

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

BRAN N. KEOPUHIWA,

Complainant,

and

HAWAI'I FIRE DEPARTMENT, County
of Hawai'i; and HAWAII FIRE FIGHTERS
ASSOCIATION, INC.,

Respondents.

CASE NO(S). 19-CE-11-930
19-CU-11-373

ORDER NO. 3548

PRETRIAL ORDER AND NOTICES;

- (1) NOTICE TO RESPONDENT(S) OF AMENDED PROHIBITED PRACTICE COMPLAINT FILED ON AUGUST 1, 2019;
- (2) NOTICE OF FILING REQUIREMENTS;
- (3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS;
- (4) NOTICE OF HEARING ORAL ARGUMENTS ON DISPOSITIVE MOTIONS;
- (5) NOTICE OF PRETRIAL CONFERENCE;
- (6) NOTICE OF HEARING ON THE MERITS; AND
- (7) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

PRETRIAL ORDER AND NOTICES;

(1) NOTICE TO RESPONDENT(S) OF AMENDED PROHIBITED PRACTICE COMPLAINT FILED ON AUGUST 1, 2019; (2) NOTICE OF FILING REQUIREMENTS; (3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS; (4) NOTICE OF HEARING ORAL ARGUMENTS ON DISPOSITIVE MOTIONS; (5) NOTICE OF PRETRIAL CONFERENCE; (6) NOTICE OF HEARING ON THE MERITS; 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 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: **August 1, 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 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 HEARING ORAL ARGUMENTS ON DISPOSITIVE MOTIONS

PURSUANT TO HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-8(g)(3)(iv):

NOTICE IS HEREBY GIVEN that the Board will hear oral arguments on dispositive motions on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: Wednesday, October 23, 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 above hearing 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: Wednesday, October 30, 2019 at 9:00 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 October 28, 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: **Tuesday, November 5, 2019 at 9:00 a.m.**

LOCATION: Aging & Disability Resource Center
Conference Training Room
1055 Kinoole Street
Hilo, Hawai'i 96720

DATE AND TIME: **Wednesday, November 6, 2019 at 9:00 a.m.**

LOCATION: HGEA Offices
495 Manono Street,
Hilo, Hawai'i 96720

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

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Hearing Oral Arguments on Dispositive Motions</u>	10/23/2019	9:00 a.m.
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	10/28/2019	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	10/30/2019	9:00 a.m.
<u>Hearing on the Merits</u>	11/5/2019 11/6/2019	9:00 a.m. 9:00 a.m.

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

DATED: Honolulu, Hawai'i, August 15, 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

J. N. MUSTO, Member

Copies sent to:

Bran N. Keopuhiwa, SRL
John Mukai, Deputy Corporation Counsel
Peter Liholiho Trask, Esq.



**EFiled: Aug 01 2019 09:36PM HAST
Transaction ID 64047261
Case No. 19-CE-11-930, 19-CU-11-
373**

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

**FORM HLRB-4
PROHIBITED PRACTICE COMPLAINT**

INSTRUCTIONS. Submit the original¹ 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.

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.
-

2. COMPLAINANT Please select one that describes the Complainant:

Public Employee Public Employer Public Union (public employee organization)

- a. Name, address and telephone number.

Bran N. Keopuhiwa
PO Box 271
Papaikou, HI 96781
808-217-5656

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

Bran N. Keopuhiwa
PO Box 271
Papaikou, HI 96781
keopuhiwb001@hawaii.rr.com
808-217-5656

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

3. RESPONDENT Please select one that describes the Respondent:

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

a. Name, address and telephone number.

Hawaii Fire Fighters Association	County of Hawaii
1018 Palm Drive	25 Aupuni Street
Honolulu, HI 96814	Hilo, HI 96720
808-949-1566	808-961-8211

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

Hawaii Fire Fighters Association	County of Hawaii
1018 Palm Drive	25 Aupuni Street
Honolulu, HI 96814	Hilo, HI 96720
808-949-1566	808-961-8211

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

BU - 11 Firefighters

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.)

