



STATE OF HAWAII

EFiled: Jun 16 2017 09:11AM HAST
Transaction ID 60743390
Case No. OSH 2017-09

HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

AB CRANE LLC,

Respondent.

CASE NO. OSH 2017-09

ORDER NO. 915

ORDER DISMISSING AB CRANE LLC'S
CONTEST DUE TO UNTIMELINESS

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On February 21, 2017, the Hawaii Labor Relations Board (Board) received from the Hawaii Occupational Safety and Health Division (HIOSH), a division of Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Complainant or Director), a transmittal of a Notice of Contest (Contest) submitted by Respondent AB CRANE LLC (Respondent).

On March 7, 2017, the Board sent to all parties a NOTICE OF APPEAL; NOTICE OF STATUS CONFERENCE OR MOTION HEARING; AND NOTICE OF DE NOVO HEARING (Notice of Hearing). The Notice of Appeal notified the parties that the deadline for the filing of a dispositive motion was May 16, 2017; that the deadline for a response to a dispositive motion was May 30, 2017; and that a motion hearing would be held on June 6, 2017. The *de novo* hearing on the merits was scheduled for June 27, 2017. On March 8, 2017, the Board issued an AMENDED RECEIPT OF NOTICE OF CONTEST AND GENERAL INFORMATION; NOTICE OF STATUS CONFERENCE AND ORAL ARGUMENTS ON A DISPOSITIVE MOTION; AND NOTICE OF DE NOVO HEARING (Amended Notice of Hearing). The Amended Notice of Hearing amended the deadline for the filing of a dispositive motion to **May 9, 2017**; the deadline for responses to dispositive motions to **May 16, 2017**; and the date for the motion hearing to **May**

23, 2017. The *de novo* hearing was rescheduled to **June 29, 2017.** The date for the filing of a party's position statement remained March 21, 2017. The parties were notified that "[a]ny party may retain counsel if the party so desires, and an individual may appear on the individual's own behalf, or a member or a partnership may represent the partnership, or an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association." The parties were further notified that a party or representative may appear telephonically at the motion hearing.

On March 21, 2017, Complainant filed a position statement. Respondent did not file a position statement.

On April 13, 2017, Complainant filed a motion to dismiss Respondent's contest (Motion to Dismiss), asserting the Board has no jurisdiction over this matter. The Motion to Dismiss asserted that Respondent received its HIOSH Citation on January 11, 2017, and therefore was supposed to file its original, written contest by January 23, 2017; thus, the Contest was untimely.

Attached to the Motion to Dismiss was a Declaration (Declaration) of Allen Miho (Miho), the Manager for the HIOSH, and Exhibits "A" through "C" authenticated by Manager Miho. The Declaration stated that the Citation was issued and mailed to Respondent on January 9, 2017. Exhibit "A" attached to the Motion to Dismiss is a copy of the Citation, and indicates an issuance date of "01/09/2017." Exhibit "B" consists of a copy of a U.S. Postal Service Certified Mail Receipt showing that the Citation was mailed on January 9, 2017, and was delivered on January 11, 2017. Exhibit "C" consists of a copy of Respondent's letter to HIOSH to contest the Citation, and the letter's envelope that shows a postmark of February 8, 2017. Manager Miho's Declaration states that HIOSH received Respondent's Contest on February 9, 2017.

On April 19, 2017, the Board inadvertently issued a Notice of Hearing on Complainant Director of Labor and Industrial Relations' Motion to Dismiss Respondent AB Crane, LLC's Contest, noticing May 1, 2017 as the date for oral arguments on the motion. On April 25, 2017, the Board issued an AMENDED NOTICE OF ORAL ARGUMENT AND STATUS CONFERENCE ON MAY 23, 2017, to clarify and reiterate that the oral argument on the Motion to Dismiss would be heard on May 23, 2017. However, due to a conflict in the Board's schedule, the date for the oral arguments on the Motion to dismiss was continued to May 24, 2017, at 9:00 a.m., and therefore on April 25, 2017, the Board issued a SECOND AMENDED NOTICE OF ORAL ARGUMENT AND STATUS CONFERENCE TO BE HELD ON MAY 24, 2017.

Respondent did not file any response or opposition to the Motion to Dismiss.

