

STATE OF HAWAI‘I
HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

LENORA L. ASATO; JENNIFER E.
HALASZYN; JEFF IBARA; YOSHIAKI
IINUMA; CHARLES LUK; JOY
MAGARIFUJI; SIRI AILEEN WILSON;
and GANG YUAN,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO, and UNIVERSITY OF
HAWAI‘I,

Respondents.

CASE NO. 18-CU-08-365a-h
 18-CE-08-921a-h

ORDER NO. 3469A

AMENDED MINUTE ORDER
DENYING RESPONDENT
UNIVERSITY OF HAWAI‘I’S MOTION
TO ADMIT INTO THE RECORD
SEALED EXHIBIT UH-U

AMENDED MINUTE ORDER DENYING RESPONDENT UNIVERSITY OF
HAWAI‘I’S MOTION TO ADMIT INTO THE RECORD SEALED EXHIBIT UH-U

On February 28, 2019, the Hawai‘i Labor Relations Board (Board) issued Board Order No. 3469 (Order No. 3469), Minute Order Denying Respondent University of Hawai‘i’s Motion to Admit into the Record Sealed Exhibit UH-U. It was brought to the Board’s attention that the Order No. 3469 contained an inadvertent typographical error. Therefore, the Board issues this Amended Minute Order Denying Respondent University of Hawai‘i’s Motion to Admit into the Record Sealed Exhibit UH-U as follows:

On September 14, 2018, Complainants LENORA L. ASATO; JENNIFER E. HALASZYN; JEFF IBARA; YOSHIAKI IINUMA; CHARLES LUK; JOY MAGARIFUJI; SIRI AILEEN WILSON; and GANG YUAN (each individually a Complainant and collectively, Complainants) filed a Prohibited Practice Complaint (Complaint) against Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA)

with the Hawai'i Labor Relations Board (Board). The Complaint, among other things, alleges violations of Hawai'i Revised Statutes (HRS) §§ 89-13(b)(1) and 89-6(f)(5).

On September 18, 2018, the Board issued Board Order No. 3395, Pretrial Order and Notices (Order No. 3395) which included the following language:

Before a party files or submits any pleading, correspondence or other document (Documents) to the Board, whether electronically or manually, the party shall make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" shall include social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest...

(Emphasis added).

On October 17, 2018, each Complainant filed a First Amended Prohibited Practice Complaint (collectively First Amended Complaints). The First Amended Complaints, among other things, added the UNIVERSITY OF HAWAI'I (UH) as a Respondent and alleged additional violations of HRS Chapter 89.

On October 19, 2018, the Board issued Board Orders No. 3401, 3402, 3403, 3404, 3405, 3406, 3407, and 3408 (collectively, Orders No. 3401-3408) which included the same language as Order No. 3395 regarding "Personal information."

The Board began the Hearing on the Merits in the instant case on November 27, 2018.

On November 28, 2018, Complainant Jennifer E. Halaszyn (Halaszyn) objected to the admission of UH's Exhibit UH-U (Exhibit UH-U) into the record, stating that it contained irrelevant, private, and confidential medical information. Halaszyn requested that UH withdraw Exhibit UH-U and resubmit the exhibit redacting the confidential medical information. UH objected to Halaszyn's request, arguing, among other things that Exhibit UH-U is not a confidential medical record. Kendra Kawai, Esq. also stated that she had read the Board's pretrial orders (namely Order No. 3395 and Orders No. 3401-3408), including the language regarding redaction of personal information.

The Board considered the objection and sustained Halaszyn's objection, ruling that Exhibit UH-U contained unredacted "personal information", as defined in the above-mentioned Board Orders in this case.

On February 15, 2019, UH filed Respondent University of Hawai'i's Motion to Admit into the Record Sealed Exhibit UH-U (Motion to Admit) arguing, among other things, that Halaszyn has no expectation of privacy because Exhibit UH-U is "admissible and relevant"; that the Hawai'i

Constitution's privacy provision prohibits disclosure of medical conditions outside the underlying litigation; and that the Uniform Information Practices Act (UIPA) does not apply to the admissibility of evidence at a Board hearing. On February 19, 2019, HGEA filed HGEA/AFSCME's Statement of No Objection to Respondent University of Hawaii's Motion to Admit into the Record Sealed Exhibit UH-U.

On February 25, 2019, Complainants filed Complainant's Response to Respondent University of Hawaii's Motion to Admit [] into the Record Sealed Exhibit UH-U (Complainant's Response), which among other things, disputed UH's argument that Halaszyn has waived the right to privacy regarding her resignation letter because she copied individuals at UH and external entities and the Hawai'i Civil Rights Commission and the U.S. Equal Opportunity Commission and made a claim placing the document or information at issue.

Based upon the pleadings and record in this case, the Board denies the Motion to Admit. The findings of fact and conclusions of law related to this denial will be included in the Board's final decision in this case.

DATED: Honolulu, Hawai'i, _____ March 1, 2019 _____.

HAWAII LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair



SESNITA A.D. MOEPONO, Member



J.N. MUSTO, Member



Copies sent to:

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Peter Liholiho Trask, Esq.

Robert S. Katz, Esq.

Kendra K. Kawai, Esq.

Jennifer L. Gitter, Esq.