

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

GORDON LESLIE; BERNARD KUAMOO;
GEORGE SHERIDAN; DEANGELO
DIXON; and FELICIANO SAMSON,

Complainants,

and

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO,

Respondent.

CASE NO(S). 20-CU-10-381

ORDER NO. 3599

PRETRIAL ORDER AND NOTICES

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

In the Matter of

GORDON LESLIE; BERNARD KUAMOO;
GEORGE SHERIDAN; DEANGELO
DIXON; WYATT LEE; and FELICIANO
SAMSON,

Complainants,

and

DAVID Y. IGE, Governor, State of Hawai‘i;
NOLAN P. ESPINDA, Director, Department
of Public Safety, State of Hawai‘i; SCOTT
HARRINGTON, Warden, Halawa
Correctional Facility; LYLE ANTONIO,
Deputy Warden, Halawa Correctional
Facility; CALVIN MOCK, Chief of Security,
Halawa Correctional Facility; JANE AND
JOHN DOE 1-25, State of Hawai‘i,
Department of Public Safety,

Respondents.

CASE NO(S). 20-CE-10-943

In the Matter of

GORDON LESLIE; BERNARD KUAMOO;
GEORGE SHERIDAN; DEANGELO
DIXON; WYATT LEE; and FELICIANO
SAMSON,

Complainants,

and

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO,

Respondent.

CASE NO(S). 20-CU-10-382

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 RESPONDENTS OF A PROHIBITED PRACTICE COMPLAINT

The attached prohibited practice complaints (Complaints) were filed with the Board by the above-named Complainant(s) on: **April 2, 2020, April 7, 2020, and April 7, 2020.**

The Board, *sua sponte*, consolidated the Complaints on **April 9, 2020**, in Board Order No. 3598 (attached).

PURSUANT TO HAWAI'I REVISED STATUTES (HRS) § 377-9(b) AND HAWAI'I ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed prohibited practice Complaints with the Board, copies of which are 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 Complaints within ten (10) days after service of the Complaints. 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 EXTRAORDINARY CIRCUMSTANCES

Due to the current concerns regarding COVID-19, the Governor of the State of Hawai'i (Governor) issued an Emergency Proclamation on March 5, 2020, a Supplementary Emergency Proclamation on March 16, 2020, a Second Supplemental Proclamation on March 21, 2020, a Third Supplementary Proclamation on March 23, 2020, and a Fourth Supplementary Proclamation on March 31, 2020. These proclamations, among other things, gave agencies the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at

the same location, and suspend certain rules, statutory requirements, and administrative hearing procedures as needed to deal with the emergency situation brought on by COVID-19. On March 17, 2020, the Governor further ordered all non-essential state workers to work remotely.

In the Governor's Third Supplementary Proclamation, the Governor, among other things, ordered that all persons in the state must stay at home or in their place of residence from March 25, 2020 at 12:01 a.m. through 11:59 p.m. on April 30, 2020.

On March 29, 2020, the Governor issued Executive Order No. 20-02, which, among other things, gave the Board the sole discretion to waive the requirement in HRS § 377-9 to hold a hearing on the complaint not more than 40 days after the filing of the complaint or amendment thereof.

Accordingly, the Board will hold hearings as much as possible by telephone or video conferencing and is mandating electronic filing during the emergency period, unless terminated by separate proclamation, whichever shall occur first.

(3) **NOTICE OF FILING REQUIREMENTS**

1) **Electronic Filing**

All filings in this case must be made electronically through the Board's filing service FileandServeXpress (FSX). There is no charge to the parties for use of this electronic filing service. Should any party not have access to the Internet, or for any other concerns or complications, please contact the Board via electronic mail or (808) 586-8616.

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/hlrb/forms/>.

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

2) **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.

(4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS

All parties have the right to appear and to be represented by counsel or any other authorized person in all Board proceedings, subject to the Extraordinary Circumstances set forth in Section (2) above. 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 that, due to the Extraordinary Circumstances set forth in Section 2 above, is unable to be accessed to the public.

(5) 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: April 21, 2020 at 10:15 a.m.

LOCATION: Remote Telephonic Conference

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 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.

(6) 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: TBD

LOCATION: TBD

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 telephonically and to be represented by counsel or any other authorized person, all parties are required to either appear telephonically or have a representative appear telephonically. 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) 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: TBD

LOCATION: TBD

Subject to the Board’s discretion due to the Extraordinary Circumstances listed above in Section 2, all parties have the right to appear at the Hearing on the Merits 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.** Please note that this requirement may be altered due to the Extraordinary Circumstances listed above in Section 2 by Board Order.

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.

(8) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Prehearing Conference</u>	4/21/2020	10:15 a.m.
<u>Dispositive Motion Deadline</u>	TBD	
<u>Response to Dispositive Motion Deadline</u>	TBD	

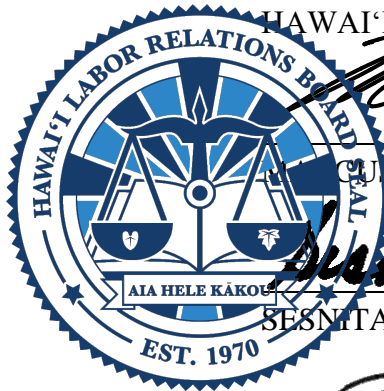
Pretrial Statement; Exchange of Exhibits; Subpoena Deadline TBD

Pretrial Conference and Hearing on Dispositive Motions TBD

Hearing on the Merits TBD

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

DATED: Honolulu, Hawai'i, _____ April 9, 2020 _____.



HAWAI'I LABOR RELATIONS BOARD

Manu R. Oshiro

MANU R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J. In Musto

J. IN MUSTO, Member

Copies sent to:
Gordon Leslie, Representative
Feliciano Samson, Representative
Governor David Ige, State of Hawai'i
Department of Public Safety, State of Hawai'i
James E. Halvorson, Deputy Attorney General
Dayton Nakanelua, UPW