

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

PATRICK J. GALLAGHER,

Complainant,

and

BOARD OF WATER SUPPLY, CITY  
AND COUNTY OF HONOLULU,

Respondent.

CASE NO(S). 19-CE-03-931

ORDER NO. 3539

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: **July 18, 2019**.

PURSUANT TO HAWAI'I REVISED STATUTES (HRS) § 377-9(b) AND HAWAI'I ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS 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 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.

## **(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: Thursday, August 1, 2019 at 10:00 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, August 19, 2019 at 10:00 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, 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: Monday, August 26, 2019 at 2:00 p.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>	8/1/19	10:00 a.m.
<u>Dispositive Motion Deadline</u> <i>Responses to dispositive motions shall be due five business days after the dispositive motion is filed and served.</i> HAR § 12-42-8(g)(3)(C)(iii)	8/8/19	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	8/8/19	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	8/19/19	10:00 a.m.
<u>Hearing on the Merits</u>	8/26/19	2:00 p.m.

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

DATED: Honolulu, Hawai‘i, July 19, 2019.


HAWAI‘I LABOR RELATIONS BOARD



*Marcus R. Oshiro*

MARCUS R. OSHIRO, Chair

*Sesnita A. D. Moepono*  
SESNITA A.D. MOEPONO, Member



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J.N. MUSTO, Member

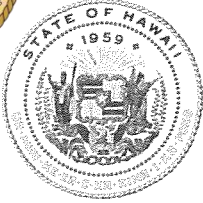
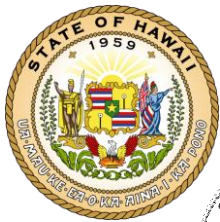
Enclosure: PROHIBITED PRACTICE COMPLAINT

Copies sent to:

Patrick J. Gallagher, SRL  
Ernest Y. W. Lau, P.E., Manager and Chief Engineer  
Paul S. Aoki, Acting Corporation Counsel

GALLAGHER v. BOARD OF WATER SUPPLY  
CASE NO. 19-CE-03-931  
PRETRIAL ORDER AND NOTICES  
ORDER NO. 3539





**EFiled: Jul 17 2019 01:30PM**  
**HAST Transaction ID 63562217**  
**Case No. 19-CE-03-931**

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.

Patrick J. Gallagher  
PO Box 15060  
Honolulu, Hawaii 96830  
808-216-2574

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

Patrick J. Gallagher  
PO Box 15060  
Honolulu, Hawaii 96830  
808-216-2574  
korky54@gmail.com

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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.

Honolulu Board of Water Supply  
615 S. Beretania Street  
Honolulu, Hi 96815  
748-5030  
Attn: Ernest Lau, Manager

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

Honolulu Board of Water Supply  
615 S. Beretania Street  
Honolulu, Hi 96815  
748-5030  
Attn: Ernest Lau, Manager

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

HGEA, Unit 3 and all other affected Units

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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.)

The HBWS has continued to deduct dues in violation of the June 2018 United States Supreme Court decision, known as the Janus decision. The supreme court specifically concluded that it was unconstitutional to continue with the current language that historically gave employees two options dues deductions 1) to join HGEA and pay dues, or to not join HGEA but to pay an agency fee". Because various methods were used by the employer and/or union at various times in the past, the court ruled that a "re-affirmation" or reauthorization process needed to be established before public employers could deduct money from employee paychecks. The process needed to be neutral so as to not violate a workers first amendment right of speech and association.

Prohibited Practice Complaint (Rev. 4/2017b)  
FORM HLRB-4

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6. Provide a clear and concise statement of any other relevant facts.

It is my understanding that public employers had the obligation to negotiate new dues deduction language with the union that was in compliance with the Janus decision. Because this was not done, unauthorized deductions continued to be made to this date, over 1 year and counting. I am therefore requesting the HLRB to investigate whether or not the public employer or HLRB is responsible for recovery of all unauthorized monies and paying back all workers that did not "re-affirm" authorization.

I requested this of my employer and was told to go see the union, which is unconstitutional and violates my right to not freely associate with a labor union or divulge my union activity or lack thereof. I am concerned that employees might be intimidated by this and in fear of saying that they dont want to be "union active".

And because the union has good reason to maintain the status quo by not re-negotiating this so that dues can continue to unconditionally keep flowing, as well; I am requesting the Board (in theory a neutral party) offer up a written procedure that does not put a worker in an uncomfortable position by violating his or her rights of free association, or lack of free association and free speech, or desiring to keep his or her speech silent in accordance with his or her union activity or lack thereof as a condition of continued employment.

I feel public workers have a right to have a neutral procedure in place that is in writing and that explains their options and is enforceable buy the HLRB and federal authorities.

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).

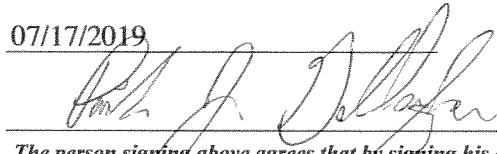
Please select one:

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

I, Patrick J. Gallagher,

do declare under penalty of law that the foregoing is true and correct.

Date: 07/17/2019



*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.*

korky54@gmail.com

*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/hlrb/forms](http://labor.hawaii.gov/hlrb/forms).) Email the completed form to the Board at [dlii.laborboard@hawaii.gov](mailto:dlii.laborboard@hawaii.gov).

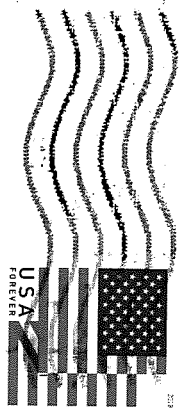
Patrick J. Gallagher  
P.O. Box 15060  
Honolulu, HI 96830

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HAWAII LABOR  
RELATIONS BOARD

Hawaii Labor Relations Board  
830 Punchbowl Street, Room 434  
Honolulu, HI 96813

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