

(DL 92-002)

HAWAII CIVIL RIGHTS COMMISSION 92 APR 28 P1:23

STATE OF HAWAII

In the Matter of	)	Docket No. 91-001 E-SH
	)	Fep No. WH 3962
DOLORES R. SANTOS,	)	
	)	
Complainant,	)	
_____	)	
	)	
MASAMI "SPARKY" NIIMI and	)	
HAWAIIAN FLOWER EXPORTS, INC.	)	
	)	
Respondents.	)	
_____	)	

ORDER DENYING MOTION FOR ORDER GRANTING DECLARATORY RELIEF

I. INTRODUCTION

On April 8, 1992, Masami "Sparky" Niimi and Hawaiian Flower Exports, Inc., (hereinafter referred to as "Niimi") filed a Motion for Order Granting Declaratory Relief, Or In the Alternative for Reconsideration of Hearings Examiner's Order Filed on March 30, 1992. On April 9, 1992, Niimi filed an Amended Motion for Order Granting Declaratory Relief, Or In the Alternative for Reconsideration of Hearings Examiner's Order Filed on March 30, 1992.<sup>1</sup> The Executive Director filed a Memorandum in Opposition on April 23, 1992.

Niimi's Motion will be treated as a Petition for Declaratory Relief under Hawaii Administrative Rules ("H.A.R.") § 12-46-61. The Commissioners met on April 21, 23, and 28, 1992, to

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<sup>1</sup>The Amended Motion clarified that it was addressed to the Commissioners, not the Hearings Examiner. The substance of the original motion was unchanged.

consider disposition of the petition. Pursuant to H.A.R. § 12-46-63(b)(1), the Commission is authorized and chooses to summarily deny the Petition.

## II. ISSUE

Niimi seeks a declaration that H.A.R. § 12-46-18<sup>2</sup> requires that an additional fifteen (15) days must elapse before a proceeding<sup>3</sup> can commence after the end of an extension of the initial fifteen day conciliation period. It is Niimi's contention that the rule must be read to provide for two separate fifteen day periods before a proceeding can commence. The first fifteen day period begins after the receipt of the final conciliation demand letter and is provided to all parties. The second fifteen day period begins at the expiration of any extension granted by the Executive Director under H.A.R. § 12-46-17(c)(2) and only arises if an extension is granted. Niimi contends that the grammatical structure of the rule requires two fifteen day periods.

The Executive Director takes the position that H.A.R. § 12-46-18 should be read to allow only one fifteen day period, i.e. after the receipt of the final conciliation demand letter. If an

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<sup>2</sup>H.A.R. § 12-46-18 provides:

A proceeding shall commence by the appointment of a hearings examiner fifteen days after service of the final conciliation demand or any extension thereof pursuant to section 12-46-17. The hearings examiner shall docket the complaint and assign a docket number to the complaint.

<sup>3</sup>A proceeding is the term used to describe the process which begins with the appointment of the hearings examiner and culminates with the issuance of a final decision by the Commission after a contested case hearing conducted by the hearings examiner.

extension of conciliation is granted after the initial fifteen day period, then a proceeding must commence when it expires. The Executive Director contends that the word "thereof" in the rule refers to the fifteen day period after the conciliation letter is served and the rule must be interpreted as authorizing the proceeding to commence at the end of "any extension thereof", or when conciliation efforts are unsuccessful.

### III. DISCUSSION

In Williams v. Hawaii Medical Service Ass'n., 71 Haw. 545, 549-550 (1990) the Hawaii Supreme Court reiterated the standards for construction of administrative rules:

In construing an administrative rule, general rules of statutory construction are applicable. Mahiai v. Suwa, 69 Haw. 350, 358, 742 P.2d 359, 366 (1987). When a rule does not conflict with statutory and constitutional requirements, courts will ascertain and effectuate the intent of the agency which promulgated the rule. Life of the Land, Inc. v. West Beach Dev. Corp., 63 Haw. 529, 531, 631 P.2d. 588, 590 (1981); Mahiai, 69 Haw. at 358, 742 P. 2d at 366. "Courts strive to give meaning to all parts of an administrative rule and to avoid construing any part as superfluous." International Bhd. of Elec. Workers v. Hawaiian Tel. Co., 68 Haw. 316, 325, 713 P.2d 943, 951 (1986). Courts will not construe rules in a manner which produces an absurd result. Mahiai, 69 Haw. at 358, 742 P.2d at 367.

In light of these standards, the Commission will decide the Petition.

