

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-548
)	
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,)	ORDER NO. 2249
)	
Complainant,)	ORDER DENYING UPW'S MOTION FOR RECONSIDERATION OF ORDER NO. 2235 AND FOR STAY PENDING JUDICIAL REVIEW OF ARBITRATOR'S AWARD
)	
and)	
)	
LILLIAN KOLLER, Director, Department of Human Services, State of Hawaii; MARK J. BENNETT, Attorney General, State of Hawaii, and LINDA LINGLE, Governor, State of Hawaii,)	
)	
Respondents.)	
)	

ORDER DENYING UPW'S MOTION FOR
RECONSIDERATION OF ORDER NO. 2235 AND FOR
STAY PENDING JUDICIAL REVIEW OF ARBITRATOR'S AWARD

On March 29, 2004 Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed its Motion for Reconsideration of Order No. 2235 and for Stay Pending Judicial Review of Arbitrator's Award with the Hawaii Labor Relations Board (Board). The UPW requested that the Board reconsider its Order No. 2235 issued on March 9, 2004 which dismissed the instant prohibited practice complaint and stay the proceedings in this matter pending judicial review of Arbitrator Russell Higa's January 20, 2004 decision and award. UPW's counsel asserts in an affidavit filed in support of the motion that the Board's decision to dismiss the complaint on mootness grounds was premature given the Employer's motion to confirm the award filed on March 9, 2004 and the UPW's opposition to the motion. Thereafter, the UPW also moved to vacate the award on March 29, 2004 which is set for hearing on May 19, 2004. The UPW submits that if the Court vacates the arbitral award, the proceedings in this case would not be moot. However, if the Court confirms the award, Order No. 2235, should be issued in the future. In any event, the UPW contends that the Board should reconsider Order No. 2235.


On April 5, 2004, Respondents filed a Memorandum in Opposition to UPW's motion for reconsideration and for stay pending judicial review of the arbitrator's award. Respondents contend that under Hawaii Rules of Civil Procedure (HRCP) Rule 59, made applicable by HRCP Rule 81(b)(12), any motion for reconsideration must be filed within ten days of the order and therefore the instant motion is untimely. Second, Respondents contend

that the Board lacks jurisdiction to review the merits of Order No. 2235, because Hawaii Revised Statutes (HRS) § 377-9(l) provides that persons aggrieved by a final decision or order must obtain review by the Circuit Court in an agency appeal. Lastly, Respondents contend that the UPW's motion raises nothing that could not have been raised in the hearing on the merits of the case.

In considering the instant motion, "[t]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10 (1992). In this case, the UPW failed to satisfy the foregoing condition because the UPW could have raised the arguments before Board. Having considered the arguments and authorities presented by the UPW, the Board is not persuaded that its findings of fact and conclusions of law in Order No. 2235 should be reconsidered as the opposition to the confirmation of the arbitration award at issue does not affect the finality of the award. In addition, the Board is not persuaded that it has the statutory authority to stay its order after issuance. Accordingly, the instant motion for reconsideration of Order No. 2235 and for a stay is denied.

DATED: Honolulu, Hawaii, May 7, 2004.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

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