

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

LENORA L. ASATO; JENNIFER E.  
HALASZYN; JEFF IBARA; YOSHIAKI  
IINUMA; CHARLES LUK; JOY  
MAGARIFUJI; SIRI AILEEN WILSON;  
and GANG YUAN,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO, and UNIVERSITY OF  
HAWAII,

Respondents.

CASE NO. 18-CU-08-365a-h  
18-CE-08-921a-h

ORDER NO. 3468

MINUTE ORDER DENYING  
RESPONDENT UNIVERSITY OF  
HAWAII'S MOTION TO REVOKE  
SUBPOENAS DUCES TECUM TO  
SARAH HIRAKAMI AND TRACIE  
NAKAGAWA AND SUBPOENA TO  
FLORENCE NAKAKUNI ISSUED  
NOVEMBER 19, 2018

MINUTE ORDER DENYING RESPONDENT

UNIVERSITY OF HAWAII'S MOTION TO REVOKE SUBPOENAS  
DUCES TECUM TO SARAH HIRAKAMI AND TRACIE NAKAGAWA  
AND SUBPOENA TO FLORENCE NAKAKUNI ISSUED NOVEMBER 19, 2018

On September 14, 2018, Complainants LENORA L. ASATO; JENNIFER E. HALASZYN; JEFF IBARA; YOSHIAKI IINUMA; CHARLES LUK; JOY MAGARIFUJI; SIRI AILEEN WILSON; and GANG YUAN (each individually a Complainant and collectively, Complainants) filed a Prohibited Practice Complaint (Complaint) against Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) with the Hawai'i Labor Relations Board (Board). The Complaint, among other things, alleges violations of Hawai'i Revised Statutes (HRS) §§ 89-13(b)(1) and 89-6(f)(5).

On October 17, 2018, each Complainant filed a First Amended Prohibited Practice Complaint (collectively First Amended Complaints). The First Amended Complaints, among

other things, added the UNIVERSITY OF HAWAI'I (UH) as a Respondent and alleged additional violations of HRS Chapter 89.

On November 19, 2018, the Complainants submitted an Application for Issuance of Subpoena(s)/Subpoena(s) Duces Tecum (Subpoena Application). The Subpoena Application included, among other things, requests for subpoenas duces tecum to Sarah Hirakami (Hirakami) and Tracie Nakagawa (Nakagawa) and a request for a subpoena to Florence Nakakuni (Nakakuni).

On November 19, 2018, based on the Subpoena Application, the Board issued subpoena(s)/subpoena(s) duces tecum (subpoena) for Hirakami, Nakagawa, and Nakakuni to appear before the Board on November 27, 2018. Hirakami and Nakagawa were further ordered to produce and bring with them the specifically requested documents/records/correspondence.

On November 21, 2018, the Complainants filed Returns of Service for Hirakami and Nakagawa, stating that they were served on November 20, 2018. On November 26, 2018, the Complainants filed a Return of Service for Nakakuni, stating that she was served on November 23, 2018.

The Board began the Hearing on the Merits in the instant case on November 27, 2018.

On November 28, 2018, UH filed Respondent University of Hawai'i's Motion to Revoke Subpoenas Duces Tecum to Sarah Hirakami and Tracie Nakagawa and Subpoena to Florence Nakakuni Issued November 19, 2018 (Motion to Revoke), asserting regarding the Nakagawa subpoena that the documents and records subpoenaed do not reasonably related to any matter under investigation, inquiry, or hearing. Regarding the Hirakami subpoena, UH contends that Hirakami is the Director of Collective Bargaining and an attorney for Respondents; and accordingly, that the documents and records requested are protected by attorney-client privilege and/or attorney work product; and that the request includes documents containing names of third parties that do not reasonably relate to any matter under investigation, inquiry, or hearing. Regarding the Nakakuni subpoena, UH also asserts attorney client privilege and that the information the Complainants seek from Nakakuni is irrelevant to this action.

On December 5, 2018, the Complainants filed Complainants' Objection to Respondent University of Hawaii's Motion to Revoke Subpoena/Subpoenas Duces Tecum Filed November 28, 2018. Regarding the Nakagawa subpoena, Complainants argue the relevancy of the information requested. Regarding Nakakuni's subpoena, Complainants contend that the information exchanged in the in the investigation interview with Nakakuni was not privileged. Regarding the Hirakami subpoena, Complainants defer to the Board regarding the attorney-client privilege of the grievance materials. However, regarding the whistleblower complaints, the Complainants contend that these complaints are not protected by attorney-client privilege and that whistleblowers are not bound by confidentiality.

Based upon the pleadings and record in this case, the Board denies the Motion to Revoke. The findings of fact and conclusions of law related to this denial will be included in the Board's final decision in this case.

UH is directed to produce Nakakuni as a witness on the next date of the Hearing on the Merits in the above-entitled case.

DATED: Honolulu, Hawai'i, February 28, 2019.

HAWAI'I LABOR RELATIONS BOARD



*Marcus R. Oshiro*

MARCUS R. OSHIRO, Chair

*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO, Member

*J.N. Musto*

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