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Case No. 17-CU-14-349, 17-CE-14-
894**

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

CHAD MEDEIROS,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO; and KAUAI FIRE
DEPARTMENT, County of Kauai,

Respondents.

CASE NO(S).:

17-CU-14-349

17-CE-14-894

ORDER NO. 3264

ORDER OF DISMISSAL

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A Prohibited Practice Complaint (Complaint) was filed with the HAWAII LABOR RELATIONS BOARD (Board) by the above-named Complainant on April 7, 2017.

PURSUANT TO Hawaii Revised Statutes (HRS) § 89-5(i)(4) and (i)(5), and Hawaii Administrative Rules (HAR) § 12-42-47, on May 1, 2017, the Board held a Prehearing Conference in the Board's Hearing Room 434, 830 Punchbowl Street, Honolulu, Hawaii 96813. Complainant CHAD MEDEIROS (Complainant), appeared *pro se* at the Prehearing via telephone conference call. HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (Respondent HGEA) was represented by its attorney Debra A. Kagawa (Kagawa), who was present in person at the Prehearing. KAUAI FIRE DEPARTMENT, County of Kauai (Respondent KFD) was represented by Deputy County Attorney Mark L. Bradbury (Bradbury) via telephone conference call.

During the May 1, 2017 Prehearing Conference, the Board reviewed with the Complainant and the Respondents the dates and deadlines set forth in the Board's April 12, 2017 NOTICE TO RESPONDENTS OF PROHIBITED PRACTICE COMPLAINT; NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING ON THE MERITS OF THE PROHIBITED PRACTICE COMPLAINT (April 12, 2017 Notice). In deference to the

Complainant appearing *pro se*, the Board described for Mr. Medeiros the procedures that would be followed with respect to the issuance of subpoenas, the submission of witness lists and exhibits, and the burden of proof, which required that the Complainant be prepared to be the initial party to present a case when the Hearing on the Merits commenced on May 16, 2017. The Board also noted that *all the parties or their representatives were required to be present in person* at the Hearing on the Merits, which was scheduled to be held in the Board's Hearing Room, located in Honolulu, on the Island of Oahu. Complainant responded to the Board by stating that he thought he could "call in" because he resides on the island of Kauai and didn't have the financial means to purchase an airline ticket to Oahu. The Board repeated to Complainant that he was required to appear in person before the Board. However, the Board told the parties it would take into consideration the financial difficulty that the Complainant would face by having to travel to Oahu, and would issue a subsequent notice to the parties.

On May 1, 2017, the Board issued a NOTICE OF CHANGE IN VENUE FOR HEARING ON DISPOSITIVE MOTIONS AND HEARING ON THE MERITS; FILING OF COMPLAINANT'S PREHEARING STATEMENT; CONFIRMATION OF DEADLINES, which included, *inter alia*, the following notice of a change in venue:

During the Prehearing Conference, the Board made note that all parties must be in attendance for the Hearing on the Merits. The Complainant, Chad Medeiros, told the Board that he did not have financial resources to attend the Hearing on [sic] Merits at the Board's offices located on the island Oahu, in Honolulu, Hawaii. The Board reiterated that his physical attendance was required for the complaint to proceed to the hearing on the merits. The Board did take notice of the Complainant's expressed financial difficulty in attending the hearing on [sic] merits. After due consideration, the Board, pursuant to Hawaii Revised Statutes (HRS) §89-5(j), decided to reschedule the Hearing on the Merits from [sic] Board's Hearing Room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813 to **the County of Kauai**.

At that time, the Complainant **had not provided** the Board with a **Prehearing Statement**, as required by the Board's April 12, 2017 Notice.

The May 1, 2017 NOTICE OF CHANGE IN VENUE FOR HEARING ON DISPOSITIVE MOTIONS AND HEARING ON THE MERITS; FILING OF COMPLAINANT'S PREHEARING STATEMENT; CONFIRMATION OF DEADLINES further stated that "...the Board will allow the Complainant to file a Prehearing Statement by not later than **4:30 pm**, Thursday, **May 8, 2017**." The record shows that the Complainant **did not file a Prehearing Statement**, even given this extended deadline. Nor did the Complainant file with

the Board the required Exchange of Witness List, Exchange of Exhibits Lists, or copies of proposed exhibits as set forth in the both the April 12, 2017 and May 1, 2017 NOTICES.

On May 16, 2017, at 9:00 a.m., the Board convened its hearing at the **County of Kauai Piikoi Building, Conference Room A, 4444 Rice Street Lihue Kauai, Hawaii 96766**. Present at the hearing were Kagawa representing Respondent HGEA and Deputy County Attorney Bradbury, representing Respondent KFD. The Complainant **was not present**. The Board had its staff contact Complainant by telephone to remind him of the hearing. When Complainant had still not appeared, the Board again had its staff contact and inform Complainant that if he did not attend the hearing, the Complaint could be dismissed. The Board staff informed the Board that Complainant responded to the second telephone call by saying, “Whatever” and hanging up. The Board went on the record, and indicated to the Respondents that it would be open to receive a motion to dismiss complaint for failure to prosecute pursuant to Hawaii Rules of Civil Procedure (HRCPP) Rule 41(b)(1)ⁱ.

Consequently, Respondents HGEA and KFD, by and through their respective attorneys, each entered on the record motions to dismiss the Complaint for failure of the Complainant to prosecute the Complaint pursuant to HRCPP Rule 41(b)(1). The Board orally granted the motions to dismiss on the record at the hearing, and issues this written order to reduce the oral granting of the Motions to writing in accordance with the requirements of HRS § 91-12ⁱⁱ and HAR § 12-42-8(g)(18).ⁱⁱⁱ In addition, HRS § 91-10(5) provides that, “Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.” HAR § 12-42-8(g)(16) similarly provides that, “The charging party, in asserting a violation of chapter 89, HRS, or this chapter, shall have the burden of proving the allegations by a preponderance of the evidence.” The Board further finds that by his absence at the hearing on the merits, Complainant failed to meet his burden of proving the allegations of the Complaint by a preponderance of the evidence. Accordingly, in the alternative, the Board dismisses the Complaint for the Complainant’s failure, as the initiating or charging party, to carry his burden of proving the prohibited practice violations alleged in the Complaint.

ORDER

For the reasons discussed above, the Board hereby dismisses the case. This case is closed.

CHAD MEDEIROS v. HGEA and KAUAI FIRE DEPARTMENT
CASE NOS.: 17-CU-14-349, 17-CE-14-894
ORDER OF DISMISSAL
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DATED: Honolulu, Hawaii, May 18, 2017.

HAWAII LABOR RELATIONS BOARD



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

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

Copies sent to:
Chad Medeiros, *pro se*
Debra A. Kagawa, Esq.
Mark L. Bradbury, Deputy County Attorney

ⁱ HRCF Rule 41(b)(1) provides:

- (b) Involuntary dismissal: Effect thereof.
 - (1) For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against it.

ⁱⁱ HRS § 91-12 provides in relevant part:

§91-12 Decisions and orders. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law....

ⁱⁱⁱ HAR § 12-42-8(g)(18) provides in relevant part:

- (18) Decisions and orders of the board:
 - (A) Every decision and order rendered by the board shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law....