

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

PATRICK ISHIDA,

Complainant(s),

and

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO; ~~and AMERICAN
FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES,~~

Respondent(s).

CASE NO(S). 22-CU-01-387

ORDER NO. 3885

PRETRIAL CONFERENCE MINUTE
ORDER

PRETRIAL CONFERENCE MINUTE ORDER

1. Introduction and Oral Arguments

The Hawai'i Labor Relations Board (Board) held a pretrial conference in this case on August 22, 2022.

At the pretrial conference, among other things, the Board heard oral argument on Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO's (UPW or Union) Motion to Revoke certain subpoenas. After hearing oral arguments from UPW and from Complainant PATRICK ISHIDA (Complainant or Mr. Ishida), the Board orally granted the Motion to Revoke and stated that a written order would follow regarding the Motion to Revoke.

2. Exhibits

The Board ordered UPW to file a bates-stamped copy of the relevant collective bargaining agreement (CBA) for bargaining unit 1 (BU 1), for the years July 1, 2017 through June 30, 2021, as Board Exhibit 1. **UPW must file this copy by August 25, 2022.**

Board Exhibit 1 is considered entered into the record when filed.

The Board further informed the parties that it does not permit non-specifically factually relevant arbitration decisions or court orders to be used as proposed exhibits and does not permit Board Orders or Decisions to be used as proposed exhibits. Accordingly, the Board ordered that it would not permit the following exhibits to be used at the hearing on the merits (HOM):

Complainant Proposed Exh. No.	Description	Reasoning
AA	Cover of the Unit 1 Agreement	Contained in Board Exhibit 1; unduly repetitious, <i>see</i> Hawai‘i Revised Statutes (HRS) § 91-10(1).
AB	Section 1.05	Contained in Board Exhibit 1; unduly repetitious, <i>see</i> HRS § 91-10(1)
AC	Section 11.01a., 11.01b	Contained in Board Exhibit 1; unduly repetitious, <i>see</i> HRS § 91-10(1)
AD	Section 15.11 – 15.11c, 15.12, 15.15	Contained in Board Exhibit 1; unduly repetitious, <i>see</i> HRS § 91-10(1)
AE	Section 37.04 b. – 37.09 c.	Contained in Board Exhibit 1; unduly repetitious, <i>see</i> HRS § 91-10(1)
AF	Section 38.11	Contained in Board Exhibit 1; unduly repetitious, <i>see</i> HRS § 91-10(1)
AG	Application of Section 11 – Seven Tests of Just Cause	Irrelevant legal conclusions. <i>See e.g., Cooper v. Dep’t of Tax.</i> , Board Case Nos. 22-CE-03-967, 22-CE-03-391, Order No. 3873 at *5 (July 18, 2022) (https://labor.hawaii.gov/hlrb/files/2022/07/Order-No.-3873.pdf) (<i>Cooper II</i>); to the extent that those conclusions may be relevant, they are relevant only as to what was included in other communications to parties. (And then becomes unduly repetitious). Otherwise irrelevant, immaterial. <i>See</i> HRS § 91-10(1).
AH	HLRB Case No. DR-01-48, Order No. 715	Prior Board case not involving Complainant; declaratory ruling (non-precedential) order. Irrelevant, immaterial. <i>See</i> HRS § 91-10(1).
AI	Summary of Arbitrator Castrey’s Award	Irrelevant legal conclusions. <i>Cooper II</i> , Order No. 3873 at *5; to the extent that those conclusions may be relevant, they are relevant only as to what was included in other communications to parties. (And then becomes unduly repetitious). Otherwise irrelevant, immaterial. <i>See</i> HRS § 91-10(1).

Complainant Proposed Exh. No.	Description	Reasoning
AJ	Summary of Court Orders Based on Arbitration Decisions.	Irrelevant legal conclusions. <u>Cooper II</u> , Order No. 3873 at *5; to the extent that those conclusions may be relevant, they are relevant only as to what was included in other communications to parties. (And then becomes unduly repetitious). Otherwise irrelevant, immaterial. <i>See</i> HRS § 91-10(1).
AK	Summary of Court Cases and Arbitrations Regarding Section 1.05 of the BU 1 CBA	Irrelevant legal conclusions. <u>Cooper II</u> , Order No. 3873 at *5; to the extent that those conclusions may be relevant, they are relevant only as to what was included in other communications to parties. (And then becomes unduly repetitious). Otherwise irrelevant, immaterial. <i>See</i> HRS § 91-10(1).
AL	Summary of Court Cases and Arbitrations Regarding Sick Leave and Related Issues	Irrelevant legal conclusions. <u>Cooper II</u> , Order No. 3873 at *5; to the extent that those conclusions may be relevant, they are relevant only as to what was included in other communications to parties. (And then becomes unduly repetitious). Otherwise irrelevant, immaterial. <i>See</i> HRS § 91-10(1).
AM	Arbitration Awards and Court Orders	Prior arbitration awards and court orders not related to Mr. Ishida. Because the Board is not bound by arbitration decisions, irrelevant, immaterial. <i>See</i> HRS § 91-10(1).
AN	Affidavit of Gary W. Rodrigues	Affidavit regarding other improper exhibits, irrelevant, immaterial. <i>See</i> HRS § 91-10(1).

