

HAWAI'I REVISED STATUTES CHAPTERS



The Hawai'i Labor Relations Board has original jurisdiction over complaints filed under HRS Chapters 89 (Public Sector Collective Bargaining), 377 (Private Sector Collective Bargaining Not Covered by the NLRA).

The Board also hears appeals from HIOSH Citations and Notifications of Penalty (HRS Chapter 396).

A BRIEF TIMELINE OF HLRB

- 1945 Hawai'i Employment Relations Act (HRS Chapter 377) enacted, creating the Hawai'i Employment Relations Board (HERB)
- 1968 Hawai'i Constitutional Convention adds collective bargaining rights for public employees
- 1970 HRS Chapter 89 enacted, creating the Hawai'i Public Employment Relations Board (HPERB)
- 1985 HERB abolished, duties transferred to HPERB, and HPERB is renamed the Hawai'i Labor Relations Board.
- 2002 HLRB authorized to conduct *de novo* hearings to review appeals from HIOSH citations.

ALL HLRB
PROCEEDINGS ARE
OPEN TO THE PUBLIC



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Hawai'i Labor Relations Board

HRS Chapters
89, 377, and 396



AIA HELE KĀKOU
TRUST & ADHERE

HRS CHAPTER 396

HIOSH APPEALS

WHAT IS AN APPEAL FROM A HIOSH CITATION?

There are typically two types of HIOSH cases that come before HLRB, namely appeals from citations of HIOSH violations and appeals from findings of violations of HRS § 396-8(e), discharge or discrimination against employees for exercising any right under HRS Chapter 396.

WHAT TYPES OF HEARINGS ARE HELD?

HLRB is authorized to hold *de novo* hearings, or hearings that review the evidence from the beginning. This means that evidence obtained in the investigation and contained in the investigative file, as well as any additional documents or evidence submitted by the parties, will be considered by HLRB.

De novo hearings take the form of a trial, where each party will present its case through witnesses and exhibits.

ONE THING FROM THE COURTS:

[HIOSH's] decision carries a presumption of validity and the party seeking to reverse the agency's decision has the burden of making a convincing showing that the decision is invalid.

[Dir. Dept. of Labor and Indus. Relations v. Kiewit Pacific Co.](#), 104 Hawai'i 22, 27, 84 P.3d 530, 535 (App. 2004)

HRS CHAPTER 89

PUBLIC SECTOR COLLECTIVE BARGAINING

WHAT CASES ARE HEARD?

HLRB hears multiple types of HRS Chapter 89 cases. However, the majority of the HLRB's HRS Chapter 89 cases are "prohibited practice complaints", where a complainant alleges a public employer, a public union, a public employee, or some combination, committed a prohibited practice. Complainants include employers, unions, and individual employees.

WHAT IS A "PROHIBITED PRACTICE"?

HRS § 89-13 defines prohibited practices that can be raised. Prohibited practice complaints may be filed within 90 days of when the complainant knew or should have known about the prohibited practice. The Board must begin the hearing on the merits no more than 40 days from the filing of the complaint, unless the parties waive this requirement.

ONE THING FROM THE COURTS:

For an employee to succeed on a claim that the employer violated the collective bargaining agreement, the employee must demonstrate both that the employer's actions were contrary to the relevant collective bargaining agreement and also that the union's conduct toward the member is arbitrary, discriminatory, or in bad faith.

[Poe v. Hawaii Labor Relations Board](#), 105 Hawai'i 97, 101-102, 94 P.3d 652, 656-57 (2004)

HRS CHAPTER 377

PRIVATE SECTOR COLLECTIVE BARGAINING

WHO IS COVERED UNDER HRS CHAPTER 377?

The types of employees covered by HRS Chapter 377 are better defined by what they are not. HRS Chapter 377 covers collective bargaining in the private sector (*not* the public sector), but it does not cover those who are subject to the National Labor Relations Act.

WHAT IS AN "UNFAIR LABOR PRACTICE"?

HRS §§ 377-6, 7, and 8 define unfair labor practices (ULPs) that may be committed by employers, employees, or any other person. ULP complaints may be filed within 90 days of when the complainant knew or should have known about the ULP. The Board must begin the hearing on the merits no more than 40 days from the filing of the complaint, unless the parties waive this requirement.

ONE THING FROM THE COURTS:

To determine if an employer has met its statutory duty to bargain in good faith, HLRB must look to the "totality of the employer's conduct" to determine if the employer has a present intention to find a basis for agreement and has made a sincere effort to reach a common ground.

[Del Monte Fresh Produce Haw. v. Int'l Longshore & Warehouse Union, Local 142](#), 128 Hawai'i 289, 306, 287 P.3d 190, 207 (2012)