

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

MUFI HANNEMANN, Mayor, City and
County of Honolulu; KENNETH
NAKAMATSU, Director, Department of
Human Resources, City and County of
Honolulu; and CLIFFORD LUM, Manager
and Chief Engineer, Board of Water Supply,
City and County of Honolulu,

Respondents.

CASE NO. CE-01-647

ORDER NO. 2489

ORDER GRANTING UPW'S MOTION
FOR RECONSIDERATION FILED ON
JANUARY 4, 2008 AND RESCINDING
ORDER NO. 2483, ISSUED ON
DECEMBER 27, 2007

ORDER GRANTING UPW'S MOTION FOR
RECONSIDERATION FILED ON JANUARY 4, 2008 AND
RESCINDING ORDER NO. 2483, ISSUED ON DECEMBER 27, 2007

On December 27, 2007, the Hawaii Labor Relations Board (Board) issued Order No. 2483, Order Denying UPW's Motion for Summary Judgment; and Order Dismissing Prohibited Practice Complaint or Alternatively, Granting Respondents' Cross-Motion for Summary Judgment in this matter. In its order, the Board found that all relevant information pertaining to Board of Water Supply (BWS) contracts had already been provided to the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) in an October 5, 2007 transmittal letter and concluded the case was moot. The Board accordingly dismissed the complaint for lack of jurisdiction based upon its findings. Alternatively, assuming *arguendo*, the Board had jurisdiction over the complaint, the Board found that Respondents provided the UPW with access to the contracts for review and copying within 7 days of its request. In addition, the Board found that all relevant information pertaining to BWS contracts was included in the City's October 5, 2007, response to the UPW. The Board therefore concluded alternatively, that Respondents were entitled to summary judgment because Respondents did not wilfully violate Hawaii Revised Statutes (HRS) §§ 89-13(a)(1), (5), (7), and (8).

Thereafter, on January 4, 2008, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union), by and through its counsel, Herbert R. Takahashi, Esq. (Takahashi) filed a Motion for Reconsideration with the Board. Takahashi

stated in an affidavit attached to the motion that he was informed by Respondents' counsel, Gregory M. Sato (Sato) that the BWS had additional documents and information which were previously requested by the UPW. Complainant attached as an exhibit to the motion, a letter dated January 3, 2008 from Sato to Takahashi indicating additional relevant documents had been found.

Thereafter, in a letter dated January 5, 2008, Complainant's counsel wrote to the Board Chair indicating that the parties agreed, inter alia, that the motion for reconsideration in Case No. CE-01-647 shall be granted.

On January 8, 2008, the Board issued a Notice of Hearing on Complainant's Motion for Reconsideration filed on January 4, 2008 scheduling a hearing on January 15, 2008.

On January 14, 2008, the UPW filed a Supplemental Submission with the Board consisting of a January 12, 2008 letter to Takahashi from Sato stating, inter alia, Respondents' position that none of the work described involve services customarily and historically performed by BWS employees and 4 pages which included lists of BWS Purchase Orders for Services and Pcard transactions.

Prior to the hearing scheduled on January 15, 2008, Takahashi notified the Board that the parties agreed to continue the proceedings in this matter.

Based upon the record in this case, the Board finds good cause to reconsider Order No. 2483 and to rescind the order.

FINDINGS OF FACT

1. On December 27, 2007, the Board issued Order No. 2483, Order Denying UPW's Motion for Summary Judgment; and Order Dismissing Prohibited Practice Complaint or Alternatively, Granting Respondents' Cross-Motion for Summary Judgment. Based upon the facts in the record, the Board found that Respondents had provided the UPW with the documents requested, as well as access to the relevant documents. Thus, the Board dismissed the complaint as moot or alternatively, denied the UPW's motion for summary judgment and granted summary judgment in favor of the Respondents.
2. Thereafter, by letter dated January 3, 2008, Respondents' counsel, Sato, notified UPW's counsel, Takahashi, and the Board that:

Following my client's conversation with your client, I am writing to inform you that we have confirmed that there are additional matters that are relevant to your earlier request. We

will provide them to you shortly. By a copy of this letter to the Hawaii Labor Relations Board, we will be notifying them of this development.

3. The listing of documents Sato provided to Takahashi by letter of January 12, 2008 constitutes new evidence which was not previously made available to the UPW and which could not have been presented to the Board.
4. By letter dated January 5, 2008, Takahashi wrote to the Board Chair advising the Board of certain stipulations reached between the parties, including an agreement that the “motion for reconsideration in Case No. CE-01-647 shall be granted.”

CONCLUSIONS OF LAW

1. The Board has previously considered motions for reconsideration of its final decisions and orders. And, in considering the instant motion, the Board notes “[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). “Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding.” Tagupa v. Tagupa, 108 Hawai‘i 459, 465, 121, P.3d 924, 930 (2005); Ass’n of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai‘i 97, 110, 58 P.3d 608, 621 (2002) (quoting Sousaris v. Miller, 92 Hawai‘i 505, 513, 993 P.2d 539, 547 (2000)).
2. Based upon a review of the record, Complainant’s Motion for Reconsideration and Supplemental Submission, and the parties’ stipulation that the Motion for Reconsideration be granted, the Board hereby grants Complainant’s Motion for Reconsideration in view of the newly discovered evidence which could not have been previously presented to the Board.
3. As the evidence could materially impact Board Order No. 2483, the Board with an abundance of caution and in the interests of justice, hereby rescinds Order No. 2483, dated December 27, 2007.

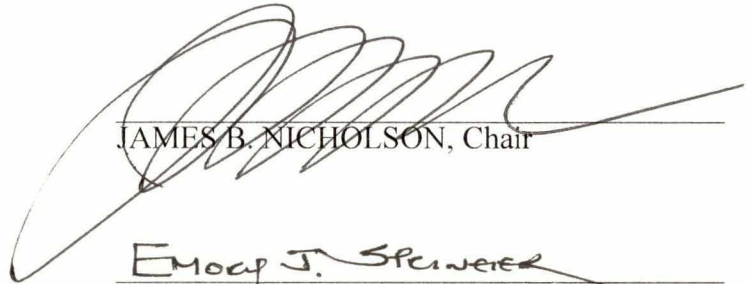
ORDER

Based on the foregoing, the Board grants Complainant’s Motion for Reconsideration, filed on January 4, 2008 and rescinds Board Order No. 2483, Order

Denying UPW's Motion for Summary Judgment; and Order Dismissing Prohibited Practice Complaint or Alternatively, Granting Respondents' Cross-Motion for Summary Judgment, dated December 27, 2007.

DATED: Honolulu, Hawaii, January 17, 2008.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Copies sent to:

Herbert R. Takahashi, Esq.
Gregory M. Sato, Esq.