

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR

SCOTT T. MURAKAMI
DIRECTOR, DLIR

LEONARD HOSHIJO
DEPUTY DIRECTOR, DLIR



MARCUS R. OSHIRO
BOARD CHAIR

SESNITA A.D. MOEPONO
BOARD MEMBER

J N. MUSTO, Ph. D
BOARD MEMBER

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

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February 21, 2019

The Honorable Ronald Kouchi, Senate President
And Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

Pursuant to Hawaii Revised Statutes 89-5(h), the Hawaii Labor Relations Board presents its 2018 Annual Report. Please inform your members that an electronic copy of the same may be found at <https://labor.hawaii.gov/hlrb/files/2019/02/HLRB-Annual-Report-FY2017-2018.pdf>.

Thank you for your kind consideration.

Very truly yours,

MARCUS R. OSHIRO
Chair

MRO:ne

Enclosure

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February 21, 2019

The Honorable Scott K. Saiki, House Speaker
And Members of the House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear Mr. Speaker and Members of the House of Representatives:

Pursuant to Hawaii Revised Statutes 89-5(h), the Hawaii Labor Relations Board presents its 2018 Annual Report. Please inform your members that an electronic copy of the same may be found at <https://labor.hawaii.gov/hlr/files/2019/02/HLRB-Annual-Report-FY2017-2018.pdf>.

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Enclosure

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



HAWAI'I LABOR RELATIONS BOARD
ANNUAL REPORT TO
THE HONORABLE DAVID IGE
GOVERNOR OF THE STATE OF HAWAI'I
FY 2017-2018

PRESENTED BY THE HAWAI'I LABOR RELATIONS BOARD

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

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I. INTRODUCTION

Pursuant to HRS § 89-5(a), the Hawai'i Labor Relations Board (Board) presents its annual report to the Governor describing its activities for fiscal year 2018 and fiscal year 2017, reflecting the status of the composition of the Board on June 30, 2017 and June 30, 2018.¹

II. EXECUTIVE SUMMARY

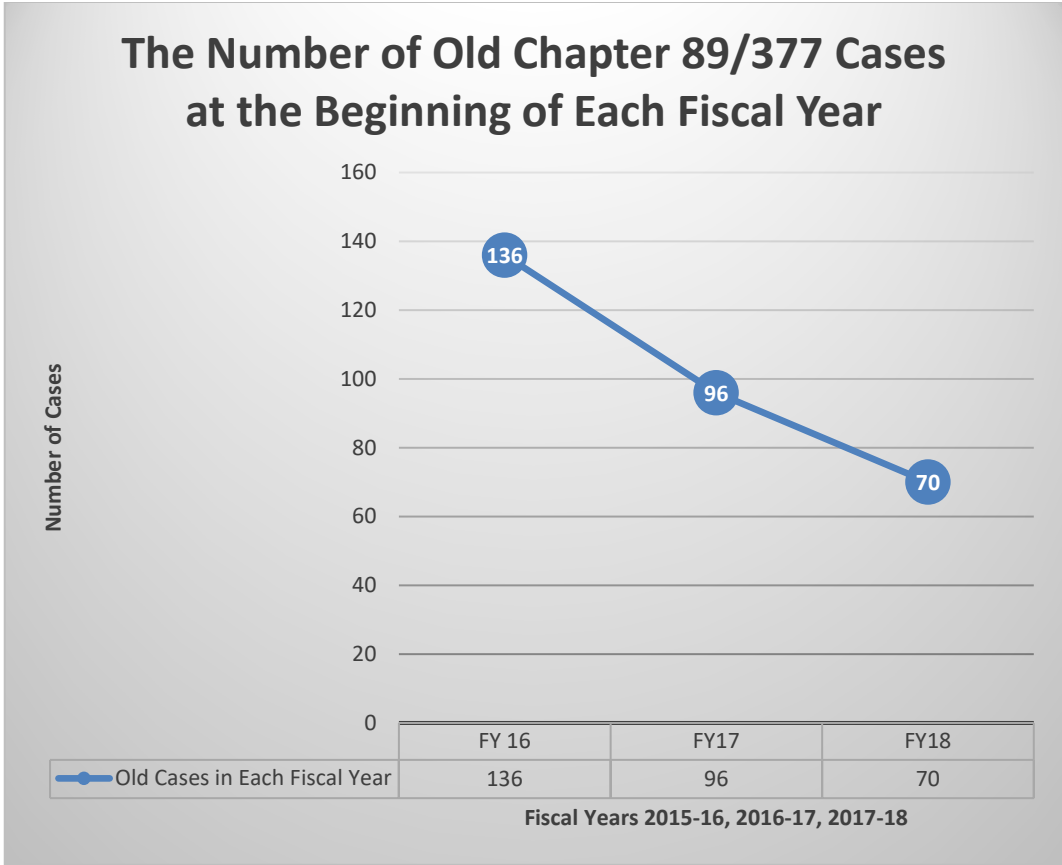
A. Brief Background of the Board

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 of the Hawai'i Revised Statutes (HRS), and (2) contests involving citations or orders of the Director of Labor and Industrial Relations involving occupational safety and health laws set forth in Chapter 396, HRS. 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 overseeing Chapters 89 and 377 disputes, the Board adjudicates disputes between public employers, unions, and employees involving Chapter 89 and also adjudicates disputes that most often arise between certain private sector employers, unions, and employees involving Chapter 377 claims.

