

STATE OF HAWAI'I

HAWAI'I 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.

CASE NOS.: 20-CE-03-946a
20-CE-04-946b
20-CE-13-946c

ORDER NO. 3633

EMERGENCY AMENDED NOTICE
AMENDING THE NOTICE OF HEARING
ON THE MERITS; MINUTE ORDER
REGARDING PROCEEDINGS BEFORE
THE BOARD

EMERGENCY AMENDED NOTICE OF AMENDING THE NOTICE OF
HEARING ON THE MERITS

On June 9, 2020, the Hawai'i Labor Relations Board (Board) issued Order No. 3608, Pretrial Order and Notices, which, among other things, set a Hearing on the Merits (HOM) for July 27, 2020 in the instant case. The Board issued an Amended Hearing on the Merits on July 9, 2020, which, among other things, extended the HOM to run from July 27, 2020 through July 29, 2020.

On July 22, 2020, a storm in the Pacific Ocean strengthened to become Hurricane Douglas. According to the National Oceanic and Atmospheric Administration (NOAA), the State of Hawai'i is within Hurricane Douglas' forecasted trajectory.

On July 23, 2020, the Governor of the State of Hawai'i issued a Proclamation starting in part, "based upon scientific information and expertise available, Hawai'i is in danger of a disaster occurrence of high winds, heavy rains, high surf, storm surge, and flooding that threaten to cause extensive damage to private and public property throughout the entire State and impacting the counties of Hawaii, Maui, Kalawao, Kaua'i, and the City and County of Honolulu, State of Hawai'i, thereby endangering the health, safety, and welfare of the people..."

Accordingly, NOTICE IS HEREBY GIVEN, pursuant to Hawai‘i Revised Statutes (HRS) §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and Hawai‘i Administrative Rules §§ 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. 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: July 28-31, 2020 at 10:00 a.m.

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

Subject to the Board’s discretion due to the Extraordinary Circumstances listed in Section 2 of Order No. 3608, all parties have the right to appear in person or videographically at the HOM and to be represented by counsel or any other authorized person. All parties whose representatives are appearing in person at the HOM must prepare and provide two physical copies of their exhibits for use by the Board and any witnesses appearing in person. All parties appearing videographically are responsible for ensuring that their witnesses appearing remotely have access to both parties exhibits for use in questioning.

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 and will need to submit to a temperature check and questionnaire prior to entry.

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.

MINUTE ORDER REGARDING PROCEEDINGS BEFORE THE BOARD

The Board makes the following orders regarding proceedings in this case before the Board:

1. At the Board’s July 20, 2020 pretrial conference in the instant case, among other things, the Board reiterated that it had taken jurisdiction over the HRS Chapter 89 issues in this case, as permitted by law.

The Board has no jurisdiction to interpret any other chapters of the HRS or any emergency proclamations issued under any chapter outside of HRS Chapter 89.

The Board therefore has not and will not take any position regarding the validity of any portion of any other chapter of the HRS or any emergency proclamation.

More specifically, **the Board has not taken and will not take any stance on the validity of any portion of any emergency proclamation including but not limited to those portions of any emergency proclamation that may reference HRS Chapter 89.**

Accordingly, the Board orders that it will hear the case in two parts, bifurcating the case. First, the Board will hear evidence on the HRS Chapter 89 issues. Fact-specific HRS Chapter 89 issues have been raised in this case by HGEA regarding consultation and/or negotiation as pertains to the temporary change to a 4-10 work schedule, and those issues will be addressed first.

Only after considering the facts surrounding the HRS Chapter 89 issues, will the Board make a determination as to whether it will entertain evidence as to the wilfulness of the County's actions. When it comes to evidence regarding wilfulness, the Board has the authority to look into the applicability of other statutes to the case. Other sections of the HRS outside of HRS Chapter 89 may be relevant to this inquiry of wilfulness and its definition of "conscious, knowing, and deliberate" intent. However, in so inquiring, the Board cannot and will not interpret a section of the HRS outside of HRS Chapter 89 in determining whether the conduct was wilfull.

2. Additionally, the Board reminds the parties that, despite the hearing being broadcast videographically, no one, including any observers watching but not participating in the proceedings, is permitted to record the proceedings without prior Board approval. This prohibition includes but is not limited to any recordings of the video stream of the proceedings. The Board orders that, if any party invites members of the public to view the proceedings, that party shall be required to inform those invitees that they are not permitted to record the proceedings without prior Board approval.
3. Finally, the Board orders that all previously issued subpoenas shall remain in effect. The subpoenaed parties shall be notified of the change in time by the subpoenaing parties.

DATED: Honolulu, Hawai'i, _____ July 24, 2020 _____.

HAWAI'I LABOR RELATIONS BOARD



Mark R. Oshiro

MARK R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J.N. Musto

J.N. MUSTO, Member

Copies sent to:

Stacy Moniz, HGEA

Mark L. Bradbury, Deputy County Attorney

HGEA v. KAWAKAMI

CASE NOS. 20-CE-03-946a; 20-CE-04-946b; 20-CE-13-946c

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ERRATA TO ORDER NO. 3633

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Order No. 3633, Emergency Amended Notice Amending the Notice of Hearing on the Merits; Minute Order Regarding Proceedings Before the Board contains inadvertent typographical errors as follows:

The title on page one (1) reads Emergency Amended Notice of Amending the Notice of Hearing on the Merits.” The correct title of the Notice is “Emergency Amended Notice Amending the Notice of Hearing on the Merits.”

The third paragraph of page one (1) contains an inadvertent typographical error. Page 1, paragraph three should read as follows:

On July 23, 2020, the Governor of the State of Hawai‘i issued a Proclamation stating in part, “based upon scientific information and expertise available, Hawai‘i is in danger of a disaster occurrence of high winds, heavy rains, high surf, storm surge, and flooding that threaten to cause extensive damage to private and public property throughout the entire

State and impacting the counties of Hawaii, Maui, Kalawao, Kaua‘i, and the City and County of Honolulu, State of Hawai‘i, thereby endangering the health, safety, and welfare of the people...”

In all other respects, Order No. 3633 remains in effect and unchanged. The Board apologizes for any inconvenience.

DATED: Honolulu, Hawai‘i, July 24, 2020.

HAWAI‘I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

N. Musto

N. MUSTO, Member

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