

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

RALPH R. FUKUMOTO,

Complainant(s),

and

DEPARTMENT OF PUBLIC SAFETY,
State of Hawai'i; and HAWAII
GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Respondent(s).

CASE NO(S). 22-CE-14-966
22-CU-14-389

ORDER NO. 3910

PRETRIAL CONFERENCE MINUTE
ORDER; AMENDED NOTICE OF
HEARING ON THE MERITS

PRETRIAL CONFERENCE MINUTE ORDER

1. Introduction

The Hawai'i Labor Relations Board (Board) held a pretrial conference in this case on September 23, 2022. This pretrial conference was continued from the pretrial conference on August 15, 2022 where the Board, among other things, heard oral argument on Respondents' dispositive motions. The Board granted, in part, and denied, in part, those dispositive motions in Order No. 3890.

Based on the Board's rulings, the only issues remaining in this case are:

- Whether Respondent DEPARTMENT OF PUBLIC SAFETY, State of Hawai'i (PSD or Employer) committed a prohibited practice by wilfully violating the bargaining unit 14 (BU 14) collective bargaining agreement (CBA), as laid out in Complainant RALPH R. FUKUMOTO's (Complainant or Mr. Fukumoto) two grievances; and
- Whether Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union and collectively with PSD,

Respondents) committed a prohibited practice by breaching the duty of fair representation owed to Mr. Fukumoto in the processing and handling of Mr. Fukumoto’s grievance.

2. Exhibits

Board Exhibit 1, the BU 14 CBA for July 1, 2019 through June 30, 2021, was entered into the record on May 2, 2022.

The Board first reviewed Mr. Fukumoto’s proposed exhibits.

After discussion, because Mr. Fukumoto’s proposed Exhibit C is a document that was not provided by either Respondent, the Board ruled that proposed Exhibit C will not be allowed to be used at the hearing on the merits (HOM).

Further, the Board found that Mr. Fukumoto’s proposed Exhibit N and HGEA’s proposed Exhibit U-4 are substantially similar. PSD agreed to allow the document into evidence; therefore, the Board marked the document as Joint Exhibit 1.

The Board also found that Mr. Fukumoto’s proposed exhibit CC is a duplicate of Board Exhibit 1; therefore, it will not be allowed to be used at the HOM.

Mr. Fukumoto also listed several proposed exhibits based on documents he requested through subpoenas duces tecum. Upon discussion over which documents had already been provided by the Employer, Mr. Fukumoto agreed to submit the documents that he had to the parties for review prior to the HOM.

Based on the review of Mr. Fukumoto’s proposed exhibits, and to ensure that the documents can be properly bates stamped, the Board finds that the following are the Complainant’s exhibits that may be used at the hearing:

New Exh. No.	Prior Exh. No.	Brief Description
A	A	E-mail Communication: Ralph FUKUMOTO to Charlene ITO (HGEA). Subject Request to Meet for Discussion Dated: 03-18-2022
B	B	Just Cause Checklist
C	D	E-mail Communication: Stacy MONIZ (HGEA) to Ralph FUKUMOTO. Subject RE: RE Arbitration Questions Dated: 01-20-2022
D	E	E-mail Communication: Stacy MONIZ (HGEA) to Ralph FUKUMOTO. Subject RE: Cases Dated: 02-02-2022

