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Case No. 16-CE-11-887, 14-CE-11-845**

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII FIRE FIGHTERS ASSOCIATION,
IAFF, LOCAL 1463,

Complainant(s),

and

RICK BLANGIARDI, Mayor, City and
County of Honolulu; LIONEL CAMARA,
JR., Acting Fire Chief, Honolulu Fire
Department, City and County of Honolulu;
HONOLULU FIRE DEPARTMENT, City
and County of Honolulu; and CITY AND
COUNTY OF HONOLULU,

Respondent(s).

CASE NO(S). 14-CE-11-845

ORDER NO. 3730

ORDER GRANTING, IN PART, AND
DENYING, IN PART, HFFA/IAFF
MOTION FOR AWARD OF ATTORNEYS'
FEES AND COSTS AND DISMISSING
AND CLOSING THE CASE

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CASE NO(S). 16-CE-11-887

**ORDER GRANTING, IN PART, AND DENYING, IN PART,
HFFA/IAFF MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS AND DISMISSING AND CLOSING THE CASE**

1. Introduction

Complainant HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463 (HFFA) filed two prohibited practice complaints Case Nos. 14-CE-11-845 and 16-CE-11-887 with the Hawai'i Labor Relations Board (Board) against Respondents KIRK CALDWELL, Mayor, City and County of Honolulu (Caldwell); MANUEL P. NEVES, Fire Chief, Honolulu Fire Department, City and County of Honolulu (Neves)ⁱ; HONOLULU FIRE DEPARTMENT, City and County of Honolulu; and CITY AND COUNTY OF HONOLULU (collectively, Respondents). The cases were consolidated for hearing and disposition.

After the Hearing on the Merits (HOM), the Board issued a minute order on September 18, 2017, finding that Respondents committed prohibited practices, and a final order in these cases on June 8, 2018.

Respondents appealed the final order to the Circuit Court. The Circuit Court remanded the case, in part, to clarify whether HFFA prevailed in Case No. 14-CE-11-845. The Board issued an order clarifying that HFFA is the prevailing party of the consolidated cases, which, for the purpose of determining fees, effectively means that HFFA prevailed in both cases.

With the final order clarified, the Board now turns to HFFA's Motion for Award of Attorneys' Fees and Costs (Motion for Fees and Costs). The Board required HFFA to submit additional evidence to consider the Motion for Fees and Costs, which HFFA did in the form of a Supplemental Memo. HFFA also submitted an additional Supplemental Memo that added additional requested fees.

The Board allowed the parties to make oral arguments on and against the Motion for Fees and Costs. Because HFFA submitted the additional Supplemental Memo the day before the hearing, the Board permitted Respondents to submit their objections to these additional fees in writing, which they did.

After hearing all the arguments and a review of the pleadings, the Board GRANTS, IN PART, AND DENIES, IN PART, the Motion for Fees and Costs. The Board grants the Motion for Fees and Costs to the extent that HFFA is entitled to attorney's fees and costs. However, the Board denies HFFA's request for \$154,915.88 as attorney's fees and costs and reduces that amount to a total of \$99,155.86 in attorney's fees and \$5,602.00 in costs, based on what attorney's fees and costs have been shown to be reasonably and necessarily incurred.ⁱⁱ

2. Calculation of Fees Via the “Lodestar” Method

According to the Supplemental Memo, HFFA requests \$137,025.83 in attorney’s fees and costs; \$10,975.83 of that amount is costs, and the remainder appears to be attorney’s fees and applicable taxes. HFFA’s original Motion for Fees and Costs requested \$121,025.00 in attorney’s fees with a calculated \$5,446.12 in General Excise Tax (GET) and did not request costs.ⁱⁱⁱ HFFA’s second Supplemental Memo adds on an additional request of \$17,890.05 for the services of Rebecca Covert, Esq. from the firm Takahashi and Covert (Covert).

In support of the requested fees, HFFA provided various invoices from Trask, A Law Corporation, Peter Liholiho Trask, Esq. (Trask) and letters from Covert to HFFA providing an hourly breakdown. The invoices and letters describe various tasks that Trask and Covert completed, and the amount of time spent on those tasks. Trask states in two declarations that his agreed upon rate for this case with HFFA was \$250.00/hour; however, when this case began, he charged HFFA \$175.00/hour. Covert states in her declaration that her hourly rate with HFFA in this case is \$335.00/hour.

Respondents argue that the fee requests are unreasonable, lacks specificity, is vague, excessive, contains block billing, and attempts to recover for clerical tasks. Respondents argue that many of the billings are redundant and non-compensable, pointing to examples such as proposed findings of fact and conclusions of law (a total of 50 hours, billed in two entries covering four months). Further, according to Respondents, many clerical tasks are block-billed with non-clerical tasks.

The U.S. Supreme Court (U.S. Sup. Ct.) and the Hawai‘i Supreme Court (HSC) have both adopted roughly the same “lodestar” test to determine the reasonableness of attorney’s fees: consider the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *See, Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (Hensley); *Kaleikini v. Yoshioka*, 129 Hawai‘i 454, 469, 304 P.3d 252, 267 (2013) (Kaleikini). The party requesting fees, namely HFFA, has the burden to prove that the requested fees were reasonably and necessarily incurred. *See, Sharp v. Hui Wahine*, 49 Haw. 241, 246, 413 P.2d 242, 247 (1966).

2.1. HFFA Prevailed in Both Case No. 14-CE-11-845 and Case No. 16-CE-11-887

The Board must first consider to what level HFFA succeeded in this case and perform a Hensley analysis, considering whether the unsuccessful claims are related to the successful claims and whether HFFA’s level of success merits “limited” or “excellent” results. *Schefke v. Reliable Collection Agency Ltd.*, 96 Hawai‘i 408, 444-45, 32 P.3d 52, 88-89 (2001) (Schefke). The majority of Respondents’ objections appear to deal with the question of to what extent HFFA prevailed in the consolidated cases.

Although HFFA did not prevail on all of its claims, the HSC has noted that, in the context of determining attorney's fees, when claims for relief involve a common core of facts or rely on related legal theories, the majority of the attorney's time is devoted generally to the litigation as a whole, and it is difficult to divide the hours expended on a claim-by-claim basis. *Id.* The Board finds that this description aptly applies to this case.

