



HAWAI'I LABOR RELATIONS BOARD
KA PAPA LIMAHANA O HAWAI'I

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

July 1, 2021 - June 30, 2022

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 (FY) 2022 (July 1, 2021 through June 30, 2022) and reflecting the status of the composition of the Board on June 30, 2022.

In FY 2022, as Hawai‘i continued to contend with the COVID-19 pandemic, there was a marked decrease in the number of Chapter 396, HRS, Hawai‘i Occupational Safety and Health Law (HIOSH) cases filed with the Board. While it appears that the COVID-19 pandemic and the Governor’s and Mayors’ Emergency pronouncements and orders may have initially increased the time it took to process and close cases, most cases continue to close within one year or 365 days from filing, and only two cases have extended beyond one year.

Throughout the COVID-19 pandemic, the Board and its staff maintained efforts to reduce the backlog of pre-FY 2016 Chapters 377/89, HRS, Hawai‘i Employment Relations Act/Collective Bargaining in Public Employment cases (filed in 2003 through June 30, 2016). At the end of FY 2020, the backlog was reduced from 26 cases to 18 cases, and for FY 2021, the backlog was reduced to six cases. For the current fiscal year, the backlog is now reduced to two cases.

Accordingly, the Board anticipates 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 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.

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, unions¹, and employees involving collective bargaining, and disputes between certain private sector employers, unions, 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. 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.”

¹ 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.

The Hawai‘i Employment Relations Act (HERA) was enacted in 1945 and codified as 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, Collective Bargaining in Public Employment, 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, 2022, 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 9th 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 reappointed and confirmed for a six-year term, ending on June 30, 2023. Ms. Moepono's annual salary as of June 30, 2022, 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, 2022, 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.

D. Current Board Staff

Pursuant to Section 89-5(a), HRS, the Board may appoint the members of its staff. The Board's secretary is 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 and administrative duties as may be delegated by the Board. Her legal duties primarily include research, drafting, and editing Board decisions and orders. Her administrative duties include supervising other staff members and responding to inquiries from the public. Ms. Goto's annual salary as of June 30, 2022, was \$118,152. 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.

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. Ms. Hirai's annual salary as of June 30, 2022, 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-HOSHIO, Staff Attorney. Ms. Matsumori-Hoshio 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. Ms. Matsumori-Hoshio's annual salary as of June 30, 2022, was \$90,816. Ms. Matsumori-Hoshio 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-Hoshio 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, 2022, 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 49 years.

MILTON Y. HIRATA, Hearings and Case Management Specialist. His annual salary as of June 30, 2022, was \$52,116. 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. 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 exhibits 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, 2022, was \$57,336. 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 15 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 15 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

As of December 31, 2021, there were approximately 57,881 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.

Unit	No. of Employees	Difference From Previous Year	Exclusive Representative	Date of Initial Certification
1	8,295	(184)	UPW	10/20/1971
2	751	(14)	HGEA	10/20/1971
3	11,812	(398)	HGEA	4/3/1972
4	771	(2)	HGEA	5/3/1972
5	12,718	(248)	HSTA	05/21//71
6	926	(36)	HGEA	6/10/1971
7	3,305	(202)	UHPA	11/1/1974
8	2,237	(128)	HGEA	1/26/1973
9	1,201	36	HGEA	7/10/1979
10	2,416	33	UPW	2/11/1972
11	1,979	15	HFFA	2/4/1972
12	2,704	(50)	SHOPO	7/14/1972
13	8,019	(105)	HGEA	5/3/1972
14	371	(384)	HGEA	7/1/2013
15	376	376	HGEA	1/7/2021

The information in the above chart is from the HLRB Informational Bulletin No. 60A, dated May 27, 2022 (Revised June 23, 2023), and can be found on the Board's website <http://labor.hawaii.gov/hlrb/find-a-report/>.

IV. BOARD PROGRAM OF WORK DURING FY 2022

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 on or before June 30, 2016), many of which were 10-15 years old and some even preceding the terms of the current Board members.

For most of the backlog cases, Board members who did not participate in the hearings, pursuant to Section 91-11, HRS, had to review entire case files 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.²

Notwithstanding these challenges, the Board is pleased to report that at the end of FY 2020, the backlog had been reduced from 26 cases to 19 cases, and for FY 2021, the backlog was reduced to six cases. And, for FY 2022, the backlog is now reduced to two cases.

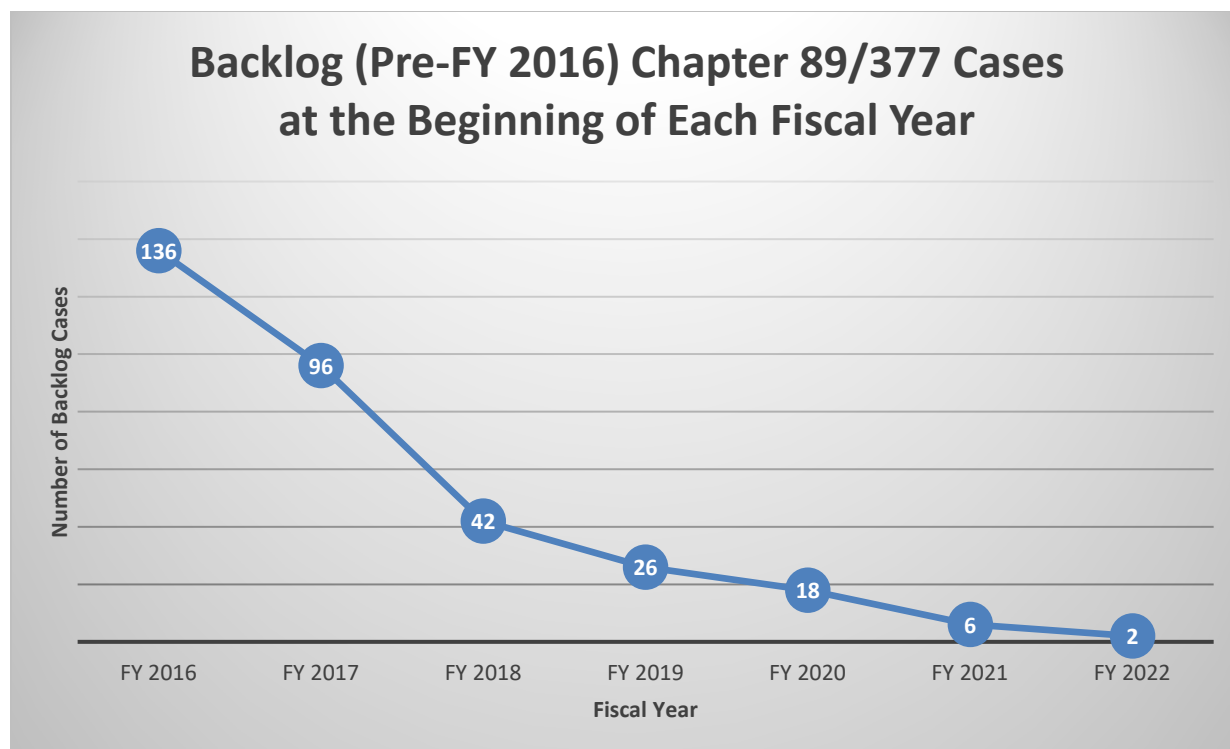
Finally, it is important to note that for all practical purposes, the Backlog Cases are now comprised of only one case. And, because the Board continuously monitors its cases and compels the parties to report on the case status, the Board is confident that this remaining case will be closed or set for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

	Date/File	Case #	Case Name	Status
1.	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

