

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Repeal of Chapters 12-41 and 12-42  
and Adoption of Chapter 12-43,  
Hawaii Administrative Rules

[date]

1. Chapters 41 and 42, Hawaii Administrative Rules, entitled "Hawaii Employment Relations Board Rules of Practice and Procedure", are repealed.

2. Chapter 12-43, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure before the Hawaii Labor Relations Board", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7 BOARDS

CHAPTER 43

RULES OF PRACTICE AND PROCEDURE  
BEFORE THE HAWAII LABOR RELATIONS BOARD

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Historical note: This chapter is based substantially  
upon chapters 12-41 [Eff 11/10/83; R ]  
and 12-42 [Eff 2/6/81; am 4/12/82; R ]

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§12-43-1 Scope.** As used in these administrative rules, "the board" refers to the Hawaii labor relations board created by section 89-5, HRS. This chapter governs procedures before the board under chapters 89, 377, and 396, HRS, and other statutes as may be administered by the board. The board may also issue protocols to govern matters such as attire, order of presentation, seating, and decorum before the board. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 377-11, 377-16, 396-11.5)

**§12-43-2 Subchapters.** (a) Each subchapter sets forth special rules applicable to the type of proceeding described in the caption of the subchapter.

(b) This subchapter sets forth general rules applicable to all proceedings conducted by the board, and shall be read in conjunction with the subchapter governing the particular proceeding.

(c) In any conflict between a general rule in this subchapter and a special rule in another subchapter, the special rule shall govern.

(d) All applicable definitions for chapters 89, 377, and 396, HRS, are incorporated herein. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 377-11, 396-11.5)

**§12-43-3 The board.** (a) The office of the board is at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813, or such other address where the board is located. Unless otherwise specifically directed, all written communications to the board shall be sent to this address.

(b) The office of the board shall be open from 7:45 a.m. to 4:30 p.m. of each day that is not a Saturday, Sunday, or state holiday, unless otherwise provided by statute, rule, executive order, or order of the board.

(c) Sessions of the board shall be held as follows:

- (1) The board may meet and exercise its powers in any part of the State;
- (2) All rulemaking meetings of the board and other meetings of the board subject to chapter 92, HRS, shall be open to the public;
- (3) The board may meet in executive session, from which the public may be excluded, as provided in chapter 92, HRS; and
- (4) For internal management of the board, investigations or studies conducted by the board, and adjudicatory proceedings subject to chapters 89, 91, HRS, and other applicable laws, the board may deliberate in private, and any order, ruling, deliberation, or decision by the board in such proceeding may be made in private, as provided in chapter 92, HRS.

(d) The administration of the board shall be as follows:

- (1) The board's chair shall be responsible for the administrative functions of the board;
- (2) The board may appoint an executive officer; such executive officer shall have the duties and functions as may be determined by the board;
- (3) The board may appoint a hearings officer to conduct a hearing; the board may confer upon such hearings officer the necessary powers,

subject to chapter 89, HRS, and subchapter 2, to conduct such hearing and procedural matters related thereto; and

(4) The board may order mediation in any contested case and appoint a mediator. All costs of the mediation shall be borne equally by the parties unless otherwise ordered by the board.

(e) Any party to a hearing may file a motion to disqualify a board member or hearings officer, which must be filed at least ten calendar days before the hearing in question or good cause shall be shown for the failure to file the motion within such time. Such motion shall be supported by a declaration based on the personal knowledge of the declarant and stating the factual and legal reasons for the declarant's belief that a board member or hearings officer should be disqualified. The board member or hearings officer against whom the motion is filed may respond to the motion or file a notice of recusal with the board.

(f) Any board member or hearings officer may recuse the person's self by filing with the board a statement that the board member is unable for any reason to participate in the pending hearing.

(g) Any action taken by the board shall be by simple majority of the members of the board. Two members of the board shall constitute a quorum.

[Eff ] (Auth: HRS §§89-5, 396-11.5)  
(Imp: HRS §§89-5, 92-3, 92-4, 92-5, 92-6, 377-11, 396-11.5)

**§12-43-4 Government records.** (a) The term "government record," as used in this chapter, shall be as defined in section 92F-3, HRS.

(b) All of the board's government records shall be available for inspection in the office of the board during established office hours, in accordance with and subject to the limitations and exceptions set forth in chapter 92F, HRS.

(c) Government records printed or reproduced by the board shall be made available to any person requesting the same and upon making such arrangements as may be acceptable to the board for paying the required costs thereof, all in accordance with chapter 92F, HRS, and any applicable circuit court and administrative rules. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5, 92F-11, 377-13, 396-11.5) (Imp: HRS §§89-5, 91-2.5, 92-21, 92F-11, 92F-13, 377-13, 396-11.5)

**§12-43-5 Filing and service of documents.** (a)

All documents submitted to be filed with the board for a case are subject to the following requirements.

(b) General provisions applicable to all parties.

(1) Form of documents.

(A) All documents filed with the board shall be legible when printed on letter-size or A4 paper measuring eight and one-half inches by eleven inches in size, with twenty-pound weight or higher, written in ink or typewritten, one and one-half spaced between the lines, in twelve-point type or equivalent type size using Times New Roman or Courier or equivalent font, except that any document or exhibit on paper larger than letter-size shall be resized to fit on a letter-size paper. Any document or exhibit that cannot be resized or any video or audio recording shall be filed pursuant to the board's directions.

(B) The first page of every pleading shall set forth the name, current mailing address, email address, and telephone number of the party or party's representative who may be served with any document filed in the proceeding, the title of the pleading, the case

number, and the name of the proceeding.  
All declarations shall conform to this section.

- (2) Declaration. A declaration shall accompany all complaints or petitions in writing, signed by the declarant with an electronic or handwritten signature, certified by the declarant that the declaration was signed under penalty of law and its contents are true and correct, and dated. All declarations shall conform to this section.
- (3) Certificate of service. All pleadings filed with the board after the filing of the initial petition, complaint, transmittal of a notice of contest or other pleading initiating the proceeding at the board, must be accompanied by a certificate of service upon all other parties, certifying that service was made electronically, by first class mail, or by hand-delivery. All correspondence or other communication submitted to the attention of the board must also be sent to all other parties or their representatives.
- (4) Signing a document. All documents filed with the board must be signed, either in black ink or electronically. A person's signature on a document constitutes a certification by the person that:
  - (A) The person has read the document;
  - (B) To the best of the person's knowledge, information, and belief, every statement contained in the document is true and correct and no statements are misleading;
  - (C) The person has complied with all applicable rules; and
  - (D) The document is not filed to hinder or delay the proceeding or for the purpose of harassing any party.
- (5) Service of documents. All documents filed with the board must be served on the other

parties or the parties' representatives. Service of a document is complete upon mailing, hand-delivery, or electronic delivery; however, whenever a party has the right, or is required, to perform some act or take some action within a prescribed period after service of a document, and the document is served by mail, two days shall be added to the prescribed period.

(c) Electronic filing and service. All documents shall be filed using the board's electronic filing system ("EFS"), except as specifically provided herein. Information on registering for the board's EFS shall be available on the board's webpage or at the board's office. Only "users", as defined in paragraph (1), may use the board's EFS.

- (1) As used herein, "user" or "users" means a party or a party's representative in a case before the board and registered with the EFS. All attorneys or law firms representing a party appearing before the board shall register as a user. An employee of a user may register as a user in the employee's own name to file documents on behalf of the employee's employer, provided that such employer shall be responsible for the employee's actions and documents electronically filed by the employee. Each user shall follow the requirements of the EFS, including keeping the user's registration information current with the EFS.
- (2) As used herein, "electronic signature" means the name of the user typed in the space usually reserved for a handwritten signature preceded by "/s/" or the image of the user's handwritten signature or any other mark or symbol acceptable to the board. Subject to the board adopting alternative verification methodology, once a document is filed with the EFS, the electronic signature shall carry the same weight and legal effect as a

handwritten signature. The user is responsible for all acts and documents filed with the EFS.

- (3) An electronically filed document shall have the same legal effect as a document filed at the board's office and is deemed to be filed as of the date and time affixed on the document by the board's EFS provided that any document filed with the EFS on a day or at a time when the board is not open for business is deemed filed on the next date or time the board is open for business.
- (4) If an electronic filing or an electronic service of a document does not occur because of the EFS' failure to process the document, inaccessibility to the EFS, or an EFS error and it was not due to the user's fault, the board may extend any deadline.
- (5) An employer, exclusive representative, or labor organization who is a party to a case before the board may be permitted access to their case file by the board upon request.

(d) Exemption from electronic filing. A self-represented litigant (SRL) may file a signed written request with the board for an exemption from subsection (c) stating the reasons for the request. The signed request shall automatically be granted. The SRL shall agree to file all documents by first class mail or hand-delivery at the board's office and serve all documents to the other parties in the case by first class mail or hand-delivery at the party's last known address.

- (1) All documents submitted to the board for filing under this subsection must contain the SRL's handwritten signature in black ink.
- (2) Upon receiving a document, the board shall affix a date and time on the document, signifying when the document was filed, which will be deemed as the original filing date. The filed document will be uploaded by the board to the EFS. The original filed

document will be discarded. Any date and time affixed by the EFS will not change the original filing date.

(e) Board documents. The board may electronically serve board-issued documents upon parties, counsel, or representatives who are users. If an SRL is not a user, the board shall serve such party by mail or hand-delivery at the party's last known address, unless otherwise required by law.

(1) Unless otherwise required by law, the board shall give written notice of any hearing by first class mail or by electronic service through the EFS at least fifteen days before the scheduled date of the hearing.

(2) If electronically filed, all documents issued by the board may be signed using electronic signatures by a board member, hearing officer, executive officer, or staff member. [Eff: \_\_\_\_\_] (Auth: HRS §§89-5, 89-5.1, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-5.1, 89-14, 377-9, 396-11.5)

**§12-43-6 Retention of documents.** (a) All documents filed with or submitted to and accepted by the board shall be retained in the files of the board in such form or format as allowed in section 92-29, HRS, which copy, whether a photograph, microphotograph, reproduction on film or electronic copy, shall be an original record pursuant to section 92-30, HRS. The board's documents may be destroyed as provided in section 92-31, HRS.

(b) The board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents. [Eff: \_\_\_\_\_] (Auth: HRS §§89-5, 377-1, 396-11.5) (Imp: HRS §§89-5, 377-11, 396-11.5)

**§12-43-7 Confidential information. (a)**

Notwithstanding any other rule to the contrary, a party shall not include: (1) confidential information, including the information enumerated in section 92F-14, HRS, in which an individual may have a significant privacy interest; and (2) any personal information, as defined in section 487N-1, HRS, in any document submitted to, or filed with, the board.

(b) All confidential or personal information that is not relevant to a proceeding shall be redacted from documents before filing or submitting the documents to the board. If the confidential or personal information is relevant to a proceeding, the confidential or personal information shall be removed from documents and shall be filed with or submitted to the board in a format that substantially conforms to Forms 1 and 2 of the Hawaii Court Records Rules. "Confidential or personal information" includes social security numbers, birth dates, home addresses, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest.

(c) If the party submitting or filing a document containing confidential or personal information believes that the information is relevant to the proceeding and that the use of a form substantially similar to Form 2 of the Hawaii Court Records Rules is not adequate to protect the confidentiality or personal interest, the party may request by motion that the board accept the confidential or personal information under seal.

(d) To the extent that any confidential or personal information is not redacted and is or may be part of a record on appeal of a contested case which is subject to judicial review pursuant to chapters 89, 377, 396, or 91, HRS, if the party submitting or filing the document without redaction is an individual or entity with the confidentiality or personal interest, then such interest is waived and such document shall not be altered (whether by redaction or otherwise) unless permitted by the board in its discretion upon motion duly made.

(e) Upon motion or upon the board's own initiative, the board may permit or order redaction of confidential or personal information contained in documents previously filed with or submitted to the board. In such event, the redacted version shall replace the unredacted version in the board's files.

(f) The board may impose sanctions and penalties upon parties or the parties' attorneys or representatives who do not comply with this section, where the parties or the parties' attorneys or representatives have not shown good cause for failure to comply. Penalties may include monetary penalties not to exceed \$1,000 per page. [Eff ]  
(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-8 Time.** In computing any period of time prescribed or allowed by these rules or by order of the board, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than seven days, intermediate, Saturdays, Sundays, and state holidays shall be excluded in the computation. [Eff ]  
(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-9 Extensions.** Unless otherwise provided by statute or law, the board may upon its own initiative, or upon motion by a party showing good cause, extend the time within which any action shall be taken at the request of any party. A party requesting an extension of time shall file a motion

with an accompanying declaration stating the reasons for the request. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-10 List of mediators and arbitrators.**

(a) The board shall maintain a list of qualified persons, broadly representative of the public, to serve as mediators or arbitrators.

(b) The public employers and employee organizations may submit in writing the names of proposed mediators and arbitrators to the board.

(c) The board may, by written order, establish reasonable hourly and daily rates of mediators and arbitrators. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5) (Imp: HRS §89-11)

SUBCHAPTER 2

PRACTICE AND PROCEDURE IN CONTESTED CASES

**§12-43-16 Scope.** This subchapter governs the general practice and procedure relating to contested case proceedings before the board, pursuant to chapters 89, 91, 377, and 396, HRS. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 377-11, 396-11.5)

**§12-43-17 Appearance and practice before the board.** (a) An employee, public employee, or other individual who is a party to a proceeding may appear on the person's own behalf; an employee organization may be represented by a person or persons duly

designated and authorized by the employee organization; and an employer or public employer may appear on its own behalf or through a person or persons duly designated and authorized by such employer.

