

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

CHRISTINA KISHIMOTOⁱ, Department
of Education, State of Hawai'i and
CONNECTIONS, A New Century Public
Charter School,

Respondents.

CASE NO. CE-01-539

ORDER NO. 3703

PRETRIAL ORDER AND NOTICES;

- (1) NOTICE OF MOTION FOR
REMEDIES AND DAMAGES
- (2) NOTICE TO PARTIES OF
EXTRAORDINARY
CIRCUMSTANCES;
- (3) NOTICE OF FILING
REQUIREMENTS;
- (4) NOTICE OF APPEARANCE AND
ACCESSIBILITY OR
ACCOMMODATIONS;
- (5) NOTICE OF PRETRIAL
CONFERENCE AND HEARING ON
COMPLAINANT'S MOTION FOR
PROTECTIVE ORDER;
- (6) NOTICE OF HEARING ON THE
MOTION FOR REMEDIES AND
DAMAGES; AND
- (7) SCHEDULE OF HEARINGS,
CONFERENCES, AND
DEADLINES

PRETRIAL ORDER AND NOTICES;
(1) NOTICE OF MOTION FOR REMEDIES AND DAMAGES;
(2) NOTICE TO PARTIES OF EXTRAORDINARY CIRCUMSTANCES;
(3) NOTICE OF FILING REQUIREMENTS;
(4) NOTICE OF APPEARANCE AND ACCESSIBILITY
OR ACCOMMODATIONS; (5) NOTICE OF PRETRIAL CONFERENCE AND
HEARING ON COMPLAINANT’S MOTION FOR PROTECTIVE ORDER;
(6) NOTICE OF HEARING ON THE MOTION FOR REMEDIES AND
DAMAGES; AND (7) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

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 OF MOTION FOR REMEDIES AND DAMAGES

On February 16, 2021, Complainant filed and served COMPLAINANT’S MOTION FOR REMEDY AND FOR AWARD OF ATTORNEYS’ FEES AND COSTS (MOTION) with the Board through the Board’s efilings service. Pursuant to Hawai‘i Administrative Rule (HAR) § 12-42-8(g)(3)(C), Answering Affidavits, if any, shall be served on all parties within five business days after service.

The Motion also requested that the Board convert the status conference scheduled for March 2, 2021 at 9:00 a.m. to a pretrial conference and schedule the hearing on the motion for March 9, 2021 at 9:00 a.m. The Board hereby grants this request.

(2) NOTICE OF EXTRAORDINARY CIRCUMSTANCES

Due to the current concerns regarding COVID-19, the Governor of the State of Hawai‘i (Governor) issued a series of Emergency Proclamations, with the first being signed on March 5, 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.

(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/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.

(4) NOTICE OF ACCESS

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 Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

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.

(5) NOTICE OF PRETRIAL CONFERENCE AND HEARING ON COMPLAINANT’S MOTION FOR PROTECTIVE ORDER

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

NOTICE IS HEREBY GIVEN that the Board will conduct a Pretrial Conference and a hearing on Complainant’s Motion for Protective Order, filed on February 5, 2021, on the date listed below and in the Schedule in this document.

DATE AND TIME: 3/2/2021 at 9:00 a.m.

LOCATION: Zoom

1) Pretrial Statement

Both the Complainant(s) and the Respondent(s) shall file a Pretrial Statement with the Board on Pretrial Statement Date at 4:30 p.m., 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.

Both parties shall use the prefix "REM-" with the following instructions.

- a) The Complainant shall identify its exhibits using alphabetical letters (A, B, C, D, etc.).
- b) Respondents shall identify its exhibits using numerical designations (1, 2, 3, 4, etc.).
- c) If there are 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.)

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 motion (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).

All parties have the right to appear at the Pretrial Conference in person 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, please call the Board at (808) 586-8616.

**(6) NOTICE OF THE HEARING ON THE MOTION FOR
REMEDIES AND DAMAGES**

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-8(g) and 12-42-49 that the Board will conduct a hearing on the motion at the place, time and date listed below and in the Schedule set forth below. The purpose of the hearing is to receive evidence and arguments on the Motion.

DATE AND TIME: 3/9/2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

All parties have the right to appear at the HOM in person and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear in person at the motion hearing.** 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>Pretrial Statement; Exchange of Exhibits</u>	2/25/2021	4:30 p.m.
<u>Pretrial Conference and Hearing on Motion for Protective Order</u>	3/2/2021	9:00 a.m.
<u>Hearing on the Motion for Remedies and Damages</u>	3/9/2021	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 18, 2021 _____.

HAWAI'I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J.N. Musto

J.N. MUSTO, Member

Copies sent to:

Lisa Anne Gruebner, Esq.

James E. Halvorson, Esq.

UPW v. KISHIMOTO, ET AL.

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ⁱ The Hawai'i Labor Relations Board has applied the Hawai'i Rules of Civil Procedure (HRCP) where its administrative rules are silent. Dep't of Safety, State of Hawaii v. United Public Workers, AFSCME, Local 646, AFL-CIO, Board Case No, CU-10-322, Order No. 2944 at *2 n. 2 (2013). HRCP Rule 25(d)(1) provides that "When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded."