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Case No. 22-CE-03-967, 22-CU-03-391

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of MARIO COOPER, Complainant(s), and DEPARTMENT OF TAXATION, State of Hawai'i; DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, State of Hawai'i; and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO, Respondent(s).	CASE NO(S). 22-CE-03-967 22-CU-03-391 ORDER NO. 3873 ORDER DENYING COMPLAINANT'S MOTION FOR LEAVE TO AMEND; GRANTING, IN PART, AND DENYING, IN PART, RESPONDENTS' MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT; DISMISSING CLAIMS FOR LACK OF STANDING; AND CLOSING THE CASE

ORDER DENYING COMPLAINANT'S MOTION FOR LEAVE TO AMEND; GRANTING, IN PART, AND DENYING, IN PART, RESPONDENTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT; DISMISSING CLAIMS FOR LACK OF STANDING; AND CLOSING THE CASE

1. Introduction and Statement of the Case

Complainant MARIO COOPER (Complainant or Mr. Cooper), a self-represented litigant (SRL) filed a prohibited practice complaint (Complaint) with the Hawai'i Labor Relations Board (Board) alleging that Respondent DEPARTMENT OF TAXATION, State of Hawai'i (DoTax) and Respondent DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, State of Hawai'i (DHRD and, collectively with DoTax, State Respondents or Employer) committed prohibited practices in violation of Hawai'i Revised Statutes (HRS) § 89-13(a)(8) and that Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union) committed prohibited practices by breaching the duty of fair representation owed to Mr. Cooper.

The State Respondents filed a Motion to Dismiss, or in the Alternative, for Summary Judgment (MTD/MSJ) which HGEA joined, and Mr. Cooper opposed.

Mr. Cooper filed a Motion for Leave to Amend (Motion to Amend), which both the State Respondents and HGEA opposed.

The Board held oral arguments on the Motions on July 11, 2022. After reviewing the record and the arguments made, the Board orally denied Mr. Cooper's Motion to Amend; took several documents under judicial notice[1]; granted the State Respondents' MTD/MSJ because the grievance at issue was dismissed by the U.S. District Court, which prevents the Board from finding a violation of HRS § 89-13(a)(8); and found that Mr. Cooper's inability to prove a violation of HRS § 89-13(a)(8), under the standard set by the Hawai'i Supreme Court in Poe v. Haw. Lab. Rels. Bd., 105 Hawai'i 97, 94 P.3d 652 (2004) (Poe II), means that Mr. Cooper does not have standing to pursue a claim of the breach of the duty of fair representation and that the Board must dismiss the case against HGEA.

Because the Board dismissed all claims in the Complaint, the Board closed the case and informed the parties that the Board would issue a written order in accordance with HRS § 91-12, which it does here.

Any conclusion of law improperly designated as a finding of fact is deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law is deemed or construed as a finding of fact.

2. Findings of Fact; Judicial Notice; Allegations Accepted as True

The Board accepts the allegations of the complaint as true for the purposes of considering the MTD/MSJ and construes them in the light most favorable to Mr. Cooper. Haw. Gov't Emples. Ass'n, AFSCME, Local 152, AFL-CIO v. Kishimoto, Board Case Nos. 20-CE-02-947a-f, Decision No. 503, at *2 (April 9, 2021) (https://labor.hawaii.gov/hlrb/files/2021/05/Decision-No.-503.pdf) *citing* Tupola v. Univ. of Haw. Prof'l Assembly, Board Case Nos. CU-07-330; CE-07-847, Order No. 3054, at *18 (February 25, 2015) (https://labor.hawaii.gov/hlrb/files/2019/01/HLRB-Order-3054.pdf) (Tupola).

Further, the Board is entitled to take notice of judicially recognizable facts, which it does in this case. HRS § 91-10(4). This means that the Board may take judicial notice of a fact not subject to reasonable dispute if it is capable of "accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Uyeda v. Schermer, 144 Hawai'i 163, 172, 439 P.3d 115, 124 (2019). Because the "ready availability and accuracy" of court records are not considered reasonably questionable, the Board may use judicial notice to notice the contents of court records. Id.

