

STATE OF HAWAII

HAWAII 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. 3887

ORDER SCHEDULING SUBMISSION OF
WRITTEN MOTION AND RESPONSE

ORDER SCHEDULING SUBMISSION OF WRITTEN MOTION AND RESPONSE

1. Introduction

The Hawai'i Labor Relations Board (Board) held a hearing on the merits (HOM) in this case on August 29, 2022. Complainant PATRICK ISHIDA (Complainant or Mr. Ishida) called one witness, Elizabeth Ho, and rested his case.

After Mr. Ishida rested his case, Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) made an oral motion to dismiss or in the alternative for directed verdict (Oral Motion). Mr. Ishida gave an oral response to the Oral Motion.

The Board confirmed with the parties that the exhibits in evidence are:

- Board Exhibit 1
- Joint Exhibits 1 through 10
- Complainant Exhibits B, C, D, E, F, I, J, P, S, and T.

All other exhibits have not been entered into evidence, are not in the record, and will not be considered by the Board in rendering its decision on UPW's motion.

2. Motion to Dismiss or in the Alternative for Directed Verdict

The Board's rules provide for motions to dismiss under Hawai'i Administrative Rules (HAR) § 12-42-8(g)(3)(B).

Although the Board's administrative rules do not specifically provide for motions for directed verdict, the Board has considered these types of motions under HAR § 12-42-8(g)(3), the Board's rules for motions.

Motions for directed verdicts are made after the non-moving party—in this case, Mr. Ishida—has been fully heard on the issue. *See Kamaka v. Goodsill Anderson Quinn & Stifel*, 117 Hawai'i 92, 102 n. 14, 176 P.3d 91, 101 n.14 (2008). Effectively, UPW is arguing that Mr. Ishida has completed presenting his evidence, rested his case, and has failed to meet his required burden of proof.

Under Hawai'i Revised Statutes (HRS) § 91-10(5) and HAR § 12-42-8(g)(16), the complainant—in this case, Mr. Ishida—has the burden or obligation to prove that his allegations are more likely than not true (also known as by a preponderance of the evidence). He is required to produce enough evidence and to support that evidence with arguments in applying the relevant legal principles. *Mamuad v. Nakanelua*, Board Case No. CU-10-331, Order No. 3337F, *25 (May 7, 2018) (*Mamuad*) (<https://labor.hawaii.gov/hlrp/files/2019/01/HLRB-Order-3337F.pdf>).

Therefore, in moving for directed verdict, Respondents argue that Mr. Ishida has failed to produce enough evidence and/or to support that evidence with arguments applying the relevant legal principles.

The Board orders that UPW file its Oral Motion in a written form on or by **September 9, 2022 at 4:30 p.m.**

3. Responses to Motion

Mr. Ishida must file any written response within five business days of service of UPW's written motion. *See* HAR § 12-42-8(g)(3)(C)(iii).¹ Response filings must be received **by 4:30 p.m. on the deadline day.**

4. Filing Requirements

Memoranda in support of or in opposition to the motion must not exceed 25 pages in length, exclusive of table of contents and table of authorities. Reply memoranda are not accepted and will not be considered by the Board.

Memoranda exceeding 10 pages must have a table of contents and a table of authorities.

In their memoranda, parties may reference any of the above-listed exhibits in evidence, may cite to relevant court cases and Board decisions and orders. However, parties may not include any new evidence and may not attach copies of the court cases or Board decisions and orders.

Parties may not include any exhibits or attachments to their motions or memoranda without prior written authorization by the Board.

5. Further Proceedings

The Board cancels all future hearing dates set in this case, including the previously scheduled HOM dates of August 30 and 31, 2022 and September 1, 2022. The Board will set new hearing dates after ruling on UPW’s motion if necessary.

DATED: Honolulu, Hawai‘i, August 29, 2022.

HAWAI‘I LABOR RELATIONS BOARD
(dhir.laborboard@hawaii.gov)

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Gary Rodrigues, Representative
Jonathan Spiker, Esq.

¹ HAR § 12-42-8(g)(3)(C)(iii) states:

Answering affidavits, if any, shall be served on all parties and...shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise.