

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

STATE OF HAWAII ORGANIZATION  
OF POLICE OFFICERS,

Complainant,

and

TODD RAYBUCK, Chief of Police, Kaua'i  
Police Department; DEREK S. K.  
KAWAKAMI, Mayor, County of Kaua'i,

Respondents.

CASE NO(S). 19-CE-12-929

ORDER NO. 3506

PRETRIAL ORDER AND NOTICES;

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

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## **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 RESPONDENT(S) OF A PROHIBITED PRACTICE COMPLAINT**

The attached prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **May 21, 2019**.

PURSUANT TO HAWAI'I REVISED STATUTES (HRS) § 377-9(b) AND HAWAI'I ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is 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 Complaint within ten (10) days after service of the Complaint. 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 FILING REQUIREMENTS**

#### **1) Electronic Filing:**

**The Board provides to all parties and encourages the use of an electronic filing service through File & ServeXpress.** There is no charge to the parties for use of this electronic filing service.

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 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.

## **(3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS**

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 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 and that any party, representative, counsel, or other person attending a proceeding will need to present a government-issued identification for entry.

**(4) 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: Friday, June 7, 2019 at 10:30 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room  
830 Punchbowl Street – Room 434  
Honolulu, Hawai'i 96813

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 in person or 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.

**(5) 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: Monday, June 24, 2019 at 11:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room  
830 Punchbowl Street – Room 434  
Honolulu, Hawai'i 96813

## 1) Pretrial Statement

**Both the Complainant(s) and the Respondent(s) shall file a Pretrial Statement with the Board on or by June 17, 2019 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. A party's exhibits or Joint exhibits shall be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes with each exhibit bookmarked and bates-stamped at the top right corner. 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.).

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.

## **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 in person or telephonically and to be represented by counsel or any other authorized person, **all parties are required to either appear in person or have a representative appear in 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 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: Friday, June 28, 2019 at 9:00 a.m.

LOCATION: Hawai'i Labor Relations Board Hearing Room  
830 Punchbowl Street – Room 434  
Honolulu, Hawai'i 96813

All parties have the right to appear at the Hearing on the Merits in person 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.** 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**

<b><u>DATES AND DEADLINES</u></b>	<b><u>DATE</u></b>	<b><u>TIME</u></b>
<u>Prehearing Conference</u>	6/7/19	10:30 a.m.
<u>Dispositive Motion Deadline</u>	6/13/19	
<u>Response to Dispositive Motion Deadline</u>	6/20/19	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	6/17/19	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	6/24/19	11:00 a.m.
<u>Hearing on the Merits</u>	6/28/19	9:00 a.m.

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

DATED: Honolulu, Hawai'i, May 23, 2019.

HAWAI'I LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair





SESNITA A.D. MOEPONO, Member

EXCUSED

J N. MUSTO, Member

Enclosure: PROHIBITED PRACTICE COMPLAINT

Copies sent to:

Vladimir P. Devens, Esq.

Keani Alapa, Esq.

Matthew M. Bracken, County Attorney

James Forrest, Deputy County Attorney

SHOPO v. RAYBUCK AND KAWAKAMI  
CASE NO(S). 19-CE-12-929  
PRETRIAL ORDER AND NOTICES  
ORDER NO. 3506





OFFICES OF VLADIMIR P. DEVENS, LLC

**EFiled: May 21 2019 01:28PM HAST  
Transaction ID 63286016  
Case No. 19-CE-12-929**

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SHOPO

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

STATE OF HAWAII ORGANIZATION  
OF POLICE OFFICERS (SHOPO),

Complainant,

vs.

TODD RAYBUCK, CHIEF OF POLICE,  
KAUAI POLICE DEPARTMENT; DEREK  
S.K. KAWAKAMI, MAYOR, COUNTY OF  
KAUAI

Respondents.

HLRB NO.: \_\_\_\_\_

PROHIBITED PRACTICE  
COMPLAINT

**PROHIBITED PRACTICE COMPLAINT**

COMES NOW, Complainant STATE OF HAWAII ORGANIZATION OF  
POLICE OFFICERS (“SHOPO” or “Union”), and for a complaint against the above-identified  
Respondents, alleges and avers as follows:

**PARTIES**

1. At all times relevant herein, Complainant SHOPO was and is an employee

organization as defined under Hawaii Revised Statutes (“HRS”) §89-2.