In this case, the Board took judicial notice of documents in Cooper v. State of Haw. Dep't of Tax., Civil No. 1:18-cv-00284, (D. Hawai'i) (Cooper Dist. Court Case). *See* Endnote 1. By doing so, the Board takes judicial notice of the existence of the documents, rather than the

truth of the facts in those documents. State v. Kotis, 91 Hawai'i 319, 342, 984 P.2d 78, 101 (1999).

The State of Hawai'i[2] employed Mr. Cooper[3] of the State of Hawai'i until his discharge. In his position, Mr. Cooper was a member of bargaining unit 3[4] (BU 3). HGEA is BU 3's exclusive representative[5].

HGEA and the relevant employer group[6] for BU 3 are parties to a collective bargaining agreement (CBA) for the bargaining unit.

After DoTax discharged him on or about July 20, 2017, Mr. Cooper filed a grievance related to his discharge.

Both DoTax and DHRD were involved in processing Mr. Cooper's grievance.

On or about March 21, 2018, HGEA notified the State Respondents of its intent to arbitrate Mr. Cooper's grievance as soon as HGEA retained an attorney.

The State Respondents confirmed the receipt of the notice of intent to arbitrate and agreed to hold the matter in abeyance until HGEA retained their attorney.

Mr. Cooper filed his First Amended Complaint in the Cooper Dist. Court Case on November 2, 2018.

A hearing was held in the Cooper Dist. Court Case on June 25, 2019 where the Mr. Cooper and DoTax confirmed the terms of a settlement agreement (Settlement).

The Settlement included, among other things, the dismissal of all cases related to Mr. Cooper's employment with DoTax, other than a worker's compensation case.

DoTax filed a Motion to Enforce Settlement in the Cooper Dist. Court Case, and the Honorable Rom A. Trader, United States Magistrate Judge, (Judge Trader) issued findings and a recommendation to grant the Motion to Enforce Settlement.

The Honorable Jill A. Otake, United States District Judge, (Judge Otake) adopted Judge Trader's findings and recommendations, overruling Mr. Cooper's objections.

Judge Otake's Order, among other things, enforced the Settlement.

The Ninth Circuit, United States Court of Appeals, upheld Judge Otake's Order.

3. Discussion and Conclusions of Law

3.1. Motion to Amend

Mr. Cooper filed his Motion to Amend, stating, "Complainant seeks to add three additional claims; one claim for each Respondent—for their delay in not selecting an arbitrator within 10-days of agreeing to arbitrate pursuant to Article 11, G of the collective bargaining agreement. Complainant also seeks to add a claim that Respondents DOTAX and DHRD violated Article 8 of the collective bargaining agreement when they terminated Complainant's employment without just cause." Complainant further alleges that HGEA and the State Respondents committed violations of HRS § 89-13(b)(5) and HRS § 89-13(a)(8) respectively The Motion to Amend also retains the hybrid claim found in his Complaint.

On July 10, 2022, the Board received HGEA/AFSCME's Memorandum in Opposition to Complainant's Motion to Amend Prohibited Practice Complaint Filed June 8, 2022. HGEA argues, among other things, that Complainant's current complaint is based on his discharge/termination from employment with DoTax on July 20, 2017 and that Complainant reached the Settlement in Cooper Dist. Court Case and relinquished his claims.

The State Respondents filed their memorandum in opposition to Complainant's Motion for Leave to Amend on July 10, 2022 arguing, among other things, that there is nothing in Article 11 G of the CBA that requires the parties to select an Arbitrator within ten (10) days. Additionally, the specific term allowing the parties to request a list of five (5) Arbitrators is "may" which is permissive, not mandatory. State Respondents erroneously assert that the Hawai'i Rules of Civil Procedure (HRCP) governs proceedings before the Board under HRCP Rule 81(b)(12), a proposition explicitly rejected by the Hawai'i appellate courts. *See* Los Banos v. Haw. Lab. Rel. Bd., No. CAAP-17-0000476 (App. Nov. 22, 2019) (mem.) at 30 ("HRCP Rule 81(b)(12) does not make the HRCP applicable to proceedings before the Board."). Therefore, the standards that the State Respondents cite to are irrelevant.