(b) When a person acting in a representative capacity appears in a proceeding or signs a document submitted to the board, that appearance or signature shall constitute a representation to the board that such individual is lawfully authorized to act as a representative. The board may at any time require any person transacting business before the board in a representative capacity to furnish proof of authorization to act in that capacity.

(c) In any proceeding under chapters 89, 377, or 396, HRS, any employee, public employee, employee organization, employer, public employer, or any other party to a proceeding may be represented by legal counsel at that party or individual's own expense.

(1) Substitution of legal counsel shall be effective upon filing of notice of the substitution by the party represented. Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the board and is subject to the guidelines of the Hawaii Rules of Professional Conduct. No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before a hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown.

(2) At the discretion of the board, an attorney who is not authorized to practice law in the state and who associates with a member in good standing of the Hawaii state bar may appear in a representative capacity.

(d) Any ethical bar to appearing before the board is governed by chapter 84, HRS.

(e) Any employee, public employee, or other individual who is a party to a proceeding appearing on the person's behalf, employee organization representative, person acting in a representative capacity, or legal counsel representing a party shall be responsible for notifying and keeping the board informed of their current information, including a mailing address, contact phone number, and email address.

(f) The board may establish additional decorum standards or protocols. [Eff ]  
(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-18 Contemptuous conduct.** (a)

Contemptuous conduct during any hearing or proceeding shall be grounds for summary exclusion from the hearing or proceeding.

(b) Contemptuous conduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or exclusion from further practice before the board after due notice and opportunity for hearing.

(c) The refusal of a witness at any proceeding or hearing to answer any question which has been ruled to be proper may, in the discretion of the board, be grounds for disregarding all testimony previously given by such witness on related matters.

(d) Any person who wilfully assaults, resists, prevents, impedes, or interferes with any member of the board, or any of the board's agents or employees, in performance of duties under chapter 89 or 377, and 396, HRS, shall be fined not more than \$500 or imprisoned not more than one year, or both. [Eff ]  
(Auth: HRS §§89-5, 89-18, 377-11, 377-15, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-19 Intervention.** (a) A petition to intervene in a proceeding and become a party thereto shall be filed with the board within ten days after notice of the proceeding in which intervention is sought, or as otherwise directed by the board.

(b) The petition shall contain the following:

- (1) Nature and extent of the petitioner's rights or interest;
- (2) Effect of any decision in the proceeding on the petitioner's rights or interest;
- (3) Extent to which the petitioner's interest may be represented by existing parties;
- (4) Extent to which the petitioner's participation will broaden the issue or delay the proceeding; and
- (5) Any other relevant facts.

(c) Intervention is discretionary, and may only be granted on averments which are reasonably pertinent to the issues already presented but do not unduly broaden them. If intervention is granted, the petitioner thereby becomes an intervenor and a party to the proceeding to the degree indicated by board order allowing the intervention. [Eff  
] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-20 Consolidation.** The board, upon motion or its own initiative, may consolidate for hearing or other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues or arise out of the same general transaction, if it finds that the consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff  
] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-21 Motions.** (a) An application for relief or order shall be made by motion, which, unless made during a hearing, shall be made in writing, accompanied by declarations and memoranda setting forth with particularity the grounds therefor, and shall set forth the relief or order sought. The board in its discretion may require any oral motion made at hearing to be reduced to writing and served on all parties.

(b) Motions referring to facts not of record shall be accompanied by declarations, and if involving a question of law, shall be accompanied by a memorandum of legal authorities.

(c) Unless otherwise allowed by the board, answering memoranda, including but not limited to memoranda in opposition, memoranda in support, and memoranda of no position, shall be filed with the board within five days after service of the motion papers, unless otherwise directed by the board. Reply memoranda, if permitted by the board, shall be filed within three days after service of answering memoranda, unless otherwise directed by the board.

(d) The board in its discretion may decide to hear oral argument or testimony thereon, in which case the board shall notify the parties of the time and place of the argument or the taking of testimony.

(e) An exhibit or declaration attached to a motion is not in evidence at the hearing on the merits unless resubmitted by a party as an exhibit at the hearing.

(f) All motions made during a hearing shall be made a part of the record of the proceedings.

(g) Motions for preliminary injunction may be made where immediate and irreparable injury will result to the movant before the hearing on the merits of the case. Hearing on a motion for preliminary injunction shall be scheduled as expeditiously as possible, following notice to the other parties and opportunity for the other parties to respond to the motion. The board's official record and any evidence admitted in a hearing on a motion for preliminary injunction will be incorporated into the record of the

hearing on the merits or de novo hearing and need not be resubmitted. Orders of preliminary injunction may be enforced as final orders of the board.

(h) Memoranda in support of or in opposition to any motion shall not exceed twenty-five pages in length, exclusive of table of contents, table of authorities, declarations, exhibits, concise statement and other attachments (collectively, attachments). Reply memoranda shall not exceed ten pages in length (exclusive of attachments). Memoranda more than ten pages in length shall include a table of contents and a table of authorities.

(i) Dispositive motions, such as motions to dismiss (except for those based on jurisdiction and a motion to dismiss in lieu of answer), motions for judgment on the pleadings, or motions for summary judgment, shall be filed before the hearing on the merits or within the time otherwise ordered by the board.

- (1) A motion to dismiss in lieu of answer shall be filed before the time to file an answer to a complaint has run; if denied in whole or in part, an answer to a complaint shall be filed within ten days after the board's denial whether the denial is made orally or in writing, or as otherwise directed by the board. Any other dispositive motion shall be filed after an answer has been filed or after the time to file an answer has run.
- (2) A motion for summary judgment shall be accompanied by a supporting memorandum and a separate concise statement detailing each material fact which the moving party contends has no genuine issues to be tried and is essential for the board's determination of the motion.
  - (A) Any opposition to a summary judgment motion shall contain a separate concise statement that admits or disputes each material fact set forth in the moving party's concise statement, as well as

setting forth any other material facts that the non-moving party contends are relevant.

- (B) The concise statements of moving and non-moving parties shall be no more than five pages or one thousand five hundred words, whichever is less, and may use a single-space format for the presentation of facts and evidentiary support.
- (C) In preparing a concise statement, the party shall reference only the material facts necessary for the board to determine the limited issues presented in the motion. The party shall include a citation to a particular declaration, exhibit, or other document supporting the party's interpretation of the material fact for each reference. The concise statement shall further specifically identify the page and portion of the page of the document referenced, with relevant portions of the attached exhibits, declaration, or exhibit highlighted or otherwise emphasized. Documents referenced in the concise statement may be filed in their entirety if the full context would be helpful to the board. If the referenced document is extracted, sufficient portion of the document shall be attached to put the matter in context.
- (D) In resolving a motion for summary judgment, the board shall have no independent duty to search and consider any part of the record not otherwise referenced in the concise statements of the parties, or to review exhibits in their entirety; rather, the board may in its discretion review only those

- portions of the exhibits specifically identified in the concise statements.
- (E) Material facts set forth in a moving party's concise statement and supported by references shall be admitted unless controverted by the concise statement of the non-moving party and supported by references.
  - (F) In the board's consideration of a motion for summary judgment, if the record establishes that a non-moving party is entitled to summary judgment or other relief against the moving party, the board may enter an order granting summary judgment or other relief to the non-moving party, provided the parties have been given a fair opportunity to be heard on the relevant issues.
- (3) A hearing on a dispositive motion in a prohibited practice or unfair labor practice case before the hearing on the merits shall meet the section 377-9(b), HRS, requirement that the hearing on the complaint shall be not less than ten nor more than forty days after filing of the complaint or amendment thereto. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-22 Amendment of documents.** (a) A pleading or document filed in a proceeding may be amended, at the discretion of the board, at any time before the board's disposition of that pleading or document.

(b) If a document is not in substantial conformity with the applicable rules of the board as to the format or contents thereof, or is otherwise insufficient, the board, on its own initiative or upon

motion of a party, may strike or dismiss the document, or require its amendment.

(c) A party moving to amend a document shall file a motion for leave to amend, together with the proposed amended document, and a declaration stating why the amendment should be granted.

(d) If amended, the document shall be effective as of the date of the original filing, if it relates in all material respects to the original document.

[Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-23 Discovery, depositions, and interrogatories.** (a) In proceedings pursuant to chapter 396, HRS, the nature and extent of discovery will be controlled by the Hawaii Rules of Civil Procedure applicable to that form of discovery and may commence upon the filing of the notice of contest.

(b) In proceedings other than appeals pursuant to chapter 396, HRS, upon written application and for good cause shown, the board may permit the parties to take depositions upon oral examination or written interrogatories in the manner prescribed under the Hawaii Rules of Civil Procedure.

(c) In proceedings involving prohibited practice complaints and unfair labor practice complaints, discovery is disfavored. If discovery is requested by a party and allowed by the board, it shall extend the requirement of section 377-9(b), HRS, that a hearing on a complaint shall be fixed not more than forty days after the filing of the complaint or amendment thereof.

(d) Witness fees and mileage shall be paid by the party naming and calling the witness and shall be the same as fees paid to witnesses in circuit court.

[Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-24 Prehearing, pretrial, and status conferences.** (a) The board may order that a prehearing or status conference be conducted and attended by all parties to the proceeding, either in person or by remote access, as determined by the board.

- (1) The purpose of a prehearing or status conference is to discuss the case, in whole or in part, including but not limited to clarifying or limiting the issues and scheduling of proceedings and deadlines.
- (2) The purpose of a pretrial conference is to identify, exchange, and to the extent possible, reach agreement or resolve issues regarding the admissibility of witness testimony, exhibits, facts, matters, or procedures to facilitate and expedite the hearing or adjudication of the issues presented; and address other prehearing, scheduling, or administrative matters.

(b) Before the pretrial conference, the board may require each party to submit a pretrial conference statement disclosing and identifying all witnesses to be called at the hearing, the order of their appearance, all exhibits to be used, and other matters to simplify the issues and facilitate the orderly progress of the hearing. A pretrial conference statement shall be filed at least three days before the conference or as otherwise ordered by the board and each party may be required to submit copies of each of the exhibits with the pretrial conference statement.

(c) Stipulation to settle. If the parties enter into a stipulation to settle a case, either party initiating the settlement shall file with the board the stipulation to settle signed by all of the parties or notice of withdrawal of the case with the board. Upon receipt of a filed stipulation to settle or notice of withdrawal of the case, the board will issue and file its own order dismissing and closing the case. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5,

377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-25 Mediation in chapter 91, HRS, contested cases.** (a) To the extent provided by law, the board may encourage parties to a contested case hearing under chapter 91, HRS, to participate in mediation before the hearing. The board may suspend all further proceedings in the contested case pending the outcome of the mediation.

(b) No mediation period shall exceed thirty days from the date the case is referred to mediation, unless otherwise extended by the board.

(c) The parties may jointly select a person to conduct the mediation. If the parties are unable to jointly select a mediator within ten days of the referral to mediation, the board shall select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the board, or provided by law.

(d) No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the case, including the contested case hearing or a court proceeding.

(e) No preparatory meetings, briefings, or mediation sessions under this section shall constitute a meeting under section 92-2, HRS. Any mediator notes under this section shall be exempt from section 92-21, HRS and chapter 92F, HRS. Section 91-10, HRS, shall not apply to these mediation proceedings. [Eff

] (Auth: HRS §§89-5, 396-11.5) (Imp: HRS §§91-8.5, 396-11.5)

**§12-43-26 Agreed statement of facts.** In any proceeding, the parties may agree to a statement of facts to be introduced into the record with respect to any issue. The board may accept an agreed statement of facts without a hearing on the merits. The parties

to an agreed statement of facts may stipulate to waive the holding of a hearing on the merits. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-27 Hearings, in general.** (a) All hearings shall be conducted by the board or a duly appointed hearings officer.

(b) Hearings shall be open to the public, except for hearings under chapter 396, HRS, unless otherwise provided by this chapter, or order, for good cause, by the board. Unless otherwise provided by law, any hearing may be conducted by remote access, as determined by and at the discretion of the board.

(c) Unless otherwise provided by law, the board, in conducting a hearing, shall have the powers, without limitation, to:

- (1) Hold hearings and issue notices;
- (2) Administer oaths and affirmations;
- (3) Consolidate hearings or several proceedings, provided that those actions shall be conducive to effectuating the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
- (4) Subpoena and examine witnesses;
- (5) Issue subpoenas;
- (6) Rule upon offers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, privileged, or unduly repetitious, and accordingly may restrict lines of questioning or testimony;
- (7) Regulate the scheduling, course, manner, and conduct of the hearing, including but not limited to the bifurcation of the proceedings, and the continuance of any proceeding or hearing;
- (8) Regulate the manner of any examination so as

- to prevent needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;
- (9) Regulate the amount of time for presentation of opening statements, closing statements, and oral arguments;
  - (10) Remove and hold in contempt disruptive individuals including any party, legal counsel, representative, witness, or observer;
  - (11) Hold conferences before or during the hearing, for the settlement or simplification of issues;
  - (12) Rule on motions and dispose of procedural matters;
  - (13) Issue oral and minute rulings and orders to dispose of procedural or substantive matters, the basis for which will be incorporated or addressed in a final decision or order;
  - (14) Examine, after notice to all parties, any site or tangible evidence relevant to the case; and
  - (15) Dispose of any other matter that normally and properly arises during the proceedings and to take any action authorized by this chapter, chapters 89, 377, or 396, HRS, or any other related laws.