Ammended: 89-13 (a)-It shall be a prohibited practice for a public employer or its designated representative to: (8) Violate the terms of a collective bargaining agreement.
89-13 (b)- It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to: (5)- Violate the terms of a collective bargaining agreement.

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

On November 27, 2018 Chief Darren Rosario served me a "Notice of Placement", permanently transferring my position from Waiakea Fire Station "B" Platoon, to Kailua Fire Station "C" Platoon, effective December 1, 2018 in retaliation for two Violence in the Workplace incident reports I filed on May 22, 2017.

December 14, 2018 I filed a grievance against this action. The grievance was denied at Step 1 by Chief Darren Rosario on February 4, 2019. The Step 2 grievance was denied by Hawaii County Director of Human Resources William Brilhante Jr. on April 22, 2019.

On December 24, 2018 I submitted a transfer request which was denied by Chief Darren Rosario. On January 31, 2019 I filed a grievance against this action. This grievance was denied at the informal Step by Deputy Chief Uchida on January 23, 2019. This same grievance was denied at Step 1 by Chief Rosario on February 15, 2019. I attended a Step 2 hearing with Human Resources Labor Specialist Lee Botelho on March 19, 2019. Unfortunately, I never received a notice of completion of the Step 2.

On April 25, 2019 the Hawaii Fire Fighters Association (HFFA) notified me that they submitted notice to my employer (Hawaii County Fire Department) of their intent to arbitrate a grievance that I filed previously.

On May 28, 2019 I contacted the HFFA to check on the status of arbitration and they said they are "still working through the grievance review process".

According to the Collective Bargaining Agreement, Section 18. Grievance Procedure- G. Step 3. Arbitration- If the grievance is not resolved at Step 2 and the Union desires to proceed with arbitration, it shall serve written notice on the Employer or designee of its desire to arbitrate within ten (10) working days after receipt of the Employer's decision at Step 2. Representatives of the parties shall attempt to select an arbitrator immediately thereafter. If agreement on an arbitrator is not reached within ten (10) working days after the notice for arbitration is submitted, either party may request the Hawaii Labor Relations Board to submit a list of five (5) arbitrators.

Neither the County of Hawaii nor the HFFA have abided by the terms of the Collective Bargaining Agreement in that neither have attempted to select an arbitrator to begin the process. I have been waiting patiently to file further Prohibited Practice complaints to address retaliation by both the County of Hawaii and the HFFA, unfortunately according to the statutes, I must wait until the grievance process is exhausted. Please see the attached (ammended) documents to corroborate the timeline mentioned above.

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, Bran N. Keopuhiwa,
do declare under penalty of law that the foregoing is true and correct.

Date: 8-1-2019

/s/ Bran Naliko Keopuhiwa

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.

keopuhiwb001@hawaii.rr.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/hlr/forms.) Email the completed form to the Board at dlir.laborboard@hawaii.gov.

1
Harry Kim
Mayor



Darren J. Rosar
Fire Chief

Lance S. Ue
Deputy Fire Chief



County of Hawaii
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawaii 96720
(808) 932-2900 • Fax (808) 932-2928

HAND DELIVERED

November 27, 2018

Mr. Bran Keopuhiwa
Fire Rescue Specialist
P.O. Box 271
Papaikou, Hawaii 96781

Dear Fire Rescue Specialist Keopuhiwa:

Re: NOTICE OF PLACEMENT

Effective December 1, 2018, you are being permanently assigned to Position No. OO-02597 at the Kailua Fire Station on "C" Platoon. This action is being taken in accordance with the Bargaining Unit 11 Collective Bargaining Agreement Section 4, Management Rights, and Section 10, Placement and Transfer and is not a disciplinary action.

Beginning about September 2017 I was made aware of several incidents involving yourself and Fire Captains Matsuda, Spain, and Vincent. The department conducted investigations into the incidents. While the investigator/investigators findings resulted in various levels of corrective action where applicable for the parties involved, in effort to resolve any negativity or conflict between you and Fire Captains Matsuda, Spain, and Vincent, you were temporarily reassigned to report to Battalion Chief Kusch and referred to counseling with our Employee Assistance Program (EAP) Provider, Employee Assistance of the Pacific. Additionally, in hopes of resolving any remaining issues between you and Fire Captains Matsuda, Spain, and Vincent., you were notified to attend mandatory mediation with Ku'ikahi Medication Center to try to come to an agreement on working respectfully and cohesively as part of the unit assigned to the Waiakea Fire Station.