Here, HFFA succeeded in the consolidated cases based on an amalgamate of the facts and theories presented in the consolidated cases because Respondents infringed on HFFA's bargaining unit members' HRS Chapter 89 rights. Accordingly, HFFA is the prevailing party in both Case No. 14-CE-11-845 and Case No. 16-CE-11-887.

More specifically, in the Board's final order in this case, Order No. 3368, as clarified by Order No. 3658, the Board made findings of fact and conclusions of law that pertain to both cases. The findings of fact apply to and cover the period of both cases. The conclusions of law apply to both cases. The Board specifically stated in Order No. 3368 that the Respondents' wilfulness was found based on the totality of circumstances in this case.

Upon clarification, in Order No. 3658, the Board further stated that HFFA's status as the prevailing party relies on the "amalgamate of circumstances of the two cases". Accordingly, HFFA prevailed in both cases, notwithstanding HFFA's lack of success on some of its claims.

Because the Board relied on the facts and theories in both cases to make its determinations, the Board finds that HFFA's level of success merits full fees of all reasonably and necessarily incurred costs.

However, a number of entries in Trask's early billing, specifically related to Case No. 14-CE-11-845 do not appear to be reasonably related to the litigation before the Board. The Board, therefore, will reduce those hours as more fully laid out in the table below.

2.2. Hours Reasonably and Necessarily Incurred

The Board must next determine how many hours were spent performing appropriate services in this case. *DFS Grp. L.P. v. Paiea Prop.*, 110 Hawai'i 217, 222, 131 P.3d 500, 505 (2006).

In addition to its Motion for Fees and Costs, HFFA submitted invoices to the Board that include timesheets detailing the hours that Trask spent on this consolidated case, as well as a breakdown of time spent by Covert and letters to HFFA regarding Covert's time. Respondents have raised objections to most of the individual time entries for Trask and general objections to the whole of Covert's time entries. The specific objections to Trask's work are generally duplicative of each other and reference issues including HFFA's status as the prevailing party, which the Board addresses above, vagueness, block-billing, clerical tasks, and assertions that the

total amount of time taken for items is unreasonable and that some entries have not been shown to be necessary. The Board will review each of these arguments.

Respondents also raised the issue of hours charged for attending hearings and the billed versus actual time of the hearing; HFFA did not dispute this issue. Further, certain entries on the Motion for Fees and Costs are not corroborated by the evidence submitted. Accordingly, the Board will reduce hours to match the actual hearing times and match the evidence submitted, as detailed in the table below.

2.2.1. Trask Hours

2.2.1.1. Alleged Vagueness

Respondents object to numerous time entries as vague. Several objections appear to entries where the items worked on are not specifically stated (e.g., “Continue drafting.”). However, while some of these entries are not excessively descriptive, they are not so vague as to warrant rejection. When read in context, the items worked on are clear based on the prior and subsequent line items.

While the Board might prefer more coherent descriptions of the time spent, the Board does not see them as impermissibly vague. Accordingly, the Board rejects these vagueness objections.

2.2.1.2. Block Billing

Block billing occurs when multiple tasks are claimed in one block, without detailing the amount of time spent on each task; however, common sense must be used when reviewing alleged block billed entries. Gurrobat v. HTH Corp., 135 Hawai‘i 128, 136, 346 P.3d 197, 205 (2015) (Gurrobat).

Block billing is problematic because it makes it difficult for the Board to determine reasonableness of billed hours. Gurrobat, 135 Hawai‘i at 135, 346 P.3d at 204. However, this does not automatically lead to the rejection of block billed entries. Id.

Block-billed hours may be excluded where the Board cannot distinguish between compensable and non-compensable tasks. Haw. Ventures, LLC v. Otaka, Inc., 116 Hawai‘i 465, 475, 173 P.3d 1122, 1132 (2007) (Hawaii Ventures). Where the Board can make such a distinction, block-billed entries may be reduced by a percentage to account for the increased difficulty in determining the reasonableness of these hours. Gurrobat, 135 Hawai‘i at 135, 346 P.3d at 204.

Several of Respondents’ block billing objections must be set aside when considered with common sense (e.g., Objection 24 objects to the entry “Draft HFFA Exhibits/Revise” as a block-

billed entry; this clearly constitutes the single task of “working on a HFFA Exhibits”. *See, Gurrobat* 135 Hawai‘i at 136, 346 P.3d at 205.

There are, however, a few cases in which multiple documents are worked on in a single entry. For example, on September 29, 2014, Trask worked on a Motion to Continue/Reschedule and the Declarations of two witnesses in one billed entry. However, the Board generally finds that it can determine whether the entries are reasonable or not.

There are additional entries where clerical tasks have been entered together with other items; the Board will address those below.

Accordingly, the Board rejects these objections.

2.2.1.3. Billing for Multiple Days

While the Board can generally determine the reasonableness of block billed entries where general tasks are broken into multiple smaller tasks, the Board finds it much more difficult to do where Trask billed for multiple days in a single entry.

Typically, attorneys keep time sheets with units of time for billing purposes, and one-tenth of one hour (0.1 hour) is generally the shortest acceptable unit of attorney time. *Gurrobat*, 135 Hawai‘i at 135-36, 346 P.3d 197, 204-05. Counsel is not required to record in great detail how every minute is spent, but if a court requires more detailed information to determine the outcome of fee applications, then the court may request it. *See, Fisher v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000).

In this case, the Board requested additional evidence from HFFA to substantiate the hours requested in the original Motion for Fees and Costs. HFFA provided additional information in the Supplemental Memo.

However, HFFA did not provide any additional information as to the several periods where multiple days were billed for in a single billing entry. When multiple days or even months are billed together in a single entry, ending in a perfectly round number (10 hours or 50 hours), the Board finds this suspect and makes it difficult for the Board to determine the reasonableness of these entries.

As stated above, HFFA bears the burden of proof with regard to a request for attorney’s fees and costs. Because the Board cannot substantiate these hours after requesting and reviewing additional evidence and, the Board will deny the periods of multiple days, weeks, and months billed together in a single entry.