(d) Unless requested for purposes of rehearing or court review or otherwise required by law, the board is not required to transcribe the record of any proceeding. However, the parties may agree to have the proceedings transcribed at their own cost and to stipulate that the transcript be deemed the official record of the proceeding.

- (1) Anytime a party references a portion of a transcript not deemed the official record during the proceedings, including but not limited to at the hearing, or in a post-hearing brief or other filed document, the party is required to file with the board a copy of the entire transcript to which the

reference is made simultaneously or before the reference being made.

- (2) Anytime a party makes reference to an audio or videotape, including but not limited to during the hearing, or in the party's post-hearing argument or brief or other filed document, the party shall cite the date of the recording and the counter number or time at which the cited material is located on the audio or videotape. [Eff  
] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-9, 377-9, 396-11.5)

**§12-43-28 Notice of hearing.** Unless otherwise provided by statute or these rules, all parties shall be given written notice of the hearing on the merits electronically or by first class mail at least fifteen days before the hearing. [Eff  
] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-9, 377-9, 396-11.5)

**§12-43-29 Hearing procedure.** Unless otherwise ordered by the board, or stipulated to by the parties with the board's approval, all hearings shall proceed as follows:

- (1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive that opportunity. The board may limit the time for, and control the order of, opening statements;
- (2) The board may decide the order of presentation by the parties. However, the order of presentation will not determine the burden of proof;
- (3) After presentation of evidence in support of their respective cases, the party with the

- burden of proof shall have the opportunity to introduce rebuttal evidence;
- (4) Each witness shall be examined first by the party calling the witness, before cross-examination by the opposing party or parties;
  - (5) The board may also question any party or witness appearing before it in any matter, or a party's attorney or other representative appearing before the board, with respect to the matter;
  - (6) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make final oral argument or submit a post-hearing brief; and
  - (7) The hearing shall be closed for the purposes of taking evidence after completion of all final oral arguments, if any, or when the parties have rested their case, whichever occurs later. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§89-5, 377-9, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-30 Subpoenas.** (a) The board may issue subpoenas or subpoenas duces tecum to require the attendance of witnesses in the State and the production of books and papers before or at the hearing as provided by the Hawaii Rules of Civil Procedure.

(b) Any party may file an application for subpoena with the board before the hearing. The subpoena must be served on the witness at least seven business days before the hearing or attendance or production date.

(c) A motion to revoke or quash a subpoena may be filed with the board no later than three business days from the date of service of the subpoena; and

(d) The board may revoke, quash, or otherwise limit a subpoena on the ground that the subpoena does

not reasonably relate to any matter under investigation, inquiry, or hearing; that the subpoena does not describe with sufficient particularity the evidence sought or that the evidence sought from the witness is privileged under the law; that the subpoena is harassing; or for other good cause shown. [Eff ] (Auth: HRS §§ 89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-31 Witnesses.** (a) All witnesses shall appear in person or by remote access, as determined by and at the discretion of the board, and shall be examined under oath or affirmation. All witnesses subpoenaed by a party shall be paid by that party the same witness and mileage fees as witnesses in the civil courts of the State. Travel costs for subpoenaed witnesses shall be paid by the party requesting the witness's appearance.

(b) No person served with a subpoena issued by the board shall refuse or neglect to appear, to testify, or to produce books and papers relevant to such investigation, inquiry, or hearing as commanded in such subpoena with the board.

(c) A failure to comply with, or neglect of, a subpoena issued by the board may be certified by the board to a court of competent jurisdiction for an order of compliance. Any person who fails or neglects to appear or to testify or to produce books, papers, or records as required, may, upon application to a court of competent jurisdiction, be ordered to appear before the board to testify or produce evidence if so ordered, and the failure to obey the order may be punished as contempt of court. In the discretion of the board, failure to comply with a subpoena issued by the board may be grounds for striking all testimony or other evidence previously given by the witness on related matters. [Eff ] (Auth: HRS §§89-5, 377-9, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-32 Evidence.** (a) In any proceeding before the board, the board shall not be bound by the technical rules of evidence, and all relevant oral or documentary evidence shall be admitted.

(b) All irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(c) The board shall give effect to the rules of privilege recognized by law.

(d) Documentary evidence shall be submitted in the format as specifically ordered by the board. The board may require any document that can be reduced to electronic format be reduced. A hard copy of the documentary evidence shall be provided to the board at any hearing.

(e) The board may take notice of judicially recognizable facts. In addition, the board may take notice of generally recognized technical or scientific facts, and the parties shall be afforded an opportunity to contest such facts so noticed.

(f) The board may take notice of any proceeding in its records, pertinent collective bargaining agreements, case law and other judicial and administrative proceedings, and the legislative history of statutes. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-33 Substitution of parties.** (a) Upon motion and for good cause shown, such as death or legal incapacity, the board may order substitution of parties; provided that the substitution:

- (1) Is conducive to effectuating the ends of justice;
- (2) Will not unduly delay the proceeding; and
- (3) Will not otherwise unduly harass, hinder, or prejudice the rights of any party.

(b) When a public officer is a party to any proceeding and the officer dies, resigns, or otherwise ceases to hold office, the officer's successor is automatically substituted as a party.

(c) Proceedings following a substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties may be disregarded in the discretion of the board.

(d) Proceedings against a public employer or a union may proceed even though the petitioner incorrectly names the public employer or union, if the board is able to ascertain the true public employer or union. Any public employee of a public employer or union specifically named shall be named in their official capacity as an employee of the public employer or union. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-34 Burden of proof.** Unless otherwise ordered or provided by statute, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-10, 377-9, 396-11.5)

**§12-43-35 Post-hearing briefs.** (a) After all parties have rested their cases at the hearing, a party may file a post-hearing brief in lieu of final oral argument made before the close of hearing. Such party shall be entitled to file a brief within the time as may be fixed by the board, except that the board may order that proposed findings of fact and conclusions of law be submitted in lieu of or in addition to the parties' post-hearing briefs. Post-hearing briefs and proposed findings and conclusions may not exceed twenty-five pages in length, exclusive of transcripts. Upon motion and for good cause shown, the board may grant permission to exceed these page limits.

(b) The board may, on its own initiative, order the filing of briefs or proposed findings of fact and conclusions of law, or both, when it deems such filing is warranted by the nature of the proceedings or the issues therein.

(c) A request for extension of time within which to file a brief or proposed findings of fact and conclusions of law shall be filed at least ten days before the expiration of the required time for filing, and shall be accompanied by a declaration setting forth the grounds upon which it is based and indicating the position of the other parties with regard to the request. [Eff ]  
(Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-36 Taking of further evidence or request for further briefs.** At any time before the issuance of a decision by the board or recommended decision by a hearings officer, the board or hearings officer may, upon its own initiative or upon motion and for good cause shown, reopen the hearing for the purpose of taking further evidence, or further briefing and shall do so in a written decision or order. Further evidence or briefing may be obtained through oral hearing or by certification of questions to the parties. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-37 Proposed decision or order, exceptions.** (a) This section applies to a decision, order, or preliminary ruling that would entitle an aggrieved person judicial review under section 91-14, HRS.

(b) When a hearings officer or a board member rendering a final decision has not heard and examined all of the evidence, a final decision shall not be

made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties.

(c) An adversely affected party may file exceptions to the whole or part of the proposed decision, order, or preliminary ruling and may include a request for an opportunity to present oral argument before the hearings officer or the board. A copy of the exceptions shall be served by the party so excepting upon each party to the proceeding.

(d) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;
- (2) Identify that part of the proposed decision, order, or preliminary ruling to which exceptions are made;
- (3) Designate by citation the portions of the record relied upon;
- (4) Cite any authorities relied upon; and
- (5) State all grounds and reasons for exceptions to a ruling, finding, conclusion, or proposal. Grounds not cited or specifically urged are waived.

(e) Any party may file with the hearings officer or board a statement in support of the proposed decision, order, or preliminary ruling within five days after service of another party's exceptions. A statement in support shall be served on each party.

(f) When exceptions have been timely filed and a party has requested the opportunity to present oral argument, all parties to the proceeding shall be afforded the opportunity to present oral argument to the board concerning the proposed decision, order, or preliminary ruling. All parties shall be served with notice of the time and place of the argument at least five days before the argument. Within a reasonable time after the argument has been heard, the board shall issue a final decision or order, either adopting, modifying, or reversing, in whole or in part, the proposed decision or order.

(g) When no written exceptions have been filed within the time limitation set forth above, the board shall issue a final decision or order, either adopting, modifying, or reversing, in whole or in part, the proposed decision or order. The board shall state specifically in the final decision and order the reasons for any modification or reversal of the recommended decision or order.

(h) This section shall not apply to the board's rulemaking functions. [Eff \_\_\_\_\_] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-11, 377-9, 396-11.5)

**§12-43-38 Decisions or orders and dispositive orders of the board.** (a) Every final decision or order rendered by the board that is adverse to a party to the proceeding and appealable pursuant to section 91-14, HRS, shall be in writing, or stated in the record, and shall be accompanied by separate findings of fact and conclusions of law. Interlocutory orders may be in writing or stated in the record, and shall be enforceable by the board as if a final order.

(b) Copies of final decisions and orders shall be available for public inspection in the office of the board or the board website or may be obtained upon request and the payment of appropriate costs, all in accordance with applicable law.

(c) In a contested case where notice of the hearing has been served by publication and the party so served has failed to appear at the hearing, service of the board's decision is complete upon mailing to the party's last known address.

(d) Subject to any specific provisions set forth in any other subchapters, a final decision or order, withdrawal, or dismissal of a complaint, petition, contest or other pleading initiating a case before the board, shall close the case before the board. [Eff \_\_\_\_\_] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-39 Motions to stay or enforce board decisions and orders.** (a) A party may move the board to enforce or stay a final or interlocutory order or decision by the board.

(b) A motion to enforce a board decision or order shall be made within thirty days after another party's refusal to comply with the order. Following notice to the other parties and opportunity for other parties to respond, the board in its discretion may schedule the motion for hearing or may decide the motion without hearing. If it appears that a party failed to obey an order of the board while the same is in effect, the board may petition the circuit judge of the judicial circuit wherein such party resides or usually transacts business for the enforcement of the order and for appropriate temporary relief or restraining order. The board shall certify the file in the court as the record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which the order was entered, and the decision and order of the board. Upon such filing the board shall cause notice thereof to be served upon the party by mailing a copy to the party's last known address, and thereupon the judge shall have jurisdiction in the premises.

(c) The board may on its own initiative petition the circuit court for appropriate relief. [Eff  
] (Auth: HRS §89-5, 396-11.5 (Imp:  
HRS §§89-13, 89-14, 377-9, 396-11.5)

**§12-43-40 Judicial review of contested cases.** Appeals may be taken in accordance with statutory provisions. A motion to enforce a final decision or order, motion for stay, motion for attorney's fees and costs, or motion for reconsideration shall not affect the time in which an aggrieved party may appeal a final decision or order. [Eff  
] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 91-14, 377-9, 396-12).

**§12-43-41 Record on appeal from board decisions.**

(a) The designation and certification of the record on appeal shall be controlled by the applicable Hawaii Rules of Civil Procedure.

(b) Where the transcripts are not already part of the board's records in a case, a party requesting transcripts for purposes of appeal shall arrange with the court reporter for the payment of the transcripts and for filing of the transcripts with the board, unless otherwise ordered by the board.

(c) As required by law, the appealing party or parties shall be responsible for all costs of preparing and transmitting a record on appeal, including the costs of copying and mailing documents. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§91-9, 91-14, 396-11.5).

**§12-43-42 Ex parte communications.**

(a) No employee, public employee, exclusive representative, employer, public employer, or any other person or organization, whether or not a party to a proceeding before the board, shall engage in any unauthorized ex parte communications, either orally, in writing or electronically, about any proceeding or matter pending before the board with any member of the board.

(b) The following classes of communications shall not be prohibited:

- (1) Those which relate solely to matters which a board member or hearings officer is authorized to dispose of on an ex parte basis;
- (2) Requests for information with respect to the status or scheduling of a proceeding;
- (3) Those which all parties to the proceeding agree, or which the board has formally ruled, may be made on an ex parte basis; and
- (4) Those with representatives of any news media on matters intended to inform the general public. [Eff \_\_\_\_\_ ] (Auth: HRS

§§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 89-14, 377-9, 396-11.5)

**§12-43-43 Board investigations under chapters 89 and 377, HRS.** Pursuant to chapter 89 or 377, HRS, the board may at any time institute investigations on its own initiative into any matter governed by chapter 89 or 377, HRS. The board shall serve its notice of investigation upon the employee, public employee, employee organization, employer, or public employer being investigated or having a direct interest or concern in the matter under investigation and shall designate the time and place for the investigation. In conducting an investigation or inquiry, the board may request or subpoena information from an employee, employee organization, or employer that is subject to chapter 89 or 377, HRS, or question a party, witness, a party's attorney, or other representative appearing before the board, with respect to any matter. [Eff ] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

**§12-43-44 Cooperation of employers and employee organizations.** In proceedings pursuant to chapter 89 or 377, HRS, the board may obtain the assistance or solicit the views of other governmental agencies, employee organizations, public employers, or private organizations where necessary or desirable to effectuate the purposes of chapters 89 and 377, HRS. [Eff ] (Auth: HRS §89-5) (Imp: HRS §89-5).

