



## HAWAI'I LABOR RELATIONS BOARD

FISCAL YEAR REPORT TO  
THE HONORABLE DAVID Y. IGE  
GOVERNOR OF THE STATE OF HAWAI'I

July 1, 2020-June 30, 2021

PRESENTED BY THE HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chairperson  
SESNITA A.D. MOEPONO, Board Member  
J N. MUSTO, Board Member

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## **I. EXECUTIVE SUMMARY**

Pursuant to Section 89-5(h), Hawai‘i Revised Statutes (HRS), the Hawai‘i Labor Relations Board (Board) presents its annual report to the Governor describing its activities for fiscal year 2021 (July 1, 2020 through June 30, 2021) and reflecting the status of the composition of the Board on June 30, 2021.

By comparing the HRS 396/HIOSH case filings and closing between FY2020 and FY2021, and at the beginning and the mid-term of the COVID-19 pandemic, it appears that the COVID-19 pandemic and the Governor’s and Mayors’ Emergency pronouncements and orders may have increased the time it took to process and close cases. However, most cases were closed within one year or 365 days from filing and only a handful of cases extended beyond the one year and all were closed within two years from filing.

Despite these unprecedented events, the Board and staff have diligently worked to reduce the backload of its pre-FY2016 HRS 377/89 cases (filed in 2003 through June 30, 2016). At the end of FY2019, the backlog was reduced from 42 cases to 26 cases, and for FY2020, the backlog was reduced to 19 cases. For the current fiscal year, the backlog is now reduced to six cases.

Accordingly, the Board is pleased to report that the pre-2016 Chapter 89, and 377, HRS, backlog will be completed in the next fiscal year. This achievement will be accomplished while the Board still maintains the timely processing of new cases and conducts substantive hearings. Further, the Board will continue to ensure the high quality of its decisions for present parties as well as future self-represented litigants and attorney practitioners.

Finally, the Board acknowledges the conscientiousness and ingenuity of its staff for navigating the Board through the challenges of the COVID-19 pandemic and insuring that Hawai‘i’s people received uninterrupted access to the services provided by the Board. The results of their hard work are both self-evident and recognized in this report.

## **II. INTRODUCTION**

### **A. Overview of the Board**

The Board is a quasi-judicial agency that oversees two areas of laws in the State of Hawai‘i:

- (1) Collective bargaining and unfair labor practices under Chapters 89 and 377, HRS; and
- (2) Contests involving citations or orders of the Director of Labor and Industrial Relations related to occupational safety and health laws set forth in Chapter 396, HRS.

The mission of the Board is to enforce and protect the rights of employees and unions to organize and bargain collectively, in balance with the employer's rights to manage operations as provided by Chapters 89 and 377, HRS, by fairly and efficiently resolving labor disputes brought before it. The Board is committed to promoting the harmonious and cooperative relations between the parties.

The Board has jurisdiction over public employers – i.e., the State of Hawai'i and the counties, the Judiciary, the Department of Education, including the public charter schools, the University of Hawai'i system, and the Hawai'i Health Systems Corporation.

In the private sector, the Board also has jurisdiction over employees, employers, and unions who are not subject to the jurisdiction of the National Labor Relations Board. Historically this has included agricultural employees and employers.

The Board is attached to the State Department of Labor and Industrial Relations (DLIR) for administrative and budgetary purposes only.

In its capacity as a quasi-judicial body, the Board adjudicates disputes between public employers, unions, and employees involving collective bargaining, and disputes between certain private sector employers, unions<sup>1</sup>, and employees involving employment relations. These cases typically involve an employer or union's failure to bargain in good faith, an employer or union's interference with an employee's right to participate in or refrain from bargaining activities, or a union's failure to fairly represent its members in the negotiation of agreements or the pursuit of grievances.

The Board also conducts union representation elections, supervises the impasse procedures in public employment, and issues declaratory rulings, which clarify the applicability of governing statutes and its rules.

In 2002, the Board also acquired jurisdiction regarding occupational health and safety. In those cases, the Board's case review is confined to the record only. Because of this, the Board is committed toward ensuring that every worker has a safe and healthful work environment and that employers and employees collectively work to reduce injury and illness arising out of employment.

## **B. Statutory Authority and Foundation**

Private employees in the State of Hawai'i have a constitutional right to organize. Article XIII, Section 1 of the State Constitution, provides that:

*“Persons in private employment shall have the right to organize for the purpose of collective bargaining.”*

The Hawai'i Employment Relations Act (HERA) was enacted in 1945 and codified as

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<sup>1</sup> HRS § 89-2, defines “Exclusive Representative” to mean “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.” The term “union” is commonly used to describe an exclusive representative and will be used throughout this report.

Chapter 377, HRS, to permit employees who are not subject to the Railway Labor Act or the National Labor Relations Act to participate in collective bargaining. The Hawai‘i Employment Relations Board (HERB) was created to administer the provisions of the HERA.

Similarly, in 1968, the State Constitution was amended to afford public employees in the State of Hawai‘i the right to organize for the purpose of collective bargaining. Article XIII, Section 2 of the State Constitution, provides that:

*“Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law.”*

The Legislature enacted Act 171, Session Laws of Hawai‘i 1970, which was subsequently codified as Chapter 89, HRS, the Collective Bargaining in Public Employment Law, to encourage joint decision-making in administering government. This Act created the Hawai‘i Public Employment Relations Board (HPERB) to administer Chapter 89, HRS.

In 1985, the Legislature abolished HPERB and renamed it the Hawai‘i Labor Relations Board, effective January 1, 1986, to administer the provisions of both Chapters 89, and 377, HRS.

Subsequently, the Legislature enacted Act 104, Session Laws of Hawai‘i 2002, which empowered the Board to conduct *de novo* hearings in reviewing contests of citations or orders of the Director of Labor and Industrial Relations involving occupational health and safety pursuant to Section 396-11, HRS, except as provided in Section 396-11(h), HRS, where the Board’s review is confined to the record only.

### **C. Current Board Members**

The Board is comprised of three members:

- (1) One member representative of management;
- (2) One member representative of labor; and
- (3) The third member, the Chair, representative of the public.

Each member is appointed by the Governor and confirmed by the Senate. The full term of appointment for Board members is six years. Because cumulative experience and continuity in office are essential to the proper administration of Chapter 89, HRS, the two-term appointment limit in Section 26-34, HRS, is not applicable, and members can continue in office as long as efficiency is demonstrated.

The Board is currently comprised of the following members:

**MARCUS R. OSHIRO**, Chair, was appointed to the Board on October 25, 2017, and his initial term ended on June 30, 2018. He was also appointed concurrently to another term effective July 1, 2018, through June 30, 2024. Mr. Oshiro's annual salary as of June 30, 2021, was \$134,688. After graduating from Leilehua High School on O'ahu, Mr. Oshiro received his Bachelor of Arts in Political Science from the University of Hawai'i at Mānoa. He attended the Willamette University College of Law from 1985-1988 and graduated with a J.D. and earned a Certificate in Dispute Resolution in 1988. He was admitted to the Hawai'i State Bar in 1988 and is licensed to practice in the Hawai'i State Courts, as well as the U.S. District Court (Hawai'i) and the 9<sup>th</sup> Circuit Court of Appeals. During his professional career, he served as a Deputy Prosecuting Attorney for the City and County of Honolulu and Consumer Law Attorney at the Legal Aid Society of Hawai'i. He has served in various leadership and committee chairmanships representing the people of Wahiawa, Whitmore Village, and Launani Valley in the State House of Representatives from 1994 through 2017.

**SESNITA A.D. MOEPONO**, Member, representative of management, was appointed and confirmed for a six-year term beginning on July 1, 2011 and ending on June 30, 2017. Ms. Moepono was then re-appointed and confirmed for a six-year term, ending on June 30, 2023. Ms. Moepono's annual salary as of June 30, 2021, was \$127,956. Ms. Moepono graduated from Punahou School, University of Hawai'i at Mānoa with a Bachelor of Arts, and the William S. Richardson School of Law in 1986 with a J.D. She was admitted to the Hawai'i State Bar Association in 1987. Ms. Moepono was in private practice from 1998-2011. From 1994-1997, she served as the Deputy Administrator of Operations, Office of Hawaiian Affairs, and was responsible for the administrative functions, i.e. fiscal, personnel, public information, cultural, legislative, and public information. She has worked in the Legislature as a budget analyst for the Senate Ways and Means Committee and legislative researcher for the Senate Majority Research Office and the Committees on Judiciary, Labor, Transportation, and Health. Ms. Moepono served as the Chair of the Liliha Neighborhood Board 2003-2007, served as Vice Chair during her tenure on the Honolulu Planning Commission 1994-2007, and a member of the Downtown Business Association, Kupuna Caucus, the Honolulu Committee on Aging, the Juvenile Justice SAC, and the Lanakila Multi-Purpose Committee, among others.

**J.N. MUSTO**, Member, representative of labor, was appointed and confirmed to a six-year term beginning on July 1, 2016, and ending on June 30, 2022. Dr. Musto's annual salary as of June 30, 2021, was \$127,956. Dr. Musto graduated with a Bachelor of Science in Biology from Hillsdale College in 1963. He attended the University of Michigan from 1968 to 1973, receiving a Master's degree and Ph.D. from the Rackham Graduate School in a combined curriculum of education, law, and business. His dissertation explored the potential impact of Title VII of the 1964 Civil Rights Act on affirmative action hiring programs in selected Michigan public school districts. He has taught in public secondary schools and universities. For more than 35 years, Dr. Musto served as the Executive Director and Chief Negotiator for the University of Hawai'i Professional Assembly. He has been appointed to serve on impasse resolution interest arbitration panels in both Hawai'i and other states. Dr. Musto was appointed as one of Hawai'i's Commissioners to the Education Commission of the States and was a member of the Research Corporation of the University of Hawai'i Board of Directors. He also participated in the early formation of the Neighborhood Justice Center of Honolulu, serving as both a mediator and its president.

### **E. Current Board Staff**

Pursuant to Section 89-5(a), HRS, the Board may appoint the members of its staff. The Board's secretary and legal clerk are in the civil service system and excluded from collective bargaining. Other staff members are exempt from civil service and excluded from collective bargaining.

The Board's staff currently includes the following:

**LINDA K. GOTO**, Executive Officer. Ms. Goto serves as legal counsel to the Board and performs such legal duties as may be delegated by the Board. Her legal duties primarily include research, drafting, and editing Board decisions and orders. Her annual salary as of June 30, 2021, was \$115,800. Ms. Goto graduated from Punahou School and Mount Holyoke College in South Hadley, Massachusetts with a Bachelor of Arts in Psychology. She received a Juris Doctorate from the Columbus School of Law, Catholic University of America, Washington, D.C. and has been a member of the Hawai'i State Bar Association since 1978. Ms. Goto served briefly as a law clerk in the Office of the Administrative Director of the Family Court for the First Circuit after her graduation from law school. She then joined the Board for her first term as the Hearings Officer in 1978. In 1981, Ms. Goto left the Board to work in private practice, primarily in the area of civil litigation. After several years in private practice, Ms. Goto returned to work in state government as a legal researcher with the Legislative Reference Bureau, Hawai'i State Legislature, and an administrative rules drafter with the State Department of Taxation. In 1993, she became a solo practitioner performing legal research and writing on a contract basis, primarily in the area of private sector labor and employment law, until returning to the Board for a second term as the Hearings Officer in 2014. Ms. Goto initially served in a temporary assignment as the Executive Officer until she was appointed to the position permanently. In her capacity as the Executive Officer, Ms. Goto performs such legal and administrative duties as may be delegated by the Board. Her administrative duties include supervising the other staff members; drafting and editing Board publications and decisions; and responding to inquiries from the public.

**MIDORI K. HIRAI**, Hearings Officer. Ms. Hirai serves as legal counsel and hearings officer to the Board and performs such legal duties as may be delegated by the Board. Her legal duties primarily include research, drafting, and editing Board decisions and orders. She is also the attorney primarily responsible for handling appeals from Board decision and orders. Her annual salary as of June 30, 2020, was \$83,376. Ms. Hirai previously worked in state government as a legislative aide and joined the Board as a Staff Attorney in October 2018 after spending time in private practice. Ms. Hirai graduated from Punahou School and University of Hawai'i at Mānoa with a Bachelor of Arts in English with High Honors and a Professional Writing Certificate. She received a Juris Doctorate from the University of San Francisco, School of Law, San Francisco, California and has been a member of the Hawai'i State Bar Association since 2016.

**JOYCE K. MATSUMORI-HOSHIJO**, Staff Attorney. Ms. Matsumori-Hoshijo oversees the process for the drafting, public comment, and adoption of new HLRB administrative rules. She also performs such other assignments as directed by the Chair and Board members. Her annual salary as of June 30, 2021, was \$90,816. Ms. Matsumori-Hoshijo graduated from the University of California at Berkeley with a Bachelor of Arts in Psychology. She received a Juris Doctorate from Hastings College of the Law in San Francisco, California, and has been a member

of the Hawai‘i State Bar Association since 1984. Ms. Matsumori-Hoshijo served as a law clerk in the Motions Division of the First Circuit Court and subsequently worked with the Office of the Public Defender, litigating bench, and jury trials, drafting appellate briefs and presenting oral argument before the Hawai‘i Supreme Court and the Intermediate Court of Appeals. She taught Appellate Advocacy for six semesters as an Adjunct Instructor at the University of Hawai‘i, Richardson School of Law. After leaving the Office of the Public Defender in 2005, Ms. Matsumori-Hoshijo worked in private practice, specializing in appellate litigation. She served as Grand Jury Counsel for the First Circuit Court in 2007 and 2009. From 2011-2019, she served on the Hawai‘i Paroling Authority as a Board member where she adjudicated hearings and assisted in drafting and revising administrative rules and Board manuals.

**NORA A. EBATA**, Secretary IV; SR 18M. Ms. Ebata provides clerical services for the Chair and Board members. Her annual salary as of June 30, 2021, was \$71,172. She also serves as the office manager, supervises the Board’s clerical staff, and is responsible for fiscal and personnel recordkeeping, including purchasing and travel for the Board. Ms. Ebata also finalizes Board publications and responds to public inquiries. She has been with the Board for over 48 years.

**MILTON Y. HIRATA**, Hearings and Case Management Specialist. His annual salary as of June 30, 2021, was \$51,084. Mr. Hirata effectively serves as the Board’s judicial Court Clerk, which has allowed the Board to expand the number of hearings it is able to hold, nearly doubling the number of days of hearings on the merits since the creation of the position. In that role, Mr. Hirata is responsible for the administration of the Board’s hearings. He maintains the audio and/or video recordings of the hearings, which serves as the official record of the proceedings. Mr. Hirata also takes the official Board proceeding notes, which are taken contemporaneously with all proceedings, including status conferences, pre-hearing conferences, motion hearings, and hearings on the merits.

