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Case No. CE-12-696

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

STATE OF HAWAII ORGANIZATION OF
POLICE OFFICERS,

Complainant,

and

MUFI HANNEMANN, Mayor, City and
County of Honolulu; BOISSE P. CORREA,
Chief of Police, Honolulu Police Department,
City and County of Honolulu; and CITY AND
COUNTY OF HONOLULU,

Respondents.

CASE NO. CE-12-696

ORDER NO. 3232

MINUTE ORDER DIRECTING PARTIES
TO SUBMIT PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING OR DENYING
RESPONDENTS' MOTION TO DISMISS
AND GRANTING OR DENYING
COMPLAINANT'S SECOND MOTION FOR
DISCOVERY

**MINUTE ORDER DIRECTING PARTIES TO SUBMIT PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
GRANTING OR DENYING RESPONDENTS' MOTION TO DISMISS AND
GRANTING OR DENYING COMPLAINANT'S SECOND MOTION FOR DISCOVERY**

On November 7, 2008, Complainant STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO or Complainant) filed with the Hawaii Labor Relations Board (Board) a Prohibited Practice Complaint (Complaint) against Respondents MUFI HANNEMANN, Mayor, City and County of Honolulu (the Mayor¹); BOISSE P. CORREA, Chief of Police (the Chief of Police), Honolulu Police Department (HPD), City and County of Honolulu; and CITY AND COUNTY OF HONOLULU (the City), collectively "Respondents." The Complaint involves the Chief of Police's implementation of HPD Policy No. 5.03, relating to the Restriction

¹ Pursuant to Hawaii Rules of Civil Procedure (HRCPP) Rule 25(d)(1), when a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party; proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. Although the Board does not amend the caption in this matter, the Board, pursuant to HRCPP Rule 25(d)(1), deems the successor Mayor and the successor Chief of Police to be parties in this matter.

of Police Authority (ROPA). The Complaint alleges that Policy No. 5.03 was implemented unilaterally; that SHOPO has made numerous attempts throughout the years to negotiate the terms of the ROPA Policy but such attempts were fruitless; that the ROPA Policy changes an officer's work assignment and hours of work; that the ROPA Policy violates an officer's contractual right to fair and equitable assignment of overtime work; that officers are denied fundamental due process; that the ROPA Policy amounts to disciplinary action and requires the HPD to comply with the grievance process in Article 13 of the SHOPO collective bargaining agreement (CBA); that the ROPA Policy violates the Prior Rights clause of the SHOPO CBA; that the Chief of Police inconsistently applies the ROPA Policy; and that the ROPA Policy results in injustices. The Complaint seeks, *inter alia*, that the Board order: (1) the Respondents to comply with the SHOPO CBA, negotiate with the SHOPO in good faith, and obtain the SHOPO's mutual consent prior to the implementation, application, modification, or revision of the ROPA Policy; (2) that police officers who are subject to the ROPA policy have the right to appeal through the grievance process; (3) that the Respondents are required to hold a meeting and/or hearing between the Chief of Police and the police officer together with the SHOPO; (4) that police officers and the SHOPO are entitled to an expedited due process hearing; (5) the Respondents are required to provide the SHOPO with relevant information and documents; (6) the Respondents are required to make officer "whole" in the event there is insufficient evidence or the officer is exonerated; (7) that Respondents are required to keep "ROPA'ed" officers on the same work schedule and work hours; and the Respondents are required to fairly and consistently apply the ROPA Policy; and any other relief deemed necessary and appropriate.

On November 20, 2008, the Respondents filed their Answer to the Complaint, asserting, *inter alia*, that the Complaint fails to establish the Board's jurisdiction; that Complainant failed to exhaust contractual remedies; that the Respondents acted in accordance with "management rights" set forth under Hawaii Revised Statutes (HRS) chapter 89; the Complaint is barred by the statute of limitations; that the questions presented are moot; and requested that the Complaint be dismissed.