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 FY 2003 and FY 2016.³

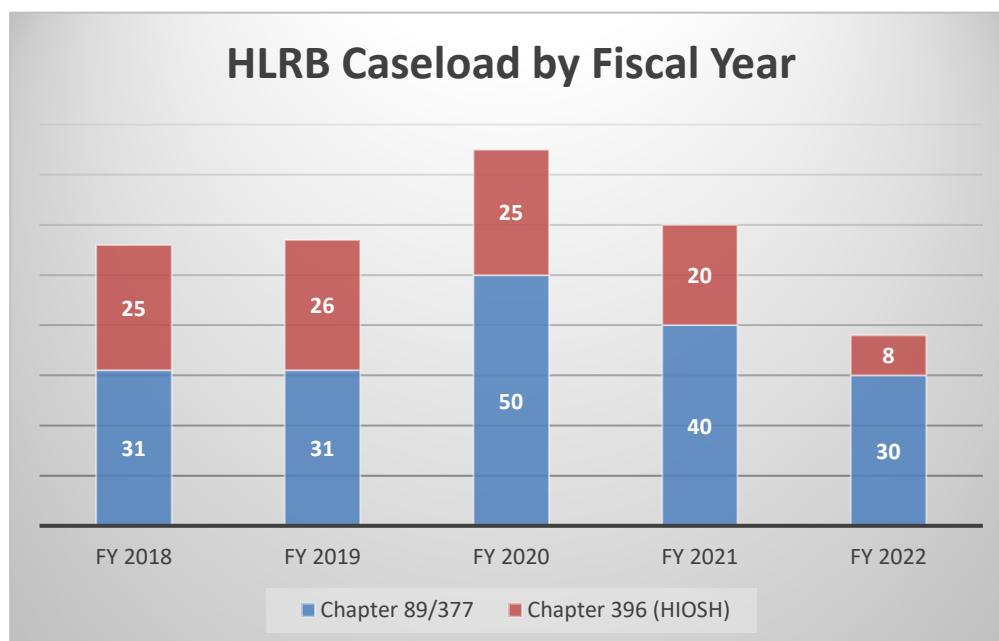
² All the backlog cases are being overseen by Board Member Sesnita Moepono who has been serving since June 5, 2011, making her the only Board Member to have participated in most of the backlog cases and the Board's most experienced member. The reduction of the backlog is attributed to her work ethic,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

³ Although the list contains one (1) case, for statistical purposes there are two (2) separate cases that comport with the named respondents, who are the Employer (CE) and the Exclusive Representatives or Union (CU). Specifically,



B. Caseload Makeup

Over the past five fiscal years, from FY 2018 to FY 2022, the Board received an average of 36 new Chapter 89/377 cases and 21 new Chapter 396 cases each year.



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 FY 2021, there were 15 impasse cases, compared to FY 2022 where no impasse cases were filed. 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 FY 2022, there was one request for a Declaratory Ruling, and the Board issued its Declaratory Order, in Merit Appeals Board, County of Hawai'i and Robert R. K. Pereira; and Fire Commission, County of Hawai'i, Case No. 21-DR-00-118. The case and Board order may be found under "*Board Orders*" at www.labor.hawaii.gov/hlr/b/. This Order may be useful for understanding how the Board applies its laws, rules, and authority in analyzing and deciding a 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). These types of cases are rarely seen by the Board, and no such case was filed with the Board in FY 2022.⁴

⁴ It is noteworthy to elaborate on why a Petition for Clarification or Amendment of Appropriate Bargaining Unit, (RA), is rarely seen by the Board. In Act 31, Session Laws of Hawaii (SLH), 2020, the Hawai'i State Legislature statutorily established 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. 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). 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 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.

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.⁵ 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.

By the end of FY 2021 and throughout FY 2022, 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. 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, self-represented litigants, 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.

⁵ There are also instances where the University of Hawai‘i’s Associate General Counsels or outside counsel appear, as the Employers see fit.

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. In these types of cases, the Board’s policy is to encourage settlement among the parties, especially when the differences may be one of monetary fine or the cited business is represented by legal counsel, and therefore, the Board provides six months before setting pretrial deadlines and hearing dates. The Director and HIOSH is always represented by the Department of the Attorney General.

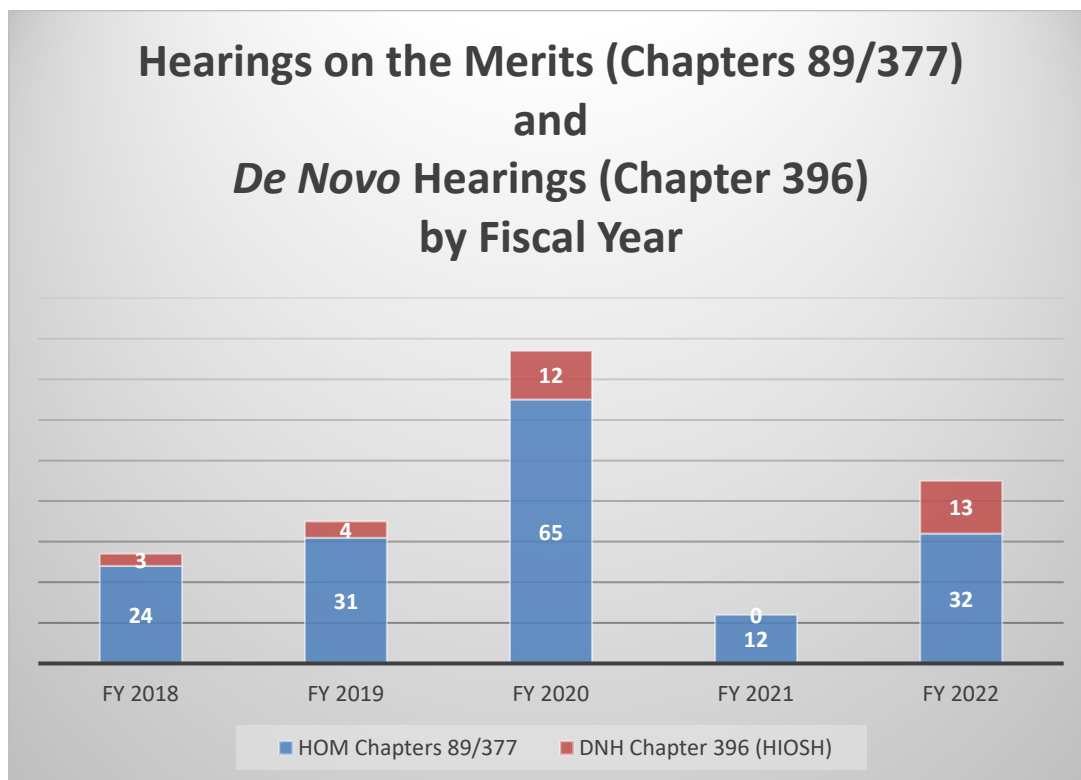
Another type of case arising under Chapter 396, HRS, is the “Discrimination” or “Whistleblower” Case and involves an employee bringing a complaint for an adverse employment action because they are engaged in some protected activity such as raising a safety and health concern with an employer or HIOSH.⁶ Because these types of cases usually involve self-represented litigants, the Board asserts greater oversight and sets a *de novo* hearing within 90 days of receipt of a transmittal of notice of contest from HIOSH. Typically, in these cases, an employee appeals HIOSH’s decision and order that the employer did not unlawfully discriminate and must establish a *prima facie* case that the employee engaged in a protected activity, the employer subjected the employee to an adverse action, and a causal

⁶ 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.

link exists between the protected activity and the adverse employment action. If the employee 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 employee 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 Hearings on the Merits (HOM) and *De Novo* Hearings (DNH), from FY 2018 through FY 2022.



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 hearings on the merits or *de novo* hearings. This did not, however, include multiple status conferences, pre-trial hearings, and other non-substantive procedural hearings.⁷ In fact, prior to the onset of the COVID-19 pandemic, the Board

⁷ 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 2020, 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 2021, over 250 orders

recorded more hearing time on Chapters 89 and 377, HRS, cases than in recent memory, with 31 days of hearings on the merits in FY 2019 and 65 days of hearings on the merits in FY 2020. For FY 2019 and FY 2020, the Board completed, on average, 56 days of hearings on the merits and *de novo* hearings.

