

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-05-551
STEPHANIE STUCKY,)	ORDER NO. 2346
Complainant,)	ORDER DENYING COMPLAINANT'S
and)	MOTION TO ENFORCE DECISION
BOARD OF EDUCATION, State of Hawaii;)	NO. 450 IN ACCORDANCE WITH
MARY COCHRAN, in her capacity as a)	APPELLATE COURT'S ORDER, FILED
member of the Board of Education, State of)	ON AUGUST 5, 2005
Hawaii; DEPARTMENT OF EDUCATION,)	
State of Hawaii; DONNA WHITFORD, in her)	
capacity as District Superintendent, Department)	
of Education, State of Hawaii,)	
Respondents.)	

ORDER DENYING COMPLAINANT'S MOTION
TO ENFORCE DECISION NO. 450 IN ACCORDANCE
WITH APPELLATE COURT'S ORDER, FILED ON AUGUST 5, 2005

On August 5, 2005, STEPHANIE STUCKY (STUCKY), by and through her counsel, filed a Motion to Enforce Decision No. 450 in Accordance with Appellate Court's Order with the Hawaii Labor Relations Board (Board). STUCKY requested the Board to issue an order requiring the above-named Respondents to comply with the remedial orders issued by the Board in Decision No. 450 on December 13, 2004. Specifically, STUCKY requested the Board require Respondents to place her in the band classes for the 2005-2006 school year as intended by the Second Circuit Court in Respondents' appeal of Decision No. 450 in Civil No. 05-1-0006(3).

On August 5, 2005, STUCKY filed Complainant's Ex Parte Motion to Shorten Time for Hearing on Complainant's Motion to Enforce Decision No. 450 in Accordance with Appellate Court's Order with the Board.

On August 10, 2005, Respondents filed a memorandum opposing STUCKY'S motion to enforce on the grounds that appellate jurisdiction remained with the Second Circuit Court, and therefore the Board lacked jurisdiction over a motion to enforce. Furthermore, Respondents contend that their interpretation of Board Decision No. 450 did not require that STUCKY be allowed to teach band class in the 2005-2006 school year.

On August 22, 2005, the Board held a status conference at which counsel representing STUCKY and Respondents appeared, notwithstanding Respondents' contest of the Board's jurisdiction. At the status conference, the Board scheduled a hearing on Complainant's motion to enforce for August 26, 2005. On August 25, 2005, STUCKY filed a Supplemental Memorandum in Support of Motion to Enforce Decision No. 450 in Accordance with Appellate Court's Order.

On August 26, 2005, the Board held a hearing on the instant motion. After the presentation of arguments, the hearing was continued to allow STUCKY time to file a final judgment in the Second Circuit Court in Civil No. 05-1-0006(3). Notwithstanding the Respondents' narrow interpretation of Board Decision No. 450, Respondents were given time to explore the possibility of complying with Board Decision No. 450 by allowing STUCKY to teach at least two band classes in the current 2005-2006 school year. The Board continued the hearing on the motion to enforce to September 6, 2005.

On September 6, 2005, STUCKY's counsel informed the Board that an entry of final judgment was filed in the Second Circuit Court on September 2, 2005. Respondents' counsel informed the Board that STUCKY was placed in Position No. 65656 and good faith efforts were being made by Respondents to allow STUCKY to teach two band classes in the current school year at Iao Intermediate School to comply with Board Decision No. 450.

On September 14, 2005, Respondents filed the Declaration of Patricia Hamamoto explaining how the Respondents were complying with the Board's Decision No. 450.

After full consideration of the evidence and arguments on the motion, the Board makes the following Findings of Fact and Order.

FINDINGS OF FACT

1. On December 13, 2004, the Board issued Decision No. 450 in the above-captioned matter, and concluded that Respondents wilfully violated HRS §§ 89-13(a)(1), (2), and (7), "by initiating discussions and directly dealing under the guise of implementing a settlement agreement with Complainant without her Union representative present."
2. In Decision No. 450, the Board ordered as follows:
 1. Respondents are ordered to cease and desist from interfering with the rights of Complainant by changing the terms of an agreement to resolve her grievance at

Step 2 agreed to by the DOE Superintendent's designees and the Union.