Hawai'i Administrative Rules (HAR) § 12-42-43, the Board's administrative rule on amending complaints, allows complainants to amend their complaint in the discretion of the board at any time prior to the issuance of a final order in the case. However, while the Board provides wide latitude for amendments, the Board has denied motions to amend when, among other things, the proposed amendment would be futile. *See* Kusumoto v. Haw. Gov't. Emples. Ass'n, AFSCME, Local 152, AFL-CIO, Board Case Nos. 20-CU-06-379, 20-CE-06-940, Order No. 3834, at *2 (April 1, 2022) (http://labor.hawaii.gov/hlrb/files/2022/04/Order-No.-3834.pdf).

The new allegations alleged by Mr. Cooper rely on Article 11, Section G, which, according to Mr. Cooper, reads:

> "Representatives of the parties shall attempt to select an Arbitrator immediately thereafter" the union gives notice of its intent to arbitrate. "If the agreement on an Arbitrator is not reached within ten (10) working days after the notice for arbitration is submitted, either party may request [] the Hawai'i Labor Relations Board to submit a list of five (5) arbitrators.

Based on the plain language of the subsection, Respondents are correct in their interpretation that Article 11(G) does not require the parties to select an arbitrator within ten (10) days. The ten-day requirement that Complainant alleges merely gives either party the "discretion" to ask for a list of arbitrators from the Board. HGEA is also correct in raising that, to the extent that these allegations are not contained in Mr. Cooper's grievance, the new allegations are untimely as they occur years before June 8, 2022 and, therefore, are outside of the ninety-day requirement in HRS § 377-9. *See* Section 3.2.1, below (providing the legal basis for issues of timeliness in HRS Chapter 89 cases).

Accordingly, based on the plain language of the subsection, HGEA and the State Respondents could not have violated the CBA by not selecting an arbitrator within ten days because no such requirement exists in the CBA. Further, the new claims are untimely. Therefore, because the alleged prohibited practices cannot succeed, the proposed amendment is futile.

Based on the futility of the amendment, the Board denies Mr. Cooper's Motion to Amend.

3.2. Jurisdictional Arguments

The contents of the Complaint are the basis on which the Board must consider the MTD/MSJ's arguments regarding lack of subject matter jurisdiction, and the Board must accept the factual allegations in the Complaint as true and view those allegations in the light most favorable to Mr. Cooper. *See* Haw. State Teachers Ass'n v. Hayashi, Board Case No. CE-05-661, Order No. 3855, at *3 (June 7, 2022) (http://labor.hawaii.gov/hlrb/files/2022/06/Order-No.-3855.pdf) (Hayashi). The law does not require that the Board accept conclusory allegations about the legal effect of the events alleged in the complaint. Id. The Board may dismiss a claim if it appears beyond a doubt that Mr. Cooper can prove no set of facts that would support the claim and entitle him to relief. Haw. State Teachers Ass'n v. Abercrombie, 126 Hawai'i 13, 19 265 P.3d 482, 488 (App. 2011).

As the party bringing the case, Mr. Cooper must establish that jurisdiction exists. Hayashi, Order No. 3855, at *3. When considering a motion to dismiss for lack of subject matter jurisdiction, the Board may review evidence, such as affidavits and testimony, to resolve factual disputes about whether the Board has jurisdiction to hear the case. Casumpang v. ILWU, Local 142, 94 Hawai'i 330, 337, 13 P.3d 1235, 1242 (2000); Right to Know Comm. v. City Council, City and Cnty. of Honolulu, 117 Hawai'i 1, 7, 175 P.3d 111, 117 (App. 2007).

3.2.1. Timeliness

Based on the requirement in HRS § 377-9, the Board can only hear complaints filed within ninety days of the action that gave rise to the alleged prohibited practice. HRS § 377-9(l); Aio v. Hamada, 66 Haw. 401, 404 n.3, 664 P.2d 727, 729 n.3 (1983) (Aio). The Board's administrative rules also include this ninety-day limit. HAR § 12-42-42(a).

The Board construes the limitations period strictly and cannot waive a defect of even a single day because the period is set by law. Hayashi, Order No. 3855, at *3. The limitations period begins when Mr. Cooper knew or when he should have known that his rights were being violated. Campos v. Univ. of Haw. Prof'l Assembly, Board Case No. 19-CU-07-374, Decision No. 511, at *8 (June 28, 2022) (https://labor.hawaii.gov/hlrb/files/2022/06/Decision-No.-511.pdf) (Campos II).