Mr. Hirata serves as the primary point-of-contact with the parties to determine access needs, compliance with filing deadlines and requirements, including that the parties have properly bates-stamped all exhibits, and properly completed forms requesting subpoenas, and filed any service documents. Prior to pretrial conferences, Mr. Hirata is responsible for reviewing the pretrial statements submitted by the parties and for checking the witness and exhibit lists offered by the parties for any duplicative exhibits or witnesses who may be called by both parties. During hearings, Mr. Hirata is responsible for displaying in the Board Hearing Room during testimony, maintaining the list of exhibits that are withdrawn, offered, rejected, or entered into the record, and monitoring the observers of hearings, both in person and Remotely, to ensure compliance with the Witness Exclusion Rule.

Further, as the primary staff member tasked with technological responsibilities, Mr. Hirata operates and maintains the Board’s electronic broadcasting and recording systems. These systems have allowed the Board to hold remote hearings by Zoom and by FreeConferenceCall when Internet access or equipment may not allow for video recordings. Mr. Hirata also provides back-up support for the Researcher and can manage and maintain the Board System/Docket, Decision and Order log, and the Board’s *FileandServeXpress* system.

Mr. Hirata graduated from the University of Hawai‘i at Mānoa with a Bachelor of Arts



degree in Political Science. From 1980 to 2005, Mr. Hirata founded and managed several communications agencies. From 2005 to 2013, Mr. Hirata served as the regional director of communications for the American Cancer Society, Hawai‘i Pacific Division.

**KEITH D. KARDASH**, Researcher. His annual salary as of June 30, 2021, was \$56,196. Mr. Kardash performs a variety of duties for the Board as a researcher. His primary responsibilities involve maintaining the Board’s official electronic case records and the *FileandServeXpress* (FSX) electronic filing system. The FSX system provides free electronic filing and electronic service of documents for parties, including self-represented litigants, Unions, law firms, Employers, and the Attorney General’s office. Mr. Kardash is also responsible for maintaining the Board’s digital calendar.

Mr. Kardash reviews and finalizes all Board filings, including Board Notices and Orders, under the direction of the Executive Officer and the Hearings Officer and forwards all required documents to the Board for execution via the eSign system. After receiving the completed documents, Mr. Kardash uploads the Board documents to the FSX system. Mr. Kardash is also responsible for preparing and mailing required notices to parties. Mr. Kardash assists the Executive Officer and the Hearings Officer with scheduling hearing dates and times. Additionally, Mr. Kardash maintains a record of open action items in cases that need to be acted on.

Mr. Kardash is also responsible for maintaining and updating the Board’s website, including its library of Board Orders and Decisions, laws, rules, and other public information. In addition to the website, Mr. Kardash is tasked with collecting and maintaining information on the cases, including the number, type, and status. Mr. Kardash also performs research and builds systems for the Board as required.

Previously, Mr. Kardash gained more than ten years of legal experience at a prominent labor law firm in Hawai‘i. Mr. Kardash graduated from Kamehameha Schools and Northwestern University with a Bachelor of Arts in Music Performance: Piano. After obtaining his bachelor’s degree, Mr. Kardash received a Master of Library and Information Science from the University of Hawai‘i at Mānoa.

### **III. PUBLIC-SECTOR BARGAINING UNITS**

#### **A. Overview**

The collective bargaining law for public employees divides all State and county employees covered by Chapter 89, HRS, into 14 units based on occupational and compensation plan groupings. These bargaining units, described in Section 89-6(a), HRS, are as follows:

Unit	Statutory Description
1	Non-supervisory employees in blue collar positions;
2	Supervisory employees in blue collar positions;
3	Non-supervisory employees in white collar positions;
4	Supervisory employees in white collar positions;
5	Teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
6	Educational officers and other personnel of the department of education under the same pay schedule;
7	Faculty of the University of Hawai‘i and the community college system;
8	Personnel of the University of Hawai‘i and the community college system, other than faculty;
9	Registered professional nurses;
10	Institutional, health and correctional workers;
11	Firefighters;
12	Police officers;
13	Professional and scientific employees, who cannot be included in any of the other bargaining units; and
14	State law enforcement officers; and
15	State and county ocean safety and water safety officers.

It is customary to refer to the bargaining units by the numbers used in Section 89-6(a), HRS. For example, the unit consisting of firefighters is referred to as “Unit 11”.

### **B. Exclusive Representatives**

All 14 public employee collective bargaining units have selected employee organizations to serve as their exclusive representatives. Throughout the remainder of this report, the following abbreviations will be used to refer to the respective exclusive representatives (or unions):

HFFA	Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO
HGEA	Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO
HSTA	Hawaii State Teachers Association
SHOPO	State of Hawaii Organization of Police Officers
UHPA	University of Hawaii Professional Assembly
UPW	United Public Workers, AFSCME, Local 646, AFL-CIO

### **C. Employees Per Bargaining Unit**

There are approximately 60,729 public employees in bargaining units. The following chart indicates the number of employees in each bargaining unit, the change in employees from the previous year, the Exclusive Representative for each unit, and the date that the union was initially selected and certified as the exclusive representative.

<b>Unit</b>	<b>No. of Employees</b>	<b>Difference From Previous Year</b>	<b>Exclusive Representative</b>	<b>Date of Initial Certification</b>
1	8,375	(104)	UPW	10/20/1971
2	779	(10)	HGEA	10/20/1971
3	13,055	(418)	HGEA	4/3/1972
4	844	3	HGEA	5/3/1972
5	12,638	(98)	HSTA	05/21//71
6	880	25	HGEA	6/10/1971
7	3,804	(116)	UHPA	11/1/1974
8	2,334	(6)	HGEA	1/26/1973
9	1,700	140	HGEA	7/10/1979
10	3,094	93	UPW	2/11/1972
11	1,977	52	HFFA	2/4/1972
12	2,894	(23)	SHOPO	7/14/1972
13	8,143	33	HGEA	5/3/1972
14	212	60	HGEA	7/1/2013

The chart below indicates the number of Unit 14 employees by employing jurisdiction. It is anticipated that a more accurate number of Unit 14 employees will be reported in the next HLRB Informational Bulletin.

Unit	State of Hawai'i	C & C	Hawai'i County	Maui County	Kaua'i County	DOE	Jud.	UH	HHSC	TOTAL
14	0	170	0	0	42	0	0	0	0	212

*The information in the above two charts are from HLRB Informational Bulletin No.57, dated March 15,2019, and can be found on the Board's Web site <http://labor.hawaii.gov/hlrb/find-a-report/>.*

#### **IV. BOARD PROGRAM OF WORK DURING FY2021**

##### **A. Closing Backlog Cases**

As previously reported, the Board and staff have diligently worked to reduce the backlog of its pre-FY 2016 cases (filed in 2003- June 30, 2016) , many of which are 10-15 years old and some even preceding the terms of the current Board members. Furthermore, many of cases deal with personnel issues and collective bargaining contracts which arose during the early years of the conversion and “New Century” charter schools, and under previous State and County Executives, like Governors Linda Lingle and Neil Abercrombie, and Honolulu Mayor Mufi Hannemann, State of Hawai'i Department of Education Superintendent, Patricia Hamamoto, and Department of Human Resources, Director Marie Laderta.

For most of the backlog cases, Board members who did not participate in the hearings, pursuant to Section 91-11, HRS, must review the entire case file and listen to the audio recordings or read the transcripts to comprehend and endorse any proposed order and findings of fact and conclusions of law. This has been time consuming, however, because many cases do not have transcripts but only audio recordings.

Additionally, changes in assigned private attorneys and deputy attorneys general, further complicated the parties' knowledge of the case. For cases, all about 10 years old, where a current Board member participated in the hearings, she is assigned to work with our Executive Director to ascertain the case status and determine appropriate steps to dispose of the case – usually additional hearing, briefing, or order. The other Board members are then consulted, and the matter is deliberated and considered by the entire Board before a decision and order is issued. This is again taxing on the Board members' time and energies, as the same attention and consideration must apply to current or more recent cases. <sup>2</sup>

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<sup>2</sup> All the backlog cases are being overseen by Board Member Sesnita Moepono who has been serving since June 5, 2011, making her the only Board Member to have participated in most of the backlog cases and the Board's most experienced member. The reduction of the backlog is attributed to her work ethic, attentiveness, and legal scholarship.

Notwithstanding these challenges, the Board is pleased to report that at the end of the fiscal year 2019, the backlog had been reduced from 42 cases to 26 cases, and for fiscal year 2020, the backlog is reduced to 19 cases. And, for the current fiscal year, the backlog is now reduced to six cases.

Finally, it is important to note that for all practical purposes, the Backlog Cases are now comprised of only three (3) cases. And, because the Board continuously monitors these cases and compels the parties to report on the case status, the Board is confident that these remaining few cases will be closed or set for hearing soon if not in the next fiscal year.

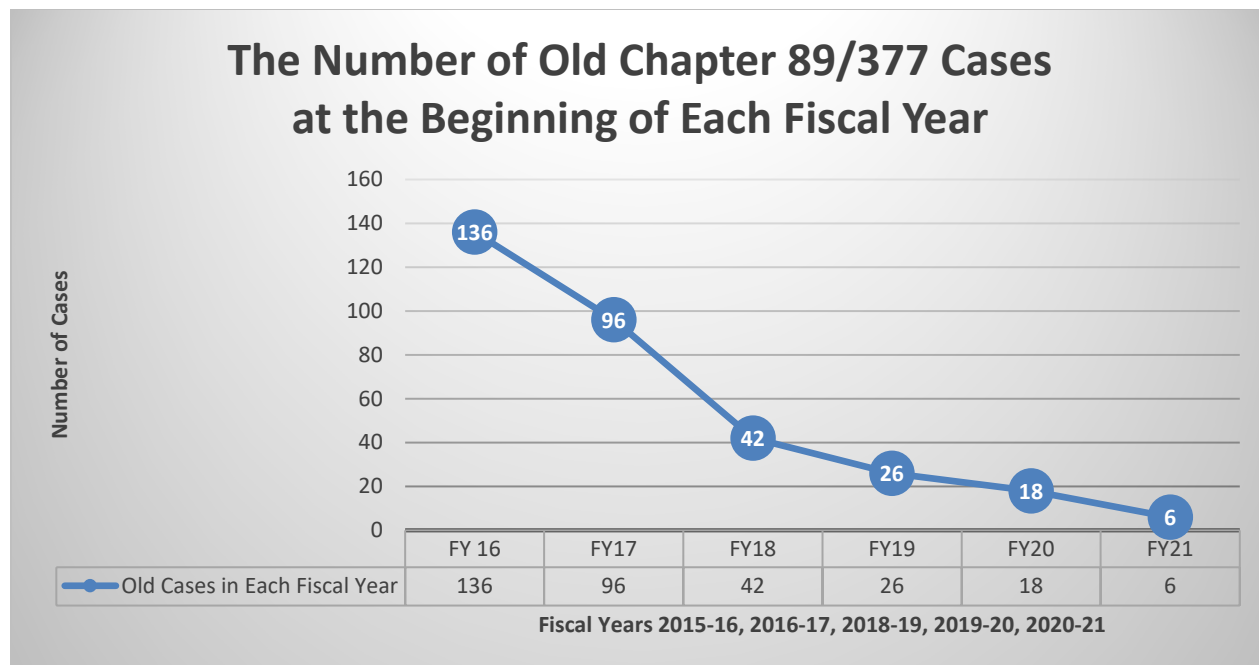
	Date/File	Case #	Case Name	Status
1.	7/2/2003	CE-01-537a, 02- <del>537a</del> , 03- <del>537e</del> , 04- <del>537d</del> , 06- <del>537e</del>	UPW, HGEA and Kathleen Watanabe, Dir., DHRD & Linda Lingle, Governor (Charter School) <sup>3</sup>	Open
2.	6/24/2004	CE-01-565a, 02- <del>565b</del> , 03- <del>565e</del> , 04- <del>565d</del>	UPW & HGEA and Patricia Hamamoto & BOE <sup>4</sup>	Open
3.	3/12/2008	CE-05-661	HSTA v. Patricia Hamamoto, BOE, Linda Lingle, Marie Laderta	Open
4.	6/6/2008	CU-05-265	Patricia Hamamoto, BOE, Linda Lingle & Marie Laderta v. HSTA	Open
5.	11/13/2009	CE-10-737, CU-10-284	Jonathan Taum, Chad Ross, Carl L. Kahawai, Quincy G. K. Pacheco, Bradford J. Leialoha, Julieann L. Salas v. DHRD & UPW	Open

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<sup>3</sup> On August 6, 2021, the parties filed a stipulation to withdraw the second amended prohibited practice complaint and based upon the stipulation, the Board dismissed and closed the case on August 11, 2021. This will be reported in the FY 22 Annual Report.

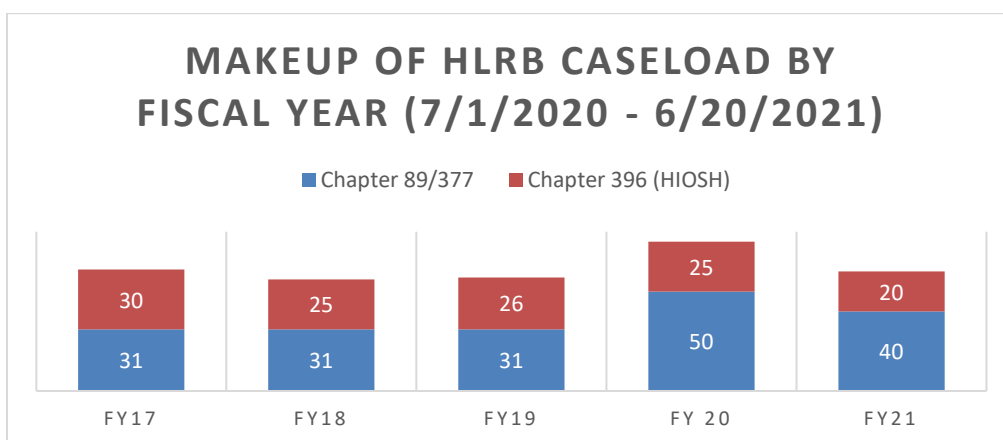
<sup>4</sup> On August 9, 2021, the parties filed a stipulation to withdraw the prohibited practice complaint and based upon the stipulation, the Board dismissed and closed the case on August 11, 2021. This will be counted and reported in FY 22 Annual Report.

The chart below graphically illustrates the results of the hard work of the Board and Staff over the years that had nearly eliminated the Backlog Cases comprised of Prohibited Practices Complaints filed between 2003 and 2016.<sup>5</sup>



## B. Caseload Makeup

A review of the past five fiscal Years (“FY”) 17, 18, 19, 20, and 21 shows that the Board receives, on average 37 new Chapter 89/377 cases and 25 new Chapter 396 cases each fiscal year, respectively.