2. At all times relevant herein, Complainant SHOPO was and is the certified exclusive representative and collective bargaining agent for all police officers up to the rank of Lieutenant within the State of Hawaii under bargaining unit 12 (“BU-12”), as that bargaining unit is defined under HRS §§89-2 and 89-6(a)(12), and has been so recognized and certified by the Hawaii Labor Relations Board (“HLRB” or “Board”), and its predecessor the Hawaii Public Employment Relations Board pursuant to HRS §89-8.

3. Respondent Todd Raybuck (“Respondent Raybuck”) is the duly appointed Chief of Police for the Kauai Police Department (“KPD”), County of Kauai, State of Hawaii, and an employer or public employer as defined under HRS §89-2 and under the applicable CBA.<sup>1</sup>

4. At all times relevant herein, Respondent Derek S.K. Kawakami (“Respondent Kawakami”) was and is the duly elected Mayor of the County of Kauai, State of Hawaii, and an employer or public employer as defined under HRS §89-2 and under the applicable CBA.

5. Respondent County of Kauai (“Employer”) is a political subdivision of the State of Hawaii, and a public employer as defined under HRS §89-2, and under the applicable collective bargaining agreement (“CBA”) covering the relevant periods.

### **HAWAII REVISED STATUTES CHAPTER 89**

6. The HLRB under HRS Chapter 89 has exclusive original jurisdiction over matters and claims relating to prohibited practices and a statutory duty to resolve controversies under

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<sup>1</sup> At certain relevant times, Michael Contrades served as the acting Chief of Police for Kauai County until Chief Raybuck was appointed on or about 4/22/19. See HRCF Rule 25(d)(1) (When a public officer is a party to an action in an official capacity and, while that action is pending, the public officer dies, resigns, or otherwise ceases to hold office, the officer’s successor is automatically substituted as a party.)

Chapter 89, to conduct proceedings on complaints of prohibited practices and to take such action as it deems necessary and proper.

7. The Hawaii Legislature has declared under HRS §89-1(a) “that joint decision-making is the modern way of administering government. Where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work; to provide a rational method for dealing with disputes and work stoppages; and to maintain a favorable political and social environment.” The Legislature further declared under HRS §89-1(b) “that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.”

8. The Hawaii Legislature has established that it is the policy of the State of Hawaii that public employers are required to “negotiate with and enter into written agreements with exclusive representatives on matters” relating to “conditions of employment.” HRS §89-1(a)(2).

9. Pursuant to HRS §89-3, “Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference,

restraint, or coercion.”

10. HRS §89-9(a) mandates that the Employer and SHOPO “shall negotiate in good faith with respect to wages, hours, ... and other terms and conditions of employment which are subject to collective bargaining and which are to be embodied in a written agreement as specified in section 89-10, but such obligation does not compel either party to agree to a proposal or make a concession.” HRS §89-9(a).

11. HRS §89-9(d) excludes certain itemized subjects from mandatory negotiations, i.e. classification, reclassification, health benefits, recruitment, examination, initial pricing and retirement benefits. HRS §89-9(d). Otherwise, all other subject areas are negotiable as long as the Employer and SHOPO did not agree to any “proposal” “which would interfere with the rights and obligations of a public employer to” exercise certain management rights.

12. In 2018, an amendment of HRS §89-9 signed by Governor David Ige clarified the negotiability of promotional criteria. Specifically, the amendment adopted under HRS §89-9 provides the following statutory mandate:

Further, this subsection shall not preclude negotiations over the procedures and criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions as subjects of bargaining during collective bargaining negotiations or negotiations over a memorandum of agreement, memorandum of understanding, or other supplemental agreement; provided that such obligation shall not compel either party to agree to a proposal or make a concession.

HRS §89-9(d).