In its capacity as a quasi-judicial body overseeing Chapter 396 contests, the Board conducts *de novo* hearings on contests of citations issued by the DLIR Director through the Hawai'i Occupational Safety and Health Division (HIOSH) and appeals from HIOSH's findings in discrimination complaints involving retaliation for reporting safety and health violations.

¹ Mr. Kerry M. Komatsubara, chaired the Board from July 1, 2015 through November 30, 2016. From December 1, 2016 through October 24, 2017, the Board did not have a chairperson and no annual report was filed for FY 2017. On June 30, 2017, the Board was comprised of Ms. Sesnita A.D. Moepono and Mr. J N. Musto, with the chairperson seat vacant. Mr. Marcus R. Oshiro became chairman on October 25, 2017.



B. Reduction of the “Backlog” of Cases: “There is a Light at the End of the Tunnel”

Through diligent efforts in FY 2016, FY 2017, and FY 2018, the Board has significantly reduced the backlog of its pre-FY 2016 cases. These cases are, in effect, the “old cases” before the current Board and are herein referred to as the “Backlog Cases.” To appreciate the work being done, one must first understand that some of these cases are over 10-15 years old and none of the current Board members were even seated or participated in any hearings on those cases. This means, pursuant to HRS § 91-11, Board members must review the entire case file and/or transcripts to understand the law and facts unique to the case for adjudication and any proposed order and findings of fact and conclusions of law. This is both a time consuming and difficult task because many cases do not have transcripts but only audio recordings.

For cases less than 10 years old, where a current Board member has personal knowledge of the case, he or she is assigned to work with the Staff Attorneys to ascertain the case status and determine appropriate steps to dispose of the case. This is again taxing on the Board members’ time, but the law demands the same attention as newer cases, which concurrently demand timely consideration and adjudication.

Additionally, there are cases where the laws and policies therein have been changed by legislative enactment, so the precedential or instructive value is low, but the law of that time nonetheless remains controlling and determinative of the final disposition to the parties.

Finally, there is the practical issue of Backlog Cases involving State or County government employers and their respective attorneys who may have retired or are no longer government employees. Similarly, there are Backlog Cases where the original complainants or respondents may no longer be prosecuting the case. Finally, there may be Backlog cases that arose years ago, under prior administrations that are no longer a priority due to limited resources under the present administration. In all of these Backlog Cases, the Board imposes the same rigid standards of legal analysis and thoughtful drafting and review before any decision and order is filed.

In short, although each case is unique unto itself and one cannot predict nor anticipate the kinds of cases to be filed in the future, a review of the three (3) most current fiscal years suggests the proper deployment of Board and Staff resources to address the Backlog Cases while keeping current with new cases is promoting positive trends and meaningful accomplishments.

FY 2016:

In FY 2016, 40 of the 136 Chapter 89/377 Backlog Cases had been closed by Board action (whether in the form of Board decisions, orders, or stipulations) for a reduction of about 30%.

The Board was also able to close 26 of the 27 Chapter 396 cases which involve worker safety and safe work place violations. Here the Board closed nearly all, or 96%, of cases filed.

FY 2017:

In FY 2017, 43 of the 96 Chapter 89/377 Backlog Cases had been closed by Board action (whether in the form of Board decisions, orders, or stipulations) for a reduction of about 44%.

The Board was also able to close 21 of the 23 Chapter 396 Backlog Cases which involve worker safety and safe work place violations. Here the Board closed nearly all, or 96%, of cases filed.

FY 2018:

In FY 2018, 28 of the 70 Chapter 89/377 Backlog Cases had been closed by Board action (whether in the form of Board decisions, orders, or stipulations) or about 40%.

The Board in FY 2018, only had two (2) Chapter 396 Backlog Cases at the close of FY 17 and was able to close one of the two (2) cases which involve worker safety violations or 50%.