### SUBCHAPTER 3

DECLARATORY RULINGS UNDER CHAPTERS 89 AND 377, HRS

**§12-43-50 In general.** (a) Any employee, public employee, employer, public employer, exclusive representative, or interested person, who has standing under this chapter, may petition the board for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the board subject to its jurisdiction.

(b) The provisions of subchapter 2 shall govern declaratory ruling proceedings except as otherwise provided in this subchapter. [Eff \_\_\_\_\_ ]  
(Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

**§12-43-51 Petition.** (a) The petition shall be prepared on a form furnished by the board.

(b) The petition shall contain the following:

- (1) The name, mailing address, email address, and telephone number of the petitioner, and sufficient information to allow electronic filing by, and electronic service upon, the petitioner;
- (2) A statement of the nature of the petitioner's interest, including reasons for submission of the petition;
- (3) A designation of the specific provision, rule, or order in question;
- (4) A clear and concise statement of the position or contention of the petitioner;
- (5) A memorandum of authorities, containing a full discussion of the reasons, including legal authorities, in support of such position or contention; and
- (6) The signature of each petitioner or petitioner's representative.

(c) Any petition that does not conform to the foregoing requirements may be rejected. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

**§12-43-52 Disposition.** (a) The board shall consider each petition submitted and, within a reasonable time after the submission thereof, either deny the petition, stating its reason for the denial; issue a declaratory ruling on the matters contained in the petition; or set the matter for hearing or argument.

(b) The board may in its discretion refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or hypothetical and does not involve existing facts or facts which are expected to exist in the near future;
  - (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief;
  - (3) The issuance of the declaratory ruling may adversely affect the interests of the board or any of its officers or employees in litigation which is pending or may reasonably be expected to arise;
  - (4) The matter is not within the jurisdiction of the board; or
  - (5) There is a genuine controversy of material fact, the resolution of which is necessary before any declaratory ruling may be issued.
- [Eff \_\_\_\_\_ ] (Auth: HRS §89-5)  
(Imp: HRS §§89-5, 91-8)

**§12-43-53 Hearing.** (a) The board may order a hearing on the petition.

(b) The board may request the petitioner or any party to submit a statement of additional facts or memoranda to clarify a specific factual issue, position, or contention. [Eff \_\_\_\_\_ ]  
(Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

**§12-43-54 Declaratory ruling.** (a) The board shall issue and serve upon the petitioner and each other party to the proceeding, if any, a decision and order, which shall include appropriate findings of fact and conclusions of law.

(b) All declaratory rulings issued by the board shall be based upon the whole record and supported by substantial evidence, including those matters which the board took notice of pursuant to section 12-43-32(e).

(c) A declaratory ruling or an order disposing of a petition shall be applicable only to the factual situation alleged in the petition or set forth in the declaratory ruling or order disposing of the petition. The declaratory ruling or order disposing of the petition shall not be applicable to different factual situations or where additional facts not considered in the declaratory ruling or order disposing of the petition exist. [Eff \_\_\_\_\_] (Auth: HRS §89-5) (Imp: HRS §§89-5, 91-8)

#### SUBCHAPTER 4

#### PROHIBITED PRACTICES AND UNFAIR LABOR PRACTICES

**§12-43-60 Scope.** (a) This subchapter governs the procedures specific to prohibited practices pursuant to sections 89-13, 89-14, and 377-9, HRS, and unfair labor practices pursuant to sections 377-6, 377-7, 377-8, and 377-9, HRS.

(b) The provisions of subchapter 2 shall govern prohibited practice and unfair labor practice proceedings except as otherwise modified in this subchapter. [Eff \_\_\_\_\_] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-13, 89-14, 377-9)

**§12-43-61 Complaint; service of complaint.** (a)

Any complaint alleging that a person, employee, public employee, exclusive representative, employer, or public employer has engaged in a prohibited practice pursuant to section 89-13, HRS, or an unfair labor practice pursuant to sections 377-6, 377-7, or 377-8, HRS, shall be filed within ninety days of the date the complainant knew or should have known of the alleged violation, prohibited practice or unfair labor practice.

(b) A claim of prohibited or unfair labor practice based upon alleged violation of a collective bargaining agreement shall not be brought unless the complainant has exhausted all available remedies provided by the collective bargaining agreement, or can show that attempting to exhaust would be futile.

(c) A prohibited practice or an unfair labor practice complaint shall be prepared on a form furnished by the board, and filed with the board. The board shall serve a copy of the complaint upon each respondent charged.

(d) The complaint shall include the following:

- (1) The complainant's name, mailing address, email address, and telephone number of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the complainant or complainant's representative;
- (2) The name, address, email address, and telephone number, if known, of each respondent;
- (3) Designation of the appropriate bargaining unit, if applicable;
- (4) Allegations supporting the complaint, including specific facts regarding the statutory violations; and
- (5) A clear and concise statement of any other relevant facts.

(e) If the board has reasonable cause to believe that a respondent is an exclusive representative or an officer, employee, or representative of an exclusive representative, then service upon an officer of the

exclusive representative shall be service upon the respondent.

(f) Service upon a respondent shall be completed pursuant to section 12-43-5.

(g) Any other person claiming interest in the dispute or controversy, such as an employer, public employer, employee, public employee, employee organization, or other party in interest may be made a party upon proof of interest.

(h) The board may bring in additional parties by service of the complaint upon them.

(i) Only one complaint shall be issued with respect to a single controversy. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9).

**§12-43-62 Amendment of complaint.** The board may permit a complaint to be amended, upon proper motion and for good cause shown, at any time before the issuance of a final order based thereon. An amended complaint replaces the original complaint in its entirety. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

**§12-43-63 Withdrawal of complaint.** A complaint may be withdrawn at any time before the issuance of a final order thereon, upon motion and with the consent of the board. Whenever the board approves withdrawal of the complaint, the case shall be closed. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

**§12-43-64 Answer.** (a) A respondent shall file an answer to a complaint, amended complaint or a motion to dismiss in lieu of answer within ten days after service of the complaint, unless otherwise

directed by the board, and shall serve the answer or motion upon all other parties as reflected on an attached certificate of service.

(b) If the charge is believed by a respondent to be so vague and indefinite that the respondent cannot reasonably be required to frame an answer thereto, the respondent may, within five days after service of the complaint, file a motion for particularization of the complaint with the board, requesting that the complainant file a statement supplying specific information. If the board grants the motion, the complainant shall file with the board, and serve the respondent with, the requested particularization within five days after service of the board's granting order, unless the board directs otherwise. If the complainant fails to timely file and serve the particularization, the board may dismiss the complaint. Within five days after service of the complainant's particularization, the respondent shall file with the board an answer, with certificate of service on all parties, unless the board directs otherwise.

(c) The answer shall contain the following:

- (1) A specific admission, denial, or explanation of each allegation of the complaint, or, if respondent is without knowledge thereof, the respondent shall so state and the statement shall constitute a denial;
- (2) A specific detailed statement of any affirmative defense; and
- (3) A clear and concise statement of the facts and matters of law relied upon constituting the grounds of defense.

(d) In circumstances involving excusable neglect, the board may, upon motion, extend the time within which the answer shall be filed.

(e) All allegations of new matters in the answer shall be deemed denied without the necessity of a reply.

(f) If the respondent fails to file a timely answer, such failure may constitute an admission of

the material facts alleged in the complaint and a waiver of hearing.

(g) The respondent may file a motion to dismiss in lieu of a timely answer. If such motion is denied, the respondent shall file an answer within the time specified in the board's decision. [Eff  
] (Auth HRS §§89-5, 377-11) (Imp:  
HRS §§89-5, 89-14, 377-9)

**§12-43-65 Hearing.** The hearing on the merits of a case or a hearing on a dispositive motion shall be held not less than ten nor more than forty days after the filing of a complaint or amended complaint; except that the board may continue the scheduled hearing date to accommodate settlement discussions, discovery, mediation of the dispute, scheduling conflicts, hearings on motions, or other situations that may arise. [Eff  
] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

**§12-43-66 Decision and order.** (a) The board shall prepare a final decision setting forth findings of fact, conclusions of law, and order dismissing or sustaining the complaint, in whole or in part. Without limiting the board's authority to order other appropriate remedies, the board may also require the respondent to do any or all of the following: cease and desist from the prohibited practice or unfair labor practice found to have been committed; suspend the respondent's rights, immunities, privileges, or remedies granted or afforded by chapters 89 and 377, HRS, for a period of time to be determined by the board but not to exceed one year; require the respondent to take such affirmative action as will effectuate the purpose of chapters 89 and 377, HRS, including reinstatement of an employee with or without pay as may be deemed proper; and award interest, attorney's fees, and costs. The order may further

require the respondent to make reports to the board showing the extent of compliance.

(b) A party who wilfully or repeatedly commits unfair or prohibited practices that interfere with the statutory rights of an employer or employees, or discriminates against an employer or employees for the exercise of protected conduct, is subject to a civil penalty of up to \$10,000 for each violation.

(c) In determining the amount of any penalty under this section, the board shall consider the gravity of the unfair or prohibited practice and the impact of the practice on the charging party, on other persons seeking to exercise rights guaranteed by section 377-9, HRS, or on public interest. [Eff ] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 89-14, 377-9)

## SUBCHAPTER 5

### ELECTION OF BARGAINING REPRESENTATIVES IN PUBLIC EMPLOYMENT

**§12-43-70 Scope.** (a) This subchapter governs procedure relating to elections of an exclusive bargaining representative in public employment pursuant to sections 89-6 and 89-7, HRS.

(b) The provisions of subchapter 2 shall govern elections of bargaining representatives in public employment, except as otherwise modified in this subchapter. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-71 Petition for initial selection of exclusive bargaining representative.** (a) A petition to initially select an exclusive bargaining

representative for an appropriate bargaining unit may be filed by an employee organization or anyone authorized to act on its behalf.

(b) The petition shall be prepared on a form furnished by the board.

(c) The petition shall include the following:

- (1) The name, mailing address, telephone number and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner;
- (2) The name and address of the public employer involved;
- (3) The approximate number of employees in the bargaining unit;
- (4) A description of the appropriate bargaining unit, specifying inclusions and exclusions;
- (5) The name and mailing address of any known employee organization that claims to represent any of the public employees in the claimed appropriate bargaining unit; and
- (6) A clear and concise statement of any other relevant facts.

(d) The petition shall be supported by a showing of interest of at least thirty per cent of the appropriate bargaining unit.

(e) A timely petition to intervene in a selection proceeding shall be supported by a showing of interest of at least ten per cent of the employees in the appropriate bargaining unit.

(f) The board shall not entertain a petition for initial selection of an exclusive bargaining representative in any appropriate bargaining unit within which:

- (1) A valid election has been held in the preceding twelve months;
- (2) A valid collective bargaining agreement is in force and effect; or
- (3) Any new bargaining unit is created when the created unit is composed of employees currently covered by a valid collective bargaining agreement and represented by the same exclusive

representative. [Eff ] (Auth:  
HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-72 Petition for decertification or change  
in exclusive bargaining representative.**

(a) A petition for decertification or to change an exclusive bargaining representative may be filed by an employee, an employee organization, or anyone authorized to act in its behalf.

(b) The petition shall include the following:

- (1) The name, mailing address, telephone number, and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner;
- (2) The name and address of the public employer involved;
- (3) The approximate number of employees in the bargaining unit;
- (4) A description of the appropriate bargaining unit, specifying inclusions and exclusions;
- (5) The name and mailing address of any known employee organization that claims to represent any of the public employees in the claimed appropriate bargaining unit; and
- (6) A clear and concise statement of any other relevant facts.

(c) The petition shall be supported by a showing of interest of at least fifty per cent of the appropriate bargaining unit.

(d) A timely petition to intervene in a change or decertification proceeding shall be supported by a showing of interest of at least ten per cent of the employees in the appropriate bargaining unit.

(e) The board shall not entertain a petition of change or decertification in any appropriate bargaining unit within which:

- (1) A valid election has been held in the preceding twelve months;

- (2) A valid collective bargaining agreement is in force and effect; or
- (3) Any new bargaining unit is created when the created unit is composed of employees currently covered by a valid collective bargaining agreement and represented by the same exclusive representative. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-73 Showing of interest.** (a) A showing of interest shall be established through verifiable written proof of the names and signatures of employees.

(b) A showing of interest may be filed simultaneously with, or within forty-eight hours after, the filing of a petition under this subchapter. For petitions for change or decertification, signatures of employees supporting the petition must be obtained within two months of the date of the petition to be valid.

(c) Upon request, the board shall afford interested parties a contested case hearing in its investigation of the showing of interest.

