

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME LOCAL 152,  
AFL-CIO,

Complainant,

and

DEREK KAWAKAMI, Mayor, County of  
Kaua'i,

Respondent(s).

CASE NO(S). 20-CE-03-946a  
20-CE-04-946b  
20-CE-13-946c

ORDER NO. 3607

MINUTE ORDER GRANTING, IN PART,  
AND DENYING, IN PART,  
RESPONDENT'S MOTION TO DISMISS  
OR, IN THE ALTERNATIVE, FOR  
SUMMARY JUDGMENT ON  
COMPLAINANT'S FIRST AMENDED  
PROHIBITED PRACTICE COMPLAINT  
FILED MAY 7, 2020; DENYING  
COMPLAINANT'S MOTION FOR  
INTERLOCUTORY RELIEF; DENYING  
HAWAII STATE TEACHERS'  
ASSOCIATION'S PETITION FOR  
INTERVENTION; AND DENYING  
UNIVERSITY OF HAWAII  
PROFESSIONAL ASSEMBLY'S PETITION  
FOR INTERVENTION

MINUTE ORDER GRANTING, IN PART, AND DENYING, IN PART, RESPONDENT'S  
MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON  
COMPLAINANT'S FIRST AMENDED PROHIBITED PRACTICE COMPLAINT FILED  
MAY 7, 2020; DENYING COMPLAINANT'S MOTION FOR INTERLOCUTORY RELIEF;  
DENYING HAWAII STATE TEACHERS' ASSOCIATION'S PETITION FOR  
INTERVENTION; AND DENYING UNIVERSITY OF  
HAWAII PROFESSIONAL ASSEMBLY'S PETITION FOR INTERVENTION

On May 1, 2020, HGEA filed a Prohibited Practice Complaint (Complaint) with the  
Hawaii Labor Relations Board (Board) against Respondent DEREK KAWAKAMI, Mayor,  
County of Kaua'i (Respondent, County or Mayor).

On May 7, 2020, HGEA submitted to the Board a First Amended Prohibited Practice  
Complaint (First Amended Complaint) against the County. The First Amended Complaint  
alleges, among other things, that the County committed prohibited practices in violation of  
Hawaii Revised Statutes (HRS) §§ 89-1(b)(2), 89-9(a) and (c), 89-13(a)(1), (5), (7), and (8)  
arising out a movement reduction scheduling directive, which, among other things,

implemented 4 day, 10 hours a day (4-10) work schedule for County of Kauai offices during the period of the Mayor's emergency proclamation effective April 27, 2020.

The County filed an Answer to the First Amended Complaint on May 12, 2020<sup>i</sup>.

On May 19, 2020, HGEA filed Complainant's Motion for Interlocutory Relief (Motion for Interlocutory Relief). Among other things, the Motion for Interlocutory Relief moves that the Board "enjoin and restrain [the County] from implementing a 4-10 work schedule that consists of four days of ten hour shifts for employees of the County[] in Bargaining Units 3, 4[,] and 13 pending the issuance of a final determination on the instant prohibited practice complaint."

On May 21, 2020, the County filed Respondent's Memorandum in Opposition to Complainant's Motion for Interlocutory Relief (County Opposition to Motion for Interlocutory Relief). Among other things, the County asserts that HGEA is not entitled to seek injunctive relief directly from the Board; that HGEA has failed to demonstrate a likelihood of success on the merits of the case; and that HGEA failed to demonstrate irreparable harm.

On May 26, 2020, the County filed Respondent's Motion to Dismiss or, in the Alternative, for Summary Judgment on Complainant's First Amended Prohibited Practice Complaint Filed May 7, 2020 (Motion to Dismiss). The Motion to Dismiss, among other things, asserts that the County acted in conformance with the Governor of the State of Hawai'i's (Governor) emergency proclamation issued on March 4, 2020 in response to the COVID-19 pandemic (Emergency Proclamation); and validly and properly used its emergency powers under HRS Chapter 127A and the Governor's Emergency Proclamation; and that HGEA failed to properly exhaust its administrative remedies prior to filing the Complaint.

