

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

DAVIS T. PILI,

Complainant,

and

DEPARTMENT OF PUBLIC SAFETY,
State of Hawai'i, and NOLAN P.
ESPINDA, Director, Department of Public
Safety, State of Hawai'i,

Respondents.

CASE NO(S). 20-CE-10-938

ORDER NO. 3581

PRETRIAL ORDER AND NOTICES;

- (1) NOTICE TO RESPONDENT(S) OF PROHIBITED PRACTICE COMPLAINT;
- (2) NOTICE OF FILING REQUIREMENTS;
- (3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS;
- (4) NOTICE OF PREHEARING CONFERENCE;
- (5) NOTICE OF PRETRIAL CONFERENCE;
- (6) NOTICE OF HEARING ON THE MERITS; AND
- (7) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

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PRETRIAL ORDER AND NOTICES

THE PARTIES ARE HEREBY NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document shall control the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

(1) NOTICE TO RESPONDENT(S) OF A PROHIBITED PRACTICE COMPLAINT

The attached prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **January 14, 2020.**

PURSUANT TO HAWAI'I REVISED STATUTES (HRS) § 377-9(b) AND HAWAI'I ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

YOU ARE DIRECTED to file a written answer to the Complaint within ten (10) days after service of the Complaint. One copy of the answer shall be served on each party, and the original with certificate of service on all parties shall be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, such failure shall constitute an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

(2) NOTICE OF FILING REQUIREMENTS

1) Electronic Filing:

The Board provides to all parties and encourages the use of an electronic filing service through File & ServeXpress. There is no charge to the parties for use of this electronic filing service.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrp/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

2) Filing in Person or by Mail

A party may mail or file in person an original of any document at the Board's office at 830 Punchbowl Street, Room 434, Honolulu, Hawai'i, 96813. The Board's office is open on the weekdays (excluding state holidays) between 7:45 a.m. to 4:30 p.m.; the office may occasionally be closed from 12:00 p.m. to 1:00 p.m. The date of receipt by the Board shall be deemed the date of filing.

3) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information

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. To the extent any personal information is relevant to the Board's consideration of this case, the submitting party shall submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party shall by motion request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, pursuant to HAR § 12-42-8(g)(11), "The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document."

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

(3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS

All parties have the right to appear in person and to be represented by counsel or any other authorized person in all Board proceedings. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The parties should be aware that the Board is in a secured State of Hawai‘i building and that any party, representative, counsel, or other person attending a proceeding will need to present a government-issued identification for entry.

(4) NOTICE OF PREHEARING CONFERENCE

PURSUANT TO HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

NOTICE IS HEREBY GIVEN that the Board will conduct a Prehearing Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: January 24, 2020 at 10:00 a.m.

LOCATION: Hawai‘i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai‘i 96813

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; to identify witnesses and file applications for the issuance of subpoenas; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing Conference in person or telephonically and to be represented by counsel or any other authorized person. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

(5) NOTICE OF PRETRIAL CONFERENCE

PURSUANT TO HRS §§ 89-5(i)(4) and (i)(5), and 377-9:

NOTICE IS HEREBY GIVEN that the Board will conduct a Pretrial Conference on the date listed below and in the Schedule in this document.

DATE AND TIME: February 11, 2020 at 10:00 a.m.

LOCATION: Hawai‘i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai‘i 96813

1) Pretrial Statement

Both the Complainant(s) and the Respondent(s) shall file a Pretrial Statement with the Board as listed in the Schedule set forth below. The Pretrial Statement shall include the following:

1. Statement of Issues
2. Witness List

The witness lists shall include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability. The summary for each witness shall include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1).

If a party intends to file a request for a subpoena for a witness, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the witness list.

3. Exhibit List

The exhibit lists shall include copies of the proposed exhibits. The parties are encouraged to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day. The exhibits shall be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes, with each exhibit bookmarked. Alternatively, a party may file exhibits in person or by mail to the Board; the date of receipt by the Board shall be deemed the date of filing.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the exhibit list.

