

STATE OF HAWAI‘I  
HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

NARCIS D. SALERA,

Complainant(s),

and

ROGER BABCOCK, JR., Ph.D. P.E.,  
Director, Department of Environmental  
Services, City and County of Honolulu,<sup>i</sup>

Respondent(s).

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

ORDER NO. 3846

ORDER GRANTING, IN PART, AND  
DENYING, IN PART, RESPONDENT’S  
MOTIONS FOR PROTECTIVE ORDERS

**ORDER GRANTING, IN PART, AND DENYING, IN PART,  
RESPONDENT’S MOTIONS FOR PROTECTIVE ORDERS**

Respondent ROGER BABCOCK, JR., Ph.D. P.E., Director, Department of Environmental Services, City and County of Honolulu (Respondent or ENV Director) filed two Motions for Protective Orders with the Hawai‘i Labor Relations Board (Board) regarding certain exhibits. Respondent’s proposed redactions to the exhibits amount to a blanket redaction of most paragraphs within the documents. According to the form that Respondent submitted, these redactions rely on Hawai‘i Rules of Evidence (HRE) Rules 402 and 403, Hawai‘i Revised Statutes (HRS) § 92F-13(1), (2), (3), and (4), attorney-client privilege, and Hawai‘i Administrative Rules (HAR) § 12-42-8(g)(C).

Complainant NARCIS D. SALERA (Complainant or Salera) objected to Respondent’s proposed redactions.

First, the Board notes that it is not bound by the technical rules of evidence, including the HRE. HRS § 377-9. Therefore, the Board finds Respondent’s arguments related to the HRE unpersuasive.

HRS § 92F-11 sets out an affirmative disclosure requirement for government agencies, including both Respondent and the Board. Therefore, the Office of Information Practices (OIP) requires that agencies “assess whether the [non-disclosable] information is reasonably segregable

from the requested record.” HAR § 2-71-17(a). Agencies are required to provide access to whatever portions of the requested record are disclosable. HAR § 2-71-17(a)(1).

Respondent failed to segregate out the non-disclosable information or to provide a reason that this information could not be segregated out. Rather, Respondent relies on HRS § 92F-13(1), (2), (3), and (4) for the premise that the entirety of paragraphs should be redacted.

HRS § 92F-13 states in relevant part:

This part shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
- (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function; [and]
- (4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure;

Respondent does not explain anywhere in the Motions for Protective Orders how any of these sections apply to the exhibits. Upon review of the exhibits and arguments made by Respondent, the Board finds that none of these sections of HRS § 92F-13 provide an excuse for the blanket redactions proposed by Respondent.

Throughout the Declarations of Ernest Nomura (Declarations) attached to the Motions for Protective Orders, the only arguments put forward relate to the relevancy of the redacted sections. Relevancy to a case, however, is not an acceptable reason for redaction laid out in HRS Chapter 92F.

However, the Board recognizes that certain portions of the documents relate to matters that may implicate significant privacy interests. *See* HRS § 92F-14. Therefore, the Board recognizes that some aspects of the exhibits may be non-disclosable.

Upon careful review, the Board finds that the non-disclosable portions of the documents are reasonably segregable. Thus, the Board grants, in part, and denies, in part, the Motions for

Protective Orders and will allow the exhibits to be redacted as shown in the exhibits to this Order.

DATED: Honolulu, Hawai'i, May 19, 2022.

HAWAI'I LABOR RELATIONS BOARD

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MARCUS R. OSHIRO, Chair

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SESNITA A.D. MOEPONO, Member

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J N. MUSTO, Member

Copies sent to:

Rebecca L. Covert, Esq.

Ernest Nomura, Deputy Corporation Counsel

Kurt Nakamatsu, Deputy Corporation Counsel

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<sup>i</sup> An action does not automatically end if a party to the action who is named in their official capacity dies, resigns, or otherwise ceases to hold office while this action is pending. The officer's successor is automatically substituted as a party. Proceedings following the substitution will be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties will be disregarded. *See, e.g., Salera v. Yokoyama*, Board Case No. 20-CE-01-952, Order No. 3732, at \*1-2 (2021). Accordingly, the Board substitutes the current Director of Environmental Services, City and County of Honolulu, ROGER BABCOCK, JR., Ph.D. P.E. for the previous director, WESLEY T. YOKOYAMA.

## OAS - Labor Relations MONTHLY REPORT – November 13, 2020

Table 1. Summary of Union Engagement since last Staff Meeting

Grievance Step	UPW Cases	HGEA Cases
Informal Inquiry	1	--
Step 1 Filing and Information Request	4	--
Step 1 Meeting	--	1
Step 1 Response	1	1
Step 2 Decision	1	--
Step 3 (Date TBD)	--	1

1. UPW Bulk Grievance Review – Numerous grievances and issues, from Work Place Violence to scheduling/overtime/union consultation, etc.

Update 2/19/20 - CH-16-05 - Refuse unilaterally changed routes while in meaningful consultation with the Union and Refuse Committee. Arbitration date to be determined. COR unable to agree to UPW's request to consolidate CH-16-05 and KA-13-08. Letter dated 2/19/20 from COR. Discussion to be conducted during next bulk grievance review.

Update – A/O 4/29/20 – No other meetings scheduled.

Update – A/O 6/10/20 – UPW withdrew five (5) grievances as a result of Bulk Grievance Review.

**Update - 11/13/20 – Grievance review and resolution meetings ongoing**

2. Civil Suit - [REDACTED]. Re-filed after attempts to resolve original suit. COR to provide guidance on request to provide Documents and Things to be Produced and Interrogatories. CSM

Update – Information provided to Plaintiff's counsel. November 2017.

Update – A/O 2/18/19 – case is ongoing.

Update – A/O 9/12/19, per COR contact, [REDACTED] delayed the trial.

**Update: A/O 4/15/20 - A/O 4/15/20 - COR [REDACTED] is now handling. Trial has not been reset because of [REDACTED]**

3. Civil Suit – [REDACTED]. Meeting with EEOC, March 2, 2018, review, prepare to submit to COR. [REDACTED]. T&D

Update – Draft response sent to COR, on March 7, 2018.

Update – A/O 2/18/19 – case is ongoing.

Update – A/O 6/7/19 – Provided information to COR in response to [REDACTED] attorney's request for documents.

Update - A/O 4/15/20 - COR [REDACTED] is now handling. Emailed [REDACTED] for status.

**Update – A/O 4/17/20 – Case in the discovery phase.**

4. Arbitration: - CH-16-06 - Refuse, Employer unilaterally implemented changes to work schedules that consisted of rotational days off. Arbitration date to be determined.

Update - Motion filed by [REDACTED] to be heard on 3/21/19, at UPW.

Update – per [REDACTED] in Arbitration.

**Update – A/O 3/28/19 - Motion hearing continued. Supplemental response by COR due 5/31/19; response from UPW due 6/17/19; phone conference w/arbitrator 6/24/19 – 9:00 a.m.**

5. EEOC COMPLAINT: [REDACTED], October 23, 2018. Charge of Discrimination, based on Sex, Retaliation and Age.

Update - ENV Response DRAFTED and being reviewed by COR. Due to EEOC, 11/21/18.

Update - Final completed, reviewed by COR and EEO. Final sent to Admin. for signature 12/11/18.

Update – Final sent to EEO, 12/14/18. Awaiting decision from EEOC and HCRC

**Update – A/O 5/19 - EEOC has transferred case to L.A. District, workload shift.**

6. [REDACTED] – EEOC Charge 486-2020-00319

**Update 11/13/20 – Complaint was moved out of mediation and into investigation on 7/16/2020 because EEOC was unable to contact [REDACTED]  
[REDACTED] No updates related to the investigation phase.**

7. ██████████ – EOO Complaint

## Harassment, Retaliation and Discrimination

Complainant – [REDACTED], Environmental Technician III

Update – A/O 4/29/20 – EOO finalizing their report. Once completed, it will be sent to ENV for review and disposition.

**Update: Federal EEOC charge filed by [REDACTED] on 9/2/2020. Case dismissed on 9/15/2020.**

8. Step 3 Arbitration (GRV-19-0080, GRV-19-0074, GRV-19-0090)

**[REDACTED]** – CCTV Supervisors who were surveilled

**Update 9/14/20: In Arbitrator selection phase.**

9. Step 3 Arbitration (GRV-20-106) [REDACTED] CSM WPV

**Update 10/13/20 – In Arbitrator selection phase.**

**10. Step 3 Arbitration (GRV-19-309)** [REDACTED]

**Update 11/10/20 – Grievant retiring on 11/30/20 and will accept a downgraded verbal reprimand in return. Grievance should be closed by early December, pending retirement. Otherwise, in arbitrator selection phase.**

11. HLRB Case 20-CE-01-952 – Prohibited Practice Complaint filed by Narcis Salera

**Update: 11/13/20 Ernest Nomura is recommending [REDACTED]. COR will be answering complaint and filing a motion to dismiss. DHR is contacting UPW to see if they knew that complaint was filed.**

## OAS - Labor Relations MONTHLY REPORT – December 7, 2020

Table 1. Summary of Union Engagement since last Staff Meeting

Grievance Step	UPW Cases	HGEA Cases
Informal Inquiry	2	--
Step 1 Filing and Information Request	7	1
Step 1 Meeting	--	--
Step 1 Response	--	--
Step 2 Decision	--	--
Step 3 (Date TBD)	--	--

1. UPW Bulk Grievance Review – Numerous grievances and issues, from Work Place Violence to scheduling/overtime/union consultation, etc.

Update 2/19/20 - CH-16-05 - Refuse unilaterally changed routes while in meaningful consultation with the Union and Refuse Committee. Arbitration date to be determined. COR unable to agree to UPW's request to consolidate CH-16-05 and KA-13-08. Letter dated 2/19/20 from COR. Discussion to be conducted during next bulk grievance review.

Update – A/O 4/29/20 – No other meetings scheduled.

Update – A/O 6/10/20 – UPW withdrew five (5) grievances as a result of Bulk Grievance Review.

**Update - 12/7/20 – Grievance review and resolution meetings ongoing**

2. Civil Suit - [REDACTED]. Re-filed after attempts to resolve original suit. COR to provide guidance on request to provide Documents and Things to be Produced and Interrogatories. CSM

Update – Information provided to Plaintiff's counsel. November 2017.

Update – A/O 2/18/19 – case is ongoing.

Update – A/O 9/12/19, per COR contact, [REDACTED] delayed the trial.

**Update: A/O 4/15/20 - A/O 4/15/20 - COR [REDACTED] is now handling. Trial has not been reset because of [REDACTED]**

3. Civil Suit – [REDACTED]. Meeting with EEOC, March 2, 2018, review, prepare to submit to COR. [REDACTED]. T&D

Update – Draft response sent to COR, on March 7, 2018.

Update – A/O 2/18/19 – case is ongoing.

Update – A/O 6/7/19 – Provided information to COR in response to [REDACTED] attorney's request for documents.

Update - A/O 4/15/20 - COR [REDACTED] is now handling. Emailed [REDACTED] for status. Case in the discovery phase.

**Update – A/O 12/3/20 – No movement on case. Per COR, [REDACTED] attorney did not show for first meeting with judge earlier this year.**

4. Arbitration: - CH-16-06 - Refuse, Employer unilaterally implemented changes to work schedules that consisted of rotational days off. Arbitration date to be determined.

Update - Motion filed by [REDACTED] to be heard on 3/21/19, at UPW.

Update – per [REDACTED] in Arbitration.

**Update – A/O 3/28/19 - Motion hearing continued. Supplemental response by COR due 5/31/19; response from UPW due 6/17/19; phone conference w/arbitrator 6/24/19 – 9:00 a.m.**

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Update - ENV Response DRAFTED and being reviewed by COR. Due to EEOC, 11/21/18.

Update - Final completed, reviewed by COR and EEO. Final sent to Admin. for signature 12/11/18.

Update – Final sent to EEO, 12/14/18. Awaiting decision from EEOC and HCRC

**Update – A/O 5/19 - EEOC has transferred case to L.A. District, workload shift.**

6. [REDACTED] – EEOC Charge 486-2020-00319



**Update 11/13/20 – Complaint was moved out of mediation and into investigation on 7/16/2020 because EEOC was unable to contact [REDACTED]  
[REDACTED] No updates related to the investigation phase.**

7. [REDACTED] – EOO Complaint

Harassment, Retaliation and Discrimination

Complainant – [REDACTED], Environmental Technician III

Update – A/O 4/29/20 – EOO finalizing their report. Once completed, it will be sent to ENV for review and disposition.

