

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

CHRISTINA KISHIMOTO,
Superintendent, Department of
Education, State of Hawai'i; and
BOARD OF EDUCATION, State of
Hawai'i,

Respondents.

CASE NOS.: CE-01-565a
~~CE-02-565b~~
~~CE-03-565e~~
~~CE-04-565d~~

ORDER NO. 3629

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, AND DENYING, IN PART, COMPLAINANT'S MOTION, ETC. FILED ON JULY 6, 2020; NOTICE OF STATUS CONFERENCE

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

FILING OF EXCEPTIONS

Any person adversely affected by the above Proposed Order Dismissing the Prohibited Practice Complaint as Moot and for Failure to Prosecute; or Alternatively Granting in Part and Denying in Part Respondents' Motion to Dismiss or in the Alternative 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 on May 6, 2020, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed Complainant's Motions to Continue Deadline to File Exceptions to Proposed Order Dismissing the Prohibited Practice Case as Moot and for Failure to Prosecute, or Alternatively, Granting in Part and Denying in Part Respondents' Motion to Dismiss or in the Alternative for Summary Judgment (Motions for Extension) requesting a continuance of the deadline for filing exceptions to the Proposed Order (Exceptions) from February 24, 2020 to May 11, 2020 and from May 11, 2020 to July 13, 2020. These Motions for Extension were granted by Order Nos. 3599 and 3602.

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

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. 3620, granting, in part, and denying, in part, the Motion for Third Extension. Order No. 3620 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)

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 13, 2020 (Filed on July 1, 2020), and Order Granting, in Part, and Denying, in Part, Complainant's Motion, Etc. Filed on July 6, 2020 (Underlining in Original) (Motion for Reconsideration). In the Motion for Reconsideration, UPW requests reconsideration of its Motion for Third Extension, which requested an extension of the deadline to August 31, 2020 to submit Exceptions. 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.

NOTICE OF STATUS CONFERENCE

Due to the current concerns regarding COVID-19, the Governor of the State of Hawai'i (Governor) issued an Emergency Proclamation on March 4, 2020, a Supplementary Emergency Proclamation on March 16, 2020, a Second Supplementary Proclamation on March 21, 2020, a Third Supplementary Proclamation on March 23, 2020, a Fourth Supplementary Proclamation on March 31, 2020, a Fifth Supplementary Proclamation on April 16, 2020, a Sixth Supplementary Proclamation on April 25, 2020, a Seventh Supplementary Proclamation on May 5, 2020, an Eighth Supplementary Proclamation on May 18, 2020, a Ninth Supplementary Proclamation on June 10, 2020, and a Tenth Supplementary Proclamation on July 17, 2020. These proclamations, among other things, gave agencies the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at the same location, and suspend certain rules, statutory requirements, and administrative hearing procedures as needed to deal with the emergency situation brought on by COVID-19.

Accordingly, NOTICE IS HEREBY GIVEN, that the Board will conduct a Status Conference in the present case at the place, time and date listed below:

DATE AND TIME: Wednesday, September 9, 2020 at 10:30 a.m.

LOCATION: Board Hearing Room
830 Punchbowl Street, Room 434
Honolulu, Hawai'i 96813

Subject to the Board's discretion based on the Proclamations set forth above, all parties have the right to appear **in person or videographically** at the Status Conference and to be represented by counsel or any other authorized person.

The parties should be aware that the Board is in a secured State of Hawai'i building and that any party, representative, counsel, or other person attending a proceeding will need to present a government-issued identification and will need to submit to a temperature check and questionnaire prior to entry.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

DATED: Honolulu, Hawai'i, _____ July 23, 2020 _____.

HAWAI'I LABOR RELATIONS BOARD



Mus R. Oshiro

MUS 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.

UPW v. CHRISTINA KISHIMOTO, et al.

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