<sup>5</sup> Although the list contains five (5) cases, for statistical purposes there are six (6) separate cases that comport with the named respondents, who are either Employers (CE) or Exclusive Representatives or Union (CU). For example, in the *Taum, Ross, Kahawai, Pacheco, Leialoha and Salas vs. DHRD and UPW*, (2009) CE-10-737, and CU-10-284, there are two (2) separate prohibited practice cases; one against the Employer and the other against the Union.

The most common type of Chapter 89, and 377, HRS, cases over the fiscal years are the Prohibited Practice Complaint against the Employer (CE), followed by the Prohibited Practice Complaint against the Union (CU). There have been no Prohibited Practice Complaint cases filed against an Employee (CEE).

Another category under Chapter 89, HRS, is when an impasse arises under Section 89-11, HRS, but the data suggests impasse cases arise only in certain fiscal years when collective bargaining contracts are set to expire or are being negotiated and an impasse arises. For example, in FY2018, there were 14 impasse cases, compared to FY2017 where only two impasse cases were filed and both were disposed of the same fiscal year. In all impasse cases, the parties reached settlement with little Board involvement beyond the declaration of impasse.

A third category of cases under Chapter 89, HRS, is where the petitioner is seeking a Declaratory Ruling (DR). The Board has its authority to issue Declaratory Rulings under Section 89-5, HRS and Section 12-42-9, Hawai'i Administrative Rules. The Board has discretion in deciding whether to issue or refuse to issue a declaratory ruling.

In FY21, there was one request for a Declaratory Ruling, and the Board issued its Order Declining to Issue A Declaratory Order, in United Public Workers, AFSCME, Local 646, AFL-CIO and Department of Public Safety, State of Hawaii, Case No. 20-DR-10-116. The case and Board order may be found under "*Board Orders*" at [www.labor.hawaii.gov/hlrp/](http://www.labor.hawaii.gov/hlrp/). This Order may be useful for understanding how the Board applies its laws, rules, and authority in analyzing and deciding the Petition for Declaratory Ruling.

A fourth category of cases under Chapter 89, HRS, is where the petitioner is seeking a Petition for Clarification or Amendment of Appropriate Bargaining Unit, (RA).

In FY21, the Board also received and granted a request by Petitioner, HGEA for the Board to Clarify and Amend Bargaining Unit 15 with a list of certain class positions. Act 31, Session Laws of Hawaii, 2020. (Act 31) statutorily established the new Bargaining Unit 15 (BU 15) by amending Section 89-6, HRS, to add a new category of public employees of state and county water safety officers. Section 89-7 I (3), HRS, exempts new bargaining units from election requirements when the new unit is composed of employees currently covered by a valid collective bargaining agreement and is represented by the same exclusive representative.

The Board provided notice to all Employer groups and Unions and did not receive any petitions for interventions and only the HGEA appeared at its conference. Upon receipt of the class specifications for all affected jurisdictions, the Board ordered the transfer of all positions within the class positions from Bargaining Unit 14 to Bargaining Unit 15. And, according to the HGEA, BU15 constitutes approximately 400 members statewide and are comprised of the ocean/water safety officers, (Lifeguards) of the Counties of Honolulu, Hawai'i, Kaua'i, and Maui.<sup>6</sup>

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<sup>6</sup> It is noteworthy to elaborate on why a Petition for Clarification or Amendment of Appropriate Bargaining Unit, (RA), is rarely seen by the Board. Prior to the creation of BU 15, the most recently created bargaining unit was BU 14, which was established by the Hawai'i State Legislature seven years earlier in Act 137, SLH, 2013. Act 137 was approved to create BU 14, to be comprised of State law enforcement officers and state and county ocean safety and water safety officers, including employees from the Departments of Public Safety, Land and Natural Resources, and Transportation, including Deputy Sheriffs, Conservation and Resource Enforcement Officer and Harbor

### **C. Common Forms of Prohibited Practice Cases**

Most Prohibited Practice Cases involve a complaint filed by an Employee against his or her Employer. In many cases, the Employee is represented by a Union and its attorney(s). The Employer is generally represented by a Deputy Attorney General from the State of Hawai‘i; a Deputy Corporation Counsel from the City and County of Honolulu, County of Hawai‘i, or County of Maui; or a Deputy County Attorney from the County of Kaua‘i<sup>7</sup>. There are also cases in which the Employee is not represented by the Union and proceeds on their own as a self-represented litigant (“SRL”) (aka “*pro se*” complainant), bringing a complaint against their Employer. Sometimes, in these cases against the Employer, the Employee may also bring a prohibited practice charge against the Union for a violation of its breach of the duty of fair representation.

But whether these cases have an attorney or involve a self-represented litigant they are never ever “cookie cutter” cases, and each case is as unique as the parties and facts involved. Consequently, the Board and its staff spends much time processing these cases through the formal hearing process, and similar pre-hearing and post-hearing procedures as are customarily used in most civil proceedings in the Hawai‘i District or Circuit Courts.

### **D. Accessibility and Transparency**

Finally, the Board’s hearings under Chapter 89 and 377, HRS, are open to the public and reasonable accommodations are made for persons seeking access. The Board also provides language interpretation and translation services for party litigants and has the capacity for hearings on the Neighbor Islands to accommodate Neighbor Island litigants. This was done when it was economically sound for the Board and its staff to fly to the Neighbor Islands, typically where there were numerous witnesses, and it was cost prohibitive for a party to cover plane fare, ground transportation, and lodging cost for its witnesses.

At the end of this FY21, however, the Board had not conducted any in-person hearings on the Neighbor Islands due to the restrictions imposed by the Governor and County Mayors upon intra-island travel and unavailability of any public space to conduct the hearing. In the past, the Board was fortunate to use meeting space provided by: the University of Hawai‘i at Maui, Kahului; County of Hawai‘i Aging and Disability Center, Hilo; Hawai‘i County Council Hearing Room, Hilo; and Department of Labor and Industrial Relations Office, Līhu‘e.

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Enforcement Officers. Prior to that, State law enforcement officers and county ocean safety and water safety officers were in HGEA BU 3, white collar employees, and BU 4, white collar supervisors, pursuant to the Hawai‘i Public Employment Relations Board Decision No. 17, April 3, 1972, and Decision No. 13, May 3, 1972, respectively. The Board filed on November 7, 2013, its Order Granting Petitioner HGEA’s First Amended Petition for Clarification or Amendment of Appropriate Bargaining Unit relating to those positions that constituted BU 14 and transferred those positions from BU 3 and 4 to BU 14. As such, except for BU 14 which was established in 2013, and BU 15, which was established in 2020, the bargaining units 1 through 13, were all established in HRS Chapter 89 in 1970.

<sup>7</sup> There are also instances where the University of Hawai‘i’s Associate General Counsels or outside counsel appear, as the Employers see fit.



At present, the Board considers any request for a Neighbor Island hearing on a case-by-case basis.

Moreover, in April 2020, the Board pivoted to comprehensive internet and proprietary software use to accommodate remote attending of attorneys, representatives, and witnesses. The Board uses the *FreeConferenceCall* or *Zoom* platforms, learning that both technologies are easy to set-up and use. The Board has proven its set-up abilities when it conducted a “Hybrid” hearing where the attorneys and witnesses were in two different locations on Kaua‘i, while the opposing party was in-person with a court reporter before the Board in the Board’s Hearing Room.

All parties found the arrangement satisfactory and affording the customary examination and cross examination trial procedures while addressing the obvious and serious COVID-19 safety and health concerns.

In short, the Board is adequately prepared to accommodate the needs of both in-person hearings and remote hearings, while providing a safe working environment for its staff, parties, witnesses, and itself. Neighbor Island parties have expressed a desire for the continuation of this remote hearing practice.

#### **E. Hearing on the Merits**

Cases initiated pursuant to Chapters 89 or 377, HRS, are similar in many respects to civil cases filed in the circuit courts. Much of the processing of the cases hinges upon the prosecution of the case by the plaintiff and/or defendant, and the court serves in many instances as the “referee” or “facilitator” of the case, and about 90% of all civil cases do not proceed to trial and court adjudication.

The same holds true for the HLRB and the parties, other than some terminology differences. Both the complainant and respondent(s) have some say in whether a case goes to a “hearing on the merits”—the Board’s version of a trial—or is continued for purposes of settlement. Furthermore, the Board adheres to the legislative public policy of promoting harmonious and cooperative relations among the parties, and in many instances, granting additional time to the parties have resulted in resolutions benefiting both litigants, saving legal expenses, and most importantly, establishing workable processes to avoid future contractual disagreements. Still, the Board also adheres to the maxim that timely prosecution of a case is essential to a just outcome and it does not condone purposeless delay in any case.

#### **F. De Novo Hearings**

The Board serves as the appeals board for determinations made by HIOSH and the Director and previews the case *de novo*. *De novo* means that the Board will review all of the evidence in the case from the beginning of the complaint being filed with the HIOSH agency or the issuing of an inspection and citation by the HIOSH inspector.

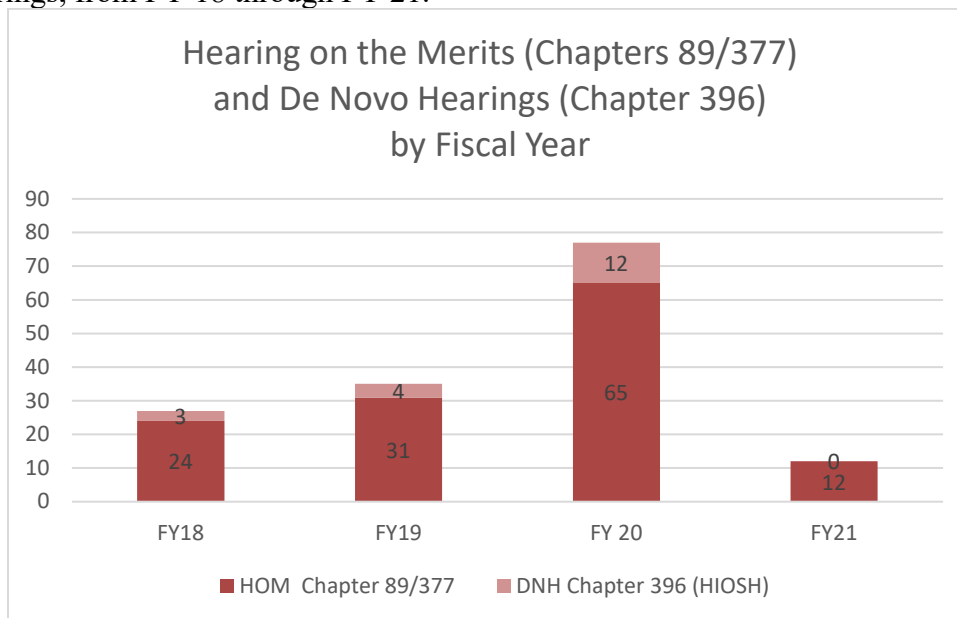
One type of case is referred to as a “Citation Case” because it is an appeal from a citation by HIOSH and commonly arises in a dispute regarding the classification of the penalty, monetary

fine, and prior record of non-compliance or previous violations. The Board tends to provide the parties greater leeway to attempt to settle the case among themselves, especially when the differences may be one of monetary fine or the cited business is represented by legal counsel. The Director and HIOSH is always represented by the Department of the Attorney General.

Another type of case arising under Chapter 396, HRS, is the “Discrimination” or “Whistleblower” Case and involves an employee bringing a complaint for an adverse employment action because he or she engaged in some protected activity such as raising a safety and health concern with an employer or HIOSH.<sup>8</sup> In these cases, the party is appealing HIOSH’s decision and order that the employer did not unlawfully discriminate and must establish a *prima facie* case that the complainant engaged in a protected activity, the employer subjected the employee to an adverse action, and a causal link exists between the protected activity and the adverse employment action. If the complainant establishes a *prima facie* case, the burden shifts to the employer to provide a legitimate, non-retaliatory reason for the employment action. If the employer does so, the burden shifts back to the complainant to prove that the employer’s stated reason was *pretextual*.

The Intermediate Court of Appeals has set forth the applicable standards regarding the circumstances in which an administrative agency determination in a HIOSH case should be given deference in Dir., Department of Labor and Industrial Relations v. Permastelisa Cladding Techs., Ltd. 125 Haw. 223, 257 P.3d 236 (2011). This deference remains despite the standard of a fresh review of an agency’s conclusions of law in statutory interpretation unless the Board finds an abuse of discretion. Finally, the Board may affirm, modify, or vacate the citation, the abatement requirement or the proposed penalty, order, or remand the case to the Director with instructions for further proceedings, or direct other relief as may be appropriate.

The chart below shows the number of days the Board held Hearing on the Merits and *De Novo* Hearings, from FY 18 through FY 21.



<sup>8</sup> While there are also cases where HIOSH found discrimination occurred and the employer challenges this finding, they are less common. However, the general burdens of proof remain the same.

Prior to the COVID-19 pandemic and restrictions and limitations imposed upon all persons in both public and private sectors, the Board held an average of 46 days in hearing on the merits or *De Novo* hearings. This did not, however, include multiple status conferences, pre-trial hearings, and other non-substantive procedural hearings.<sup>9</sup> In fact, during the past two fiscal years before the COVID-19 pandemic, the Board had recorded more hearing time on Chapters 89 and 377, HRS, cases than in recent memory.<sup>10</sup>

During the last fiscal year, however, the Board did not hold any *De Novo* Hearings and held nineteen (19) days of hearing on the merits. This substantial decline in *De Novo* Hearings or Hearings on the Merits may be attributed to the effects of the COVID-19 pandemic that essentially caused the shuttering of many government offices, public buildings, and private businesses. Having no comparable global pandemic or similar event to compare it to, the Board can only speculate on how the COVID-19 pandemic affected the business and lives of the parties involved in its cases.

We do know, however, that private sector businesses were affected by mandatory limitations including shuttering operations or limiting hours or services imposed by the State of Hawai‘i and respective County governments. That may have affected access to inspect businesses or curtailed the reporting the suspected violations. Similarly, the public sector employees and managers were also being challenged by the sudden and abrupt changes to the work environment and the necessity to react and adjust to the changing recommendations to protect the work force and maintain a level of service to the general public.

For the Board and its staff, housed in the Department of Labor and Industrial Relations, the building was closed to the general public from about March 17, 2020, and starting on August 23, 2021, anyone entering any office in the building, including all delivery personnel and contractors, were required to show a copy of their COVID-19 vaccination card or negative COVID-19 test results taken within seven (7) days of seeking entry.<sup>11</sup> The Board, however, was able to find an accommodation from the Department and as described in our previous annual report, did implement an in-person hearing protocol in compliance with the State of Hawai‘i Department of Health and U.S. Centers for Disease Control guidelines and recommendations. On a case-by-case basis, the Board allowed for in-person services subject to requirements and

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<sup>9</sup>It cannot be overlooked that while these hearings may not be “on the merits”, they still require formal written notices and orders memorializing parties’ agreements, Board decisions, evidentiary and factual stipulations, deadlines, and other directives, etc. arising from the hearings. The Board this year has begun to track and measure its issuance of all notices and orders filed under Chapters 89, 377 and 396. In FY 20, the Board filed over 300 orders and over 100 notices. The Board’s Executive Officer, Hearings Officer, Researcher, Hearings and Case Management Specialist, and Secretary are credited and recognized for the drafting and timely filing of these essential legal documents. In FY 21, over 250 orders and notices were filed.