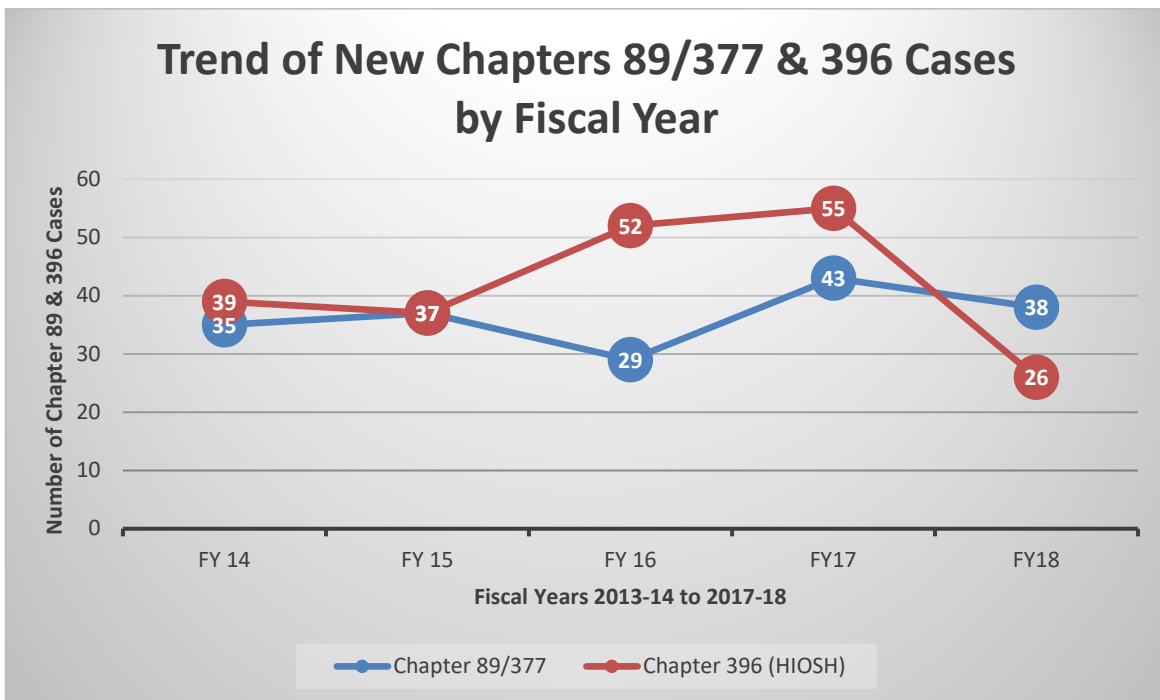
In summary, the commitment and dedication of the Board and Staff over the past several years to reduce the Backlog of Cases is paying off and showing a positive trend of “cleaning” up the Board’s docket and disposing of most of the Backlog Cases within the next several years. The Board will continue its policy of bi-annually reviewing the outstanding cases for status

conferences or other proceedings to prompt a hearing, settlement, or dismissal. For example, after the parties (employer and union) were notified by the Board’s filing of its Notice of Intent to Dismiss Case Because of Mootness, and having received no response, the Board was able to close about a dozen cases that were moot.²

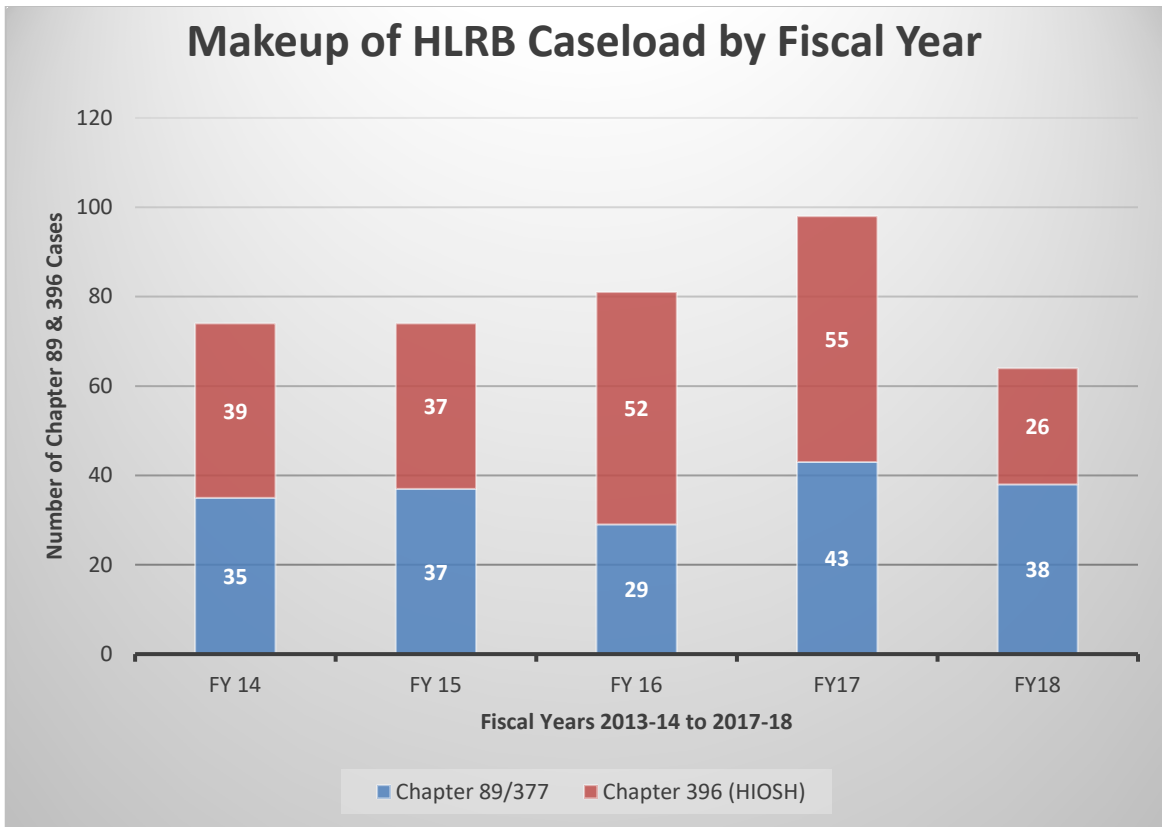
Most Chapter 396 (HIOSH) Cases are disposed of within the year filed. A review of the past two calendar years shows a positive trend of few Chapter 396, Hawai‘i Occupational Safety and Health Division (HIOSH) cases being carried forward, with a majority being closed within 12 months of being filed. For example, between January 2016 through December 2016, 56 cases were filed and all 56 were disposed of and cases closed in 2016 or early 2017. Likewise, from January 2017 through December 6, 2017, 36 cases were filed and all 36 were closed by November 2018. The Board expects the same trend to be repeated for FY 2018 cases and those filed in this calendar year.

