

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

MICHAEL FUJIOKA, Department of Human
Resources Development, Employee Claims
Division, State of Hawaii and RYKER
WADA, Director, Department of Human
Resources Development, State of Hawaii,

Respondents.

CASE NO(S). CE-10-761

ORDER NO. 3660

ORDER GRANTING, IN PART, MOTION
FOR BOARD APPROVAL AND CONSENT
TO WITHDRAW COMPLAINT WITHOUT
PREJUDICE

ORDER GRANTING, IN PART, MOTION FOR BOARD APPROVAL
AND CONSENT TO WITHDRAW COMPLAINT WITHOUT PREJUDICE

On June 29, 2010, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a prohibited practice complaint (Complaint) alleging violations of Hawaii Revised Statutes (HRS) § 89-13(a)(1), (5), (7), and (8) against Respondents MICHAEL FUJIOKA, Department of Human Resources Development, Employee Claims Division, State of Hawaii (Respondent or Fujioka) and MARIE LADERTA, Director of the Department of Human Resources Development, State of Hawaii (Respondent or Laderta and collectively Respondents).

On September 12, 2019, UPW filed a Motion for Board Approval and Consent to Withdraw Complaint Without Prejudice (Motion to Withdraw) in the above-entitled case, stating, among other things, that the dispute prompting the Complaint has been rendered moot because the statute of limitations would bar any action by the State of Hawaii to collect monies from the employee at issue in this case and that Hawaii Administrative Rules (HAR) § 12-42-44 authorizes the Board to consent to a withdrawal without prejudice.

On September 13, 2019, Respondents filed Respondents' Memorandum in Opposition to Complainant's Motion for Board Approval and Consent to Withdraw Complaint Without Prejudice. In opposing the Motion to Withdraw, Respondents dispute that the issue is moot or that a statute of limitations applies. Respondents assert that, even if that were the case, this matter was subject to repetition, which is "abundantly clear in that the Complainant has asked to withdraw without prejudice[.]" and the issue of jurisdiction would still need to be resolved. Therefore, Respondents request that their Motion to Dismiss pending before the Board be granted.

On September 18, 2019, UPW filed UPW's Supplemental Submission in Support of Motion for Board Approval and Consent to Withdraw Complaint Without Prejudice Filed on September 12, 2019

HAR § 12-42-44 states:

§12-42-44 Withdrawal. Any complaint may be withdrawn at any time prior to the issuance of a final order thereon, upon motion and with the consent of the board. Whenever the board approves withdrawal of such complaint, the case shall be closed.

After consideration of the parties' positions, the Board grants the Motion to Withdraw the Complaint, in part, by consenting to the withdrawal of the Complaint with prejudice. This case is closed.

DATED: Honolulu, Hawai'i, _____ September 18, 2019 _____.

HAWAI'I LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair



SESNITA A.D. MOEPONO, Member



N. MUSTO, Member



Copies sent to:

Herbert R. Takahashi, Esq.

James E. Halvorson, Deputy Attorney General

¹ The named Respondents in the prohibited practice complaint are Fujioka and Laderta, then Director, Department of Human Resources Development, State of Hawai'i (DHRD). When the Board's administrative rules are silent on procedural matters, the Board has looked to analogous provisions of the Rules of court. Ballera v. Del Monte Fresh Produce Hawai'i, Inc., Board Case No. 00-1(CE), Order No. 1978, at *5 (January 11, 2001). Under Hawai'i Rules of Civil Procedure Rule 25(d)(1), when a public officer is a party to an action in an official capacity and while that action is pending, the public officer dies, resigns, or otherwise ceases to hold office, the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer that does not affect the substantive rights of the parties shall be disregarded. Accordingly, the current the current Director of DHRD is Ryker Wada, who is substituted for Laderta as a party to this proceeding.