(d) An employee organization shall be regarded as satisfying the showing of interest requirement as an intervenor if it is the exclusive bargaining representative, or if it is a party to the most recently expired collective bargaining agreement covering the employees in the petitioned bargaining unit. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-74 Withdrawal of petition.** A petition may be withdrawn with the approval of the board under the conditions as the board may impose to effectuate the policies of chapter 89, HRS. Whenever the board approves withdrawal of any petition, the case shall be

closed. [Eff ] (Auth: HRS §89-5)  
(Imp: HRS §§89-6, 89-7)

**§12-43-75 Notice of pending petition.** Upon the filing of a petition under this subchapter, notice thereof, including the date when the petition was filed, the name and mailing address of the petitioner, the name and address of the public employer involved, and the appropriate bargaining unit shall be posted on a public docket to be maintained by the board at its office. Written notice of the petition shall be sent to the public employer and exclusive bargaining representative, if any, of the bargaining unit.  
[Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-76 Investigation.** (a) After the filing of a petition, the board shall conduct an investigation.

(b) The purpose of the investigation shall be to resolve the following:

- (1) Whether the showing of interest requirement under this subchapter has been satisfied;
- (2) Whether more than one employee organization seeks to represent the employees in the appropriate bargaining unit;
- (3) Whether there is agreement among the parties as to the composition of the appropriate bargaining unit; and
- (4) Whether the parties desire to enter into a stipulation for a consent election. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-77 Stipulation for consent election.** The stipulation for consent election shall be prepared and

signed by the parties subject to the approval of the board. [Eff ] (Auth: HRS §89-5)  
(Imp: HRS §§89-6, 89-7)

**§12-43-78 List of eligible voters.** Upon request from the board, the public employer shall submit to the board a list of names and mailing addresses of all employees in the appropriate bargaining unit who are eligible to vote, not less than ten days before the scheduled date of election. Subject to chapter 92F, HRS, as the same may be amended, the board shall treat the addresses of employees as confidential. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-79 Notice of hearing.** Subject to section 89-7(a), HRS, regarding a showing of interest hearing requirement, if it appears to the board after an investigation that a hearing is warranted, the board shall issue written notice of hearing upon the parties. The initial notice of hearing may be served electronically, personally or by first class mail, and shall conform to section 12-43-27. The board may notice and hold a prehearing conference. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-80 Hearing.** The procedures for hearing shall be governed by the provisions of subchapter 2. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-81 Notice of election.** (a) The public employer shall post notices of election, on forms

furnished by the board, where notices are normally posted affecting all employees in the appropriate bargaining unit not less than seven days before the scheduled date of election.

(b) The public employer shall certify to the board that the notices of election have been posted as required.

(c) The reproduction of any document purporting to be a copy of the board's official ballot, other than one completely unaltered in form and content and clearly marked "Sample" on its face, which suggests either directly or indirectly to public employees that the board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5) (Imp: HRS §89-6)

**§12-43-82 Election procedure.** (a) All elections shall be by secret ballot.

(b) Any party may be represented at the polling places by observers selected in accordance with the conditions as the board may prescribe.

(c) Any authorized observer or the board's agent may challenge, for good cause, the eligibility of any person to participate in the election.

(d) The ballots of the challenged persons shall be impounded.

(e) If the challenged ballots are insufficient in number to affect the result of the election, the challenged ballots shall not be counted.

(f) If the challenged ballots are sufficient in number to affect the results of the election, the board shall conduct an investigation and, if appropriate and as may be required by chapter 91, HRS, conduct a hearing. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5) (Imp: HRS §89-7)

**§12-43-83 Objections to the conduct of election.**

(a) Within five days after the tally of ballots has been furnished, any party may file with the board a statement of objections to the conduct of the election or conduct affecting the results of the election, with proof of service on all parties. The statement shall be timely filed whether or not challenged ballots, if any, are sufficient in number to affect the results of the election.

(b) Upon the filing of a statement of objections, the board shall conduct an investigation and, if appropriate and as may be required by chapter 91, HRS, conduct a hearing.

(c) An answer shall be filed with the board, and served upon all other parties, within five days after service of the statement of objections. The answer shall contain a brief statement of facts refuting the objections. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5)  
(Imp: HRS §§89-6, 89-7)

**§12-43-84 Runoff election.** (a) In any election where none of the choices on the ballot receives a majority of the votes cast, and no objections have been timely filed, the board shall conduct a runoff election.

(b) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest number of valid ballots cast.

(c) The board may, in its discretion, maintain the same eligibility date or establish a new eligibility date. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-85 Hearing on challenges or objections.** Except as otherwise provided in this subchapter, the procedure for hearing on challenges or objections shall be governed by the provisions of subchapter 2.

[Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-86 Certification of new election results.**

(a) If the board overrules a challenge, each challenged ballot shall be opened and counted, and the board shall issue a revised tally of votes and issue a certification of the results of the election and a certification of exclusive bargaining representative.

(b) If the board overrules the objections to the conduct of the election or the conduct affecting the results of the election, the board shall issue a certification of the results of the election and a certification of exclusive representative.

(c) If the board sustains the challenge or objections, the board shall direct a new election to be held when it deems appropriate. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

**§12-43-87 Conclusive determination.** Decisions and orders of the board relating to determinations on any controversy concerning the eligibility of an employee to vote or concerning the designated dates, times, and places for the election shall be conclusive. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-6, 89-7)

SUBCHAPTER 6

CLARIFICATION OF BARGAINING UNIT

**§12-43-100 Scope.** This subchapter governs the procedure relating to the clarification of bargaining units pursuant to section 89-6, HRS. [Eff ] (Auth: HRS §§89-5, 89-6) (Imp: HRS §89-6)

**§12-43-101 Petition.** (a) A petition for clarification of an appropriate bargaining unit or amendment of certification may be filed by the affected exclusive bargaining representative, public employer, or public employee at any time.

(b) The exclusive bargaining representative, public employer, or public employee shall file a petition where a position is to be excluded from collective bargaining on the basis that it is a top-level managerial and administrative position or involved with confidential matters affecting employee-employer relations; where a new class is established and assigned to a bargaining unit; where a new bargaining unit is established by law; or where there is controversy as to the appropriate bargaining unit status of a position.

(c) The petition shall be prepared on a form furnished by the board.

(d) The petition shall include the following:

- (1) The name, mailing address, telephone number, and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner;
- (2) The name and mailing address of the public employer and exclusive bargaining representative involved, and the name and telephone number of their principal representatives to be contacted, if known;
- (3) A description of the appropriate bargaining unit;
- (4) The proposed clarification or amendment;
- (5) A statement setting forth reasons why clarification or amendment is requested;

- (6) Whether the affected public employer and exclusive bargaining representative agree or disagree with the bargaining unit designation; and
- (7) A clear and concise statement of any other relevant facts.

(e) The petitioner shall attach a declaration to the petition which shall include sufficient facts as to the duties and responsibilities of the position and further attach as exhibits the position description, organization chart, class specifications, and other relevant documents in order that the board can rule on the petition. [Eff \_\_\_\_\_] (Auth: HRS §89-5) (Imp: HRS §89-6)

**§12-43-102 Procedure.** Where it appears to the satisfaction of the board that there is no dispute among the interested parties, the board may issue its decision without further proceedings. [Eff \_\_\_\_\_] (Auth: HRS §89-5) (Imp: HRS §89-6)

## SUBCHAPTER 7

### RESOLUTION OF DISPUTES AND IMPASSES PURSUANT TO SECTION 89-11, HRS

**§12-43-110 Scope.** This subchapter governs the general procedures relating to mediation and arbitration in labor disputes pursuant to section 89-11, HRS. [Eff \_\_\_\_\_] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-111 Policy.** It is the policy of the board to encourage parties to any labor dispute to voluntarily settle their differences; however, if the parties are unable to resolve their differences, the board shall assist the parties as required by law in resolving any labor dispute through mediation or arbitration to promote cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. [Eff \_\_\_\_\_] (Auth: HRS §89-5) (Imp: HRS §§89-1, 89-11)

**§12-43-112 Notice of impasse.** (a) More than ninety days after written notice by either party to initiate negotiations, either party may give written notice to the board that an impasse exists by filing with the board a notice of impasse, with proof of service upon all parties. The notice of impasse shall contain the following:

- (1) A description of the appropriate bargaining unit and the approximate number of employees in the unit;
- (2) The dates and duration of negotiation sessions;
- (3) The termination date of the current agreement, if any;
- (4) Whether the request is a joint request;
- (5) Whether the parties have agreed on an alternate impasse procedure; and
- (6) A clear and concise statement of any other relevant facts.

(b) The date on which the board receives notice shall be the date of impasse.

(c) If neither party gives written notice of impasse and there are unresolved issues on January 31 of a year in which the agreement is due to expire, the board shall declare on January 31 that an impasse exists and February 1 shall be the date of impasse.

[Eff \_\_\_\_\_] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-113 Alternate impasse procedure.** When an impasse exists, the parties shall notify the board if they have agreed on an alternate impasse procedure, and shall file with the board a copy of the alternate impasse procedure and any amendments thereto. The board shall permit the parties to proceed with their procedure and assist at times and to the extent requested by the parties in their procedure. In the absence of an alternate impasse procedure, the board shall assist in the resolution of impasse in the manner prescribed by this subchapter. If the parties subsequently agree on an alternate impasse procedure, the parties shall immediately notify the board and file a copy with the board, and the board shall discontinue with the procedures initiated pursuant to this subchapter and allow the parties to proceed with the parties' procedure. [Eff \_\_\_\_\_ ]  
(Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-114 Appointment of mediator.** (a) If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (5), teachers and other personnel of the department of education; or bargaining unit (7), faculty of the University of Hawaii system, the board shall assist as provided for in section 89-11(d), HRS.

(b) If an impasse exists between a public employer and the exclusive representative of bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (8), personnel of the University of Hawaii system, other than faculty; bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health,

and correctional workers; bargaining unit (11), firefighters; bargaining unit (12), police officers; bargaining unit (13), professional and scientific employees; or bargaining unit (14), state law enforcement officers and state and county ocean safety and water safety officers, the board shall assist as provided for in section 89-11(e), HRS. [Eff ] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-115 Duties of mediator.** (a) The mediator shall perform mediation duties under the guidance of the board and shall report any findings to the board.

(b) The mediator's function shall be to assist the parties in arriving at a voluntary agreement.

(c) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall be private and nonpublic in nature.

(d) Mediation meetings shall be conducted at such time and place as may be designated by the mediator. [Eff ] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-116 Confidential information.** Any information disclosed by the parties to the mediator in the performance of the mediator's duties shall not be divulged voluntarily or by compulsion, unless otherwise required by law. All files, records, reports, or other papers received or prepared by a mediator while serving in such capacity shall be treated as confidential, and the mediator shall not produce confidential records or testify in regard to mediation conducted by the mediator, on behalf of any party to a cause pending in any type of proceeding unless otherwise required by law. [Eff

11) ] (Auth: HRS §89-5) (Imp: HRS §89-

**§12-43-117 Report of mediator and parties.** (a) The mediator shall, either orally or in writing, report the progress of mediation efforts, as well as the terms of the settlement of the dispute, if any, if so requested by the board.

(b) The parties shall immediately report to the board the following circumstances as each occurs:

- (1) The date of a tentative agreement and whether the terms thereof are confidential between the parties, including the basis for a claim of confidentiality;
- (2) The ratification or failure of ratification of a tentative agreement;
- (3) The signing of a tentative agreement;
- (4) The terms of a tentative agreement; or
- (5) On or about the fiftieth day of impasse, the failure of mediation. [Eff

] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-118 Notification of arbitration.** If an impasse exists between a public employer and the exclusive representative of bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (8), personnel of the University of Hawaii system, other than faculty; bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health, and correctional workers; bargaining unit (11), firefighters; bargaining unit (12), police officers; bargaining unit (13), professional and scientific

employees; or bargaining unit (14), state law enforcement officers and state and county ocean safety and water safety officers, and the impasse continues twenty days after the date of impasse, the board shall immediately notify the public employer and the exclusive representative that the impasse shall be submitted to a three-member arbitration panel. [Eff  
] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-119 Selection, qualification, and certification of interest arbitration panel pursuant to section 89-11(e) (2), HRS.**

(a) Two members of the arbitration panel shall be selected by the parties; one shall be selected by the public employer and one shall be selected by the exclusive representative.

(b) The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. If the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified and experienced interest arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of such list, the parties shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the neutral arbitrator and chair of the arbitration panel.

(c) Within five days of the selection of the neutral third member, the parties shall notify the board in writing of the selection and the names of the members, who shall be immediately appointed by the board as members of the interest arbitration panel. Upon appointment of all three members of the interest arbitration panel, the board shall serve a copy of its certification of appointment of such panel upon all parties and interest arbitration panel members.

(d) Any party may challenge the qualifications of a qualified interest arbitrator from the list by motion pursuant to section 12-43-21 filed electronically in the applicable case.

(e) Within one hundred twenty days of its appointment, the interest arbitration panel shall commence a hearing at which time the parties may submit, either in writing or through oral testimony, all information or data supporting their respective positions to the panel. [Eff ] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-120 Findings and decision of interest arbitration panel.** Within thirty days after the conclusion of the hearing, the interest arbitration panel shall transmit a preliminary draft of its decision to the parties. Within fifteen days after the transmittal of the preliminary draft, a majority of the interest arbitration panel shall issue the arbitration decision. The interest arbitration panel shall file with the board all final findings and decisions of the panel, with proof of service upon all parties. [Eff ] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-121 Costs and expenses.** (a) Costs and expenses for mediation provided for under this subchapter shall be borne by the board.