The Complainant shall identify its exhibits using alphabetical letters (A, B, C, D, etc.). Union Respondent(s) shall identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.). Employer Respondent(s) shall identify its exhibits using numerical designations preceded by E (e.g., E-1, E-2, E-3, etc.). In the event that there are multiple Union Respondents or Employer Respondents in a particular case, the Board shall specify the designation for each Respondent.

If there are any duplicative exhibits, the parties shall designate them as Joint Exhibits, the parties shall designate one party to file these exhibits, and the Exhibits shall be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

All Exhibits are to be bates-stamped in the upper right-hand corner.

Additionally, the Exclusive Representative, unless no Exclusive Representative is party to the case, in which case the Employer, must submit to the Board the full applicable collective bargaining agreement(s), including any Memoranda of Understanding, Memoranda of Agreement, or any other supplemental agreement that has any bearing on these proceedings. These documents shall be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc. and **shall be bates-stamped in the upper-right hand corner.**

2) Pretrial Conference

At the pretrial conference, 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 (HOM), including but not limited to any stipulations, evidentiary issues, objections, or confidentiality issues that require protection from public disclosure and the narrow tailoring of methods to protect that information (e.g. sealing or redaction).

While all parties have the right to appear at the Pretrial Conference in person or telephonically and to be represented by counsel or any other authorized person, **all parties are required to either appear in person or have a representative appear in person.** Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(6) NOTICE OF THE HEARING ON THE MERITS

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49 that the Board will conduct an HOM on the instant Complaint at the place, time and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: February 19, 2020 at 9:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai'i 96813

All parties have the right to appear at the Hearing on the Merits in person and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear in person at the hearing on the merits.**

Each party shall bring to the HOM a binder containing all their individual exhibits, tabbed and bates stamped, for use by the witnesses. The filing party for all joint exhibits shall bring to the HOM a binder containing all joint exhibits, tabbed and bates stamped, for use by the witnesses.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(7) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Prehearing Conference</u>	1/24/2020	10:00 a.m.
<u>Dispositive Motion Deadline</u>	1/31/2020	
<u>Response to Dispositive Motion Deadline</u>	2/7/2020	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	2/5/2020	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	2/11/2020	10:00 a.m.
<u>Hearing on the Merits</u>	2/19/2020	9:00 a.m.

All submissions shall be filed on or before 4:30 p.m. on the deadline date.


DATED: Honolulu, Hawai'i, January 15, 2020.



HAWAII LABOR RELATIONS BOARD


MARCUS R. OSHIRO, Chair


SESNITA A.D. MOEPONO, Member


J.N. MUSTO, Member

Enclosure: PROHIBITED PRACTICE COMPLAINT

Copies sent to:

Sina P. Pili, Representative

James E. Halvorson, Deputy Attorney General

DAVIS T. PILI v. DPS and NOLAN P. ESPINDA
CASE NO(S). 20-CE-10-938
PRETRIAL ORDER AND NOTICES
ORDER NO. 3581



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Transaction ID 64616461
Case No. 19-CE-10-938

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

FORM HLRB-4
PROHIBITED PRACTICE COMPLAINT

INSTRUCTIONS. Submit the original¹ of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.
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2. COMPLAINANT Please select one that describes the Complainant:

☒ Public Employee ☐ Public Employer ☐ Public Union (public employee organization)

- a. Name, address and telephone number.

Davis T. Pili
55-615 Naniloa Loop
Laie, HI 96862
(808)763-8637

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- b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Sina P. Pili
55-615 Naniloa Loop
Laie, HI 96762
(808)763-8638
pili.sina.p@gmail.com

¹ Notwithstanding Board rule 12-42-42(b), the Board only requires the original of the complaint.

