

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

PHILIP THORP,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION,

Respondents.

CASE NO(S). 20-CU-04-380a,
20-CU-13-380b

ORDER NO. 3587

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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- (2) NOTICE OF FILING REQUIREMENTS;
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- (6) NOTICE OF HEARING ON THE MERITS; AND
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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: **February 20, 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: March 9, 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: March 19, 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: March 30, 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>	3/9/2020	10:00 a.m.
<u>Dispositive Motion Deadline</u>	3/11/2020	
<u>Response to Dispositive Motion Deadline</u>	3/17/2020	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	3/16/2020	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	3/19/2020	10:00 a.m.
<u>Hearing on the Merits</u>	3/30/2020	9:00 a.m.

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

DATED: Honolulu, Hawai'i, February 21, 2020.




HAWAI'I LABOR RELATIONS BOARD

Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member



J.N. MUSTO, Member

Enclosure: PROHIBITED PRACTICE COMPLAINT

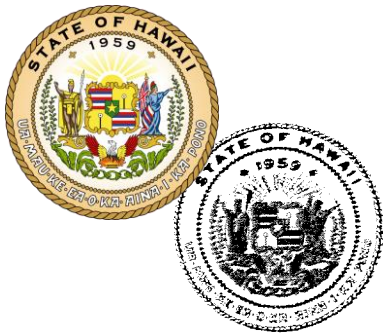
Copies sent to:

Philip Thorp, Self-Represented Litigant

Randy Perreira, HGEA

Debra A. Kagawa-Yogi, HGEA

PHILIP THORP v. HGEA
CASE NO(S). 20-CU-04-380a, 20-CU-13-380b
PRETRIAL ORDER AND NOTICES
ORDER NO. 3587



EFiled: Feb 20 2020 02:18PM HAST
Transaction ID 64747245
Case No. 20-CU-04-380a, 20-CU-18-380b
2020 FEB 20 PM 2:18

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

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.

2. COMPLAINANT Please select one that describes the Complainant:

- Public Employee Public Employer Public Union (public employee organization)

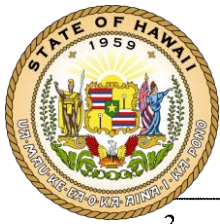
a. Name, address and telephone number.

Philip Thorp
931-A Alewa Drive
Honolulu, HI 96817
phithorp@gmail.com
(808) 927-3482

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

Same as above

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 Government Employees Association
888 Miliani Street, #401
Honolulu, HI 96813

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

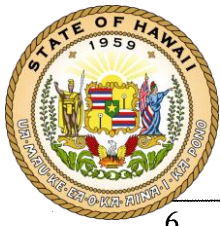
Debra A. Kagawa-Yogi
888 Miliani Street, #401
Honolulu, HI 96813
dkagawa@hgea.org
(808) 543-0003

-
4. Indicate the appropriate bargaining unit(s) of employee(s) involved.
Unit 4 & 13

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.)

1) In September 2019, the Department of Human Services (“DHS”) and the Judiciary completed my “Request for Inter-Governmental Movement”. On this form I requested “Transfer all of my vacation and sick leave credit balances” 2) On October 16, 2019 I began employment with DHS, with no break in service. I was a State civil service employee and remain a State civil service employee. Judiciary claim that I resigned, deducted 108 vacation hours and 108 sick. 3) On January 24, 2020 delivered request to HGEA to challenge Judiciary Human Resources Department to amend the G-2. 4) On February 5, 2020 received written notice from HGEA that denied request for representation of an employment related grievance.



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

Judiciary wants it both ways, transferring approximately 1,421 sick leave hours and 203 vacation hours to DHS because no break in service; deducting 108 sick and 108 vacation stating that I could not accrue sick and vacation while under Admin leave pending investigation with pay. This is not what the contract states.

1) In February 2019 I was placed on paid leave pending investigation, based on alleged retaliation.

2) In March 2019 the person whom claimed retaliation resigned from the Judiciary. She had filed complaints against 3 other Judiciary employees during her year and a half of employment.

3) ACSB Administrator, Leonard Sensui, made three requests for me to return to duty to Judiciary Administration. All requests were denied or ignored.

4) In September 2019, the Department of Human Services ("DHS") and the Judiciary completed my "Request for Inter-Governmental Movement". On this form I requested "Transfer all of my vacation and sick leave credit balances"

5) On October 16, 2019 I began employment with DHS, with no break in service. I was a State civil service employee and remain a State civil service employee. Judiciary gave no written indication of status of the investigation and/or permission to return to duty.

6) On or about December 15, 2019 I received an "Application for Transfer of Vacation and Sick leave Credit or Payment in lieu of Vacation (from G-2). Which indicated balances of 311 hours of Vacation and 1529.75 Sick leave hours, this form was submitted and returned with Judiciary requesting appropriate uniform accounting codes be filled in by myself.

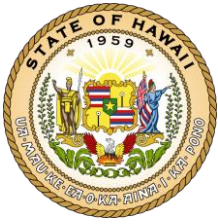
7) On or about January 13, 2020, I received an amended "Application for Transfer of Vacation and Sick leave Credit or Payment in lieu of Vacation (from G-2). Which indicated balances of 203 hours of vacation and 1421.75 Sick leave hours, an attached post-it note stated "Please fill out Sec A/B and sign new G-2 form. Vac/Sick cannot be earned during Leave w/pay under pending investigation per BU contract so amounts adjusted, Thank you". No signature was provided. The Statement is not factual. This is not what the contract states.

8) At no time did I tell my employer that I was leaving my job. I informed them that I had accepted a promotion within Hawaii State government and was transferring.

9) The "Request for Inter-Governmental Movement" clearly states "This form shall be used for all regular employees moving from one jurisdiction to another. As this form is legal authority for transferring accumulated benefits...." This was signed by Judiciary Department Head and by Judiciary Director of Human Resources.

10) To date none of my accumulated sick leave and vacation leave hours have been transferred to DHS.

Therefore, I am challenging the Judiciary Human Resources Department decision to amend the Application for Transfer of Vacation and Sick leave Credit or Payment in lieu of Vacation (from G-2).



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Transaction ID 64747245
Case No. 20-CU-04-380a, 20-CU-13-380b

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, Philip Thorp,

do declare under penalty of law that the foregoing is true and correct.

Date: February 20, 2020

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.

phithorp@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:

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/hlr/forms.) Email the completed form to the Board at dlir.laborboard@hawaii.gov.