



STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

EFiled: Jul 11 2012 01:30PM HAST
Transaction ID 55805031
Case No. OSH 2011-21

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

DONALDSON ENTERPRISES, INC.,

Respondent.

CASE NO. OSH 2011-21

ORDER NO. 475

ORDER GRANTING IN PART AND
DENYING IN PART RESPONDENT'S
MOTION TO CONTINUE HEARING,
FILED ON JUNE 15, 2012

ORDER GRANTING IN PART AND DENYING IN PART
RESPONDENT'S MOTION TO CONTINUE HEARING, FILED ON JUNE 15, 2012

On June 15, 2012, Respondent DONALDSON ENTERPRISES, INC. (Respondent or Donaldson Enterprises), by and through its counsel, Mr. Thomas Otake (Otake), filed a Motion to Continue Hearing with the Hawaii Labor Relations Board (Board). Respondent sought to continue the hearing currently scheduled on September 11-14, 2012 to avoid any infringement of Charles Donaldson's (Donaldson) Fifth Amendment right to remain silent due to a pending criminal indictment covering the same subject matter. Respondent's counsel stated in a Declaration, dated June 15, 2012, filed in support of Respondent's Motion to Continue Hearing, *inter alia*, that he was informed by an Assistant United States Attorney that the federal government intended to pursue a criminal indictment against Donaldson for alleged offenses related to the challenged violations in this proceeding; that counsel advised Donaldson that it was in his best interest to assert his Fifth Amendment constitutional right to remain silent in all related matters until the criminal case was resolved; that the predicament has resulted an inability to answer discovery responses requested by the Attorney General in this case; and that the presence of a criminal case with overlapping subject matter places Donaldson in a position where he will not be able to adequately defend himself in this proceeding if the hearing proceeds as scheduled.

On June 27, 2012, Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Director) filed his Position Statement on Respondent's Motion to Continue Hearing. The Director contended, *inter alia*, that the instant citation was directed against the corporation and not against Donaldson; that Donaldson cannot speak for the corporate entity; that he did not intend to call Donaldson

as a witness in the proceeding; and the case law does not require a stay of the civil proceeding pending resolution of the criminal proceedings.

On July 6, 2012, the Board conducted a hearing on Respondent's Motion to Continue Hearing. Respondent's counsel requested a six-month continuance of the hearing scheduled in September in order to properly assess the criminal charges which he had been advised would be filed. In response to the Complainant's opposition, Otake argued that Donaldson's testimony is critical to Respondent's defense. Otake explained that Respondent would have difficulty defending itself if Donaldson invoked his Fifth Amendment right because Donaldson's testimony is absolutely critical to questions regarding Respondent's operations.

Complainant's counsel indicated that while he opposed the instant Motion to Continue Hearing on the grounds stated, he may also seek a continuance of the hearing to complete discovery.

After considering the record and the arguments of counsel, the Board finds that a brief continuance is warranted given the pending investigation of criminal charges against Donaldson. Moreover, Complainant is not prejudiced by a continuance of the hearing in this matter as he indicated that he may seek a continuance of the hearing to complete discovery. Thus, the Board finds good cause to continue the hearing in this matter until **January 15 - 18, 2013 at 9:00 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu. Accordingly, the Board also extends the discovery deadline of August 1, 2012 to **October 15, 2012.**

DATED: Honolulu, Hawaii, July 11, 2012.

HAWAII LABOR RELATIONS BOARD



JAMES D. NICHOLSON, Chair



SESNITA A.D. MOEPONO, Member



ROCK B. LEY, Member

Copies sent to:
Herbert B.K. Lau, Deputy Attorney General
Thomas M. Otake, Esq.