

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. 2728

ORDER GRANTING IN PART  
RESPONDENTS' MOTION TO  
CONTINUE HEARING SCHEDULED  
FOR AUGUST 10 AND 11, 2010 UNTIL  
SUCH TIME AS THE COURT ISSUES A  
DECISION ON RESPONDENT'S [SIC]  
MOTION FOR STAY PENDING APPEAL;  
AND NOTICE OF RESCHEDULED  
HEARING

ORDER GRANTING IN PART RESPONDENTS' MOTION TO  
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On June 1, 2010, Respondents LINDA LINGLE, Governor, State of Hawaii;  
MARIE LADERTA, Director, Department of Human Resources Development, State of  
Hawaii; and THOMAS R. KELLER, Administrative Director of the Courts, The Judiciary,  
State of Hawaii; and THOMAS M. DRISKILL, Jr., President and Chief Executive Officer,  
Hawaii Health Systems Corporation (collectively, 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, arguing that the current controversy is  
moot.

On July 12, 2010, The Board issued 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 set the rescheduled hearing date for August 10 and 11, 2010.

On July 28, 2010, Respondents filed a Notice of Appeal of Board Order No. 2721 with the Circuit Court of the First Circuit (circuit court).

On July 29, 2010, Respondents filed with the circuit court a Motion for Stay Pending Appeal. A hearing on Respondents' Motion for Stay Pending Appeal, as well as Complainant's Motion to Dismiss Appeal Filed on July 28, 2010, is scheduled for September 8, 2010, at 10:00 a.m., before the circuit court.

Also on July 29, 2010, Respondents filed with the Board a Motion to Continue Hearing Scheduled for August 10 and 11, 2010 Until Such Time as the Court Issues a Decision of Respondent's [sic] Motion for Stay Pending Appeal (Motion to Continue). Respondents argue that a denial of a continuance will pose undue prejudice to Respondents because it would compel them to unnecessarily undertake the burden of litigation that they have a legal right to avoid; that no purpose is served by putting the parties and the Board through the rigors of hearings before a determination is made by the circuit court on Respondents' Motion for Stay Pending Appeal; that judicial economy necessitates the hearing be continued until the circuit court has made a decision on the motion to stay; and that there is no prejudice to Complainant because if the circuit court denies Respondents' Motion for Stay Pending Appeal, the hearing will continue.

On August 5, 2010, Respondents filed a Supplemental Exhibit to their Motion to Continue. The supplemental exhibit consists of a copy of the Board's Order No. 2595, Order Staying Proceedings, in Case No. CU-05-267, Linda Lingle, et al., and Hawaii State Teachers Association (HSTA), et al. Respondents argue that in Order No. 2595 the Board, upon request of the HSTA, continued the hearing pending an appeal by the HSTA following the Board's denial of HSTA's motion to dismiss based upon standing, and that in the present case the Board should rule on Respondents' motion to continue consistent with its decision in Order No. 2595.

On August 5, 2010, Complainant UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO (Complainant), filed its Opposition to Respondents' Motion to Continue Scheduled Hearings Filed July 29, 2010. Complainant argues that a complainant in a prohibited practice case has a right to a prompt and expeditious hearing; that the Board is required to facilitate and expedite resolution of issues in prohibited practice proceedings before it; that the Board already denied a motion to stay proceedings in Order No. 2721, and properly rescheduled the hearing for August 10 and 11, 2010; that the appeal filed by Respondents is frivolous because Order No. 2721 is not a final decision and order that is appealable; and that the commencement of circuit court proceedings by Respondents does not automatically stay the agency proceedings.

The Board heard oral argument on Respondents' Motion to Continue on August 10, 2010, at 8:30 a.m. At the oral argument, Respondents orally moved for a stay of proceedings before the Board, or at a minimum, for a continuance.

After reviewing the record and the arguments submitted, the Board in its discretion denies Respondents' oral request for a stay, and grants in part Respondents' Motion for Continuance.

The Board in this case is not bound by its prior ruling in Order No. 2595, Order Staying Proceedings, in Case No. CU-05-267, Linda Lingle, et al., and Hawaii State Teachers Association (HSTA), et al. The Board reviews a motion for stay or continuance on the basis of the facts and circumstances in each particular case. In the present case, the Board denies the oral request for stay because the Board, for reasons articulated in Order No. 2721, concluded that the current proceeding is not entirely moot, and/or that an exception to the mootness doctrine exists. However, given the propinquity of the previously scheduled August 10 and 11, 2010 hearing dates before the Board, and the pending motion before the circuit court, scheduled for hearing on September 8, 2010, the Board finds that judicial economy would be served, and there would not be undue delay, to continue proceedings until after the circuit court hears the Motion for Stay Pending Appeal on September 8, 2010. Moreover, in granting in part Respondents' Motion for Continuance, the Board was able to afford the parties four days in September 2010 to conduct the hearing, thereby facilitating the expeditious resolution of the issues that are the subject of the proceedings before the Board.

#### NOTICE OF RESCHEDULED HEARING

YOU ARE HEREBY NOTIFIED that the hearing in this matter is rescheduled on **September 13, 2010, at 10:00 a.m., and September 15, 16, and 20, 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, August 13, 2010.

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

  
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SARAH R. HIRAKAMI, Member

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APPEAL; AND NOTICE OF RESCHEDULED HEARING

  
NORMAN K. KATO II, Member

Copies sent to:

Herbert R. Takahashi, Esq.  
Maria Cook, Deputy Attorney General