During FY 2022, the Board held 13 days of *de novo* hearings and 32 days of hearings on the merits. This was a rebound from a record low of zero days of *de novo* hearings and 19 days of Hearings on the Merits in FY 2021, which the Board attributes mainly 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.⁸ 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 voluntary attestation.⁹

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.

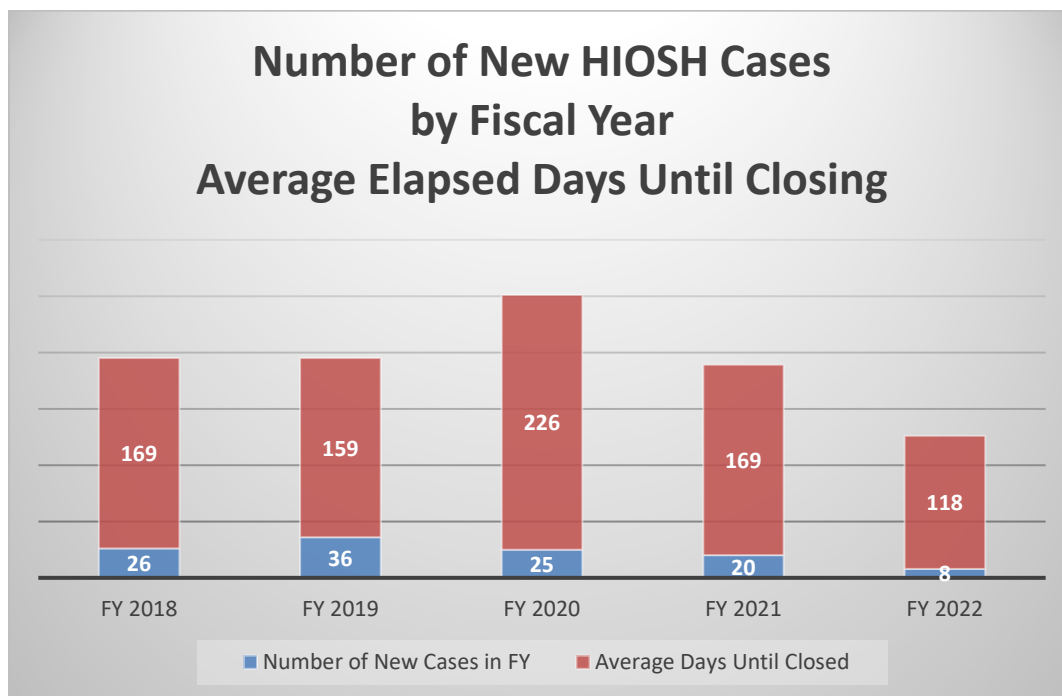
and notices were filed, and in FY 2022, the Board filed nearly 200 orders and notices.

⁸ 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.

⁹ 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.

G. Disposition of *De Novo*/HIOSH Appeals

Historically, most HIOSH cases close 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 subsequent Supplemental Proclamations, it was uncertain how the processing of these cases would be affected. 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.¹⁰



One explanation for the significant decrease in the number of HIOSH cases filed in FY 2022 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 an appeal is pending, HIOSH citations and fines, while not set aside, are not 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.

¹⁰ By the end of FY 2022, all HIOSH cases filed in FY 2018, FY 2019, and FY 2021 had closed. However, two of the 25 cases filed in FY 2020 and six of the eight cases filed in FY 2022 remain active at the end of FY 2022. Therefore, the average elapsed days until closing for cases filed in FY 2020 and FY 2022 are expected to increase in the coming fiscal year.

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.¹¹

The extension of time provided to the parties by the Board may have initially 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.

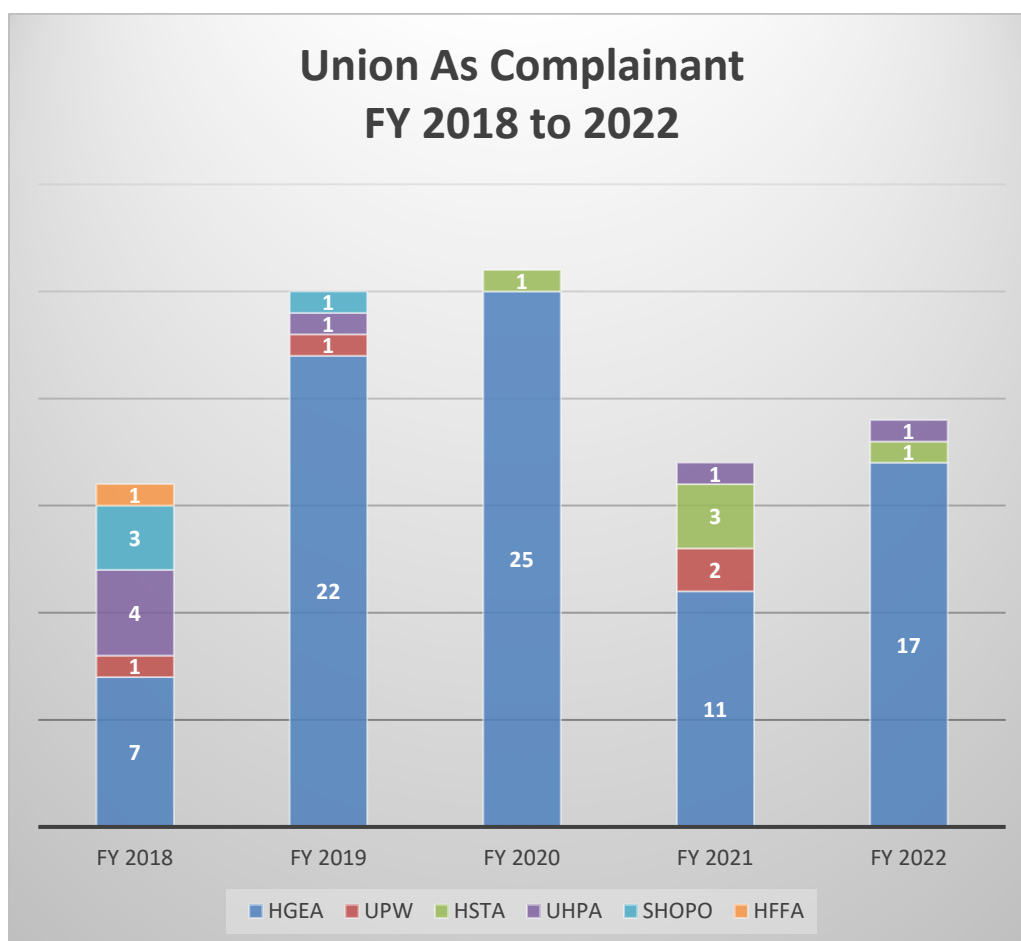
In summary, by comparing case filings and closings between FY 2021 and FY 2022, in the middle of the COVID-19 pandemic, it appears that the COVID-19 pandemic and the Governor’s and Mayor’s emergency pronouncements and orders may have affected the number of HIOSH cases filed in FY 2022. However, most cases continued to close within one year or 365 days from filing and only two cases have extended beyond one year. For those active cases, where more than two years has elapsed since filing, one case has been delayed at the request appellant’s counsel, and the other proceeded to a *de novo* hearing during FY 2022.

¹¹ 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.

