



STATE OF HAWAII

**EFiled: Jul 28 2021 07:46AM HAST**  
**Transaction ID 66805067**  
**Case No. 20-CE-01-952**

HAWAII LABOR RELATIONS BOARD

In the Matter of

NARCIS D. SALERA,

Complainant(s),

and

WESLEY T. YOKOYAMA, Director,  
Department of Environmental Services, City  
and County of Honolulu,

Respondent(s).

CASE NO(S). 20-CE-01-952

ORDER NO. 3786

PRETRIAL ORDER AND NOTICES

- (1) NOTICE TO RESPONDENT(S) OF  
A SECOND AMENDED  
PROHIBITED PRACTICE  
COMPLAINT;
- (2) NOTICE TO PARTIES OF  
EXTRAORDINARY  
CIRCUMSTANCES
- (3) NOTICE OF FILING  
REQUIREMENTS;
- (4) NOTICE OF APPEARANCE AND  
ACCESSIBILITY OR  
ACCOMMODATIONS;
- (5) NOTICE OF STRUCTURE FOR  
REMOTE HEARINGS BEFORE  
THE BOARD
- (6) NOTICE OF PREHEARING  
CONFERENCE
- (7) NOTICE OF DISPOSITIVE  
MOTION HEARING
- (8) NOTICE OF PRETRIAL  
CONFERENCE
- (9) NOTICE OF WITNESS  
REQUIREMENTS WHILE  
TESTIFYING REMOTELY
- (10) NOTICE OF HEARING ON THE  
MERITS; AND 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 controls 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 include the others as the context may require.

### **(1) NOTICE TO RESPONDENTS OF A SECOND AMENDED PROHIBITED PRACTICE COMPLAINT**

The attached amended prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **July 27, 2021**.

PURSUANT TO HAWAII REVISSED STATUTES (HRS) § 377-9(b) AND HAWAII ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a second amended 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 must be served on each party, and the original with certificate of service on all parties must 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, that failure constitutes an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

### **(2) NOTICE OF EXTRAORDINARY CIRCUMSTANCES**

Due to the current concerns regarding COVID-19, the Governor of the State of Hawai'i (Governor) issued a series of Emergency Proclamation, with the first being signed on March 5, 2020. These proclamations, among other things, gave agencies the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at the same location, and suspend certain rules, statutory requirements, and administrative hearing procedures as needed to deal with the emergency situation brought on by COVID-19.

On March 29, 2020, the Governor issued Executive Order No. 20-02, which, among other things, gave the Board the sole discretion to waive the requirement in HRS § 377-9 to hold a

hearing on the complaint not more than 40 days after the filing of the complaint or amendment thereof. The Board hereby waives this requirement in this case.

Accordingly, the Board is holding remote, videographic hearings and is mandating electronic filing during the emergency period, unless terminated by separate proclamation, whichever occurs first. (See Order Nos. 3605 and 3647)

### **(3) NOTICE OF FILING REQUIREMENTS**

#### **1) Electronic Filing**

**All filings in this case must be made electronically through the Board's filing service FileandServeXpress (FSX).** There is no charge to the parties for use of this electronic filing service. Should any party not have access to the Internet, or for any other concerns or complications, please contact the Board via electronic mail or (808) 586-8616.

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/hlrb/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

#### **2) 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 must make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" includes 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 must 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 must, 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.

**(4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS**

All parties have the right to appear and to be represented by counsel or any other authorized person in all Board proceedings, subject to the Extraordinary Circumstances set forth in Section (2) above. 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, which may not be accessible to the public during the emergency period referenced in the Notice of Receipt of Notice of Contest.

**(5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD**

The Board currently uses Zoom as its platform for online proceedings. The Board hereby orders all parties to follow the requirements laid out in this Order for all Remote Zoom Hearings before the Board.

Parties and representatives should familiarize themselves with Zoom in preparation for all online Board proceedings. For security purposes, the Board will utilize the "waiting room" function.

Prior to the hearing:

1. The Board will provide Zoom login information to the parties in advance of the hearing.
2. A party who shares the Zoom login information with any other group or individual (Sharing Party) must provide the Board and the other party/parties with a complete list of participants they have invited to attend the proceedings, including any support staff and witnesses. Failure to inform the Board of these participants may result in the participants being excluded from the hearing. **This list must be emailed to the Board at [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov).**
3. **Sharing Parties are responsible for ensuring that any participant they invite complies with this Order. An invitee's failure to comply with this Order will be regarded as the Sharing Party and/or their representative's failure to comply with this Order, during a hearing.**

**Failure to comply with this Order may be grounds for the Board to commence proceedings regarding that party or representative under HAR § 12-42-8(g)(9)(A).**

4. Any Sharing Party must inform non-witness participants:
  - 1) that they must keep their microphones muted at all times; and
  - 2) that they must keep their cameras off at all times.
5. Any Sharing Party must inform **all** participants:
  - 1) that they must submit their full name as their username when requesting entry to the Zoom conference, to allow the Board to ensure compliance with the witness exclusion rule, unless the party sets up a device specifically for witness use only, in which case that device may log in with the username “witness”; and
  - 2) **that they may not record, screen shot, record conversations, and/or use third party software to record the proceeding.**

**(6) NOTICE OF PREHEARING CONFERENCE**

PURSUANT TO HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

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

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

LOCATION: Remote Zoom Hearing

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; to identify witnesses and file applications for the issuance of subpoenas; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing 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.

**(7)     NOTICE OF DISPOSITIVE MOTION HEARING**

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

NOTICE IS HEREBY GIVEN that the Board will conduct a hearing on dispositive motions on the date listed below and in the Schedule in this document.