(b) The costs and expenses for any other services performed by neutrals pursuant to mutual agreement by the parties, including the costs for the neutral arbitrator, shall be borne equally by the parties. All other costs incurred by either party, including the costs of its selected member of the arbitration panel, shall be borne by the party incurring them. [Eff ] (Auth: HRS §§89-5, 89-11) (Imp: HRS §89-11)

**§12-43-122 Time frames.** Any time frame provided for in an impasse procedure, whether an alternate procedure or the procedures set forth in section 89-11, HRS, as the same may be amended, may be modified by mutual agreement of the parties with written notice to the board. In the absence of a mutual agreement to modify time frames, any delay, failure, or refusal by either party to participate in the impasse procedure shall not be permitted to halt or otherwise delay the process, unless the board so orders due to an unforeseeable circumstance. The process shall commence or continue as though all parties were participating. [Eff \_\_\_\_\_] (Auth: HRS §89-5) (Imp: HRS §89-11)

**§12-43-123 Closing of impasse cases.** (a) The parties are required to notify the board of the execution of any collective bargaining agreement arising out of an impasse case filed with the board. The board shall then issue a "Notice of Intent to Dismiss Impasse Case Because of Mootness" stating that the board will dismiss such impasse case because of mootness, unless it receives written notification from any party to the proceeding within ten days of the issuance of such notice, setting forth reasons why the case should not be dismissed.

(b) Ten days after issuance of such notice, if no objections to dismissal are received, the board shall issue an order dismissing the case. [Eff \_\_\_\_\_] (Auth: HRS §89-5) (Imp: HRS §89-11)

## SUBCHAPTER 8

### PROCEDURES RELATING TO STRIKES - RIGHTS AND PROHIBITIONS

**§12-43-130 Scope.** (a) This subchapter governs the general procedures relating to employee participation in a strike or to a strike about to occur or in progress, declared or authorized by an exclusive representative pursuant to section 89-12, HRS. Section 12-43-131 shall also be applicable to employees or representatives subject to the provisions of section 377-12, HRS.

(b) This subchapter shall not infringe on any party's right to institute appropriate proceedings in the circuit court. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-12, 89-14, 377-12)

**§12-43-131 Notice of intent to strike.** (a) The exclusive representative, or the employees or representative subject to section 377-12, HRS, shall give a ten-day notice of intent to strike to the employer and the board, including a statement of its position on all remaining issues in dispute.

(b) Within three days of receipt of the notice of intent to strike, the employer shall submit its own position on remaining issues in dispute.

(c) The board shall release information on the parties' respective positions to the public by posting to the board's website. [Eff ] (Auth: HRS §89-5) (Imp: HRS §§89-12, 377-12)

## SUBCHAPTER 9

### REVIEW OF DUES REFUND

**§12-43-140 Scope.** (a) This subchapter governs the procedures for the review of the amount to be refunded to a nonmember employee by an exclusive representative pursuant to section 89-4, HRS.

(b) The provisions of subchapter 2 shall govern review of dues refund proceedings, except as otherwise modified in this subchapter. [Eff \_\_\_\_\_ ]  
(Auth: HRS §89-5) (Imp: HRS §89-4)

**§12-43-141 Petition for review.** (a) A nonmember employee who objects to the amount to be refunded by an exclusive representative may petition the board for a review thereof within fifteen days after receiving notice of the amount of refund from the exclusive representative.

(b) At hearing, the exclusive representative shall bear the burden of production of evidence and the burden of proof of the validity of its proposed refund.

(c) The petition shall be prepared on a form furnished by the board.

(d) The petition shall contain the following:

- (1) The name, address, telephone number, and e-mail address of the petitioner;
- (2) The bargaining unit of the petitioner;
- (3) The name, mailing address, and telephone number of the exclusive representative against whom the petition is filed;
- (4) The name, mailing address, and telephone number of the public employer;
- (5) A statement of the amount deducted from the payroll of the nonmember employee which is equivalent to regular dues;
- (6) A statement of the amount to be refunded by the exclusive representative;
- (7) The date the notice of refund was received by the nonmember employee;
- (8) A complete statement of the reasons for objections to the amount of refund and any relevant underlying facts; and
- (9) The signature of the petitioner or the petitioner's representative.

(e) Any person claiming an interest in the review as a public employee, employee organization, or

party in interest may intervene pursuant to section 12-43-19.

(f) Upon the filing of a petition under this subchapter, the board shall serve a copy of the petition upon the respondent. [Eff ]  
(Auth: HRS §89-5) (Imp: HRS §89-4)

**§12-43-142 Answer.** (a) The respondent shall file a written answer with the board within ten days after service of a copy of the petition, along with certificate of service on all parties.

(b) The answer shall contain the following:

- (1) A specific admission, denial, or explanation of each allegation of the petition, or, if the respondent is without knowledge thereof, the respondent shall so state and the statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation;
- (2) A specific detailed statement of any affirmative defense; and
- (3) A clear and concise statement of the facts and matters of law relied upon constituting the grounds for defense.

(c) In extraordinary circumstances as determined by the board, the board may extend the time within which the answer shall be filed upon motion filed by the respondent with an accompanying declaration setting forth the grounds upon which the motion is based and indicating the position of the other parties with regard to the extension. Any motion for extension shall be filed before the expiration of the required period for filing an answer.

(d) If an exclusive representative is named as a respondent and fails to timely file an answer, that failure shall constitute an admission of the material facts alleged in the petition and a waiver of a hearing thereon.

(e) If a nonmember employee is named as a respondent and fails to timely file an answer, the board shall grant an exclusive representative's petition if there has been a prima facie showing that its assessments are correct and permitted by law. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5) (Imp: HRS §89-4)

**§12-43-143 Decision and order.** In the disposition of petitions filed under this subchapter, the board may:

- (1) Dismiss the petition; or
- (2) Find that the exclusive representative has not returned to the nonmember employee, a pro rata share of expenditures made by the exclusive representative for activities of a political and ideological nature unrelated to the terms and conditions of employment, and issue an order directing the exclusive representative to appropriately adjust the amounts to be refunded; and
- (3) Award such other relief as the board deems just. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5) (Imp: HRS §89-4)

## SUBCHAPTER 10

### FINANCIAL REPORTS OF EMPLOYEE ORGANIZATIONS

**§12-43-150 Scope.** (a) This subchapter governs the general procedures relating to an employee organization's and representative's (any representative of employees for collective bargaining subject to chapter 377, HRS) financial reports to its

members pursuant to sections 89-15 and 377-10, HRS, respectively.

(b) The provisions of subchapter 2 shall govern financial reports of employee organization and representative proceedings, except as otherwise modified in this subchapter. [Eff ]  
(Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-15, 377-10)

**§12-43-151 Petition.** (a) If an employee organization fails to comply with section 89-15, HRS, any employee included in the bargaining unit may petition the board for an order compelling compliance.

(b) If a representative fails to comply with section 377-10, HRS, any employee who is a member of the association with which the representative is associated may petition the board for an order compelling compliance. [Eff ] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-15, 377-10)

**§12-43-152 Answer.** (a) Within ten days after service of the petition, the employee organization or representative shall file with the board a written answer and serve the petitioner with its answer and certify the same in an attached certificate of service.

(b) The answer shall include specific admissions, denials, or explanations of each allegation contained in the petition.

(c) If the employee organization or representative fails to timely file an answer, such failure shall constitute an admission of the material facts alleged in the petition and a waiver of hearing. [Eff ] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-15, 377-10)

**§12-43-153 Decision and order.** The board may dismiss the petition, or order the employee organization or representative to make available to its members a certified written financial statement. [Eff ] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-15, 377-10)

## SUBCHAPTER 11

### RESOLUTION OF DISPUTES CONCERNING COST ITEMS

**§12-43-160 Scope.** This subchapter governs the general procedures for the resolution of any dispute concerning cost items pursuant to section 89-5, HRS. [Eff ] (Auth: HRS §89-5) (Imp: HRS §89-5)

**§12-43-161 Jurisdiction of the board.** Jurisdiction of the board to resolve any dispute concerning cost items shall be limited to the determination of whether the matter in dispute is or is not a cost item and shall be processed upon petition by any exclusive bargaining representative or public employer pursuant to the provisions set forth in the subchapter relating to declaratory rulings. [Eff ] (Auth: HRS §89-5) (Imp: HRS §89-5)

## SUBCHAPTER 12

### REFERENCE MATERIALS

**§12-43-170 Scope.** This subchapter governs the filing of all reference materials pertaining to public employee-management relations pursuant to section 89-5, HRS. [Eff ] (Auth: HRS §89-5)  
(Imp: HRS §89-5)

**§12-43-171 Collective bargaining agreement.** Public employers and employee organizations shall file with the board a copy of all collective bargaining agreements applicable to their respective employees and members, including supplemental agreements, memoranda of agreement, and memoranda of understanding, where such agreements concern wages, hours, or other terms and conditions of employment which are subject to collective bargaining, within thirty days after the agreement is executed by the parties. Agreements on reopened items and agreements to extend a collective bargaining agreement shall be included as documents required to be filed by this section. [Eff ] (Auth: HRS §89-5)  
(Imp: HRS §89-5)

**§12-43-172 Statutes, ordinances, rules, regulations, orders, and policies.** Upon request from the board, a public employer and an employee organization shall file with the board a copy of statutes, ordinances, rules, regulations, orders, or policy statements affecting public employee-management relations applicable to all employees of such public employer. [Eff ] (Auth: HRS §89-5)  
(Imp: HRS §89-5)

**§12-43-173 Information and data.** Upon request from the board, a public employer or employee organization shall file with the board information and data pertaining to public employee-management

relations necessary for the board to carry out its functions and responsibilities pursuant to chapter 89, HRS. [Eff \_\_\_\_\_ ] (Auth: HRS §89-5)  
(Imp: HRS §89-5)

**§12-43-174 Statistical data.** Upon request from the board, a public employer or an employee organization shall file with the board, no later than July 1 of every year, statistical data relating to the number of collective bargaining unit employees employed by that employer or a member of that employee organization, and wages, benefits, and employment practices in public employment. [Eff \_\_\_\_\_ ]  
(Auth: HRS §89-5) (Imp: HRS §89-5)

**§12-43-175 Penalties.** The failure, without good cause shown, to comply with any section of this subchapter may result in the imposition of monetary penalties and the imposition of other sanctions. [Eff \_\_\_\_\_ ]  
(Auth: HRS §89-5) (Imp: HRS §89-5)

### SUBCHAPTER 13

#### STREAMLINING UNION CERTIFICATION

**§12-43-180 Scope of streamlining union certification.** This subchapter governs the general procedure relating to selection and certification of an exclusive representative for the purposes of collective bargaining pursuant to section 377-4.6, HRS. [Eff \_\_\_\_\_ ] (Auth: HRS §377-4.6)  
(Imp: HRS §377-4.6)

**§12-43-181 Definitions.** As used in this subchapter:

"Appropriate unit" means a unit that is appropriate for the purposes of collective bargaining and that is the subject of a petition filed pursuant to this subchapter.

"Exclusive representative" means an individual or labor organization certified by the board under section 377-4.6, HRS, as the exclusive collective bargaining agent to represent all employees in an appropriate unit without discrimination and without regard to employee organization membership.

"Petition" means a petition that is filed pursuant to this subchapter. [Eff ]  
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§12-43-182 Streamlining union certification.**

(a) An employee, group of employees, or any individual or labor organization acting on their behalf may collect signed valid authorization cards from employees as defined in section 377-4.6(c), HRS, designating the individual or labor organization as their exclusive representative.

(b) The authorizations shall include the following:

- (1) The full name, address, and job title of the employee;
- (2) The name and address of the employer;
- (3) The identification of the individual or labor organization that is collecting authorization cards as the exclusive representative;
- (4) An indication that the employee designates the individual or labor organization as his or her exclusive representative;
- (5) A statement that by signing the card, the employee is acknowledging that if a majority of the employee's co-workers in an appropriate unit sign similar cards showing majority support, the card may be used by

the individual or labor organization to obtain certification as the employees' exclusive representative without an election similar to that under section 377-1, HRS;

- (6) An acknowledgement by the employee that the information given to the employee is in a language understandable to the employee;
- (7) The declaration of the employee that the information contained in the authorization cards is true and correct; and
- (8) The legible signature or mark of the employee, and if using a mark a signature of a witness, and the date of the signature or mark. [Eff \_\_\_\_\_ ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§12-43-183 Application of streamlining union certification.** Streamlining union certification under section 377-4.6, HRS, shall apply to an employee as defined under section 377-1, HRS, provided that the employee is employed by an employer with annual gross revenue of more than \$5,000,000. The annual gross revenue of an employer shall mean revenue derived by the employer from all sources, including parents, subsidiaries, and other affiliates wherever located based upon financial statements in the preceding fiscal year or, if the employer has operated for less than one year, based upon the actual or projected annual gross revenue reasonably projected by the board of that employer. [Eff \_\_\_\_\_ ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§12-43-184 Filing of petition.** An employee, group of employees, or any individual or labor organization acting on their behalf seeking certification as the exclusive representative shall file a petition on a form furnished by the board, and include the following:

- (1) The full names, addresses, email addresses, and affiliation, if any, of the petitioner, and the name and telephone number of its principal representative to be contacted;
- (2) The name and address of the employer, the general nature of the business, the number of employees constituting the appropriate unit, and annual gross revenue of the employer;
- (3) A full description of the appropriate unit, including the job classifications or positions of employees sought to be included and excluded and the approximate number of employees in the appropriate unit;
- (4) The name and address of any known persons or organizations that claim to represent any of the employees in the appropriate unit;
- (5) An allegation that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the appropriate unit;
- (6) An allegation that more than fifty per cent of the employees within the appropriate unit have designated the petitioner as their exclusive representative;
- (7) An allegation that the employer of the appropriate unit has an annual gross revenue of more than \$5,000,000; and
- (8) Any other relevant facts pertinent to the petition.

