

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 142,
AFL-CIO,

Complainant,

and

DEL MONTE FRESH PRODUCE
(HAWAII), INC., Honolulu Chilled/Frozen
Operations; EDWARD C. LITTLETON,
General Manager, Honolulu Chilled/Frozen
Operations; STACIE SASAGAWA, Human
Resources Director, Del Monte Fresh Produce
(Hawaii), Inc.; and TIM HO, Hawaii
Employers Council; DIXON SUZUKI,
Hawaii Employers Council; and DEL
MONTE FRESH PRODUCE COMPANY,

Respondents.

CASE NO. 06-5(CE)

ORDER NO. 2443

ORDER DENYING RESPONDENTS'
MOTION FOR RECONSIDERATION
AND CLARIFICATION, FILED ON
APRIL 5, 2007

ORDER DENYING RESPONDENTS' MOTION FOR
RECONSIDERATION AND CLARIFICATION, FILED ON APRIL 5, 2007

On April 5, 2007, Respondents DEL MONTE FRESH PRODUCE (HAWAII), INC., EDWARD C. LITTLETON, STACIE SASAGAWA, TIM HO, DIXON SUZUKI, and DEL MONTE FRESH PRODUCE COMPANY (collectively "Del Monte") filed a Motion for Reconsideration or Clarification of Decision No. 464, dated March 21, 2007, with the Hawaii Labor Relations Board ("Board"). Respondents requested that the remedial order be modified to reflect that any additional severance be calculated based upon a theoretical termination date of June 19, 2008 based upon the evidence in the record. Respondents also sought to clarify whether the Board's final order would be the March 21, 2007 order or its ruling on the instant motion, or some other order.

Thereafter on April 13, 2007, Complainant INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 142, AFL-CIO ("ILWU") filed a Memorandum in Opposition to Respondents' Motion. The ILWU argued that the Board has no rule authorizing the filing of a motion for reconsideration; the instant motion is untimely; Respondents failed to present new evidence or argument which could not have been

presented earlier; and the Board lacks authority to give advisory opinions on whether any particular order is final for the purposes of an appeal under HRS Chapter 91.

On April 19, 2007, the Board heard arguments on Respondents' motion. After considering the arguments presented, the Board hereby denies Respondents' Motion for Reconsideration and Clarification.

The Board recognizes the right of Respondents to file such a motion. Although not specifically provided for in the Board's rules, the Board notes that such motions are allowed under the Hawaii Rules of Civil Procedure ("HRCP") and the Federal Rules of Civil Procedure ("FRCP") and the Board has in the past looked to the HRCP and FRCP for guidance. Additionally, the Board has the authority to "[h]old such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers[.]" Hawaii Revised Statutes ("HRS") § 89-5(i)(5). In the interests of justice, the Board entertains the Respondents' Motion for Reconsideration and Clarification in the present 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). Based upon the arguments presented, the Board finds that Respondents have not presented any newly discovered evidence which by due diligence could not have been previously presented. The Board's conclusion in Decision No. 464 to use December 2008 as the date for calculating severance payments in its remedial order is supported by substantial evidence in the record, and accordingly the date is not clear erroneous. Respondents argue that a June 2008 date would be preferable; however, the exact number and sequence of incremental layoffs and cessation of agricultural activity prior to December 2008 are also hypothetical and therefore speculative to some degree, and thus the Board selected the firm "closure" date of December 2008 that was given by the employer during the course of the first phase of negotiations.

Moreover, as the judicial review of contested cases is governed by HRS § 91-14, the Board refrains from interpreting or providing legal guidance on HRS § 91-14, including any clarification regarding a tolling of the appeal period for purposes of § 91-14, as the Board believes such power lies exclusively with the courts.

Based upon the foregoing, the Board denies the instant motion.

DATED: Honolulu, Hawaii, April 20, 2007.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair

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EMORY J. SPRINGER, Member


SARAH B. HIRAKAMI, Member

Copies sent to:

Rebecca L. Covert, Esq.
Christopher S. Yeh, Esq.