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**Transaction ID 59704468**  
**Case No. 16-DR-11-109**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

DAVID Y. IGE, Governor, State of Hawaii;  
ALAN ARAKAWA, Mayor, County of Maui;  
BERNARD CARVALHO, JR., Mayor,  
County of Kauai; BILLY KENOI, Mayor,  
County of Hawaii; and KIRK CALDWELL,  
Mayor, City and County of Honolulu,

Petitioners.

CASE NO. DR-11-109

ORDER NO. 3192

ORDER DENYING BOARD OF  
REGENTS' MOTION FOR  
EXTENSION OF TIME TO FILE  
PETITION FOR INTERVENTION

ORDER DENYING BOARD OF REGENTS' MOTION FOR  
EXTENSION OF TIME TO FILE PETITION FOR INTERVENTION

On September 23, 2016, Petitioners DAVID Y. IGE, Governor, State of Hawaii; ALAN ARAKAWA, Mayor, County of Maui; BERNARD CARVALHO, JR., Mayor, County of Kauai; BILLY KENOI, Mayor, County of Hawaii; and KIRK CALDWELL, Mayor, City and County of Honolulu (Petitioner) by and through their counsel, filed a Petition for Declaratory Ruling (Petition) with the Hawaii Labor Relations Board (Board).

On September 26, 2016, the Board issued the Notice of Filing of Petition for Declaratory Ruling; Notice of Deadline for Filing Petitions for Interventions; and Notice of Board Conference (Notice) and mailed to various public employers, including the Board of Regents, University of Hawaii (Board of Regents or BOR). The Notice established, among other things, filing dates of October 4, 2016 at 4:30 p.m. for the filing of a Petition for Intervention, October 11, 2016 for the filing of an Opposition to a Petition for Intervention, and October 19, 2016 for the filing of a legal brief on the issues contained in the Petition, and a hearing date of October 21, 2016 to present legal arguments on the Petition.

On September 27, 2016, the Board issued an Errata to Notice of Filing of Petition for Declaratory Ruling; Notice of Deadline for Filing Petitions for Intervention; and Notice of Oral Argument; Attachment (Errata). The Errata corrected an error in the title of the document, namely, erroneous reference to "Board Conference" instead of the correct "Oral Argument." The Board specifically stated that "All other information in the Notice is correct and remains in effect."

On October 5, 2016 at 2:01 p.m., the Board of Regents filed its Motion for Extension of Time to File Petition (Motion) with the Board through its counsel utilizing the Board's electronic filing service (File & ServExpress or FSX). The motion stated the following:

1. On September 29, 2016, the Board of Regents received the Board's Notice of Filing of Petition for Declaratory Ruling; Notice of Deadline for Filing Petitions for Intervention; and Notice of Board Conference ("Notice"). Pursuant to the Notice, the deadline to intervene was 4:30 p.m. on October 4, 2016.
2. As noted in the attached Declaration of Sarah S.P. Moriarty, the University of Hawaii Office of General Counsel, counsel for the Board of Regents, did not receive the Notice from the Board of Regents until October 4, 2016 at 12:26 p.m. Due to an administrative oversight, the Notice inadvertently remained in the Board of Regents' out box and was not delivered to the University of Hawaii Office of General Counsel until October 4, 2016.
3. Upon receiving the Notice, counsel for the Board of Regents drafted a Petition for Intervention on behalf of the Board of Regents and attempted to file it in File & ServExpress within the time allotted. However, File & ServExpress was not recognizing the case number (as well as many variations of it) as an existing case. Yet, when attempting to add the case number as a new case, File & ServExpress recognized the case number as an already existing case, so filing the Petition for Intervention as a new case was not possible. Moreover, the File & ServExpress customer service/technical assistance (phone and chat) was unavailable. As such, counsel for the Board of Regents was unable to file the Petition for Intervention in a timely manner.

As stated above, the Board's Notice established a deadline for filing a petition for intervention of 4:30 p.m. on October 4, 2016. The BOR has admitted receiving the Notice on September 29, 2016. As stated in the BOR's motion, "Due to an administrative oversight, the Notice inadvertently remained in the Board of Regents' out box and was not delivered to the University of Hawaii Office of General Counsel until October 4, 2016." However, there are two methods available to parties to file a document with the Board. One method is filing a document in person in the Board's office, and the other is through its electronic filing service. The Board finds that the excuse given by the BOR is insufficient to grant the BOR's motion.

#### ORDER

For all of the reasons set forth above, the Board denies the Motion filed by the BOR.

DATED: Honolulu, Hawaii \_\_\_\_\_ October 14, 2016 \_\_\_\_\_.





HAWAII LABOR RELATIONS BOARD
<i>Sesnita A. D. Moepono</i>
SESNITA A.D. MOEPONO, Member
<i>J.N. Musto</i>
J.N. MUSTO, Member

### DISSENT OF KERRY M. KOMATSUBARA

I dissent from Order No. 3192 (Majority Decision) issued by a majority (Majority) of the members of the Hawaii Labor Relations Board (HLRB or Board). The Majority Decision denies the Board of Regents, University of Hawaii's (BOR) Motion for Extension of Time to File Petition (Motion to Extend) which was filed on October 5, 2016.<sup>1</sup> In denying the Motion to Extend, the Majority found "that the excuse given by the BOR is insufficient to grant the BOR's motion." (At page 2 of the Majority Decision.)

I do not agree with the Majority Decision because (1) I believe that the BOR has provided a sufficient excuse for its late filing, (2) none of the parties has opposed the granting of the Motion to Extend, and (3) there has been no showing of harm to any of the parties by the 1 day delay in the filing of the BOR Petition to Intervene.

Although there are questions as to why the Board's electronic filing service was not able to accept the BOR Petition to Intervene on October 4, there seems to be no challenge to the

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<sup>1</sup> The BOR's Petition to Intervene was attached to the Motion to Extend.

BOR's claim that this attempt was made and that the BOR would have timely filed the BOR Petition to Intervene but for the problem with the Board's electronic filing service.

Furthermore, I believe that the BOR's Petition to Intervene which accompanies the Motion to Extend should at least be heard and the tardiness of the filing of the BOR's Petition to Intervene can be taken into account in this Board's decision on the BOR's intervention question.



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KERRY M. KOMATSUBARA, Chair

Copies sent to:

Sarah S.P. Moriarty, Assoc. General Counsel, UH – Office of General Counsel  
Robert S. Katz, Esq.