

Under

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.)

CASE NOS.: CE-13-65
 CU-13-39

ORDER NO. 534

ORDER DENYING COMPLAINANT'S
 MOTION FOR RECONSIDERATION
 OF FINDINGS OF FACT, CONCLU-
 SIONS OF LAW AND ORDER

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 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 Reconsideration 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

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