The State Respondents argue that the last incident specified in the Complaint occurred on March 21, 2018, when HGEA notified the State Respondents of its intent to arbitrate and request to hold the matter in abeyance until HGEA found an attorney.

Mr. Cooper responds that, because HGEA did not notify him that it did not intend to arbitrate his grievance, the Complaint is timely, citing Gillespie v. State of Haw. Org. of Police Officers, Board Case No. CU-12-83, Order No. 931, at *6 (March 13, 1993) (https://labor.hawaii.gov/hlrb/files/2019/01/HLRB-Order-931.pdf) (Gillespie).

In Gillespie, among other things, a probationary employee filed his prohibited practice complaint roughly eleven months after the union refused to represent him in a grievance challenging his termination. Accordingly, the Gillespie Board found that the complaint against the union was untimely filed and dismissed the case.

The Board does not generally disagree with this proposition and has followed it. *See* Awana v. Honolulu Police Dep't, Board Case Nos. 22-CE-12-965, 22-CU-12-388, Order No. 3842, at *4 (April 22, 2022) (https://labor.hawaii.gov/hlrb/files/2022/04/Order-No.-3842.pdf). However, it is inapplicable to Mr. Cooper's situation. Here, Mr. Cooper falls into one of two positions, neither of which gives the Board jurisdiction over the Complaint.

If the Board follows Gillespie, and accepts the facts in the Complaint as true, Mr. Cooper has yet to receive a notice from HGEA that it does not intend to arbitrate his grievance. Assuming for the sake of argument that Gillespie applies, the Board must turn to whether Mr. Cooper has exhausted his administrative remedies, and it does so below in Section 3.2.2.

However, this case differs from Gillespie in that, until arbitration was declined, the Gillespie grievance was still "live." Here, Mr. Cooper's subject grievance regarding his

discharge is no longer "live" because the Federal District Court dismissed the grievance with prejudice.

Mr. Cooper does not dispute that the Settlement in the Cooper Dist. Court Case included the dismissal of any all related cases stemming from his employment with DoTax, other than Mr. Cooper's ongoing worker's compensation case, and he does not dispute that this dismissal included, among other things, cases before the Board and his grievance/arbitration case. These arguments form the basis for Mr. Cooper's current complaint.

Because the grievance/arbitration case is dismissed, the Board cannot find any violations by the Respondents arising from the grievance/arbitration because the grievance/arbitration is no longer live.

Even if there was no settlement agreement, the HRS § 89-13(a)(8) claim pursued by Mr. Cooper in this case is tied directly to that dismissed grievance/arbitration. Therefore, to the extent that Mr. Cooper could have brought any claim regarding the grievance, the latest possible beginning of the limitations period would be when the grievance was dismissed by Judge Otake's Order on November 18, 2019.[7] This date puts the end of the ninety-day period on or about February 18, 2020.[8]

Therefore, the Board must find that this Complaint is untimely and dismiss the case.

3.2.2. Exhaustion

Assuming for the sake of argument that Gillespie applies, the Board turns to the question of whether Mr. Cooper exhausted his administrative remedies.

Because the Board has already denied the Motion to Amend, the only allegations before the Board relate to the State Respondents' alleged breach of the CBA when they discharged Mr. Cooper and HGEA's corresponding alleged breach of the duty of fair representation.

The Board has consistently held that it does not have jurisdiction over complaints alleging violations of HRS § 89-13(a)(8) until after the complainant exhausts their contractual remedies, unless attempting to exhaust those remedies would be futile. *See* Kapesi v. Dep't. of Pub. Safety, Board Case Nos. 17-CE-10-908, 17-CU-10-359, Decision No. 510, at *11 (March 2, 2022) (https://labor.hawaii.gov/hlrb/files/2022/03/Decision-No.-510.pdf) (Kapesi). The Board rests this position on the Hawai'i Supreme Court's (HSC) decisions in Poe v. Haw. Lab. Rels. Bd., 97 Hawai'i 528, 531, 40 P.3d 930, 933 (2002) (Poe) and Poe II, 105 Hawai'i at 101, 94 P.3d at 656. Kapesi, Decision No. 510, at *11.

