re Application of Rice, 68 Haw. 334, 713 P.2d 426 (1986)), and "such a question is in order at any stage of the case" (Chun v. Employees' Retirement System, 73 Haw. 9, 14, 828 P.2d 260, 263 (1992)).

Review of a motion to dismiss for lack of subject matter jurisdiction is based on the contents of the complaint, the allegations of which are accepted as true and construed in the light most favorable to the plaintiff. Casumpang v. ILWU, Local 142, 94 Hawaii 330, 337, 13 P.3d 1235, 1242 (2000). When considering a motion to dismiss pursuant to Rule 12(b)(1) of the Hawaii Rules of Civil Procedure, which includes lack of subject matter jurisdiction, a court 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. Id.

Here, there does not appear to be any dispute that Complainant was notified via letter from Mr. Nakanelua dated May 23, 2012, that the UPW would not proceed with his grievance. However, there appears to be dispute as to whether Complainant was sufficiently notified via telephone conversation with Ms. Santiago on May 9, 2012, such that he knew or should have known as of May 9, 2012, that a prohibited practice had been committed.

Complainant's declaration states in part, "It was not until the letter from Dayton Nakanelua on May 23, 2012 was received by me that I was aware that a final decision had been made." The memorandum prepared by Ms. Santiago regarding her May 9, 2012, telephone discussion with Complainant indicates that Complainant was told "the union has taken the position that the grievance has no merits and therefore the grievance will be dropped"; however, the memorandum also states that Complaint was told "so in regards to the letter that UPW received on May 7, 2012 no action will be taking [sic] on your issue." The motion and attached documents does not explain what the letter received by the UPW on May 7, 2012, and discussed in Ms. Santiago's memorandum, involved.

Furthermore, Mr. Nakanelua's earlier declaration stated that "on or about May 23, 2012 I determined that the grievance and the claims for overtime presented by Michael Hikalea should not be arbitrated" while his most recent declaration states, "I actually decided not to arbitrate the grievance in LS-12-02 on May 9, 1012, and I requested Laurie Santiago to notify Michael Hikalea of that decision promptly on Wednesday, May 9, 2012." Mr. Nakanelua did state, in his earlier declaration, that he made his determination "on or about" May 23, 2012; however, the Board finds that the phrase "on or about" does not sufficiently explain a fourteen-day discrepancy between May 9 and May 23, 2012, and thus the actual date of the determination remains a material fact at issue.

Accordingly, because of the conflicting declarations of Complainant and Ms. Santiago, as well as the differing dates recited in Mr. Nakanelua's declarations, the Board holds that the date upon which Complainant knew or should have known that an alleged prohibited practice had been committed is not sufficiently established to enable the Board to grant the Union Respondents' Motion to Dismiss for Lack of Jurisdiction at this time, as there remains material fact in dispute to be resolved at hearing.[iv]

City Respondents' April 7, 2014, Motion to Dismiss
Complaint or, in the Alternative, for Summary Judgment

On April 7, 2014, the City filed City Respondents Department of Environmental Services, City and County of Honolulu; David Shiraishi and Kirk Caldwell's Motion to Dismiss Complaint or, in the Alternative, for Summary Judgment. The City asserts that

overtime is not a right under the Unit 01 CBA or Hawaii law, and that interpretation of the CBA is not subject to the Board's jurisdiction. The City argues, "the Complaint herein must be denied in its entirety, as there is nothing in the CBA guaranteeing overtime to UPW Unit 1 employees" and that "[o]vertime falls squarely within the City Respondents' statutorily mandated right to direct employees as well as determine standards for work." The City also argues, in support of its assertion of failure to exhaust contractual rights, that "[i]n the instant action, Complainant's claims against City Respondents simply cannot exist as there was never a grievance submitted on the allegations."