I received confirmation of your compliance with the supervisory referral to EAP and on October 30, 2018, I received notice from Ku'ikahi Mediation Center that the mediation between you and Captains Brent Matsuda, Todd Vincent, and Charles Spain have concluded. The mediation is confidential and thus I was provided confirmation that a) the mediation was held, b) no agreement was reached, and c) the file has been closed on this case and no further mediation sessions are scheduled.

EFiled: Aug 01 2019 09:36 AM HAST
Transaction ID 6404726
Case No. 19-CE-11-930, 373



Notice of Placement
November 27, 2018
Page 2

It was our goal that the temporary change of worksite, EAP counseling, and mediation would enable you to work effectively with your supervisors and return to your assignment at the Waiākea Fire Station. Unfortunately, all of these measures have not resulted in a change nor have we had any indication that you would be able to work effectively and efficiently with the captains assigned to the Waiākea Fire Station. Despite our efforts, we have determined that your presence at the Waiākea Fire Station is not in the best interest of efficient operations at this critical task oriented rescue station. As the Kailua Fire Station is the only other worksite with Fire Rescue Specialist positions, I have no recourse but to permanently assign you to the Kailua Fire Station effective December 1, 2018. Your last work Shift on "B" Platoon shall be November 29, 2018. Your first work shift on "C" Platoon shall be December 2, 2018.

You have the right to grieve this action in accordance with the Bargaining Unit 11 Collective Bargaining Agreement.



DARREN J. ROSARIO
Fire Chief

LABOR AGREEMENT GRIEVANCE FORM

Unit 11 – Firefighters
Step I

TO: **Darren Rosario** (Division Head) **Chief** (Position Title) **Fire** (Department)

FROM: **Bran Keopuhiwa** (Name of Grievant) **Rescue Specialist** (Position Title) **Fire** (Department)

PART I.

In accordance with the grievance procedure contained in the Firefighters' Agreement, a formal grievance is hereby submitted. I attempted to resolve this grievance through the informal stage on _____ (date) with _____ (Department).

A. STATEMENT OF GRIEVANCE (type an X in the appropriate selection):

1. Date of alleged violation: 11-27-18
Date

If alleged violation is continuous, date first became known: _____ Date

2. Section or provision of the agreement allegedly violated: 4, 10, 16, 19, 20

3. Nature of complaint. (Dates, facts, circumstances, etc.)

I feel that I am being retaliated against by members of the Hawaii County Fire Department. On November 27, 2018, Chief Rosario notified me by letter, that I was being permanently transferred from Waiakea Fire Station B shift, to Kailua Fire Station C shift. This transfer had an effective date of December 1, 2018. Chief Rosario violated Section 20- Hours of Work, by not giving the Union thirty days notice prior to changing my work schedule. Section 10- Placement and Transfer, by transferring me as a disciplinary measure. Chief Rosario states that this is not a disciplinary action, then he contradicts himself immediately in the notice. Section 19- Due Process, by stating that I was subject to corrective action(s) without being notified of any possible violations or misconduct. Section 16- Discipline- by taking corrective action(s) without just and proper cause. Section 4- Management Rights, by abusing those rights with punitive action.

B. REMEDY SOUGHT:

Open for negotiation.


(Signature of Grievant)

(Signature of Union Representative, if applicable)

DATE: _____ DATE: 12-14-18

HAWAII FIRE DEPARTMENT . COUNTY OF HAWAII .
HILO, HAWAII 96720

DATE December 14, 2018

Memorandum

TO : DARREN J. ROSARIO, FIRE CHIEF

VIA : LANCE UCHIDA, DEPUTY FIRE CHIEF
AFC DARWIN OKINAKA, OPERATIONS DIVISION

FROM : BRAN KEOPUHIWA, FIRE RESCUE SPECIALIST

SUBJECT: **REQUEST FOR INFORMATION**

Good afternoon Chief,

As provided for in Section 18 of the Collective Bargaining Agreement, I am requesting the following information in order to investigate and process my grievance.