H. Cases by Union

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

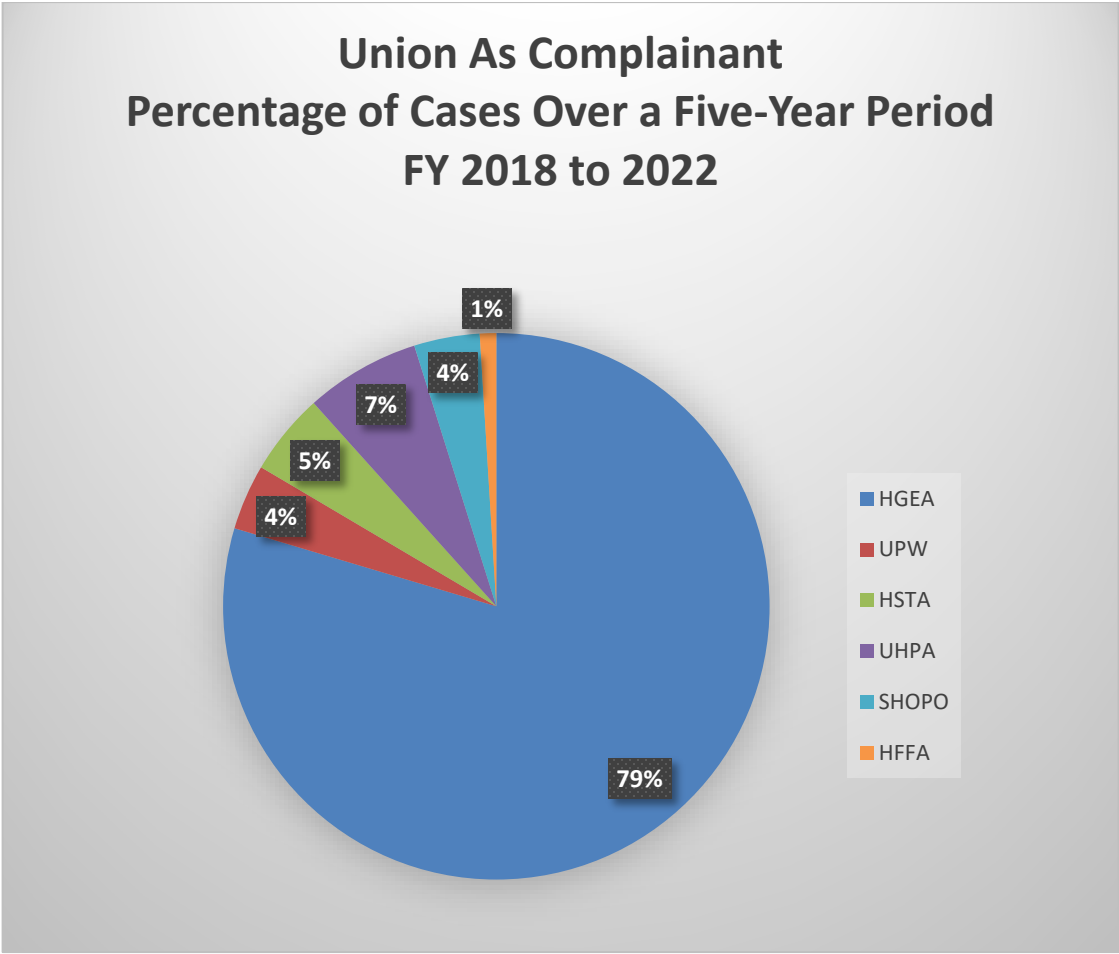
A “complainant” is the party that is filing an Unfair Labor Practice or Prohibited Practice Complaint against a “respondent”. In most cases, the complainant is a Union or Employee or Employees. On the other hand, the “respondent” is the party or parties responding to the complaint and in most cases is the Union or the Employer. In some cases, both the Union and Employer are respondents, and referred to as “Hybrid” cases.¹²



Between FY 2018 and FY 2022, the Hawaii Government Employees Association (HGEA), filed more cases than any other union, accounting for over half of the cases filed by unions in four of the five

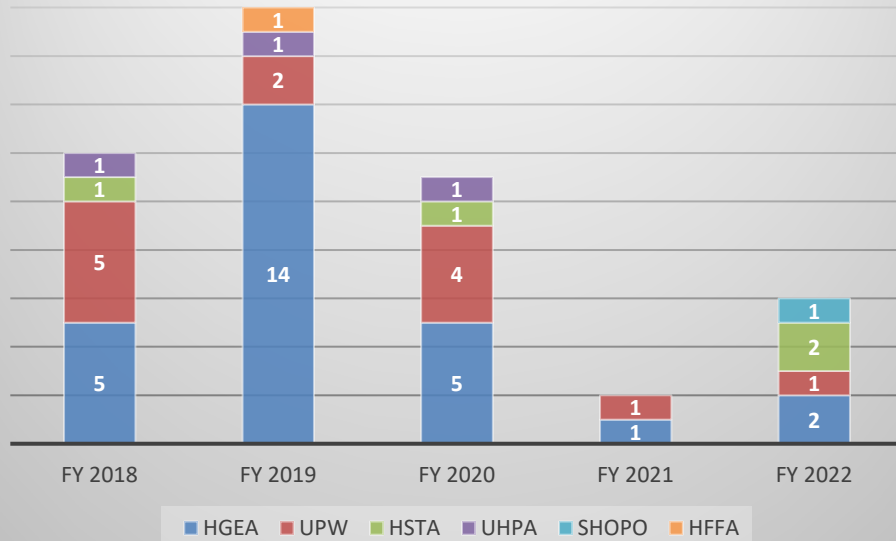
¹² When dealing with prohibited practices arising from how a union handles grievances, this falls under what is known as a “hybrid case.” While this phrase does not appear in HRS Chapter 89, the Hawai‘i Supreme Court (HSC) laid out the hybrid case in *Poe v. Haw. Labor Rels. Bd.*, 105 Hawai‘i 97, 102, 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.

fiscal years, 2018-2022, 43.8%, 88.0%, 96.2%, 64.7%, and 89.5%, 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.

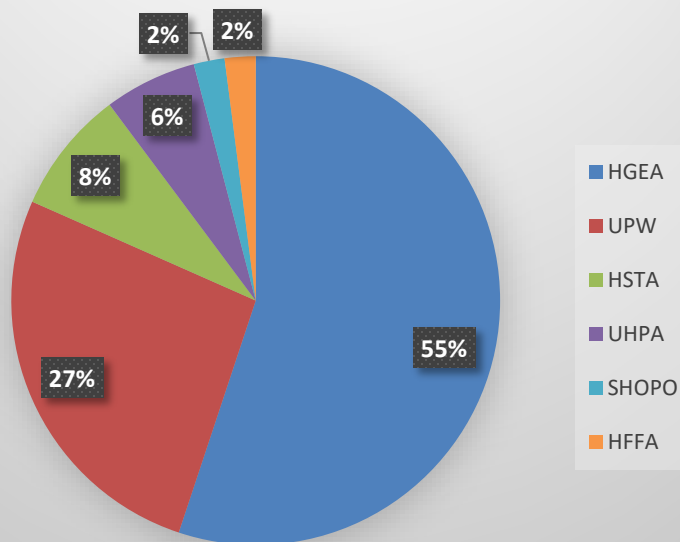


Between FY 2018 and FY 2022, the HGEA, has been the most frequently named respondent of all unions, accounting for over half of the cases filed against unions. The United Public Workers comes in a second with about a fourth of the cases followed by the Hawaii State Teachers Association and the University of Hawaii Professional Assembly. The State of Hawaii Police Organization and Hawaii Fire Fighters Association are rarely named as respondents.

Union As Respondent FY 2018 to 2022



Union As Respondent Percentage of Cases Over a Five-Year Period FY 2018 to 2022



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.

As of June 30, 2022, the Board has 41 persons listed as Arbitrators and Mediators. A current list of Arbitrators and Mediators and their resumes can be found at <https://labor.hawaii.gov/hlrb/arbitrator-mediator-listing>.