3. RESPONDENT Please select one that describes the Respondent:

☐ Public Employee ☒ Public Employer ☐ Public Union (public employee organization)

a. Name, address and telephone number.

Hawaii Dept. of Public Safety
Nolan P. Espinda
919 Ala Moana Boulevard, 4th Floor
Honolulu, HI 96814
(808)587-1288

b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Hawaii Dept. of Public Safety
Penny Young
919 Ala Moana Boulevard, 4th Floor
Honolulu, HI 96814
(808)587-1288

4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

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5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

HRS 89-13 Prohibited practices; evidence of bad faith has been violated

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (3) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;
- (4) Refuse or fail to comply with any provision of this chapter;
- (5) Violate the terms of a collective bargaining agreement;

6. Provide a clear and concise statement of any other relevant facts.

In Nov. 2017 complainant was first discharged from PSD for violation of the Memorandum of Understanding (MOU) Attendance Program as indicated in that first discharge investigation and signed by the director of Public Safety Nolan Espinda. Complainant did not know there was an attendance program that would result in termination for LWOP. He had been working for PSD since Sept. 2010 and had always been in compliance with work expectations. In 2017, complainant had adopted 3 children from the Hawaii foster care system and became ill which resulted in absences of LWOP. Upon termination, complainant requested via his union evidence of the MOU he had signed as the discharge investigation indicated complainant had signed an MOU. PSD did not provide the union with a copy of the signed MOU and per complainants union rep at that time Loyna Kamakeeaina, PSD verified they did not have an MOU signed by complainant. Complainant did not know about the attendance program all that it had entailed but complainant was discharged from work for 6 months LWOP between Nov. 2017 and May 2018 and penalized for an unknown policy he was never orientated about, signed and held to without knowledge.

In April 2018 complainant was offered to return to PSD on a Last Chance Agreement. It was unfair to place complainant on a Last Chance Agreement when he had never been given the same opportunity as other employees who were orientated about the attendance program and sign a first MOU. Complainant was told by the union rep that was the only option he had to return to work. Complainant returned to work penalized for 6 months without pay due to a false investigation that could not provide verification that he had signed the MOU as indicated in the discharge investigation which was signed by director Nolan Espinda. Complainant was unfairly treated as he was also penalized without proper orientation as other employees and reinstated on a Last Chance Agreement when he really did not violate any MOU as he was never informed about it or signed one as his colleagues were given the opportunity.

On Oct. 2019 complainant was discharged for violating the Last Chance Agreement. The investigation for this incident is error as it indicates complainant had no leave, but there is leave in his records as shown in the investigation. The leave shown in his record leave was utilized to cover all absences from work. Complainant pay history proves consistent pay throughout the entire year and no reduction in pay as a result of LWOP. Complainant has provided his union with copies of all of his paystubs to show his consistent pay. Complainant has requested through his union and directly to the PSD designee rep to review evidence of LWOP and til this day he has not been provided any records. Complainant has currently been out of work since Oct. 2019 as a result of this current allegation.

This is the 2nd incident the Director of Public Safety has signed that is false and error for its allegations which has placed complainant out of work. Furthermore, his union & employee rights are being violated as mentioned above.

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

DECLARATION IN LIEU OF AFFIDAVIT

(If the Complainant is self-represented, then the Complainant must sign this Declaration).

Please select one:

- ☐ the Complainant
☐ the Complainant's principle representative
☐ the person described below

I, Sina P. Pili,
do declare under penalty of law that the foregoing is true and correct.

Date: 1/13/2020

Sina P. Pili

The person signing above agrees that by signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.

pili.sina.p@gmail.com

Signor's email address

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

Your phone number: _____

Your relationship to the Complainant:

Spouse

If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then complete the Board Agreement to E-File, FORM HLRB-25. (Form HLRB-25 is on the HLRB Website at labor.hawaii.gov/hlrb/forms.) Email the completed form to the Board at dlir.laborboard@hawaii.gov.