

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

**EFiled: Nov 09 2016 01:50PM HAST**  
**Transaction ID 59822943**  
**Case No. 16-CU-10-344, 16-CU-10-345**

In the Matter of

STACY K. PAIO; DAYTON YOSHIDA;  
ERNEST SUGUITAN; SAMUEL KAE0;  
DONNELL ADAMS; LONNIE A.  
MERRITT; MITSUO NAKAMOTO;  
ARDEN D. COSTALES; WALLACE  
KAHAPEA; and EMOSI MANAIA SEVAO,

Complainants,

and

UNITED PUBLIC WORKERS, AFSCME,  
LOCAL 646, AFL-CIO,

Respondent.

CASE NO. 16 CU-10-344

ORDER NO. 3207

ORDER CONSOLIDATING CASES  
FOR DISPOSITION; NOTICE OF  
HEARING ON RESPONDENT UPW'S  
MOTION TO DISMISS AND  
RELEVANT DEADLINES; NOTICE OF  
DEADLINES RELEVANT TO THE  
HEARING ON THE MERITS; and  
NOTICE OF THE HEARING ON THE  
MERITS

In the Matter of

FERN KATHRYN WHEELESS,

Complainant,

and

UNITED PUBLIC WORKERS,  
AFSCME, LOCAL 646, AFL-CIO,

Respondent.

CASE NO. 16 CU-10-345

## **ORDER CONSOLIDATING CASES FOR DISPOSITION**

On October 12, 2016, and October 16, 2016, Complainants STACY K. PAIO; DAYTON YOSHIDA; ERNEST SUGUITAN, SAMUEL KAE0; DONNELL ADAMS; LONNIE A. MERRITT; MITSUO NAKAMOTO; ARDEN D. COSTALES; WALLACE KAHAPEA; and EMOSI MANAIA SEVAO, Pro Se, (collectively, Complainants) filed a Prohibited Practice Complaint in Case No. 16 CU-10-344 against Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Respondent or UPW).

On October 17, 2016, the Hawaii Labor Relations Board (Board) filed a Notice TO RESPONDENT(S) OF PROHIBITED PRACTICE COMPLAINT; NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING ON THE PROHIBITED PRACTICE COMPLAINT.

On October 19, 2016, FERN KATHRYN WHEELESS, Pro Se, (Complainant) filed Prohibited Practice Complaint in Case No. 16 CU-10-345, against Respondent.

On October 21, 2016, Complainants in Case No. 16 CU-10-344 and Case No. 16 CU-10-345 filed a MOTION TO CONTINUE.

On October 24, 2016, in Case No. 16 CU-10-344 and Case No. 16 CU-10-345, the Complainants filed an AMENDED MOTION FOR CONTINUANCE.

On October 24, 2016, in Case No. 16 CU-10-344, Respondent UPW, through its counsel, filed MOTION TO DISMISS with the Board.

On October 25, 2106, in Case No. 16 CU-10-344, Respondent UPW filed RESPONDENT UPW'S POSITION ON MOTION TO CONTINUE PRE-HEARING CONFERENCE OF NOVEMBER 1, 2016; Certificate of Service.

On October 25, 2016, in Case No. 16 CU-10-345, the Board filed a NOTICE TO RESPONDENT OF PROHIBITED PRACTICE COMPLAINT; NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING ON THE MERITS OF THE PROHIBITED PRACTICE COMPLAINT.

On October 26, 2016, the Board filed a NOTICE OF RESCHEDULED PREHEARING CONFERENCE; NOTICE OF HEARING ON THE MOTION TO DISMISS COMPLAINT FILED BY THE RESPONDENT; AND NOTICE OF RESCHEDULED

HEARING ON THE MERITS OF THE PROHIBITED PRACTICE COMPLAINT in Case No. 16 CU-10-344.

On October 28, 2016, in Case No. 16 CU-10-345, the Respondent, through its counsel, filed its MOTION TO DISMISS with the Board.

On October 28, 2016, the Respondent filed a MOTION TO RESET PLACE OF PRE-HEARING CONFERENCE OR TO AFFORD ALTERNATIVE RELIEF TO RESPONDENT; Declaration of Herbert Takahashi; Attachments 1 and 2; Certificate of Service.

On October 28, 2016, in Case No. 16 CU-10-345, the Board filed its FIRST AMENDED NOTICE OF PREHEARING CONFERENCE.

On Monday, November 7, 2016, a Prehearing Conference was held at 10:30 a.m. on the Island of Hawaii, at the Aging & Disability Center's training room at 1055, Kinoole Street, Hilo, Hawaii. The Complainants were represented by Complainant and UPW's counsel appeared telephonically. The Board informed the parties that the Board will take judicial notice of the current collective bargaining agreement for bargaining unit 10 for the period of July 1, 2013 – June 30, 2017, which will be labeled as Board Exh. "1."

In both Case Nos. 16 CU-10-344 and 16 CU-10-345, Complainants allege, *inter alia*, that UPW committed Prohibited Practices by entering into an agreement with the Department of Public Safety that violates "...Section 89-13 Prohibited Practices; evidence of bad faith by (8) and (b) (5) violating the terms of a collective bargaining unit (Unit 10 contract)." Said agreement thus reduced overtime by excluding one class of workers (ACO IV Sergeants) from overtime, while allowing ACO V (Lieutenants) and ACO III (correctional staff) to work overtime. Further, the Complaints allege that "...the practice denies Sergeants equitable access to overtime work and thereby discriminates against them for fair and equitable pay." And, this agreement altered the past practice which would allow ACO IVs overtime, even when TA [temporary assignment] of ACO III to ACO IV were made.