In 2018, the Board began assigning numbers to each of the arbitrators, and then using a random selection machine (Bingo Ball Machine) randomly draws five (5) names to create the list of arbitrators sent to the parties.¹³ The Board also established a policy of requiring written consent of the parties to request and receive a new list of five (5) arbitrators after the initial list is issued by the Board. Likewise, mutual consent of the parties is required for a replacement arbitrator due to conflict, unavailability, retirement, or for other causes. In FY 2022, the Board generated 90 letters in response to requests for a list of arbitrators. The HLRB requires the parties to notify the Board when an arbitrator is selected.

J. Administrative Rule Making

In FY 2022, the Board reviewed the final draft of its revised Hawai'i Labor Relations Board administrative rules in preparation for review by the Small Business Regulatory Review Board (SBRRB). 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.

Upon receiving permission from the SBRRB to take the rules to public hearing pursuant to Chapter 91, HRS, public notice was given in the *Honolulu Star-Advertiser*, *The Garden Island*, *Hawaii Tribune-Herald*, *West Hawaii Today*, and *The Maui News* on May 4, 2022, and a Statewide public hearing was held on June 13, 2022. The Board now intends to seek Governor's approval of the revised rules, which would be the most comprehensive amendments since 1983.

¹³ An HLRB staff member operates the random number selection machine, and the Board Chairperson confirms the corresponding numbers and names. A list of those names is sent to the parties.

IV. BOARD INITIATIVES FOR FY 2022-2023

A. Revision of the Board Rules

The Board continues 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 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. During FY 2022, the Board obtained permission to take the proposed rules to public hearing. Following public notice on May 4, 2022, the Board held a Statewide public hearing on June 13, 2022. The Board expects its amended rules to be approved by the Governor and take effect by the end of 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 updated procedures, upon receipt of a transmittal of notice of contest from HIOSH, the Board issues to the parties a notice of case assignment and order, allowing the parties six months in citation cases and 90 days in discrimination or whistleblower cases 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. The Board previously applied a 75-day timeline for scheduling all HIOSH cases. By increasing the timeline for citation cases, which the parties tend to settle, the Board avoids the prior common practice of parties filing multiple requests for continuances during 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 recording, 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 witnesses, the Board and its staff members, and the general public. Unless the parties retain a court reporter, the *Zoom* recording is deemed the official record for all Board proceedings. Official recordings are made available within 24 hours of a Board proceeding.

D. Assisting Self-Represented Litigants

The Board has nearly completed its two years of work on the Frequently Asked Questions (FAQ) Manual for the Self-Represented Litigant and anticipates making it downloadable 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 administrative rules which were taken to public hearing this fiscal year and are expected to take effect by the end of 2022.

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 June 2022.
- The Board and its staff continue to work 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, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

APPENDIX 1: CASES BY TYPE OF CASE

Chapter 89/377 - Backlog Cases (Opened Prior to FY 2016)

Type of Case	Backlog Cases Active at the Beginning of FY 2022	Backlog Cases Closed in FY 2022	Backlog Cases Pending at the End of FY 2022
Chapter 377			
Unfair Labor Practice Against Union - (CU)	0	0	0
Unfair Labor Practice Against Employer - (CE)	0	0	0
Chapter 89			
Prohibited Practice Against Employer - (CE)	4	3	1
Prohibited Practice Against Union - (CU)	2	1	1
Prohibited Practice Against Employee - (CEE)	0	0	0
Impasse - (I)	0	0	0
Declaratory Ruling - (DR)	0	0	0
Unit Clarification - (RA)	0	0	0
Total 89/377 Cases	6	4	2

Chapter 89/377 - Old Cases (Opened between FY 2016 and FY 2021)

Type of Case	Old Cases Active at the Beginning of FY 2022	Old Cases Closed in FY 2022	Old Cases Pending at the End of FY 2022
Chapter 377			
Unfair Labor Practice Against Union - (CU)	0	0	0
Unfair Labor Practice Against Employer - (CE)	0	0	0
Chapter 89			
Prohibited Practice Against Employer - (CE)	30	12	18
Prohibited Practice Against Union - (CU)	19	5	14
Prohibited Practice Against Employee - (CEE)	0	0	0
Impasse - (I)	15	0	15
Declaratory Ruling - (DR)	0	0	0
Unit Clarification - (RA)	1	1	0
Total 89/377 Cases	65	18	47

Chapter 89/377 - New Cases Opened in FY 2022

Type of Case	New Cases Opened in FY 2022	New Cases Closed in FY 2022	New Cases Pending at the End of FY 2022
Chapter 377			
Unfair Labor Practice Against Union - (CU)	0	0	0
Unfair Labor Practice Against Employer - (CE)	0	0	0
Chapter 89			
Prohibited Practice Against Employer - (CE)	23	1	22
Prohibited Practice Against Union - (CU)	6	1	5
Prohibited Practice Against Employee - (CEE)	0	0	0
Impasse - (I)	0	0	0
Declaratory Ruling - (DR)	1	1	0
Unit Clarification - (RA)	0	0	0
Total 89/377 Cases	30	3	27

Chapter 396 (HIOSH) – Old Cases (Opened Prior to FY 2022)

Type of Case	Old Cases Active at the Beginning of FY 2022	Old Cases Closed in FY 2022	Old Cases Pending at the End of FY 2022
Chapter 396 (HIOSH)			
Contested Citation	6	5	1
Discrimination	3	2	1
Total 396 (HIOSH) Cases	9	7	2

Chapter 396 (HIOSH) – New Cases (Opened in FY 2022)

Type of Case	New Cases Opened in FY 2022	New Cases Closed in FY 2022	New Cases Pending at the End of FY 2022
Chapter 396 (HIOSH)			
Contested Citation	5	2	3
Discrimination	3	0	3
Total 396 (HIOSH) Cases	8	2	6

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	FY22
Honolulu Board of Water Supply	0	0	1	0	0
County of Hawai'i Fire Department	0	2	0	0	0
City and County of Honolulu	1	0	0	0	0
County of Kaua'i	0	0	3	0	0
Dept. of Accounting and General Services	0	9 ¹⁴	0	0	0
Dept. of Agriculture	0	0	1	0	0
Dept. of Education	3	2	14 ¹⁵	10 ¹⁶	0
Dept. of Environmental Services	0	0	4	2	1
Dept. of Health	2	0	1	4	0
Dept. of Human Resources Development	0	1	1	0	0
Dept. of Labor and Industrial Relations	0	0	1	0	0
Dept. of Land and Natural Resources	0	1	0	0	0
Dept. of Public Safety	7	2	4	0	1
Dept. of Parks & Recreation	0	0	0	1	0
Dept. of Taxation	4	0	0	0	0
Dept. of Transportation	3	0	0	0	0
Hawai'i Health Systems Corporation	0	0	5	1	2
Hawai'i State Hospital	0	0	3	0	0
Honolulu Police Dept.	2	2	0	0	1
Kaua'i Police Dept.	0	1	0	0	0
Maui Police Dept.	0	0	3	0	0
The State Judiciary	0	0	0	1	0
Ocean Safety and Lifeguard Services Division	0	0	0	2	0
University of Hawai'i	6	17 ¹⁷	0	1	1
N/A ¹⁸	4	13	4	18	1
Multiple Departments ¹⁹	3	5	0	0	17
	35	55	45	40	24

¹⁴ 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*.

(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.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ For FY 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 FY 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. For FY 2022, there were a total of 17 cases with multiple departments involved. One case involved the Department of Taxation and the Department of Human Resources Development. Seven cases involved the Executive Branch, the Department of Education, and the Hawai'i State Judiciary, eight cases involved the Governor, Mayor of the City and County of Honolulu, and the Department of Education, and one case involved the Governor and the Department of Education.

