

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

STATE OF HAWAII, DEPARTMENT OF
EDUCATION, Hickam Elementary School,

Petitioner,

and

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

Intervenor.

CASE NO. DR-01-105

ORDER NO. 3010

ORDER DENYING EMPLOYER'S
MOTION FOR RECONSIDERATION
OF HLRB'S ORDER REFUSING TO
ISSUE A DECLARATORY RULING;
OR ALTERNATIVELY, GRANTING
INTERVENOR UNITED PUBLIC
WORKER[S]¹ MOTION TO DISMISS

ORDER DENYING EMPLOYER'S MOTION FOR RECONSIDERATION OF HLRB'S
ORDER REFUSING TO ISSUE A DECLARATORY RULING; OR ALTERNATIVELY
GRANTING INTERVENOR UNITED PUBLIC WORKER[S]' MOTION TO DISMISS

On February 24, 2014, the Petitioner STATE OF HAWAII, DEPARTMENT OF EDUCATION, Hickam Elementary School (Petitioner or Employer) filed a "Petition for Declaratory Ruling" (DR Petition) in the above-entitled case with the Hawaii Labor Relations Board (Board or HLRB).

On March 14, 2014, the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW or Intervenor) filed a "Petition for Intervention" in this matter, which the Board granted on March 17, 2014, by Order No. 2968.

On March 24, 2014, the UPW filed a "Motion to Dismiss for Lack of Jurisdiction."

On April 1, 2014, the Board issued a Notice of Deadlines and Motion Hearing, which specifically stated in part, "The Board will inform the parties if it decides to hear oral argument on the motion and sets June 25, 2014 at 9:00 a.m. as a tentative date for hearing on the motion" (emphasis omitted).

¹ The Employer correctly quoted the caption in Order No. 3008. However, the Board notes that in Order No. 3008 there was a typographical error of "Worker's" which should have been typed as, "Workers". The Board has made this correction.

On April 25, 2014, the UPW filed “UPW’s Supplement to Its Motion to Dismiss for Lack of Jurisdiction Dated March 24, 2014.”

On May 20, 2014, the Petitioner filed “Employer’s Memorandum in Opposition to UPW’s Motion to Dismiss for Lack of Jurisdiction Dated March 24, 2014.”

On June 10, 2014, the UPW filed “UPW’s Reply Brief in Support of Motion to Dismiss.”

On June 19, 2014, the Board issued a “Notice of No Hearing on Intervenor UPW’s Motion to Dismiss.” (Notice) The Notice reiterated the Board’s statement from its April 1, 2014 Notice of Deadlines and Motion Hearing: “The **Board will inform the parties if it decides to hear oral argument on the motion and sets June 25, 2014 at 9:00 a.m. as a tentative date for hearing on the motion**”. The Notice also cited Hawaii Administrative Rules § 12-42-9(h)(1) which provides that, “in the usual course of processing a petition for a declaratory ruling **no formal hearing shall be granted**”; however, the Board “**may in its discretion**, order such proceeding set down for hearing”. Neither party filed an objection or opposition to this Notice. (emphasis added)

On July 14, 2014, the Board issued Order No. 3008 “Order Refusing to Issue A Declaratory Ruling; or Alternatively, Granting Intervenor United Public Workers’ Motion to Dismiss.”

On July 22, 2014, the Petitioner filed a “Motion for Reconsideration of HLRB’s Order Refusing to Issue A Declaratory Ruling; or Alternatively, Granting Intervenor United Public Worker’s Motion to Dismiss” (Motion for Reconsideration). In support of its Motion for Reconsideration, Petitioner asserts that the Board erred on three grounds: 1) the HLRB’s interpretation of various sections of Chapter 658A, HRS, is incorrect and in direct violation of Judge Castagnetti’s Order; 2) HLRB reversed its position regarding the necessity of oral arguments in violation of the Employer’s due process rights; and 3) the HLRB fundamentally misunderstood the nature of the Petitioner’s DR Petition, which was seeking a declaratory ruling regarding MAB’s jurisdiction of the James Puu grievance.

On July 29, 2014, the UPW filed “UPW’s Opposition to Employer’s Motion for Reconsideration of HLRB’s Order Refusing to Issue A Declaratory Ruling; or Alternatively, Granting Intervenor United Public Worker’s Motion to Dismiss Filed on July 22, 2014.” In support of its position, UPW contends that: 1) the Board rules do not authorize a motion for reconsideration and the Employer has not met a civil substantive threshold; 2) the Employer waived any right it may arguably have had to an oral argument on the Motion; and 3) the court ruling was “without prejudice” and does not preclude judicial review of an award by Arbitrator Michael Marr.

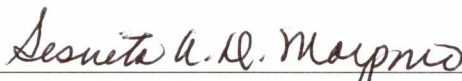
The Board notes that the UPW is correct that the Board's administrative rules do not explicitly provide for motions for reconsideration. However, the Board has previously considered motions for reconsideration of its final decisions and orders. *See, e.g., Hawaii Government Employees Ass'n. and Benjamin J. Cayetano*, Case No. CE-13-368, Decision No. 416A (11/16/2000). In considering such motions, the Board has adhered to the well- established principles set forth by the Hawaii Supreme Court that "the 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 Investment Co.*, 74 Haw. 85, 114, 839 P.2d 10, 26-27 (1992); *Omerod v. Heirs of Kainoa Kupuna Kaheananui*, 116 Hawaii 239, 270, 172 P.3d 983, 1014 (2007) (*Omerod*). Further, "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." *Omerod, id.*, 172 P.3d at 1014. *Tagupa v. Tagupa*, 108 Hawaii 459, 465, 121 P.3d 924, 930 (2005); *Ass'n. of Apartment Owners of Wailea Elua v. Wailea Resort Co., Ltd.*, 100 Hawaii 97, 110, 58 P.3d 608, 621 (2002). Applying these principles, the Board concludes that because the Petitioner has not presented any new evidence and/or arguments; but rather is seeking to "relitigate old matters or raise arguments or evidence that could and should have been brought during the earlier proceeding," the Petitioner's Motion for Reconsideration is hereby denied.

DATED: Honolulu, Hawaii _____ August 5, 2014 _____.

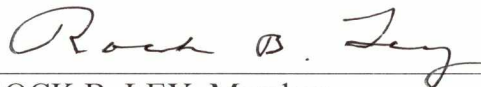
HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SESNITA A.D. MOEPONO, Member



ROCK B. LEY, Member

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