On April 10, 2014, the UPW filed a Memorandum in Opposition to Employer's Motion to Dismiss and/or for Summary Judgment Filed April 7, 2014. The UPW asserted that "management rights" has been restricted and limited by constitutional and statutory provisions as well as the CBA; that a material difference between the Unit 01 and Unit 02 CBAs renders the arbitration award by Arbitrator Michael Marr, attached to the City's motion, not applicable; and that the Unit 01 CBA contains an "equalization provision" in the assignment of overtime which limits management's rights to allocate overtime work opportunity.

On April 14, 2014, the Union Respondents filed their Joinder in City Respondents' Motion to Dismiss and/or Summary Judgment for Failure to Exhaust Contractual Remedies – 4/7/14, asserting that Complainant failed to exhaust his contractual remedies in connection with his overtime grievances.

On July 3, 3014, Complainant filed his Notice that He Takes No Position on Employer Respondents' Motion to Dismiss and/or for Summary Judgment.

On July 21, 2014, the UPW filed a Reply Brief in Support of Union Respondents' Joinder in City Respondents' Motion to Dismiss and/or Summary Judgment for Failure to Exhaust Contractual Remedies, asserting that Complainant waived his right to contest a dismissal for failure to exhaust contractual remedies, and Complainant's failure to file an opposition to the Union Respondents' Joinder of April 14, 2014 is a Forfeiture.

On July 21, 2014, the City filed City Respondents' Reply Memorandum in Support of Motion to Dismiss Complaint or, in the Alternative, for Summary Judgment,

asserting that Complainant waived his right to contest a dismissal for failure to exhaust contractual remedies.

Review of a motion to dismiss is based on the contents of the complaint, the allegations of which are accepted as true and construed in the light most favorable to the complainant. 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. In re Estate of Rogers, 103 Hawaii 275, 280, 81 P.3d 1190, 1195 (2003) (Rogers); Yamane v. Pohlson, 111 Hawaii 74, 81 137 P.3d 980, 987 (2006) (citing Love v. United States, 871 F.2d 1488, 1491 (9th Cir. 1989)).

Summary judgment should be granted only 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. GECC Financial Corp. v. Jaffarian, 79 Hawaii 516, 521, 904 P.2d 530, 535 (Haw. App. 1995), *affirmed and modified on other grounds* 80 Hawaii 118, 905 P.2d 624. The burden is on the party moving for summary judgment to show the absence of any genuine issues as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. Id.

The evidentiary standard required of a moving party in meeting its burden on a summary judgment motion depends on whether the moving party is the defendant, who does not bear the ultimate burden of proof at trial. Where the moving party is the defendant, who does not bear the ultimate burden of proof at trial, summary judgment is proper when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Miyashiro v. Roehrig, Roehrig, Wilson & Hara, 122 Hawaii 461, 474-75, 229 P.3d 341, 354-55 (App. 2010), *citing* Exotic Hawaii-Kona, Inc. v. E.I. Du Pont Nemours & Co., 116 Hawaii 277, 302, 172 P.3d 1021, 1046 (2007).

In labor relations law, the general rule, supported by strong policy reasons, is that an employee is required to exhaust contractual remedies before bringing suit. Poe v. Hawaii Labor Relations Board, (97 Hawaii 528, 536, 40 P.3d 930, 938 (2002). However, whenever exhaustion of remedies would be futile, exhaustion is not required. Id.

Based upon the record and the arguments presented by UPW's memorandum in opposition filed on April 10, 2014, the Board holds that the City has not established that it is entitled to judgment as a matter of law concerning its "management rights" argument with respect to Complainant's overtime grievances, and thus denies same.