The State Respondents argue that Mr. Cooper's HRS § 89-13(a)(8) claim lists alleged violations sections of the BU 3 CBA that were not referenced in the 2017 grievance. To the extent that Mr. Cooper is alleging violations of the BU 3 CBA that were not referenced in the

2017 grievance, the Board agrees that Mr. Cooper failed to exhaust his administrative remedies as to any prohibited practice complaints on those articles.

However, because the Board must view the facts in the light most favorable to Mr. Cooper, the Board will accept Mr. Cooper's HRS § 89-13(a)(8) claim as challenging the Employer's conduct as laid out in his grievance.

Under the Gillespie finding that the "trigger date" begins when HGEA notifies Mr. Cooper of its intention not to arbitrate the subject grievance, Mr. Cooper has not yet exhausted his administrative remedies because he states that he has received no such notice.

The Board then turns to whether attempting to exhaust those remedies would be futile.

The exhaustion doctrine "is not absolute." Kellberg v. Yuen, 131 Hawai'i 513, 319 P.3d 432, 450 (2014) (Kellberg). If exhausting administrative remedies would be futile, it is not required. Poe, 97 Hawai'i at 536, 40 P.3d at 938.

The HSC defines futility as "the inability of an administrative process to provide the appropriate relief." In re Doe Children, 96 Hawai'i 272, 287 n.20, 30 P.3d 878, 893 n.20 (2001) (Doe Children) (*citing* Hokama, 92 Hawai'i at 273, 990 P.2d at 1155). The party trying to bypass the exhaustion requirement has the burden to prove that the process cannot provide appropriate relief. Id.

Mr. Cooper does not argue that it would have been futile to exhaust his administrative remedies. However, upon review, the Board finds that when Mr. Cooper filed his Complaint, the administrative process could no longer provide him with the requested relief because the grievance in question had been dismissed by Judge Otake's order.

Therefore, as the administrative process could not provide Mr. Cooper with the requested relief, he is not required to exhaust his administrative remedies, and the Board dismisses the MTD/MSJ on this count.

3.3. Hybrid Case

When considering Motions for Summary Judgment, the Board follows the standards set by the HSC in Thomas v. Kidani, 126 Hawai'i 125, 267 P.3d 1230 (2011) and French v. Hawaii Pizza Hut, Inc., 105 Hawai'i 462, 99 P.3d 1046 (2004). *See*, *e.g.*, Guzman v. Honolulu Police Dep't, Board Case Nos. 19-CE-03-925, 19-CU-03-371, Order No. 3804, at *3 (October 25, 2021) (https://labor.hawaii.gov/hlrb/files/2022/03/Order-No.-3804.pdf) (Guzman).

Because Mr. Cooper is the party opposing the MTD/MSJ, the Board must review the evidence in the light most favorable to him. Id. The Board can grant summary judgment only if the record shows there is no genuine issue of material fact and that the State Respondents are

entitled to judgment as a matter of law, and the Board must resolve any doubt about whether to grant the motion in favor of Mr. Cooper. Id.

Mr. Cooper's claims comprise a "hybrid case," as defined by the HSC in Poe II, 105 Hawaii at 102, 94 P.3d at 657. The claim that the State Respondents wilfully violated the terms of the CBA (an HRS § 89-13(a)(8) claim) and the claim that HGEA breached its duty of fair representation are "inextricably independent." Id. This means that Mr. Cooper must prove both parts to succeed in a hybrid case. Id., *see also* Guzman, Decision No. 512, at *7 (July 8, 2022) (https://labor.hawaii.gov/hlrb/files/2022/07/Decision-No.-512.pdf).

3.3.1. HRS § 89-13(a)(8)

To establish his case against the State Respondents, Mr. Cooper must prove that they wilfully violated the CBA in discharging him. Mr. Cooper does not allege that any genuine issue of material fact exists in the HRS § 89-13(a)(8) claim. Therefore, the Board proceeds with considering this issue on summary judgment.

Mr. Cooper's discharge in 2017 led to him filing a grievance to challenge that discharge. The contents of that grievance are the only issues for which Mr. Cooper can be said to have exhausted his administrative remedies due to futility.

