

STATE OF HAWAI‘I

HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

ERIC HONDA, Acting District Health
Officer, Department of Health, Hawai‘i
District Office, State of Hawai‘i and
BRUCE ANDERSON, Ph. D., Director,
Department of Health, State of Hawai‘i,

Respondents.

CASE NO. CE-01-747

ORDER NO. 3475

ORDER DENYING COMPLAINANT’S
MOTION FOR BOARD APPROVAL OF
PROPOSED STIPULATION AND
ORDER

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FOR BOARD APPROVAL OF PROPOSED STIPULATION AND ORDER

On January 22, 2010, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Complainant) filed a prohibited practice complaint with the Hawai‘i Labor Relations Board (Board). The Complaint listed the Respondents as AARON UENO, in his official capacity as District Health Officer, State of Hawai‘i, Department of Health, Hawai‘i District Office and DR. CHIYOMI FUKINO, in her official capacity of Director, Department of Health, State of Hawaii.

On January 29, 2019, the Board issued a Notice of Status Conference for this matter and noted in an Endnote that:

The Board has applied the Hawai‘i Rules of Civil Procedure (HRCP) where its administrative rules are silent. Dept. of [Public] Safety, State of Hawai‘i v. United Public Workers, AFSCME, Local 646, AFL-CIO, Board Case No. CU-10-322, Order No. 2944, at *2 n. 2 (2013). As laid out in HRCP 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 substantial rights of the parties will be disregarded.

(Emphasis added)

Consequently, the caption reflected the change of Respondents AARON UENO to ERIC HONDA (Respondent Honda), in his official capacity as, the Acting District Health Officer and DR. CHIYOMI FUKINO to DR. BRUCE ANDERSON (Respondent Anderson), in his official capacity as the Director (collectively Respondents).

On March 6, 2019, UPW filed a Motion for Board Approval of Proposed Stipulation and Order (Motion for Board Approval). Attached to the Motion for Board Approval was a document entitled "Stipulation and Order" (Stipulation). The captions of both the Motion for Board Approval and the Stipulation were defective in that they did not include all original Respondents. Specifically, Respondent Honda was not included in the caption.

On March 7, 2019, Respondents filed Respondents' Response to UPW's Motion for Board Approval of Proposed Stipulation and Order (Respondents' Response).

After reviewing the Motion for Board Approval and Stipulation, the Board determined that the Stipulation also did not appear to include both Respondents, as the caption, the body of the Stipulation, and the signature line all did not include Respondent Honda. The Board instructed its staff to contact Complainant's office for clarification on the matter.

On March 13, 2019, Complainant's counsel sent correspondence to the Board's staff attorney asking her to "advise whether the changes highlighted in the stipulation and order will meet with the Board's approval." The Board's staff attorney responded to the Complainant on the same day, informing Complainant that the Board will not approve stipulations and suggesting alterations that would bring the stipulation into a form that the Board would be able to use as the basis for issuing its own order dismissing the case.

On March 15, 2019, Complainant's counsel sent correspondence to the Board's staff attorney, stating that Complainant would not agree to the alterations suggested by the Board, claiming that the Board's staff attorney was "involved in negotiating the terms of the settlement and resolution" of the case, and requesting that the Board make a decision on the March 6, 2019 motion for approval of the proposed stipulation and order.

On March 18, 2019, the Board Chair responded to Complainant's counsel disputing Complainant's counsel's characterization of the Board's staff attorney's actions and clarifying the record of discussions surrounding the Motion for Board Approval. The Board Chair further

informed Complainant’s counsel that the Board would issue an order in response to the Motion for Board Approval if Complainant’s counsel did not intend to comply with the Board’s requests.

On March 20, 2018, UPW filed UPW’s Supplemental Submission in Support of 3/6/19 Motion for Board Approval of Proposed Stipulation and Order, which requested the Board to grant the Motion for Board Approval and “to issue an ‘order’ with the signature of the Board members on the form presented on March 6, 2019.”

That same day, Respondents filed Respondents’ Response to UPW’s Supplemental Submission in Support of 3/6/19 Motion for Board Approval of Proposed Stipulation and Order (Respondents’ Response to Supplemental Submission). In Respondents’ Response to Supplemental Submission, Respondents noted that on March 17, 2019, Respondents’ counsel emailed Complainant’s counsel to inform him that Respondents had “no comments and no objections to the changes proposed to the Stipulation” by the Board.

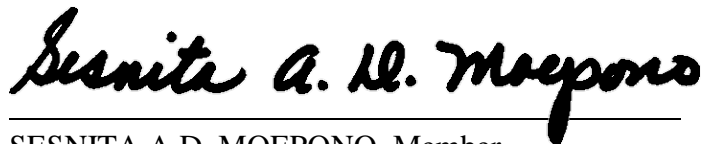
After review of the Motion for Board Approval and the Stipulation, the Board must deny the Motion for Approval as the caption does not accurately reflect the parties to the case, and the Stipulation is unclear as to whether it covers both Respondents or only Respondent Anderson. The Board further notifies the parties that if the parties submit a stipulation to dismiss a case, the Board will review the stipulation and determine if the Board will issue an order dismissing the case.

DATED: Honolulu, Hawai‘i, _____ March 21, 2019 _____.

HAWAII LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair



SESNITA A.D. MOEPONO, Member



J.N. MUSTO, Member



Copies sent to:

Herbert R. Takahashi, Esq.

Jeffrey A. Keating, Deputy Attorney General