<sup>10</sup> For FY 19, and 20, the Board completed, on average 56 days of hearings on the merits and *de novo* hearings.

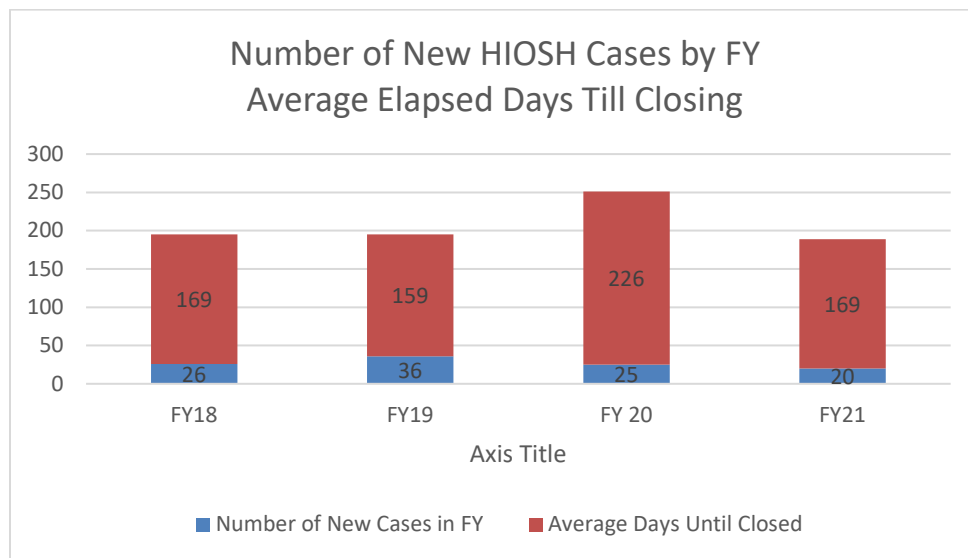
<sup>11</sup> About the same time, the Department, in consultation with the State of Hawaii Department of Health, contemplated a re-opening of the building in September 2021, However, with the surge in COVID-19 cases caused by the highly contagious *Delta* variant and accounting for the majority of the infections, the Department decided to not re-open the building but continue limiting access with the aforementioned protocols.

voluntary attestation.<sup>12</sup>

In short, while we can only speculate on the impact felt by the State and counties COVID-19 pandemic emergency orders, proclamations, and advisories may have had upon the Board's case filings, and proceedings, the Board did not skip a beat but used specialized technological tools and reconfigured its hearing room to conduct business addressing the health and safety needs of parties, staff, and board members. Certainly, the HLRB is ready to address future emergency conditions and adjust accordingly to fulfill its mission under Chapters 89, 377, and 396, HRS.

### **G. Disposition of De Novo/HIOSH Appeals**

As previously reported in the Board's FY19 and FY20 Annual Reports, historically most of the Hawai'i Occupational and Safety Cases (HIOSH) were closed within a year of the filing but with the advent of the COVID-19 pandemic and Governor's Emergency Proclamation issued in March 2020, and Supplemental Proclamations filed throughout the fiscal year, it was uncertain how it would affect the processing of these cases. The table below shows that although the first fiscal year of the COVID-19 pandemic may have resulted in extending the time from filing to the closing of cases, the historical trend has continued, and most cases are still processed and closed within a year of filing.



<sup>12</sup> In early November 2021, as COVID-19 case counts have decreased and vaccination rates have increased, the State of Hawaii and the Department became comfortable with relaxing some restriction and allow for limited in-person services, on only Wednesday, Thursday, and Friday, and restrict in-person services on Mondays and Tuesdays. This policy and practice began on December 1, 2021. Added security for the public and employees were provided by the Hawaii Army National Guard who manned both public and employee entrances along with Department of Public Safety Sheriffs.

One explanation for the significant increase in the number of elapsed days from filing to closing of cases may be the affect the COVID-19 pandemic, Governor's Proclamations, and Board orders related to the COVID-19 may have had on these cases. For one, due to the suddenness and uncertainty of the restrictions imposed on both government and public sectors, parties may have had to adjust to their own working conditions and the private sector businesses may have had other or competing needs to address.

While their appeal is pending, the HIOSH citation and fine, while not set aside, is not being enforced against a business.

The first Emergency Proclamation signed on March 5, 2020, gave State agencies, like the HLRB, the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at the same location, and suspend certain rules, statutory requirements, and administrative hearing procedures as needed to deal with the emergency situation brought on by COVID-19.

On March 23, 2020, in the Governor's Third Supplemental Proclamation, the Governor, among other things, ordered that all persons in the state must stay home or in their place of residence from March 25, 2020, through April 30, 2020. Similarly, on August 25, 2020, the Mayor of the City and County of Honolulu, issued Emergency Order 2020-25, as a Second Stay-at-Home/Work-From-Home Order, which became effective on August 27, 2020, through September 9, 2020. There is no doubt that these State of Hawai'i and City and County of Honolulu orders affected, to some degree, both public and private operations and employers and employees.<sup>13</sup>

The extension of time provided to the parties by the Board may have also contributed to the additional days from the filing to the closing of the cases. It should be noted that the Board was concerned about ensuring that none of the mandatory COVID-19 Pandemic government restrictions inadvertently affected the due process and substantive rights of the parties and therefore postponed and rescheduled these cases to accommodate the parties and the Board. The Board is pleased to report that a few parties requested their case be designated as "Priority" and advanced to a hearing and that all requests were granted.

In summary, by comparing the case filing and closing between FY20 and FY21 and at the beginning and the mid-term of the COVID-19 pandemic, it appears that the COVID-19 pandemic and the Governor's and Mayor's emergency pronouncements and order may have had some degree of affect in increasing the time from processing and closing of the HIOSH cases. Still, however, most cases were closed within one year or 365 days from filing and only a handful of cases extended beyond the one year and all were closed within two (2) years from filing. And, where there were cases being carried over into another fiscal year and over two (2) years from filing, they were cases that involved a self-represented litigant and/or proceeded to a *De Novo* hearing.<sup>14</sup>

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<sup>13</sup> Because the Board is located within the City and County of Honolulu, and to be in compliance with Emergency Order 2020-25, the Board ordered that all hearings on or after September 3, 2020, would be held using the *Zoom* platform and made case-by-case accommodations for parties without Internet connection or having concerns or complications with the Internet technology or *Zoom* platform.

<sup>14</sup> In a citation case, filed in 2018, the parties, both represented by their own attorney, mutually requested the Board

## **H. Cases by Union**

The tables below show the number and percentage of cases in which a union is either a complainant or respondent.

A “complainant” is the party that is filing an Unfair Labor Practice or Prohibited Practice Complaint against a “respondent”. In most cases, the complainant is a Union or Employee or Employees. On the other hand, the “respondent” is the party or parties responding to the complaint and in most cases is the Union or the Employer. In some cases, both the Union and Employer are respondents, and referred to as “Hybrid” cases.<sup>15</sup>

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to continue the case for purposes of additional time to discuss settlement and since this was a “citation” case wherein the contest is based upon a HIOSH citation and fine imposed, and not a discrimination case or Whistleblower violation, the Board was more lenient to additional time for parties to settle strictly among themselves which the Board does not participate in or endorse. The five (5) “citation” cases filed in 2020 were closed without a *De novo* hearing but within 2 years. In 2021, two cases were carried over into another fiscal year and both were closed within two years. One of the cases were settled among the parties. The other case, however, involved a Self-Represented Litigant, and the Board held a hearing on a motion to dismiss, finally granting the motion, and closing the case. At the time of this report, no appeal has been filed and the case remains closed.

In Henkels & McCoy, Inc. and DLIR and Olive, Jr. Case No. OSH-2019-05, the Board held a *de novo* hearing over ten (10) days on July 15, 16, 22, August 5, 6, and 7, and September 16, 17, 18, and 20, 2019. The Board allowed the parties to file post hearing briefs, which were filed by the parties on October 31, 2019, and filed its Finding of Fact, Conclusions of Law, Decision and Order on November 2, 2020. The appellee was a Self-Represented Litigant.

On November 25, 2020, the appellee filed a Motion to Enforce Decision, and Appellant filed its Motion to Stay Enforcement of the Decision No. 40 on November 30, 2020, and two Motions for Reconsideration on December 9, 2020. The Board heard oral argument on these motions on April 19, 2021, and issued an Order Denying Appellant’s Motion for Reconsideration; Denying Appellant’s Motion for Reconsideration of Appellee’s Entitlement To Back Pay’ Denying Appellant’s Motion To Stay Enforcement; And Granting Appellee’s Motion to Enforce Decision. The Board further ordered that the Appellant to comply with Board’s Decision No. 40 immediately. Subsequently, the Appellant filed a notice of appeal, on May 19, 2021, and at close of the FY 21, the case was before the Circuit Court of the First Circuit, Civil No. 1CCV-21-0000654. The appeal has since been withdrawn.

In 2019, Appellant, a Self-Represented Litigant, appealed the decision and order of the Department of Labor and Industrial Relations that the Appellee did not violate HRS 396-8, and the Board conducted a one-day *De novo* hearing and flew out to the Neighbor Island to accommodate the Appellant and witnesses. Its Findings of Fact, Conclusions of Law, Decision and Order was filed on May 25, 2021, dismissing the appeal, and closing the case. At the time of this report, no appeal has been filed and the case remains closed.

<sup>15</sup> When dealing with prohibited practices arising from how a union handles grievances, this falls under what is known as a “hybrid case.” While this phrase does not appear in HRS Chapter 89, the Hawai‘i Supreme Court (HSC) laid out the hybrid case in Poe v. Haw. Labor Rels. Bd., 105 Hawai‘i 97, 102, 94 P.3d 652, 657 (2004) (Poe II). A hybrid case alleges that the employer committed a prohibited practice under HRS § 89-13(a)(8) and that the union breached its duty of fair representation, which is a prohibited practice under HRS § 89-13(b)(4). The complainant must prove both that the employer wilfully violated the collective bargaining agreement **and** that the union violated its duty of fair representation. This type of complaint can succeed only if the complainant proves **both** parts. The complainant may choose to bring a case against only one respondent but must still prove both parts of the case. Further, the complainant can receive remedies only from the respondents in the case. This means that, for example, to receive any remedy or relief from an employer, the complainant would have to name the employer as a respondent.

Between FY 18 – FY 21, the Hawaii Government Employees Association (HGEA), has filed the most cases than any other union, accounting for over half of the cases filed in three of the four fiscal years, 2018-2021, 43.8%, 88.0%, 96.2%, and 64.7%, respectively. Coming in at a distant second, third, and fourth place are the University of Hawaii Professional Assembly, State of Hawaii Police Organization, Hawaii State Teachers Association, and United Public Workers Union, respectively. The data reveals that the Hawaii Fire Fighters Association rarely appears before the Board.

**Union as Complainant**

<b>Complainant</b>							
	HGEA	UPW	HSTA	UHPA	SHOPO	HFPA	Total
FY 18	7	1	0	4	3	1	16
	43.8%	6.3%	0.0%	25.0%	18.8%	6.3%	
FY 19	22	1	0	1	1		25
	88.0%	4.0%	0.0%	4.0%	4.0%	0.0%	
FY 20	25	0	1	0	0	0	26
	96.2%	0.0%	3.8%	0.0%	0.0%	0.0%	
FY 21	11	2	3	1	0	0	17
	64.7%	11.8%	17.6%	5.9%	0.0%	0.0%	

Between FY 18 – FY 21, the HGEA, has been the most frequently named respondent of all unions, accounting for over half of the cases filed. The United Public Workers comes in a second with about a fourth of the cases and tied for third place are the Hawaii State Teachers Association and the University of Hawaii Professional Assembly.

**Union as Respondent**

<b>Respondent</b>							
	HGEA	UPW	HSTA	UHPA	SHOPO	HFPA	Total
FY 18	5	5	1	1	0	0	12
	41.7%	41.7%	8.3%	8.3%	0.0%	0.0%	
FY 19	14	2	0	1	0	1	18
	77.8%	11.1%	0.0%	5.6%	0.0%	5.6%	
FY 20	5	4	1	1	0	0	11
	45.5%	36.4%	9.1%	9.1%	0.0%	0.0%	
FY 21	1	1	0	0	0	0	2
	50.0%	50.0%	0.0%	0.0%	0.0%	0.0%	

**I. Labor Arbitration and Mediation Program**

The Board is continuously reviewing its method of overseeing the list of labor arbitrators and mediators under Section 89-5(i)(5) and (7), HRS. Annual submission of updated resumes and

any address changes are required by the Board. The Board has also established a policy of requiring both parties' written asset to request and receive a list of five (5) Arbitrators after the initial list if issued by the Board. Likewise, the same is required for a replacement Arbitrator due to unavailability due to death, retirement or for causes.

As of June 30, 2021, the Board has a listing of 40 persons listed as Arbitrators and Mediators. The list of the Arbitrators and Mediators and their resumes can be found at <https://labor.hawaii.gov/hlrp/arbitrator-mediator-listing>.

In 2018, the Board began assigning numbers to each of the arbitrators and then used a random selection machine (Bingo Ball Machine) to randomly draw five (5) names to create the list of arbitrators, sent to the parties. In FY 21, the Board generated 89 letters.