DATE AND TIME:   August 26, 2021 at 9:00 a.m.

LOCATION:           Remote Zoom Hearing

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.

**(8)     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:   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.

## **(9) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY**

Due to the situation with COVID-19, unless otherwise ordered by the Board, all witnesses must testify videographically. Accordingly, the Board **orders all parties** to inform their witnesses that, unless otherwise directed or allowed, when the witness testifies:

1. The witness must be in a location without anyone else in the room with them, and there should be no one at the location who can overhear their testimony;
2. The device from which the witness appears must be used during the witness' testimony solely for the purpose of the witness appearing by video;
3. The witness may not consult with anyone during testimony;
4. The party calling the witness must ensure that the witness has access to all exhibits in the case;
5. The witness must not look at or make reference to notes or any other documents or materials other than the exhibits, and may look at the exhibits only when directed to do so by a party or the Board;
6. At all times while testifying, the witness must be clearly visible, face the camera, and speak directly and audibly into the microphone;



7. The witness may not use a virtual background; and
8. The witness must not have any communication with third parties while they are on the stand and under oath.

**(10) 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: 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.

For the purposes of HAR § 12-42-8(g)(5), witnesses will be considered to be appearing in person if they appear via videoconference in compliance with Section 9 above.

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.

(11) **SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES**

<b><u>DATES AND DEADLINES</u></b>	<b><u>DATE</u></b>	<b><u>TIME</u></b>
<u>Prehearing Conference</u>	8/9/21	9:00 a.m.
<u>Dispositive Motion Deadline</u>	8/12/21	
<u>Response to Dispositive Motion Deadline</u>	8/19/21	
<u>Dispositive Motion Hearing</u>	8/26/21	9:00 a.m.
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	TBD	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	TBD	TBD
<u>Hearing on the Merits</u>	TBD	TBD

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

DATED: Honolulu, Hawai'i, \_\_\_\_\_ July 28, 2021 \_\_\_\_\_.

HAWAII LABOR RELATIONS BOARD



*Marcus R. Oshiro*

MARCUS R. OSHIRO, Chair

*Susana A.D. Moepono*

SUSANA A.D. MOEPONO, Member

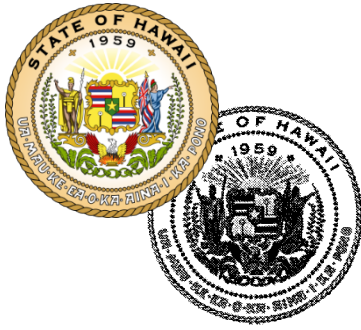
*N. Musto*

N. MUSTO, Member

Copies sent to:

Rebecca L. Covert, Esq.

Ernest H. Nomura, Deputy Corporation Counsel



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Case No. 20-CE-01-952

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

**FORM HLRB-4**  
**SECOND AMENDED PROHIBITED PRACTICE COMPLAINT**

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INSTRUCTIONS. Submit the original<sup>1</sup> 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.

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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.
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2. COMPLAINANT Please select one that describes the Complainant:

☒ Public Employee      ☐ Public Employer      ☐ Public Union (public employee organization)

- a. Name, address and telephone number.

Narcis D. Salera  
1931 Kalihi Street  
Honolulu, Hawaii 96819  
(808) 483-0245

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

Herbert Takahashi, Esq.  
Rebecca L. Covert, Esq.  
Takahashi and Covert  
4348 Waialae Avenue, #625  
Honolulu, Hawaii 96816  
(808) 526-3003

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

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3. RESPONDENT Please select one that describes the Respondent:

☐ Public Employee      ☒ Public Employer      ☐ Public Union (public employee organization)

a. Name, address and telephone number.

Wesley T. Yokoyama, Director  
Dept. of Environmental Services  
1000 Uluohia St., Suite 308  
Kapolei, HI 96707  
(808) 768-3486

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

Ernest H. Nomura, Esq.  
Deputy Corporation Counsel  
City and County of Honolulu  
530 South King Street, Room 110  
Honolulu, Hawaii 96813  
(808) 768-5120

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

Blue collar non supervisory employees in bargaining unit 1.

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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.)

See Counts I through X of the allegations of the second amended complaint which are attached hereto.

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

See attached sheets.

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, Herbert Takahashi,  
do declare under penalty of law that the foregoing is true and correct.

Date: July 27, 2021

/s/ Herbert Takahashi

*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.*

louis345.tc@gmail.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:

Legal representative with Rebecca L. Covert as co-counsel.

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](http://labor.hawaii.gov/hlr/forms).) Email the completed form to the Board at [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov).

## **5. Allegations of the Complaint**

### **A. The Parties**

1. Narcis D. Salera (Salera) is a blue collar non-supervisory employee of the City and County of Honolulu, Department of Environmental Services (ENV), a "public employee" within the meaning of Section 89-2, Hawaii Revised Statutes (HRS), an "employee" within the meaning of Section 378-62, HRS, and a "civil service employee" within the meaning of Section 76-11, HRS.
2. At all relevant times herein Salera was an active member of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW), the exclusive bargaining representative of blue collar non-supervisory employees in bargaining unit 1 under Section 89-8 (a), HRS, and he regularly exercised his constitutional, statutory, and contractual rights as a citizen, a member of the UPW in association with other bargaining unit employees, a civil service employee, and a bargaining unit 1 employee covered by the unit 1 collective bargaining agreement.
3. Wesley T. Yokoyama, P.E., (Yokoyama), is the director of the Department of Environmental Services, City and County of Honolulu (ENV), a "public employer" within the meaning of Section 89-2, HRS, and an "employer" within the meaning of Section 378-62, HRS, and Section 76-11, HRS. Yokoyama held the position of director of ENV from January 2021 through the present.
4. At all relevant times herein Yokoyama acted as the duly designated representative of Rick Blangiardi, the mayor of the City and County of Honolulu from January 2021 to present, with direct knowledge of Salera's exercise of his constitutional, statutory, and contractual rights.