1. The exact list and dates of the "several incidents" between myself and Captains Matsuda, Vincent, and Spain, that you reference in paragraph two of the Notice of Placement that I received on November 27, 2018.
2. The complete case files for the investigations of these incidents, including what corrective action was taken where applicable, as referenced by you in paragraph two of the Notice of Placement dated November 27, 2018.
3. The written notice of the corrective action that was supposed to "enable you to work effectively with your supervisors and return to your assignment at the Waiakea Fire Station". As stated in paragraph four of the Notice of Placement dated November 27, 2018.
4. The written notice that you were seeking to change me to work effectively and efficiently with the captains assigned to Waiakea Fire Station, as you state in paragraph four of the Notice of Placement dated November 27, 2018.

EXHIBIT A-3

5. Any corrective actions taken by the captains at Waiakea, which would show a pattern of ineffectiveness, or a lack of efficiency on my part, as you note in paragraph four of the Notice of Placement dated November 27, 2018.
6. Factual proof that Kailua Fire Station is not a "critical task oriented station". The personnel at station seven seem to disagree with your assessment, as would the recent rescue operation that they undertook at Anna's Pond.
7. All phone logs, written communication, and emails between Captains Vincent, Spain, and Matsuda and your office that have a bearing on this situation. Please include communications with retired chiefs Victorino, Andrade, and Kosaki in this as well.

I believe this is a good start, however I have no doubt that further requests for information will be forthcoming.

Thank you for your consideration in this matter.



Bran Keopuhiwa
Fire Rescue Specialist
Kailua Fire Station, C Platoon

Harry Kim
Mayor

6

Darren J. Rosario
Fire Chief

Lance S. Uchida
Deputy Fire Chief



County of Hawai'i

HAWAI'I FIRE DEPARTMENT

25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720
(808) 932-2900 • Fax (808) 932-2928

December 24, 2018

Mr. Bran Keopuhiwa
Fire Rescue Specialist
P.O. Box 271
Papaikou, Hawai'i 96781

Dear Fire Rescue Specialist Keopuhiwa:

Re: REQUEST FOR INFORMATION

Regarding your letter received on December 14, 2018 for information request. Please see the following regarding your request according to your bulleted items:

1. See attached.
2. See attached
3. There is no written notice as you indicated. The letter dated November 27, 2018 does not state any mention of a written notice.
4. There is no written notice as you indicated. The letter dated November 27, 2018 does not state any mention of a written notice.
5. My letter does not state what you are indicating in your request.
6. My letter does not state that the Kailua Fire Station is not a critical task oriented station. Both stations are critical task oriented stations. My letter states that the Kailua Fire Station is the only other worksite with Fire Rescue Specialist positions.
7. See attached.

DARREN J. ROSARIO
Fire Chief



FRS Bran Keopuhiwa request for information dated December 14, 2018, Item 1:

1. As indicated in Captain Matsuda's letter dated April 20, 2018 that list incidents between Captain Matsuda and FRS Keopuhiwa between January 16, 2017 to January 11, 2018
2. Failure to follow a directive by BC Kusch regarding communicating with Captain Matsuda
 - a. December 22, 2017
3. Oral Reprimand by Captain Spain for not following work place directives
 - a. December 13, 2017
4. Inappropriate texting regarding Captain Matsuda
 - a. December 28, 2017
5. Allegation of failure to follow a directive from BC Kusch
 - a. December 13, 2017
6. As indicated in Captain Vincent's letter dated April 22, 2018
7. As indicated in Captain Spain's letter dated April 23, 2018
8. Violence in the Workplace Incident Report submitted May 22, 2017 regarding Captain Vincent
9. Violence in the Workplace Incident Report submitted May 22, 2017 regarding Captain Spain
 - a. December 13, 2018
10. Violation of Section 3 and Section 19 of the HFD Rules and Regulations complaint by Captain Spain
 - a. September 7, 2018
 - b. December 13, 2017

