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Case No. 17-CE-12-905**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

STATE OF HAWAII ORGANIZATION OF  
POLICE OFFICERS (SHOPO),

Complainant,

and

AMANDA FURMAN; and CITY AND  
COUNTY OF HONOLULU,

Respondents.

CASE NO.: 17-CE-12-905

ORDER NO. 3321

ORDER GRANTING IN PART  
COMPLAINANT SHOPO'S MOTION FOR  
EMERGENCY INTERLOCUTORY ORDER  
TO SEAL RESPONDENTS'  
PLEADINGS/EXHIBITS AND FOR  
SANCTIONS; NOTICE OF HEARING ON  
COMPLAINANT SHOPO'S MOTION FOR  
EMERGENCY INTERLOCUTORY ORDER  
TO SEAL RESPONDENTS'  
PLEADINGS/EXHIBITS AND FOR  
SANCTIONS; NOTICE OF HEARING ON  
PENDING MOTIONS; AND NOTICE OF  
PRETRIAL CONFERENCE

**ORDER GRANTING IN PART COMPLAINANT SHOPO'S MOTION  
FOR EMERGENCY INTERLOCUTORY ORDER TO SEAL  
RESPONDENTS' PLEADINGS/EXHIBITS AND FOR SANCTIONS**

On February 7, 2018, Complainant STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO) filed COMPLAINANT SHOPO'S MOTION FOR EMERGENCY INTERLOCUTORY ORDER TO SEAL RESPONDENTS' PLEADINGS/EXHIBITS AND FOR SANCTIONS and accompanying declaration and exhibits (Motion for Interlocutory Order). SHOPO asserts that Respondents AMANDA FURMAN and CITY AND COUNTY OF HONOLULU (Respondents) publicly filed on February 5, 2018, a motion for summary judgment, exhibit list, and exhibits which contain confidential and privacy protected information, including full and unredacted transcripts and correspondences from an ongoing Step IV arbitration proceeding regarding the termination of a SHOPO member, and that the confidential information contained in the documents are also subject to a "gag order" issued by the arbitrator in the underlying case. SHOPO asserts that the confidential records that were publicly filed by Respondents are unprotected, and requests that the Board grant an interlocutory order to seal

Respondents’ “pleadings and exhibits that were publicly filed with the [Board] on 2/5/18 and which contain private and confidential information.” SHOPO further requests that the Board issue sanctions against Respondents, including the reimbursement of attorney’s fees and costs incurred because of Respondents’ conduct and to compensate SHOPO for unnecessary and wasteful expenses it was forced to incur, and any other sanctions or damages the Board deems appropriate.

In Oahu Publications, Inc. v. Takase, 139 Hawaii 236, 386 P.3d 873 (2016), the Hawaii Supreme Court recognized that “sealing of records may be necessary prior to a judicial determination of their accessibility”; and thus, if a court receives a motion to seal, it should promptly seal those portions of the filing contended to be in violation of the courts’ records rules. Based upon the principles articulated in Takase and the assertions made by SHOPO in its Motion for Interlocutory Order, the Board makes the following order:

THE BOARD HEREBY GRANTS IN PART SHOPO’S MOTION FOR INTERLOCUTORY ORDER, in that **the documents filed by Respondents on February 5, 2018, shall be immediately “sealed” by the Board such that there is no public access to the documents on the Board’s electronic filing system** or public access to any copy of the documents that may be in the Board’s possession. The Board reserves further ruling on SHOPO’s Motion for Interlocutory Order pending hearing on the motion.

NOTICE OF HEARING ON COMPLAINANT SHOPO’S MOTION  
FOR EMERGENCY INTERLOCUTORY ORDER TO SEAL  
RESPONDENTS’ PLEADINGS/ EXHIBITS AND FOR SANCTIONS

In Takase, the Hawaii Supreme Court also recognized that “the sealing should be narrowly tailored so that those portions of the filing containing non-personal information remain in the public record”; that any sealing be no broader than reasonably necessary to protect the information; and that if the record does not include a redacted version of the filing, the party that filed the document containing personal information should expeditiously file with the court a redacted version of the documents. Accordingly,

NOTICE IS HEREBY GIVEN that the Board will hear arguments on SHOPO’s Motion for Interlocutory Order on **February 15, 2018, at 9:00 a.m.**, to be held in the Board’s hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. The arguments shall be on the merits of the motion, and shall include the scope of confidential or personal information

that requires protection from public disclosure; the narrow tailoring of methods to protect the information, such as sealing or redaction of documents; and the imposition of sanctions.

NOTICE IS HEREBY GIVEN that any party or member of the public **may file an objection to the sealing of the documents by the close of business on February 14, 2018.**

NOTICE OF HEARING ON PENDING MOTIONS

NOTICE IS HEREBY GIVEN that the Board, pursuant to HRS § 89-5(i)(4) and (5), and HAR § 12-42-8(g)(3)(C)(iv), will hear oral arguments on the following pending motions:

- (1) Complainant SHOPO's Motion for Attorney's Fees and Costs, filed on December 22, 2017;
- (2) Motion to Dismiss Deputy Corporation Counsel Amanda Furman from the First Amended Complaint, filed on December 26, 2017;
- (3) Motion to Dismiss Deputy Corporation Counsel Amanda Furman from the First Amended Complaint Filed on January 5, 2018, filed on January 8, 2018;
- (4) Complainant SHOPO's Motion to Strike Respondents' Reply Memorandum in Support of Motion to Dismiss Deputy Corporation Counsel Amanda Furman from the First Amended Complaint, filed on January 24, 2018;
- (5) Complainant SHOPO's Motion for Attorney's Fees and Costs, filed on January 25, 2018;
- (6) Complainant SHOPO's Motion for Summary Judgment, filed on January 5, 2018; and
- (7) Respondents' Motion for Summary Judgment, filed on February 5, 2018.

NOTICE OF PREHEARING CONFERENCE

NOTICE IS HEREBY GIVEN that pursuant to Hawaii Revised Statutes (HRS) § 89-5(i)(4) and (5), and Hawaii Administrative Rules (HAR) § 12-42-47, the Board will hold a prehearing conference in its hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, on **February 15, 2018, at 9:00 a.m.**, or soon thereafter following arguments on SHOPO's Motion for Interlocutory Order and pending motions as stated above. The parties shall be prepared to

discuss, among other things, the exhibits filed in this matter or anticipated to be introduced at hearing, including any exhibits that may raise confidentiality issues. The Parties shall be prepared to further discuss any document that has been filed under seal in this matter, the scope of confidential or personal information contained in such document that requires protection from public disclosure, and the narrow tailoring of methods to protect that information, such as sealing or redaction of documents. The parties shall be prepared to discuss, raise, and present their position regarding the presentation of the anticipated evidence (witnesses, exhibits) to be introduced at the hearing on the merits, and any stipulations, evidentiary issues, or objections thereto.

DATED: Honolulu, Hawaii, February 7, 2018.

HAWAII LABOR RELATIONS BOARD



*Marcus R. Oshiro*

MARCUS R. OSHIRO, Chair

*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO, Member

*J.N. Musto*

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