### **B. Venue and Jurisdiction**

5. The claims for relief presented in this case arose on the island of Oahu within the first judicial circuit where Salera and Yokoyama are domiciled and employed, and venue for this action is proper under applicable laws
6. The Hawaii Labor Relations Board has exclusive original jurisdiction over controversies relating to prohibited practices and has primary subject matter jurisdiction over related constitutional and statutory claims arising in the context of public employment.

### **C. Relevant Factual Allegations**

7. Salera was hired on or about April 22, 1991 by the City and County of Honolulu and has been continuously employed thereafter as a civil service

employee and a bargaining unit 1 employee in good standing covered by the unit 1 collective bargaining agreement negotiated by UPW.

- a. On April 22, 1991 Salera was hired on a limited term appointment as a refuse collector in position number WR 951.
  - b. On February 16, 1996 Salera became a full time refuse collector in position number WR 744.
  - c. May 29, 2006 Salera was promoted to refuse collection crew leader in position number WR 776.
  - d. Based on his seniority Salera selected the front end load route and other manual and bulky item routes on Oahu where he had straight time and overtime work opportunity as a refuse collection crew leader (BC-09).
  - e. During his employment by ENV Salera received favorable annual performance evaluations including but not limited to as a front end loader operator and was commended by his supervisors and managers as being an "awesome worker" who did "excellent work", as a refuse collection crew leader.
8. Lori M.K. Kahikina, PE (Kahikina), was the director of the Department of Environmental Services, City and County of Honolulu (ENV), a "public employer" within the meaning of Section 89-2, HRS, and an "employer" within the meaning of Section 378-62, HRS, and Section 76-11, HRS. Kahikina held the position of director of ENV from January 2013 through December 2020.
  9. At all relevant times herein Kahikina acted as the duly designated representative of Kirk Caldwell, the mayor of the City and County of Honolulu from January 2013 through December 2020, with direct knowledge of Salera's exercise of his constitutional, statutory, and contractual rights.
  10. On or about July 25, 2014 and thereafter Kahikina unlawfully and unilaterally decided to privatize refuse collection and disposal services provided by civil servants in bargaining unit 1 (including Salera) to multi-family properties, condominiums, and non-profit organizations, to repudiate a prior memorandum of agreement with UPW to restore and expand public refuse collection services on Oahu and to diminish and undermine the uku pau or task work system of refuse collection.
  11. On December 31, 2014 Salera (and others) filed a civil action challenging Kahikina's decision to privatize refuse collection and disposal services



provided by civil servants in bargaining unit 1 to multi-family properties, condominiums, and non-profit organizations in Civil No. 14-1-2655-12.

- a. On January 24, 2015 Salera submitted a declaration in support of a motion for temporary restraining order and preliminary injunction.
  - b. On January 30, 2015 the circuit court of the first circuit (the Honorable Karl Sakamoto presiding) granted the motion for temporary restraining order and for preliminary injunction enjoining and restraining Kahikina (and other defendants) from privatizing refuse collection and disposal services for multi-family properties, condominiums, and non-profit organizations.
  - c. On February 25, 2015 the circuit court granted plaintiffs' motion for partial summary judgment for a violation of constitutional merit principles under Article XVI, Section 1 of the Hawaii State Constitution (count I of the complaint), and a violation of civil service laws (count II of the complaint).
  - d. Within 30 days of the February 25, 2015 decision and order Kahikina (and other defendants) filed an appeal from the circuit court's January 30, 2015 and February 25, 2015 decisions and orders.
  - e. In Salera v. Caldwell, 137 Hawai'i 409, 375 P.3d 188 (2016), the Supreme Court affirmed the circuit court's decisions and orders for violations of constitutional merit principles and civil service laws, and remanded the case for further action in the circuit court over violations of the constitutional right to collective bargaining (count III), and violations public policy (count IV) of the complaint, and for appropriate relief to Salera and other adversely affected employees for all counts in the complaint.
  - f. The proceeding in Civil No. 14-1-2655-12 is currently pending before the Honorable Bert Ayabe of the circuit court of the first circuit.
12. On May 12, 2015 the UPW in behalf of Salera and other front end loader crew leaders and refuse collectors filed a class grievance in case number DA-15-14 challenging Kahikina's repudiation of a prior memorandum of agreement to restore and expand public refuse collection services on Oahu.
- a. The class action grievance in DA-15-14 which was prompted in part by Kahikina's appeal from the circuit court orders dated January 3, 2015 and February 25, 2015 in Civil No. 14-1-2655-12 was processed through the grievance procedure of the unit 1 collective bargaining agreement and the parties selected Ted Sakai to arbitrate the matter.