New Exh. No.	Prior Exh. No.	Brief Description
E	F	E-mail Communication: Stacy MONIZ (HGEA) to Ralph FUKUMOTO. Subject Automatic Reply: Cases Dated: 02-03-2022
F	G	E-mail Communication: Stacy Moniz (HGEA) to Ralph FUKUMOTO. Subject RE: Cases Dated: 02-03-2022
G	H	E-mail Communication: Stacy MONIZ (HGEA) to Ralph FUKUMOTO. Subject Settlement Offer Dated: 02-04-2022
H	I	E-mail Communication: Stacy MONIZ (HGEA) to Ralph FUKUMOTO. Subject RE: Arbitration Dated: 03-10-2022
I	J	E-mail Communication: Stacy MONIZ (HGEA) to Ralph FUKUMOTO. Subject RE: Latest Offer Dated: 02-16-2022
J	K	E-mail Communication: Stacy MONIZ (HGEA) to Ralph FUKUMOTO. Subject Latest Offer Dated: 02-16-2022
K	L	E-mail Communication: Ralph FUKUMOTO to Stacy MONIZ (HGEA). Subject RE: HGEA Ltr to R FUKUMOTO re GRV-19-0349 & GRV-20-0118 4-6-22 Dated: 04-06-2022
L	M	E-mail Communication: Stacy MONIZ (HGEA) to Ralph FUKUMOTO. Subject RE: HGEA Ltr to R FUKUMOTO re GRV-19-0349 & GRV-20-0118 4-6-22 Dated: 04-07-2022
M	O	E-mail Communication: Margie ABE to Amanda FURMAN; Stacy MONIZ. Subject RE: BU14 FUKUMOTO - Letter Regarding Replacement Arbitrator Dated: 04-09-2021
N	P	E-mail Communication: Amanda FURMAN to Stacy MONIZ (HGEA). Subject 4/16/21 Teleconference Recap: FUKUMOTO Discipline Grievance and HSH Issues Dated 04-16-2021
O	Q	E-mail Communication: Amanda FURMAN to Stacy MONIZ (HGEA). Subject BU14 ARB: HGEA (Ralph FUKUMOTO)/PSD-Sheriff Division; GRV-19-0349 (Maintenance of Rights/Benefits) and GRV-20-0018 Dated 07-01-2021

New Exh. No.	Prior Exh. No.	Brief Description
P	R	E-mail Communication: Amanda FURMAN to Stacy MONIZ (HGEA). Subject FUKUMOTO Suspension Arb. Dated 07-01-2021
Q	S	E-mail Communication: Stacy MONIZ (HGEA) to Amanda FURMAN. Subject RE: Selected Arbitrator Regarding Ralph FUKUMOTO (GRV-20-0018) Dated: 07-02-2021
R	T	HGEA MEMORANDUM To: Randy PERREIRA (HGEA Executive Director) From: Stacy MONIZ Subject: SETTLEMENT AGREEMENT; RALPH FUKUMOTO, PSD Dated: 04-13-2022
S	U	HGEA MEMORANDUM To: Debra KAGAWA-YOGI From: Stacy MONIZ Subject: Ralph FUKUMOTO, BU14 Dated: 03-10-2022
T	AA	Employee Action Report 06162022
U	BB	PSD SDA 19-013
V	DD	DHRD Policy 601 001
W	EE	Image of Computer Screen Saver
X	FF	Image of Computer Screen Saver
Y	GG	Image of Computer Screen Saver
Z	HH	Image of Computer Screen Saver
AA	II	Image of Locker Contents
BB	JJ	A-side of picture left in Locker
CC	KK	B-side of picture left in Locker
DD	V	PSD Disciplinary Hearings Process From Employee Misconduct to The Standards of Conduct to Finalizing the Investigation (SUBPOENA REQUEST)
EE	W	FUKUMOTO Disciplinary File (SUBPOENA REQUEST)
FF	X	PSD Use of Force Policy (SUBPOENA REQUEST)
GG	Y	PSD Crime Scene Procedures Policy (SUBPOENA REQUEST)
HH	Z	PSD disciplinary actions taken (SUBPOENA REQUEST)

The Board will provide the parties with a bates-stamped copy of Mr. Fukumoto's exhibits. Mr. Fukumoto's proposed exhibits, as listed above and provided to the parties, may be used at the HOM, and the Respondents may raise any objections to the exhibits at the HOM.

Upon review of the Respondents' exhibits, the Board finds that HGEA's proposed Exhibit U-5 and the Employer's proposed Exhibit E-4 are substantially the same document. Because Mr. Fukumoto did not object to the document, the Board will enter this document into the record as Joint Exhibit 2.

Therefore, the following are the Joint Exhibits in this case:

Joint Exh. No	Description
J-1	Letter dated April 6, 2022 from HGEA to Mr. Fukumoto; certified mailing receipt.
J-2	Settlement Agreement dated April 15, 2022

The Board will provide the parties with a bates-stamped copy of the Joint Exhibits.