2. Respondents are ordered to implement the October 23, 2003 settlement agreement as planned by Kilborn to take effect at the start of the second semester in 2005.
 3. Respondents shall immediately post copies of this decision in conspicuous places at its work sites where employees of Unit 05 assemble and congregate, and on the Respondents' respective websites for a period of 60 days from the initial date of posting.
 4. Respondents shall notify the Board of the steps taken to comply herewith within the 30 days of receipt of this order.
3. Respondents appealed Decision No. 450 in the Second Circuit Court (Civil No. 05-1-0006(3)) within the 30-day period for judicial review as provided under HRS § 91-14, and obtained a stay of the Board's order pending the appeal.
 4. On June 3, 2005, the Honorable Joseph E. Cardoza conducted oral arguments on the appeal and affirmed the Decision No. 450 and dissolved the stay. The Court noted that the Board's order was "appropriate and remains enforceable" and expected that "implementation would move forward."¹
 5. On August 4, 2005, STUCKY, by and through counsel, sent a letter to Respondents, requesting that Respondents implement the Board's order "for the upcoming school year. Since the first day of school is August 18, 2005," ²
 6. On August 5, 2005, Respondents, by and through their counsel, informed STUCKY as follows:

In response to your letter of August 4, 2005, it is the Department of Education's position that the decision by the Hawaii Labor Relations Board just referred to the Spring

¹Complainant's Motion to Enforce Decision No. 450 in Accordance with Appellate Court's Order, Exhibit (Ex.) 1.

²Id., see Ex. 2.

Semester of 2005. The role of the Circuit Court was to review that decision and determine if it was proper. Where the Court finds the decision was appropriate, that role does not allow the Court to change the remedy that was provided by the Hawaii Labor Relations Board. Further, we have reviewed the transcript and do not believe that it should be interpreted as requiring the Department of Education to allow Ms. Stucky to teach band classes during the 2005-2006 school year.³

7. On August 5, 2005, Complainant's filed the instant motion to enforce.
8. On September 2, 2005, Complainant filed its notice of final judgment and entry of final judgment in the Second Circuit Court, Civil No. 05-1-0006(3), affirming Board Decision No. 450. On September 7, 2005, the Board received the Circuit Court's notice of judgment in the appeal in Civil No. 05-1-0006(3).
9. On September 14, 2005, Respondents filed the Declaration of Patricia Hamamoto (Hamamoto), Superintendent of the Department of Education, State of Hawaii to explain that the Respondents are unable to comply with a strict reading of the Board's order in Decision No. 450 because based on a review of the October 23, 2003 settlement agreement the classes proposed for the 2003-2004 school year are no longer being offered and there is no second band line at Iao Intermediate School. Furthermore, the applicable Bargaining Unit 05 collective bargaining agreement, provides that "each teaching assignment can only be for one school year and the assignments have been made for the 2005-2006 school year that is currently in session[.]" Consistent with the October 23, 2003 letter, STUCKY was placed in Position No. 65656. Moreover, in order to comply with the Board's Order of December 13, 2004, Hamamoto instructed Ken Nomura, the Complex Area Superintendent for Iao Intermediate School, to assign STUCKY to teach two band classes during the 2005-2006 school year as soon as possible. Hamamoto declared that Nomura is "working to carry out [her] instructions."⁴
10. Based on Hamamoto's declaration, the Board finds that Respondents have substantially complied with the Board's remedial order in Decision No. 450.

³Id., see Ex. 3.

⁴See, Declaration of Patricia Hamamoto, dated September 12, 2005.

DISCUSSION

STUCKY alleges that Respondents are refusing to comply with the Board's remedial order in Decision No. 450 by not allowing her to teach band classes during the 2005-2006 school year, regardless of the interpretation of the Second Circuit Court upon affirming the Board's Decision No. 450 on appeal and dissolving the stay of the Board's remedial order.⁵ STUCKY therefore moves this Board to petition the circuit court for enforcement as provided by HRS §§ 89-14, 377-9(e) and Hawaii Administrative Rules (HAR) § 12-42-51.

Jurisdiction

The first issue is whether the Board has jurisdiction to consider Complainant's motion to enforce. Initially, Respondents opposed Complainant's motion on the grounds that the Board lacked jurisdiction since appellate jurisdiction remained with the Second Circuit Court in Civil No. 05-1-0006(3). In Korean Buddhist Dae Won Sa Temple of Hawaii v. Concerned Citizens of Palolo, 107 Hawai'i 371, 382-383, 114 P.3d 113 (2005), the Hawaii Supreme Court decided administrative appeals filed pursuant to HRS § 91-14 are disposed of by judgments pursuant to Hawaii Rules of Civil Procedure Rule 72(k) (2000), which provides:

Upon determination of the appeal, the court having jurisdiction shall enter judgment. Such judgment shall be reviewable, or final, as may be provided by law. Promptly after final determination of the appeal in the circuit court or in the supreme court, the clerk of the court finally determining the case shall notify the governmental official or body concerned, of the disposition of the appeal.

