

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. 3723

PROPOSED FINAL DECISION AND
ORDER CLOSING THE CASE

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On July 17, 2019, Complainant PATRICK J. GALLAGHER (Complainant) filed a Prohibited Practice Complaint (PPC) against Respondent BOARD OF WATER SUPPLY, City and County of Honolulu (Respondent). The Complainant alleges violations of the Hawaii Revised Statutes (HRS), Section 89-13, but failed to specify the specific subsection or subsections of HRS 89-13 that were violated.

On July 29, 2019, Respondent filed its Answer to the PPC, filed July 17, 2019.

On August 8, 2019, Respondent filed Respondent Board of Water Supply's Motion to Dismiss Complainant Patrick J. Gallagher's Prohibited Practice Complaint, filed July 17, 2019.

On August 22, 2019, Complainant filed an Amended PPC Complaint alleging violations of HRS 89-13, without specification of specific violations subsection or subsections of HRS 89-13, and violations of "HRS 89-4(B)".

On August 23, 2019, Respondent filed Respondent's Motion to set a Hearing Date for The Board to Accept Records Pursuant to a Subpoena Dues Tecum to be Served on the Hawaii Government Employees Association.

On August 23, 2019, the Board issued Order No. 3553, Pretrial Order and Notices, which among other things, noticed a hearing on dispositive motions and hearings on the merits on October 11, 2019 at 9:00 a.m. The Board set no other hearing dates in Order No. 3553.

On August 30, 2019, Respondent filed its Answer to Amended Prohibited Practice Complaint filed on August 22, 2019.

On September 10, 2019, the Board issued Order No. 3556, Order Granting, in Part, and Denying, in Part, Respondent's Motion to set a Hearing Date for The Board to Accept Records Pursuant to a Subpoena Dues Tecum to be Served on the Hawaii Government Employees Association. The Board denied the motion to set hearing but issued the subpoena duces tecum for October 11, 2019 at 9:00 a.m.

On October 3, 2019, Respondent filed Respondent Board of Water Supply's Motion to Dismiss Complainant, or in the Alternative, Motion for Summary Judgment of Patrick J. Gallagher's Amended Prohibited Practice Complaint, filed on August 22, 2019, with Memorandum in Support of Motion.

On October 11, 2019, the Board held a Hearing on dispositive motions and hearings on the merits. The Board also, pursuant to subpoena duces tecum received Respondent Exhibit #1 from the Hawaii Government Employees Association. Complainant was not present, and Respondent argued for dismissal of Complainant's Amended Prohibited Practice Complaint, filed on August 22, 2019. The Board took said motion under advisement and directed Respondent Board of Water Supply to file its motion to dismiss the PPC for Complainant's failure to appear and prosecute his case, by October 14, 2019.

On October 11, 2019, Respondent filed Respondent Board of Water Supply's Motion to Dismiss Complaint of Patrick J. Gallagher's Amended Prohibited Practice Complaint, filed on August 22, 2019, with Memorandum in Support.

On October 16, 2019, the Board filed its Notice of Hearing on Respondent Board of Water Supply's Motion to Dismiss Complaint of Patrick J. Gallagher's Amended Prohibited Practice Complaint, filed on August 22, 2019, setting the Hearing for October 24, 2019, 1:00 p.m.

On October 24, 2019, the Board held a Hearing on Respondent Board of Water Supply's Motion to Dismiss Complaint of Patrick J. Gallagher's Amended Prohibited Practice Complaint, filed August 22, 2019. Complainant was not present, and the Board granted Respondent's motion, and ordered Respondent to file its Proposed Board Order Granting Respondent Board of Water Supply's Motion to Dismiss Complainant Patrick J. Gallagher's Amended Prohibited Practice Complaint, Filed on August 22, 2019.

On November 8, 2019, Respondent filed Proposed Board Order Granting Respondent Board of Water Supply's Motion to Dismiss Complainant Patrick J. Gallagher's Amended Prohibited Practice Complaint, Filed on August 22, 2019.

Accordingly, pursuant to HRS § 91-11,ⁱ the Board enters the following order and decision.

Hawaii Administrative Rules § 12-42-8(g)(17)(C) provides that the “[B]oard may direct oral argument or the filing of briefs or **proposed findings of facts, conclusions of law, or both**, when it deems the submission of briefs or proposed findings, or both, is warranted by the nature of the proceeding or the particular issues therein” (emphases added).

The Board Grants the Respondent Board of Water Supply’s October 11, 2019 Motion to Dismiss Complainant Patrick J. Gallagher’s Amended Prohibited Practice Complaint, filed on August 22, 2019, and incorporates the Respondent’s Memorandum in Support of Motion to Dismiss in its decision and order. Further, the Board finds that the **Complainant**, as stated in the Respondent’s Memorandum in Support of the October 11, 2019 Motion to Dismiss Patrick J. Gallagher’s Amended Prohibited Practice Complaint, filed on August 22, 2019, **did fail to prosecute the complainant. (Emphasis added)**

The Complainant has five (5) days from the issuance of this order to file an objection. If no objection is filed, this Decision and Order will become final, and the case shall be closed.

DATED: Honolulu, Hawai‘i, March 22, 2021.

HAWAI‘I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Patrick J. Gallagher, Self-Represented Litigant
Ernest H. Nomura, Deputy Corporation Counsel
Gabriele V. Provenza, Deputy Corporation Counsel

ⁱ HRS § 91-11 states:

§91-11 **Examination of evidence by agency.** Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.