On December 10, 2008, the SHOPO filed Petitioner's Motion for Discovery, requesting the Respondents comply with certain documents requests or that the Board issue subpoenas duces tecum, and that the Board permit the taking of certain depositions. On January 28, 2009, the SHOPO filed Petitioner's Amended Motion for Discovery, adding the names of

several officers about whom information was being sought. On February 24, 2009, the SHOPO filed Petitioner's Second Amended Motion for Discovery, involving an additional request for production of documents or the issuance of a subpoena duces tecum and adding the names of several individuals whom the SHOPO sought to depose.

On April 27, 2009, the Respondents filed Respondents' Discovery Response, asserting the SHOPO's discovery request regarding HPD Policy No. 5.03 is overly broad and cumulative, and SHOPO has been possession of the requested documents; that information regarding grievances and settlements is privileged and subject to confidentiality agreements, and that SHOPO as the representative may be in possession of any relevant information; that other requested information regarding individual officers is subject to privilege, confidentiality, and is unduly burdensome, and that the SHOPO as representative may be in possession of any relevant information; and that the Respondents object to the taking of oral depositions for reasons of privilege, confidentiality, and being unduly burdensome.

On May 19, 2009, the Board heard oral argument on the SHOPO's Second Amended Motion for Discovery, and took the matter under advisement.

Also on April 27, 2009, the Respondents filed Respondents' Motion to Dismiss Prohibited Practice Complaint (Motion to Dismiss), asserting the ROPA Policy was implemented in 2000 and only updated in July of 2007 with "very minor" changes and therefore the Complaint is untimely; and that the Board should permit the parties to process the allegation in the Complaint through the CBA's grievance procedure.

On May 8, 2009, the SHOPO filed Petitioner's Memorandum in Opposition to Respondents' Motion to Dismiss Prohibited Practice Complaint, asserting the employer failed to obtain the SHOPO's consent prior to implementing the ROPA Policy, which affects the contractual rights of SHOPO members; that the SHOPO timely filed its Complaint within the recognized "continuing violation" exception to the 90-day limitation period; that even if the "continuing violation" exception does not apply, the Complaint was timely, because even though the policy was posted on the bulletin boards following its implementation, it was not until the Chief of Police imposed the ROPA Policy upon the SHOPO's members that their rights were actually violated; that where there are countervailing policy considerations, the acceptance of jurisdiction is proper and the Board has declined to defer to the grievance process; that the Board has exclusive

jurisdiction over statutory interpretations; and that deferral is inappropriate where the Board is asked to determine whether the subject matter is subject to negotiation.

On May 19, 2009, the Board heard oral argument on the Respondents' Motion to Dismiss, and took the matter under advisement.

Hawaii Administrative Rules (HAR) § 12-42-8(g)(17)(C) provides that the “[B]oard may direct oral argument or the filing of briefs or **proposed findings of facts, conclusions of law, or both**, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein” (emphases added). In the present case, the Board finds that the submission of proposed findings of fact and conclusions of law by the parties is warranted based upon the nature of the proceeding and the status of the case which has been pending for years, as well as the change in the membership of the Board, and the Board's oral ruling taking the SHOPO's Second Amended Motion for Discovery and the Respondents' Motion to Dismiss under advisement.

Accordingly, this minute order directs the parties to submit to the Board for its consideration proposed findings of fact, conclusions of law, and order granting or denying the Respondents' Motion to Dismiss, and granting or denying the SHOPO's Second Amended Motion for Discovery. The proposed findings of fact, conclusions of law, and orders shall be filed with the Board and served on all other parties no later than **April 20, 2017**.

DATED: Honolulu, Hawaii, Feb. 24, 2017.

HAWAII LABOR RELATIONS BOARD



Sesnita A. D. Moepono
SESNITA A.D. MOEPONO, Member

J. N. Musto
J.N. MUSTO, Member

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*The Board offers a free electronic filing service. Please contact the Board's office for more information.