

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO, and HAWAII
GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Complainants,

and

RYKER WADA, Director, Department of
Human Resources Development, State of
Hawai'i; DAVID Y. IGE, Governor, State of
Hawai'i; CHRISTINA KISHIMOTO,
Superintendent, Department of Education,
State of Hawai'i; and BOARD OF
EDUCATION, State of Hawai'i,

Respondents.

CASE NOS. CE-01-537a
~~CE-03-537b~~
~~CE-03-357e~~
~~CE-04-537d~~
~~CE-06-537e~~

ORDER NO. 3626

ORDER GRANTING, IN PART, AND
DENYING IN PART, COMPLAINANT'S
MOTION FOR RECONSIDERATION OF
MOTION TO EXTEND DEADLINE TO
FILE EXCEPTIONS TO PROPOSED
ORDER FILED ON FEBRUARY 14, 2020
(FILED ON JULY 1, 2020), AND ORDER
GRANTING, IN PART, COMPLAINANT'S
MOTION, ETC., FILED ON JULY 6, 2020

ORDER GRANTING, IN PART, AND DENYING, IN PART,
COMPLAINANT'S MOTION FOR RECONSIDERATION
OF MOTION TO EXTEND DEADLINE TO FILE EXCEPTIONS TO PROPOSED
ORDER FILED ON FEBRUARY 14, 2020 (FILED ON JULY 1, 2020), AND ORDER
GRANTING, IN PART, COMPLAINANT'S MOTION, ETC., FILED ON JULY 6, 2020

On February 14, 2020, the Hawai'i Labor Relations Board (Board) issued Proposed Order Dismissing the Second Amended Prohibited Practice Complaint as Moot, or Alternatively, Granting Respondents' Motion to Dismiss, or in the Alternative for Summary Judgment and Denying Complainants' Motion for Summary Judgment (Proposed Order). The Proposed Order provided in relevant part:

Any person adversely affected by the above Proposed Order Dismissing the Second Amended Prohibited Practice Complaint as Moot; or Alternatively, Granting Respondents' Motion to Dismiss, or in the Alternative for Summary

Judgment; and Denying Complainants' Motion for Summary Judgment may file exceptions with the Board, pursuant to HRS § 91-11, within ten days after service of a certified copy of this document. The exceptions shall specify which finding or conclusions are being excepted to with citations to the factual and legal authorities therefor. A hearing for presentation of oral arguments will be scheduled should any party file exceptions, and the parties will be notified thereof.

On February 21, 2020 and May 6, 2020, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Complainant or UPW) filed Complainant's Motions to Continue Deadline to File Exceptions to Proposed Order Dismissing the Second Amended Prohibited Practice Complaint as Moot, or Alternatively, Granting Respondents' Motion to Dismiss, or in the Alternative for Summary Judgment, and Denying Complainants' Motion for Summary Judgment (Motions for Extension) with the Board, requesting continuances of the deadline for filing Exceptions to the Proposed Order (Exceptions) from February 25, 2020 to May 11, 2020, and from May 11, 2020 to July 13, 2020. These Motions for Extension were granted by Order Nos. 3588 and 3603.

On June 1, 2020, a Notice of Withdrawal and Substitution of Counsel was filed transferring the UPW's representation in the present case from the law firm of Takahashi and Covert to the Koshiba, Price, and Gruebner law firm.

On July 1, 2020, UPW filed Complainant's Motion to Extend Deadline to File Exceptions to Proposed Order Filed on February 14, 2020 (Motion for Third Extension). In the Motion for Third Extension, UPW sought an extension from July 13, 2020 to August 31, 2020 to file Exceptions. On July 6, 2020, the Board issued Order No. 3619, granting, in part, and denying, in part, the Motion for Third Extension. Order No. 3619 granted a final extension for filing of Exceptions to August 13, 2020 at 4:30 p.m. and further ordered that "**No further extensions will be granted.**" (Emphasis in original order.)

However, on July 15, 2020, UPW filed Complainant's Motion for Reconsideration of Motion to Extend Deadline to File Exceptions to Proposed Order Filed on February 14, 2020 (Filed on July 1, 2020), and Order Granting, In Part, and Denying, In Part, Complainant's Motion, Etc., Filed on July 6, 2020 (Motion for Reconsideration). In the Motion for Reconsideration, UPW requests reconsideration of its Motion for Third Extension for an extension to August 31, 2020 deadline. Further, UPW requests that any order extending the deadline not include an order that no further extensions will be granted and that a status conference be held.

In support of reconsideration, UPW makes several assertions. First, that the present case is related to the Hawai'i Supreme Court's decision in UPW v. Kishimoto, etc., and Connections, A New Century Public Charter School, and HLRB, et. al., Case No. SCAP-18-0000732 (Ah Sing). The Ah Sing decision remanded the case to the Board to reinstate bargaining unit 1 member James Ah Sing under the Stipulation and Orderⁱ (which was ruled invalid in the present case), or for other available and appropriate affirmative remedies. Second, UPW contends that the available and

appropriate remedy for Ah Sing must be determined by UPW, Ah Sing, and Respondents RYKER WADA, Director, Department of Human Resources Development, State of Hawai'i; DAVID Y. IGE, Governor, State of Hawai'i; CHRISTINA KISHIMOTO, Superintendent, Department of Education, State of Hawai'i; and BOARD OF EDUCATION, State of Hawai'i (collectively Respondents), which may require time beyond the current deadline of August 13, 2020. Finally, UPW claims that its filing of comprehensive exceptions may rely on whether or not the parties are or are not able to resolve the remedy for Ah Sing. In further support of the Motion for Reconsideration, UPW attached a Declaration of Lisa Anne Gruebner (Gruebner Declaration) declaring that Richard Thomason, Deputy Attorney General, attorney for Respondents has no objections to the reconsideration of UPW's Motion or to the third extension to August 31, 2020 extension.

Based on the Motion for Reconsideration, the full record herein, and the lack of objections from the Respondents, the Board grants, in part, the Motion for Reconsideration to extend the deadline for the filing of Exceptions to August 31, 2020 at 4:30 p.m. However, the Board denies the request in the Motion for Reconsideration that the order not include that no further extensions will be granted. The Board orders that no further extensions to file Exceptions will be granted unless supported by a stipulation between the parties regarding any extension requested.

DATED: Honolulu, Hawai'i, _____ July 21, 2020 _____.

HAWAII LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J. N. Musto

J. N. MUSTO, Member

Copies sent to:

Lisa Anne Gruebner, Esq.
Richard Thomason, Deputy Attorney General
Liz Ho, AFSCME Administrator

ⁱ In Ah Sing, the issue of the validity of the Stipulation and Order was not raised and resolved because this specific issue was before the Board in the present case and the Board was not compelled to address the issue based on its ruling that Ah Sing was not covered by the Stipulation and Order.