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Case No. 18-CE-12-916

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

STATE OF HAWAII ORGANIZATION
OF POLICE OFFICERS,

Complainant,

and

SUSAN BALLARD, Chief of Police,
Honolulu Police Department, City and County
of Honolulu; and CITY AND COUNTY OF
HONOLULU,

Respondents.

CASE NO. 18-CE-12-916

ORDER NO.: 3375

ORDER EXTENDING TEMPORARY
RESTRAINING ORDER ENJOINING
RESPONDENTS' RELEASE OF
CONFIDENTIAL RECORDS AND
INFORMATION

**ORDER EXTENDING TEMPORARY RESTRAINING ORDER ENJOINING
RESPONDENTS' RELEASE OF CONFIDENTIAL RECORDS AND INFORMATION**

On May 22, 2018, Complainant STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO) (Complainant or SHOPO) filed a prohibited practice complaint (Complaint) with the Hawaii Labor Relations Board (Board) against Respondents SUSAN BALLARD, Chief of Police, Honolulu Police Department, City and County of Honolulu (Respondent or Chief Ballard); and CITY AND COUNTY OF HONOLULU (Respondent or City and collectively Respondents) for alleged violations of Hawaii Revised Statutes (HRS) § 89-13(a)(1)-(5), (7), and (8) arising out of an incident involving the potential release of confidential information.

On May 23, 2018, SHOPO filed Complainant SHOPO'S Motion for Emergency Temporary Interlocutory Order to Enjoin Respondent's Release of Confidential Records and Information (Motion for Interlocutory Relief).

On May 23, 2018, the Board issued a Notice of Hearing on SHOPO's Motion for Interlocutory Relief notifying the Complainant and Respondents that the Board would hold a hearing on the Motion on May 24, 2018.

On May 24, 2018, the Board held that hearing on the Motion for Interlocutory Relief, and all parties were represented by counsel. After hearing the arguments of the parties and considering the record, the Board rendered an oral order, which included a temporary restraining order before concluding the hearing. Finding immediate and irreparable harm, the Board temporarily restrained Respondents from releasing the Arbitrator's decision and investigative reports referenced at the hearing and any information referenced in a May 23, 2018 video message sent to Honolulu Police Department (HPD) personnel by Chief Ballard until a second hearing on the Motion for Interlocutory Relief on June 4, 2018 at 1:00 p.m. The Board further ordered the parties to submit a copy of the bargaining unit 12 collective bargaining unit agreement (CBA) and briefs by May 31, 2018 addressing the issue of whether the Board should or should not grant the injunctive relief requested. The Board further clarified that Complainant should seek any injunctive relief on any claims involving HRS Chapter 92F or the Constitution of the State of Hawaii in the circuit court or other court of competent jurisdiction.

On May 24, 2018, the Board confirmed in writing the Temporary Restraining Order (TRO), which restrained Respondents "from releasing the written decision of the Arbitrator and any other information referred to in a May 23, 2018 video message sent to personnel in the Honolulu Police Department by Chief Ballard", which "shall remain in effect until a second hearing on the Motion for Temporary Interlocutory Relief is held on Monday, June 4, 2018 at 1:00 p.m."

On May 24, 2018, the Board issued a Notice of Second Hearing on Complainant SHOPO's Motion for Emergency Temporary Interlocutory Order to Enjoin Respondents' Release of Confidential Records and Information scheduling the second hearing on the Motion for Interlocutory Relief on June 4, 2018 at 1:00 p.m.

On May 31, 2018, Complainant filed Complainant SHOPO's Memorandum in Support of Motion for Emergency Temporary Interlocutory Order to Enjoin Respondents' Release of Confidential Records and Information (SHOPO Memorandum). Attached to the Memorandum was a Complaint for Declaratory Judgment and Injunctive Relief filed with the First Circuit Court, State of Hawaii in Civil No. 18-1-0823-05 on May 24, 2018.

On May 31, 2018, Respondents filed Respondents' Memorandum in Opposition to Complainant's Motion for Temporary Interlocutory Relief.

On June 4, 2018, the Board held the second hearing on the Motion for Interlocutory Relief. At the hearing, the Respondents agreed to extend the TRO until a final decision was rendered in the pending Civil Case No. 18-1-0823-05, including any appeals. Accordingly, the Board rendered an oral order, which would be reduced to writing, that pursuant to Hawaii Rules

of Civil Procedure (HRCP) Rule 65 and the agreement of the Respondents, the TRO is extended until the final decision in Civil No. 18-1-0823-05 is reached, including any appeals.

HRCP Rule 65(b) provides:

(b) Temporary restraining order; notice; hearing; duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained a temporary restraining order shall proceed with the application for a preliminary injunction and, if that party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(Emphasis added)

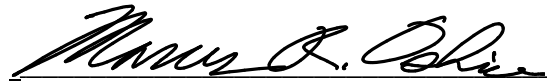
ORDER

Based on HRCP Rule 65(b) and the Respondents' consent to the extension, the TRO is, accordingly, extended until Civil No. 18-1-0823-05 is finally decided, including exhaustion of the appeal process. The Board further orders that all deadlines be suspended and all scheduled hearing dates be taken off the calendar until further notice by the Board.

SHOPO v. SUSAN BALLARD, et al.
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DATED: Honolulu, Hawaii, July 9, 2018.

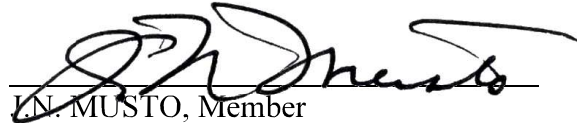
HAWAII LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair



SESNITA A.D. MOEPONO, Member



J.N. MUSTO, Member

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