That same grievance, however, was dismissed by Judge Otake's order. Based on that dismissal, the Board cannot find a violation of HRS § 89-13(a)(8) because Mr. Cooper voluntarily gave up that claim in agreeing to the settlement agreement.

Accordingly, the Board must grant summary judgment to the State Respondents as to the HRS § 89-13(a)(8) claim and find that Mr. Cooper cannot prove that the State Respondents violated the CBA.

3.3.2. The Duty of Fair Representation

As discussed above, the hybrid claim requires that Mr. Cooper succeed on both issues; if he fails to prove one, the other cannot succeed. Because the Board finds that Mr. Cooper failed to prove his HRS § 89-13(a)(8) claim, the Board cannot find that HGEA committed a prohibited practice by breaching the duty of fair representation owed to Mr. Cooper.

Therefore, the Board dismisses the claim of the breach of the duty of fair representation for lack of standing and makes no other findings as to this claim.

4. Order

Based on the above, the Board denies the Motion to Amend; grants, in part, and denies, in part, the MTD/MSJ; and dismisses the claim of the breach of the duty of fair representation

based on Mr. Cooper's failure to prove the required HRS § 89-13(a)(8) claim. This case is closed.

DATED: Honolulu, Hawai'i, July 18, 2022.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J.N. MUSTO, Member

Copies sent to:

Mario Cooper, Self-Represented Litigant
Amanda Furman, Deputy Attorney General
James Halvorson, Deputy Attorney General
Peter Liholiho Trask, Esq.

[1] The Board informed the parties that it would take the following documents from U.S. District Court case number 1:18-cv-00284 under judicial notice:

1) Document No. 36, filed on November 2, 2018, and entitled, "Plaintiff Mario Cooper's First Amended Complaint";
2) Document No. 107, filed on June 25, 2019 and entitled, "Minutes";
3) Document No. 109, filed on July 10, 2019, and entitled, "Defendants' Motion to Enforce Settlement Agreement" and its attached "Memorandum in Support";
4) Document No. 111, filed on July 11, 2019 and entitled, "Transcript of Settlement on the Record Before the Honorable Rom Trader, United States Magistrate Judge";

5) Document No. 126, filed on September 25, 2019 and entitled, "Findings and Recommendations to Grant Defendants' Motion to Enforce Settlement";

6) Document Number 130, filed on November 18, 2019 and entitled, "Order Overruling Plaintiff's Objections and Adopting the Magistrate Judge's Findings and Recommendations to Enforce Settlement"; and

7) Document Number 142, filed on November 2, 2020, the Memorandum Opinion from the 9th Circuit Court of Appeals.

[2] In this capacity, DoTax and DHRD are both public employers within the definition of HRS § 89-2, which defines employer or public employer as:

> "Employer" or "public employer" means the governor in the case of the State…and any individual who represents one of these employers or acts in their interest in dealing with public employees…

[3] In this capacity, Mr. Cooper was a public employee within the definition of HRS § 89-2, which defines employee or public employee as:

> "Employee" or "public employee" means any person employed by a public employer, except elected and appointed officials and other employees who are excluded from coverage in section [89-6(f)].

[4] HRS § 89-6(a)(3) defines BU 3 as, "Nonsupervisory employees in white collar positions."

[5] HRS § 89-2 defines exclusive representative as:

> "Exclusive representative" means the employee organization certified by the board under section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

[6] HRS § 89-6(d)(1) defines the employer group for BU 3 as:

> (1) For bargaining units…(3)…the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the bargaining unit[.]

[7] By expressing that this was the latest possible date to begin the ninety day period, the Board is not ruling out the possibility that the "trigger date" may have occurred prior to Judge Otake's order being filed. However, because the Board must view the facts in the light most favorable to Mr. Cooper, the Board will focus on this latest possible date.

[8] The ninetieth day, February 16, 2020, fell on a Sunday. Under HAR § 12-42-8(c), the limitations period, "runs until the end of the next day which is not a Saturday, a Sunday, or a holiday." February 17, 2020 was President's Day, which is a holiday. *See* HRS § 8-1. Therefore, the last day of the limitations period was February 18, 2020.