A petition may be withdrawn at any time before the issuance of a final order of the board. [Eff  
] (Auth: HRS §377-4.6) (Imp: HRS  
§377-4.6)

**§12-43-185 Notice of petition.** (a) Upon the filing of the petition, written notice thereof with a copy of the petition shall be sent by the board to the employer and other interested parties. The notice

shall include the date when the petition was filed, the name and address of the petitioner, the name and address of the employer involved, a description of the appropriate unit, and a statement that parties and interested persons shall have fourteen days from the date of the notice to file:

- (1) Objections to the allegation that the employer has annual gross revenues of more than \$5,000,000;
- (2) Objections to the description of the appropriate unit, including the job classifications or positions to be included or excluded from the appropriate unit and the approximate number of employees in the appropriate unit;
- (3) Objections to the petitioner's designation of the question regarding representation that has arisen; or
- (4) A petition to intervene pursuant to the provisions of subchapter 2 of these rules, in so far as it applies.

(b) The employer shall post the notice where notices are normally posted affecting all employees in the appropriate unit not less than three days after receipt of the notice. [Eff \_\_\_\_\_] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§12-43-186 Investigation of petition.** (a) Upon the filing of the petition, the board or the hearings officer shall investigate whether:

- (1) Petitioner has collected valid authorization cards from more than fifty per cent of the employees in an appropriate unit designating petitioner as their exclusive representative for collective bargaining purposes;
- (2) There is agreement among the parties regarding the composition of the appropriate unit;
- (3) The employer earns annual gross revenues of more than \$5,000,000; and

- (4) There is no other individual or labor organization that is certified or recognized as the exclusive representative of any of the employees in the appropriate unit.
- (b) Pursuant to the investigation, the board or the hearings officer may ask the employer to submit:
  - (1) Information showing the nature of the employer's business and its revenues;
  - (2) Existing or recently expired collective bargaining agreements, if any;
  - (3) An alphabetized list of all employees in the appropriate unit with their full names, addresses, and job classifications who are or were employed by the employer within the six months immediately preceding the petition's filing date;
  - (4) Copies of the W-4 forms for each employee included on the alphabetized list above;
  - (5) An alphabetized list of all employees in the appropriate unit with their full names, addresses, and job classifications who were employed as of the petition's filing date; and
  - (6) Any other information relevant to the investigation.
- (c) Pursuant to the investigation, the board or the hearings officer shall request that the petitioner submit:
  - (1) The original of each authorization card collected under the "Streamlining Union Certification" section above; provided that
    - (A) The authorization card shall be valid only if signed within six months before the filing of the petition; and
    - (B) The board or hearings officer will not accept copies of a signed authorization card;
  - (2) A declaration authenticating that such authorization cards are valid and attesting to the following:
    - (A) The declarant's personal knowledge or inquiries that the declarant has made

that the persons whose names appear on the authorization cards have personally signed or marked their own cards on the dates specified thereon as provided in the "Streamlining Union Certification" section above;

- (B) That the persons specified as members of the appropriate unit are or were employees of the appropriate unit during the six-month period immediately preceding the petition's filing date; and
- (C) If the declaration is based upon inquiries the declarant has made, rather than upon personal knowledge, the declarant shall specify the nature of those inquiries; and

(3) Any other information relevant to the investigation.

(d) Responses to requests made under subsections (b) and (c) herein shall be made within ten days of the receipt of the requests unless an extension of time is granted by the board or hearings officer for good cause shown. [Eff \_\_\_\_\_ ] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§12-43-187 Notice of hearing.** After the investigation, if it appears to the board or hearings officer that a hearing is warranted, the board or hearings officer shall issue notice of hearing upon the parties, electronically or via first class mail, at least fifteen days before the hearing and shall set the time and place of such hearing. The board or hearings officer may notice and hold a prehearing conference. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5.1, 377-4.6) (Imp: HRS §377-4.6)

**§12-43-188 Eligibility and validity of authorization.** (a) The validity of the signatures appearing on the authorization cards shall be determined administratively by the board or hearings officer. A signature appearing on an authorization card filed in compliance with these rules shall be presumed valid.

(b) The board and hearings officer shall maintain the confidentiality of all signatures and identities appearing on authorization cards. The authorization cards shall not be shown or furnished to any of the parties after acceptance by the board or hearings officer and shall be destroyed when the file is closed notwithstanding any other rule to the contrary.

(c) A board or hearings officer's finding of the eligibility of an employee to sign an authorization card or of the validity of the signature of the employee on an authorization card, or both, shall be dispositive of the issue and not subject to litigation or collateral attack, except upon sufficient evidence that the signature was obtained improperly through fraud or coercion. If there is a dispositive finding by the board or hearings officer that the employee is eligible to sign an authorization card and that the signature of the employee on an authorization card is valid, the authorization of the employee shall be counted toward the final determination of certification by the board or the hearings officer conducting the investigation. [Eff ]  
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§12-43-189 Decision and order.** (a) Following the hearing, the board or hearings officer shall issue a decision and order determining whether:

- (1) The employer has annual gross revenues of more than \$5,000,000;
- (2) No other individual or labor organization is certified or recognized as the exclusive

representative of any of the employees in the unit; and

- (3) A majority of the employees in the appropriate unit have signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative.

(b) If the board or hearings officer determines that any of these requirements set forth under subsection (a) are not met, the petition shall be dismissed.

(c) If the hearing is held before a hearings officer, the decision and order rendered thereon shall be a recommended decision subject to the filing of exceptions and board review. [Eff ]  
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

**§12-43-190 Certification of representative.**

Upon a finding by the board or hearings officer that all of the requirements for certification by authorization cards have been satisfied, the board shall certify the petitioner as the exclusive representative of the appropriate unit. The board shall issue a copy of the certificate to the employer and so notify the parties. [Eff ]  
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

SUBCHAPTER 14

ELECTION OF BARGAINING  
REPRESENTATIVES IN PRIVATE EMPLOYMENT

**§12-43-200 Scope.** (a) This subchapter governs the general procedure relating to determination of an appropriate bargaining unit, election of an exclusive

bargaining representative, and decertification of an exclusive bargaining representative in private employment pursuant to section 377-5, HRS.

(b) The provisions of subchapter 2 shall govern election of bargaining representatives in private employment proceedings insofar as they may be applicable, or as otherwise modified by this subchapter. [Eff \_\_\_\_\_] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-201 Determination of collective bargaining unit and election of collective bargaining representative.** A petition for determination of a collective bargaining unit and election of collective bargaining representative pursuant to section 377-5(b) and (c), HRS, may be filed by an employee, group of employees, an individual or labor organization acting in their behalf, or an employer in the case of jurisdictional disputes, or where a union has requested recognition. [Eff \_\_\_\_\_] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-202 Petition.** (a) The petition shall be prepared on a form furnished by the board, and filed with the board.

- (b) The petition shall include the following:
- (1) The name, mailing address, telephone number, and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner;
  - (2) The name and mailing address of the employer, the general nature of the business, and the approximate number of employees;
  - (3) A description of the bargaining unit claimed to be appropriate and the approximate number of employees constituting the unit;

- (4) The names and mailing addresses of any known persons or organizations that claim to represent any of the employees in the alleged bargaining unit;
- (5) A brief statement setting forth the nature of the question that has arisen concerning representation; an appropriate showing that thirty per cent or more of the employees within a bargaining unit claimed to be appropriate have selected the collective bargaining representative to represent them; and
- (6) Any other relevant facts pertinent to the petition. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-203 Hearing to determine bargaining unit.**

If it appears to the board that the petition presents a question concerning the determination of a collective bargaining unit, the board shall hold a hearing upon notice to all parties. The hearing procedure shall be governed by the provisions of subchapter 2. The board shall determine the facts necessary for the determination of the appropriate bargaining unit. Upon completion of the hearing, the board shall issue a decision regarding the appropriate bargaining unit. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-204 Pre-election conference, stipulation for consent election, hearing, and elections.**

If the board finds that the petition presents a question concerning representation, a pre-election conference shall be held between the interested parties, and the parties may enter into a stipulation for consent election, as prescribed by the board. The board or its agents shall conduct the election in accordance with the stipulation. If no stipulation is entered

into, the board may hold a hearing, after notice of the hearing to all parties. At the hearing, the board shall determine the facts necessary to conduct the election. If, upon completion of the hearing, the board concludes that a secret ballot election shall be held, it may direct that an election be conducted in the appropriate collective bargaining unit upon the terms as it may specify. The form of ballot to be used in any election shall be prepared as prescribed in section 377-5(c), HRS. [Eff ]  
(Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-205 Certification of election.**

Immediately following the election, the board shall make findings and certify the results of the election to the employer and the parties to the proceedings (election certification). [Eff ]  
(Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-206 Election results and objections.**

Any party to the proceeding may file objections to the conduct of the election or conduct affecting the results of the election within five days after receipt of a copy of the election certification. The objections shall be in writing and contain a brief statement of the facts upon which the objections are based. The original, with proof of service upon all parties, shall be signed and filed with the board. The board may hold a hearing upon due notice and shall decide the validity of the objections before proceeding to a final determination. [Eff ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-207 Challenged ballots.**

If a dispute arises in an election concerning the eligibility of a

particular employee to vote therein, the ballot of the employee may be challenged by the board agent conducting the election or an authorized observer. Each challenged ballot shall be placed in an individually marked envelope. If the challenged ballots are necessary for a final determination, the board may hold a hearing upon due notice, and shall decide the eligibility of the employee. [Eff ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-208 Runoff election.** (a) The board shall conduct a runoff election in any election where no choice on the ballot receives a majority of valid votes cast. The runoff ballot shall provide for selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) Employees who were eligible to vote in the election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election. [Eff ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-209 Petition for decertification.** (a) A petition for decertification may be filed by an employee, an employee organization, or anyone authorized to act in its behalf.

(b) The petition shall be prepared on a form furnished by the board, and filed with the board.

(c) The petition shall include the following:

(1) The name, mailing address, telephone number, and affiliation, if any, of the petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, the petitioner and the name and telephone number of its principal representative to be contacted;

- (2) The name, mailing address, telephone number, and affiliation, if any, of the exclusive representative; and the name, address, and telephone number of the principal representative, and the date of certification;
  - (3) The name, address, and telephone number of the employer and the name and telephone number of its principal representative to be contacted;
  - (4) The approximate number of employees in the bargaining unit;
  - (5) A description of the appropriate bargaining unit, specifying inclusions and exclusions;
  - (6) Whether the employer is a party to a contract for the affected employees;
  - (7) A showing of interest indicating that thirty per cent or more of the employees in the unit support the petition; and
  - (8) A clear and concise statement of any other relevant facts.
- (d) If the board finds that the petition presents a question of representation, the matter will be processed in accordance with sections 12-43-220 through 12-43-223. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §377-5)

## SUBCHAPTER 15

### REFERENDUM CONCERNING ALL-UNION AGREEMENT

**§12-43-220 Scope.** This subchapter governs the procedure relating to all-union agreements defined in section 377-1, HRS. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-221 Authority for all-union agreement.**

An employer may enter into an all-union agreement with the bargaining representative of the employees in a collective bargaining unit, unless the board has certified that a majority of employees has acted to rescind the authority of the bargaining representative to negotiate an all-union agreement within one year preceding the date of the agreement. [Eff

] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-222 Rescission of authority and petition.**

(a) A petition to rescind the authority of a labor organization to make an all-union agreement requiring membership in the labor organization as a condition of employment may be filed by an employee or group of employees on behalf of thirty per cent or more of the employees in a bargaining unit covered by an agreement. An original of the petition shall be filed with the board.