- b. On or about July 23, 2019 a motion for summary disposition was filed by UPW with the arbitrator.
- c. On September 21, 2019 and September 27, 2019 Salera filed declarations in support of the union's motion for summary disposition.
- d. On May 20, 2020 ENV filed a counter declaration to the statements filed by Salera in his declaration.
- e. On June 17, 2020 arbitrator Ted Sakai granted the union's motion for summary disposition on all claims presented in case number DA-15-14 and entered the following remedial award in favor of Salera and others:
  - (1) As part of the remedy the award required the Employer to restore the status quo which existed prior to July 25, 2014 by making good faith efforts to reinstate front end loader services by providing written notification to all 181 condominiums, non-profit organizations, and other entities that public refuse collection through front end loader services shall be provided to them and others similarly situated on the same terms and conditions which existed prior to July 25, 2014 by the City on and after this award.
  - (2) The City was to provide the Union information needed to ascertain the status of front-end loader refuse collection services at Makiki Christian Pre-School, St. Philomena, Palm Villas, and Holomoana Sea Country and if the services have not been restored at those locations, determine the feasibility of restoring those services.
  - (3) In the event the Employer failed to comply with the remedial terms and provisions to restore the status quo, the Employer was to pay the Union attorney's fees rendered by the Union's counsel in the arbitration proceedings and make whole bargaining unit employees for loss of work opportunity.
  - (4) The City was to cease and desist from repudiating its prior commitment to the Union to restore and expand public refuse collection and was ordered to restore collection services for the City which had been privatized, and to expand services to businesses, multi-family dwellings, condominiums, and churches and compete with private haulers to contract services for military bases and public schools.

- (5) On and after July 1, 2021 the Employer was to make good faith efforts to provide front end loader services to all new multi-family dwellings, condominiums, developments, non-profit organizations, churches and private schools.
  - (6) In the event the Employer failed to comply with these additional remedial terms, the Employer was to pay the Union attorney's fees rendered by the Union's counsel in the arbitration proceedings and make whole bargaining unit employees for loss of work opportunity.
- 13. Kahikina and officials within the Department of Environmental Services (ENV) were also aware of Salera's exercise of his protected rights under Section 89-3, HRS, and of his support for and participation in class grievances in case numbers BM-12-02, KA-13-09, and CH-18-04 (to preserve, restore, and expand uku pau rights of refuse collection employees in bargaining unit 1) resulting in numerous favorable arbitration decisions, awards, and remedies, court orders, and court enforcement proceedings against Kahikina and ENV from 2017 to 2020.
- 14. On May 1, 2020 the UPW was placed under administratorship, resulting in the displacement of its local union leadership which had successfully challenged (with Salera's direct involvement and assistance) Kahikina's conduct, including but not limited to the actions taken in Civil No. 14-1-2655-12, and the grievance in case number DA-15-14, BM-12-02, KA-13-09, and CH-18-04.
- 15. On and after May 1, 2020 Kahikina and ENV officials sensed that the time was right to retaliate against Salera for exercise of constitutional, statutory, and contractual rights which resulted in favorable court and arbitration decisions for bargaining unit employees during her tenure.
- 16. On November 2, 2020 Salera filed the prohibited practice complaint 20-CE-01-952 against Kahikina, that he now seeks to amend for a second time. Prohibited practice complaint 20-CE-01-952 alleged willful and unlawful conduct by Kahikina against Salera for exercise of constitutional, statutory, and contractual rights which resulted in favorable court and arbitration decisions for bargaining unit employees during her tenure.
- 17. In furtherance of Kahikina's unlawful object and purpose Kahikina and other ENV officials willfully and unlawfully interfered, restrained, and coerced Salera for exercise of protected conduct and engaged in a discriminatory pattern of conduct to discourage union membership and participation in the union activities by:

- a. Failing to provide fair and consistent performance appraisals as required by applicable policies and legal requirements in 2020;
  - b. Placing Salera on a “special 3 month” evaluation for the months of May and June 2020 without prior notice of substandard performance;
  - c. Suspending Salera for one (1) day in a letter dated May 22, 2020 and threatening termination from employment without “just cause” for work performance consistent with the basic uku pau principles and requirements and not subject to discipline or such discriminatory treatment of a refuse crew member;
  - d. Suspending Salera for two (2) days in a letter dated May 26, 2020 and threatening termination from employment without “just cause” for inability to safely complete a refuse route consistent with the basic uku pau principles and requirements, and not subject to discipline or discriminatory treatment of a refuse crew member;
  - e. Failing to comply with the remedial terms of the June 17, 2020 decision and award by Ted Sakai in class grievance DA-15-14;
  - f. Suspending Salera for five (5) days in a letter dated August 5, 2020 and threatening termination from employment without “just cause” for a bald tire on a vehicle also regularly assigned to other refuse crew leaders, and not subject to discipline or discriminatory treatment; and
  - g. Suspending Salera for ten (10) days in a letter dated December 23, 2020 and threatening termination from employment without “just cause” for a vehicular accident not subject to disciplinary suspension under uku pau policies of the City and County of Honolulu (absent retraining), not subject to discriminatory treatment of a refuse crew member, and not subject to double jeopardy for alleged prior disciplinary actions.
18. In furtherance of Kahikina’s unlawful object, purpose and actions, Yokoyama and other ENV and City and County of Honolulu officials willfully and unlawfully continued to interfere with, restrain, and coerce Salera for engaging in protected activities, and discriminated against him to discourage union membership and participation in union activities by:
- a. Suspending Salera for ten days in the letter dated January 13, 2021 and threatening termination from employment without “just cause” for a vehicular accident not subject to disciplinary suspension under uku pau policies of the City and County of Honolulu (absent retraining), not subject to discriminatory treatment of a refuse crew member, and not subject to double jeopardy for alleged prior disciplinary actions;

