STATE OF HAWAII
HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
EDGAR H. W. LUM,
Complainant,
and
EILEEN R. ANDERSON, Mayor
of the City and County of
Honolulu,
and
HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME LOCAL
152, AFL-CIO,
Respondents.

ORDER DENYING COMPLAINANT'S MOTION
FOR RECONSIDERATION OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

On February 11, 1985, Complainant EDGAR H. W. LUM, by
and through his attorneys, filed with this Board a Motion for
Reconsideration of Findings of Fact, Conclusions of Law and Order
together with a Memorandum in Support of Motion attached thereto.
In said motion, Complainant moved the Board for an order amending
or modifying its Findings of Fact, Conclusions of Law and Order
in the above-captioned case. On February 19, 1985, Respondent
HAWAII GOVERNMENT EMPLOYEES ASSOCIATION [hereinafter referred to
as HGEA], by and through its attorney, filed with this Board a
Memorandum in Opposition to Complaint's [sic] Motion for Recon-
sideration of Findings of Fact, Conclusions of Law and Order.
Upon notice to all parties, the Board conducted a hearing on February 28, 1985 on the instant motion. At the hearing, Complainant urged the Board to: (1) decide Case Nos. CE-13-65 and CU-13-39 in his favor and against Respondent Employer; (2) award costs and other expenses incurred in litigating the instant case in his favor and against Respondent HGEA; and (3) order a stay for submitting this case to arbitration pending disposition of this motion and the intended appeal of the case.

Based upon all arguments, both written and oral, the Board hereby denies Complainant's motion in toto. Given the nature of the complaint, the Board found that the Union committed a prohibited practice against Complainant by not submitting the case to arbitration. Thus, the Board believes the remedy issued in Decision No. 203 is consistent with its findings in said decision. The decision of the arbitrator will appropriately determine whether or not Complainant was unjustly discharged.

Complainant has cited Decision No. 145, In the Matter of Yamaguchi, 2 HPERB 656 (1981), as a basis for the Board to award him costs and attorneys fees. However, in that case, the Board found that there was collusion between the Respondents Union and Employer, and thus awarded costs and attorneys fees to Complainant for such flagrant action. This particular case does not present a similar factual situation. Therefore, the Board believes that such an award is improper in this instance.

Finally, in its argument, Complainant cites § 377-9, HRS, as empowering the Board to stay its decision, while
Respondents aver § 91-41(g), HRS, does not allow the Board to grant the same.

While the statutory provisions appear to be conflicting, it is the Board's opinion that § 377-9, HRS, the more specific statute, empowers it to stay the remedy in this decision if it so chooses. However, the Board remains convinced that Complainant has not presented sufficient basis for a stay in this matter.

Based on the above, the Board maintains that its decision is in conformance with applicable legal principles and therefore declines to amend or alter Decision No. 203.

DATED: Honolulu, Hawaii, _____March 21, 1985________

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

MACK H. HAMADA, Chairperson

JAMES K. CLARK, Board Member

JAMES R. CARRAS, Board Member

Copies sent to:

Charlotte J. Duarte, Deputy Corporation Counsel
Rodney H. S. Kim, Esq.
Yukio Naito, Esq.
Joyce Najita, IRC