(b) The petition shall include:

- (1) The name, address, telephone number, and email address of the petitioner;
  - (2) The name and address of the employer, the general nature of the business, and the approximate number of employees;
  - (3) A description of the appropriate bargaining unit or the bargaining unit claimed to be appropriate, and the approximate number of employees within the unit;
  - (4) The name and address of the labor organization whose authority it is desired to rescind;
  - (5) An appropriate showing that thirty per cent or more of employees within an appropriate unit desire to rescind the authority of the labor organization involved; and
  - (6) Any other facts that are relevant to the petition. [Eff
- ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-223 Election to rescind authority and hearing.** Where a petition has been filed and the petitioner has made an appropriate showing to the board that thirty per cent or more of the employees within the unit covered by the agreement desire to rescind the authority of the labor organization to make an agreement, the board shall conduct a secret ballot election of the employees involved on their desire to rescind. Where it appears to the board that the proceeding raises a question which cannot be decided without a hearing, the board may issue a notice of hearing upon the parties in conformance with the applicable provisions in subchapter 2. The board shall fix the time and place of the election, eligibility requirement for voting, and other arrangements of the balloting, but the parties may enter into an agreement, subject to the approval of the board, fixing such arrangements. In any consent agreements, provisions may be made for final determination of all questions arising with respect to the balloting. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-224 Hearing.** The hearing shall be governed pursuant to the applicable provisions in subchapter 2. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §377-5)

**§12-43-225 Balloting and post-balloting procedures.** The election shall be governed insofar as applicable by the provisions of subchapters 6 and 14. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §377-5)

## SUBCHAPTER 16

FACILITATING INITIAL COLLECTIVE  
BARGAINING AGREEMENTS, AND CONCILIATION

**§12-43-230 Scope.** This subchapter governs conciliation and facilitating initial collective bargaining agreements in private employment pursuant to chapter 377, Hawaii Revised Statutes. [Eff  
] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§12-43-231 Request to bargain.** An individual or labor organization that has been newly organized or certified as the exclusive representative may submit to the employer a written request to bargain over an initial collective bargaining agreement. Within ten days after the employer's receipt of the request to bargain, the parties shall meet and commence bargaining collectively in good faith. The parties shall make every reasonable effort to conclude and sign a collective bargaining agreement. [Eff  
] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

**§12-43-232 Notice of dispute and request for conciliation.** More than ninety days after the date on which bargaining over an initial collective bargaining agreement commenced, or such additional period as the parties agree upon, if the parties have failed to reach an agreement, either party may notify the board of the dispute by filing a written notice of dispute and request for conciliation. The employer or exclusive bargaining representative shall file an original of the notice of dispute, with proof of service upon all parties. [Eff  
] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§12-43-233 Contents of notice.** The notice of dispute shall contain the following:

- (1) The names, addresses, telephone numbers, and email addresses of the parties to the dispute and their principal representatives;
- (2) A description of the appropriate unit and the approximate number of employees constituting the unit;
- (3) The dates and duration of negotiation sessions, if any;
- (4) The name of the party or parties requesting conciliation; and
- (5) A clear and concise statement of any other relevant facts. [Eff \_\_\_\_\_ ]  
(Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§12-43-234 Board determination of jurisdiction and the possibility of settlement and termination of dispute.** Upon receiving notice of a labor dispute regarding the failure to reach an initial collective bargaining agreement involving a newly organized or certified representative, or upon receiving information that any other labor dispute within the board's jurisdiction exists, the board shall determine whether the possibility of settlement and termination of the dispute may be increased by conciliation. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§12-43-235 Appointment of conciliator.** If the board determines that the labor dispute is within its jurisdiction and that the possibility of settlement and termination of the dispute may be increased by conciliation, the board shall notify the governor, who shall immediately appoint a conciliator. The governor shall so notify the board of the appointment of a conciliator. Upon receipt of notice of the

appointment, the board shall refer the dispute to the conciliator. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§12-43-236 Duties of conciliator.** (a) The conciliator shall perform conciliation duties under the guidance of the board and shall report any findings to the board.

(b) If the dispute involves the failure to reach an initial collective bargaining agreement involving a newly organized or certified representative, the conciliator shall use his or her best efforts to resolve the dispute within twenty days immediately succeeding the date upon which the request for conciliation was made, or such additional time as is agreed upon by all parties to the dispute. If the conciliator is not able to resolve the dispute within the required period, the conciliator shall immediately certify such fact to the board, and the board shall refer the dispute to a three-member arbitration panel established in accordance with section 89-11(e)(2)(A), HRS.

(c) For any other labor dispute, the conciliator shall use his or her best efforts to resolve the dispute within ten days immediately succeeding the reference of the dispute to the conciliator or within such additional time, not to exceed ten days, as is agreed upon by all parties to the dispute. If the conciliator is not able to resolve the dispute within the required period, the conciliator shall immediately certify such fact to the board, and the board shall so notify the governor.

(d) The conciliator may hold separate or joint meetings with the parties or their representatives, which shall be private and nonpublic in nature.

(e) Conciliation meetings shall be conducted at such time and place as may be designated by the conciliator. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§12-43-237 Confidential information.** (a) Any information disclosed by the parties to the conciliator in the performance of such conciliator's duties shall not be divulged voluntarily or by compulsion.

(b) All files, records, reports, or other papers received or prepared by a conciliator while serving in such capacity shall be treated as confidential. The conciliator shall not produce any confidential records of or testify regarding any conciliation conducted by such conciliator, on behalf of any party to any cause pending in any type of proceeding, unless otherwise required by law. [Eff \_\_\_\_\_] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§12-43-238 Report of conciliator.** The conciliator shall, either orally or in writing, report the progress of conciliation efforts, as well as the terms of the termination or resolution of the dispute, if any, when so requested by the board. [Eff \_\_\_\_\_] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

**§12-43-239 Selection and certification of arbitration panel.** (a) Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. If the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of the labor dispute, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the neutral arbitrator shall be selected.

(b) Within five days after receipt of the list, the parties shall alternately strike names from the list until a single name is left, and that arbitrator named shall be immediately appointed by the board as the neutral arbitrator and chair of the arbitration panel, and the board shall serve a copy of its certification of appointment of the panel upon all parties. [Eff \_\_\_\_\_] (Auth: HRS §377-11) (Imp: HRS §§89-11, 377-4.7)

**§12-43-240 Findings and decision of arbitration panel.** The arbitration panel shall file with the board the original of all findings and decisions, which shall be binding upon the parties for a two-year period, unless amended during that period by written consent of the parties, with proof of service upon all parties. [Eff \_\_\_\_\_] (Auth: HRS §377-11) (Imp: HRS §§89-11, 377-4.7)

**§12-43-241 Payment for conciliation and arbitration.** The costs and expenses for services performed by neutrals under this subchapter, including the conciliator and the neutral arbitrator, shall be borne equally by the parties. All other costs incurred by either party, including the costs of its selected member of the arbitration panel, shall be borne by the party incurring them. [Eff \_\_\_\_\_] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

**§12-43-242 Closing of dispute in an initial collective bargaining agreement case.** (a) Upon written notification to the board by the employer or exclusive representative of the execution of an initial collective bargaining agreement, where a request was made to the board for conciliation, or

upon the board's own knowledge and information, the board shall issue a "Notice of Intent to Dismiss Labor Dispute Case Because of Mootness" stating that the board will dismiss such labor dispute case because of mootness, unless it receives written notification from any party to the proceeding within ten days of the issuance of such notice, setting forth reasons why the case should not be dismissed.

(b) Ten days after issuance of such notice, if no objections to dismissal are received, the board shall issue an order dismissing such case. [Eff ] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

#### SUBCHAPTER 17

#### PETITION FOR TEMPORARY RESTRAINING ORDER OR TEMPORARY INJUNCTION DURING UNFAIR LABOR PRACTICE PROCEEDING

**§12-43-250 Filing a complaint.** When a complaint is filed with the board pursuant to section 380-14(b) and (c), HRS, and after conducting the preliminary investigation provided for in this section, the board may petition any circuit court of the State within any circuit where the unfair labor practice is alleged to have occurred, or where the person or persons reside or transact business for appropriate temporary relief or restraining order. Upon the filing of the complaint, the court shall serve notice upon the respondents. [Eff ] (Auth: HRS §377-11) (Imp: HRS §380-14)

**§12-43-251 Preliminary investigation.** Whenever it is charged that a person has engaged in an unfair labor practice within the meaning of section 377-7(5),

(6), (7), (8), and (9), HRS, the board shall conduct a preliminary investigation and the investigation shall be given priority over all other cases except cases of like character. [Eff ] (Auth: HRS §377-11) (Imp: HRS §380-14)

**§12-43-252 Procedure in conducting preliminary investigation.** The preliminary investigation shall be conducted by the board in the manner and at the places as shall be deemed suitable and appropriate under the circumstances with due regard for the purpose and intent of section 380-14(b) and (c), HRS. The preliminary investigation may be conducted ex parte, and the board may proceed without the presence of all parties concerned. The board shall give notice immediately to all parties concerned regarding the preliminary investigation, and shall afford reasonable opportunity to all parties concerned to present all relevant and material facts pertinent to the inquiry. [Eff ] (Auth: HRS §377-11) (Imp: HRS §380-14)

**§12-43-253 Petition for injunctive relief.** If, after investigation, the board has reasonable cause to believe that the charges contained in the complaint are true, it shall petition any circuit court of the State within any circuit where the alleged unfair labor practice in question has occurred, or is alleged to have occurred, or wherein the person or persons reside or transact business, for appropriate relief pending final adjudication of the board with respect to the matter in accordance with and subject to the provisions of section 380-14(c), HRS. [Eff ] (Auth: HRS §377-11) (Imp: HRS §380-14)

**§12-43-254 Hearing on complaint following injunctive relief.** Whenever temporary relief or a restraining order has been obtained by the board pursuant to section 380-14(b) and (c), HRS, the complaint which had been the basis for such temporary relief or restraining order shall be given priority by the board over all other cases except cases of like character. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §380-14)

**§12-43-255 Disposition of injunctive relief.** Upon the hearing on the complaint giving rise to the temporary relief or restraining order pursuant to section 380-14(b) and (c), HRS, if the board dismisses the complaint, in whole or in part, the board shall promptly suggest to the circuit court which issued the temporary relief or restraining order the possible change in circumstances arising out of the findings and conclusions of the board. [Eff \_\_\_\_\_ ] (Auth: HRS §377-11) (Imp: HRS §380-14)

## SUBCHAPTER 18

### PROCEDURE FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

**§12-43-260 Scope.** This subchapter governs the general procedure relating to rulemaking by the board pursuant to sections 89-5, 91-3, 91-6, 377-11, and 396-11.5, HRS. [Eff \_\_\_\_\_ ] (Auth: HRS §§89-5, 377-11) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

**§12-43-261 Petition.** (a) Any employee, public employee, employee organization, employer, public employer, or interested person or organization may petition the board for adoption, amendment, or repeal of any rule of the board.

(b) The petition need not be in any special form but it shall contain the following:

- (1) The name, mailing address, and telephone number of each petitioner, and sufficient information to allow for electronic filing by, and electronic service upon, each petitioner;
- (2) The signature of each petitioner;
- (3) A statement of the nature of the petitioner's interest;
- (4) The text of the proposed rule which is sought to be adopted, the text of the proposed amendment of the existing rule which is sought to be amended, or the designation or text of the rule which is sought to be repealed;
- (5) A concise statement indicating with particularity the reasons for filing the petition, the necessity for the relief, and the anticipated effect or impact of the relief; and
- (6) Any other information pertinent to the petition.

(c) If a petitioner is not represented by counsel and is not a registered user of the board's electronic filing system, such petitioner may file hard copies of documents with the board.

(d) Any petition which does not conform to the requirements specified herein may be rejected and the petitioner shall be so informed. [Eff

] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-6, 377-11, 396-11.5)

**§12-43-262 Disposition.** The board shall, within the time frame set forth in section 91-6, HRS, either

deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with section 91-3, HRS, and the procedures provided in this subchapter for the adoption, amendment, or repeal of rules. [Eff

] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

**§12-43-263 Public hearing.** (a) The public hearing on the proposed adoption, amendment, or repeal of any rule shall be held at the time and place set forth in the notice of public hearing but that time and place may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement at the hearing. The board shall afford all interested persons a reasonable opportunity to present data and their views or arguments, orally or in writing.

(b) The notice of public hearing shall be made in accordance with the provisions of chapters 91 and 92, HRS. The board may set reasonable time limits on testimony, and any such limits shall be stated in the notice of public hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing, then briefly prescribe the procedures to be followed. The presiding officer shall have the authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.

(d) Interested persons and agencies offering testimony are subject to questioning by the presiding officer or other person authorized by the board. Questioning by other persons or agencies shall not be permitted except when authorized by the presiding officer. Unless ordered by the presiding officer, testimony given at the hearing shall not be reported verbatim.

(e) Any person or agency unable to attend the public hearing who desires to submit written testimony

shall submit the testimony to the board at its office by the date and time specified in the notice of public hearing. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

**§12-43-264 Decision.** The board may render its decision at the public hearing or at a later time. The board, upon request of any interested person or agency, shall issue a concise statement of the principal reasons for its decision. In making its decision, the board shall consider all written and oral submissions respecting the proposed rule relief. [Eff ] (Auth: HRS §§89-5, 377-11, 396-11.5) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

**§12-43-265 Board initiated rulemaking.** The board may at any time, on its own initiative, institute proceedings in accordance with section 91-3, HRS, and the procedures provided herein for the adoption, amendment, or repeal of rules. [Eff ] (Auth: HRS §§89-5, 396-11.5) (Imp: HRS §§89-5, 91-3, 377-11, 396-11.5)

**§12-43-266 Emergency rulemaking.** The board may adopt emergency rules pursuant to the requirements of sections 91-3 and 91-4, HRS. The board's determination that there is imminent peril and the reasons therefor shall be stated in, and made part of, the emergency rule. The board shall make the emergency rule known to the public by publishing the rule, at least once, in a newspaper of general circulation in the State, within five days from the date the rule is filed with the lieutenant governor." [Eff ] (Auth: HRS §§89-5, 377-11,

396-11.5) (Imp: HRS §§89-5, 91-3, 91-4, 377-11, 396-11.5)

3. The repeal of chapters 12-41 and 12-42, and the adoption of chapter 12-43, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on [date] and filed with the Office of the Lieutenant Governor.

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Marcus R. Oshiro  
Chair  
Hawaii Labor Relations Board

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Anne Perreira-Eustaquio  
Director  
Department of Labor and  
Industrial Relations

APPROVED AS TO FORM:



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Deputy Attorney General