

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Complainant(s),

and

ADULT MENTAL HEALTH DIVISION,
Department of Health, State of Hawai'i,

Respondent(s).

CASE NO(S). 23-CE-03-980a
23-CE-09-980b
23-CE-13-980c

DECISION NO. 519

FINDINGS OF FACT, CONCLUSIONS OF
LAW, DECISION AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

1. Introduction and Statement of the Case

This case arises from a prohibited practice complaint (Complaint) filed by Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (Complainant, HGEA, or Union). HGEA argues, among other things, that Respondent ADULT MENTAL HEALTH DIVISION, Department of Health, State of Hawai'i (Respondent, AMHD, or Employer) committed prohibited practices under Hawai'i Revised Statutes (HRS) §§ 89-13(a)(1), (2), (4), (7), and (8) and violated HRS §§ 89-3, 89-8(a), and 89-9(c).

Specifically, HGEA alleges that AMHD began a temporary reorganization to transition into a "pilot program" called Certified Community Behavioral Health Clinic (CCBHC) and that HGEA bargaining unit members at the Wailuku Health Center have been affected by this pilot program. HGEA alleges that AMHD failed to consult with it over this pilot program.

AMHD filed a Motion to Stay Proceedings, which the Board denied because, among other things, the motion was procedurally defective and AMHD failed to meet its burden of proof as the movant. *See* Board Order No. 4000.

AMHD failed to file an Answer. By doing so, under Hawai'i Administrative Rules (HAR) § 12-43-64(f), the Board found that AMHD admitted the material facts alleged in the Complaint. *See* Board Order No. 4000.

The Board began the hearing on the merits on November 1, 2023. HGEA called Toni Rust, Maui Island HGEA Division Chief (Rust). The Board entered exhibits CU-1 through CU-16 into the record over AMHD's objections.

2. Relevant Background; Admitted Material Facts; and Findings of Fact

As discussed above, AMHD admitted to certain material facts by failing to file an Answer under HAR § 12-43-64(f). Those admitted material facts are incorporated into the findings of fact below.

2.1. Parties and Collective Bargaining Relationship

HGEA is the exclusive representative¹ that represents bargaining unit 3 (BU 3), bargaining unit 9 (BU 9), and bargaining unit 13² (BU 13).

HGEA is a party to collective bargaining agreements (CBAs) for BU 3, BU 9, and BU 13 with the relevant employer groups.³

Rust is the HGEA Maui Island Division (MID) chief. In that role, among other things, she participates in consultations affecting HGEA bargaining unit members in Maui County.

AMHD is a public employer⁴ and part of the relevant employer groups for BU 3, BU 9, and BU 13.

John Oliver (Oliver) is the Public Health Program Manager and Branch Chief for the Maui Community Mental Health Center (CMHC) branch of AMHD, which is located at the Wailuku Health Center.

Channing Slate, M.D. (Slate) is the Medical Director for the Maui CMHC branch of AMHD.

2.2. CCBHC Pilot Program

There has been a federal push towards moving from CMHCs to CCBHCs. Among other things, CCBHCs have federal regulations they must meet, covering areas of, among other things, staffing and scope of services.

The Maui CCBHC project is a federally funded grant project to augment and expand the existing services at Maui CMHC to include all required CCBHC services. Under the CCBHC project, the existing services provided by AMHD at the Maui CMHC will continue, but additional services will be added.

Staffing requirements to meet the CCBHC standards include having individuals with expertise in “addressing trauma and promoting the recovery of children and adolescents with serious emotional disturbance”.

Further, services at a CCBHC must be available at some weekend and “after hours” due to “Timely Access Requirements.”

As a part of the CCBHC project, the Hawai‘i State Legislature (Legislature) created four civil service positions within the Maui CMHC. Those four civil service positions have not been established.

AMHD did not notify HGEA that it intended to initiate a pilot program to transition to a CCBHC.