2.2.1.4. Clerical Tasks

The HSC has directed courts to reduce attorney's fees for the performance of clerical tasks. Schefke, 96 Hawai'i at 458, 32 P.3d at 102. Clerical costs are considered part of an attorney's overhead, reflected in the charged hourly rate, and cannot be billed separately. Hanover Ins. Co. v. Anova Food, LLC, 2017 U.S. Dist. Lexis 89300, *21 (D. Haw. June 9, 2017).

Clerical tasks may include reviewing notices, scheduling, calendaring, notice to clients of dates and deadlines, informing clients if documents having been filed, filing documents, copying, printing, and scanning documents, and communicating with Board staff, etc. Moskowitz v. Am. Sav. Bank, F.S.B., 2017 U.S. Dist. Lexis 179303, at *19-20, (D. Haw. Oct. 30, 2017). Selecting exhibits is a legal task; however, review and/or organization of those exhibits is clerical. Id.

HFFA argues that Trask's billing entries that include or comprise solely of clerical tasks are not representative of what Trask actually did at those times; rather, they are notes of what else was happening at that time and that Trask never billed for clerical time.

However, the Board cannot accept these arguments. Trask's billing entries have reasonable specificity as to tasks completed for periods of time. If the Board accepts that some of Trask's billing entries are inaccurate as submitted, then the Board would be forced to determine that all of Trask's billing entries are inaccurate. The Board declines to do so.

Respondents argue that the Board cannot reasonably apportion the time between compensable and non-compensable tasks because certain entries have been combined. The Board recognizes that clerical tasks cannot be billed for. However, after review of the evidence, the Board believes it can make a reasonable determination of the amount of time that should be reduced.

Based on the Board's review, the Board reduces Trask's hours as described more fully in the table below.

2.2.2. Covert Hours

Although Respondents do not set out a breakdown of objections to Covert's hours and, instead, primarily argues that they should be rejected in their entirety, the Board has an obligation to determine the reasonableness of the requested attorney's fees.

Covert's hours have many of the same issues that Trask's do when it comes to billing for multiple days and clerical tasks. For the reasons referenced above in calculating Trask's work, the Board reduces Covert's hours, as described more fully in the table below.

2.3. Reasonable Rate

The Board next turns to the hourly rates that should be awarded based on Trask and Covert's work. According to HFFA and its documentation, Trask's early work was billed at the rate of \$175.00/hour, a rate that was then raised to \$250.00/hour, and Covert's work was billed at the rate of \$335.00/hour.

HFFA argues that Trask's original rate of \$175.00/hour was based on Trask keeping his hourly rate for HFFA artificially low until 2014. Based on that argument, HFFA claims that \$175.00/hour is an unreasonable rate for Trask's work, and that \$250.00/hour should be awarded.

The value of an attorney's time is generally reflected in the normal billing rate. Chun v. Bd. of Trustees of the Emp. Ret. Sys., 92 Hawai'i 432, 442, 992 P.2d 127, 137 (2000). However, the HSC has also used prevailing market rates to determine a reasonable attorney's fee. See Kaleikini, 129 Hawai'i at 472, 304 P.3d at 270.

HFFA argues that Trask's rate of \$175.00/hour was unreasonable because of Trask's years of legal experience and that Trask kept this rate artificially low case, at his 2004 rate, rather than his 2014 rate, which was actually \$250.00/hour.

According to HFFA, Trask has been licensed to practice law since 1977 and has been practicing within the area of labor relations since 1997. The HSC has looked at reasonable rates for attorneys and found that \$160.00/hour was a reasonable rate for an attorney with significantly less experience. Kaleikini, 129 Hawai'i at 473, 304 P.3d at 271. Considering the hourly fees of other attorneys in 2014, the Board finds that \$250.00/hour is a reasonable rate for Trask.

Covert's normal billing rate is \$335.00/hour. Respondents do not argue that Covert's rate is unreasonable, and the Board finds that, based on the evidence presented, \$335.00/hour is a reasonable rate for Covert.

3. Substantiated Costs

The Board now turns to the requests for costs. HFFA did not ask for costs in its original Motion for Fees and Costs. In considering the reasonable actual disbursements, the Board looks to the evidence submitted by HFFA.

HFFA submitted receipts totaling \$5,602.00. Accordingly, as "costs may be easily proven by actual receipts for expenditures," Porter v. Hu, 116 Hawai'i 42, 67, 169 P.3d 994, 1019 (App. 2007) (citation omitted), the Board will accept these receipts as the actual costs.

Accordingly, the Board will award \$5,602.00 to HFFA as costs.

4. Table of Final Attorney's Fees

In sum, the Board will award attorney's fees and costs to HFFA as follows:

4.1. Trask Attorney's Fees

Date	Task	Requested	Awarded	Reason
7/29/14	Begin drafting New Prohibited Practice Complaint, challenging HFD' s denial of All Union meetings. (Section 5 and 6)	3.5	3.5	
8/20/14	Continue drafting.	3.5	3.5	
8/23/14	Continue drafting.	8	8	
8/24/14	Complete draft, review/revise/check exhibits, scan draft and email to RHL for approval.	6.7	3.2	Clerical Tasks (2.2.1.4)
8/26/14	Received emailed comments from RHL, TC/to RHL, discuss why Section 5 and 6 are claimed as alleged misconduct against HFD.	0.4	0.4	
8/26/14	Revise PPC, copy and file on August 27, 2014	2	0.5	Clerical Tasks (2.2.1.4)
8/27/14	PPC filed at HLRB, ID: CE-11-845, Delivered 3 copies to HFFDA	0.5	0	Clerical Tasks (2.2.1.4)
8/28/14	Received/revise/filed, and transmitted copy to HFFA of HLRB's Order and Notice of Filing of PPC and Pre-Hearing/Settlement Dates, and Hearing Dates	1	0	Clerical Tasks (2.2.1.4)
9/5/14	Receive/review/file and transmit copy of Respondents Answer To PPC & Prehearing Settlement Conference Statement to RHL, email and hard copy by mail.	1	0	Clerical Tasks (2.2.1.4)
9/9/14	Review of file, attend HLRB Pre-Hearing Settlement Conference.	1.5	1.5	
9/9/14	TC with RHL, wants to consider filing motion for Summary Judgment.	0.2	0.2	
9/19/14	Begin drafting Motion for Summary Judgment	6.5	6.5	
9/20/14	Continue drafting Motion for Summary Judgment.	4	4	
9/21/14	Continue drafting Motion for Summary Judgment and begin drafting RHL Declaration	7	7	
9/22/14	Review revise Declaration of RHL, scan/email to RHL, for review and approval; draft Declaration of Andrew Fukuda; TC's to and from Andrew Fukuda, forward declaration to Andrew Fukuda. Review/revise/finalize, copy and file 9/23/2014.	6	3	Clerical Tasks (2.2.1.4)