13. The Hawaii Supreme Court made clear that “HRS §§89-9(a), (c) and (d) must be considered in relationship to each other in determining the scope of bargaining. For if Section 89-9(a) were considered disjunctively, on the one hand, all matters affecting the terms and

conditions of employment would be referred to the bargaining table, regardless of employer rights. On the other hand, Section 89-9( d), viewed in isolation, would preclude nearly every matter affecting terms and conditions of employment from the scope of bargaining .... “ Univ. of Hawai`i Prof’l Assembly v. Tomasu, 79 Haw. 154, 161, 900 P.2d 161, 168 (1995).

14. Under HRS §89-9, Respondents at relevant times herein, were required under law to “negotiate in good faith” with SHOPO with respect to conditions of employment, including promotional criteria, and any agreements reached were required to be embodied in a written agreement.

15. Under HRS §89-13(a), it is a prohibited practice for a public employer to willfully:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
- ...
- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;
- ...
- (7) Refuse or fail to comply with any provision of this chapter;
- (8) Violate the terms of a collective bargaining agreement;

Haw. Rev. Stat. § 89-13.

**COLLECTIVE BARGAINING AGREEMENT**

16. At all times relevant herein, SHOPO and the Employer are parties to a collective

bargaining agreement ("CBA"), which contains various contracted terms and agreements.

17. Under Article I.D. (Mutual Consent) of the CBA, the Employer agreed that "No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent."

18. Article 35.A. (Prior Rights - Rights, Benefits and Perquisites) of the CBA, the Employer agreed that nothing in the CBA "shall be construed as abridging, amending or waiving any rights, benefits or perquisites presently covered by statutes, rules or regulations of each jurisdiction that the employees have enjoyed heretofore except as specifically superseded by the terms of this Agreement."

19. Article 47 (Promotions) of the CBA states in relevant part:

**ARTICLE 47. PROMOTIONS**

- A. Posting Requirements - For the information of all employees, the Employer shall post in a conspicuous place in each police station, its existing promotional policies and procedures, civil service rules and regulations governing promotions and current examination announcements which are applicable to unit employees.
- B. Fair Standards of Merit and Ability - Promotions shall be based upon fair standards of merit and ability, consistent with applicable civil service statutes, rules and regulations and procedures.
- C. Non-Selection - An employee who is certified from an eligible list for promotion but not selected shall upon written request submitted within twenty (20) calendar days of non-selection, be entitled to an individual conference with the appointing authority or designated representative to discuss the reasons for the employee's non-selection and the employee's promotion potential.

20. Under Article 53 (Entirety Clause) of the CBA, the Employer and SHOPO agreed that the terms and provisions herein contained constituted the entire agreement between the parties and superseded all previous communications, representations or agreements, either verbal

or written, between the parties hereto with respect to the subject matter therein. Article 53 further provides that the Employer and SHOPO agreed that all negotiable items had been discussed during the negotiations leading to the CBA and, agreed that "negotiations will not be reopened on any item, whether contained herein or not, during the life of this Agreement except by written mutual consent."

### **SUBJECT INCIDENT**

21. At all times relevant herein, Malcolm Lutu was a sergeant with the Honolulu Police Department, a SHOPO member, and the President of SHOPO.

22. At all times relevant herein, Chris Calio was a Lieutenant with KPD, a SHOPO member, and the duly elected Kauai Chapter Chair

23. At all times relevant herein, Stanton Koizumi was a Business Agent for SHOPO.

24. On 12/24/18, Respondents submitted to SHOPO changes it intended to make to KPD General Order No. 34.1 entitled "Promotions." In an accompanying letter addressed to SHOPO Business Agent Stanton Koizumi, Respondents stated: "If the Union wishes to meet and confer on the proposed changes, it shall respond in writing within ten (10) working days from the date of receipt of this notice and request an appointment to meet and confer via the Chiefs Office."