APPENDIX 3: SIGNIFICANT DECISIONS AND ORDERS

Listed below are short summaries of the Board's FY 2022 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. The Board Decisions can be found at <https://labor.hawaii.gov/hlrb/decisions-hlrb/> and the Board Orders can be found at <https://labor.hawaii.gov/hlrb/board-orders-hlrb/>.

UPW v. KISHIMOTO || CASE NO. CE-01-539 (PPC)

ORDER NO. 3774 || ISSUED JULY 7, 2021

Denying Motion to Enforce

The Legislature must appropriate payments of judgments against the State because the Legislature must approve the funding from the State budget. *See*, Hawai'i State Constitution Article VII, § 5; *Persin v. State*, 2018 Haw. App. LEXIS 440, at *9-10 (2018) (summary disposition order). Therefore, the State cannot pay the judgment until the Legislature approves the funds, and the Motion to Enforce is premature.

JONES v. HGEA || CASE NO. 21-CU-06-386 (PPC)

ORDER NO. 3780 || ISSUED JULY 16, 2021

Granting Motion to Dismiss (Exhaustion)

Alleged breaches of the Duty of Fair Representation (DFR) constitute one part of a "hybrid" case, the other being the case against the employer alleging a wilfull violation of the relevant CBA under HRS § 89-13(a)(8). *Poe v. HLRB*, 105 Hawai'i 97, 94 P.3d 652 (2004) (*Poe II*). Further, before bringing a case alleging a wilfull violation of the relevant CBA, the Complainant must exhaust administrative remedies unless attempting to exhaust would be futile. *Poe v. HLRB*, 97 Hawai'i 528, 531, 40 P.3d 930, 933 (2002) (*Poe I*). All four grievances at issue are continuing through the grievance process; therefore, Complainant has not exhausted the administrative remedies, and the Board lacks jurisdiction over the case.

JONES v. LEE || CASE NO. 21-CE-06-960 (PPC)

ORDER NO. 3781 || ISSUED JULY 16, 2021

Granting Motion to Dismiss (Exhaustion)

Before bringing a case alleging a wilfull violation of the relevant CBA, the Complainant must exhaust administrative remedies unless attempting to exhaust would be futile. *Poe I*, 97 Hawai'i 528, 531, 40 P.3d 930, 933. All four grievances at issue are continuing through the grievance process; therefore, Complainant has not exhausted the administrative remedies, and the Board lacks jurisdiction over the case.

HFFA v. BLANGIARDI, ET AL. || CASE NOS. 14-CE-11-845; 16-CE-11-887 (PPC)

ORDER NO. 3782 || ISSUED JULY 19, 2021

Granting Motion to Enforce; Denying Motion to Stay Pending Appeal

Employer has not argued any irreparable injury from enforcement of the Order Regarding Attorneys' Fees. Monetary damage is not an irreparable injury. *See Stop H-3 Ass'n v. Volpe*, 353 F.Supp. 14, 18 (1972). Therefore, a stay is not warranted.

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

ORDER NO. 3787 || ISSUED AUGUST 4, 2021

Denying Motion to Strike and/or Dismiss Allegation

The Board does not dismiss factual allegations that are relevant to the case. While the Board does not consider claims not pleaded by the Complainant, the factual allegations are relevant to a properly pleaded claims.

PARKER v. PSD || CASE NO. 19-CE-10-923 (PPC)

ORDER NO. 3788 || ISSUED AUGUST 6, 2021

Clarifying Requirements for Compliance with Decision No. 502

The Board's authority to craft remedies under HRS § 377-9(d) is very broad. *See Del Monte Fresh Produce, Inc. v. Int'l Warehouse Union, Local 142*, 112 Hawai'i 489, 492, 146 P.3d 1066, 1068 (2006). When looking at a make whole remedy involving back pay, offset or mitigation is not automatically required; rather, the Board may, in its discretion, permit such offset or mitigation. If the Board does not specify that such offset or mitigation should be added to the calculation, then the Board's make whole remedy must be followed as ordered.

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

ORDER NO. 3792 || ISSUED AUGUST 18, 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.

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

ORDER NO. 3799 || ISSUED OCTOBER 7, 2021

Granting, in Part, and Denying, in Part, Dispositive Motions, Denying Motion to Join, Denying Discovery Depositions

The applicable 90-day period begins when a complainant knew or should have known that their statutory rights were being violated. Mere ignorance of the law or rules does not excuse a failure to timely file a complaint. Only a party to an arbitration proceeding may confirm or vacate an arbitration award; therefore, individual employees cannot

do so. Employees are not required to name both the Employer and the Union when bringing a hybrid case. The Board will not permit depositions without good cause.

GUZMAN V. HPD AND HGEA || CASE NOS. 19-CE-03-925; 19-CU-03-371 (PPC)

ORDER NO. 3804 || ISSUED OCTOBER 25, 2021

Denying Dispositive Motions (Timeliness)

Employees cannot file a prohibited practice complaint alleging that the Employer violated the applicable collective bargaining agreement and committed a prohibited practice under HRS § 89-13(a)(8) (and the corresponding allegation that the Union breached its duty of fair representation) until they have exhausted their administrative remedies. Therefore, employees have 90-days from when they have exhausted those remedies to file a prohibited practice complaint.

CASPILLO V. DOT AND UPW || CASE NOS. 17-CE-01-899, 17-CE-01-355 (PPC)

DECISION NO. 509 || ISSUED NOVEMBER 22, 2021

Decision

UPW did not breach the duty of fair representation owed to Caspillo and did not violate the CBA. Failure to prove a breach of the duty of fair representation deprives Caspillo of standing for the claim against DOT for alleged willful violation of the CBA.

MERIT APPEALS BOARD AND PERREIRA || CASE NO. 21-DR-00-118 (DR)

ORDER NO. 3818 || ISSUED DECEMBER 6, 2021

Declaratory Ruling

MAB does not have jurisdiction over this case where HRS § 76-14(c)(1) requires that MAB defer to the proper authority under HRS Chapter 92. Further, MAB does not have jurisdiction over this case under HRS § 76-14(a)(1) because County department heads are exempt from civil service requirements, recruitment or examination to fill a department head position does not fall under HRS §§ 76-22.5 and 76-18.

HSTA V. IGE || CASE NO. 21-CE-05-961 (PPC)

HGEA V. IGE || CASE NOS. 21-CE-02-962A-H (PPC)

ORDER NOS. 3822, 3827 || ISSUED JANUARY 25, 2022, MARCH 2, 2022

Holding Case in Abeyance

Issues of compliance with the grievance procedure must be addressed by an arbitrator, not by the Board or a court. After a notice of intent to arbitrate is sent, the Board defers to the arbitrator's jurisdiction. HRS Chapter 658A applies to public sector CBAs, but unions are not required to use HRS Chapter 658A unless the relevant CBA for the bargaining unit so requires. Declining to use HRS Chapter 658A does not remove issues from an arbitrator's jurisdiction.

KAPESI V. PSD AND UPW || CASE NOS. 17-CE-10-908; 17-CU-10-359 (PPC)

DECISION NO. 510 || ISSUED MARCH 2, 2022

Decision

Employees have no standing to bring claims under HRS §§89-13(a)(5), (6), (b)(2) and (3). Complainant did not prove PSD violated the CBA. Failure to prove an HRS § 89-13(a)(8) claim deprives Complainant of standing against UPW for alleged breach of the duty of fair representation.

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

ORDER NO. 3834 || ISSUED APRIL 1, 2022

Denying Motion to Amend

HRS § 89-13(a)(7) claims require that the complainant specify the HRS Chapter 89 provision allegedly violated, and the provision allegedly violated must be a violation independent of HRS § 89-13. Failure to include a separate HRS Chapter 89 provision makes the motion to amend futile.