- b. Failing to comply fully with the remedial terms of the June 17, 2020 decision and award by Ted Sakai in class grievance DA-15-14;
  - c. Issuing a substandard annual job performance appraisal on or about March 30, 2021 based solely on alleged prior disciplinary suspensions dated May 22, 2020, August 5, 2020, December 23, 2020, and January 13, 2021, and without conducting a fair evaluation of Salera's work performance from April 22, 2020 to April 21, 2021;
  - d. Denying temporary assignments to supervisory positions on or about April 24, 2021, and thereafter to Salera contrary to applicable seniority rights and the requirements on temporary assignments under the unit 1 collective bargaining agreement as construed by arbitrators whose awards have been confirmed and enforced by court decision, order, and judgment;
  - e. Agreeing to enter into settlement discussions to resolve through the process of good faith negotiations with Salera's attorneys the pending prohibited practice claims on or about June 9, 2021, receiving a written proposal from Salera on June 10, 2021, but repudiating on and after June 17, 2021 without good cause the settlement process it mutually agreed to on June 9, 2021.
  - f. Suspending Salera for fifteen (15) days by letter dated June 21, 2021 and threatening discharge without "just cause" for damage to a refuse truck not subject to disciplinary suspension under uku pau policies and not subject to discriminatory treatment of a refuse crew member, or to a refuse crew leader who was only partially assigned to the same refuse truck and not subject to double jeopardy for alleged prior disciplinary suspensions; and
  - g. Threatening and implementing other adverse actions against Salera to be established during the course of the proceedings before the Hawaii Labor Relations Board.
19. The ten days suspension referred to on December 23, 2020 and January 13, 2021, and the fifteen day suspension dated June 21, 2021 was premised on alleged damage to a vehicle parked along Salera's refuse pickup route and while engaged in uku pau work. Respondents in their investigation did not involve the Vehicle Accident Investigation Committee as required under ENV Policies and Procedures on Task Work for Refuse Collection. Respondents did not offer Salera a special training course in lieu of the suspensions as required under ENV Policies and Procedures on Task Work for Refuse Collection. Kahikina and Yokoyama's failure to comply with these terms of employment was in bad faith and discriminatory.

20. Kahikina and Yokoyama supported the ten days and fifteen day suspensions based on the prior disciplines that were issued unlawfully as alleged in Salera's prohibited practice complaint 20-CE-01-952.
21. The conduct and actions taken against Salera by Kahikina, Yokoyama, and other ENV officials were contrary to established terms and conditions of employment as determined in prior arbitration decisions and awards relating to task work or uku pau, discipline, avoidable accidents, temporary assignments, and finality of arbitration decisions and awards.
22. The aforementioned actions were undertaken by Kahikina and Yokoyama in retaliation for Salera's direct involvement and participation in the union, resulting in favorable court actions and grievances including but not limited to case numbers BM-12-02, KA-13-09, CH-18-40, and DA-15-14, and in pursuing a prohibited practice complaint 20-CE-01-952, and were discriminatory in nature and inherently destructive of employee rights.
23. By reason of the foregoing premises Salera has and will suffer damages, costs, and attorney's fees and asks leave of this Board to show the same at the time of trial and thereafter to make him whole.
24. Salera has no plain, adequate or complete remedies to redress the wrongs alleged herein and unless afforded declaratory, injunctive, cease and desist orders civil penalties (under Section 377-9 (d), HRS), and affirmation and make whole remedies, including reinstatement, recession of adverse actions, back pay, interest, costs and attorney's fees will suffer irreparable harm.

**D. Count I - Unlawful Interference, Restraint, and Coercion**

25. The allegations in paragraphs 1 through 24 are restated, realleged and fully incorporated herein.
26. As a public employee who is covered by HRS Chapter 89 Salera exercised his statutory rights guaranteed under Section 89-3, HRS, and Section 89-10.8, HRS, to join the UPW, to file, pursue, and support grievances, and to engage in protected concerted activities for the mutual aid and protection of bargaining unit 1 employees of the City and County of Honolulu.
27. At the request of and support by Salera and in association with other employees the UPW and Salera filed, pursued and obtained favorable constitutional, statutory, and contractual relief in Civil No. 14-1-2655-12 (to protect bargaining unit work), and in class grievance case numbers BM-12-02, KA-13-09, and DA-15-14 (for overtime pay and compensation) against Kahikina.

28. Kahikina was fully aware of Salera's direct involvement and participation in the aforementioned protected concerted activities because Salera was a named plaintiff and presented a supporting declaration in Civil No. 14-1-2655-12, submitted several declarations in DA-15-14 before arbitrator Sakai, and received back pay checks in BM-12-02 and KA-13-09.
29. Yokoyama as Director of ENV knew or should have known of Salera's direct involvement and participation in the aforementioned protected concerted activities because Salera was a named plaintiff and presented a supporting declaration in Civil No. 14-1-2655-12, submitted several declarations in DA-15-14 before arbitrator Sakai, received back pay checks in BM-12-02 and KA-13-09 and filed prohibited practice complaints against Yokoyama referring to his role and activities.
30. Kahikina and Yokoyama supported the ten days suspension and the fifteen day suspension based on the prior disciplines including but not limited to the May 22, 2020, May 26, 2020, August 5, 2020, and January 13, 2021 that were issued unlawfully as alleged in Salera's prohibited practice complaint 20-CE-01-952.
31. Contrary to Section 89-3, HRS (which provides that employees shall be free from interference, restraint, or coercion for engaging in protected concerted activities), and Section 89-10.8 HRS (which provides for a grievance procedure culminating in final and binding arbitration) and in violation of Section 89-13 (a) (1), HRS, Kahikina and Yokoyama willfully interfered, restrained, and coerced Salera in the exercise of rights guaranteed by HRS Chapter 89 by engaging in retaliatory and discriminatory conduct against him as specified in paragraphs 17, and 18 above.

#### **E. Count II - Unlawful Discrimination in Terms & Conditions of Employment**

32. The allegations in paragraphs 1 through 31 are restated, realleged, and fully incorporated herein.
33. Section 89-13 (a) (3), HRS, states
  - a. It shall be a prohibited practice for a public employer or its designated representative wilfully to . . . [d]iscriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization[.]
34. Kahikina was fully aware that Salera was an active member of UPW who supported the work of the union in behalf of bargaining unit 1 employees in Civil No. 14-1-2644-12 (in which he was the first named plaintiff in the case),

in pursuing and supporting grievances filed in BM-12-02, KA-13-09, and DA-15-14 which resulted in favorable relief to Salera and others in the refuse division. On and after November 2, 2020 Kahikina was fully aware that Salera filed prohibited practice complaint 20-CE-01-952 against her.

