

STATE OF HAWAI‘I
HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

ERIN K. KUSUMOTO,

Complainant(s),

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO; and DEPARTMENT OF
EDUCATION, State of Hawai‘i,

Respondent(s).

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

ORDER NO. 3834

ORDER DENYING MOTION TO AMEND

ORDER DENYING MOTION TO AMEND

Complainant ERIN K. KUSUMOTO (Kusumoto) filed a Motion to Amend, which both Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) and Respondent DEPARTMENT OF EDUCATION, State of Hawai‘i (DOE and collectively with HGEA, Respondents) opposed. The Hawai‘i Labor Relations Board (Board) listened to oral arguments on the Motion to Amend on March 23, 2022.

The Motion to Amend contains a request to add several factual allegations based on testimony and evidence from the hearing on the merits (HOM) regarding Kusumoto’s case against DOE and alleges that DOE committed a prohibited practice under Hawai‘i Revised Statutes (HRS) § 89-13(a)(7).

The only substantive addition proposed in the Motion to Amend is adding an allegation of a prohibited practice under HRS § 89-13(a)(7).

The Board has consistently held that an HRS § 89-13(a)(7) allegation requires that the complainant specify the HRS Chapter 89 provision the employer allegedly violated, which Kusumoto has failed to do. *See Kapesi v. Dep’t of Pub. Safety*, Board Case Nos. 17-CE-10-908; 17-CU-10-359, Decision No. 510, at *11 (2022). Further, this alleged violation must be a violation independent of HRS § 89-13 because “[A]ny other interpretation would render [the

section] meaningless and redundant. Burns v. Anderson, Board Case No. CE-12-76, Decision No. 169, at *15 (1982) (<https://labor.hawaii.gov/hlrp/files/2018/12/Decision-No-169.pdf>).

The proposed amendment in the Motion to Amend does not contain an alleged violation of any section of HRS Chapter 89 independent of HRS § 89-13. Accordingly, the alleged prohibited practice under HRS § 89-13(a)(7) cannot succeed by law, rendering the proposed amendment futile.

Accordingly, after review of the Motion to Amend, the Oppositions, and consideration of the oral argument, the Board denies the Motion to Amend.

DATED: Honolulu, Hawai'i, _____ April 1, 2022 _____.

HAWAI'I LABOR RELATIONS BOARD
dlir.laborboard@hawaii.gov

MARCUS R. OSHIRO, Chair

J N. MUSTO, Member

MIDORI K. HIRAI, Temporary Acting Member

Copies sent to:

Miles T. Miyamoto, Esq. (mtmlaw67@gmail.com)

Peter Liholiho Trask, Esq. (ttrask1@hawaii.rr.com)

Miriam P. Loui, Deputy Attorney General (Miriam.p.loui@hawaii.gov)