



**EFiled: Aug 21 2017 11:02AM HAST
Transaction ID 61013845
Case No. 17-DR-07-111**

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

HLRB-12 PETITION FOR DECLARATORY RULING

CASE NO. _____

INSTRUCTIONS. File the original¹ by File and ServeXpress, in person or U.S. Mail, to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly. Attach a memorandum of authorities, in support of your position and contentions with the Petition. Attach declaration of facts necessary to a proper consideration of the Petition.

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1. The Petitioner alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board pursuant to Hawaii Revised Statutes Chapter 91, and its Administrative Rules, issue a declaratory ruling based upon the matters alleged in this Petition and the supporting affidavits and memorandum of authorities submitted with it.

2. **PETITIONER**

- a. Name, address and telephone number.

University of Hawaii Professional Assembly
1017 Palm Drive
Honolulu, Hawaii 96814
(808) 593-2157

- b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

T. Anthony Gill, Esq.
Gill, Zukeran & Sgan
707 Richards St, Suite 100
Honolulu, Hawaii 96813
(808) 523-6777
tgill@gzsattorneys.com

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3. State the nature of Petitioner's interest, including the reasons for the submission of the Petition.

Please see attached.

¹ Notwithstanding Board rule 12-42-9(b), the Board only requires one copy of a petition.

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4. Designate the specific provision of the Hawaii Revised Statutes, Chapters 89 or 377, the Board's Administrative Rules or Orders, the applicability of which is in question.

Please see attached.

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5. Indicate the appropriate bargaining unit(s) of employee(s) involved.

Please see attached.

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6. Provide a clear and concise statement of the position or contentions of the Petitioner as to the applicability of the above position.

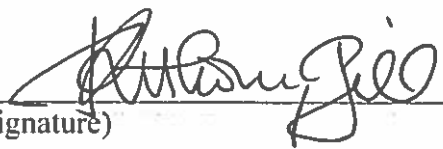
Please see attached.

DECLARATION in Lieu of Affidavit

I, _____ T. Anthony Gill, Esq. _____ do declare
under penalty of law that the foregoing is true and correct.

August 21, 2017

Dated: _____

(Signature) 

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3. UHPA seeks a declaration from the Board to the effect that the legislature may fund a collective bargaining agreement during a special session, and that the Governor does not breach any law by collaborating in that process.

Due to the short timeline, the UHPA requests the Board to handle this on an EXPEDITED BASIS. UHPA has, simultaneously with this filing, served this Petition on the Public Employer through University General Counsel, and the Attorney General, as well as provided party-to-party notice to appropriate administrators.

UHPA negotiated, ratified, and, as of August 3, 2017, signed a renewed collective bargaining agreement with the Public Employer. This process was completed after the adjournment of the legislature in 2017. The agreement is in effect as to language items, but awaits appropriation for salary and other cost items (except EUTF funding, which had been appropriated in regular session). Petitioner UHPA has an interest in seeing the agreement fully funded.

A special session of the legislature is scheduled, beginning on August 28, 2017. UHPA wants the special session to appropriate funds for the agreement. On August 3, the Governor's chief of staff indicated that there were "technical problems" in moving forward with the appropriation in special session. On information and belief, based on subsequent discussions, it appears that the Governor's office is concerned that § 89-10 (b) H.R.S. may bar appropriations for collective bargaining agreements from being considered in special sessions. It is unclear at this writing whether the Attorney General has opined on this matter, but it does seem that the A.G. has at least received a request for an opinion. The University of Hawaii has not raised these same concerns.

There does not appear to be any Board or court decision on point. A timely declaration of law by this Board will remove uncertainty as to the legal authority of the Governor's office and the legislature to fund the Unit 7 agreement in special session.

Members of bargaining unit 7 are subjected to increased medical costs under the new agreement, and raises were agreed on, to offset those increased costs; accordingly, unit 7 will be injured during any delay in appropriation. This situation constitutes an imminent and likely circumstance justifying the Board's issuance of a declaratory ruling.

4. § 89-10 (b) H.R.S., particularly the clause which provides: "except that if any cost items require appropriation by the state legislature and it is not in session at the time, the cost items shall be submitted for inclusion in the governor's next operating budget."

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5. Unit 7, University of Hawaii Faculty. Upon information and belief, this principle could apply to other bargaining units now and in the future.

6. The clause in § 89-10 (b) certainly mandates that the governor must propose any needed appropriations for collective bargaining agreements to the next available regular legislative session, as part of his budget proposal. However, neither that clause, nor anything else in § 89-10 (b), specifically precludes the legislature from calling a special session on its own constitutional authority, and making an appropriation, if it so chooses, for a collective bargaining agreement; provided only that the legislative houses agree between themselves to take up the matter.

There is nothing illegal about funding a collective bargaining agreement in an optional special session. Although neither the legislature nor the governor is legally obliged to call a special session to fund a collective bargaining agreement, there is also no prohibition against doing so apparent in the Hawaii Constitution, Article III, Section 10. There is also nothing in Article II, Section 10, that limits the legislature's general power granted in Article III, Section 1. Nothing in Chapter 89 amounts to an express limitation on legislative authority in special sessions. Phrased another way, whether to bring forward a bill to fund a collective bargaining agreement in special session is a political choice.

Should the legislature choose to take the matter up, then its acceptance or rejection of the cost items would have the same effect as an acceptance or rejection of them in a regular session. But because the legislature is under no obligation to call a special session in the first place, should the legislature call a special session and not choose to consider an appropriation, then any needed appropriation would remain pending for acceptance or rejection in the next regular session, as explicitly contemplated in § 89-10 (b).

As a practical matter, it is important that UHPA, the University of Hawaii, the Governor's office, and the legislature, receive the Board's declaration of law before the scheduled session on August 28.

UHPA is available should the Board prefer to hold a hearing on this matter; UHPA does not contend that a hearing is necessary.