With respect to the "failure to exhaust" argument, the City, in its motion, refers to its attached Exhibit "C" as being portions of the Unit 01 CBA. The Board notes that Exhibit "C" on its face has the effective dates of July 1, 2007, through June 30, 2009. There is no declaration, affidavit, or exhibit attached to the City's pleadings to explain the applicability of Exhibit "C" to Complainant's grievances filed in 2012. Furthermore, Exhibit "C" only includes limited portions of Section 15, entitled "Grievance Procedure." However, the UPW, in its August 22, 2012, Motion to Dismiss and/or for Summary Judgment, included as part of its Exhibit "3" what appears to be the entire Section 15 (specifically, at pages 3-120 through 3-124), along with an explanation in Mr. Nakanelua's Declaration as to the applicability of the 2007-2009 CBA to the present controversy. Accordingly, the Board will take notice of Mr. Nakanelua's Declaration and its attachments for purposes of the City's Motion to Dismiss or, in the Alternative, for Summary Judgment, rather than the City's Exhibit "C."

Pursuant to Section 15.03 a. of the CBA, an employee "may process a grievance and have the grievance heard without representation by the Union except as provided in Section 15.18" In turn, Section 15.18 governs "Issues to be Arbitrated."

The formal grievance process starts at Section 15.11, "Step 1 Grievance," which is filed with the department head or the department head's designee in writing. However, pursuant to Section 15.04 ("Class Grievance"), a "class grievance may be filed at Step 2 by mutual agreement between the Union and the Employer or the Employer's designee within the time limits in Section 15.11."

Section 15.13a. ("Step 2 Appeal or Grievance") provides, "[i]n the event the grievance is not resolved in Step 1, the grieving party and/or the Union may file a letter of appeal with the Employer or the Employer's designee specifying the reasons for the appeal together with a copy of the grievance and a copy of the Step 1 decision within nine (9) calendar days after receipt of the Step 1 decision." Section 15.13b. provides, "[i]n the event a grievance is filed at Step 2 as provided in Section 15.04, the grievance

shall be filed as provided in Section 15.11 except that the grievance shall be filed with the Employer or the Employer's designee instead of the department head or the department head's designee."

Step 3 of the grievance procedure is Arbitration. Section 15.16 provides, "[i]n the event the grievance is not resolved in Step 2, and the Union desires to submit the grievance to arbitration, the Union shall notify the Employer within thirty (30) calendar days after receipt of the Step 2 decision." Accordingly, only the Union, and not an employee, may take a grievance to arbitration.

The Board notes that the City does not specify which of Complainant's grievances were not exhausted through the grievance procedure. The Board finds that the UPW filed a grievance on behalf of Complaint on or about April 20, 2012, in UPW grievance case number LS-12-02, and that the UPW notified Complainant, at the latest, via letter on May 23, 2012, that the union would not be proceeding to arbitration on his overtime grievance. Only the Union may take a case to arbitration. Thus, the Board finds that Complainant exhausted the grievance procedure for LS-12-02.

The Complaint also alleges that the Employer deliberately failed to process Complainant's written grievance, dated May 17, 2012. The City did not attach or refer to a declaration, affidavit, or exhibit that sufficiently enables the Board to find that the grievance procedure was, or was not, exhausted with respect to this grievance. However, in Union Respondents' Joinder in the City Respondents' Motion to Dismiss and/or Summary Judgment for Failure to Exhaust Contractual Remedies – 4/7/14, the UPW refers to its own Exhibit "17" attached to its August 22, 2012, Motion to Dismiss and/or for Summary Judgment, which is a copy of the Complaint and its attachments.

On Page 17-10 of Exhibit "17," Complainant alleged in an attachment to the Complaint that "the Employer deliberately failed to process Mr. Hikalea's written grievance dated May 17, 2012. Till this day the Employer has blatantly ignored the written grievance Mr. Hikalea had filed that day, leaving Mr. Hikalea no recourse but to invoke the jurisdiction of this Honorable HLRB[.]" Pursuant to Section 15.06 of the CBA (page 3-120 of UPW's Exhibit "3"), "In the event the Employer fails to respond within the time limits of any step of Section 15, the grievance may be appealed to the next step." Complainant has not asserted any argument or facts to support a finding that

appealing to the next Step would have been futile. Accordingly, the Board finds that Complainant failed to exhaust his contractual remedies with respect to the May 17, 2012, grievance, and grants summary judgment in favor of the City and UPW with respect to any of Complainant's claims based upon that grievance.