This expedient and efficient processing of these HIOSH appeals is attributed to the greater Board involvement on setting cases for *de novo* hearings and status conferences to promote settlement. The State of Hawai‘i also has well trained and seasoned attorneys representing itself.

C. Trends of New Chapter 396 (HIOSH) & Chapter 89/377 Cases by Fiscal Year



² The Board’s HLRB Researcher, now Hearings and Case Specialist, and Board Secretary reviewed and researched the individual impasse cases filed in FY 2017 and correlated settlement of each case with a specific legislative appropriation and execution of the collective bargaining contract for the collective bargaining unit described in the Order Declaring Impasse and Appointing A Mediator. Thus, the Board, using HAR 12-42-76, issued its notice and, having received no objection from any party, could dismiss because of mootness. Then, the Board could close the case on its docket.



1. New Chapter 396 (HIOSH) Cases

A review of the past five (5) Fiscal Years (“FY”) 14, 15, 16, 17, and 18, shows that the Board received on average 52 cases a year but in the last two (2) FYs, there has been a reduction in the number of HRS Chapter 396 cases, from a high of 55 cases in FY 17, to a low of 26 cases filed in FY 18.

This may reflect the construction boom and economic expansion during the years 2014-2017 and the subsequent increase in construction projects and the expected increase in HIOSH citations and cases. It could also reflect the increased monetary penalties that HIOSH imposes upon the violators and resulting deterrent effect, or better business compliance with the rules and regulations, or the increased enforcement and prosecution by HIOSH. Regardless, of whether this is a trend in the out-years the Board is able and will adjudicate the cases in an expeditious and efficient manner.

2. New Chapter 89/377 Cases

A review of the past five (5) Fiscal Years (“FY”) 14, 15, 16, 17, and 18, shows that the Board receives, on average, about 36 new Chapter 89 cases each fiscal year.

The most frequent kind of Chapter 89/377 case over the last three fiscal years is 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).³

The other category under Chapter 89 is when an impasse arises under HRS § 89-11, but the data suggests that this type of case arises only in certain fiscal years when collective bargaining contracts are set to expire or are being negotiated, such as in FY 2018 compared to FY 2017. In FY 2018, there were 14 impasse cases, compared to FY 2017 where only 2 cases were carried into the fiscal year, and both were disposed of the same fiscal year.

Finally, there are a few cases seeking a Declaratory Ruling. The Board finds its authority to issue such orders under HRS § 89-5 and Hawai'i Administrative Rules Section 12-42-9. The Board has discretion in deciding whether to issue or refuse to issue a declaratory ruling. About two or three petitions are filed each year.

III. OVERVIEW AND HISTORY OF THE BOARD

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 HRS Chapters 89 and 377, 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, the public charter schools, the University of Hawai'i system, and the Hawai'i Health Systems Corporation. In the private sector, the Board 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 conducts hearings pursuant to HRS Chapters 89 and 377 to adjudicate complaints filed by employees, unions, and employers alleging prohibited or unfair labor practices. The issues before the Board 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, clarifies through a petition the membership of a bargaining unit, and issues declaratory rulings, that clarify the applicability of governing statutes and its rules.

In 2002, the Board also acquired jurisdiction to conduct *de novo* hearings on contests of citations issued by the Director of the DLIR through HIOSH under HRS Chapter 396 or appeals of HIOSH

³ The Board uses acronyms of "CE", "CU", and "CEE" to designate the Prohibited Practice Complaint Against Employer, Prohibited Practice Complaint Against Employee Union, and Prohibited Practice Complaint Against Employee.

determinations involving other violations of HRS Chapter 396, except where HIOSH's rules require a prior formal hearing at the HIOSH level and the proceedings are required to be transcribed. In those cases, the Board's case review is confined to the record only. The Board's mission pursuant to HRS Chapter 396 is to ensure the right of workers to a safe and healthful work environment and encourage employer and employee efforts to reduce injury and illness arising out of employment.