25. The parties subsequently met on or about 1/3/19 and discussed the proposed changes to General Order No. 34.1.

26. On 1/10/19, SHOPO Business Agent Stanton Koizumi stated the following in a letter to then Acting Chief of Police Michael Contrades:

In reviewing the provisions of this proposal there are several items that are governed by Article 1 in that conditions of work are being affected for the

members of SHOPO Bargaining Unit 12. Being that it clearly states in the CBA that no changes in wages, hours or condition of work contained herein may be made except by mutual consent ARTICLE 1 D. To meet this requirement there must be a Labor/Management meeting and agreement can be only by mutual agreement by both parties. I suggest that you consult the Human Resources Department to schedule a Labor/Management workshop.

27. On 2/21/19, then Acting Chief Contrades responded in a letter as follows:

The Union's position on the matter is noted however, we disagree with your assertion that the provisions fall within the requirements of Article 1D. According to Hawai'i Revised Statutes section 89-9 Scope of Negotiations: consultation, section (d) (1) & (d) (3); the statute clearly states, "Excluded from the subjects of negotiations are matters...that would interfere with the rights and obligations of a public employer to: (1) Determine qualifications, standards for work, and the nature and contents of examinations; (3) Hire, promote, transfer, assign, and retain employees in positions." Further, KPD and the Union met and conferred on January 3, 2019 at 1300 hours. Present at that meeting was Kauai Chapter Chair Christopher Calio, Vice-Chair Aaron Bandmann, and yourself. Representing KPD was Lieutenant Scott Williamson and me. At that meeting, the Union was afforded the opportunity to comment and provide input into the proposal. All recommendations made by the Union were subsequently added to the proposal and the policy was finalized. As such, KPD will proceed with the implementation of General Order 34.1 Promotions. Enclosed is a copy of the finalized general order for your records.

28. On 3/20/19, SHOPO President Lutu stated in a letter to Acting Chief Contrades:

In response to BA Koizumi's letter, you provided a letter to SHOPO dated 2/21/19 and referenced HRS §89-9. However, your letter only referenced a partial section of the statute (HRS §89-9(d)) and omitted the definitive language contained in the amendment passed by the Hawaii Legislature and signed into law by Governor Ige in 2018, that clarified the parties' rights to negotiate promotional criteria. Specifically, the amendment adopted under HRS §89-9 provides the following statutory mandate:

Further, **this subsection shall not preclude negotiations over the procedures and criteria on promotions**, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions **as subjects of bargaining during collective bargaining negotiations** or negotiations over a memorandum of agreement, memorandum of understanding, or other supplemental agreement; **provided that such obligation shall not compel either party to agree to a proposal or make a**



**concession.**

See HRS §89-9(d)(emphasis added).

While we certainly appreciated the opportunity to meet and discuss in good faith our concerns and thoughts regarding the proposal with your representatives, SHOPO wants to make clear that we have not and will not waive our negotiation rights under the CBA and HRS §89-9 to any proposal that requires a party's mutual agreement to the changes management is proposing to the existing promotional policy. We also want to make clear that we have not in any way interfered nor have we been accused of interfering with the KPD's right to promote or to determine qualifications and have worked cooperatively and in good faith with KPD in raising our concerns relating to a new policy. If you feel this has not been the case, please let us know in writing as soon as possible so that we can take that issue up with you right away.

Last, SHOPO wants to reiterate and emphasize that KPD's current proposed changes to the existing promotional policy are required by law to be negotiated and mutually agreed upon to be accepted and considered valid.

Thank you for your time and consideration of our position which is supported by the clear language of the relevant statute. If you have legal authority that contradicts our position and understanding, please provide the same as we will be more than willing to reconsider our position.

29. By the aforementioned acts, Respondents, and each of them, wilfully violated the terms of the applicable CBA.

30. By the aforementioned acts, Respondents, and each of them, willfully violated, among other things, HRS Chapter 89 and the prior rulings of the HLRB, including refusing to bargain collectively in good faith with the exclusive representative as required under HRS §89-9.

31. By the aforementioned acts, Respondents, and each of them, willfully violated, among other things, HRS §§89-9, 10 and 13(a)(1), (2), (5), (7), and (8).

32. The aforementioned conduct of Respondents, and each of them, constitutes a prohibited practice pursuant to HRS §§89-9, 10 and 13(a)(1), (2), (5), (7), and (8).

