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Case No. CE-07-847

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

ANDRIA TUPOLA,

Complainant,

and

UNIVERSITY OF HAWAII, State of
Hawaii,

Respondent.

CASE NO. CE-07-847

ORDER NO. 3027

ORDER CONSOLIDATING
CASES FOR DISPOSITION;
NOTICE OF DEADLINES AND
HEARING ON THE MERITS;
NOTICE OF DEADLINES AND
HEARING ON MOTION(S)

In the Matter of

ANDRIA TUPOLA,

Complainant,

and

UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY,

Respondent.

CASE NO. CU-07-330

ORDER CONSOLIDATING CASES FOR DISPOSITION;
NOTICE OF DEADLINES AND HEARING ON THE MERITS;
NOTICE OF DEADLINES AND HEARING ON MOTION(S)

On October 9, 2014, the Hawaii Labor Relations Board (Board) held a Pre-Hearing Settlement Conference on Case No. CE-07-847. In her complaint, ANDRIA TUPOLA, *Pro Se*, (Complainant) alleges, *inter alia*, that the University of Hawaii (UH) violated Hawaii Revised Statutes (HRS) §§89-13 and 89-13(8) by violating her

collective bargaining rights under the current University of Hawaii Professional Assembly (UHPA) contract (2009-2015) and more specifically under Article III. Complainant alleges that BOR 9-5 does not supersede Article III H of UHPA's current collective bargaining agreement and that during a conversation she had with J.N. Musto, Executive Director of UHPA, "He indicated that they had been fighting the contract language for 30 years and did reach agreement that UH professors could maintain their position while campaigning but upon being elected needed to resign. He indicated that the agreement language should be interpreted to allow professors to maintain their employment while campaigning."

Complainant alleges that Article III H states ". . . Faculty Members may continue working while campaigning for elective political office as long as campaigning does not interfere with the duties and responsibilities of the Faculty Member . . ."

On October 9, 2014, the Board held a Pre-Hearing/Settlement Conference on Case No. CU-07-330. Complainant was present and Respondent UHPA was represented by counsel, Wade Zukeran, Esq. Complainant alleges, *inter alia*, that UHPA (1) violated HRS §§89-13 and 89-13(6) and (8), as stated in the complaint, and (2) violated its duty of fair representation by failing to file for arbitration regarding employees working for the University of Hawaii and running for public office, as stated in the Pre-Hearing/Settlement Conference.

Complainant states in her complaint that UHPA filed a Step 1 and Step 2 grievance regarding the issues in CE-07-847 but denied her request for arbitration in Step 3.

At the Pre-Hearing/Settlement Conference on the prohibited practice complaint held on October 9, 2014, the Board, pursuant to § 12-42-8(g)(13)¹, Hawaii Administrative Rules (HAR), on its own initiative initiated discussion to consolidate the above cases. The parties did not oppose consolidating the cases.

After reviewing the complaints, the Board finds that the complaints involve the same Complainant and the alleged violations of UHPA that arise from the issues in CE-07-847. The Board also finds that consolidation of the proceedings would be conducive to the proper dispatch of business and the ends of justice and will not unduly

¹ **HAR § 12-42-8(g)(13)** The board, on its own initiative or upon motion, may consolidate for hearing or other purposes or may contemporaneously consider two or more proceedings which involve substantially the same parties or issues if it finds that such consolidation of proceedings or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

delay the proceedings. Pursuant to § 12-42-8(g)(13), HAR, the Board HEREBY ORDERS the consolidation of the above-entitled cases.

NOTICE OF DEADLINES AND HEARING ON THE MERITS

Also, at the Pre-Hearing/Settlement Conferences, the Board established the following deadlines and hearing on the merits for the above-entitled cases:

Deadline for:	Due by Noon on listed date
1. Identification of the first two witnesses to called by Complainant and in the interest of judicial economy, a brief but meaningful summary or general statement of the nature of the testimony expected, and the order in which the witnesses are expected to be called. The summary or general statement for each witness shall include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see, HRS § 91-10(1) and HAR § 12-42-8(g)(8)(B).	10/15/2014
2. Exchange of Exhibit Lists: Complainant's exhibits shall be marked using numbers (e.g., 1, 2, 3, etc.) and Respondent UHPA's exhibits shall be marked using letters of the alphabet (e.g. A-B-C-, etc.) and Respondent UH's exhibits shall be marked using roman numerals (e.g. I, II, etc.)	10/15/2014
3. Copies of exhibits shall be provided to the Board as follows:	10/16/2014
a. If a party is utilizing the File & ServeXpress eFiling system to file their proposed exhibits; then the party shall provide to the Board one (1) set each of their exhibits for use by the witness on the day of the hearing and for Opposing Counsel; or	
b. If a party is not utilizing the File & ServeXpress eFiling system, then said party shall provide to the Board its proposed exhibits as follows: one (1) set each for the Board and the witness, and one (1) pdf copy of the exhibits in one file and bookmarked, or in individual files.	

NOTICE IS HEREBY given that the Board, pursuant to HRS § 89-5(i)(3), (4), and (5), and HAR §§ 12-42-8(g) and 12-42-49, will conduct a hearing on the merits of the above-entitled cases at **1:00 p.m. on October 20, 2014**, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii. The issues involved and the statutory provisions at issue are as indicated by the record in this matter.

NOTICE OF DEADLINES AND HEARING ON MOTION(S)

Also at the Pre-Hearing/Settlement Conferences, the Board established the following deadlines and hearing for motions for the above-entitled cases:

Deadline to file Motion	October 24, 2014
Deadline to Respond to a Motion	October 31, 2014
Deadline to Reply to the Response	November 7, 2014

ACCORDINGLY, NOTICE IS HEREBY GIVEN that a hearing on the motion(s) in the above-entitled cases will be held on November 14, 2014 at 9:00 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

Any party may appear on his or her own behalf, retain counsel or obtain a representative if the party so desires.

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.

DATED: Honolulu, Hawaii, October 13, 2014.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair


SESNITA A.D. MOEPONO, Member


ROCK B. LEY, Member

Copies sent to:

Andria Tupola
Richard Rand, Esq.
Wade Zukeran, Esq.

CE-07-847 and CU-07-330 (Consolidated) Andria Tupola v. UH and UHPA: ORDER
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HEARING ON THE MERITS; NOTICE OF DEADLINES AND HEARING ON
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