9/23/14	File HFFA Motion for Summary Judgment at HLRB.	1.5	0	Clerical Tasks (2.2.1.4)
9/25/14	Received by mail, Board notice of rescheduled Hearing dates etc. to 10/7/2014, at 10:30am. PLT needs to reschedule due to Navy Arb . 3 hours	0.3	0	Clerical Tasks (2.2.1.4)
9/26/14	TC with Elisabeth Contrades, Dep Corp Counsel, she is ok with continuance of hearing on HFFA/IAFF motion for summary judgment.	0.2	0.2	
9/29/14	Draft HFFA Motion to Continue/Reschedule dates. Draft Declarations of RHL and Andrew Fukuda for submission into HLRB record.	3.2	3.2	
10/13/14	Receive/review/file, copy and transmit copy of City and County of Honolulu's Memorandum In Opposition to HFFA/is Motion for Summary Judgment.	1.5	0	Clerical Tasks (2.2.1.4)
10/26/14	Review of file, HFFA Motion for Summary Judgment, Employer's Memo In Opposition, Complaint, Answer to Complaint, in preparation for argument on 10/27/2014 before HLRB on HFFA Motion for SJ.	2	2	
10/27/14	Oral Argument before HLRB on HFFA/IAFF, Motion for Summary Judgment.	1.5	1.5	
11/19/15	Voice Message to Elisabeth Contrades that PLT going send "draft Exhibits" for her review for JOINT EXHIBITS	0.1	0	Clerical Tasks (2.2.1.4)
11/19/15	Draft HFFA Exhibits/revise.	3.5	3.5	
11/19/15	Draft HFFA Witness List.	1	1	
11/19/15	Scan and email to E. Contrades HFFA Exhibits List and witness List.	0.2	0	Clerical Tasks (2.2.1.4)
11/23/15	Email and voice message from E. Contrades will look over the Exhibits and get back about making them Joint Exhibits.	0.2	0	Clerical Tasks (2.2.1.4)
11/24/15	Reply from E. Contrades but for one exception to Exhibits could be Joint Exhibits. PLT reply.	0.2	0	Clerical Tasks (2.2.1.4)
11/25/15	Emails from and return to E. Contrades. Acceptable/revise and PLT to file electronically the Joint Exhibit list.	3	3	

11/29/15	Review/revise Joint Exhibits, resend to E. Contrades, copy and make Exhibits for HLRB submission, Witness Copy, Courtesy Copy for Elisabeth and RHL.	3.5	0.5	Clerical Tasks (2.2.1.4)
11/29/15	Draft Briefing Booklet for RHL.	3	3	
11/30/15	Prepare for hearing on 12/3-4/2015, and meeting at HFFA on 12/1 /2015.	3	3	
11/30/15	File and ServeXpress of Joint Exhibits to HLRB.	1.5	0	Clerical Tasks (2.2.1.4)
11/30/15	Continue Preparation for Hearing	3	3	
11/30/15	Draft/Revise/file and Serve Express HFFA Exhibit #1 (Photo)	1	0	Clerical Tasks (2.2.1.4)
1/6/16	After discussion with RHL about Chief's video message of December 2015, draft letter to HLRB requesting further "status conference", where RHL could show Chief's Video dated December 2015.	1	1	
1/7/16	After discussion with RHL, revised letter and sent to HLRB by U.S. mail and email.	0.5	0	Clerical Tasks (2.2.1.4)
1/13/16	After emails to and from HLRB, Lis Contrades and RHL, Status Conference set for 1/14/2016 at 1:30 pm.	0.5	0	Clerical Tasks (2.2.1.4)
1/14/16	Attend Status conference at HLRB	1	1	
3/20/16	Draft Joint Motion to Reschedule hearing on merits in CE-11-845, and Motion to Schedule Submission of Post Hearing Briefs in CE-11-864.	3.5	3.5	
3/23/16	Review/revise, and efile motion	1	0	Clerical Tasks (2.2.1.4)
3/23/16	Scan and email filed copies of both motions to RHL & I. P.	0.3	0	Clerical Tasks (2.2.1.4)
3/31/16	Receive/review and forward copy of HFD's memorandum In Opposition to HFFA's Motion to reschedule Hearing on merits on CE-11-845 and reschedule submission date for Post Hearing Briefs in CE-11-864.	0.5	0	Clerical Tasks (2.2.1.4)
4/6/16	Draft/revise/file with HLRB Supplemental Declaration of PLT and Exhibit 1.	2.8	0.8	Clerical Tasks (2.2.1.4)