35. In order to discourage membership in UPW Kahikina willfully and unlawfully discriminated against Salera by not completing an annual performance appraisal for 2019 to 2020, placing him Salera on a "special 3 - month evaluation" and by selectively and in a discriminatory manner suspending him without "just cause" on May 22, 2020, May 26, 2020, August 5, 2020, and December 23, 2020, repeatedly threatening him with discharge or termination from employment, refusing to comply with the remedial terms of the arbitration decision and award by Ted Sakai dated June 17, 2020.
36. Yokoyama knew that Salera was an active member of UPW who supported the work of the union in behalf of bargaining unit 1 employees and who had filed a prohibited practice complaint in 20-CE-01-952 against the Director of ENV setting forth his protected activities as a union member.
37. In order to discourage membership in UPW Yokoyama willfully and unlawfully discriminated against Salera by selectively and in a discriminatory manner suspending him without "just cause" on January 13, 2021 and June 21, 2021, threatening him with discharge or termination from employment, engaging in double jeopardy, and otherwise engaging in discriminatory conduct as alleged in paragraph 18 above.
38. Kahikina and Yokoyama supported the ten days suspension based on the prior disciplines of May 22, 2020, May 26, 2020 and August 5, 2020 that were issued unlawfully as alleged in Salera's prohibited practice complaint 20-CE-01-952
39. Other employees who engaged in similar alleged "misconduct" were not subject to a "special 3 - month evaluation" or disciplinary suspensions by Kahikina and Yokoyama, and the reasons given for these adverse actions against Salera were pre-textual in nature. The ten days and fifteen days suspensions were taken without compliance with the ENV's own Policies and Procedures on Task Work for Refuse Collection.
40. The actions taken against Salera are inherently destructive of employee rights since it creates visible and continuing obstacles to the future exercise of employee rights in light of the ruling in Salera v. Caldwell, et al., 137 Hawai'i 409, 375 P.3d 188 (2016), and the decision and award by arbitrator Ted Sakai in case number DA-15-14. The failure of Kahikina and Yokoyama to adhere to the terms in the ENV Policies and Procedures on Task Work for Refuse



Collection in issuing the ten days suspension is further evidence of their bad faith.

**F. Count III - Unlawful Retaliation for Protected Activities**

41. The allegations in paragraphs 1 through 40 are restated, realleged, and fully incorporated herein.
42. Section 89-13 (a) (4), HRS, states:  
§ 89-13. Prohibited practices; evidence of bad faith.  
    (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to: . . .  
    (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;
43. An employer commits a prohibited practice in violation of Section 89-13 (a) (4), HRS, by retaliating against an employee engaged in protected activity such as signing or filing an affidavit, petition, or complaint or giving any information to an employee organization.
44. Salera engaged in protected activities by signing and submitting declarations in support of the UPW's challenge to unlawful privatization in Civil No. 14-1-2655-12 and in support of the grievance in DA-15-14 to challenge the repudiation of a prior memorandum of agreement to restore and expand public refuse collection services on Oahu. Salera engaged in protected activities by filing prohibited practice complaint 20-CE-01-952.
45. Kahikina and Yokoyama were fully aware that the information provided to the UPW by Salera was critical to support the temporary restraining order and preliminary injunction sought by UPW in Civil No. 14-1-2655-12, and the information he provided by declarations in grievance case number DA-15-14 was critical to support the summary disposition motion in the case before arbitrator Ted Sakai. On and after November 2, 2020 Kahikina was fully aware that Salera filed prohibited practice complaint 20-CE-01-952 against her.
46. Yokoyama knew that Salera was an active member of UPW who supported the work of the union in behalf of bargaining unit 1 employees and who had filed a prohibited practice complaint in 20-CE-01-952 against the Director of ENV.

47. Kahikina violated Section 89-13 (a) (4), HRS, by wilfully retaliating against Salera for protected activities by taking adverse actions against Salera as stated in paragraph 17 above.
48. Yokoyama violated Section 89-13 (a) (4), HRS, by willfully retaliating against Salera for protected activities by taking adverse actions against Salera as stated in paragraph 18 above.

**G. Count IV – Further Unlawful Retaliation for Protected Activities**

49. The allegations in paragraphs 1 through 48 are restated, realleged, and fully incorporated herein.
50. Section 89-13 (a) (4), HRS, states:

§ 89-13. Prohibited practices; evidence of bad faith.

(a) It shall be a prohibited practice for a public employer or its designated representative wilfully to: . . .

(4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;

51. An employer commits a prohibited practice in violation of Section 89-13 (a) (4), HRS, by retaliating against an employee engaged in protected activity such as signing or filing an affidavit, petition, or complaint or giving any information to an employee organization.
52. Salera engaged in protected activities by filing the prohibited practice complaint 20-CE-01-952 on November 2, 2020 to challenge the disciplines issued by ENV on May 22, 2020, May 26, 2020 and August 5, 2020.
53. At the time Kahikina and Yokoyama took the actions against Salera as stated in paragraphs 17 and 18 they were fully aware that Salera had filed prohibited practice complaint 20-CE-01-952.
54. Kahikina and Yokoyama violated Section 89-13 (a) (4), HRS, by willfully retaliating against Salera for filing prohibited practice complaint 20-CE-01-952.