2.3. Communications Regarding CCBHC Pilot Program

By letter dated June 26, 2023, Rust informed Oliver that it had come to HGEA’s attention that the Employer had placed HGEA bargaining unit members at the Wailuku Health Center under a temporary reorganization to transition into a “pilot program” called CCBHC. HGEA expressed concerns that these actions could be possible violations of the respective collective bargaining agreements and HRS § 89-9. As the exclusive representative of HGEA bargaining unit employees, HGEA requested a meeting to learn more about the temporary reorganization and CCBHC program, and requested a response by July 7, 2023 providing available dates to meet. HGEA provided an agenda of matters to be discussed.

On June 27, 2023, HGEA sent an email to Oliver requesting to meet with members and conduct a site visit on July 6, 2023.

On July 5, 2023, Oliver and Slate showed up at the HGEA MID offices unannounced and unscheduled. Rust was unavailable to meet with Oliver and Slate when they first arrived. Rather than schedule a meeting, Oliver and Slate left the MID offices and returned later that day to try to meet with Rust.

The second time Oliver and Slate showed up at the MID offices on July 5, 2023, Rust met with them for approximately 30 minutes.

During the meeting, Rust asked why Oliver and Slate were at the MID offices. Without fully explaining themselves, Oliver and Slate discussed, among other things, what “consultation” looked like. Rust showed Oliver and Slate an example of a prior consultation with another department and informed them that she would provide an example of a Department of Health (DOH) consultation at the consultation meeting necessary to address the CCBHC issues.

After HGEA briefly shared its concerns about the CCBHC issues, Rust repeated the request to schedule a meeting to discuss matters more thoroughly with affected members present. Oliver agreed and said he would check with human resources (HR) and get back to MID with his availability.

On July 10, 2023, Oliver sent an email to MID, stating his belief that the meeting on July 5, 2023 was the meeting that HGEA wanted to have.

In response to Oliver's email to MID, on July 10, 2023, Rust sent a detailed email to Oliver asserting, among other things:

- DOH changed members working conditions since August 2022 and did not consult as required pursuant to HRS Chapter 89;
- DOH never scheduled a meeting as requested in HGEA's letter dated June 27, 2023;
- How DOH's characterization to HGEA members in DOH's latest PowerPoint could lead to members believing that HGEA agreed with the information in DOH's PowerPoint or any other changes DOH wanted to make.

Rust characterized Oliver's July 10, 2023 email as a gross misrepresentation of what occurred in the less than 30-minute meeting on July 5, 2023.

HGEA sent two letters to Oliver dated July 10, 2023. One letter informed him that the Union did not receive any formal response to HGEA's letter and email dated June 27, 2023. HGEA informed Oliver that it was extending the deadline for DOH to respond to the close of business July 12, 2023.

The second July 10, 2023 letter that HGEA sent to Oliver was a cease-and-desist letter that Rust attached to her email to Oliver dated July 10, 2023. This letter rescinded the two-day extension initially extended in the first July 10, 2023 letter. As the exclusive representative, HGEA demanded that the DOH immediately cease and desist the implementation of the CCBHC pilot program until consultation requirements under HRS § 89-9 and the HGEA CBAs were met.

The cease and desist included the hiring of contract workers and any further action in relation to the CCBHC program. HGEA advised DOH that non-compliance with the Union's demand would be considered a willful violation of HRS Chapter 89 and the CBAs and would result in a class action grievance and/or a Prohibited Practice Complaint. HGEA demanded a response from Oliver or DOH by the close of business July 19, 2023.

By email dated July 12, 2023, AMHD Administrator Amy Curtis, PhD, MPH (Curtis) acknowledged receipt of the cease and desist and apologized to Rust for the actions AMHD had

taken regarding the initial meeting. Curtis requested a meeting using the Zoom platform with Rust and expressed AMHD's opinion that the CCBHC pilot program was not something that needed to be consulted on with the union "at this point in time."

Rust met with Curtis using the Zoom platform on July 17, 2023.