A. Governing Constitutional Provisions and Statutes

Private employees in the State of Hawai'i have a constitutional right to organize. Article XIII, Section 1 of the State Constitution, provides that, "Persons in private employment shall have the right to organize for the purpose of collective bargaining." The Hawai'i Employment Relations Act (HERA) was enacted in 1945 and codified as HRS Chapter 377 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."

In 1970, the Legislature enacted Act 171, Session Laws of Hawai'i, which was subsequently codified as HRS Chapter 89, Collective Bargaining in Public Employment, to encourage joint decision-making in administering government. The Act created the Hawai'i Public Employment Relations Board (HPERB) to administer the provisions of HRS Chapter 89. 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 HRS Chapters 89 and 377.

Thereafter, in 2002, the Legislature enacted Act 104, Session Laws of Hawai'i, 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 HRS § 396-11, except as provided in HRS § 396-11(h) where the Board's review is confined to the record only.

B. Board Functions

The Board is an agency within the DLIR for administrative and budgetary purposes only. The Board exercises quasi-judicial powers with jurisdiction over disputes pertaining to collective bargaining in the public sector arising under HRS Chapter 89 and in the private sector under HRS Chapter 377.⁴ Accordingly, the primary duties of its members are to hear and adjudicate contested cases involving prohibited or unfair labor practice complaints and to render declaratory rulings on

⁴ Pursuant to HRS § 92-6(2)(A), the Board is exempt from Part I of Chapter 92, HRS, when performing "adjudicatory functions."

questions submitted. 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 to clarify the applicability of governing statutes and its rules. In addition, the Board also resolves disputes involving bargaining unit designations and determines the appropriateness of dues refunds for nonmembers.

In the public sector, the Board has jurisdiction over public employees covered by a collective bargaining agreement employed by the state, county, judiciary, public school system, the University of Hawai'i and community college system, the Hawai'i Health Systems Corporation, and charter schools.

Thus, the majority of the Board's Chapter 89/377 cases involve disputes between an Employee covered by a collective bargaining agreement and his or her Employer or a Union representing a bargaining unit and the Employer. In cases that involve the Employer or a Union, government or private attorneys represent these parties. There are also cases in which the Employee is not represented by the Union and proceeds on his or her own as a Self-Represented Litigant (SRL) (aka "*pro se*" complainant). In this type of case, the Employee alleges prohibited practice charges against the Union for a violation of the Union's breach of the duty of fair representation and against the Employer for violating Chapter 89 and/or the collective bargaining agreement. Cases involving an SRL are unique as SRLs have little or no experience with a court system, statutes, the Board's rules or practices and procedures as used in a traditional civil case in the Hawai'i Circuit or District Courts. Consequently, assisting the SRL and without rendering legal advice through the Board's processes, rules and court-type procedures applicable to filing documents for a pre-hearing, motion hearings, hearing on the merits and post-hearing practices can be very challenging for the Board and its staff.

In the private sector, the Board similarly conducts representation elections and resolves unfair labor practice complaints. The Board has jurisdiction over private employees and employers who are not subject to the jurisdiction of the National Labor Relations Board. Historically, this includes primarily agricultural employees, employers, and their unions. Typically, the employees are members of unions or are involved with organizing activities.

In addition, the Board adjudicates contests and appeals of decisions rendered by the DLIR Director, through HIOSH, under HRS Chapter 396. These cases are typically employer contests of citations and penalties issued and appeals in discrimination cases involving retaliation against employees for reporting safety and health violations.

The Board's hearings are open to the public and reasonable accommodations are made for persons seeking access. The Board also provides statutorily required language interpretation and translation services for party litigants and has held hearings on the Neighbor Islands to accommodate Neighbor Island litigants, both complaints and respondents.

C. FY 2018 Board Members

The Board is composed of three members: one member is representative of management, one member is representative of labor, and the third member, the Chair, is 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 HRS Chapter 89, the two-term appointment limit in HRS § 26-34 is not applicable, and members can continue in office as long as efficiency is demonstrated. For FY 2018, the Board was composed 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, 2018 was \$120,876. 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. MOEPOONO, Member, representative of management, was appointed and confirmed for a six-year term beginning on July 1, 2011 and ending on June 30, 2017. Ms. Moepono was then re-appointed and confirmed for a six-year term, ending on June 30, 2023. As of June 30, 2018, Ms. Moepono's annual salary was \$119,472. 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 end on June 30, 2022. Dr. Musto's annual salary as of June 30, 2018 was \$119,472. 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. FY 2018 Board Staff

Pursuant to HRS § 89-5(a), the Board may appoint the members of its staff. The Board’s secretary and legal clerk are in the civil service system and excluded from collective bargaining. Other staff members are exempt from civil service and excluded from collective bargaining. For FY 2016, the Board’s staff was composed of the following:

