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March 12, 2016

TO: The Honorable Mark M. Nakashima, Chair
The Honorable Jarrett Keohokalole, Jr., Vice Chair
Honorable Members of the House Committee on Labor & Public Employment

DATE: March 15, 2016
TIME: 10:30 a.m.
PLACE: Conference Room 309
State Capitol Building

FROM: Kerry M. Komatsubara, Chair
Hawaii Labor Relations Board (HLRB)

A handwritten signature in black ink, appearing to read "Kerry M. Komatsubara", is written over the printed name and title.

RE: Testimony in Support of S.B. No. 2896, S.D. 1
Relating to the Prevention of Unfair Labor Practices

I. OVERVIEW OF PROPOSED LEGISLATION

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) § 377-9 by clarifying that the HLRB may serve complaints and notices of hearings on parties by first class mail and also allow service by electronic means.

II. COMMENTS

Section 377-9(b), HRS, requires unfair labor practice complaints to be served "by delivery to the person, or by mail or by **telegram**." This proposal deletes the reference to telegram and replaces it with electronic service, to keep up with changes in technology.

Additionally, the proposal provides that notice of the hearing may be provided by written notice by first class mail or by electronic service through a company designated by the HLRB at least fifteen days before the hearing. This revision is similar to the language currently used in section 89-5.1, which governs collective bargaining in public employment, which is the public employment counterpart to the Hawaii Employment Relations Act.

Therefore, if the measure is enacted, the procedures before the HLRB will be identical whether the complaint involves an unfair labor practice under chapter 377, HRS, or a prohibited practice complaint under chapter 89, HRS.

The HLRB has already implemented an electronic filing system to save the HLRB and parties the cost of postage and paper, as well as accommodate parties who are not located on Oahu and who may be disadvantaged by having to mail documents.

Impact on the public: The electronic service of complaints and notices is a faster and less expensive way to provide notice to parties. The HLRB intends to provide in its administrative rules that a party not represented by counsel may elect to continue filing paper documents with the HLRB and continue to serve, and be served, paper copies of documents by mail.

Impact on the department and other agencies: The electronic service of complaints and notices is a faster and less expensive way to provide notice to parties. HLRB and the parties before it, including the legal offices of the governmental agencies practicing before HLRB (e.g., Department of the Attorney General, the corporation counsels of the four counties, the General Counsel of the University of Hawaii and the General Counsel for the Hawaii Health Systems Corporation) will avoid unnecessary postage expenses and gain clerical labor savings.

Standards and protocols for use of electronic means of service: HLRB wishes to inform this Committee that we are in the process of revising our administrative rules to establish standards and protocols for the use of electronic means to serve complaints, hearing notices and other document filings. Our draft rules have 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 HLRB, and we have recently delivered back to them further revisions for final approval. Also, HLRB's revised draft rules recognizes and provides for a verification protocol of electronic filings.

III. REQUESTED AMENDMENT TO S.B. NO. 2896, S.D. 1

HLRB requests one change to S.B. No. 2896, S.D. 1. We ask that clarifying language be added to the second paragraph in HRS Section 377-9(b) to make clear that the 15-day hearing notice is only applicable to the hearing that is the subject of the 40-day requirement described in that paragraph.

With this change, S.B. No. 2896, S.D. 1, H.D. 1 would “mirror” H.B. No. 2367, H.D. 1 (the House companion bill to S.B. No. 2896) which the House Committee on Consumer Protection & Commerce adopted via House Standing Committee Report No. 1009-16. A copy of H.B. No. 2367, H.D. 1 is attached hereto for your convenient review.

IV. CONCLUSION

Thank you for allowing HLRB the opportunity to testify on this bill, and HLRB requests your support to pass this bill out of committee with the requested amendment. HLRB’s representative is available for any questions.

Attachment as stated

A BILL FOR AN ACT

RELATING TO THE PREVENTION OF UNFAIR LABOR PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 377-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any party in interest may file with the board a written complaint, on a form provided by the board, charging any person with having engaged in any specific unfair labor practice. The board shall serve or require the complainant to serve a copy of the complaint upon the person charged, hereinafter referred to as the respondent. If the board has reasonable cause to believe that the respondent is a member of or represented by a labor union, then service upon an officer of the union shall be deemed to be service upon the respondent. Service may be by delivery to the person, or by mail or ~~[by telegram]~~ electronic service through a company designated by the board, to the person's last known address. Any other person claiming interest in the dispute or controversy, as an employer, an employee or their representative, shall be made a party upon proof of the interest. The board may bring in additional parties by service of a copy of the complaint. Only one complaint shall issue against a person with respect to a single controversy, but any complaint may be amended in the discretion of the board at any time prior to the issuance of a final order based thereon. The respondent may file an answer to the original or amended complaint but the board may find to be true any allegation in the

complaint in the event either no answer is filed or the answer neither specifically denies nor explains the allegation nor states that the respondent is without knowledge concerning the allegation. The respondent shall have the right to appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. The hearing on the complaint shall be before either the board or a hearings officer of the board, as the board may determine.

The board shall fix a time for the hearing on the complaint, which shall be not less than ten nor more than forty days after the filing of the complaint or amendment thereof~~[, and notice shall be given to each party by service on the party personally or by mailing a copy thereof to the party at the party's last known post office address at least ten days before the hearing]~~. Notwithstanding section 91-9.5, in the hearing conducted by the board pursuant to this subsection, all parties shall be given written notice of the hearing by first class mail or by electronic service through a company designated by the board at least fifteen days before the scheduled date of the hearing. In case a party in interest is located without the State and has no known ~~[post office]~~ address within the State~~[,]~~ and no known electronic mail address, a copy of the complaint and copies of all notices shall be filed in the office of the lieutenant governor and shall also be sent by ~~[registered]~~ first class mail to the last known ~~[post office]~~ address of the party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon a party located within the State. The hearing may be adjourned from time to time in the discretion of the board and hearings may be held at such places as the board shall designate.

In all proceedings under this chapter before the board, each member of the board may issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by law. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture under the laws of the State, but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person may testify or produce evidence, documentary or otherwise, in such proceedings. Such person so testifying shall not be exempt however, from prosecution and punishment for perjury committed in so testifying.

Any person who wilfully and unlawfully fails or neglects to appear or to testify or to produce books, papers, and records as required, shall, upon application to a circuit judge, be ordered to appear before the board, ~~[there to testify or produce evidence if so ordered,~~] and failure to obey the order may be punished as a contempt of court.

Each witness who appears before the board by subpoena shall receive for the witness' attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the State in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the board."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

18 years ago I contacted the labor board in regards to hours and break time – if I’m working over 8 hours, that I deserve to have time away from my job. According to the labor board, the company I than worked for was not under the labor laws – though a poster to contact that number was listed in the break room. (visible location, where all employees had access too) Since I’ve been in this field of work for 20+ years, didn’t bother with more than a simple call a few years back, similar results, couldn’t assist. ...though “Any party in interest may file with the board a written complaint, on a form provided by the board, charging any person with having engaged in any specific unfair labor practice” – which I thought this was unfair....but...believe that it is about time that they allowed electronic service to notify parties of complaints or dates of hearings.

Def. for.