

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

BRAN N. KEOPUHIWA,

Complainant,

and

HAWAI'I FIRE DEPARTMENT, County of  
Hawai'i; and HAWAI'I FIRE FIGHTERS  
ASSOCIATION, INC.,

Respondents.

CASE NOS. 19-CE-11-930

19-CU-11-373

ORDER NO. 3569

ORDER GRANTING COMPLAINANT  
BRAN KEOPUHIWA'S SECOND MOTION  
TO AMEND COMPLAINT

ORDER GRANTING COMPLAINANT

BRAN KEOPUHIWA'S SECOND MOTION TO AMEND COMPLAINT

On June 19, 2019, Complainant BRAN KEOPUHIWA (Complainant), *a self-represented litigant* and a public employee, filed his prohibited practice complaint (Complaint) with the Hawai'i Labor Relations Board (Board) alleging, *inter alia*, that Respondent HAWAI'I COUNTY FIRE DEPARTMENT, County of Hawai'i (County) and Respondent HAWAI'I FIRE FIGHTERS ASSOCIATION (HFFA) (collectively, Respondents) violated Hawai'i Revised Statutes (HRS) §89-13(b)(5) – Violate the terms of a collective bargaining agreement. The Complaint states on April 25, 2019, the HFFA notified Complainant that they submitted their intent to the County to arbitrate a grievance that Complainant filed previously. The Complaint also alleges since April 25, 2019, both the public employer and public union have not abided by the terms of the collective bargaining agreement. The Complaint further claims that this action prevents Complainant from either having his grievance arbitrated or exhausting his grievance, a prerequisite to the filing of a prohibited practice complaint with the Board.

On June 24, 2019, the County filed Respondent Hawai'i Fire Department, County of Hawai'i's Motion to Dismiss Complaint, or in the alternative, for Summary Judgment (MTD/MSJ).

On June 27, 2019, HFFA filed HFFA/IFFA's Motion to Dismiss in Lieu of Answer to Prohibited Practice Complaint filed on June 19, 2019. On July 8, 2019, the County filed its joinder

to HFFA's Motion to Dismiss in Lieu of Answer. On July 9, 2019, HFFA filed its joinder to the County's MTD/MSJ.

On July 16, 2019, the Board held a hearing on the dispositive motions filed by Respondents. Respondents were represented in person by their respective counsel. Complainant appeared representing himself via telephone. After hearing oral arguments, the Board took the motions under advisement. Complainant also orally raised a motion to amend his complaint to add HRS § 89-13(a)(5). The Board granted Complainant's motion and set August 2, 2019 to file his amended complaint and canceled all hearing dates and deadlines.

On August 1, 2019, Complainant filed his first amended prohibited practice complaint, pursuant to Hawai'i Administrative Rules (HAR) § 12-42-43. This first amended complaint replaces the original complaint. The first amended complaint alleges violations of HRS §§ 89-13(a)(8) and 89-13(b)(5) and reiterates that the HFFA and the County are violating the collective bargaining agreement by not proceeding with the grievance process to arbitration or denying complainant's request for arbitration to enable him to satisfy the exhaustion requirement for filing a complaint with the Board. The difference between the original complaint and the first amended complaint is the additional violation of HRS § 89-13(a)(8).

On August 5, 2019, HFFA filed HFFA/IFFA's Answer to Amended Prohibited Practice Complaint.

On August 13, 2019, the County filed Respondent County of Hawai'i's Motion to Dismiss Complaint filed August 1, 2019, or in the Alternative, for Summary Judgment (County's MTD/MSJ on Complaint filed August 1, 2019) pursuant to HAR §§ 12-42-8(g)(3)(B) and (C), Hawai'i Rules of Civil Procedure (HRCPP) §§ 12(b)(6) and 56 based, *inter alia*, on jurisdiction and no genuine issues of material fact in dispute.

On August 14, 2019, HFFA filed HFFA/IFFA's Motion to Dismiss First Amended Prohibited Practice Complaint Filed on August 1, 2019 pursuant to HRCPP § 12(b)(6) for failure to state a claim upon which relief may be granted and HAR § 12-42-8(g)(3)(C). On the same day, HFD filed Respondent County of Hawaii's Joinder in HFFA/IFFA'S Motion to Dismiss First Amended Complaint.

On September 26, 2019, Complainant filed COMPLAINANT'S BRAN KEOPUHIWA'S SECOND MOTION TO AMEND COMPLAINT pursuant to Hawai'i Administrative Rule (HAR) § 12-42-43 that states:

Any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order.

Complainant's Second Motion to Amend Complaint alleges violations of HRS §§ 89-13(a) (1), (4), (7), (8) and 89-13(b) (1), (4), (5). The difference between the first amended complaint and the proposed second amended complaint is the addition of alleged violations of HRS §§ 89-13(a) (1), (4), (7) and 89-13(b) (1), (4).

On September 30, 2019, HFFA/IFFA'S Memorandum in Opposition to Complainant's Motion for Leave to File a Second Amended Prohibited Practice Complaint filed on September 26, 2019 was filed with the Board.

On October 1, 2019, Respondent County filed with the Board Respondent County of Hawai'i's Joinder in HFFA/IFFA's Memorandum in Opposition to Complainant's Motion for Leave to file Second Amended Prohibited Practice Complaint filed on September 26, 2019.

### ORDER

Pursuant to HAR § 12-42-43, the BOARD HEREBY GRANTS COMPLAINANT BRAN KEOPUHIWA'S SECOND MOTION TO AMEND COMPLAINT and cancel/removes from the calendar all previously scheduled deadlines and hearings set out in Order No. 3548.

Further, the BOARD DENIES THE FOLLOWING MOTIONS AS MOOT:


- 1) Respondent Hawai'i Fire Department, County of Hawai'i's Motion to Dismiss Complaint, or in the alternative, for Summary Judgment (filed with the Board on June 24, 2019);
- 2) HFFA/IFFA's Motion to Dismiss in Lieu of Answer to Prohibited Practice Complaint filed on June 19, 2019 (filed with the Board on June 27, 2019);
- 3) Respondent Hawai'i Fire Department, County of Hawai'i's Joinder in HFFA/IFFA's Motion to Dismiss in Lieu of Answer to Prohibited Practice Complaint filed on June 19, 2019 (filed with the Board on July 8, 2019);
- 4) HFFA/IFFA'S Statement of No Objection to and Joinder in Respondent Hawaii Fire Department, County of Hawaii's Motion to Dismiss Complaint or in the Alternative, for Summary Judgment (filed with the Board on July 9, 2019);
- 5) Respondent County of Hawai'i's Motion to Dismiss Complaint Filed on August 1, 2019, or in the alternative, for Summary Judgment (filed with the Board on August 13, 2019);
- 6) HFFA/IFFAS' Motion to Dismiss First Amended Prohibited Practice Complaint filed on August 1, 2019 (filed with the Board on August 14, 2019); and

7) Respondent County of Hawai'i's Joinder in HFFA/IFFA'S Motion to Dismiss First Amended Prohibited Practice Complaint filed on August 1, 2019 (filed with the Board on August 14, 2019).

Complainant is instructed to file his Second Amended Complaint by October 25, 2019 which will replace the first amended complaint. A new Pretrial Order will be issued upon the filing of the second amended complaint.

DATED: Honolulu, Hawai'i, October 17, 2019.

HAWAI'I LABOR RELATIONS BOARD



*Mary R. Oshiro*  
MARGARET R. OSHIRO, Chair

*Janita A. D. Moepono*  
JANITA A.D. MOEPONO, Member

*John N. Musto*  
JOHN N. MUSTO, Member

The seal of the Hawai'i Labor Relations Board is circular with a blue and white color scheme. It features a central scale of justice and a torch. The text around the seal reads "HAWAI'I LABOR RELATIONS BOARD" and "EST. 1970". A banner at the bottom of the seal contains the Hawaiian phrase "AIA HELE KAKOU".

Copies sent to:

Bran N. Keopuhiwa, Self-Represented Litigant  
John Mukai, Deputy Corporation Counsel  
Peter Liholiho Trask, Esq.