By letter dated July 24, 2023, Curtis recapped the July 17, 2023 meeting and responded to HGEA's cease and desist letter and demand for consultation. Curtis disagreed with the Union's position that the CCBHC pilot project required consultation at that time.

Curtis informed Rust that the contracted workers were not on the organizational chart for Maui CMHC, but the four civil service positions given to the CCBHC by the Legislature would be added to the organizational chart. However, because AMHD needed to do a reorganization before adding those positions, they had not been established yet. Curtis further stated that, when reorganizing to add the four civil service position, AMHD would consult with HGEA.

Curtis also asserted AMHD's belief that the change at Maui CMHC to have contracted workers working in the same area as HGEA bargaining unit members was not a change in the employees' working conditions. However, she also indicated that AMHD "believe[d] existing civil service staff should have been kept in the loop of changes happening within the branch that affected their working space."

Curtis ended her July 24, 2023 letter by offering to meet with HGEA and Maui CMHC Staff on August 3, 2023.

On July 24, 2023, Rust responded to Curtis' letter informing her that she was not available on August 3, 2023 but was available to meet on August 2 or 4, 2023 instead. Rust also noted that HGEA nurses had been asked to complete training geared toward the CCBHC model and not towards AMHD. Rust questioned why DOH was mandating CCBHC training modules for AMHD nurses if DOH was insisting that none of their working conditions have changed or will change. Additionally, Rust noted that nurses were also being told that they will eventually be drawing blood, something that they previously had not done and was not part of AMHD's services.

On July 26, 2023, Curtis responded that the next available dates to meet was September 21, 2023 or September 22, 2023.

AMHD employees are experiencing and must work under new policies, procedures, and protocols to run a CCBHC. The Department has hired numerous contract employees who work alongside affected HGEA BU 03, 09 and 13 civil service employees.

On August 24, 2023, Slate sent an email to the DOH Maui Branch CMHC regarding the CCBHC Admission Policy. In the email, among other things, Slate states that the CCBHC

Admission Policy will be used for intaking new referrals; that all new referred clients to the Maui CMHC are considered CCBHC clients; that the current case management staff at CMHC will continue to work with the adult client population; and that nursing staff has been directed to begin transitioning scheduling to the office assistant staff. Slate further stated that CCBHC is “the future direction of all AMHD outpatient operations across the state.”

3. Analysis and Conclusions of Law

3.1. The Board Has Jurisdiction Over This Case

3.1.1. HRS Chapter 127A Jurisdictional Issues

As the Board has noted in a variety of cases, the Board does not have jurisdiction to interpret HRS Chapter 127A. *See, e.g., Haw. Gov’t Emp. Ass’n, AFSCME, Local 152, AFL-CIO v. Kawakami*, Board Case Nos. 20-CE-03-946a-c, Decision No. 506, at *15-16 (June 23, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/06/Decision-No.-506.pdf>).

The Board can only use powers that statute expressly or implicitly grants. *Haw. Gov’t Emp. Ass’n v. Casupang*, 116 Hawai‘i 73, 97, 170 P.3d 324, 348 (2007) (*Casupang*). The Board has original jurisdiction over controversies involving prohibited practices, so the Board has both the “express” power over such controversies and the “implied” powers that are “reasonably necessary” to make that express power effective. *Id.*, 170 P.3d at 348. The Board may apply sections outside of HRS Chapter 89 to prohibited practice complaints if it is “necessary and proper” to do so to determine whether a prohibited practice has been committed. *Id.* at 98, 170 P.3d at 349.

The Board “only has jurisdiction over issues related to HRS Chapter 89, such as collective bargaining and prohibited practice controversies, to the extent they do not violate merit principles.” *United Pub. Workers v. Abercrombie*, 133 Hawai‘i 188, 205, 325 P.3d 600, 617 (2014) (*Abercrombie*). Neither HRS Chapter 127A nor the emergency proclamations are within HRS Chapter 89.⁵ Therefore, the Board does not have the jurisdiction to issue a determination as to the applicability of HRS Chapter 127A or the emergency proclamation to this case.