**H. Count V - Unlawful Refusal to Comply with HRS Chapter 89**

55. The allegations in paragraphs 1 through 54 are restated, realleged, and fully incorporated herein.

56. Section 89-13 (a) (7), HRS, states:  
§ 89-13. Prohibited practices; evidence of bad faith.  
    (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to: . . .  
    (7) Refuse or fail to comply with any provision of this chapter;
57. Section 89-3, HRS, provides that an employee shall be free from interference, restraint or coercion for engaging in protected concerted activities.
58. Kahikina and Yokoyama violated Section 89-13 (a) (7), HRS, by willful refusing and failing to comply with Section 89-3, HRS, and Section 89-10.8, HRS, by failure to comply with final and binding decisions of arbitrators setting forth the terms and conditions of employment applicable to Salera on uku pau discipline, accidents, appraisals, and contracting out.

### **I. Count VI – Violation of Whistleblower Rights**

59. The allegations in paragraphs 1 through 58 are restated, realleged and fully incorporated herein.
60. The Hawai'i Whistleblowers' Protection Act (HWPB) states in relevant portions:  
§ 378-62. Discharge of, threats to, or discrimination against employee for reporting violations of law.  
    An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:  
    (1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of:  
        (A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States[.]  
    (Emphasis added).
61. In Civil No. 14-1-2655-12 Salera reported to a public body, i.e., the circuit court, a violation of law under Article XVI, Section 2 of the State Constitution, the civil service laws, Article XIII, Section 2 of the State Constitution, and other public policies by Kahikina.
62. The circuit court in Civil No. 14-1-2655-12 and the Supreme Court in Salera v. Caldwell, 137 Hawai'i 409, 375 P.3d 188 (2016), found merit in Salera's

claims for violations of laws by Kahikina and there are suspected violations of collective bargaining rights in that case.

63. In grievance case number DA-15-14 the UPW in behalf of Salera filed a class grievance alleging, inter alia, violations of prior rights of employees as set forth in HRS Chapter 89 when Kahikina repudiated a prior memorandum of agreement to restore and expand public refuse collection on Oahu.
64. On June 17, 2020 arbitrator Ted Sakai sustained the grievance in DA-15-14, thereby finding merit in Salera's claim for violations of law by Kahikina.
65. On November 2, 2020 Salera filed prohibited practice complaint 20-CE-01-952.
66. Kahikina and Yokoyama thereby violated Hawaii's Whistle Blower Protection Act by repeatedly threatening Salera with discharge and by discriminating against him regarding his terms and conditions of employment because he reported the aforementioned violation and suspected violations of laws by Kahikina.

**J. Count VII – Violation of the Constitutional Right to Organize for Collective Bargaining**

67. The allegations in paragraphs 1 through 66 are restated, realleged and fully incorporated herein.
68. Article XIII, Section 2 of the Hawaii State Constitution states in relevant portions as follows:

Persons in public employment shall have the right to organize for of collective bargaining as provided by laws.

69. At all relevant times herein Salera exercised his constitutional right to organize for the purpose collective bargaining by joining and supporting the UPW and by engaging in concerted activities for the mutual aid and protection of bargaining unit 1 employees.
70. On and after May 1, 2020 Kahikina and Yokoyama unlawfully discriminated and retaliated against him for exercising his constitution right to collective bargaining in violation of Article XIII, Section 2 of the Hawaii State Constitution.

**K. Count VIII – Improper Denial of Temporary Assignments**

71. The allegations in paragraphs 1 through 70 are restated, realleged and fully incorporated herein.

72. Sections 16.03 and 16.04 of the unit 1 collective bargaining agreement requires temporary assignments to be made to bargaining unit 1 employees to qualified employees with the greatest baseyard seniority.
73. In 1986 arbitrator Lincoln Ishida in United Public Workers, Local 646, AFSCME, AFL-CIO and Department of Public Workers, County of Maui (Grievance of Paul Kaina) held that unilateral changes in temporary assignment to a refuse crew chief violated Section 1.05 of the unit 1 agreement.
74. In 1996 arbitrator Barclay Bryan held in United Public Workers, AFSCME, Local 646, AFL-CIO and City and County of Honolulu, Department of Public Workers, (Class grievance re: temporary assignment) that temporary assignment to supervisory positions outside of bargaining unit 1 based on seniority could not be unilaterally changed.
75. In 1998 arbitrator Edward Parnell held in United Public Workers, AFSCME, Local 646, AFL-CIO and City and County of Honolulu, Building Department (Grievance re: Mayor's clean team) that the City and County of Honolulu violated Section 1.05 by unilaterally changing terms and conditions of work including temporary assignments to bargaining unit 1 employees.
76. In 2017 arbitrator Joyce Najita held that the City and County of Honolulu violated Sections 1.05, 16.03, and 16.04 by denying temporary assignments to unit 1 employees based on seniority due to vacancies in supervisory positions in the Department of Facility Maintenance.
77. In 2019 arbitrator George Lindsey found that the City and County of Honolulu violated Sections 1, 14, and 15 of the collective bargaining agreement by unilaterally denying temporary assignments in the Emergency Medical Services Department.
78. In 2020 arbitrator Kahu Kaleo Patterson found that the City and County of Honolulu violated Sections 1.01, 1.02, 1.05, 16.03 and 16.04 by denying temporary assignments to bargaining unit 1 employees in grievance case number MH-18-15 and ordered, inter alia, the employer to cease and desist from changing past practices and customs on temporary assignments to bargaining unit 1 employees. The award by Patterson was confirmed by the court.