The Commission will first examine the statutory basis for the rule. H.R.S. § 368-14(a) provides, in pertinent part:

If fifteen days after service of the final conciliation demand, the commission finds that conciliation will not resolve the complaint, the commission shall appoint a hearings examiner and schedule a contested case hearing that shall be held in accordance with chapter 91.

There is no mention in the statute of allowing an additional fifteen day period after an extension of time.<sup>4</sup> Thus, there would be no direct conflict with the statute if the Commission interpreted the rule to not provide a second fifteen day period.

The Commission finds that H.A.R. § 12-46-18 can be read in the manner argued by Niimi or in the manner argued by the Executive Director. The rule is ambiguous in that both appear to be reasonable constructions, thus resort must be made to the Commission's intent in order to interpret the rule.

The Commission's intent when promulgating H.A.R. § 12-46-18 was to allow sufficient time for conciliation efforts after the final demand letter was served while at the same time ensuring that a proceeding would be promptly initiated when conciliation was no longer feasible. The initial fifteen day period is the minimum time required by statute.<sup>5</sup> The extension provision was added by rule to allow time for further conciliation efforts if the

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<sup>4</sup>The authority to extend the final conciliation demand period stems from the Commission's rule making authority in H.R.S. § 368-9 and not from the language of H.R.S. § 368-14(a). H.A.R. § 12-46-17(c)(2) authorizes the Executive Director to grant an extension of time for conciliation if there is a written request stating good cause why conciliation should continue. The purpose of the extension is to foster conciliation. If the extension expires without an agreement, H.A.R. § 12-46-17(d) provides that the Executive Director shall notify the complainant of the failure of conciliation efforts.

<sup>5</sup>The Commission has previously interpreted the word "service" in the rule as meaning respondent's actual receipt, as opposed to the mailing, of the final conciliation demand letter in order to allow the full statutory time for conciliation. In the Matter of Dolores Santos, Docket No. 92-001 E-SH (Order Denying Motion for Declaratory Relief, March 20, 1992).

Executive Director determined that conciliation was possible. The length of the extension may vary depending upon the circumstances. Thus, the fifteen day period and the extension period serve the same purpose; and it would be illogical to read the rule as providing an additional fifteen days after the extension expires.<sup>6</sup>

The Commission finds support for this intent in the legislative purpose of the statute authorizing the Commission to commence hearings. The Commission determines that the legislative purpose of the first sentence of H.R.S. § 368-14(a) is two-fold: First, to allow a respondent sufficient time to respond to a final conciliation demand, a minimum of fifteen days after service. Second, to require the prompt commencement of a contested case proceeding if conciliation efforts are unsuccessful. This second purpose is evident because the statute provides that a hearings examiner "shall" be appointed when the Commission finds that conciliation will not resolve the complaint. There appears to be no need to provide for an additional fifteen day "waiting" period if the extension does not result in a conciliation agreement.

Given this determination of the legislative purpose, the Commission concludes that H.A.R. § 12-46-18 must be read as authorizing the commencement of a proceeding at the end of the extension. In making this conclusion, the Commission is mindful

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<sup>6</sup>Niimi argues the additional fifteen day period was necessary for the parties to consider new positions. This argument fails to address the point that the extension period provides the time for such consideration.

that it was established to create "a uniform procedure for the enforcement of the State's discrimination laws." H.R.S. § 368-1. The Commission was granted the power to "receive, investigate, and conciliate complaints" and "conduct proceedings. . . where conciliatory efforts are inappropriate or unsuccessful." H.R.S. § 368-3(1). (Emphasis added). The Commission is further required to liberally construe its rules in order to accomplish the purpose of ending employment discrimination. H.A.R. § 12-46-2. Given these mandates the Commission believes that the second fifteen day period would serve no purpose and therefore cannot interpret its rules to permit unnecessary delays in the enforcement of the State's discrimination laws.

#### IV. ORDER

IT IS HEREBY ORDERED THAT the Motion for Order Granting Declaratory Relief is summarily denied under the authority of H.A.R. § 12-46-63(b)(1).

Niimi may seek reconsideration under H.A.R. § 12-46-38 by filing a motion with ten days of receipt of this order. Niimi may seek judicial review in the circuit court under H.R.S. §§ 91-8 and 14 within thirty days after service of the final decision and order.

Dated: Honolulu, Hawaii, April 28, 1992.

  
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Amefil Agbayani  
Chairperson  
Hawaii Civil Rights Commission