However, the Board has jurisdiction to consider what issues it has the authority to adjudicate. *See HOH Corp. v. Motor Vehicle Industry Licensing Bd.*, 69 Haw. 135, 141, 736 P.2d 1271, 1275 (1987). Therefore, the Board has the discretion to determine which issues it may and may not consider.

In this case, the Board found that it has jurisdiction to consider the HRS Chapter 89 issues raised by the alleged facts.

3.1.2. Exhaustion

The Board has consistently held that it does not have jurisdiction over complaints alleging violations of HRS § 89-13(a)(8) until after the complainant exhausts their contractual remedies, unless attempting to exhaust those remedies would be futile. *See Kapesi v. Dep't. of Pub. Safety*, Board Case Nos. 17-CE-10-908, 17-CU-10-359, Decision No. 510, at *9-10 (March 2, 2022) (<https://labor.hawaii.gov/hlr/files/2022/03/Decision-No.-510.pdf>) (Kapesi). The Board rests this position on the Hawai'i Supreme Court's (HSC) decisions in *Poe v. Haw. Lab. Rels. Bd.*, 97 Hawai'i 528, 531, 40 P.3d 930, 933 (2002) (Poe) and *Poe v. Haw. Lab. Rels. Bd.*, 105 Hawai'i 97, 101, 94 P.3d 652, 656 (2004) (Poe II). Kapesi, Decision No. 510, at *11.

Here, HGEA alleges that AMHD violated Article 4 of the relevant CBAs. However, HGEA has not presented any evidence that it exhausted the grievance process. Accordingly, the Board dismisses the HRS § 89-13(a)(8) claim because of HGEA's failure to exhaust its contractual remedies.

3.2. The Board Was Required to Deny the Motion to Stay

AMHD filed a Motion to Stay Proceedings early in the case before any facts were entered into the record. The Board denied the Motion to Stay Proceedings because it was procedurally flawed, and AMHD failed to meet its burden as the movant.

The Motion to Stay Proceedings asked the Board to provide relief by staying the proceedings but did not include a declaration from AMHD's counsel or any other individual. HAR § 12-43-21 requires:

(a) An application for relief or order shall be made by motion, which, unless made during a hearing, shall be made in writing, **accompanied by declarations** and memoranda setting forth with particularity the grounds therefor, and shall set forth the relief or order sought...

(b) Motions referring to facts not of record **shall be accompanied by declarations**, and if involving a question of law, shall be accompanied by a memorandum of legal authorities.

(emphasis added).

No facts were in the record when the Motion to Stay Proceedings was filed. No declarations or attachments/exhibits were included in the Motion to Stay Proceedings. No requests were made that the Board take judicial notice of any emergency proclamations or even

the existence of the wildfires that took place on Maui in August 2023. Further, the Board’s rules require an “immediate and irreparable injury”⁶ to qualify for a preliminary injunction.

Without any facts in the record, without any declarations or attachments/exhibits, the Board could not grant the Motion to Stay Proceedings and, therefore, denied the motion.

3.3. No Other Employee Organization Was Involved; HRS § 89-13(a)(2) Claim

Preliminarily, the Board must reject HGEA’s HRS § 89-13(a)(2) claim. The relevant test to determine if an employer committed a prohibited practice under HRS § 89-13(a)(2) requires two elements: 1) the involvement of an employee organization other than the exclusive representative; and 2) the employer’s actions dominating, interfering, or assisting in the formation, administration, or organization of that non-exclusive representative employee organization. Haw. Gov’t Emp. Ass’n, AFSCME, Local 152, AFL-CIO v. Hawai‘i State Hospital, Board Case No. 22-CE-09-971, Decision No. 518, at *5 (August 15, 2023) (<https://labor.hawaii.gov/hlrp/files/2023/11/Decision-No.-518-signed.pdf>) (HSH) citing to Haw. Gov’t Emp. Ass’n, AFSCME, Local 152, AFL-CIO v. Governing Bd. of Kanuikapono Charter Sch., Board Case No. 19-CE-03-928, Decision No. 513, at *23 (October 19, 2022) (<https://labor.hawaii.gov/hlrp/files/2022/10/Decision-No.-513.pdf>) (Kanuikapono).