79. In United Public Workers, AFSCME, Local 646, AFL-CIO v. William Takaba, 7 HLRB 45 (Decision No. 469) the Board held that the repudiation of a final and binding arbitration decision and award by an employer constitutes a prohibited practice in violation of Sections 89-13 (a) (7) and (8), HRS.
80. Prior to April 24, 2021 Salera, based on his experience and qualification as a refuse collection crew leader and seniority at the Honolulu baseyard within the refuse division, was granted temporary assignments to refuse supervisory positions.
81. On and after April 24, 2021 Salera was unilaterally denied temporary assignments to refuse supervisor positions contrary to the requirements of Sections 1.05, 16.03, and 16.04 of the unit 1 collective bargaining as construed by various arbitrators.
82. On and after April 24, 2021 Yokoyama repudiated final and binding arbitration decisions on temporary assignments and the cease and desist order of arbitrator Patterson.
83. The denial of temporary assignments to Salera on and after April 24, 2021 violates Section 89.10.8, HRS, and constitutes prohibited practices in violation of Section 89-13 (a) (7) and (8), HRS.

#### **L. Count IX - Repudiation of Oral Agreement**

84. The allegations in paragraphs 1 through 83 are restated, realleged and fully incorporated herein.
85. On June 1, 2021 the Hawaii Labor Relations Board (HLRB) convened a pre-hearing conference pursuant to Order No. 3750 in Case No. 20-CE-01-952, for the purpose of arriving at a settlement or clarification of issues and to the extent possible of arriving at an agreement on facts, and matters of procedure.
86. At said pre-hearing conference (on June 1, 2021) the Board encouraged the parties to arrive at a settlement, sought to clarify the issues, and reached an agreement on procedures by setting a deadline for dispositive motions and a hearing on said motions.

87. Accordingly on June 1, 2021 the Board in Order No. 3755 set deadlines for the filing and hearing on dispositive motions on June 15, 2021 and June 29, 2021, respectively.
88. On June 9, 2021 Yokoyama by and through his designated counsel (Ernest Nomura, Esq.) orally agreed to negotiate with counsel for Salera a possible settlement of Case No. 20-CE-01-952.
89. Yokoyama, through his designated counsel (Nomura) requested that counsel for Salera set forth his proposal in writing to resolve Case No. 20-CE-01-952. Salera agreed to do so with the understanding that Yokoyama would negotiate in good faith over the terms and provisions of a settlement agreement.
90. In order to afford the parties adequate time to discuss and negotiate in good faith over the specific terms of a possible resolution the parties agreed on June 9, 2021 to request HLRB to extend the deadlines for dispositive motions from June 15, 2021 to June 29, 2021 and for a hearing on the dispositive motions from June 29, 2021 to July 13, 2021.
91. In reliance upon the promises made by Yokoyama through his counsel (Nomura) Salera filed a motion to extend the deadline for dispositive motions and the date of hearing on dispositive motions on June 10, 2021.
92. On June 10, 2021 Salera submitted a written settlement proposal to Yokoyama pursuant to the oral agreement of June 9, 2021 and requested a response by June 14, 2021 (noon time) from Yokoyama.
93. On June 15, 2021 HLRB, based on the representations made by counsel for Yokoyama and Salera regarding the existence of an oral argument granted the motion to extend the deadline for dispositive motions and the date of hearing on dispositive motions in Order No. 3766.
94. On June 16, 2021 counsel for Yokoyama (Nomura) informed Salera's counsel that he would be meeting with ENV officials later on June 16, 2021 and would be getting back to counsel for Salera about the June 16, 2021 written proposal.
95. On June 17, 2021 and thereafter Yokoyama, by the through his counsel (Nomura) refused to respond to the written proposal submitted on June 10, 2021 by Salera, repudiated the terms and conditions of the oral agreement of June 9, 2021, and opposed any extensions of the deadlines set by the Board.

96. By the aforementioned conduct Yokoyama has violated well established public policies favoring the resolution of disputes through settlement discussions, and has breached the oral agreement to negotiate in good faith with Salera contrary to Section 89-3, HRS, and Section 89-13 (a) (7), HRS.

**M. County X - Failure to Comply With Remedies**  
**Ordered by Arbitrator Sakai on June 17, 2020**

97. The allegations in paragraphs 1 through 96 are restated, realleged and fully incorporated herein.
98. In his decision and award dated June 17, 2020 in grievance case number DA-15-14 arbitrator Ted Sakai ordered the City and County of Honolulu, to cease and desist from repudiating its prior commitment to the union to restore and expand services to businesses, multi-family dwellings, condominiums, and churches and compete with private haulers to contract services for military bases and public schools, and set a July 1, 2021 deadline to make good faith efforts to provide front end loader services to all new multi-family dwellings, condominiums, developments, and non-profit organizations, churches and private schools.
99. From June 17, 2020 to the present Kahikina and Yokoyama, and continuously hereafter has continued to willfully repudiate the prior commitment to the union to restore and expand services to businesses, multi-family dwellings, condominiums, and churches and to compete with private haulers to contract services for military bases and public schools.
100. Kahikina and Yokoyama have willfully disregarded the July 1, 2021 deadline and made no effort to provide front end services to all new multi-family dwellings, condominiums, non-profit organizations, churches, and private school as required by arbitrator Sakai.
101. Respondents' failure to fully comply with the remedial terms and provisions of the decision and award by arbitrator Ted Sakai constitutes a violation of Section 89-10.8, HRS, and is a prohibited practice in violation of Section 89-13 (a) (7) and (8), HRS, as determined in Decision No. 469.



### **K. Prayer for Relief**

Wherefore, Salera prays the Hawaii Labor Relations Board for declaratory, make whole, injunctive, and other appropriate relief including affirmative actions, rescission of disciplinary actions, back pay, attorney's fees, costs, and civil penalties against Kahikina and Yokoyama.