The Prohibited Practice Complaints filed with the Board are made against the UPW by members of Bargaining Unit 10, all holding the rank of ACO IV, and the written statements are all identical with respect to the allegations that are made, including references to the violations which are alleged to have occurred. The only difference between each of the signed forms is the name, signature, and address of each of the Complainants. Further, all the Complaints have identified Fern Kathryn Wheelless as the Complainants' Personal Representative.

At the Pre-Hearing Conference on the Prohibited Practice Complaint held on November 7, 2016, the Board, pursuant to § 12- 42-8(g)(13), 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 parties similarly situated in bargaining unit 10, and that the Complaints involved substantially similar issues, facts, and matters of law.

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 delay the proceedings pursuant to § 12-42-8(g)(13), HAR.

The Board HEREBY ORDERS the consolidation of the above cases 16 CU-10-344 and 16 CU-10-345, including all pending motions.

**NOTICE OF HEARING ON RESPONDENT UPW'S  
MOTION TO DISMISS AND RELEVANT DEADLINES**

NOTICE IS HEREBY GIVEN that the Board will conduct a hearing on Monday, **November 21, 2016, at 10:30 am** on the Island of Hawaii at the Aging & Disability Center's training room at 1055, Kinoole Street, Hilo, Hawaii, and sets the following deadlines:

**Deadline for Complaints to file a  
written response to the Motion to Dismiss:                      Monday, November 14, 2016 by 4:30 pm.**

**Oral arguments over the Motion to Dismiss:                      Monday, November 21, 2016 at 11:00 a.m.**

**NOTICE OF DEADLINES RELEVANT TO HEARING ON THE MERITS**

**Deadline for:**

**Due by  
Noon on:**

**1. Application for the issuance of subpoenas of Complainant's first 5 witnesses.** If subpoenas are issued, the Board requests that parties send a courtesy copy to all opposing parties and file the proof of service with the Board by the next business day following service.

**11/16/16**

**2. Exchange of Witness List:** The witness list shall include, 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, Hawaii Revised Statutes § 91-10(1) and Hawaii Administrative Rules § 12-42-8(g)(8)(B).

11/14/16

**3. Exchange of Exhibit Lists:** Complainant's exhibits shall be marked using number (e.g., 1, 2, 3, etc.) and Respondent's exhibits shall be marked using letters (e.g. A, B, C, etc.).

11/16/16

**4. Copies of exhibits shall be provided to the Board as follows:**

11/18/16

a. If a party is utilizing the File & ServeXpress eFiling system to file its proposed exhibits; then the party shall provide to the Board one (1) hard copy of its exhibits for use by the witness on the day of the hearing; 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) hard copy for the witness, and one (1) pdf copy in one file and bookmarked, or in individual files.

### **NOTICE OF HEARING ON MERITS OF PROHIBITED PRACTICE COMPLAINTS**

NOTICE IS HEREBY GIVEN that the Board will conduct a hearing on the merits of the instant complaint on **Monday, November 21, 2016, at 11:00 a.m. or shortly thereafter**, on the Island of Hawaii, at the Aging & Disability Center's conference and training room at 1055 Kinoole Street, Hilo, Hawaii, and will adjourn at 6:00 p.m. The purpose of the hearing is to receive evidence and arguments on whether Respondent committed prohibited practices as alleged by Complainants.

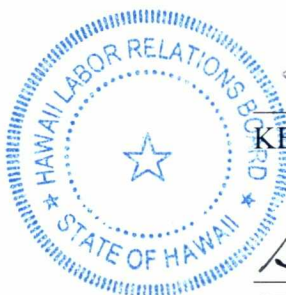
The hearing on the merits will continue on November 22 and 23, 2016, from 8:30 a.m. to 6:00 p.m. in the Aging & Disability Center's training room. All parties have the right to appear in person and to be represented by counsel or other representative.

Auxiliary aids and services are available upon request by calling Ms. Nora Ebata, Board Secretary, at (808) 586-8610, (808) 586-8847 (TTY), or 1 (888) 569-6859 (TTY)

neighbor islands). A request for reasonable accommodations should be made not less than ten (10) days before the needed accommodation.

Dated: Honolulu, Hawaii, November 9, 2016.

HAWAII LABOR RELATIONS BOARD



  
KERRY M. KOMATSUBARA, Chair

  
SESNITA A.D. MOEPONO, Member

  
J.N. MUSTO, Member

Copy to:

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Emosi Manaia Sevaio  
Herbert R. Takahashi, Esq.

Case Nos. 16-CU-10 344 and 16-CU-10-345 – Stacy K. Paio, et. al and United Public Workers – Order Consolidating Cases for Disposition; Notice of Hearing on Respondent UPW's Motion to Dismiss and Relevant Deadlines; Notice of Deadlines Relevant to Hearing on the Merits; and Notice of Hearing on the Merits.

Order No. 3207