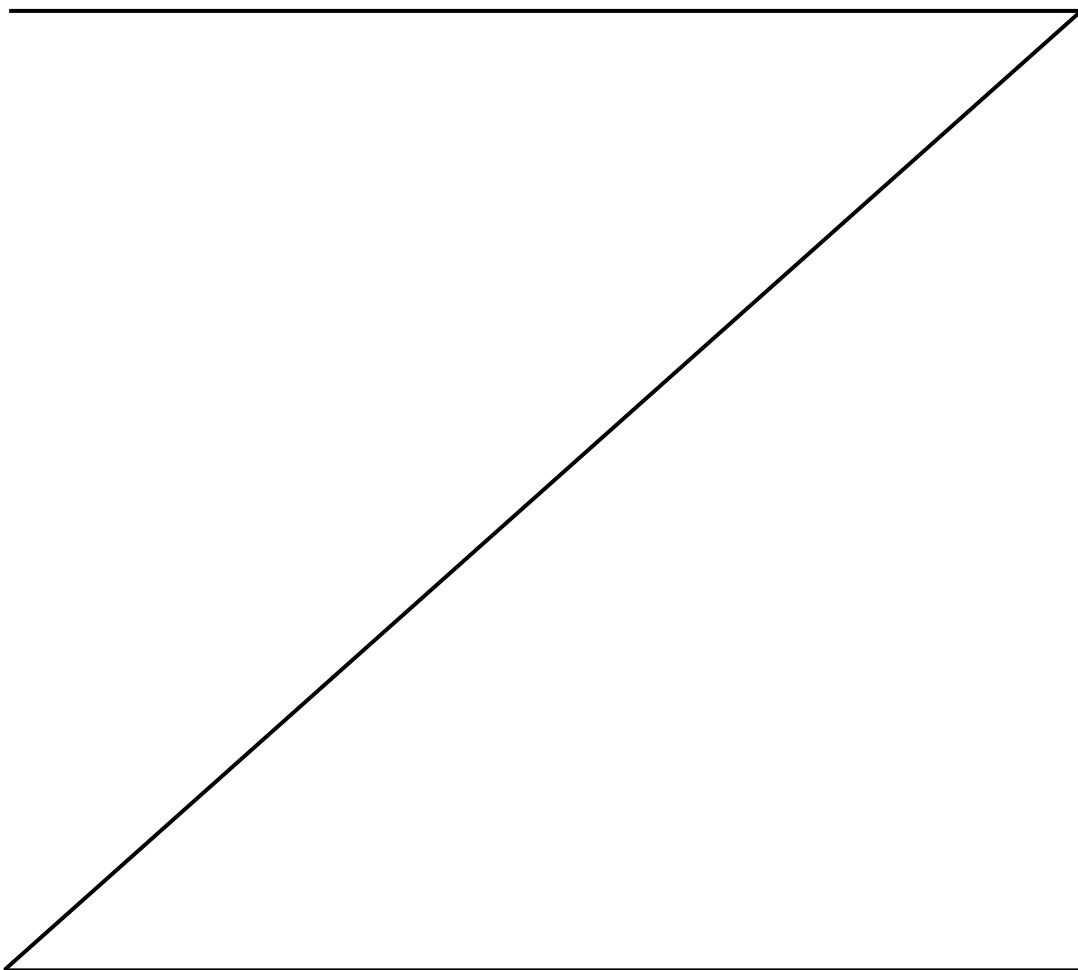
Board Secretary Nora Ebata is the Board's operator of the random number selection machine. The corresponding numbers and names are confirmed by the Board Chairperson and those names are sent to the parties for their use.



## **J. Administrative Rule Making**

As of August 2020, a draft of the revised Hawai'i Labor Relations Board administrative rules is near completion, building on the substantial work undertaken in previous years. The new rules combine Chapters 41 and 42, Hawai'i Administrative Rules, into a single set of procedural rules governing cases under Chapters 89, 377 and 396, HRS.

The Board is currently reviewing the final draft in preparation for review by the Small Business Regulatory Review Board (SBRRB) and subsequent permission to take the rules to public hearing pursuant to Chapter 91, HRS. The Board foresees obtaining the SBRRB approval for the public hearing and the public hearing to occur in the first half of 2022. Once the public hearing is completed the Board intends to seek Governor's approval of the revised rules, which would be the most comprehensive amendments since 1983.



## **IV. BOARD INITIATIVES FOR FY 2021-2022**

### **A. Revision of the Board Rules**

The Board is currently in the process of updating its administrative rules which were last revised in 1981 and 1983. Since that time, much has happened. The Board has expanded its responsibilities to adjudicate HIOSH cases under Chapter 396, HRS. The Board is now responsible for administering the “card-check program”. In 1985, the Legislature abolished HERB, transferred its functions to HPERB, and renamed it the Hawai‘i Labor Relations Board, effective January 1, 1986, to administer the provisions of both Chapter 89 and 377, HRS. In addition, the Board has proceeded to use electronic means to serve complaints, hearing notices and other document files.

The Board has already received comments and suggested changes from two divisions (Employment Law Division and Labor Division) within the Department of the Attorney General that regularly appear before the Board. We anticipate proceeding toward Statewide public hearings and adoption of amended rules in 2022.

### **B. Improving Pre-Hearing Processes**

The Board continues to review and make changes to its pre-hearing and pre-trial processes for Chapter 89, 377 and 396, HRS, cases.

For the Chapter 89, and 377, HRS, cases, the Board has been holding prehearing conferences as a matter of course, clarifying the issues, attempting to reach an agreement among the parties regarding undisputed facts and procedures, which facilitate the expediting of the hearing or adjudication of issues, and establishing deadlines and prehearing procedures. The Board also schedules a pre-trial conference to discuss and identify anticipated witnesses, proposed exhibits, evidentiary issues, stipulations, and pre-trial motions. The Board has found these processes to be more conducive to resolving disputes prior to a full hearing on the merits, and for cases that do proceed to a hearing, the Board is better able to hear and decide said cases within a shorter timeframe.

For the Chapter 396, HRS cases, the Board has revised its prehearing conferences and procedures. Under the Board’s new procedures, upon receipt of the transmittal of notice of contest from HIOSH, the Board issues to the parties a notice of case assignment and order, allowing the parties seventy-five (75) days to identify the contested issues, to conduct any necessary discovery, and to engage in settlement negotiations before committing, if necessary, to pretrial deadlines and trial dates assigned by the Board. By this procedure, the parties avoid the prior common practice of filing multiple requests for continuances in the prehearing process.

The Board’s goal is to work with the parties in resolving HIOSH cases as efficiently and successfully as possible, all while protecting the safety of the workers in the workplace. The Board has received positive comments regarding these new procedures and, most important, the parties that appear before the Board in Chapter 396 cases have engaged in positive and continuing discussions with us to further improve these procedures.

### **C. Integrating E-Filing System and Free Recording Services**

As reported in the previous Annual Reports, it was the Board's intent to address the backlog of cases by pursuing, among other things, the development of a comprehensive e-Filing system to include Chapter 89, 377 and 396, HRS, cases.

In early 2014, the Board contracted with *File and ServeXpress (FSX)* to provide e-Filing services on *FSX's* website, which services include online filing of pleadings and case related correspondence, and service of pleadings and correspondence by email, and storage of all case files. The current voluntary e-Filing service allows all participating parties to file and serve their documents on the opposing party "24/7." Like the Hawai'i Supreme Court, the Board accepts digital signatures on documents filed with the Board. Because of online filing and digital signatures, the Board's "paperless" process results in savings on paper and reproduction, binding, delivery services and postage, and labor costs, which benefits the State, the Board, and the parties.

Through the diligent efforts of the Board's staff and the cooperation of the various government and private law offices that practice before the Board, e-Filing through *FSX* has now been adopted by 99% of the government attorneys that appear before the Board and many new private-sector law firms and self-represented litigants. Web Based Technology to Record and Store Board Proceedings

The Board continues recoding, storing, and retrieving the audio and video proceedings of its hearings by contracting with an Internet vendor (*FreeConferenceCall*) which has proven to provide good multi-vocal audio recordings and quick and easy filing and retrieval of all Board proceedings, all at a nominal month-to-month service charge. Parties can also access the recordings within minutes of its filing and access is through any internet connected platform, even a mobile phone. Using off-the-shelf video cameras, the Board can project real-time images to remote viewers of its proceedings and in tandem with the audio broadcasting and recording service be accommodating to Neighbor Island parties and provide real-time remote viewing and participation. This means the parties, and/or their attorneys, may attend Board proceedings without physical attendance and save in personal attendance, travel, and parking expense.

Finally, and most recently, the Board has established a *Zoom* account and protocol for remote hearings to accommodate Neighbor Islanders, at-risk parties, including parties' attorneys, and its Board and staff members.

### **D. Assisting Pro-Bono Litigants**

The Board has nearly completed its two years of work on the Frequently Asked Questions (FAQ) Manual for the Self-Represented Litigant and expects to make it downable and printable in the next fiscal year. The Board Chairperson and Staff Attorney have completed most of the questions and are reviewing the answers for completeness, internal consistency and references to current law and rules. Graphic images and flow charts are also being considered and reviewed. It is intended that the FAQ Manual will incorporate the proposed new HAR rules which are being taken in public hearing in FY22.

#### **E. Improving the Board's Website**

The Board is continually working on updating its Website. The following improvements were made recently.

- Since its inception the Board has rendered over 400 decisions and over 3,000 orders in Chapters 89, and 377, HRS, cases, and over 100 decisions and over 1,000 orders in Chapter 396, HRS, HIOSH cases. The Board has also electronically archived most of the Chapter 89, HRS, Decisions and Orders from 1974 through 2001 and 2012 to the current fiscal year. All of the recently added files and most of the older files are compliant with the Americans with Disabilities Act.
- The HLRB Decision and Orders under Chapters 89 and 377, HRS, are available to the public and all are text searchable. Most *Google* searches will show contents of cataloged pdfs. The list of all Decisions and Orders is current as of May 2022.
- The Board and its staff are working on a topical index for all its Decisions and Orders. This should be a helpful tool for both students, researchers, and practitioners alike, as private subscription services are no longer providing this service.
- The Board continues to examine the use of video to provide instruction and information to the public on the law and proceedings of the Board. Recent use of *Zoom* and other social media platforms may provide means of greater participation and education.

## V. CONCLUSION

The Board is pleased to report that the pre-2016 HRS Chapter 377/89 backlog cases will likely be completed in the next fiscal year. This achievement is accomplished while still maintaining the timely processing of new cases and conducting substantive hearings. Further, the Board continues to ensure the high quality of its decisions for present parties as well as future self-represented litigants and attorney practitioners. Finally, the Board acknowledges the conscientiousness and ingenuity of its staff for navigating the Board through the challenges of the COVID-19 pandemic and for insuring Hawai‘i’s people uninterrupted access to the services of the Hawai‘i Labor Relations Board. The results of their hard work are both self-evident and is recognized in this report.

Respectfully submitted,



*Marcus R. Oshiro*

MARCUS R. OSHIRO, Chair

*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO, Member

*J. N. Musto*

J. N. MUSTO, Member

## APPENDIX 1: Case Backload by Type of Case

### Chapter 89/377 - Backlog Cases (prior to 6/30/15)

Type of Case	Backlog Cases Active at Start of FY21	Backlog Cases Closed FY21	Pending Backlog Cases FY21
<b>Chapter 377</b>			
Unfair Labor Practice Against Union – (CU)	0	0	0
Unfair Labor Practice Against Employer – (CE)	0	0	0
<b>Chapter 89</b>			
Prohibited Practice Against Employer – (CE)	21	10	11
Prohibited Practice Against Union – (CU)	4	0	4
Prohibited Practice Against Employee – (CEE)	0	0	0
Impasse - (I)	0	0	0
Declaratory Ruling - (DR)	1	0	1
Unit Clarification - (RA)	0	0	0
<b>Total 89/377 Cases</b>	<b>26</b>	<b>10</b>	<b>16</b>

**Chapter 89/377 - Old Cases (Opened between 7/1/15 and 6/30/17)**

<b>Type of Case</b>	<b>Old Cases Active at Start of FY21</b>	<b>Old Cases Closed FY21</b>	<b>Pending Old Cases FY21</b>
<b>Chapter 377</b>			
Unfair Labor Practice Against Union – (CU)	<b>0</b>	<b>0</b>	<b>0</b>
Unfair Labor Practice Against Employer – (CE)	<b>12</b>	<b>0</b>	<b>12</b>
<b>Chapter 89</b>			
Prohibited Practice Against Employer – (CE)	<b>46</b>	<b>13</b>	<b>33</b>
Prohibited Practice Against Union – (CU)	<b>23</b>	<b>4</b>	<b>19</b>
Prohibited Practice Against Employee – (CEE)	<b>8</b>	<b>8</b>	
Impasse – (I)	<b>0</b>	<b>0</b>	
Declaratory Ruling – (DR)	<b>0</b>	<b>0</b>	
Unit Clarification – (RA)	<b>1</b>	<b>0</b>	<b>1</b>
<b>Total 89/377 Cases</b>	<b>90</b>	<b>25</b>	<b>65</b>

**Chapter 89/377 - New Cases Opened in FY21**

<b>Type of Case</b>	<b>New Cases Opened FY21</b>	<b>New Cases Closed FY21</b>	<b>Pending New Cases FY21</b>
<b>Chapter 377</b>			
Unfair Labor Practice Against Union - (CU)	0	0	0
Unfair Labor Practice Against Employer - (CE)	0	0	0
<b>Chapter 89</b>			
Prohibited Practice Against Employer - (CE)	17	4	13
Prohibited Practice Against Union - (CU)	2	1	1
Prohibited Practice Against Employee - (CEE)	0	0	0
Impasse - (I)	15	0	15
Declaratory Ruling - (DR)	2	1	1
Unit Clarification - (RA)	2	2	0
<b>Total 89/377 Cases</b>	<b>38</b>	<b>8</b>	<b>30</b>



**Chapter 396 (HIOSH) - Old Cases (opened prior to FY21)**

Type of Case	Old Cases FY21	Old Cases Closed FY21	Pending Old Cases FY21
<b>Chapter 396</b>			
<b>Contested Cases</b>	6	0	6
<b>Discrimination</b>	2	0	2
<b>Total 396 (HIOSH) Cases</b>	8	0	8

**Chapter 396 (HIOSH) - New Cases Opened in FY 21**

Type of Case	New Cases Opened FY21	New Cases Closed FY21	Pending New Cases FY21
<b>Chapter 396 (HIOSH)</b>			
<b>Contested Citation</b>	13	8	5
<b>Discrimination</b>	7	5	2
<b>Total 396 (HIOSH Cases)</b>	20	13	7

## APPENDIX 2: Prohibited Practice Complaints By Employers as Complainant or Respondent

The Board has begun observing and listing the Employers who are named as either a Complainant or Respondent in the Chapter 89/377 cases. This includes both State and county departments, agencies, and government corporations.