Harry Kim
Mayor

Darren J. Rosario
Fire Chief

Lance S. Uchida
Deputy Fire Chief



County of Hawaii
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawaii 96720
(808) 932-2900 • Fax (808) 932-2928

February 4, 2019

CERTIFIED MAIL

Fire Rescue Specialist Bran N. Keopuhiwa
P.O. Box 271
Papaikou, HI 96781

Dear Fire Rescue Specialist Keopuhiwa:

RE: FIRE RESCUE SPECIALIST BRAN KEOPUHIWA GRIEVANCE REGARDING PLACEMENT

This is in response to the Step 1 Grievance filed on your (Fire Rescue Specialist Bran Keopuhiwa, Hawaii Fire Department) personal behalf. A Step 1 Grievance meeting was held on January 28, 2019 at the HFD Administration Conference Room. In attendance were Fire Chief Darren Rosario, Grievant Fire Rescue Specialist Bran Keopuhiwa, Deputy Fire Chief Lance Uchida, Assistant Fire Chief Darwin Okinaka, Human Resources Specialist I Jean Viernes, HFFA Division Chairman Charles Spain, and HFFA Board Member Ivan Higashi.

The grievance alleged that the Department violated Sections 4, 10, 16, 19, and 20 of the Unit 11 Agreement. The grievant contended that these violations occurred when the Department placed the Grievant to the Kailua Fire Station from his regular assignment at the Waiakea Fire Station.

During the Step 1 Grievance Hearing, the matter was discussed and the Grievant was provided the opportunity to provide evidence regarding the alleged violation.

1. Section 4: The Grievant contended that the employer violated this section as an abuse of the Fire Chief's power. The Grievant contends that his placement to the Kailua Fire Station was a transfer under disciplinary action. The Grievant further contended that the alleged violations of Sections 10, 16, 19, and 20 shows that Section 4 was violated. Section 4 affords that "The Employer reserves and retains, solely, and exclusively, all rights, authority and prerogatives, including the rights of management to manage, control and direct its Employees and operations except as specifically abridged or modified by this Agreement." The Grievant did not provide any evidence that supported his contention that Section 4 was violated. As allowed, The Fire Chief placed the Grievant for the good of the order of the department.



Hawaii's County is an Equal Opportunity Provider and Employer.

EXHIBIT A-5

2. Section 10: The Grievant maintains that he was transferred for disciplinary reasons. The Grievant was provided the opportunity to provide to the Fire Chief any evidence that his placement was a form of discipline. The Grievant did not provide any documentation or testimony that supported his claim. Documentation provided to the Grievant prior to the hearing included the placement order, written statements from the Officers of the Waiakea Fire Station both prior to counseling and mediation and following the mediation, and the letter from the Kuikahi Mediation Center. The Employer placed the Grievant to the Kailua Fire Station. The Grievant is ranked as a Fire Rescue Specialist. The only other worksite for a Fire Rescue Specialist, other than the Waiakea Fire Station, is the Kailua Fire Station.
3. Section 16: The Grievant contends that the Employer violated Section 16 by disciplining the Grievant. The Employer maintains that the placement was not discipline.
4. Section 19: The Grievant contends that the Employer violated Section 19 by disciplining him. The Employer maintains that the placement was not discipline.
5. Section 20: The Grievant contended that the Employer violated Section 20 when he was assigned to a different platoon. The Grievant stated that he had communicated with the BU 11 President and was advised that there were no violation. The Grievant still contended that the Employer violated Section 20. The Employer did not violate Section 20 as the Grievants hours of work did not change as specified in Section 20.

I have considered the facts and circumstances of this case along with the statements the Grievant made during the Step 1 grievance meeting. Having considered the complaint and the evidence presented, it is the decision that the department did not violate Sections 8, 10, 14, and 22. Accordingly, the grievance is denied.

