

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO,

Complainant,

v.

JAMES PROPOTNICK, Acting Director,
Department of Public Safety, State of Hawaii
and MARIE LADERTA, Director,
Department of Human Resources
Development, State of Hawaii,

Respondents.

CASE NO. CE-10-620

ORDER NO. 2482

ORDER DENYING COMPLAINANT'S
MOTION TO WITHDRAW COM-
PLAINT, FILED ON DECEMBER 10,
2007

ORDER DENYING COMPLAINANT'S MOTION
TO WITHDRAW COMPLAINT, FILED ON DECEMBER 10, 2007

On December 10, 2007, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Motion to Withdraw Complaint with the Hawaii Labor Relations Board (Board). UPW's counsel states in an affidavit attached to the motion that on November 30, 2007, the UPW and the Employer entered into a settlement agreement to resolve the controversy underlying this complaint. UPW's counsel further states that as part of the settlement terms, the UPW agreed to "dismiss with prejudice Hawaii Labor Relations Board ("HLRB") Case No. CE-10-620, i.e. UPW v. Propotnick, et al: (sic) and withdraw the appeal filed in Civil No. 06-1-1316-07 SSM, ICA Case No. 28346, related to HLRB Case No. CE-10-620." See paragraph 6, Exhibit 1, attached to the motion. The UPW requested the Board to consent to the withdrawal of the complaint pursuant to Hawaii Administrative Rules (HAR) § 12-42-44. Thereafter, on December 14, 2007, the UPW filed a Supplemental Submission in Support of Motion to Withdraw Complaint filed on December 10, 2007. The UPW submitted a copy of the Intermediate Court of Appeals' Order Granting UPW's Motion to Withdraw and Dismiss Appeal in Case No. 28346 filed on December 13, 2007.

HAR § 12-42-44 provides that:

Any complaint may be withdrawn at any time prior to the issuance of a final order thereon, upon motion and with

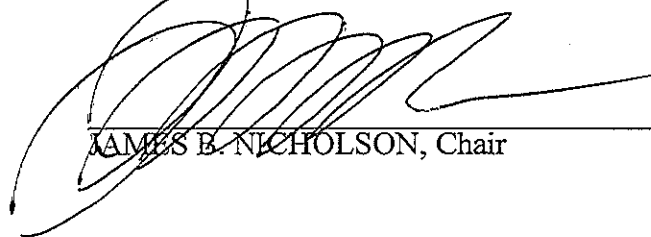
the consent of the board. Whenever the board approves withdrawal of such complaint, the case shall be closed.

The foregoing rule permits the Board to consent to the withdrawal of a complaint prior to the issuance of a final order. In this case, the Board issued Order No. 2381, Order Granting Respondents' Motion to Dismiss, on June 30, 2006 concluding, *inter alia*, that it lacked jurisdiction over the instant complaint because it was time barred. Thereafter, the UPW filed an appeal from Order No. 2381 to the First Circuit Court in Civil No. 06-1-1316-07 SSM. The First Circuit Court affirmed Order No. 2381 and the UPW appealed the First Circuit Court's judgment to the Intermediate Court of Appeals in Case No. 28346 which has been withdrawn pursuant to the terms of the parties' settlement. However, as Order No. 2381 was a final appealable order which left nothing more to be considered before the Board,¹ the Board cannot consent to the withdrawal of the complaint pursuant to HAR § 12-42-44 and the Board accordingly must deny this motion. The Board also notes that the effect of the Board's Order No. 2381 is to dismiss, with prejudice, Case No. CE-10-620.

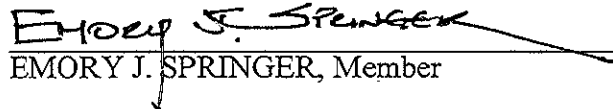
Based on the foregoing, the Board hereby denies Complainant's motion to withdraw the instant complaint.

DATED: Honolulu, Hawaii, December 26, 2007

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

¹HRS § 91-14(a) provides that any person aggrieved by a "final decision and order" is entitled to judicial review thereof. In this context, the Hawaii Supreme Court has defined "final" order" to mean an order ending the proceedings, leaving nothing further to be accomplished. Bocalbos v. Kapiolani Medical Center for Women and Children, 89 Hawai'i 436, 439, 974 P.2d 1026, 1029 (1999). As the Board dismissed the instant complaint in Board Order No. 2381, that order was a final and appealable order.

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Copies sent to:

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