*Employer Named As Complainant or Respondent in Chapter 89 and 377, HRS, Cases by Fiscal Year*

	FY18	FY19	FY20	FY21
Honolulu Board of Water Supply	0	0	1	0
County of Hawai‘i Fire Department	0	2	0	0
City and County of Honolulu	1	0	0	0
County of Kaua‘i	0	0	3	0
Dept. of Accounting and General Services	0	9 <sup>14</sup>	0	0
Dept. of Agriculture	0	0	1	0
Dept. of Education	3	2	14 <sup>15</sup>	10 <sup>16</sup>
Dept. of Environmental Services	0	0	4	2
Dept. of Health	2	0	1	4
Dept. of Human Resources Development	0	1	1	0
Dept. of Labor and Industrial Relations	0	0	1	0
Dept. of Land and Natural Resources	0	1	0	0
Dept. of Public Safety	7	2	4	0
Dept. of Parks & Recreation	0	0	0	1
Dept. of Taxation	4	0	0	0
Dept. of Transportation	3	0	0	0
Hawai‘i Health Systems Corporation	0	0	5	1
Hawai‘i State Hospital	0	0	3	0
Honolulu Police Dept.	2	2	0	0
Kaua‘i Police Dept.	0	1	0	0
Maui Police Dept.	0	0	3	0
The State Judiciary	0	0	0	1
Ocean Safety and Lifeguard Services Division	0	0	0	2
University of Hawai‘i	6	17 <sup>17</sup>	0	1
N/A <sup>18</sup>	4	13	4	18
Multiple Departments <sup>19</sup>	3	5	0	0
	35	55	45	40

<sup>14</sup> At first, one might think that nine cases were lodged against the State of Hawai Department of Budget and Finance, and that would be true, but practically speaking, because HGEA represents, at that time, eight (8) bargaining units, 02, 03, 04, 06, 08, 09, and 13, and each were alleging a violation of Chapter 89, you end up with eight separate cases. (*HGEA v. Governor David Ige, Comptroller*, Case No. 18-CE-02-920a, 18-CE-03-920b, 18-CE-04-920c, 18-CE-06-920d, 18-CE-08-920e, 18-CE-09-92f, 18-CE-13-920g, and 18-CE-14-920h. The other complaint, which raised similar allegations of violations of Chapter 89, were brought by the UHPA represents bargaining unit 07. (*UHPA v. Governor David Ige, Comptroller*, Case No. 18-CE-07-919). Again, since each bargaining unit constitutes a separate complainant, the Board counts each as a separate case. Interestingly, this was the first case brought to the HLRB arising from the United States Supreme Court decision in *Janus v. AFSCME*.

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(USSC, June 27, 2018), regarding union dues and payroll issues but since the parties were able to resolve the matters on their own, the Board made no rulings and both cases were closed.

<sup>15</sup> Although in FY 2020, 14 cases were filed against the Department of Education, six of these cases arise out of a complaint regarding members of HGEA's bargaining units, 02, 03, 04, 06, 09, and 13, (HGEA v. Kishimoto, 20-CE-02-947a-947f). Accordingly, the Board counts each as a separate case. The Board held a hearing on the motion to dismiss and filed its Decision and Order dismissing the complaint in its entirety and closing the case. The remaining eight cases are comprised of complaints brought by the various unions and employees, and most have closed. One of the cases is on appeal at the First Circuit Court of Hawai'i, and another is proceeding to a Hearing on the Merits on a complaint brought against both the DOE and Union.

<sup>16</sup> Although in FY 2021, 10 cases were filed against the Department of Education, six of these cases arise out of a complaint regarding members of HGEA's bargaining units, 02, 03, 04, 06, 09, and 13, (HGEA v. Governor David Ige, Kishimoto, and Board of Education, 20-CE-02-955a-955f). One of the issues in this case arose from a press conference by the Governor stating that due to COVID-19 negative economic impacts, the State may have to furlough state employees. The Governor subsequently announced that he would delay the implementation of the furlough and the parties requested that the case be stayed by the Board. The Board waited five months to hear from the parties and hearing none and receiving no objection, dismissed and closed the case. The other four cases are comprised of complaints brought by several unions and a Self-Represented Litigant. All of the cases were dismissed and closed.

<sup>17</sup> Although in FY 2019, 17 cases were filed against the University of Hawai'i, 16 of the cases arose from one set of facts involving 8 employee complainants against two (2) respondents; the University of Hawaii and the HGEA. As explained previously, each individual complainant in a multi-party or multi-respondent proceeding is counted as one case apiece. In the Matter of Lenora L. Asato, Jennifer E. Halaszyn, Jeff Ibara, Yoshiaki Inuma, Charles Luk. Joy Magarifuji, Siiri Aileen Wilson, and Gang Yuan v. HGEA and University of Hawai'i, 18-CU-08-365a-h, and 18-CE-08-921a-h, the Board held 13 days of hearings on the merits, received several motions, accepted post-hearing briefs and is proceeding to issue its decision and order. The one other case involved a complaint against the University of Hawaii Board of Regents, and after a hearing on a motion to dismiss, which was granted, the case was dismissed and case closed.

<sup>18</sup> Most of these are "Impasse Cases", FY 2019 and FY 2021, that arise when neither party gives written notice of an impasse and there are unresolved issues on January 31, of a year in which the collective bargaining agreement is due to expire and the Board pursuant to HRS 89-11, declares Impasse and sets the date of impasse and usually arise in an odd-number year. These impasse cases can also arise when one of the parties informs the Board of the impasse in writing and seeks a declaration of impasse. The Board's impasse order sets into action a statutory timeline and process for the parties to follow to resolve the impasse among themselves or seek HLRB or Judicial intervention. Over the past several years, the parties have entered into and used their Alternate Impasse Procedures with mutually favorable results. The other type of cases listed here are those that involve an Employee who only brings a complaint against the Exclusive Representative and not the Employer.

<sup>19</sup> For Fiscal Year 2018, there were a total of three cases with multiple departments involved. Two cases involved the Civil Service Commission and the Honolulu Police Department. One case involved the Board of Water Supply and the Department of Human Resources Development. For Fiscal Year 2019, there were a total of five cases with multiple departments involved. Four cases involved the Department of Human Resources Development and the Department of Taxation. One case dealt with the Department of Environmental Services, the Department of Facility Maintenance, the Department of Human Resources Development and the City and County of Honolulu.

### APPENDIX 3: Significant Decisions and Orders

Listed below are short summaries of the Board's FY 21 Chapter 89/377 Decisions and Orders of significance. They may be instructive to the attorney practitioner, self-represented litigant, employers, employees, and unions. They may also be of interest to the state and county legislative bodies, the Legislative Reference Bureau, the University of Hawai'i, the Hawai'i State Public Library System, and the general public. All of the Board's Decisions and Orders can be found at [www.labor.hawaii.gov/hlrp/](http://www.labor.hawaii.gov/hlrp/)<sup>22</sup>

#### **HSIAO V. HGEA || CASE NO. 20-CU-08-383 (PPC)**

DECISION NO. 498 || ISSUED OCTOBER 14, 2020

##### **Granting Respondent's Motion for Directed Verdict**

The Complaint contains sufficient facts to support a claim. Complainant failed to exhaust contractual remedies necessary to sustain an HRS § 89-13(a)(8) claim. The alleged breach of the duty of fair representation was dependent on the alleged HRS § 89-13(a)(8) violation under Poe v. HLRB, 105 Hawai'i 97, 94 P.3d 652 (2004). The Board did not consider whether HGEA breached the duty of fair representation. HGEA did not commit prohibited practices in violation of HRS § 89-13(b)(1) or (b)(5).

#### **SANTANA V. UPW || CASE NO. 20-CU-01-385 (PPC)**

DECISION NO. 499 || ISSUED DECEMBER 31, 2020

##### **Dismissing for Lack of Jurisdiction (Timeliness)**

The Complaint was not filed within 90 days of when Complainant knew or should have known about the action that gave rise to the alleged prohibited practice, as required by HRS § 377-9. The Board, *sua sponte*, dismissed the case for lack of jurisdiction, based on the claim's untimeliness.

#### **IN RE: HGEA || CASE NO. 20-RA-14-245A; 20-RA-15-245B (UNIT CERTIFICATION)**

DECISION NO. 500 || ISSUED JANUARY 7, 2021

##### **Certifying Bargaining Unit 15, HGEA as Exclusive Representative**

Based on HRS § 89-7(c), HGEA's representations, and no parties intervening in the case, the Board certified HGEA as the exclusive representative for BU 15, certified BU 15 as consisting of particular class specifications, and transferred all positions within those class specifications from BU 14 to BU 15.

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<sup>22</sup> These 18 Decisions or Orders are only a small handful that are drafted and filed each year. For FY 21, there were 157 Chapter 89/377 Orders drafted and filed and 17 Chapter 89/377 Decisions drafted and filed.

**PANGANIBAN V. JUDICIARY || CASE NO. 21-CE-03-957 (PPC)**

DECISION NO. 501 || ISSUED FEBRUARY 3, 2021

**Dismissing for Lack of Jurisdiction (Timeliness)**

The Complaint was not filed within 90 days of when Complainant knew or should have known about the action that gave rise to the alleged prohibited practice, as required by HRS § 377-9. The Board, *sua sponte*, dismissed the case for lack of jurisdiction, based on the claim's untimeliness.

**PARKER V. UPW AND PSD || CASE NOS. 18-CU-10-370, 19-CE-10-923 (PPC)**

DECISION NO. 502 || ISSUED MARCH 23, 2021

**Decision**

Complainant did not show UPW breached the duty of fair representation arbitrarily, discriminatorily, or in bad faith. The Board had jurisdiction to consider the allegations in the Third Amended Complaint, and the Third Amended Complaint contains sufficient facts to support a claim. PSD committed prohibited practices by violating HRS § 89-13(a)(1) and HRS § 89-3, thereby violating HRS § 89-13(a)(7).

**HFFA V. BLANGIARDI, ET AL. || CASE NOS. 14-CE-11-845; 16-CE-11-887**

ORDER NO. 3730 || ISSUED APRIL 5, 2021

**Granting, in Part, Denying, in Part, Motion for Attorney's Fees and Costs**

HFFA, as the prevailing party in both cases, was entitled to attorney's fees for all hours reasonably and necessarily incurred. Fees must be reduced for clerical tasks and when the Board cannot determine the reasonableness of the hours.

**SALERA V. KAHIKINA || CASE NO. 20-CE-10-952 (PPC)**

ORDER NO. 3732 || ISSUED APRIL 7, 2021

**Granting, in Part, and Denying, in Part, Motion to Amend**

When a Respondent is named in their official capacity, it is the office, not the individual, who is the proper Respondent. Accordingly, the Board will reference whoever is presently in the office for the purpose of naming the Respondent.

**HGEA V. KISHIMOTO || CASE NOS. 20-CE-02-947A-F (PPC)**

DECISION NO. 503 || ISSUED APRIL 9, 2021

**Dismissing for Lack of Standing (Speculative Injury)**

HGEA did not allege an actual or threatened injury. Without an actual or threatened injury, HGEA did not have standing to bring the Complaint.

**HGEA V. HAWAI'I STATE HOSPITAL || CASE NOS. 21-CE-03-958A-C (PPC)**

ORDER NO. 3736 || ISSUED APRIL 20, 2021

**Dismissing Based on Parties' Agreement of No Issues to be Decided**

The parties entered into a stipulation and agreed that there were no further issues to be

determined. Neither party prevailed.

**ASATO V. HGEA AND DOE || CASE NOS. 19-CU-03-375, 19-CE-03-934 (PPC)**

DECISION NO. 504 || ISSUED MAY 5, 2021

**Granting Respondent HGEA's Motion for Directed Verdict**

Complainant did not prove HGEA breached the duty of fair representation arbitrarily, discriminatorily, or in bad faith. The HRS § 89-13(a)(8) claim was dependent on the alleged breach of the duty of fair representation under Poe v. HLRB, 105 Hawai'i 97, 94 P.3d 652 (2004). The Board did not consider whether DOE violated HRS § 89-13(a)(8).

**UPW V. KISHIMOTO, ET AL. || CASE NO. CE-01-539 (PPC, REMANDED)**

ORDER NO. 3741 || ISSUED MAY 10, 2021

**Granting, in Part, Denying, in Part, Motion for Remedy and Attorney's Fees and Costs**

Employee was entitled to lost wages, vacation, and sick leave, reduced by mitigation, along with interest. UPW was entitled to attorney's fees for all hours reasonably and necessarily incurred. Fees must be substantiated with evidence. The Board may reduce fees where block-billing increases the difficulty in determining the reasonableness of hours and may be excluded where the Board cannot distinguish between compensable and non-compensable tasks. The Board must reduce fees for clerical tasks.

**KUSUMOTO V. HGEA AND DOE || CASE NOS. 20-CU-06-379, 20-CE-06-940 (PPC)**

ORDER NO. 3745 || ISSUED MAY 14, 2021

**Bifurcating Case and Denying Application for Discovery**

A "hybrid case" requires proving both a breach of the duty of fair representation and a wilful violation of the CBA. The Board may bifurcate a case to hear one prong separate from the other if necessary and proper. The Board does not generally permit discovery in the manner prescribed by the HRCPP, and will not permit such discovery without good cause.

**UPW AND PSD || CASE NO. 20-DR-10-116**

ORDER NO. 3752 || ISSUED MAY 26, 2021

**Declining to Issue a Declaratory Ruling**

Under HAR § 12-42-9, parties are not entitled to hearings without properly requesting one. Declaratory rulings do not order parties to take actions; they are strictly for determining whether and in what way a statute, agency rule, or order, applies to the factual situation raised by an interested person. Citizens Against Reckless Dev. v. Zoning Bd. of Appeals, 114 Hawai'i 184, 159 P.3d 143. The Board may decline to issue a declaratory ruling where the question is so broad as to be speculative or hypothetical. The Board lacks jurisdiction to issue declaratory rulings regarding CBA or MOU provisions. Procedures and criteria on disciplinary actions is a permissive, not mandatory subject of

bargaining.

**SALERA V. YOKOYAMA || CASE NO. 20-CE-10-952 (PPC)**

ORDER NO. 3754 || ISSUED JUNE 1, 2021

**Dismissing Counts VI and VII for Lack of Jurisdiction**

The Board does not have jurisdiction over alleged violations of the Hawai‘i Whistleblower Protection Act or over constitutional claims. Constitutional analyses are unnecessary for the Board to decide statutory issues.

**UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY || CASE No. 21-DR-07-117**

ORDER NO. 3764 || ISSUED JUNE 10, 2021

**Refusing to Issue a Declaratory Ruling**

The Legislature is not a public employer or employee and, thus, cannot commit prohibited practices. *See* HRS §§ 89-2, 89-13. The Board does not have jurisdiction over constitutional questions. Questions challenging legislative actions are not within the Board’s jurisdiction because, among other things, the Board does not have the authority to require the Legislature to take any actions. The Board does not rule on political questions.

**SIU V. HGEA || CASE NO. CU-04-291**

DECISION NO. 505 || ISSUED JUNE 14, 2021

**Decision**

Unions cannot commit prohibited practices under HRS § 89-13(a). Employees do not have standing to bring HRS § 89-13(b)(2) or (a)(5) claims. HRS § 89-13(a)(7) claims require an alleged violation of an HRS Chapter 89 provision outside of HRS § 89-13. HRS § 89-13(b)(4) claims can stand alone as allegations of the breach of the duty of fair representation. The alleged breach of the duty of fair representation was dependent on the alleged Employer CBA violation under *Poe v. HLRB*, 105 Hawai‘i 97, 94 P.3d 652 (2004), which Complainant did not prove. The Board did not consider whether HGEA breached the duty of fair representation. The Board will not order employees to pay union attorney’s fees and costs.