AWANA V. HPD AND SHOPO || CASE NOS. 22-CE-12-965, 22-CU-12-388 (PPC)

ORDER NO. 3842 || ISSUED APRIL 22, 2022

Dismissing Case (Standing, Exhaustion)

When dealing with an issue that arises from a grievance, the 90-day period for a prohibited practice complaint to be filed begins when the Union informs the employee that the Union is not intending to arbitrate the grievance. Employees do not have standing to bring HRS §§ 89-13(a)(6) or (b)(3) claims. Administrative remedies must be exhausted before a valid prohibited practice complaint can be considered, and the Board defers to the arbitrator's jurisdiction after a notice of intent to arbitrate is filed.

CAMPOS V. UHPA || CASE NOS. 19-CU-07-374 (PPC)

DECISION NO. 511 || ISSUED JUNE 28, 2022

Decision

The Board follows the traditional “notice pleading” standard and follows the Hawai‘i Supreme Court in explicitly rejecting the “*Twombly/Iqbal*” standard. When bringing a hybrid case, the Board considers whether the Complainant was a public employee on the relevant date when the injury began, not their status on the date they filed their prohibited practice complaint.

APPENDIX 4: CASES ON APPEAL

Listed below are Board Decisions and Cases on Appeal that were active at various State courts during FY 2022. The **bold** case captions describe the case heard by the HLRB. All Chapter 89/377 decisions and orders can be found online at 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.	Academic Labor United v. Board of Regents, et al. ²⁰ <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	1/28/2022 5/1/2021	CAAP-22-0000029 Active 1CCV-21-0000559
2.	Hsiao v. HGEA <i>Ya-Wen Hsiao v. Hawai'i Labor Relations Board</i>	5/7/2020	20-CU-08-383	11/18/2020	1CCV-20-0001696 Active
3.	HGEA v. Derek Kawakami, Mayor, County of Kaua'i <i>HGEA v. HLRB and Derek Kawakami, Mayor, County of Kauai</i>	5/1/2020	20-CE-03-946a 20-CE-04-946b 20-CE-13-956c	7/22/2021	1CCV-21-0000939 (Decision and Order Affirming HLRB's Decision and Order 2/9/2022; Notice of Entry of Judgment 2/10/2022)
4.	Asato v. HGEA and Department of Education, State of Hawai'i <i>Valerie Asato v. HGEA and DOE</i>	10/4/2019	19-CU-03-375, 19-CE-03-934	5/17/2022 6/4/2021	CAAP-22-0000339 Active 1CCV-21-0000736
5.	Henkels & McCoy Inc. v. DLIR and Wendell Keith Olive, Jr. <i>Henkels & McCoy, Inc. v. HLRB and Wendell Keith Olive, Jr.</i>	3/19/2019	OSH 2019-05	5/19/2021	1CCV-21-0000654 (Stipulation for Dismissal with Prejudice of All Claims and All Parties 4/11/2022)

²⁰ 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.

	HLRB Case Name / Appeal Case Name	Complaint Filed	Case #	Appeal Filed Date	Civil Appeal #
6.	SHOPO v. Susan Ballard, Chief of Police, Honolulu Police Department, City and County of Honolulu <i>SHOPO v. HLRB; Marcus R. Oshiro, Sesnita A.D. Moepono, and J N. Musto</i>	2/5/2018	18-CE-12-910	9/16/2019 2/15/2019	CAAP-19-0000643 Active 1CC191000270 (Order Affirming HLRB Order 8/29/2019; Notice of Entry of Judgment 9/11/2019)
7.	Elaban v. SOH, DOT, and UPW <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 8/31/2017	CAAP-18-0000254 Active 1CCV-17-1-1420-08 (Decision and Order Affirming HLRB Order 3280 2/27/2018)
8.	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 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 CONSOLIDATED <i>KIRK CALDWELL, Mayor, City and County of Honolulu; MANUEL P. NEVES, Fire Chief, City and County of Honolulu; Honolulu Fire 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>	11/14/2016	14-CE-11-845, 16-CE-11-887	12/3/2021 6/10/2021 5/5/2021 10/23/2020 7/9/2018	CAAP-21-0000680 Active CAAP-21-0000365 Active 1CCV-21-0000579 (Court Reversed HLRB Order 3730 re: Attorneys' Fees and Costs; Appellant to Prepare and Submit Order and Judgment 10/01/21) 1CCV-20-0001454 (HLRB Order 3658 Affirmed 5/11/21) 1CC181001088 (Remanded 11/6/20)

	HLRB Case Name / Appeal Case Name	Complaint Filed	Case #	Appeal Filed Date	Civil Appeal #
9.	Paio et al. v. UPW; Wheelless v. UPW CONSOLIDATED 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	10/12/2016	16-CU-10-344, 16-CU-10-345	3/20/2020	1CCV-20-0000458 (Stipulation for Dismissal with Prejudice of All Claims and Parties 3/2/2022)
10.	HFFA v. Kirk Caldwell and Manuel P. Neves, et al. <i>HFFA v. Caldwell</i>	3/30/2016	16-CE-11-879	2/7/2022 11/13/2017 7/20/2016	SCWC-17-0000827 (Application for Writ of Certiorari Denied Case closed 3/22/2022) CAAP-17-0000827 (ICA Judgment on Appeal Affirmed 12/9/2021) 1CC161001390 (Copy of Memorandum Opinion Filed 8/31/2021 (ICA CAAP-17-0000827))
11.	SHOPO v. Bernard Carvalho, Jr. Mayor of Kauai; et al STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO), and HAWAI'I LABOR RELATIONS BOARD; SESNITA A.D. MOEPONO; and J N. MUSTO, and 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	1/11/2016	CE-12-875	5/1/2017 7/1/2016	CAAP-17-0000375 Active 1CC1611259 (Order Dismissing Appeal 4/25/2017)
12.	Makino v. County of Hawaii & UPW 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	4/20/2015	CE-01-856 CU-0 1-332	10/12/2018 11/17/2017	CAAP-18-0000782 Active 3CC171000368 (HLRB Decision Affirmed 7/3/2018)

	HLRB Case Name / Appeal Case Name	Complaint Filed	Case #	Appeal Filed Date	Civil Appeal #
13.	Yang v. Loretta J. Fuddy, DOH <i>HENRY H. YANG, M.D., v. BRUCE ANDERSON, Ph.D., Director, Department of Health, State of Hawai'i; HAWAII LABOR RELATIONS BOARD</i>	11/25/2011	CE-13-788	7/31/2019	3CC191000208 Active
14.	Stucky v. Wilfred Okabe, Wilbert Holck, Eric Nagamine, David Forrest, HSTA <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 HAWAII LABOR RELATIONS BOARD</i>	4/7/2011	CU-05-303	7/30/2021	2CCV-21-0000228 Active
15.	HSTA v. BOE, Patricia Hamamoto & Susan H. Kitsu <i>HSTA v. BOE & HLRB</i>	5/27/2008	CE-05-667	8/11/2017 10/7/2016	CAAP-17-0000605 Active 1CCV-16-1-1878-10 (HLRB Decision Affirmed 7/12/2017)

During FY 2022, these fifteen (15) cases were at various stages of the appellate process. The oldest appeal of an HLRB decision and/or order was filed on July 1, 2016, and the most recent was filed on July 30, 2021.