Sincerely,



DARREN J. ROSARIO
Fire Chief

cc: Deputy Fire Chief Lance Uchida
Assistant Fire Chief Darwin Okinaka
Robert Lee, President, HFFA
William Brillhante, Director of Human Resources
Wil Okabe, Managing Director

KEOPUHIWA, BRAN, N

08-03-03

EMPLOYEE 200 DEC 23 AM 8 23
JAN 02 2019

DATE OF HIRE

FIRE RESCUE SPECIALIST

05-15-09

RANK

PROMOTION DATE

KAILUA "C"

STATION/PLATOON

I request a transfer to the Fire Stations indicated below. My preference is in the order listed, and I understand that I can be transferred according to this request:

- 1. WAIAKEA B 5. CENTRAL ANY SHIFT
- 2. WAIAKEA C 6. HAIHAI ANY SHIFT
- 3. WAIAKEA A 7. LAUPAHOEHOE ANY SHIFT
- 4. KAILUA B 8. VOLCANO ANY SHIFT

Note: Only a station name is required. If a shift preference is indicated, you will only be considered for that assignment. For assignment to Hazmat or Rescue, attach copies of current certifications to your transfer request.

[Signature]
SIGNATURE

12-24-18

DATE SUBMITTED

SS
REVIEWED DATE 12/27/18

IMMEDIATE SUPERVISOR

MG
REVIEWED DATE 12/31/18

BCB Michael Grace

BATTALION CHIEF

ALC
REVIEWED DATE 1/2/19

AC-1 Darwin Okinaka
ASSISTANT FIRE CHIEF

SON
REVIEWED DATE JAN 02 2019

Lance S. Uchida

DEPUTY FIRE CHIEF

[Signature]
REVIEWED DATE JAN 02 2019

Darren J. Rosario

FIRE CHIEF

COMMENTS:

THIS REQUEST WILL EXPIRE AT THE END OF THE CALENDAR YEAR AND WILL BE CONSIDERED NULL AND VOID AFTER ANY PROMOTION OR TRANSFER. IF YOU SHOULD DECIDE TO RESCIND THIS REQUEST, PLEASE SUBMIT YOUR INTENTION IN WRITING AND YOUR NAME WILL BE REMOVED FROM THE ACTIVE TRANSFER LIST. IF YOU WISH TO MAKE ANY CHANGES TO YOUR REQUEST YOU MUST SUBMIT A NEW REQUEST.

THIS REQUEST EXPIRES: 12/31/2019

FOR FIRE ADMINISTRATION USE

DATE RECEIVED: _____ DISPOSITION: _____

Date Rec'd by Employer:
JAN 31 2019 3:08 pm

LABOR AGREEMENT GRIEVANCE FORM
Unit 11 - Firefighters
Step I

TO: Darren Rosario (Division Head) Chief (Position Title) Fire (Department)
FROM: Bran Keopuhiwa (Name of Grievant) Fire Rescue Specialist (Position Title) Kailua C (Department)

PART I.

In accordance with the grievance procedure contained in the Firefighters' Agreement, a formal grievance is hereby submitted. I attempted to resolve this grievance through the informal stage on 1-23-19 (date) with Fire (Department).

A. STATEMENT OF GRIEVANCE (type an X in the appropriate selection):

- Date of alleged violation: 1-16-19 Date
- If alleged violation is continuous, date first became known: _____ Date
- Section or provision of the agreement allegedly violated: 10,4,16,19

3. Nature of complaint. (Dates, facts, circumstances, etc.)

The Hawaii County Fire Department continues to retaliate against me for filing a Violence in the Workplace complaint. Chief Rosario transferred me without having a viable reason and now Fire administration refuses to honor my transfer request, stating that "This decision was made with consideration of what's best for the Department, its operational efficiencies, and personnel involved. It was also determined that at the present time; out the best interest of all parties involved, the Department and for operational efficiencies to keep you and FRS Chun Fat on separate platoons." Chief Rosario failed to recognize the CBA Sec 10- Placement and transfer, and claims Sec 4- Management rights in an unlawful manner, and completely disregards Sec 19- Due process. Finally Chief Rosario makes a mockery of Sec 16- Discipline.