Here, HGEA has not alleged the involvement of any other employee organization. Therefore, the Board must dismiss this claim.

3.4. HGEA Did Not Prove Discrimination; HRS § 89-13(a)(4) Claim

To prove a prohibited practice under HRS § 89-13(a)(4), HGEA must show: 1) HSH had an improper motive; 2) a causal connection between the improper motive and for engaging in protected activity before the Board; and 3) the improper motive was the motivating factor for the adverse action. Kanuikapono, Decision No. 513, at *25.

Here, HGEA did not provide any allegations or evidence related to any discrimination tied to a protected activity before the Board.

Accordingly, the Board must dismiss this claim.

3.5. AMHD Failed to Meaningfully Consult with HGEA

Having dealt with these preliminary issues, the Board turns to the main question of this case: whether AMHD meaningfully consulted with HGEA over changes to the policies and procedures affecting the BU 3, BU 9, and BU 13 members, as required by HRS § 89-9(c). The Board must find that AMHD was obligated to consult with HGEA and did not fulfill this obligation.

3.5.1. Consultation Was Required

HRS § 89-9(c) clearly requires:

- (c) Except as otherwise provided in this chapter, **all matters affecting employee relations**, including those that are, or may be, the subject of a rule adopted by the employer or any director, **shall be subject to consultation** with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations.

(emphasis added).

One of the material facts that AMHD admitted through its failure to file an Answer is that new policies, procedures, and protocols to run a CCBHC are affecting employees.

However, beyond the admission of fact admitted through AMHD's answer, Curtis admitted in both her July 12, 2023 email and her July 24, 2023 letter that AMHD would need to consult with HGEA on aspects of the CCBHC project at some point in time. She incorrectly believed that the time to consult would come later.

Curtis acknowledged in her July 24, 2023 letter that there had already been changes within the Maui CMHC branch of AMHD that affected the working space of bargaining unit employees. For the CCBHC project, contracted workers began to work in the same offices as the Maui CMHC.

Further, according to Slate's email sent to the "DOH Maui Branch CMHC", the Maui CMHC is currently in a transition period to open the CCBHC and that this type of "conversion" from a CMHC to a CCBHC is the future direction of all AMHD outpatient operations across the state. Additionally, Slate references a new position of "Medical APRN-Rx" which will be starting on September 5, [2023], trainings that need to be completed, and policies that have not been finalized.

If the CCBHC pilot project was a fully separate entity from the Maui CMHC simply renting space from the Maui CMHC until its offices were complete, Curtis' argument may have had some merit. However, the evidence shows that AMHD treated the Maui CMHC as the foundation for the CCBHC pilot project, not as a separate entity.

Accordingly, AMHD was required to consult with HGEA on the issue and knew it was so required.

3.5.2. No Meaningful Consultation Occurred

The Board adopted Arbitrator Ted T. Tsukiyama's test for a valid consultation in HGEA v. Cayetano, Board Case Nos. CE-02-387a-e, Decision No. 394, at *32-33 (1998) (<https://labor.hawaii.gov/hlrp/files/2020/10/Decision-No-394.pdf>) (Kapolei). The Kapolei test requires:

...(1) notice to the union, (2) of the proposed personnel practices and policies of a major, substantial and critical nature, other than those requiring negotiations, (3) in reasonable completeness and detail, (4) requesting the opinion, advice or input of the Union thereto, (5) listening to, comparing views and deliberating together thereon (i.e., "meaningful dialog"), and (6) without requirement of either side to concede or agree on any differences or conflicts arising or resulting from such consultation.