**HGEA V. KAWAKAMI || CASE NOS. CU-05-303**

DECISION NO. 506 || ISSUED JUNE 23, 2021

**Decision**

The Board has jurisdiction over HRS Chapter 89 and does not have jurisdiction over constitutional issues or HRS Chapter 127A. The Board takes no position on the effects of an emergency proclamation issued under HRS Chapter 127A. The Board has the discretion to bifurcate proceedings. Allegations of a prohibited practice under HRS § 89-13(a)(8) must exhaust all administrative remedies before the Board has jurisdiction over the allegations.

HRS § 89-1 is a statement of legislative intent and purpose and cannot be used to claim a prohibited practice. HRS § 89-9(c) requires that employers consult with the unions whether the subject of consultation is a mandatory or permissive subject of bargaining, and the “management right” exclusions do not alter the consultation requirements. There is no statutory requirement for a “formal consultation”. Employers must consult on the proposed practices and policies in reasonable completeness and detail and do not have to consult over every draft of such practices and policies. The Employer acted in good faith and adequately consulted with the Union, with the consultation ending before the implementation of the proposed change. The Union did not demand negotiations over the proposed change in accordance with HRS § 89-9(b); therefore, the Employer had no obligation to negotiate with the Union.

**Dissent by Member J N. Musto**

The Employer had a duty to consult with the Union over the proposed change. The Employer did not consult with the Union over the final draft of the proposed change. No formal consultation was concluded. Therefore, the Employer did not adequately consult with the Union and violated HRS § 89-9(c).

**YANG AND DEP’T. OF HEALTH || CASE NO. DR-13-102 (DR)**

ORDER NO. 3772 || ISSUED JUNE 30, 2021

**Refusing to Issue a Declaratory Ruling**

The DR Petition and the Prohibited Practice Complaint in Board Case No. CE-13-788 contain the same allegations and request for remedies; therefore, the DR Petition runs afoul of HAR § 12-42-42(f), which specifies that only one complaint may issue against a party with respect to a single controversy. The Board may also decline to issue declaratory rulings if the issuance of such an order could adversely affect the Board’s interests in litigation that is pending or is reasonably expected, such as in this case where the Board is party to the appeal from Board Case No. CE-13-788.



## APPENDIX 4: Cases on Appeal

Listed below are Board Decisions and Cases on Appeal at various State courts. The **bold** case captions described the heard by the HLRB and these decision and orders can be found at [www.labor.hawaii.gov/hlrb/](http://www.labor.hawaii.gov/hlrb/) , Board Decisions and Orders. The *Italicized* captions are cases on appeal or filed with the circuit court and can be found through the Judiciary's eCourt Kokua at <https://www.courts.state.hi.us>.

	HLRB Case Name / Appeal Case Name	Complaint Filed	Case #	Appeal Filed Date	Civil Appeal #
1.	<b>Academic Labor United v. Board of Regents, et al.</b> <sup>23</sup> <i>Academic Labor United, an unincorporated association, Ashley Hi'ilani Sanchez, Kawena'ulaokala Kapahua, and Cameron Grimm v. Board of Regents of the University of Hawai'i, Hawai'i Labor Relations Board, and State of Hawai'i</i>	5/1/2021	N/A	5/1/2021	CAAP-22-0000029  1CCV-21-000059
2.	<b>Hsiao v. HGEA</b> <i>Ya-Wen Hsiao v. Hawai'i Labor Relations Board</i>	5/7/2020	20-CU-08-383	11/18/2020	1CCV-20-0001696
3.	<b>Asato v. HGEA and Department of Education, State of Hawai'i</b> <i>Valerie Asato v. HGEA and DOE</i>	10/4/2019	19-CU-03-375, 19-CE-03-934	6/4/2021	1CCV-21-0000736
4.	<b>Henkels &amp; McCoy Inc. v. DLIR and Wendell Keith Olive, Jr.</b> <i>Henkels &amp; McCoy, Inc. v. HLRB and Wendell Keith Olive, Jr.</i>	3/19/2019	OSH 2019-05	5/19/2021	1CCV-21-0000654
5.	<b>Elaban v. SOH, DOT, and UPW</b> <i>Catherine Elaban v. Department of Transportation, State of Hawai'i, and UPW</i>	5/19/2017	17-CE-01-897, 17-CU-01-351	3/29/2018	CAAP-18-0000254  1CCV-17-1-1420-08
6.	<b>HFFA v. KIRK CALDWELL, Mayor, City and County of Honolulu; MANUEL P. NEVES, Fire Chief, Honolulu Fire Department, City and County of Honolulu; HONOLULU FIRE DEPARTMENT, City and County of Honolulu; and CITY AND COUNTY OF HONOLULU</b>  <b>HFFA v. KIRK CALDWELL, Mayor, City and County of Honolulu; MANUEL P. NEVES, Fire Chief, Honolulu Fire Department, City and County of Honolulu; HONOLULU FIRE DEPARTMENT, City and County of Honolulu; and CITY AND COUNTY OF HONOLULU</b>  <b>CONSOLIDATED</b>  <i>KIRK CALDWELL, Mayor, City and County of Honolulu; MANUEL P. NEVES, Fire Chief, City and County of Honolulu; Honolulu Fire</i>	11/14/2016	14-CE-11-845, 16-CE-11-887	7/9/2018	CAAP-21-0000365  1CCV-18-1-1088-07 (Remanded 11/6/20)  1CCV-20-0001454 (Affirmed 5/11/21)  1CCV-21-0000579

<sup>23</sup> This is not an appeal from a Board's decision but listed here for the convenience of the reader. The Board is a Defendant in Academic Labor United v. Board of Regents of the University of Hawai'i, Hawai'i Labor Relations Board, and State of Hawai'i, 1CCV-21-0000559, complaint for Declaratory Judgment, filed May 1, 2021.

	<b>HLRB Case Name / Appeal Case Name</b>	<b>Complaint Filed</b>	<b>Case #</b>	<b>Appeal Filed Date</b>	<b>Civil Appeal #</b>
	<i>Department, City and County of Honolulu; HONOLULU FIRE DEPARTMENT, City and County of Honolulu; and CITY AND COUNTY OF HONOLULU v. HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO, and HAWAI'I LABOR RELATIONS BOARD; MARCUS R. OSHIRO, SESNITA A.D. MOEPONO, and J N. MUSTO</i>				
<b>7.</b>	<b>Paio et al. v. UPW; Wheelless v. UPW CONSOLIDATED</b>  <i>UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. HAWAI'I LABOR RELATIONS BOARD; MARCUS R. OSHIRO; SESNITA A.D. MOEPONO; J N. MUSTO; [Agency-Appellees, and] STACY K. PAIO[:]; DAYTON YOSHIDA[:] ERNEST SUGUITAN[:]; SAMUEL KAEQ[:] DONNELL ADAMS[:]; LONNIE A. MERRITT[:] MITSUO NAKAMOTO[:]; ARDEN D. COSTALES[:] WALLACE KAHAPAEA[:]; EMOSI MANAIA SEVAO[:]; AND FERN KATHRYN WHEELLESS</i>	<b>10/12/2016</b>	<b>16-CU-10- 344, 16-CU-10- 345</b>	3/20/2020	1CCV-20- 0000458
<b>8.</b>	<b>UPW v. Hawai'i Health Systems Corporation</b>  <i>UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO v. LINDA ROSEN, M.D., M.P.H., CEO, Hawai'i Health Systems Corporation and HAWAI'I LABOR RELATIONS BOARD; SESNITA A.D. MOEPONO; and J N. MUSTO</i>	<b>7/26/2016</b>	<b>16-CE-01- 883a &amp; b</b>	11/25/2016	CAAP- 17- 0000067  1CCV-16-1- 2153-11 1CCV-16-1- 2163-11 1CCV-17-1- 1525-09
<b>9.</b>	<b>UPW v. County of Maui, Alan Arakawa &amp; Thomas Kolbe</b>  <i>UPW v. COUNTY OF MAUI; ALAN ARAKAWA, Mayor, County of Maui; and THOMAS KOLBE, Deputy Corporation Counsel, Office of the Corporation Counsel, County of Maui, and HAWAI'I LABOR RELATIONS BOARD; KERRY KOMATSUBARA; SESNITA A.D. MOEPONO; and J N. MUSTO</i>	<b>7/25/2016</b>	<b>16-CE-01- 882</b>	10/18/2016	CAAP- 17- 0000560  1CCV-16-1- 1952-10
<b>10.</b>	<b>HFFA v. Kirk Caldwell and Manuel P. Neves, et al.</b>  <i>HFFA v. Caldwell</i>	<b>3/30/2016</b>	<b>16-CE-11- 879</b>	7/20/2016	SCWC-17- 0000827  CAAP- 17- 0000827  1CCV-16-1- 1390-07

	HLRB Case Name / Appeal Case Name	Complaint Filed	Case #	Appeal Filed Date	Civil Appeal #
11.	<b>SHOPO v. Bernard Carvalho, Jr. Mayor of Kauai; et al</b>  <i>STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO), and</i>  <i>HAWAI'I LABOR RELATIONS BOARD; SESNITA A.D. MOEPONO; and J N. MUSTO, and</i>  <i>BERNARD P. CARVALHO, JR., Mayor of the County of Kaua'i, State of Hawai'i; DARRYL D. PERRY, Chief of Police of the Kaua'i Police Department; and COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i</i>	1/11/2016	CE-12-875	7/1/2016	CAAP- 17-0000375  1CCV-16-1-1259-07
12.	<b>Makino v. County of Hawaii &amp; UPW</b>  <i>NATHAN MAKINO v. COUNTY OF HAWAI'I; UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO; and HAWAI'I LABOR RELATIONS BOARD, STATE OF HAWAI'I</i>	4/20/2015	CE-01-856 CU-0 1-332	11/17/2017	CAAP- 18-0000782  1CCV-17-1-0368
13.	<b>Yang v. Loretta J. Fuddy, DOH</b>  <i>HENRY H. YANG, M.D., v. BRUCE ANDERSON, Ph.D., Director, Department of Health, State of Hawai'i; HAWAI'I LABOR RELATIONS BOARD</i>	11/25/2011	CE-13-788	7/31/2019	1CCV-19-1-0208
14.	<b>The Educational Laboratory: A Hawaii New Century Public Charter School ("ULS") Local School Board ("LSB") v. HSTA</b>  <i>HAWAI'I STATE TEACHERS ASSOCIATION, and</i>  <i>THE EDUCATIONAL LABORATORY: A HAWAI'I NEW CENTURY PUBLIC CHARTER SCHOOL ("ULS") LOCAL SCHOOL BOARD ("LSB"), and</i>  <i>HAWAI'I LABOR RELATIONS BOARD; KERRY M. KOMATSUBARA; SESNITA A.D. MOEPONO; AND ROCK B. LEY</i>	4/28/2011	CU-05-305	4/17/2014	CAAP- 15-0000166  1CCV-14-1-0967
15.	<b>Stucky v. Wilfred Okabe, Wilbert Holck, Eric Nagamine, David Forrest, HSTA</b>  <i>STEPHANIE C. STUCKY v. WILFRED OKABE, President, Hawaii State Teachers Association; WILBERT HOLCK, UniServ, Hawaii State Teachers Association; ERIN NAGAMINE, Maui UniServ, Hawaii State Teachers Association; DAVID FORREST, O'ahu Uniserv, Hawaii State Teachers Association; and HAWAII STATE TEACHERS ASSOCIATION, and HAWAI'I LABOR RELATIONS BOARD</i>	4/7/2011	CU-05-303	7/30/2021	2CCV-21-0000228

	<b>HLRB Case Name / Appeal Case Name</b>	<b>Complaint Filed</b>	<b>Case #</b>	<b>Appeal Filed Date</b>	<b>Civil Appeal #</b>
<b>16.</b>	<b>HSTA v. BOE, Patricia Hamamoto &amp; Susan H. Kitsu</b>  <i>HSTA v. BOE &amp; HLRB</i>	<b>5/27/2008</b>	<b>CE-05-667</b>	10/7/2016	CAAP- 18-0000605  1CCV-16-1-1878-10
<b>17.</b>	<b>UPW v. Kishimoto; and Connections, A New Century Public Charter School</b>  <i>UNITED PUBLIC WORKERS, AFSCME, v. PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawai'i; and CONNECTIONS, A New Century Public Charter School, and HAWAI'I LABOR RELATIONS BOARD; SESNITA A.D. MOEPONO; and J. N. MUSTO (2003-027)</i>	<b>8/18/2003</b>	<b>CE-01-539</b>	9/14/2017	SCAP-18-0000732  CAAP-18-0000732  1CCV-07-1-314

These seventeen (17) cases are at various stages of the appellate process and the oldest was filed on April 17, 2014, and the newest was filed on November 18, 2020.

## APPENDIX 5: OPEN HRS 377/89 CASES

Date Filed	Case Number(s)	Case Name	Status
3/12/2008	CE-05-661	HSTA v. Hamamoto, BOE, Lingle & Laderta	OPEN
6/6/2008	CU-05-265	Hamamoto, BOE, Lingle & Laderta v. HSTA	OPEN
11/13/2009	CE-10-737, CU-10-284	Taum et al. v. DHRD & UPW <sup>24</sup>	OPEN
10/2/2017	17-CE-10-900	Pinkney v. PSD & UPW	OPEN
12/20/2017	17-CU-10-357, 17-CE-10-906	Taum v. UPW & PSD	OPEN
6/12/2018	18-CE-07-917, 18-CU-07-362	Campos v. UHPA & UH	OPEN
9/14/2018	18-CE-08-365-a-h	Asato, et al v. HGEA & UH <sup>25</sup>	OPEN
4/17/2019	19-CE-03-925, 19-CU-03-371	Guzman v. HPD & HGEA	OPEN
5/7/2019	19-CE-03-928	HGEA v. Kanuikapono Charter School	OPEN
6/19/2019	19-CE-11-930, 19-CU-11-373	Keopuhiwa v. Hawai'i FD & HFFA	OPEN
7/1/2019	19-CU-07-374	Campos v. UHPA	OPEN
1/13/2020	20-CE-10-938	Pili v. PSD & Espinda	OPEN
2/7/2020	20-CE-06-940, 20-CU-06-379	Kusumoto v. HGEA & Kishimoto	OPEN
4/9/2020	20-CU-10-381, 20-CE-10-943, 20-CU-10-382	Leslie, et al v. UPW & PSD <sup>26</sup>	OPEN
6/22/2020	20-CE-06-949	HGEA v. DOE & Kishimoto	OPEN
11/2/2020	20-CE-01-952	Salera v. Kahikina/Yokoyama	OPEN

<sup>24</sup> In cases CE-10-737 and CU-10-284, the Complainants are Jonathan Taum; Chad Ross; Carl L. Kahawai; Quincy G.K. Pacheco; Bradford J. Leialoha; and Julieann L. Salas,

<sup>25</sup> In case 18-CE-08-365-a-h, the Complainants are Leonora L. Asato, Jennifer E. Halaszyn, Jeff Ibara, Yoshiaki Iinuma, Charles Luk. Joy Magarifuji, Siri Aileen Wilson, and Gang Yuan.