B. REMEDY SOUGHT:

Honor my transfer request by transferring me to Waiakea B. Or, negotiate an agreeable outcome.

(Signature of Union Representative, if applicable)

Bran Keopuhiwa
(Signature of Grievant)

DATE: 1-31-19

EXHIBIT A-7

12

Informal Step Grievance Meeting – FRS B. Keopuhiwa
1/23/19 @ 0900hrs

Email received on 1/22/19

Good morning Chief Uchida, I would like to request an informal step grievance meeting to discuss why I was not transferred on the latest round of movements. Thank you for your time and assistance, I look forward to hearing from you.

Mahalo, FRS Bran Keopuhiwa

Response:

- We did receive and consider your transfer request.
- After careful consideration and at the present time, the Chief determined not to honor your transfer request to Sta – 2. This decision was made with consideration of what's best for the Department, its operational efficiencies, and the personnel involved.
- Your request to transfer to Kailua B platoon was also considered. It was also determined that at the present time; out the best interest of all parties involved, the Department and for operational efficiencies to keep you and FRS Chun Fat on separate platoons.
- You have the right to grieve this decision.



1/23/19

Harry Kim
Mayor

Darren J. Rosario
Fire Chief

Lance S. Uchida
Deputy Fire Chief



County of Hawaii
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawaii 96720
(808) 932-2900 • Fax (808) 932-2928

February 15, 2019

CERTIFIED MAIL

Fire Rescue Specialist Bran N. Keopuhiwa
P.O. Box 271
Papaikou, HI 96781

Dear Fire Rescue Specialist Keopuhiwa:

**RE: FIRE RESCUE SPECIALIST BRAN KEOPUHIWA GRIEVANCE REGARDING
TRANSFER REQUEST**

This is in response to the Step 1 Grievance filed on your (Fire Rescue Specialist Bran Keopuhiwa, Hawaii Fire Department) personal behalf. A Step 1 Grievance meeting was held on February 11, 2019 at the HFD Administration Conference Room. In attendance were Fire Chief Darren Rosario, Grievant Fire Rescue Specialist Bran Keopuhiwa, Assistant Fire Chief Darwin Okinaka, Human Resources Specialist I Jean Viernes, and HFFA Division Chairman Charles Spain.

The grievance alleged that the Department violated Sections 4, 10, 16, and 19 of the Unit 11 Agreement. The Grievant contended that these violations occurred when the Department did not transfer him as requested on his transfer request.

During the Step 1 Grievance Hearing, the matter was discussed and the Grievant was provided the opportunity to provide evidence regarding the alleged violation.

1. Section 4: Section 4 affords that "The Employer reserves and retains, solely and exclusively, all rights, authority and prerogatives, including the rights of management to manage, control and direct its Employees and operations except as specifically abridged or modified by this Agreement." The Grievant did not provide any evidence that supported his contention that Section 4 was violated. As allowed in Section 10 of the BU 11 Contract, the Department considered the Grievant's transfer request.



Fire Rescue Specialist Bran N. Keopuhiwa
February 15, 2019
Page 2

2. Section 10: The Grievant alleged that by not honoring his transfer request, the Department violated this section. The Grievant was provided the opportunity to provide to the Fire Chief any evidence that the BU 11 contract requires the employer to transfer an employee as requested. The Grievant did not provide any documentation or testimony that supported his claim. The employer provided the Grievant with the applicable reasons that his transfer request was not approved.
3. Section 16: The Grievant contends that the employer violated Section 16 by disciplining the Grievant. The Grievant did not provide any evidence that he was disciplined. The employer maintains that the Grievant was not disciplined.
4. Section 19: The Grievant contends that the employer violated Section 19 by disciplining him. The Grievant did not provide any evidence that he was disciplined. The employer maintains that the placement was not discipline.

I have considered the facts and circumstances of this case along with the statements the Grievant made during the Step 1 grievance meeting. Having considered the complaint and the evidence presented, there is no violation. Accordingly, the grievance is denied. You have the right to appeal this decision to the employer in accordance to the BU 11 contract.