Id.

All six parts of the test must be met for a consultation to be valid.

Here, AMHD failed from the first part of the test.

AMHD does not contest that it did not notify HGEA of the proposed transition to a CCBHC. Curtis states that AMHD did not believe it needed to consult with HGEA "at this time" but would consult with HGEA on issues when they arose.

To the extent that AMHD might argue that the CCBHC pilot project is not "of a major, substantial and critical nature," the Board disagrees. Slate makes clear that the pilot project is intended to be the future of the Maui CMHC and that major, substantial changes will occur, including a shift from dealing solely with adults to dealing with "clients" of all ages.

When HGEA reached out to AMHD about consulting over the CCBHC pilot project, AMHD could have provided information to HGEA about the project and what steps AMHD had taken to ensure that civil service employees were not impacted at that time. However, AMHD does not even allege that they provided HGEA with the information that AMHD provided to the employees about the CCBHC. By providing no information outside of brief meetings, the Board cannot find that AMHD provided any information in reasonable completeness or detail.

AMHD did not and has not requested HGEA's opinions, advice, or input, and has rejected HGEA's attempts for meaningful dialogue.

The only aspect of the test that AMHD has met is the fact that they are not required to concede or agree with HGEA on any differences or conflicts. However, without any of the first

five parts of the test being met, the Board cannot find that AMHD has made any good faith effort at consultation.

Accordingly, the Board finds that AMHD violated HRS § 89-9(c). The Board further finds that the violation of HRS § 89-9(c) interferes with the HGEA bargaining unit members' HRS § 89-3 rights by interfering with the employees' lawful, concerted activities under HRS Chapter 89 and interferes with HGEA's HRS § 89-8(a) rights as the exclusive representative for its bargaining unit members.

3.6. AMHD's Conduct Was Wilfull

To determine if AMHD committed a prohibited practice, the Board must determine whether AMHD acted with the conscious, knowing, and deliberate intent to violate the provisions of HRS Chapter 89. Haw. Gov't Emp. Ass'n v. Casupang, 116 Hawai'i 73, 99, 170 P.3d 324, 350 (2007). A respondent's omission or failure to act may support a conclusion that there was some wilfull misconduct. Aio v. Hamada, 66 Haw. 401, 409 n. 8, 664 P.2d 727, 732 n. 8 (1983) (*citing Trombley*, 31 Cal.2d 801, 807, 193 P.2d 734, 739).

The Board finds the requisite wilfullness in this case.

Curtis asserted actual knowledge that consultation over the CCBHC pilot program would be necessary at some point. She also asserted actual knowledge that changes were occurring at Maui CMHC that were affecting bargaining unit members. Despite the knowledge of both points, Curtis refused to consult with HGEA over the changes brought about by the CCBHC pilot program.

Further, although Oliver was informed about the consultation requirement by HGEA, as the AMHD Branch Chief for the Maui CMHC, he authorized Slate to provide a policy that had not been consulted on to HGEA bargaining unit members.

These actions show a deliberate intent to ignore and minimize the HRS Chapter 89 rights afforded to HGEA's bargaining unit members. Accordingly, the Board finds AMHD's conduct in violating HRS § 89-9(c) and interfering with HRS §§ 89-3 and 89-8(a) was wilfull.

4. Order

Based on the above, the Board finds that AMHD committed a prohibited practice under HRS § 89-13(a)(7) by wilfully violating HRS § 89-9(c) and committed prohibited practices under HRS § 89-13(a)(1) by wilfully interfering with HRS §§ 89-3 and 89-8(a) rights.