Finally, with respect to the UPW's Reply Brief in Support of Union Respondents' Joinder in City Respondents' Motion to Dismiss and/or Summary Judgment for Failure to Exhaust Contractual Remedies, and the City Respondents' Reply Memorandum in Support of Motion to Dismiss Complaint or, in the Alternative, for Summary Judgment, the Board holds that the City and UPW did not meet their burden with respect to dismissal of, or for a favorable summary judgment ruling on, Complainant's LS-12-02 grievance, as discussed above. Where the movants did not meet their initial burden with respect to grievance LS-12-02, Complainant need not affirmatively oppose the motion, because the Board may only grant the motion if appropriate. Justice Acoba stated in a concurring opinion in GECC Financial Corp. v. Jaffarian, 79 Hawaii 516, 525, 904 P.2d 520, 539 (App. 1995), *affirmed and modified on other grounds*, 80 Hawaii 118, 905 P.2d 624 (1995):

> A party opposing summary judgment cannot rest on its pleadings if the moving party has satisfied its obligation of showing there is no genuine issue of material fact and it is entitled to a judgment as a matter of law. Miller v. Manuel, 9 Haw. App. 56, 65, 828 P.2d 286, 292 (1991). In a practical sense, the movant's burden amounts to establishing a prima facie case for relief. 10A C. Wright, A. Miller & M. Kane, *Federal Practice & Procedure: Civil* § 2727, at 143 (2d ed. 1983). However, in situations where the moving party has failed to meet its burden, or its papers indicate that a genuine issue exists, the nonmoving party does not have to present affidavits or evidence countering the motion. *Id.* at 138-42. Thus, the nonmoving party does not have to respond to a summary judgment motion if the movant fails to meet its burden because the motion will only be granted by the court "if appropriate[.]" Hawaii Rules of Civil Procedure Rule 56(e).

As discussed above, the Board finds summary judgment appropriate with respect to Complainant's May 17, 2012, grievance; however, the Board finds that summary

judgment is not appropriate with respect to grievance LS-12-02 as there are facts in the record indicating that only a union may proceed to arbitration and that the UPW declined to do so, and thus Complainant exhausted contractual remedies with respect to LS-12-02.

NOTICE OF STATUS CONFERENCE

NOTICE IS HEREBY GIVEN that pursuant to HAR § 12-42-47, the Board will conduct a Status Conference in this matter on **November 5, 2014, at 10:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The purpose of the Status Conference is to schedule the continued hearing dates and address other procedural matters.

Auxiliary aids and services are available upon request by calling 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 accommodation should be made no later than ten working days prior to the needed accommodation.

Parties or their representatives may appear at the Status Conference via telephone, by calling Ms. Ebata at the telephone number listed above prior to the conference to make arrangements.

DATED: Honolulu, Hawaii, October 3, 2014.

HAWAII LABOR RELATIONS BOARD

JAMES B. NICHOLSON, Chair

SESNITA A.D. MOEPONO, Member

Rock B. Ley

ROCK B. LEY, Member

Copies sent to:

Michael Hikalea, *Pro se*
Herbert R. Takahashi, Esq.
John S. Mukai, Deputy Corporation Counsel

END NOTES

[i] Kirk Caldwell, Mayor, City and County of Honolulu, is substituted for Peter Carlisle. See, Rule 25(d), Hawaii Rules of Civil Procedure ("[w]hen a public officer is a party to an action in an official capacity and during its pendency . . . ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party").

[ii] The Complaint references its attached "Exhibit '1'" as the May 17, 2012, grievance.

[iii] HRS 89-14 provides, "[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[.]"

[iv] The Complaint also alleges a grievance filed on May 17, 2012, which would render timely any claims in the Complaint related to the processing of that grievance; however, the May 17, 2012, grievance is dismissed, as discussed later in this Order, for failure to exhaust contractual remedies.