4/21/16	Attend Status Conference on this matter before the Board, Paul H. Sato. Board insisting on Settlement. City needs to respond to HFFA/IAFF's last settlement proposal.	0.5	0.2	Reasonable Relation (2.1) (Pertains to agreement not before the Board)
4/26/16	Received/reviewed filed HFD's reply to HFFA/IAFF's Settlement proposal of 2/2/2016	0.1	0	Clerical Tasks (2.2.1.4)
4/27/16	Email transmittal of HFD's reply to HFFA/IAFF's 2/2/2016 last Settlement Demand in these two cases, forward to RHL/Irene Puuhau.	0.2	0	Clerical Tasks (2.2.1.4)
8/28/16- 8/29/16	Review of files, status, analyze, draft opinion letter for resolution.	3	0	Multiple Days (2.2.1.3)
8/30/16	Draft letter to RHL/HFFA recommending acceptance of Agreement drafted with help of Chair Kerry Komatsubara, December 3, 2015.	1.5	0	Reasonable Relation (2.1) (Pertains to agreement not before the Board)
8/30/16	TC with RHL, discuss options, from letter and the direction he/HFFA desires to proceed, instructs filing for status conference	0.3	0.3	
8/31/16	Pursuant to instructions, drafted HFFA/IAFF motion for Status Conference in both cases, filed separately electronically.	3.5	0.5	Clerical Tasks (2.2.1.4)
9/7/16	Received/Reviewed/filed and transmitted copies of HFD's statement of No Objection to HFFA Motions for Status Conference in both PPC's filed on August 31, 2016 to HFFA.	0.5	0	Clerical Tasks (2.2.1.4)
9/8/16	Received/review/filed and transmitted copy of Board of Notice Scheduled Status Conference for 9/16/2016 to HFFA.	0.5	0	Clerical Tasks (2.2.1.4)
9/9/16	Received/reviewed/filed Board Notice of Corrected Notice of Status Conference. Not sent to HFFA. 3 Corrective Board Notices	0.3	0	Clerical Tasks (2.2.1.4)
9/15/16	Supplemental Memo to 8/30/2016 memo to RHL/HFFA on these cases. Strategy for 9/16/2016 HLRB Status Conference.	0.5	0.5	
9/15/16	TC with RHL discuss and informed of City meeting with HFD, Mayor, HR Director, etc. on what way to settle PPCs. RHL believes City will make settlement offer.	0.5	0	Reasonable Relation (2.1) (Pertains to agreement not before the Board)

9/16/16	Appearance at HLRB for Status Conference in both PPC's. Board issued verbal notice of scheduling of Hearing on merits of CE-11-845, and deadline for submission of Post Hearing Briefs in CE-11-864. Written order to issue from Board.	1.5	1.5	
9/16/16	Review of prior emails and settlement agreements. TC with RHL, received Settlement Agreement from City through Mayors Office. Forwarded to PLT. Review and compare to previous settlement agreements.	1	0.5	Clerical Tasks (2.2.1.4)
9/16/16	Received Board order for both PPC. File and forward to RHL/HFFA.	0.3	0	Clerical Tasks (2.2.1.4)
9/16/16	Upon request from RHL resent documents.	0.2	0	Clerical Tasks (2.2.1.4)
9/16/16	Draft letter for RHL inquiring about the Settlement Agreement he received in CE-11-845.	1.5	0	Reasonable Relation (2.1) (Pertains to agreement not before the Board)
9/18/16	TC from RHL requesting that I revise letter for him in CE-11-845. Returned to RHL.	0.2	0	Reasonable Relation (2.1) (Pertains to agreement not before the Board)
9/28/16	Email inquiry to Elisabeth Contrades on status of settlement proposal made on 9/25/2016 by PLT.	0.1	0	Reasonable Relation (2.1) (Pertains to proposal not before the Board)
10/10/16	TC to John S. Mukai, Esq., inquiring about the whereabouts of Lis Contrades, etc. Econtrades at UH, Ernest Nomura in charge.	0.2	0	Reasonable Relation (2.1); Clerical Tasks (2.2.1.4)
10/16/16	Draft/review/revise/HFFA Motion to Extend Time to Submit Post Hearing Briefs; Efiled 10/17/2016	4	3	Clerical Tasks (2.2.1.4)
10/25/16	TC with RHL, submit Post Hearing Brief and head for hearing in 845.	0	0	
1/0/00	Email from Karen Lee, City willing to discuss resolution of 845 and pending disputes on Section 6 Meetings. Wants to discuss. Reply email, PLT asks City for proposal.	0.2	0	Clerical Tasks (2.2.1.4)
10/28/16	Email from Karen Lee, wanting information on other grievances etc., and questioning pending PPC. Inquires whether HFFA willing to remove from Table its Section 6 proposal. PLT response.	0.3	0	Reasonable Relation (2.1) (Pertains to other matters not before the Board); Clerical Tasks (2.2.1.4)

11/9/16	Received authorization to proceed to file new HLRB Complaint; draft, review and consideration of Complain in CE-11-845; letters, correspondence, emails by and between HFFA and RFD, Re: Section 6 Meetings dating 8/16/2016; consider timeliness issue. 8.5 hours	8.5	8.5	
11/10/16	Continue drafting new Complaint.	7.5	7.5	
11/13/16	Complete draft/review of new PPC. Email to RHL for review. (Need: Exh 6)	4.5	2.5	Clerical Tasks (2.2.1.4)
11/14/16	Received from HFFA emailed Exh 6.	0.1	0	Clerical Tasks (2.2.1.4)
11/14/16	Telecon with RHL, approval, and electronic filing.	1.5	0.5	Clerical Tasks (2.2.1.4)
11/15/16	Online Check with HLRB and File & ServeXpress whether New PPC accepted. Received and accepted. Confirmed. Download and print. Forward Copies to RHL/HFFA.	0.5	0	Clerical Tasks (2.2.1.4)
11/15/16	Begin drafting HFFA Motion to Consolidate CE-11-845 with CE-11-886, legal research Board Rules, and prior decisions.	2	2	
11/16/16	Drafting/review/revise HFFA Motion to Consolidate 845 and 887.	6	6	
11/17/16	Review/revise/electronically file, copy and mail to all Respondents, HFFA Motion For Consolidation.	1.5	0.5	Clerical Tasks (2.2.1.4)
11/17/16	Received, Review electronic Board Filing of Notice To Respondents of Filing of PPC, Prehearing and Hearing. File and forward copy to HFFA.	1	0	Clerical Tasks (2.2.1.4)
11/22/16	Draft/review/file and serve electronic filing at HLRB of HFFA Prehearing Conference. Copy to HFFA.	3	2	Clerical Tasks (2.2.1.4)
11/23/16	Received/review and file electronic service of Respondents Answer to PPC; Memorandum In Opposition to HFFA Motion For Consolidation and Pre-hearing Conference Statement. Forward Copies to RHL/HFFA. (Hand Delivered 11/25/2016)	1.5	0	Clerical Tasks (2.2.1.4)