SARAH R. HIRAKAMI, Executive Officer. From September 8, 2016 until February 22, 2018, Ms. Hirakami served as legal counsel to the Board, represented the Board in the courts, and performed such legal and administrative duties as were delegated by the Board. Her administrative duties included supervising the other staff members; drafting and editing Board publications and decisions; and responding to inquiries from the public. Her annual salary was \$110,604 as of February 2018. She also served on the Board from July 1, 2006 to June 1, 2011 as the management representative. Ms. Hirakami previously served as deputy legal counsel to the Board of Water Supply, City and County of Honolulu, and as a deputy attorney general in the Employment Law Division of the Office of the Attorney General, State of Hawai‘i. Ms. Hirakami previously served as the Board’s Executive Officer from July 2013 until October 2015. Ms. Hirakami then served as Associate General Counsel with the University of Hawai‘i from October 2015 until September 2016, when she returned to the Board as Executive Officer. In February 2018, Ms. Hirakami became the Administrative Program Officer, Office of Human Resources, University of Hawai‘i. Prior to becoming an attorney, Ms. Hirakami worked as an engineer. Ms. Hirakami graduated from the University of Hawai‘i with a Bachelor of Science degree from the College of Engineering, and she received a Juris Doctorate degree from the William S. Richardson School of Law with a certificate in Environmental Law.

LINDA K. GOTO, Hearings Officer and Temporary Assignment as Executive Officer⁵. Ms. Goto serves as legal counsel to the Board and performs such legal duties as may be delegated by the Board. Her legal duties primarily include research, drafting, and editing Board decisions and orders. Her annual salary as of June 30, 2018 was \$91,788. 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.

⁵ Ms. Goto was permanently appointed to the Executive Officer position on July 21, 2018.

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 served in a temporary assignment as the Executive Officer from June 1, 2018 to July 20, 2018. In that capacity, Ms. Goto performed such legal and administrative duties as may be delegated by the Board. Her administrative duties included supervising the other staff members; drafting and editing Board publications and decisions; and responding to inquiries from the public.

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, 2018 was \$65,460. 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 types from a draft and finalizes Board decisions, orders, notices, and other Board publications; proofs and finalizes court documents; and responds to public inquiries. She has been with the Board for over 47 years.

MILTON Y. HIRATA, HLRB Researcher⁶. Mr. Hirata manages *File and ServeXpress* for the Board. *File and ServeXpress* is a vendor contracted by the Board to provide free electronic-filing and electronic-service of documents for law firms and self-represented litigants (“SRLs”) appearing before the Board. The files on *File and ServeXpress* serve as a facsimile of the Board’s official record of all cases filed after 2014 before the Board. Mr. Hirata also maintains a working back-up of the *File and ServeXpress* filings on the Board’s local server. Mr. Hirata helps users with questions and problems and conducted trainings for new users. Mr. Hirata’s annual salary as of June 30, 2018 was \$48,120.

In addition to his duties managing *File and ServeXpress*, Mr. Hirata also established and maintains the Board’s *FreeConferenceCall* account. The Board uses its *FreeConferenceCall* account to record all of its hearings. These recordings are the official record of the Board’s proceedings. The recordings can be retrieved by the Board and its staff 24/7 from any internet connected computer. Additionally, use of this technology provides good voice recordings and permits off-site participation by litigants and is especially useful to Neighbor Islanders and their counsel. The Board has recorded over 100 Board proceedings using *FreeConferenceCall*.

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 started, ran, and managed several communications agencies. From 2005 to 2013, Mr. Hirata was the regional director of communications for the American Cancer Society, Hawai'i Pacific division.

⁶ Mr. Hirata was promoted to the position of Hearings and Case Management Specialist on August 21, 2018.

IV. DATA ON THE PUBLIC-SECTOR BARGAINING UNITS

The collective bargaining law for public employees divides all State and county employees covered by Chapter 89, HRS, into 14 units based upon occupational and compensation plan groupings. These bargaining units, described in HRS § 89-6(a), 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 state and county ocean safety and water safety officers.

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

A. Exclusive Representatives

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

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

B. Number of Employees in Units

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

There are approximately 60,729 public employees in bargaining units as shown in the chart above. The above chart also indicates the number of employees in each bargaining unit, the union and the date that the union was initially selected and certified as the exclusive representative.

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

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

The information in the above two charts are from HLRB Informational Bulletin No.54, dated April 4, 2016, and can be found on the Board's Web site <http://labor.hawaii.gov/hlrb/find-a-report/>.

V. CASES BEFORE THE BOARD IN FY17

FISCAL YEAR 2016/17 - FINAL
July 1, 2016 – June 30, 2017

Type of Case	Old Cases <i>(as of June 30, 2016)</i>	Old Cases Closed in FY17	New Cases <i>(Cases Opened in FY17)</i>	New Cases Closed in FY17	Pending Cases End of FY17
CHAPTER 377					
Unfair Labor Practice Against Union - (CU)	0	0	0	0	0
Unfair Labor Practice Against Employer - (CE)	0	0	0	0	0
CHAPTER 89					
Prohibited Practice Against Employer – CE	85	40	21	18	48
Prohibited Practice Against Union – CU	6	0	4	2	8
Prohibited Practice Against Employee - CEE	0	0	0	0	0
Impasse – I	2	2	14	0	14
Declaratory Ruling - DR	2	0	2	2	2
Unit Clarification – RA	1	1	2	2	0
MISCELLANEOUS					
	-	-	-	-	-
TOTAL 89/377 CASES	96	43	43	24	72
CHAPTER 396 (HIOSH)					
Contested Citation	21	19	52	52	2
Discrimination	2	2	3	3	0
Miscellaneous	-	-	-	-	-
TOTAL 396 (HIOSH) CASES	23	21	55	55	2
TOTAL OF CASES FILED	119	64	98	79	74

