

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

LINDA LINGLE, Governor, State of Hawaii;
MARIE LADERTA, Director, Department of
Human Resources Development, State of
Hawaii; MUFI HANNEMANN, Mayor, City
and County of Honolulu; CHARMAINE
TAVARES, Mayor, County of Maui;
BERNARD P. CARVALHO, Jr., Mayor,
County of Kauai; WILLIAM KENOI, Mayor,
County of Hawaii; THOMAS KELLER,
Administrative Director, The Judiciary, State of
Hawaii; and THOMAS M. DRISKILL, Jr.,
President and Chief Executive Officer, Hawaii
Health Systems Corporation,

Respondents.

CASE NOS.: CE-01-717a
CE-10-717b

ORDER NO. 2721

ORDER DENYING RESPONDENTS'
MOTION TO DISMISS AND/OR
MOTION FOR SUMMARY JUDGMENT
FOR LACK OF JURISDICTION ON THE
GROUND OF MOOTNESS AND
MOTION FOR STAY OF PROCEEDINGS
PENDING RESOLUTION OF
RESPONDENTS' PENDING MOTION TO
DISMISS AND/OR MOTION FOR
SUMMARY JUDGMENT, FILED ON
JUNE 1, 2010; AND NOTICE OF
RESCHEDULED HEARING

ORDER DENYING RESPONDENTS' MOTION TO DISMISS AND/OR
MOTION FOR SUMMARY JUDGMENT FOR LACK OF JURISDICTION
ON THE GROUND OF MOOTNESS AND MOTION FOR STAY OF
PROCEEDINGS PENDING RESOLUTION OF RESPONDENTS' PENDING
MOTION TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT,
FILED ON JUNE 1, 2010; AND NOTICE OF RESCHEDULED HEARING

On June 1, 2010, Respondents filed a Motion to Dismiss and/or Motion for Summary Judgment for Lack of Jurisdiction on the Ground of Mootness and Motion for Stay of Proceedings Pending Resolution of Respondents' Pending Motion to Dismiss and/or Motion for Summary Judgment with the Hawaii Labor Relations Board (Board). Respondents argued that the instant Prohibited Practice Complaint (Complaint) is moot because the Legislature failed to appropriate funds for increases in health benefit contributions for fiscal biennium (FB) 2010-11 thereby determining that contribution should remain at the same level currently paid by the State; that there was no effective remedy because the relief sought by the Complainant, i.e., to require the State to pay 60% of the premium rate for FB 2010-11 was specifically rejected by the Legislature and there are no monies appropriated to pay any increases in premium rates for FB 2010-11.

On June 16, 2010, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Memorandum in Opposition to Respondents' Motion to Dismiss and/or Motion for Summary Judgment for Lack of Jurisdiction on the Ground of Mootness and Motion for Stay of Proceedings Pending Resolution of Respondents' Pending Motion to Dismiss and/or Motion for Summary Judgment Filed on June 1, 2010 with the Board. The UPW argued that Respondents' motion was untimely because it was not filed at least 48 hours before the hearing; the role of the Legislature has nothing to do with the prohibited practices committed by Respondents, particularly with respect to a breach of the duty to bargain in good faith and interference with employee rights which occurred on or about July 1, 2009; neither Hawaii Revised Statutes (HRS) § 89-11(g) nor § 89-10(a) and (b) restrict the Board's jurisdiction to determine claims presented; the controversy is not moot because there are claims to be determined for violations of HRS §§ 89-13(a)(1), (3), (5), (7), and (8) as well as remedial issues; Respondents failed to meet their burden of proof in support of its motion to dismiss and/or for summary judgment, and the Board has no authority to stay the proceedings.

Thereafter, on June 24, 2010, Respondents filed a reply to UPW's memorandum in opposition and on June 28, 2010, the UPW filed a supplemental submission in opposition to the Respondents' motions.

On June 30, 2010, the Board conducted a hearing on Respondents' motions. The parties had full opportunity to present evidence and argument to the Board.

After a careful review of the record and the well-articulated arguments by counsel, the Board concludes that the Respondents' motions are timely because they raise jurisdictional issues of mootness which can be raised at any time. With regard to the mootness, in Right to Know Committee v. City Council, City and County of Honolulu, 117 Hawai'i 1, 8, 175 P.3d 111, 118 (Hawai'i App. 2007), the Intermediate Court of Appeals stated:

The Hawai'i Supreme Court has required a case to remain continually viable to avoid mootness:

A case is moot if it has lost its character as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions on abstract propositions of law. The rule is one of the prudential rules of judicial self-governance founded in concern about the proper and properly limited role of the courts in a democratic society. We have said the suit must remain alive throughout the course of litigation to the moment of final appellate disposition to escape the mootness bar. Kemp v. State of Hawai'i Child Support Enforcement Agency, 111 Hawai'i 367,

385, 141 P.3d 1014, 1032 (2006) (quoting Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81, 87, 734 P.2d 161, 165 (1987)).

The Hawai`i Supreme Court has articulated the mootness doctrine in more concrete terms, stating that:

A case is moot where the question to be determined is abstract and does not rest on existing facts or rights. Thus, the mootness doctrine is properly invoked where “events ... have so affected the relations between the parties that the two conditions for justiciability relevant on appeal-adverse interest and effective remedy-have been compromised.” Carl Corp. v. State, Dept. Of Educ., 93 Hawai`i 155, 164, 997 P.2d 567, 576 (2000) [hereinafter, “CARL II] (quoting In re Application of Thomas, 73 Haw. 223, 226, 832 P.2d 253, 254 (1992) (quoting Wong v. Bd. of Regents, University of Hawai`i, 62 Haw. 391, 394, 616 P.2d 201, 203-04 (1980))).

The court has also recognized exceptions to the mootness doctrine:

A public-interest exception to the mootness doctrine arises “[w]hen the question involved affects the public interest[] and it is likely in the nature of things that similar questions arising in the future would likewise become moot before a needed authoritative determination by an appellate court [.]” Johnston v. Ing, 50 Haw. 379, 381, 441 P.2d 138, 140 (1968). “Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question.” Id. (quoting In re Brooks’ Estate, 32 Ill.2d 361, 364, 205 N.E.2d 435, 438 (1965)); accord Okada Trucking, 99 Hawai`i at 196-97, 53 P.3d at 804-05.

Id., 117 Hawai`i 1, 9, 175 P.3d 111, 119.

The Board concludes that the instant case, if moot, would nevertheless meet the public-interest exception to the mootness doctrine and therefore the Board hereby denies the Respondents’ motion to dismiss and/or for summary judgment and denies Respondents’ motion for stay of proceedings.

NOTICE OF RESCHEDULED HEARING

YOU ARE HEREBY NOTIFIED that the hearing in this matter is rescheduled on **August 10 and 11, 2010 at 8:30 a.m.** in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii. Witnesses subject to previously issued subpoenas shall appear in the Board's hearing room at that time, unless otherwise advised by counsel.

DATED: Honolulu, Hawaii, July 12, 2010.


HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

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