

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

ERIN K. KUSUMOTO,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, and DEPARTMENT OF
EDUCATION, State of Hawai'i,

Respondents.

CASE NO(S). 20-CU-06-379
 20-CE-06-940

ORDER NO. 3586A1

AMENDED PRETRIAL ORDER AND
NOTICES; NOTICE OF EVIDENTIARY
HEARING

AMENDED PRETRIAL ORDER AND NOTICES

The Hawai'i Labor Relations Board (Board) previously issued Order No. 3586, Pretrial Order and Notices. After bifurcating the case in Order No. 3745, the Board hereby amends Order No. 3586 as set out below. The Board highly recommends that parties review the entirety of this order, as certain sections may have been amended in ways that include but are not limited to hearing dates and deadlines.

1. Section 4, Notice of Pretrial Conference, is amended to read as follows:

(4) 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: July 22, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

1) Pretrial Statement

Both the Complainant(s) and the Respondent(s) must file a Pretrial Statement with the Board as listed in the Schedule set forth below. The Pretrial Statement must include the following:

1. Statement of Issues
2. Witness List

The witness lists must 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 must include enough information for the Board to determine if the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1). The summary, therefore, must include sufficient information to show the Board that the testimony of each witness will be different, and so the summary for each witness must be individualized.

Failure to include individualized summaries for any witness may be grounds for the Board to strike that witness and not allow them to testify at the hearing on the merits. Multiple failures by a party or representative to include individualized summaries for witnesses may be grounds for the Board to commence proceedings regarding that party or representative under HAR § 12-42-8(g)(9)(A).

The witness list **must also include information regarding the location where the party expects the witness to testify from.** This location may include the witness' home, a party's office, or any other location from which the witness can testify remotely, without assistance or interference from any other party, and can access the relevant exhibits. See Order No. 3756 for more information about witness requirements.

If a party intends to file a request for a subpoena for a witness to attend the HOM, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the witness list.

3. Exhibit List

The exhibit lists must include copies of the proposed exhibits. The parties must use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day. The exhibits must be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes, with each exhibit bookmarked.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, to be produced at trial, such request must 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 must identify its exhibits using alphabetical letters (A, B, C, D, etc.). Union Respondent(s) must identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.). Employer Respondent(s) must identify its exhibits using numerical designations preceded by E (e.g., E-1, E-2, E-3, etc.). If there are multiple Union Respondents or Employer Respondents in a particular case, the Board will specify the designation for each Respondent.

If there are any duplicative exhibits, the parties must designate them as Joint Exhibits, the parties must designate one party to file these exhibits, and the Exhibits must be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

All Exhibits must be bates-stamped in the upper right-hand corner.

Additionally, the Exclusive Representative 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 must be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc. and **must be bates-stamped in the upper-right hand corner.**

2) Pretrial Conference

At the pretrial conference, the Parties must 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).

Parties should familiarize themselves with the other parties' intended witnesses and exhibits prior to the pretrial conference. Parties will be expected to submit objections to exhibits or witnesses at the pretrial conference. The Board will be moving exhibits into evidence at the pretrial conference if there are no valid objections.

The Board's rules of evidence are found in HAR § 12-42-8(g)(8).

While all parties have the right to appear at the Pretrial Conference to be represented by counsel or any other authorized person, **all parties are required to either appear or have a representative appear.**

Should any party share the Remote Zoom Hearing information with any other person, that sharing party is responsible for ensuring that that the Board's orders regarding such hearings are complied with. The Board will hold parties or representatives responsible for actions by any party that they share the Remote Zoom Hearing information with. See Order No. 3756.

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.

2. Section 5, Notice of the Hearing on the Merits, is amended to read as follows:

**(5) NOTICE OF THE HEARING ON THE
MERITS FOR PART ONE OF THE BIFURCATED CASE**

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: July 30, 2021 at 9:00 a.m.
August 2, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

All parties have the right to appear at the Hearing on the Merits and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear via the Remote Zoom Hearing at the hearing on the merits, unless permission is otherwise requested and granted.**

Should any party share the Remote Zoom Hearing information with any other person, that sharing party is responsible for ensuring that that the Board's orders regarding such hearings are complied with. The Board will hold parties or representatives responsible for actions by any party that they share the Remote Zoom Hearing information with. See Order No. 3756.

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.

3. Section 6, Schedule of Hearings, Conferences, and Deadlines is amended to read as follows:

(6) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Dispositive Motion Deadline</u>	7/8/21	
<u>Response to Dispositive Motion Deadline</u>	7/15/21	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	7/15/21	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	7/22/21	9:00 a.m.
<u>Hearing on the Merits</u>	7/30/21	9:00 a.m.
	8/2/21	9:00 a.m.

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

All provisions in Order No. 3586 not amended by this Amended Pretrial Order and Notices remain in effect.

DATED: Honolulu, Hawai'i, June 2, 2021.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Miles T. Miyamoto, Esq.
Peter Liholiho Trask, Esq.
Miriam P. Loui, Deputy Attorney General