VI. CASES BEFORE THE BOARD IN FY18

FISCAL YEAR 2017/18 - FINAL
July 1, 2017 – June 30, 2018

Type of Case	Old Cases (as of June 30, 2017)	Old Cases Closed in FY18	New Cases (Cases Opened in FY18)	New Cases Closed in FY18	Pending Cases End of FY18
CHAPTER 377					
Unfair Labor Practice Against Union - (CU)	0	0	0	0	0
Unfair Labor Practice Against Employer - (CE)	0	0	2	2	0
CHAPTER 89					
Prohibited Practice Against Employer – CE	48	12	20	4	52
Prohibited Practice Against Union – CU	6	2	11	5	10
Prohibited Practice Against Employee - CEE	0	0	0	0	0
Impasse – I	14	14	1	0	1
Declaratory Ruling - DR	2	0	4	2	4
Unit Clarification – RA	0	0	0	0	0
MISCELLANEOUS					
	-	-	-	-	-
TOTAL 89/377 CASES	70	28	38	13	67
CHAPTER 396 (HIOSH)					
Contested Citation	2	1	25	15	11
Discrimination	0	0	1	0	1
Miscellaneous	-	-	-	-	-
TOTAL 396 (HIOSH) CASES	2	1	26	15	12
TOTAL OF CASES FILED	72	29	64	28	79

VII. PUBLICATIONS

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

Website: Rules, forms, bulletins, recent decisions of the Board, and the Board’s List of Arbitrators with their resumes and fees are posted on the Hawai‘i Labor Relations Board section of the DLIR website at www.hawaii.gov/labor.⁷

VIII. BOARD INITIATIVES FOR 2019-2020

A. Revision of the Board Rules

The Board is currently in the process of changing its administrative rules, which were last revised in 1981. Since that time, much has happened: (i) the Board has expanded its responsibilities to adjudicate HIOSH cases under Chapter 396 of the Hawai‘i Revised Statutes; (ii) the Board is responsible for administrating the “card-check program”; (iii) 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 HRS Chapter 89 and 377; and (iv) the Board has proceeded to use electronic means to serve complaints, hearing notices and other document files.

The Board has already received comments and suggested changes from two divisions (Employment Law Division and Labor Division) within the Department of the Attorney General that regularly appear before the Board. We anticipate proceeding toward Statewide public hearings and adoption of amended rules in 2019.

B. Modification of Pre-Hearing and Settlement Processes for Chapter 89/377 and 396 Cases

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

For the Chapter 89/377 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 will 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

⁷ The Board will be updating its website in 2019 to include more information to assist the Self Represented Litigant (“SRL”) and a current Arbitrator/Mediator Listing.

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 cases, the Board has revised its prehearing conferences and procedures. Under the Board's new procedures, upon receipt of the transmittal of notice of contest from HIOSH, the Board issues to the parties a notice of case assignment and order, allowing the parties seventy-five (75) days to identify the contested issues, to conduct any necessary discovery, and to engage in settlement negotiations before committing, if necessary, to pretrial deadlines and trial dates assigned by the Board. By this procedure, the parties avoid the prior common practice of filing multiple requests for continuances in the prehearing process. The Board's goal is to work with the parties in resolving HIOSH cases as efficiently and successfully as possible, all while protecting the safety of the workers in the workplace. The Board has received positive comments regarding these new procedures and, most important, the parties that appear before the Board in Chapter 396 cases have engaged in positive and continuing discussions with us to further improve these procedures.

C. E-Filing System

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 both Chapter 89/377 and Chapter 396 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. These participants include:

- State of Hawai'i, Department of the Attorney General – Both Employment Law, and Labor Divisions
- University of Hawai'i, Office of the General Counsel
- City and County of Honolulu, Department of the Corporation Counsel,
- County of Hawai'i, Corporation Counsel,
- County of Maui, Department of the Corporation Counsel,
- County of Kaua'i, Office of the County Attorney,
- About 20 private-sector Hawai'i law firms, and
- About 5 mainland law firms or in-house counsel located on the mainland.

In FY 2016, the Board conducted four trainings for *FSX* users.

- All Corporation Counsels, Hawai‘i, Honolulu, Kaua‘i, and Maui
- State of Hawai‘i, Attorney General Department – Labor Division
- Marr Jones & Wang LLLP
- Kobayashi, Sugita & Goda

In 2019, the Board will be posting more information on its website to inform and direct more parties to the cost savings and easy use of *FSX* and plans, either through statutory or administrative rule, to require all cases filed under HRS Chapters 89 and 377 and appeals under HRS Chapter 396 be managed through the use of electronic filing.