The listed reasoning above is provided as a summary of the Board’s reasoning behind not allowing the proposed exhibits to be used at the HOM and is not necessarily the entirety of the Board’s reasoning.

The Board further reviewed the parties’ exhibits and ordered that the following would be entered into the record as Joint Exhibits:

Joint Exh. No	Description	Complainant Exh. No.	UPW Exh. No.
1	Step 1 Grievance Letter	A	7, bates-stamp 010-011
2	Step 2 Grievance Letter	I	7, bates-stamp 012
3	Step 1 Grievance Decision	L	7, bates-stamp 013
4	Step 2 Grievance Decision	O	7, bates-stamp 014-016

Joint Exh. No	Description	Complainant Exh. No.	UPW Exh. No.
5	Withdrawal of Grievance	X	7, bates-stamp 017
6	March 9, 2021, Use of Sick Leave Balance Letter	AO	2
7	May 3, 2021, Separation of Employment Letter	AP	3
8	May 7, 2021, Letter and Termination Notice	AQ	4
9	May 14, 2021, Final Termination Notice	AS	5
10	Text Messages Between Ishida and Misty Silva	C, D, and E	6

UPW must file a joint exhibit list, based on the above, with the Board by August 25, 2022. UPW must also submit all joint exhibits, properly bates-stamped in accordance with the Board's pretrial order, by August 25, 2022.

Joint exhibits are considered entered into the record when filed.

The Board further noted that UPW Exhibit No. 1 is contained in Mr. Ishida's Exhibit AT; therefore, the Board informed the parties that it would not allow UPW's Exhibit 1 to be used because Mr. Ishida's Exhibit AT is more complete.

Prior to the pretrial conference, UPW submitted a list of objections to Mr. Ishida's exhibits. The Board confirmed that UPW does not object to those exhibits not listed in the objections.

UPW's proposed exhibits are all included in the Joint Exhibits and Mr. Ishida's Exhibit AT.

Mr. Ishida must submit an amended exhibit list and proposed exhibits. Therefore, the Board provides the following list of Mr. Ishida's exhibits:

New Exh. No.	Prior Exh. No.	Brief Description	No Objection
A	B	Facts and evidence Complainant provided to the union...	No
B	F	On July 9, 2021, the BA was notified by email...	Yes

New Exh. No.	Prior Exh. No.	Brief Description	No Objection
C	G	On July 13, 2021, the BA requested by text that Complainant...	Yes
D	H	On July 15, 2021, Complainant asked the BA by text...	Yes
E	J	On July 30, 2021, Complainant requested the status...	Yes
F	K	On August 4, 2021, he requested the status...	Yes
G	M	On August 12, 2021, Complainant submitted...	No
H	N	Step 2 Grievance Statement...	No
I	P	On August 24, 2021, Complainant notified...	Yes
J	Q	On August 25, 2021, Complainant requested...	Yes
K	R	On August 30, 2021, Complainant submitted...	No
L	S	Complainant's arbitration request...	No
M	T	On November 1, 2021, Complainant submitted...	No
N	U	On November 20, 2021, at 9:46 AM HST Complainant submitted...	No
O	V	On November 20, 2021, at 9:51 AM HST Complainant submitted...	No
P	W	On November 22, 2021, at 2:38 PM, BA 2 responded...	Yes
Q	Y	On November 29, 2021, at 11:16 AM HST, Complainant submitted...	No
R	Z	Letter to Liz Ho from Complainant...	No
S	AR	May 7, 2021, letter from the County...	Yes
T	AT	Fourteen (14) text messages to Complainant...	Yes
U	AU	August 27 & 31, September 8[] & 14[]2022, text messages...	No

New Exh. No.	Prior Exh. No.	Brief Description	No Objection
V	AV	July 23, 2020 – 4:46 PM & July 23, 2020 – 5:24 PM, text messages...	No

Mr. Ishida must file an amended exhibit list, based on the above, with the Board by August 25, 2022. Mr. Ishida must also submit all of his exhibits, properly bates-stamped in accordance with the Board’s pretrial order, by August 25, 2022.

Mr. Ishida’s exhibits that UPW has not objected to (B, C, D, E, F, I, J, P, S, and T) are considered entered into the record when filed.

The remaining proposed exhibits listed above may be used at the HOM, and UPW may make its objections to those exhibits at that time.

3. Witnesses

UPW did not object to the appearance of Elizabeth Ho (Ms. Ho) or Loyna Kamakeeaina (Ms. Kamakeeaina).

UPW agreed to provide copies of the exhibits for Ms. Kamakeeaina and to provide an email address that Mr. Ishida can use to send Ms. Ho copies of the exhibits.

The Board noted that it has not received the return of service for either Ms. Ho or Ms. Kamakeeaina. Complainant must file these returns of service with the Board before the start of the HOM.

As a reminder, the Board does not serve subpoenas. Therefore, the party requesting the subpoena must properly serve the subpoenas. Subpoenas cannot be served by the named party and must be personally served on recipients.

4. Further Proceedings

The Board is scheduled to begin the HOM on August 29, 2022, and continuing on August 30, 2022, August 31, 2022, and September 1, 2022, all beginning at 9:00 a.m.

DATED: Honolulu, Hawai‘i, _____ August 22, 2022 _____.

HAWAI‘I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

EXCUSED

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Gary Rodrigues, Representative for Complainant
Jonathan Spiker, Esq.

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