<sup>26</sup> In Case No. 20-CU-10-381, the Complainants are Gordon Leslie, Bernard Kuamoo, George Sheridan, Deangelo Dixon, and Felicianyyo Samson v. UPW;

In Case No. 20-CE-10-943, the Complainants are Gordon Leslie; James Akau; Marc S. Amerino; Anthony Baysa; Daniel J. Bryant; Levi Christenson; Michael Costa; Neemia Feagai; Lee Fields, Jr.; William T.K. Greig; William S. Gonsalves; Henry C. Hope; Sheen H. Ikegami; Cranston M. Kamaka, Jr.; Austin R. Keanu; Bernard Kuamoo, Jr.; John P. Lalotoa; Wyatt G. Lee; Alton Lorico, Jr.; Raymond R. Lyman, Sr.; Raymond A. Maae; Chad K. Mahuka; Gary D. Mendonca; David Murray; Dale U. Newcomb; Potumoe Olomua; Robert L. Prado; Steven Preza; Adrian P. Salas; Feliciano Samson; Fiafia S. Sataraka; Iafeta Save; Deborah Segich; George Sheridan, III; Kenneth Siilata; Michael Taamilo; William Taamu-Perifanos; Jared Tajon; Thomas Taum; Maria Elena Y.L.W. Tom; Pilipo Tuitama; Edward F. Vaovasa; Bradley Wakuta; Mark M. Watanabe; and Lance F.P. Wong

Case No. 20-CU-10-382. the Complainants are Gordon Leslie; James Akau; Marc S. Amerino; Anthony Baysa; Daniel J. Bryant; Levi Christenson; Michael Costa; Neemia Feagai; Lee Fields, Jr.; William T.K. Greig; William S. Gonsalves; Henry C. Hope; Sheen H. Ikegami; Cranston M. Kamaka, Jr.; Austin R. Keanu; Bernard Kuamoo, Jr.; John P. Lalotoa; Wyatt G. Lee; Alton Lorico, Jr.; Raymond R. Lyman, Sr.; Raymond A. Maae; Chad K. Mahuka; Gary D. Mendonca; David Murray; Dale U. Newcomb; Potumoe Olomua; Robert L. Prado; Steven Preza; Adrian P. Salas; Feliciano Samson; Fiafia S. Sataraka; Iafeta Save; Deborah Segich; George Sheridan, III; Kenneth Siilata; Michael Taamilo; William Taamu- Perifanos; Jared Tajon; Thomas Taum; Maria Elena Y.L.W. Tom; Pilipo Tuitama; Edward F. Vaovasa; Bradley Wakuta; Mark M. Watanabe; and Lance F.P. Wong

## **APPENDIX 6: PUBLICATIONS**

HLRB Informational Bulletin: This annual bulletin issued by the Hawai‘i Labor Relations Board provides by employing jurisdictions, the number of public employees included in each of the 14 collective bargaining units established by Hawai‘i Revised Statutes § 89-6(a). The bulletin is published in the Spring and posted on the Board’s Website in the Find a Report section.

Website: Rules, forms, bulletins, recent decisions of the Board, and the Board’s List of Arbitrators with their resumes and fees are posted on the Hawai‘i Labor Relations Board section of the DLIR website at [www.hawaii.gov/labor](http://www.hawaii.gov/labor).

## APPENDIX 7: HLRB INFORMATIONAL BULLETIN NO. 59

**DAVID Y. IGE**  
GOVERNOR

**JOSH GREEN**  
LIEUTENANT GOVERNOR

**ANNE PERREIRA-EUSTAQUIO**  
DIRECTOR, DLIR

**JOANN A. VIDINHAR**  
DEPUTY DIRECTOR, DLIR



**MARCUS R. OSHIRO**  
BOARD CHAIR

**SESNITA A.D. MOEPONO**  
BOARD MEMBER

**J N. MUSTO, Ph. D**  
BOARD MEMBER

**STATE OF HAWAII**  
**HAWAII LABOR RELATIONS BOARD**  
830 PUNCHBOWL STREET, ROOM 434  
HONOLULU, HAWAII 96813  
Phone (808) 586-8610 / FAX (808) 586-8613  
Email: [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov)

February 26, 2021

### HLRB INFORMATIONAL BULLETIN NO. 59

This is the forty-seventh annual informational bulletin issued by the Hawaii Labor Relations Board providing, by employing jurisdictions, the number of public employees included in each of the 14 collective bargaining units established by Hawaii Revised Statutes § 89-6(a). The figures reported are provided by each employing jurisdiction and are correct as of December 31, 2020.

The 14 collective bargaining units are:

- 1 Nonsupervisory employees in blue collar positions;
- 2 Supervisor employees in blue collar positions;
- 3 Nonsupervisory employees in white collar positions;
- 4 Supervisory employees in white collar positions;
- 5 Teachers and other personnel of the department of education under the same salary schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
- 6 Educational officers and other personnel of the department of education under the same schedule;
- 7 Faculty of the University of Hawaii and the community college system;
- 8 Personnel of the University of Hawaii and the community college system, other than faculty;
- 9 Registered professional nurses;
- 10 Institutional, health, and correctional workers;
- 11 Firefighters;
- 12 Police Officers; and
- 13 Professional and scientific employees, who cannot be included in any of the other bargaining units;
- 14 State law enforcement officers and state and county ocean safety and water safety officers

Equal Opportunity Employer/Program  
Auxiliary aids and services are available upon request to individuals with disabilities.  
TDD/TTY Dial 711 then ask for (808) 586-8866



## NUMBER OF EMPLOYEES

The following figures indicate the number of employees who are included in the respective bargaining units by employing jurisdictions.

Unit	State of Hawaii	C&C	County of Hawaii	County of Maui	County of Kauai	Dept. of Education	Judiciary	UH	HHSC	TOTAL
01	1,848	1,899	583	603	375	2,221	105	497	348	8,479
02	176	205	52	42	13	246	1	12	18	765
03	3,284	1,446	585	510	207	4,541	724	533	380	12,210
04	208	128	37	30	13	249	53	39	16	773
05	0	0	0	0	0	12,966	0	0	0	12,966
06	0	0	0	0	0	962	0	0	0	962
07	0	0	0	0	0	0	0	3,507	0	3,507
08	0	0	0	0	0	0	0	2,365	0	2,365
09	382	0	0	0	0	2	4	7	770	1,165
10	1,438	242	0	0	0	34	52	2	615	2,383
11	190	1,008	352	286	128	0	0	0	0	1,964
12	0	1,884	415	310	145	0	0	0	0	2,754
13	4,427	1,110	314	295	145	1,012	540	0	281	8,124
14	390	202	56	55	52	0	0	0	0	755
TOTAL	12,343	8,124	2,394	2,131	1,078	22,233	1,479	6,962	2,428	59,172

The Charter Schools Administrative Office has submitted bargaining unit information to the Board and the information is included on page 3 of his bulletin.



UNIT	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	TOTAL
01	4			8			2	6	9	1						8	2		1	8	3	1	7				3	1				5	5	1		2	80	
02				1					1								1			1																	9	
03	13	5	8	44	24	1	11	21	39	6	21	8	6	8	2	17	3	29	12	16	13		12	17	11	12	8	3	7	13	6	10	10	6		5	7	434
04		1		5					2	2	1	1	1	1	2		2			2			1	1	1	1	1	2	1	1								27
05	27	4	14	49	86	15	9	38	92	14	41	9	17	14	5	39	21	51	15	29	14	1	26	33	17	28	11	14	40	20	21	47	22	13	11	4	10	921
06	3	1	1	1	7	4	2	2	6		4	1	2	1	1		1	1	2	2		2	2	2	2	4	1	4	2	2	2	3	1	2	1	2	69	
13	7	2	1		7		2	2	1	8	1	1	1	1	3	1	1	6		1		2					3	5	2	2	1	4	3	2		1	69	
TOTAL	54	13	24	108	124	20	26	69	150	31	68	19	27	24	11	67	29	86	29	58	33	1	41	61	32	44	23	24	57	43	31	68	42	26	14	10	22	1,609

#### NUMBER OF EMPLOYEES

The figures above indicate the number of employees who are included in the respective bargaining units at the charter schools.

#### CHARTER SCHOOLS BY NUMBERS

1	Connections	17	West Hawaii Explorations Academy PCS	33	Waimea Middle Conversion CS
2	Hakipuu Learning Center	18	Kihei PCS	34	Innovations PCS
3	Halau Ku Mana	19	Kona Pacific PCS	35	Kapolei PCS
4	Hawaii Academy of Arts & Science	20	Kualapuu Elementary	36	Ke Ana La'ahana PCS
5	Hawaii Technology Academy	21	Kua O Ka La	37	Ke Kula O Samuel M. Kamakau Lab PCS
6	Dream House 'Ewa Beach	22	Kula Aupuni Niihau Aloha		
7	Ka Umeke Kaeo	23	Ka'ohao PCS		
8	Ka Waihona O Ka Na'auao PCS	24	Laupahoehoe Community PCS		
9	Kamaile Academy	25	Malama Honua		
10	Kanuikapono	26	Myron B. Thompson Academy		
11	Kanu o ka Aina	27	Na Wai Ola NCPCS		
12	Alaka'i O Kaua'i Charter School	28	SEEQS PCS		
13	Kawaikini PCS	29	University Laboratory School		
14	Kamalani Academy	30	Volcano School of Arts and Science Comm PCS		
15	Ke Kula Ni'ihau O Kekaha Learning Ctr	31	Voyager PCS		
16	Ke Kula O Nawaihiokalani'opuu Iki	32	Waialae Elementary PCS		

## CHANGES IN NUMBER OF EMPLOYEES

The following figures indicate the differences in the number of public employees as reported in HLRB Informational Bulletin No. 58, dated February 26, 2021, and the figures reported in the foregoing table.

Unit	State of Hawaii	C&C	County of Hawaii	County of Maui	County of Kauai	Dept. of Education	Judiciary	UH	HHSC	TOTAL
01	(6)	23	11	8	(2)	(28)	(8)	(25)	11	(16)
02	(13)	(11)	1	(1)	(1)	(6)	N/C	(2)	(1)	(8)
03	(133)	13	8	(3)	3	(63)	(37)	(51)	(1)	(264)
04	(20)	(1)	(4)	3	(3)	(12)	1	(1)	2	(35)
05	/	/	/	/	/	(90)	/	/	/	(90)
06	/	/	/	/	/	11	/	/	/	11
07	/	/	/	/	/	/	/	(889)	/	(889)
08	/	/	/	/	/	/	/	(73)	/	(73)
09	(22)	/	/	/	/	N/C	N/C	(3)	(17)	(42)
10	(72)	4	/	/	/	1	(6)	N/C	(1)	(74)
11	6	(5)	7	N/C	(6)	/	/	/	/	2
12	/	13	14	(5)	8	/	/	/	/	30
13	(91)	10	7	(8)	1	N/C	(29)	/	3	(107)
14	(17)	2	N/C	(2)	N/C	/	/	/	/	(17)
TOTAL	(342)	48	44	(8)	0	(187)	(79)	(1,054)	(4)	(1,582)

N/C: No change

/: Not applicable

( ): Denotes a Negative Number

We are grateful to the following individuals and their respective staffs for providing the reports which made it possible to present this data to you: Ryker Wada, Director, Department of Human Resources Development, State of Hawaii; Jason Minami, Human Resources Director, Human Resources, The Judiciary, State of Hawaii; Noel Ono, Acting Director, Department of Human Resources, City and County of Honolulu; William Brilhante, Director, Personnel Services, County of Hawaii; David J. Underwood, Director, Personnel Services, County of Maui; Annette Anderson, Director, Personnel Services, County of Kauai; Cynthia A. Covell, Assistant Superintendent, Department of Education, State of Hawaii; Sarah Hirakami, Director of Collective Bargaining and Labor Relations, University of Hawaii; Juanita Lauti, Chief Human Resources Officer, Hawaii Health Systems Corporation; and Sione Thompson, Charter Schools.

## APPENDIX 8: HAWAII LABOR RELATIONS BOARD SEAL



### MOTTO: TRUST & ADHERE

Aia Hele Kākou means to trust and adhere in 'Ōlelo Hawai'i. Its foundation is based upon the idea that the Hawaii Labor Relations Board upholds its mission and duty to the people of Hawai'i in ensuring that the Hawai'i Employment Relations Act, Collective Bargaining in Public Employment, and the Employment Safety and Health Laws, HRS, 377, 89, and 396, are enforced, respectively.

### THE STAR OF BRILLIANCE

The stars symbolize traditional Polynesian way-finding navigation and the reliance and importance of a voyages' starting and ending points. The star also represents Hawai'i's position as the 50th state in the American flag.

### THE SCALES OF JUSTICE & IMAGE OF THE BIRD

The Scales of Justice symbolizes fairness, impartiality, and no influence of bias or privilege. It also symbolizes equality under the law and the weighing of evidence for a just decision. It can be traced back to the ancient Egyptian myth of the Weighing of the Heart and its goddess of truth, justice, and order.

### THE KALO LEAF

The Kalo leaf symbolizes the interdependency of the past, the present, and the future. It also represents the essence of procreation and regeneration, as the foundation of any sustainable practice. Kalo is the Hawaiian name for taro and was designated as the official state plant in 2007.

### THE BOOK OF LAW

The Book of Law symbolizes knowledge concerning the permanence and impartiality of the written law. It signifies the importance of judgment in finalizing decisions – dictating the permanence of both law and order.

### THE KUKUI LEAF

In Hawaiian, it means "light" or "lamp" and is used for medicine, food, and lighting. The Kukui tree is symbolic of enlightenment, protection, guidance, and peace. The Kukui tree was declared the official state tree of the State of Hawai'i in 1959. Its bloom is Moloka'i's island flower.

### THE RISING SUN

The rising sun references the sun image found in the current State of Hawai'i seal. It represents the brilliance and dawn of Hawai'i as a new state.

### THE KAPU STICK

The Kapu Stick (Pūlo'ulo'u) is symbolic of authority to represent and protect the people of Hawai'i. It references the ancient Hawaiian code of law, emphasizing the enforcement of law and the penalty for breaking it. In ancient times, it was placed in front of the Ali'i's home or court.

### THE THREE SUN RAYS

The three Sun Rays represent the three members of the board, who are representative of Management, Labor, and the Public.

### COLOR SELECTION (BLUE & GRAY)

Blue is a color associated with trust, intellect, and piety, expressing authority and officialism. Gray is a neutral balanced color that possesses formal qualities that conveys a sense of composure and reliability. Together, the colors suggest security, heritage and stability—emitting a somber tone of order and justice.