Id., at 382-383. There, the Court explained the circuit court's appellate jurisdiction of an administrative appeal is limited, and ends upon the "appellate court's filing its judgment on appeal" as set forth under HRS § 602-5 (1993) governing agency appeals brought under HRS § 91-14, § 91-15.

⁵Hawaii Administrative Rules § 12-42-51 provides in part:

If any party fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit judge . . . for the enforcement of the order and for appropriate temporary relief or restraining order, and shall certify the file in the court the record in the proceedings, Upon such filing the board shall cause notice thereof to be served upon the party by mailing a copy to the party's last known post office address, and thereupon the judge shall have jurisdiction in the premises.

In this case, the Board reacquired jurisdiction to consider STUCKY's motion to enforce Board Decision No. 450, upon notification of the filing of final judgment on September 7, 2005. Therefore, the Board has jurisdiction to consider STUCKY's motion to enforce and the Declaration of Patricia Hamamoto filed on September 14, 2005.

Substantial Compliance

In Order No. 1934, dated September 26, 2000, United Public Workers, AFSCME, Local 646, AFL-CIO, in Case Nos. CE-01-410a, CE-10-410b, the Board concluded that petitioning the circuit court for an enforcement order is discretionary, not mandatory. The applicable standard is found in HRS § 377-9(k), which provides that:

(k) A substantial compliance with the procedure of this chapter shall be sufficient to give effect to the decisions and orders fo the board, and they shall not be declared inoperative, illegal, or void for any nonprejudicial irregularity in respect thereof.

In support of her motion to enforce, STUCKY contends that Respondents have no intention of complying with the Board's order that would allow her to teach a second band line which was the crux of the October 23, 2003 settlement agreement. Respondents initially countered that a strict reading of the Board's order makes compliance impossible because there are no second line band classes in the 2005-2006 school year at Iao Intermediate School. Further, Respondents contend that the collective bargaining agreement unequivocally provides teaching assignments can only be for one school year.

Thereafter, Hamamoto declared that consistent with the October 23, 2003 letter, STUCKY was placed in Position No. 65656. Hamamoto also instructed Ken Nomura, the Complex Area Superintendent for Iao Intermediate School, to assign STUCKY to teach two band classes during the 2005-2006 school year as soon as possible. Hamamoto declared that Nomura is "working to carry out [her] instructions."

Based on the Declaration of Patricia Hamamoto submitted on September 14, 2005, the Board is satisfied that Respondents have made a good faith effort to substantially comply with the remedial provisions of Decision No. 450. Therefore, it would be unproductive and an inefficient use of the circuit court's time and resources for this Board to petition for enforcement. See, Michael L. Last, 5 HLRB 564 (1996). For these reasons, Complainant's motion to enforce is denied.

CONCLUSIONS OF LAW

1. HRS § 89-5(b), authorizes the Hawaii Labor Relations Board to:

* * *

- (4) Conduct proceedings on complaints of prohibited practices by employers, employees and employee organizations and take such actions with respect thereto as it deems necessary and proper;
 - (5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers,
* * *
 - (9) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91.
2. The Board has jurisdiction over Complainant's Motion to Enforce Decision No. 450 in Accordance with Appellate Court's Order upon the Circuit Court's entry of judgment in Civil No. 05-1-0006(3) affirming and dissolving the stay of Board Decision No. 450, filed on September 2, 2005. Korean Buddhist Dae Won Sa Temple of Hawaii v. Concerned Citizens of Palolo, 107 Hawai`I 107 Haw. 371, 114 P.3d 113 (2005).
3. Based on the record, the Board concludes that Respondents have substantially complied with the Board's orders to give effect to the remedial provisions of Board Decision No. 450.

ORDER


The Complainant's Motion to Enforce Decision No. 450 in Accordance with Appellate Court's Order is hereby denied.

DATED: Honolulu, Hawaii, OCTOBER 20, 2005.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member


KATHLEEN RACUYA-MARKRICH, Member

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