Accordingly, the Board orders:

1. AMHD must cease and desist from further implementation of the CCBHC pilot program until all consultation with HGEA pursuant to this Decision and Order is complete. This cease and desist includes orders that AMHD:
 - a. Is prohibited from contracting with any agency to bring any new contract workers into the Maui CMHC or Wailuku Health Center or other offices designated for the CCBHC pilot program as of the date of this Decision and Order;
 - b. Is prohibited from altering the job duties of any HGEA bargaining unit members at the Maui CMHC or Wailuku Health Center; and
 - c. Must restore all HGEA bargaining unit members at the Maui CMHC or Wailuku Health Center to the job duties these members were performing prior to the initiation of the CCBHC pilot program;
2. AMHD must consult with HGEA on all aspects of the CCBHC pilot program that affect HGEA bargaining unit employee relations at Maui CMHC or Wailuku Health Center, including but not limited to:
 - a. Alterations to the employees' working conditions (e.g., reduction in office space for Maui CMHC workers due to increase in staff at the Wailuku Health Center);
 - b. Policy or process changes (e.g., any changes to the Admission Policy, the eligibility determination process, or other policies, processes, or procedures that HGEA bargaining unit members are affected by or expected to follow/implement);
 - c. Training or job duty changes (e.g., any new required training for HGEA bargaining unit members, including for potential new job duties); and
 - d. All other matters that affect employee relations;
3. To the extent that any changes may not be fully fleshed out "in reasonable completeness and detail," AMHD must provide HGEA with a list of all issues affecting employee relations that AMHD knows of that will arise from the CCBHC pilot program in as much detail as AMHD has available;
4. Within 30 days of this Order, AMHD must file with the Board a status report on the compliance with this Order. If the requisite consultation has not begun and concluded within those 30 days, AMHD must file status reports with the Board every subsequent 30 days until the requisite consultation is complete;

5. Preserve and within 14 days of a request from HGEA, or such additional time as the Board may allow for good cause shown⁷, provide at a reasonable place designated by HGEA, all records related to the CCBHC pilot program that may affect HGEA bargaining unit members that are not otherwise privileged by law;
6. AMHD must post at the Maui CMHC copies of this Decision and Order for sixty (60) consecutive days in places where notices to employees are customarily placed. In addition to physical posting of paper notices, notices must be distributed electronically, such as by posting on an intranet or an internet site or other means that AMHD customarily uses to communicate with HGEA bargaining unit members; and
7. AMHD must pay a civil penalty of \$3,000.00 to the general fund of the State of Hawai'i.

This case is closed.

DATED: Honolulu, Hawai'i, November 7, 2023.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

STACY MONIZ, Member

Copies sent to:

Peter Liholiho Trask, Esq.
James Halvorson, Deputy Attorney General
Elbridge Z. Smith, Deputy Attorney General

¹ HRS § 89-2 defines exclusive representative as:

“Exclusive representative” means 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.

² HRS § 89-6(a) defines BU 3, BU 9, and BU 13 as:

- (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (3) Nonsupervisory employees in white collar positions;

- (9) Registered professional nurses; [and]

- (13) Professional and scientific employees, who cannot be included in any of the other bargaining units;

³ HRS § 89-6(d) defines the employer groups for BU 3, BU 9, and BU 13 as:

- (d) For the purpose of negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor together with the following employers:

- (1) For bargaining units...(3),...(9),...[and] (13)..., the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit;

⁴ HRS § 89-2 defines “employer” or “public employer” as:

“Employer” or “public employer” means the governor in the case of the State, the respective mayors in the case of the counties, the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of these employers or acts in their interest in dealing with public employees. In the case of the judiciary, the administrative director of the courts shall be the employer in lieu of the chief justice for purposes which the chief justice determines would be prudent or necessary to avoid conflict.

⁵ Although there are no emergency proclamations in the official record of this case, the Board acknowledges that portions of an emergency proclamation have been quoted in filings by the parties.

⁶ HAR § 12-43-21(g) provides in relevant part:

(g) Motions for preliminary injunction may be made where immediate and irreparable injury will result to the movant before the hearing on the merit of the case...

⁷ To assert good cause, AMHD must submit a motion to the Board that complies with HAR § 12-43-21.