Sincerely,



DARREN J. ROSARIO
Fire Chief

cc: Deputy Fire Chief Lance Uchida
Assistant Fire Chief Darwin Okinaka
Robert Lee, President, HFFA
William Brillhante, Director of Human Resources
Wil Okabe, Managing Director

EXHIBIT A-9

Mach 4, 2019

Mr. William Brillhante Jr.

Dear Mr. Brillhante,

SUBJECT: Step 2 Grievance Appeal – FRS Bran Keopuhiwa – Transfer Request

This letter is to formally notify you that I am submitting this Step 2 appeal for the above referenced grievance pursuant to Section 18 Grievance Procedure set forth in the BU11 Collective Bargaining Agreement. This appeal is being filed because I am not satisfied with the action taken by the Employer to adjust the grievance at Step 1.

The facts generally related to the grievance are contained in the grievance itself.

Please contact me at your earliest convenience at 808-217-5656 or bkeopuhiwa@hawaiicounty.gov in order to schedule a meeting to discuss this Step 2 appeal.

Very truly yours,



FRS Bran Keopuhiwa

Enclosure (2) Original grievance, Step One response

Cc: Chief Darren Rosario

From: Bobby Lee
Sent: Tuesday, April 25, 2019
To: Keopuhiwa, Bran
Cc: Waipouli; Higashi, Ivan; Robert Lee; Fong, Richard
Subject: RE: Step 2 Decision

Aloha Liko,

Based on the Step 2 decision, we are submitting notice to the Employer to Arbitrate, primarily to preserve the time requirement while we assess the merits of your grievance. You will be receiving a letter from us shortly explaining our process and what you need to do.

Be Safe,

Bobby

From: Keopuhiwa, Bran [mailto:Bran.Keopuhiwa@hawaiicounty.gov]
Sent: Thursday, April 25, 2019 10:40 AM
To: Bobby Lee <rh18@hawaii.rr.com>
Cc: Waipouli <conan@hawaiiintel.net>; Higashi, Ivan <Ivan.Higashi@hawaiicounty.gov>; Robert Lee <robertlee@hawaiifirefighters.org>; Fong, Richard <Richard.Fong@hawaiicounty.gov>
Subject: RE: Step 2 Decision

Good morning Bobby, I received the decision from HR and I would like to move forward with arbitration. Please let me know if I need to do anything to start that process. Mahalo, FRS Bran Keopuhiwa

Sent from Mail for Windows 10

From: Bobby Lee
Sent: Tuesday, April 23, 2019 9:14 AM
To: Keopuhiwa, Bran
Cc: Waipouli; Higashi, Ivan; Robert Lee; Fong, Richard
Subject: RE: Step 2 Decision



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1483, AFL-CIO HUMAN RESOURCES
1018 PALM DRIVE, HONOLULU, HAWAII 96814-1029
TELEPHONE (808) 949-1566 FAX: (808) 952-6003
WEBSITE: www.hawaii firefighters.org

APR 25 2019

RECEIVED

April 25, 2019

VIA FACSIMILE and FIRST CLASS MAIL

William V. Brilhante, Jr.
Director, Department of Human Resources
County of Hawaii
101 Pauahi Street, Suite 2
Hilo, Hawaii 96720

Re: Fire Rescue Specialist Bran Keopuhiwa – Placement Grievance
Request for Arbitration

Dear Mr. Brilhante,

This letter is to formally notify you that the HFFA hereby submits this Step 3 Appeal for the above-referenced grievance pursuant to Section 18 Grievance Procedure set forth in the Agreement. This appeal is being filed because the HFFA is not satisfied with the action taken by the Employer to adjust the grievance at Steps 1 & 2.

The HFFA incorporates by reference all prior allegations of the contractual violations and request for remedies and relief. The HFFA requests the Employer to contact the undersigned at 808-949-1566 to schedule a meeting to discuss the Step 3 appeal.

Kind regards,

Robert H. Lee
HFFA President

cc: Colin Wilson
Charles Spain
Ivan Higashi
Richard Fong

6120

EXHIBIT A-12