On May 24, 2017, the Board heard oral arguments on the Motion to Dismiss. Amy Chan, Deputy Attorney General, appeared on behalf of Complainant and presented oral arguments. James Boldt appeared via telephone on behalf of Respondent, but reserved making any statements until he could speak to or obtain legal representation, and requested a continuance of twelve days. Deputy Attorney General Chan represented at the oral arguments that she spoke to Mr. Boldt “sometime in March” before she filed the Motion to Dismiss, told him that she was going to file a motion to dismiss, and Mr. Boldt indicated at that time that he wanted to speak to an attorney, and that he never called her back. Mr. Boldt stated that HIOSH would not give him a copy of the autopsy, and that he needed to get a lawyer in order to obtain a copy of the autopsy that would show Respondent is not liable.

The Board’s jurisdiction over this matter is governed by Hawai‘i Revised Statutes (HRS) §§ 396-11 and 396-11.5. HRS § 396-11(a) provides that a citation shall be final and conclusive unless contested within twenty days after receipt of the citation:

Any citation, proposed penalty, or order of the director shall be final and conclusive against the employer unless the employer files with the director a written notice of contest of the citation, the abatement period stated in the citation, the proposed penalty, or order ***within twenty days after receipt of the citation, proposed penalty, or order.***

(Emphasis added). This limitation is jurisdictional and provided by statute, and may not be waived by either the Board or the parties (*see* Thomas v. Commonwealth of Pennsylvania Labor Relations Board, 483 A.2d 1016 (Pa. 1984) (failure to comply with the statute of limitations for unfair labor practices goes to the subject matter jurisdiction of the labor relations board); HOH Corp. v. Motor Vehicle Indus. Licensing Bd., Dept. of Commerce and Consumer Affairs, 69 Haw. 135, 141, 736 P.2d 1271, 1275 (1987) (agencies may not nullify statutes)).

In Si-Nor, Inc. v. Director, Dep’t of Labor and Industrial Relations, 120 Hawai‘i 135, 142-43, 202 P.2d 596, 603-04 (App. 2009), involving a HIOSH appeal, the Intermediate Court of Appeals held that the right of appeal is purely statutory and therefore, the right of appeal is limited as provided by the legislature and compliance with the method and procedure prescribed by it is obligatory.

The Board finds, based upon the undisputed evidence submitted by Complainant, as well as the files and records in this case, that the Citation was issued and mailed to Respondent on January 9, 2017. The Board also finds that Respondent received the Citation on January 11, 2017. Pursuant to HRS § 396-11(a), the deadline for Respondent to file a notice of contest with the Director was **January 31, 2017**. The Board further finds that Respondent's Contest of the Citation was mailed on February 8, 2017, and received by HIOSH on February 9, 2017. Therefore, the Board finds and concludes that the Contest was untimely and thus the Board lacks jurisdiction over this matter.

The Board is guided by the principle that if a tribunal lacks jurisdiction over the subject matter of a proceeding, any judgment rendered in that proceeding is invalid; therefore, such a question is appropriate at any stage of the case. See Bush v. Hawaiian Homes Comm'n, 76 Hawai'i 128, 133, 870 P.2d 1272, 1277 (1994). A tribunal is obliged to first insure that it has jurisdiction. Id.; see also, Hawai'i Rules of Civil Procedure (HRCP) Rule 12(h)(3). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Tamashiro v. Dep't of Human Serv's., 112 Hawai'i 388, 398-99, 146 P.3d 103, 113-14 (2006).

Accordingly, the Board hereby dismisses this case for lack of subject matter jurisdiction, due to the untimely filing of the notice of contest.

Because the Board dismisses this case for lack of subject matter jurisdiction, Respondent's oral request for more time that was made at the motion hearing on May 24, 2017, is hereby denied as moot¹.

ORDER

Respondent's Contest in this matter is hereby dismissed due to untimeliness, which divests the Board of jurisdiction. This case is now closed.

¹ A case is moot when events have so affected the relations between the parties that the two conditions for justiciability – adverse interest and effective remedy – have been compromised. Hac v. University of Hawaii, 102 Hawai'i 92, 99, 73 P.3d 46, 53 (2003) (citing Okada Trucking Co. v. Board of Water Supply, 99 Hawai'i 191, 195-95, 53 P.3d 799, 803-04 (2002)).

DATED: Honolulu, Hawaii, June 16, 2017.

HAWAII LABOR RELATIONS BOARD



Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J N. Musto

J N. MUSTO, Member

Copy:

Amy Chan, Deputy Attorney General
James Boldt, AB Crane LLC

Case No. OSH 2017-09 – Director, DLIR v. AB Crane LLC – Order Dismissing AB Crane LLC’s Contest Due to Untimeliness.

Order No.: