

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

MARYELLEN ERNST,

Complainant,

and

HAWAII HEALTH SYSTEMS
CORPORATION; and KONA
COMMUNITY HOSPITAL,

Respondents.

CASE NO(S). 21-CE-13-956

ORDER NO. 3682A3

THIRD AMENDED PRETRIAL ORDER
AND NOTICES

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The Hawai'i Labor Relations Board (Board) previously issued a pretrial order and set a status conference for June 22, 2021. The Board was informed that Complainant MARYELLEN ERNST (Ms. Ernst) is currently out of state on personal business. Respondents HAWAII HEALTH SYSTEMS CORPORATION; and KONA COMMUNITY HOSPITAL (Respondents) did not object to a continuance. Accordingly, the Board cancels all previously scheduled dates and deadlines and amends Order No. 3682, Pretrial Order and Notices, as follows:

1. Section No. 5, Notice of Status Conference, is amended to read as follows:

(5) NOTICE OF STATUS CONFERENCE

PER Hawai'i Revised Statutes (HRS) § 89-5(i)(4) and (i)(5), and Hawai'i Administrative Rules (HAR) § 12-42-47:

NOTICE IS GIVEN that the Board will conduct a Status Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: August 17, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

All parties have the right to appear at the Status Conference 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.

2. Section No. 6, Notice of Pretrial Conference and Hearing on Dispositive Motions, is amended to read as follows:

(6) **NOTICE OF PRETRIAL CONFERENCE AND HEARING ON DISPOSITIVE MOTIONS**

PER HRS §§ 89-5(i)(4) and (i)(5), and 377-9:

NOTICE IS GIVEN that the Board will conduct a Pretrial Conference and Hearing on Dispositive Motions on the date listed below and in the Schedule in this document.

DATE AND TIME: TBD

LOCATION: TBD

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 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). 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 *de novo* hearing.

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.

If a party intends to file a request for a subpoena for a witness, 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 are required to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day, as ordered in Board Order No. 3605. 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, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the exhibit list.

The Complainant must identify his 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.).

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 are to be bates-stamped in the upper right-hand corner.

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 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).

While all parties have the right to appear at the Pretrial Conference and to be represented by counsel or any other authorized person, all parties are required to either appear or have a representative appear. 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 No. 8, Notice of the Hearing on the Merits, is amended to read as follows:

(8) NOTICE OF THE HEARING ON THE MERITS

NOTICE IS GIVEN, per 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: TBD

LOCATION: TBD

Subject to the Board's discretion due to the Extraordinary Circumstances listed above in Section 2, 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 at the hearing on the merits.** Please note that this requirement may be altered due to the Extraordinary Circumstances listed above in Section 2 by Board Order.

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.

4. Section No. 9, Schedule of Hearings, Conferences, and Deadlines is amended to read as follows:

(9) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Status Conference</u>	8/17/21	9:00 a.m.
<u>Dispositive Motion Deadline</u>	TBD	
<u>Response to Dispositive Motion Deadline</u>	TBD	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	TBD	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	TBD	
<u>Hearing on the Merits</u>	TBD	

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

5. In all other respects, Order No. 3682, as previously amended, remains unchanged and in effect.

DATED: Honolulu, Hawai'i, June 18, 2021.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Maryellen Ernst, SRL
Megumi Sakae, Esq.