WHEREFORE, Complainant SHOPO respectfully requests that this Honorable

Board grant appropriate relief in favor of Complainant and against the above-named Respondents, including, but not limited to, the following:

- a. Interlocutory relief prohibiting continuing violations of the contractual rights of the public employees of BU-12 by Respondents;
  - b. An order finding that Respondents have committed a prohibited practice pursuant to HRS §89-13(a)(1)-(5), (7) and (8);
  - c. An order directing Respondents to post for publication, in all locations where SHOPO members may review and gather, for 60 days, the decision of the Board finding that Respondents committed a prohibited practice as aforesaid, with proof of compliance being made to the Board and SHOPO;
  - d. A cease and desist order issue from the Board prohibiting continuing violations of HRS §89-13(a)(1)-(5), (7) and (8);
- a. That declaratory relief issue from the Board in favor of Complainant that the implementation of any changes to KPD General Order No. 34.1, entitled “Promotions”, is a mandatory subject of bargaining;
  - b. Make whole relief including, but not limited to, all costs and all reasonable attorney’s fees incurred by SHOPO in bringing and prosecuting this prohibited practice complaint before the Board;
  - c. That an Order issue from the Board against Respondents, and each of them, for such other and further relief as the Board deems appropriate and proper.

DATED: Honolulu, Hawaii, May 21, 2019.

*/s/ Christopher Calio*  
CHRISTOPHER CALIO

KAUA'I CHAPTER CHAIR



**EFiled: May 21 2019 01:28PM HAST  
Transaction ID 63286016  
Case No. 19-CE-12-929**

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

**FORM HLRB-4  
PROHIBITED PRACTICE COMPLAINT**

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INSTRUCTIONS. Submit the original<sup>1</sup> of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

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1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.
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2. COMPLAINANT Please select one that describes the Complainant:

Public Employee       Public Employer       Public Union (public employee organization)

- a. Name, address and telephone number.

STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS  
c/o Christopher Calio  
Kauai Chapter Chair  
1717 Hoe St.  
Honolulu, Hawaii 96819

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- b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Vladimir P. Devens, Esq. (devens@pacificlaw.com)  
Keani Alapa, Esq. (kalapa@pacificlaw.com)  
Law Offices of Vladimir P. Devens, LLC  
707 Richard Street, PH-1  
Honolulu, Hawaii 96813  
(808) 528-5003

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<sup>1</sup> Notwithstanding Board rule 12-42-42(b), the Board only requires the original of the complaint.

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3. RESPONDENT Please select one that describes the Respondent:

- Public Employee       Public Employer       Public Union (public employee organization)

a. Name, address and telephone number.

Todd Raybuck, Chief of Police, Kauai Police Department  
Derek S. K. Kawakami, Mayor  
County of Kauai  
County Attorney  
County of Kauai  
4444 Rice Street, Suite 220  
Phone: (808) 241-4930

b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Matthew M. Bracken, Esq.  
James Forrest, Esq.  
County Attorney  
County of Kauai  
4444 Rice Street, Suite 220  
Phone: (808) 241-4930

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4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

Bargaining Unit 12

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5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

See attached Prohibited Practice Complaint.

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6. Provide a clear and concise statement of any other relevant facts.  
See attached Prohibited Practice Complaint.

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

**DECLARATION IN LIEU OF AFFIDAVIT**

(If the Complainant is self-represented, then the Complainant must sign this Declaration).

Please select one:

- the Complainant
- the Complainant's principle representative
- the person described below

I, Christopher Calio,  
do declare under penalty of law that the foregoing is true and correct.

Date: 5/21/19

/s/Christopher Calio

*The person signing above agrees that by signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.*

ccalio@shopohawaii.org

*Signor's email address*

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Your phone number: \_\_\_\_\_

Your relationship to the Complainant:

\_\_\_\_\_

If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then complete the Board Agreement to E-File, FORM HLRB-25. (Form HLRB-25 is on the HLRB Website at [labor.hawaii.gov/hlr/forms](http://labor.hawaii.gov/hlr/forms).) Email the completed form to the Board at [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov).