

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DAMON MURPHY,

Complainant(s),

and

HAWAII STATE TEACHERS  
ASSOCIATION,

Respondent(s).

CASE NO(S). 22-CU-05-392

ORDER NO. 3869

PRELIMINARY PREHEARING  
CONFERENCE ORDER

**PRELIMINARY PREHEARING CONFERENCE ORDER**

1.	<b>INTRODUCTION</b> .....	2
2.	<b>FACTUAL CIRCUMSTANCES</b> .....	2
3.	<b>OVERVIEW OF THE BOARD’S PROCESSES</b> .....	2
	<b>3.1. General Information on the Board; Burden of Proof</b> .....	2
	<b>3.2. The Hearing on the Merits; Witnesses and Exhibits</b> .....	3
4.	<b>GENERAL LEGAL PRINCIPLES</b> .....	3
	<b>4.1. Prohibited Practices</b> .....	3
	<b>4.2. The Board Must Have Jurisdiction to Decide a Case; Complainants Must Have Standing to Bring a Case</b> .....	4
5.	<b>FURTHER PROCEEDINGS</b> .....	5

## **1. Introduction**

As the Hawai‘i Labor Relations Board (Board) acknowledged in Order No. 3863, at least one of the parties in this case appears to be a self-represented litigant (SRL). Accordingly, the Board issues this preliminary pre-hearing conference order to promote efficiency at the upcoming pre-hearing conference. This order will lay out basic information about the Board and proceedings before the Board.

## **2. Factual Circumstances**

Based on the Prohibited Practice Complaint (Complaint) filed by Complainant DAMON MURPHY (Mr. Murphy or Complainant), this case arises from Respondent HAWAII STATE TEACHERS ASSOCIATION’s (HSTA) alleged interference with the reduction-in-force (RIF) process at Mr. Murphy’s place of employment.

According to Mr. Murphy, HSTA instructed seven teachers to return the RIF questionnaire without completing it, despite not objecting to the RIF process in accordance with the bargaining unit 5 (BU 5) collective bargaining agreement (CBA).

## **3. Overview of the Board’s Processes**

### **3.1. General Information on the Board; Burden of Proof**

The Board is a quasi-judicial agency, which means that it functions like a court. Therefore, when the Board receives a complaint, the complaint generally goes through full court-like proceedings, including a hearing on the merits where witnesses are called and evidence is presented.

In prohibited practice cases, the party that filed the complaint is known as the “complainant,” and the party responding to the complaint is known as the “respondent.” By law, the complainant has the burden to prove the case by a “preponderance of the evidence.” See Hawai‘i Revised Statutes (HRS) § 91-10(5)<sup>i</sup> and Hawai‘i Administrative Rules (HAR) § 12-42-8(g)(16)<sup>ii</sup>. This means that the complainant must prove that it is more likely than not that the respondent committed prohibited practices. The complainant must prove this case against the respondents by presenting evidence in the form of exhibits and witnesses in the HOM.

The Board must construe a complaint liberally, so the general requirement that the Board follows is that the complaint must contain a “short and plain statement of the claim to provide the respondent with fair notice of the complaint and the relevant grounds.”

### **3.2. The Hearing on the Merits; Witnesses and Exhibits**

The Board must hold the HOM within 40 days of when the complaint was filed unless the parties choose to waive this requirement. See HRS § 377-9(b)<sup>iii</sup> and HAR § 12-42-46(b)<sup>iv</sup>.

All parties are responsible for calling their own witnesses for direct examination during the HOM. If a witness is not willing to appear voluntarily, then the party seeking to call that witness can request a subpoena from the Board to order the witness to appear. This subpoena must then be served on the witness by an individual who is not the named complainant.

Because the complainant must present their case first, they must call their own witnesses. Even if a witness is listed by a respondent, that is no guarantee that the respondent will call that witness. Therefore, the complainant must ensure that all witnesses are either willing to appear voluntarily or that the witnesses are properly served with a subpoena.

All subpoenaed witnesses must be paid as laid out in HRS § 607-12.

The complainant must also present exhibits, which are documents or other pieces of evidence. Any proposed exhibits must be submitted to the Board as required by the Board's Pretrial Order. There are specific requirements for how those exhibits must be submitted to the Board.

When proposed exhibits are submitted, the parties can agree to enter those proposed exhibits into the official record without objection. If the parties can do so, it helps to make the proceedings more efficient.

If the parties do not agree to enter proposed exhibits into evidence, then they can be introduced during the HOM. Exhibits are introduced during the HOM through witnesses' testimony, setting out the authentication and relevance of the exhibits. After exhibits are introduced, a party may "move" to have the exhibit entered into the official record. The Board will rule on whether the exhibit will be entered into the official record based on, among other things, whether the other parties object to the exhibit being entered into the official record.