**Update: Federal EEOC charge filed by [REDACTED] on 9/2/2020. Case dismissed on 9/15/2020. Dual filing at HCRC still pending.**

8. Step 3 Arbitration (GRV-19-0080, GRV-19-0074, GRV-19-0090)

[REDACTED] – CCTV Supervisors who were surveilled

**Update 9/14/20: In Arbitrator selection phase.**

9. Step 3 Arbitration (GRV-20-106) [REDACTED], CSM WPV

**Update 10/13/20 – In Arbitrator selection phase.**

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**Update 11/20/20 – Grievant retiring on 12/31/20 and will accept a downgraded verbal reprimand in return. Grievance should be closed by early January, pending retirement.**

11. HLRB Case 20-CE-01-952 – Prohibited Practice Complaint filed by Narcis Salera

**Update: 11/16/20 Ernest Nomura is recommending [REDACTED] COR responded to complaint and filed a motion to dismiss. DHR is contacting UPW to see if they knew that complaint was filed.**

## OAS - Labor Relations MONTHLY REPORT – February 9, 2020

Table 1. Summary of Union Engagement since last Staff Meeting

Description	UPW Cases	HGEA Cases
Informal Inquiry	8	--
Step 1 Filing and Information Request	7	2
Step 1 Meeting	--	--
Step 1 Response	--	--
Step 2 Decision	1	--
Step 3 (Date TBD)	--	--
Pre-Determination Meeting	1	1

1. Federal Drug and Alcohol Clearinghouse queries were conducted in December in compliance with new federal regulations. A total of 284 queries were conducted for this new annual requirement. A few queries still need to happen once employees return from SKI or long term leave.
2. UPW and HGEA Bulk Grievance Review – Numerous grievances and issues, from Work Place Violence to scheduling/overtime/union consultation, etc.

Update 2/19/20 - CH-16-05 - Refuse unilaterally changed routes while in meaningful consultation with the Union and Refuse Committee. Arbitration date to be determined. COR unable to agree to UPW's request to consolidate CH-16-05 and KA-13-08. Letter dated 2/19/20 from COR. Discussion to be conducted during next bulk grievance review.

Update – A/O 4/29/20 – No other meetings scheduled.

Update – A/O 6/10/20 – UPW withdrew five (5) grievances as a result of Bulk Grievance Review.

**Update - 2/9/21 – Grievance review and resolution discussions ongoing with both Unions**

3. Civil Suit - [REDACTED]. Re-filed after attempts to resolve original suit. COR to provide guidance on request to provide Documents and Things to be Produced and Interrogatories. CSM

Update – Information provided to Plaintiff's counsel. November 2017.

Update – A/O 2/18/19 – case is ongoing.

Update – A/O 9/12/19, per COR contact, [REDACTED]

[REDACTED] delayed the trial.

**Update: A/O 4/15/20 - A/O 4/15/20 - COR [REDACTED] is now handling. Trial has not been reset because of [REDACTED].**

4. Civil Suit – [REDACTED]. Meeting with EEOC, March 2, 2018, review, prepare to submit to COR. [REDACTED]. T&D

Update – Draft response sent to COR, on March 7, 2018.

Update – A/O 2/18/19 – case is ongoing.

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Update - A/O 4/15/20 - COR [REDACTED] is now handling. Emailed her for status. Case in the discovery phase.

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5. Arbitration: - CH-16-06 - Refuse, Employer unilaterally implemented changes to work schedules that consisted of rotational days off. Arbitration date to be determined.

Update - Motion filed by [REDACTED] to be heard on 3/21/19, at UPW.

Update – per [REDACTED] in Arbitration.

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Update - Final completed, reviewed by COR and EEO. Final sent to Admin. for signature 12/11/18.

Update – Final sent to EEO, 12/14/18. Awaiting decision from EEOC and HCRC

**Update – A/O 5/19 - EEOC has transferred case to L.A. District, workload shift.**

7. ██████████ – EEOC Charge 486-2020-00319

**Update 11/13/20 – Complaint was moved out of mediation and into investigation on 7/16/2020 because EEOC was unable to contact ██████████**

**██████████ 12/30/20 – ENV response sent to EEOC denying charge.**

8. HLRB Case 20-CE-01-952 – Prohibited Practice Complaint filed by Narcis Salera

**Update: 11/16/20 Ernest Nomura is recommending ██████████. COR responded to complaint and filed a motion to dismiss. DHR is contacting UPW to see if they knew that complaint was filed.**