11/24/16	Review HFFA Motion To Consolidate, Respondents Memo In Opposition; Answer and Pre-hearing Conference Statement; in prep for 11/25/2016 HLRB Prehearing Conference. May have to argue motion.	2.5	1	
11/25/16	Appearance at HLRB for Prehearing Conference in CE-11-887. Argue HFFA Motion. Board Grants HFFA Motion for Consideration. Scheduled Deadlines in Consolidated cases.	1	1	
11/26/16	Draft/review/revise letter to Dep Corp Counsel requesting information/documentation of "interference with normal departmental operations". Email and U.S. mail.	1.5	1	Clerical Tasks (2.2.1.4)
11/30/16	Received Respondents request for documentation and information. Forwarded to HFFA for gathering. Review and file.	0.5	0	Clerical Tasks (2.2.1.4)
12/4/16	Draft/review/revise/amend; file HFFA Witness List at HLRB	3.5	1.5	Clerical Tasks (2.2.1.4)
12/4/16	Begin review of File to Develop HFFA Exhibits	5	5	
12/5/16	Complete review of Efile/draft/of HFFA Exhibits at HLRB.	3.5	1.5	Clerical Tasks (2.2.1.4)
12/5/16	Receive/review Employer Witness List, Employer Exhibits List, newly produced Exhibits from Employer.	4.5	4.5	
12/5/16	TC with RHL, meeting this week with Andrew and Frank and RHL	0.5	0.5	
12/5/16	Draft historical Note on Section 6 Meetings for use at 12/6/2016 meeting at HFFA.	1	1	
12/5/16	Email from Dep Corp Counsel A. Furman. Reply	0.3	0.3	
12/6/16	Received/reviewed/forwarded to HFFA, Employer's Motion for Stay or in the Alternative Dismiss CE-11-887	1	0	Clerical Tasks (2.2.1.4)
12/6/16	Legal Research on timeliness, by Board Rules and Decisions.	3	3	
12/6/16	Email to HFFA/RHL, PLT needs Copies of 8/16/2016 notice letter from Chief Neves on 5:00pm prohibition.	0	0	
12/6/16	Prepare HFFA Exhibits.	4.5		
12/7/16	Prepare HFFA Exhibits, Download, Efiled	9	6	Clerical Tasks (2.2.1.4)
12/8/16	Divide HFFA Exhibit 1 into la to lr and download, Efiled.	1.5	0	Clerical Tasks (2.2.1.4)

12/8/16	Download and print out Employer Exhibits A-SS.	1.5	0	Clerical Tasks (2.2.1.4)
12/8/16	TC to Sarah Hiramami, HLRB, suggesting Motion to Continue to Hear Employer Motion, TC to RHL, Heads up to A. Furman, draft HFFA Motion to Continue, Efiled.	3.5	1.5	Clerical Tasks (2.2.1.4)
12/9/16	Received Efiled Board order No. 3215, Denying Respondents' Motion To Stay and Continue Hearing; forwarded to HFFA. Case Proceeding on 12/12/2016.	1.2	0	Clerical Tasks (2.2.1.4)
12/9/16	Begin prep for 12/12/2016 Board Hearing	6	6	
12/10/16	Continue prep for 12/12/2016 Board Hearing.	5	5	
12/11/16	Continue prep with RHL.	3	3	
12/11/16	Prep After prep with RHL.	5	5	
12/12/16	First day Hearing, Late start due to PLT stuck in traffic. 10:00am-4:00pm.	6	5.5	Hearing Time (2.2)
12/13/16	Second day Hearing, ALL day	8	6.5	Hearing Time (2.2)
12/14/16	Third day Hearing, ALL day	8	6	Hearing Time (2.2)
12/19/16	Fourth day Hearing	8	6.5	Hearing Time (2.2)
12/20/16	Prep for cross of Manuel Neves. New issue letter from A. Furman, "Ex parte" communication with Board Member. Email to RHL.	4.5	4.5	
12/21/16	Further prep for cross of Chief Neves.	6	6	
12/22/16	Fifth day Hearing. 12:00pm-3:00pm	3	3	
1/6/17	Received HLRB Hearing Transcript Volume I (December 12, 2016) (204 pages).	0	0	
1/8/17	Begin, review, summarize, volume I, and compare with referred Employer and Union Exhibits, for preparation on drafting Post Hearing Brief.	2.5	2.5	
1/10/17	Continue review/summary of Volume I	2.5	2.5	
1/12/17	Continue review/summarize of Volume I	2.5	2.5	
1/13/17	Complete review/summarize of Volume I	2.5	2.5	
1/20/17	Receive Vol II of HLRB Hearing Transcript. (Second day Hearing pages 204-410)	0	0	
1/24/17	Begin review/summary of Vol II with review of all Employer and Union Referenced Exhibits.	3.5	3.5	
1/26/17	Continue Review/Summary of Vol II	2.5	2.5	
1/27/17	Continue Review/Summary of Vol II	2.5	2.5	
1/28/17	Continue Review/Summary of Vol II	2.5	2.5	
1/29/17	Continue Review/Summary of Vol II	2.5	2.5	

1/30/17	Continue Review/Summary of Vol II	3	3	
1/31/17	Continue Review/Summary of Vol II	3.5	3.5	
2/1/17- 2/27/17	Includes February 1-27 Transcripts for Volumes 1 and 2, have been received and summarized. Volumes 3-5 are anticipated within the next few weeks per Donna N. Baba.	10	0	Multiple Days (2.2.1.3)
3/10/17	Received Volumes III (pages 412-611), IV (pages 612-855) and V (pages 856-962) of the HLRB Hearing Transcripts.	0		
3/30/17	Review/summarize Arbitration Transcripts Volumes III, IV and V	0		
3/30/17	Volume III (over several days)	7.8	0	Multiple Days (2.2.1.3)
3/30/17	Volume IV (over several days)	9	0	Multiple Days (2.2.1.3)
3/30/17	Volume V (over several days)	6	0	Multiple Days (2.2.1.3)
4/1/17	Begin drafting Post Hearing Brief, Due April 28, 2017	5.5	5.5	
4/2/17	Continue drafting Post Hearing Brief	4	4	
4/3/17	Continue drafting Post Hearing Brief	3.5	3.5	
4/7/17	Continue drafting Post Hearing Brief	6	6	
4/13/17	Continue drafting Post Hearing Brief	7.5	7.5	
4/14/17	Legal Research, Hawaii Rules Of Civil Procedure, Rule 8(c) Pleading Affirmative Defenses, Applicability of Rules of Civil Procedure to Proceedings under Chapter 89, HRS, Before the HLRB; Rule 81 (HRCP)	7.5	7.5	
4/15/17	Continue Legal Research, Hawaii Rules of Civil Procedure, and applicability to HLRB Proceedings. Looking for Precedence.	7.5	7.5	
4/20/17	Continue drafting Post Hearing Brief	8	8	
4/21/17	Legal Research Management Rights, Case Law. Precedence. Tsukiyama Arb Decision 2000	7	7	
4/22/17	Continued drafting Post Hearing Brief	8.5	8.5	
4/23/17	Continued drafting Post Hearing Brief	10	10	
4/24/17	Continued drafting Post Hearing Brief	10	10	
4/25/17	Continued drafting Post Hearing Brief	10	10	
4/26/17	Review/revise, recheck citations and references to HLRB Hearing Transcripts.	7.5	3.5	Clerical Tasks (2.2.1.4)
4/17/17	Final review Prior to Electronic on Friday, April 28, 2017.	1	0	Uncorroborated (2.2)
4/28/17	Electronic filing of Post Hearing Brief	0.5	0	Clerical Tasks (2.2.1.4) Uncorroborated (2.2)