Mr. Fukumoto and the Employer did not object to moving the remainder of HGEA's proposed exhibits into the record. Therefore, the Board moves the following exhibits into the record:

Exh. No.	Brief Description
U-1	11/6/19 Employer's Step 1 Response to Grievance H-EL-19-01
U-2	11/14/19 First Circuit, State of Hawai'i Complaint in 1CCV-19-0002153
U-3	8/31/20 Employer's suspension letter to Complainant

The Board will provide the parties with a bates-stamped copy of HGEA's exhibits.

Mr. Fukumoto and HGEA did not object to moving the remainder of PSD's proposed exhibits into the record. Therefore, the Board moves the following exhibits into the record:

New Exh. No.	Prior Exh. No.	Brief Description
E-1	E-1	Step 1 grievance in GRV-19-0349
E-2	E-2	Step 1 grievance in RH-20-04
E-3	E-3	Letter from Nolan Espinda to Complainant Dated August 31, 2020 re Eight day Suspension
E-4	E-5	PAYROLL - Salary Overpayment Calculator
E-5	E-6	Handwritten Calculations of the Amount of Back Pay Fukumoto Received Under Settlement Agreement
E-6	E-7	Memorandum From Renee Laulusa to PSD Personnel Clerk Maribel Marrack Dated April 21, 2022

New Exh. No.	Prior Exh. No.	Brief Description
E-7	E-8	Fukumoto's Canceled Employee Personnel Action Report 8-day Suspension

The Board will provide the parties with a bates-stamped copy of PSD's exhibits.

3. Witnesses

The Board reviewed Mr. Fukumoto's proposed witness list.

The Respondents did not object to the appearance of any of Mr. Fukumoto's listed witnesses and agreed to work with Mr. Fukumoto on the witnesses' availability. Mr. Fukumoto stated that his first three witnesses would be Charles Among, Brian Marciel, and Stacy Moniz.

Mr. Fukumoto noted that he did not receive certain documents from PSD's Custodian of Records that he requested under a subpoena duces tecum. Mr. Fukumoto noted that he had actual knowledge of the existence of some of the documents because he had a copy of those documents. After discussion, Mr. Fukumoto agreed to file the documents that he had in his possession, and PSD's counsel agreed to work with Mr. Fukumoto to determine if there were any other documents that Mr. Fukumoto should have received under the subpoena duces tecum.

4. Further Proceedings

Due to the concerns regarding the documents, the Board continued the HOM to November 9-10, 2022.

AMENDED NOTICE OF HEARING ON THE MERITS

The Board issued Order No. 3851A5, Fifth Amended Pretrial Order and Notices on October 24, 2022, and amends the start time of the Hearing on the Merits scheduled for November 10, 2022 to 10:00 a.m., as follows:

NOTICE IS GIVEN, per HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49, the Board will conduct a hearing on the merits (HOM) of the case in the above-entitled matter at the place, time, and date listed below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: November 9, 2022 at 10:00 a.m.
November 10, 2022 at 10:00 a.m.

LOCATION: Remote Zoom Hearing

Subject to the Board’s discretion due to the Extraordinary Circumstances listed in Section 2 of Order No. 3815, as previously amended, all parties have the right to appear at the Hearing on the Merits and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear at the hearing on the merits.** For the purpose of compliance with HAR § 12-42-8(g)(5), witnesses are considered appearing “in person” if they appear either at the Board’s hearing room at 830 Punchbowl Street, Room 434, Honolulu, Hawai‘i 96813 or using the Zoom platform in compliance with Section 8 above.

Please note that this requirement may be altered by Board Order due to the Extraordinary Circumstances listed in Section 2 of Order No. 3815, as previously amended.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

All subpoenas previously issued are continued to the amended date for the hearing on the merits.

DATED: Honolulu, Hawai‘i, _____ November 4, 2022 _____.

HAWAI‘I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

Ralph R. Fukumoto, Self-Represented Litigant
Keani Alapa, Esq.
James Halvorson, Deputy Attorney General

FUKUMOTO v. PSD and HGEA
CASE NOS. 22-CE-14-966, 22-CU-14-389
PRETRIAL CONFERENCE MINUTE ORDER; AMENDED NOTICE OF HEARING ON THE
MERITS
ORDER NO. 3910