On May 28, 2020, the Hawai'i State Teachers Association (HSTA) filed a Petition for Intervention (HSTA's Petition for Intervention). HSTA's Petition for Intervention, among other things, argues that, if the Board adopts the County's position and arguments, the decision will have "widespread, devastating, and far reaching effects on all unions and their members across the State of Hawaii, including Intervenor HSTA and its members."

On May 29, 2020, the University of Hawai'i Professional Assembly (UHPA) filed a Petition for Intervention (UHPA's Petition for Intervention). UHPA's Petition for Intervention, among other things, argues that, if the Board adopts the County's position and arguments, the decision "matters as much to UHPA as it does to HGEA or any other exclusive representative." UHPA's Petition for Intervention further states, among other things, that "Kauai does not contract with UHPA directly, but...UHPA does business on Kauai..."

On June 2, 2020, the County filed Respondent's Memorandum in Opposition to Petitioner Hawai'i State Teachers Association's Petition for Intervention (Opposition to HSTA's Petition for Intervention). Among other things, the County argues that HSTA's Petition for Intervention does not contain "any explanation why HGEA's representation of their mutual interest in maintaining

collective bargaining rights is inadequate and would, as a practical matter, impair or impede HSTA's ability to protect those rights"; and that HSTA currently has a case before the Board regarding a dispute that arose under the Governor's Emergency Proclamation.

On June 3, 2020, HGEA filed Complainant Hawaii Government Employees Association's Substantive Joinder in the Hawaii State Teachers Association's and the University of Hawaii Professional Assembly's Petitions for Intervention (Joinder to Petitions for Intervention).

On June 4, 2020, HSTA filed a Supplemental Declaration of Keani Alapa (Alapa Declaration) which, among other things, declaring that "the State of Hawaii confirmed its obligation and intent to continue to engage in good faith impact bargaining with the HSTA," which "contradicts the Respondent's position in this matter[.]"

On June 4, 2020, the County filed Respondent's Memorandum in Opposition to Petitioner University of Hawai'i Professional Assembly's Petition for Intervention (Opposition to UHPA's Petition for Intervention).

On June 8, 2020, HGEA filed Complainant's Supplemental Memorandum in Support of Motion for Interlocutory Relief.

#### MINUTE ORDER

After consideration of the full record herein and the arguments of the Parties and the proposed intervenors, the Board hereby:

- 1) Grants in part, the Motion to Dismiss, dismissing the alleged HRS § 89-13(a)(8) claim based on HGEA's failure to exhaust its administrative remedies;
- 2) Denies the remainder of the Motion to Dismiss,
- 3) Denies the Motion for Interlocutory Relief;
- 4) Denies HSTA's Petition for Intervention;
- 5) Denies UHPA's Petition for Intervention; and
- 6) Denies the Joinder to Petitions for Intervention;

The findings of fact and conclusions of law regarding this Minute Order will be incorporated into the final Decision and Order issued in this case after a hearing on the merits scheduled in a Pretrial Order to be issued separately in this case.

DATED: Honolulu, Hawai'i, \_\_\_\_\_ June 9, 2020 \_\_\_\_\_.

HAWAI'I LABOR RELATIONS BOARD



*Masumi O. Oshiro*  
MASUMI O. OSHIRO, Chair

*ESSENITA A.D. MOEPONO*  
ESSENITA A.D. MOEPONO, Member

*JN. MUSTO*  
JN. MUSTO, Member

Copies sent to:

- Stacy Moniz, HGEA Advocacy Chief
- Mark L. Bradbury, Deputy County Attorney
- Keani Alapa, Esq.
- Anthony Gill, Esq.

HGEA v. KAWAKAMI

CASE NOS. 20-CE-03-946a; 20-CE-04-946b; and 20-CE-133-946c

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<sup>i</sup> The Board notes that the First Amended Complaint would generally be considered procedurally defective, as HGEA neither asked for nor received leave to amend the Complaint prior to filing the First Amended Complaint in accordance with Hawaii Administrative Rules (HAR) § 12-42-43. Accordingly, the Board did not Notice the First Amended Complaint. However, the County, by answering the First Amended Complaint, acknowledged receipt of the First Amended Complaint. Therefore, the Board, in its discretion under HAR Section 12-42-43, will allow the First Amended Complaint to serve as the charging document in this case.