9/18/17	Received efiled Board Order No. 3293; Minute Order, etc. Review/forward to HFFA	1	0	Clerical Tasks (2.2.1.4) Uncorroborated (2.2)
9/18/17- 1/15/18	Draft, review, revise, further draft, review revise, finalize and file, Proposed Findings of Fact, Conclusions of Law and Order, and Decision And Order; Efile on January 15, 2018 with HLRB; Review/revise Motion For Attorneys' fees and costs, efiled January 15, 2018 with HLRB.	50	0	Multiple Days (2.2.1.3) Clerical Tasks (2.2.1.4)
		484.1	320.8	

At the determined reasonable rate of \$250.00/hour, this brings attorney's fees for Trask's work to \$80,200.00. The GET of this amount at 4.5%^{iv} is \$3,609.00.

Accordingly, the Board orders Respondents to pay to HFFA \$83,809.00 for Trask's work on this case.

4.2. Covert Attorney's Fees

Date	Task	Requested	Awarded	Reason
1/30/20	Review and analysis of court order and underlying Board rulings, research case law on scope of agency on remand, preparation of exhibits and supporting declaration, preparation of Motion to schedule supplemental briefing on sole issue on remand	1.75	1.75	
2/3/20	Finalize motion to schedule supplemental briefing, preparation of letter to president with Association's copy	0.5	0.25	Clerical Tasks (2.3, 2.2.1.4)
5/13/20	Review request for status report on this case, review and analysis of docket and the Board's ruling and circuit court's review, and HLRB Order Nos. 3595 and 3605, preparation of letter to President reporting status	0.25	0.25	
7/31/20	Preparation of Second Motion To Set Briefing Schedule To Address Remanded Issue	0	0	
9/23/20	Review and analysis of Board's Order amending its prior order in response to court's remand order and Court's remand order	0.5	0.5	
9/24/20	Preparation of letter to president transmitting Board Order No. 3658 and analyzing the effect of the Board's order related to the pending request for fees and costs before the board and options to the union, discussion with President on same.	0.5	0.25	Clerical Tasks (2.3, 2.2.1.4)

9/25/20	Review legislative history, orders from the Board to determine need for final order and analysis on issue of seeking fees and costs from appellate work before the Board, preparation of letter to the president on same	0.5	0.5	
9/29/20	Review authorization from president to submit request to HLRB for fees and costs	0	0	
10/25/20	Review filing of appeal by City from Board's order on remand and analysis of same, preparation of letter on advice and how to proceed before the HLRB and seeking authorization on the same	1	0.5	Reasonable Relation (2.1) (Pertains to appeal not before the Board)
10/26/20	Review and analysis of HFFFA's motion for fees and costs filed with HLRB and and City's opposition, preparation of outline of facts and arguments in both briefs, discussion with HFFFA staff on billing statements from the trial attorney, preparation of memorandums summarizing discussions	1.5	1	Clerical Tasks (2.3, 2.2.1.4)
10/28/20	Further analysis of request for attorney fees and costs	0.75	0.75	
10/31/20	Preparation of declaration to support pending motion on fees and costs before HLRB	0.25	0.25	
12/3/20	Review order of the Board on submission by HFFFA, analysis of record and prior comparison of hours as submitted to HFFFA versus to the Board under Section 377-9(d), HRS, select exhibits to supplement pending AFC request	2.5	2.5	
12/5/20	Worked on AFC to incorporate arguments at 1st circuit analysis of costs not billed but invoiced to HFFFA, preparation of argument on same	1.5	1.5	
12/4/20	Review and analysis of Board Order No. 3671 and preparation of letter to HFFFA on the order	0.5	0.25	Clerical Tasks (2.3, 2.2.1.4)
12/7/20	Discussion with president on billable rate of Peter Trask and subjects to cover in his declaration submitting the invoices, objectives of HFFFA, preparation of memorandum summarizing discussion	0.5	0.5	

12/8/20	Discussion with Peter Trask on his billable rate and apparent ministerial notations in his billing statements, preparation of memorandum summarizing discussion, continue analysis of fees by Mr. Trask for consistency with billing statement and to avoid challenges to the reasonableness of the fees, preparation of email to president on proposed handling of certain entries in fee requests and to verify accuracy of calculations, preparation of declaration for president to review to support reasonableness of fees	5	4	Clerical Tasks (2.3, 2.2.1.4)
12/9/20	Continue working on declarations of Covert, Trask and Lee, begin drafting Statement of Facts "A. A Brief Review of the HLRB proceedings in CE-11-845 and CE-11-887" and identify pleadings to include as exhibits.	2.5	2.5	
12/10/20	Start redactions in billing invoices that contain confidential communications between Trask and HFFA, revise declarations consistent with redactions, begin drafting Statement of Facts "B. The Experience, Skill, and Scope of Practice of Union Counsel" consistent with information in Trask supplemental declaration	3.5	2	Clerical Tasks (2.3, 2.2.1.4)
12/11/20	Review further information from Trask regarding his legal career, preparation of revisions to supplemental declaration of Trask and revise Statement of Facts "B. The Experience, Skill, and Scope of Practice of Union Counsel" consistent with the changes, research history of legislative changes to Section 377-9 (d), HRS, and ruling by Judge Karl Sakamoto on mandatory remedy of fees when HLRB finds employer violated HRS Ch. 89, identify documents to use in tracing the history, preparation of Statement of Facts "C. Fees and Costs Are Mandatory Where Complaints are Substantiated"	2.5	2	Clerical Tasks (2.3, 2.2.1.4)