APPENDIX 5: OPEN HRS 377/89 CASES

Date Filed	Case Number(s)	Case Name	Status
11/13/2009	CE-10-737, CU-10-284	Taum, et al. v. DHRD & UPW ²¹	OPEN
10/2/2017	17-CE-10-900, 17-CU-10-356	Pinkey v. PSD & UPW	OPEN
12/20/2017	17-CU-10-357, 17-CE-10-906	Taum v. UPW & PSD	OPEN
9/14/2018	18-CU-08-365a-h, 18-CE-08-921a-h	Asato, et al v. HGEA & UH ²²	OPEN
6/19/2019	19-CE-11-930, 19-CU-11-373	Keopuhiwa v. Hawai'i FD & HFFA	OPEN
1/14/2020	20-CE-10-938	Pili v. PSD & Espinda	OPEN
2/7/2020	20-CU-06-379, 20-CE-06-940	Kusumoto v. HGEA & DOE	OPEN
4/9/2020	20-CU-10-381, 20-CE-10-943, 20-CU-10-382	Leslie, et al v. UPW & PSD ²³	OPEN
6/22/2020	20-CE-06-949	HGEA v. DOE & Kishimoto	OPEN
11/2/2020	20-CE-01-952	Salera v. Kahikina, & DES	OPEN
2/5/2021	21-I-15-193	HGEA v. David Y. Ige, et al.	OPEN
10/20/2021	21-CE-05-961	HSTA v. Ige; Hayashi; & DOE	OPEN
10/22/2021	21-CE-02-962a-h	HGEA v. Ige	OPEN
2/8/2022	22-CE-02-963a-g	HGEA v. Executive Branch; DOE; & Hawaii State Judiciary	OPEN
2/18/2022	22-CU-01-387	Ishida v. UPW	OPEN
3/16/2022	22-CE-03-964a-b	HGEA v. HHSC	OPEN
4/20/2022	22-CE-14-966, 22-CU-14-389	Fukumoto v. DPS & HGEA	OPEN
5/20/2022	22-CU-05-390, 22-CE-05-970	Weiss v. HSTA	OPEN
6/28/2022	22-CE-07-968	UHPA v. BOR	OPEN

²¹ In Case Nos. 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.

²² In Case No. 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.

²³ In Case No. 20-CU-10-381, the Complainants are Gordon Leslie, Bernard Kuamoo, George Sheridan, Deangelo Dixon, and Felliciany 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; and in 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 15 collective bargaining units established by Hawai‘i Revised Statutes § 89-6(a). The bulletin is regularly published in the Spring and posted on the Board’s website in the Find a Report section at <https://labor.hawaii.gov/hlrb/find-a-report/>.

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 <https://labor.hawaii.gov/hlrb/>.

APPENDIX 7: HLRB INFORMATIONAL BULLETIN NO. 60A

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May 27, 2022
(Revised June 23, 2023)

HLRB INFORMATIONAL BULLETIN NO. 60A

This is the forty-eighth annual informational bulletin issued by the Hawai'i Labor Relations Board providing, by employing jurisdictions, the number of public employees included in each of the 15 collective bargaining units established by Hawai'i Revised Statutes § 89-6(a). The figures reported are provided by each employing jurisdiction and are correct as of December 31, 2021. This revised bulletin resolves data discrepancies that affected totals presented in earlier versions of this report.

The 15 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 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;
- 14 State law enforcement officers
- 15 State and county ocean safety and water safety officers

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 Hawai'i	C&C	County of Hawai'i	County of Maui	County of Kaua'i	Dept. of Education	Judiciary	UH	HHSC	TOTAL
01	1,769	1,818	571	621	388	2,201	100	472	355	8,295
02	180	190	48	38	17	247	1	13	17	751
03	3,162	1,356	584	504	218	4,412	692	481	403	11,812
04	207	122	36	25	16	268	48	34	15	771
05	0	0	0	0	0	12,718	0	0	0	12,718
06	0	0	0	0	0	926	0	0	0	926
07	0	0	0	0	0	0	0	3,305	0	3,305
08	0	0	0	0	0	0	0	2,237	0	2,237
09	379	0	0	0	0	2	4	8	808	1,201
10	1,421	266	0	0	0	30	51	1	647	2,416
11	197	1,020	348	282	132	0	0	0	0	1,979
12	0	1,850	429	284	141	0	0	0	0	2,704
13	4,340	1,049	315	300	182	993	545	0	295	8,019
14	371	0	0	0	0	0	0	0	0	371
15	0	209	57	58	52	0	0	0	0	376
TOTAL	12,026	7,880	2,388	2,112	1,146	21,797	1,441	6,551	2,540	57,881

The State Public Charter School Commission Office has submitted bargaining unit information to the Board, and the information is included on page 3 of this 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			9			1	6	12	2			1	1	10	1		1	8	3	1	7					3	2		6		5	4	1		2	90	
02				1				1								1			1						1					2			1			9		
03	14	6	6	50	24	1	12	22	46	6	21	7	6	11	1	17	2	27	10	19	11		14	16	14	12	4	2	9	14	7	11	10	9	2	5	6	454
04			2	5				3	1	1	1	1	1	1		2			1	2			2	1			1	1	1			2					28	
05	27	4	17	56	102	21	19	41	112	15	46	10	14	24	6	43	20	51	15	29	15	1	25	34	17	26	11	17	40	29	23	50	24	13	10	4	10	1021
06	2	1	2	1	7	4	2	2	7		4	1	2	1	1		2		1	2	2		2	2	2	4		1	4	2	2	3	1	1	2	1	2	71
13	8	2	1		11		2	2	1	11	1	1	1		2	2	1	7		1		2					4	6	1	1	2	3	4	3		1	81	
TOTAL	55	13	28	122	144	26	36	73	182	35	73	20	24	38	11	74	27	85	28	61	32	1	42	62	35	42	19	27	60	54	33	73	42	29	17	10	21	1,754

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 Hakiipu 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 Kaao	23 Ka'ohao PCS	
8 Ka Waihona O Ka Na'auao PCS	24 Laupahoehoe Community PCS	
9 Kamale Academy	25 Malama Honua	
10 Kanuikaponu	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. 59, dated February 26, 2021, and the figures reported in the foregoing table.

Unit	State of Hawai'i	C&C	County of Hawai'i	County of Maui	County of Kaua'i	Dept. of Education	Judiciary	UH	HHSC	TOTAL
01	(79)	(81)	(12)	18	13	(20)	(5)	(25)	7	(184)
02	4	(15)	(4)	(4)	4	1	N/C	1	(1)	(14)
03	(122)	(90)	(1)	(6)	11	(129)	(32)	(52)	23	(398)
04	(1)	(6)	(1)	(5)	3	19	(5)	(5)	(1)	(2)
05	/	/	/	/	/	(248)	/	/	/	(248)
06	/	/	/	/	/	(36)	/	/	/	(36)
07	/	/	/	/	/	/	/	(202)	/	(202)
08	/	/	/	/	/	/	/	(128)	/	(128)
09	(3)	/	/	/	/	N/C	N/C	1	38	36
10	(17)	24	/	/	/	(4)	(1)	(1)	32	33
11	7	12	(4)	(4)	4	/	/	/	/	15
12	/	(34)	14	(26)	(4)	/	/	/	/	(50)
13	(87)	(61)	1	5	37	(19)	5	/	14	(105)
14	(19)	(202)	(56)	(55)	(52)	/	/	/	/	(384)
15	/	209	57	58	52	/	/	/	/	376
TOTAL	(317)	(244)	(6)	(19)	68	(436)	(38)	(411)	112	(1,291)

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 Hawai‘i; Eric Tanigawa, Acting Human Resources Director, Human Resources, The Judiciary, State of Hawai‘i; Florencio C. Baguio, Jr., Acting Director, Department of Human Resources, City and County of Honolulu; Waylen L. K. Leopoldino, Acting Director, Personnel Services, County of Hawai‘i; David J. Underwood, Director, Personnel Services, County of Maui; Annette Anderson, Director, Personnel Services, County of Kaua‘i; Sean Bacon, Interim Assistant Superintendent, Department of Education, State of Hawai‘i; Jeffery Long, Director, System Office of Human Resources, University of Hawai‘i; Juanita Lauti, Chief Human Resources Officer, Hawai‘i Health Systems Corporation; and Yvonne Lau, Interim Executive Director, Charter Schools.