

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

KENDERSON CASPILLO,

Complainant,

and

DEPARTMENT OF
TRANSPORTATION, State of Hawai'i;
and UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO,

Respondents.

CASE NO. 17-CE-01-899
17-CU-01-355

ORDER NO. 3501

ORDER GRANTING RESPONDENT
UNITED PUBLIC WORKERS'
MOTION TO CONTINUE HEARINGS
ON THE MERITS

ORDER GRANTING RESPONDENT UNITED PUBLIC
WORKERS' MOTION TO CONTINUE HEARINGS ON THE MERITS

On February 4, 2019, the Hawai'i Labor Relations Board (Board) held a status conference in this matter at the Board's Hearing Room. All parties were represented at the status conference and agreed to set the Hearing on the Merits (HOM) to begin on May 28-30, 2019 on the island of Kaua'i. On February 7, 2019, the Board issued a notice to all parties that the HOM for the above-captioned case was scheduled to take place at the Lihue State Building, 1680 Haleukana Street, Room 209A, Lihue, Hawaii 96766 on May 28-30, 2019.

On April 10, 2019, Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed with the Board its Motion for Pre-Trial Conference in Honolulu and Deadlines for Submission of Witness and Exhibit Lists by Complainant requesting a pre-trial conference in Honolulu:

...to set a deadline for submission of witness and exhibit lists by complainant as soon as possible so respondents will be able to submit their witness and exhibit lists without duplication or redundancy and to subpoena witnesses on Kauai at the hearings scheduled on May 28, 29, and 30, 2019.

This motion is supported by record of proceedings herein, the declaration of union counsel, and the need to conduct efficient and prompt hearings before the Board.

On April 12, 2019, the Board issued a notice, which, among other things, scheduled a Pre-Trial Conference in the instant case on May 17, 2019 in the Board's Hearing Room and setting other applicable deadlines.

On April 18, 2019, Respondent UPW filed a Motion to Continue Hearings on the Merits (Motion to Continue), in accordance with Hawai'i Administrative Rules (HAR) § 12-42-8(g)(3)(C) and based on the Declaration of UPW's counsel requesting that the HOM be continued for a period of ninety (90) days due to conflicts in the union counsel's schedule. The Declaration of Herbert Takahashi in support of the Motion further stated:

3. ...Unfortunately, I have an overload of briefs, hearings, and trials in the months of May 2019, June 2019 and July 2019.
4. If the Board does not grant a 90 day extension of the hearing[,] union counsel may need to withdraw as counsel, and substitute counsel will be required to handle the hearings which are currently scheduled."

According to the Board's procedural rule HAR § 12-42-8(g)(3)(C)(iii), "Answering affidavits, if any,...shall be filed with the board within five days after service of the motion papers, unless the board directs otherwise."

Complainant KENDERSON CASPILLO (Complainant) and Respondent DEPARTMENT OF TRANSPORTATION, State of Hawai'i (DOT), did not file a response to UPW's Motion to Continue within the five days provided by HAR § 12-42-8(g)(3)(C).

On April 30, 2019, the Board issued a Notice of Hearing on Respondent UPW's Motion to Continue Hearing on the Merits, which scheduled a motion hearing on the Motion to Continue on Friday, May 10, 2019 at 9:00 a.m. in the Board's Hearing Room.

On May 10, 2019, the Board held a hearing and heard oral arguments on the Motion to Continue from counsel for all parties. UPW's counsel reiterated his reasons contained in UPW's Motion to Continue and further stated that after the Motion was filed, he tried to contact a substitute counsel but was unable to obtain a replacement counsel for the UPW on the dates scheduled. Further, UPW's counsel stated that, if the Motion was denied, UPW would not have a substitute counsel; therefore, UPW requested that the Board grant the motion. Complainant's counsel stated that all parties agreed to the May 28-30, 2019 dates for the hearing on the merits, but "...because [UPW's counsel] is not available and there's no substitute counsel [for UPW], we'll not be able to proceed, then based on that, we'll agree to a continuance that's mutually agreeable as long as the deadlines are continued." Counsel for Respondent DOT had no objections. After conclusion of

the arguments, the Board orally granted UPW's Motion to Continue and re-scheduled the HOM to August 26, 2019 at 10:00 a.m. and August 27 and 28, 2019 at 9:00 a.m. on the island of Kaua'i with the specific location to be determined. The Board further granted the Complainant's oral request to continue and reschedule the deadlines based on the August 26, 2019 HOM.

ORDER

Accordingly, for good cause shown, the Board hereby GRANTS the UPW's Motion to Continue and cancels the HOM scheduled for May 28-30, 2019. Due to the unavailability of a location on Kaua'i to hold the HOM on August 26-28, 2019, the Board is unable to hold the HOM on these specific dates. The Board, will, therefore, reschedule the dates for HOM based on the availability of all parties and a specific location.

The Board further orders that all remaining dates regarding deadlines and a rescheduling of the pre-trial conference will be set following the rescheduling of the HOM. All remaining deadlines and hearing dates scheduled in this case are cancelled and removed from the calendar. The Board will issue a separate notice resetting all of the dates and deadlines and noticing the pretrial conference and the HOM, including dates, times, and specific locations, in this case.

DATED: Honolulu, Hawai'i, May 14, 2019.

HAWAI'I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

N. Musto

N. MUSTO, Member

Copies sent to:

Shawn A. Luiz, Esq.

Lowell Chun-Hoon, Esq.ⁱ

Henry S. Kim, Deputy Attorney General

Herbert R. Takahashi, Esq.ⁱⁱ

ⁱ On May 10, 2019, Herbert R. Takahashi filed a Notice of Withdrawal of Counsel for Respondent United Public Workers, AFSCME, Local 646, AFL-CIO, stating that he was withdrawing from this matter and requesting that future notices, etc. be sent to Lowell Chun-Hoon, Esq. On May 13, 2019, Mr. Chun-Hoon filed a Notice of Appearance in this matter. All further service upon the UPW in this case shall be made to Mr. Chun-Hoon.

ⁱⁱ See Endnote i, *supra*.

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