12/11/20	Research Supreme Court cases in which certain rates found reasonable given experience of attorney, research prior HLRB and court orders in cases of Takahashi and Covert to verify the rates awarded were higher than the \$250 sought by HFFA in its motion, identify court opinions and court and HLRB orders to use as exhibits to document the rulings on reasonable rates and in relation to \$250 rate sought by HFFA, preparation of Statement of Facts "D. Prior Court Opinions, Board Orders And Surveys on Reasonable Hourly Rates"	2	2	
12/12/20	Further analysis on board and court orders approving fees at hourly rates above \$250 for legal services provided closer to time period relevant to this case and identifying years of legal services by the attorneys in those cases, further drafting of Statement of Facts "D. Prior Court Opinions, Board Orders And Surveys on Reasonable Hourly Rates"	2.5	2.5	
12/14/20	Research and analysis of cases holding that the rate billed to client is not ceiling and sole deciding factor in court setting rate for fee award, preparation of argument to include in the brief	5.25	5.25	
12/17/20	Review email from HFFA confirming accuracy in calculating Peter Trask's hours (N/C), preparation of Statement of Facts "E. Summary of HFFA's Fees and Costs Request In This Consolidated Case	0.75	0.75	Note: Although a clerical task is noted, it also is noted that there was no charge for that time. Accordingly, the Board does not reduce these hours
12/28/20	Finalize declarations, finalize all subsections of Statement of Facts, preparation of Relevant Statutory Provisions, analysis of Hawaii cases setting standard of review, preparation of Standard of Review	2.5	2.5	

12/29/20	Preparation of Argument "A. HFFA Is Entitled To Costs And Fees As A Make Whole Remedy For Interference With Statutory Rights Under HRS Ch. 89" and incorporate facts from Statement of Facts, Research and analysis of cases finding description of services adequately allow courts to determine fees were reasonable based on hours expended and preparation of Argument "B. The Time Spent By Trask Is Reasonable, Supported By The Pleadings, Declarations Of Mr. Trask And HFFA Invoices" and incorporate facts from Statement of the Facts	3.5	3.5	
1/6/21- 1/7/21	Preparation of Argument "C. A Rate Of \$250 Sought By HFFA Is Reasonable Under The Variety Of Factors To Be Considered When Deciding The Applicable Rate" and incorporate facts from Statement of the Facts	2	0	Multiple Days (2.3, 2.2.1.3)
1/8/21	Research Hawaii cases on fee-shifting of attorney fees and standards applied, preparation of revision to Standard of Review, preparation of Argument "D. The Hourly Rate Billed To HFFA Contemporaneous To The Invoices Supports Enhancement Of The Fee Request" and incorporate facts from Statement of Facts	3.25	3.25	
1/11/[21]	Review recent case law on approving costs, preparation of Argument "E. HFFA Should Be Reimbursed For The Actual "Costs" Incurred Related To Copying Costs And Transcripts From HLRB Hearings" and incorporate facts from Statement of Facts, revise and finalize all declarations (Lee, Trask, Covert), edit brief consistent with exhibits and declarations, finalize arguments, preparation of letter to president transmitting brief being filed (N/C)	2.75	2.75	Note: Although a clerical task is noted, it also is noted that there was no charge for that time. Accordingly, the Board does not reduce these hours
1/13/21	Prepare brief for filing, file with HLRB	0	0	
		50.5	43.75	

At the determined reasonable rate of \$335.00/hour, this brings attorney's fees for Covert's work to \$14,656.25. The GET of this amount at 4.712% tax is \$690.61.

Accordingly, the Board orders Respondents to pay to HFFA \$15,346.86 for Covert's work on this case.

5. **Order**

Accordingly, the Board hereby orders:

1. Respondents to pay to HFFA \$83,809.00 in attorney's fees for Trask's work on this case, which includes the taxes requested;
2. Respondents to pay to HFFA \$15,346.86 in attorney's fees for Covert's work on this case, which includes the taxes requested; and
3. Respondents to pay to HFFA \$5,602.00 in costs.

This case is closed.

DATED: Honolulu, Hawai'i, _____ April 5, 2021 _____.

HAWAI'I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesmita A. D. Moepono

SESMITA A.D. MOEPONO, Member

John Musto

JOHN MUSTO, Member

Copies sent to:

- Peter Liholiho Trask, Esq.
- Rebecca L. Covert, Esq.
- Ernest Nomura, Deputy Corporation Counsel

¹ Hawai'i Rules of Civil Procedure Rule 25(d)(1) (HRCP) provides that, when a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party; proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. The Board has applied the HRCP where its administrative rules are silent. Dep't of Public Safety, State of Hawaii v. United Public Workers, AFSCME, Local 646, AFL-CIO, Board Case No. CU-10-322, Order No. 2944, at *2 n. 2 (2013). The Board replaces Caldwell and Neves with their successors, RICK BLANGIARDI,

Mayor, City and County of Honolulu (Blangiardi) and LIONEL CAMARA, JR., Acting Fire Chief, Honolulu Fire Department, City and County of Honolulu (Camara).

ⁱⁱ See, DFS Group L.P. v. Paiea Props., 110 Hawai‘i 217, 221, 131 P.3d 500, 504 (2006) (DFS).

ⁱⁱⁱ The Board recognizes that the numbers requested in the Motion for Fees and Costs (\$126,471.12) and the additional items requested in the Supplemental Memo (\$10,975.83) do not total HFFA’s requested total of \$137,025.83. However, the Board will accept the figures provided by HFFA as their request.

^{iv} The Board uses the GET rate as requested by Trask, which may not be the same as the GET rate charged generally. However, as the rate requested by Trask is lower, the Board will award monies based on the rate requested.