The Board will only consider the exhibits entered into the official record when making our decision in this case. Therefore, any proposed exhibits that are not in the official record cannot impact the Board's decision.

## **4. General Legal Principles**

### **4.1. Prohibited Practices**

Prohibited practices are defined by law in HRS § 89-13.

HRS § 89-13 is broken up into two sections: first, the prohibited practices that a public employer can commit, and second, the prohibited practices that a public employee or employee organization can commit.

HRS § 89-13(b) lays out five ways that an employee organization can commit prohibited practices and reads:

- (b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:
  - (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
  - (2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9;
  - (3) Refuse to participate in good faith in the mediation and arbitration procedures set forth in section 89-11;
  - (4) Refuse or fail to comply with any provision of this chapter; or
  - (5) Violate the terms of a collective bargaining agreement.

#### **4.2. The Board Must Have Jurisdiction to Decide a Case; Complainants Must Have Standing to Bring a Case**

The Board has a limited jurisdiction or right to hear cases, and the Board cannot do more than the law authorizes it to do. See Awana v. Honolulu Police Dep't, Board Case Nos. 22-CE-12-965, 22-CU-12-388, Order No. 3842, at \*3 (April 22, 2022) (<https://labor.hawaii.gov/hlrp/files/2022/04/Order-No.-3842.pdf>) (Awana). If the Board does not have jurisdiction over a complaint, the Board cannot issue a judgment on the issue. Tamashiro v. Department of Human Services, 112 Hawai'i 388, 398, 146 P.3d 103, 113 (2006).

The Board's jurisdiction has been defined by both statute and the courts. See, HRS §§ 89-14, 377-9; Aio v. Hamada, 66 Haw. 401, 404 n. 3, 664 P.2d 727, 729 n. 3 (1983) (Aio).

While the Board's jurisdiction is made up of many different issues that the Board will not go into here, the Board will discuss a commonly raised issue: standing.

Standing looks at whether parties have the right to bring a particular complaint or claim. Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 67, 881 P.2d 1210, 1213 (1994). In other words, without standing, a party cannot bring a valid complaint.

To determine standing, the Board looks at if the complainant has alleged a sufficient personal stake in the outcome to justify the exercise of the Board’s remedial powers on the party’s behalf. Tax Foundation of Hawaii vs. State, 144 Hawai‘i 175, 188, 439 P.3d 140, 144 (2019) (Tax Foundation).

When making this consideration, the Board uses the three-part injury-in-fact test adopted in Akinaka v. Disciplinary Board, 91 Hawai‘i 51, 979 P.2d 1077 (1999) (*overruled in part by Tax Foundation*) (Akinaka). See Haw. Gov’t Emples. Ass’n v. Kishimoto, Board Case Nos. 20-CE-02-947a-f, Decision No. 503, at \*3 (April 9, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/05/Decision-No.-503.pdf>). All three prongs of the Akinaka test must be met to prove standing. Akinaka, 91 Hawai‘i at 55, 979 P.2d at 1081.

The first part of the Akinaka test considers whether the complainant suffered an actual or threatened injury because of the respondent’s wrongful conduct. Id. The complainant must show an actual, direct, distinct injury to himself—not to any third party—and this injury cannot be abstract, conjectural, or hypothetical. Hanabusa v. Lingle, 119 Hawai‘i 341, 347, 198 P.3d 604, 610 (2008); Akinaka, 91 Hawai‘i at 55, 979 P.2d at 1081.

The second prong of the Akinaka test looks at whether the injury is “fairly traceable” to the respondent’s wrongful conduct, and the third prong considers whether a favorable decision for the complainant is likely provide relief for the actual or threatened injury. Id.

## 5. Further Proceedings

The Board will hold the prehearing conference on July 14, 2022 at 9:00a.m. via remote video conference as set forth at Order No. 3862.

DATED: Honolulu, Hawai‘i, July 7, 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:

Damon Murphy, Self-Represented Litigant  
Keani Alapa, Esq.

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<sup>i</sup> HRS § 91-10(5) states:

(5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

<sup>ii</sup> HAR § 12-42-8(g)(16) of the Board's rules states:

(16) The charging party, in asserting a violation of chapter 89, HRS, or this chapter, shall have the burden of proving the allegations by a preponderance of the evidence. The party raising any subsequent issue shall have the burden of proving that issue by a preponderance of the evidence.

<sup>iii</sup> HRS § 377-9(b) states in relevant part:

(b) ...The board shall fix a time for the hearing on the complaint, which shall not be less than ten nor more than forty days after the filing of the complaint or amendment thereof...

<sup>iv</sup> HAR § 12-42-46(b) states:

(b) The hearing shall be held not less than ten nor more than forty days after the filing of the complaint or amendment thereof...