D. Web Based Technology to Record and Store Board Proceedings

The Board has implemented a new system of 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 access the recordings within minutes of its filing and access is through any internet connected platform, even a mobile phone. Using an off-the-shelf video camera, the Board can also project a 180-degree image to remote viewers of its proceedings and in tandem with the audio broadcasting and recording services, accommodating Neighbor Island parties and allowing real-time remote viewing and participation. This means the parties, and/or their attorneys, may attend Board proceedings, except hearings on the merit or *de novo* hearings, without physical attendance and save in personal attendance, travel, and parking expense.⁸

E. Labor Arbitration and Mediation Program

The Board is reviewing its method of overseeing the list of labor arbitrators and mediators as required by HRS § 89-5(i)(6) and (7). Annual submissions of updated resumes, together with the arbitrator’s/mediator’s fee schedule and terms of retention for the calendar year, will be required for listing. With the updated resumes and reported fee schedule, the parties selecting an arbitrator/mediator will be better equipped to make informed decisions and choices. The Board has also established a policy of requiring both parties’ written assent to request and receive a list of five (5) Arbitrators after the initial list is issued by the Board. Likewise, the same is required for a replacement Arbitrator due to unavailability due to death, retirement, or for cause.

⁸ The Board is unable to provide a transcript of the official record of all Board proceedings due to the cost of preparing transcripts or hiring a court reporter. Consequently, the Board’s official record is a digital recording, unless a party or parties in a case pay for a court reporter or transcriptionist and all parties agree to designate the transcript as the official record. However, audio recordings have created certain dilemmas for the Board. One situation the Board has run into is when a party creates a transcript from the Board’s recording and cites to the transcript in their post-hearing briefs. When this occurs, the Board requires the party to provide the Board with the entire transcript. Another dilemma the Board has dealt with in the past arises from the Board’s use of a variety of recording devices (due to technological changes), as some formats require a special device to listen to the recording. Fortunately, developing technology has now provided the Board with the ability to produce an audio or visual recording of all proceedings that is available in a universal format through the Internet or *FreeConferenceCall* at any location where the Board is holding a proceeding.

F. Changes to the Board's Website: A Resource for the Public and Practitioners

The Board is continually working on updating its Website. The following are improvements made to the Website over several fiscal years and plans for the future.

- Since its inception the Board has rendered over 400 decisions and over 3,000 orders in Chapter 89 & 377 cases, and over 100 decisions and over 1,000 orders in Chapter 396, HIOSH cases.
- The HLRB's HIOSH Decisions and Orders are available to the public and all are text searchable. *Google* searches will show contents of the cataloged pdfs.
- The HLRB Decision and Orders under Chapters 89 and 377 are available to the public and will all be text searchable. *Google* searches will show contents of cataloged pdfs.
- The Board has made it a priority to catalog and make searchable all its Decisions and Orders and has completed the HIOSH Decisions and Orders to the present fiscal year. The Board has also electronically archived most of the Chapter 89 Decisions and Orders from 1974 through 2001 and 2012 to the current fiscal year. The Board is still working on archiving its Decisions and Orders from 2001 through 2012; estimated be about 1,000 cases. The goal is to make the Board's Decisions and Orders available to the public and useful for both practitioners and scholars alike.⁹
- The Board and its Staff are working on a topical index for all its Decisions and Orders. This should be a helpful tool for both students, researchers, and practitioners alike, as private subscription services are no longer providing this service.
- The Board is constantly improving its legal forms on the Website and converting them to eSign "Widgets." This practice allows periodic and timely improvements to the common forms used by parties and are especially useful for the Self Represented Litigant ("SRL").
- The Board is updating its Frequently Asked Questions ("FAQ") to provide more information to Self-Represented Litigants. The Board is also examining the use of video to provide instruction and information to the public.

⁹ Recognition for updating and archiving of the Chapter 89 and 377, and Chapter 396 HLRB Orders and Decisions is given to Mr. Keith Kardash, HLRB Researcher. One of the Board's new staff members, he comes to the Board with over 10 years of legal experience at a prominent Hawai'i labor law firm and holds a Master of Library and Information Science degree from the University of Hawai'i at Mānoa.

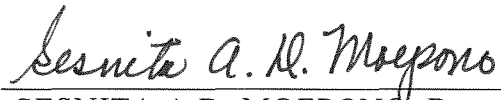
IX. CONCLUSION

The Board recognizes the need to continually work diligently to reduce the backlog of “old cases” while attending to and maintaining the timely disposition of “new” cases. The Board is committed to ensure that its decisions are thoughtfully considered, consistent with the law and facts of the case, and written to acknowledge established precedent as well to provide guidance to the parties, and Hawai‘i workers, employers, and the public. This means constantly balancing and regulating resources to accomplish these mutually important but not mutually exclusive goals. And, at no time, will the Board exchange the meeting of quotas and numerical goals, at the expense of substantive justice for the parties appearing before the Board and meaningful and well written orders or decisions. To that end, the Board commits itself and its Staff.

Respectfully submitted,



MARCUS R. OSHIRO, Chair



SESNITA A.D. MOEPONO, Board Member



J N. MUSTO, Board Member