

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

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

Complainant,

and

CHRISTINA KISHIMOTO,  
Superintendent, Department of Education,  
State of Hawai'i,

Respondents.

CASE NO. 17-CE-01-902

ORDER NO. 3543

ORDER DENYING MOTION FOR  
RECONSIDERATION

ORDER DENYING MOTION FOR RECONSIDERATION

On October 23, 2017, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Complainant or UPW) filed a Prohibited Practice Complaint (Complaint) with the Hawai'i Labor Relations Board (Board), alleging violations of Hawai'i Revised Statutes (HRS) §§ 89-13(a)(1), (5), (7), and (8) by Respondent CHRISTINA KISHIMOTO, Superintendent, Department of Education, State of Hawai'i (Respondent or Kishimoto), and it additionally alleges that Respondent undermined the grievance process by wilfully violating the statutory rights of employees under HRS §§ 89-3, 89-9(a), and 89-10.8 by refusing "to provide information it needed to properly investigate and process the matter in behalf of [grievant] on or about September 25, 2017 by its business agent."

The undisputed facts in this case show that the Complaint arises from an October 13, 2016 grievance, filed by UPW, involving the termination of an employee at Kailua High School (Grievance). Further, on September 19, 2017, UPW submitted notice of its intent to arbitrate the Grievance. The requests for information that Respondent allegedly refused to adequately respond to were sent to Respondent on September 25, 2017.

On June 25, 2019, the Hawai‘i Labor Relations Board (Board) issued Order No. 3529, Granting Respondent’s Motion to Dismiss or, in the Alternative, Motion for Summary Judgment; and Denying UPW’s Motion for Summary Judgment which, among other things, grants Respondent’s dispositive motion on the basis that UPW submitted their information requests on September 25, 2017, which is after the September 19, 2017 notice of intent to arbitrate. Therefore, such request is properly within the jurisdiction of the arbitrator and that the Board does not have jurisdiction over the instant complaint.

On July 5, 2019, UPW filed a Motion for Reconsideration, arguing, among other things, that “the Board has overlooked established precedent on the question of Board jurisdiction and has misapprehended points of law and fact...” and that, therefore, the Board should reconsider its Order No. 3529. In its Motion for Reconsideration, the UPW relies on Hawai‘i Administrative Rules (HAR) § 12-42-8(g)(3)(C)<sup>i</sup>.

On July 10, 2019, Respondent filed Respondent’s Memorandum in Opposition to Complainant’s Motion for Reconsideration arguing, among other things, that the Motion for Reconsideration is “without merit, therefore it should be denied.” Respondent goes on to argue that UPW “fails to argue in its Motion for Reconsideration that it has new evidence or argument that could not have been presented at the hearing on Respondent’s dispositive motion...[and] this is not a basis for reconsideration of a Court order.”

On July 25, 2019, UPW filed a Notice of Appeal with the First Circuit Court, State of Hawai‘i.

Prior to considering the merits of the Motion for Reconsideration, the Board must consider whether it has jurisdiction over the instant case. “[T]he general rule is that the filing of a notice of appeal divests the trial court of jurisdiction over the appealed case,” Richardson v. Sport Shinko, 76 Hawai‘i 494, 500, 880 P.2d 169, 175 (1994) (internal citations omitted), in order “to avoid the confusion and inefficiency that might flow from placing the same issue before two courts at the same time.” TSA Int’l Ltd. v. Shimizu Corp., 92 Hawai‘i 243, 265, 990 P.2d 713, 735 (1999) (internal citations omitted) (TSA Int’l).

The Board finds that “[j]urisdiction over the appealed case...transferred from the [Board] to the [appellate] court at the time the notice of appeal [wa]s filed.” TSA Int’l, 92 Hawai‘i at 265, 990 P.2d at 735. Therefore, the Board must deny the Motion for Reconsideration based on a lack of jurisdiction.

However, even assuming for the sake of argument that the Board retains jurisdiction over the case despite the Notice of Appeal being filed, the Board still must deny the Motion for Reconsideration.

The Board notes that the Board’s administrative rules do not explicitly provide for motions for reconsideration. However, the Board has previously considered motions for reconsideration of its final decisions and orders. *See, e.g., UPW v. Hannemann, et al.*, Board Case No. CE-01-647, Order No. 2489 (January 17, 2008); *Los Banos v. Dep’t. of Public Safety and UPW*, Board Case No. CU-10-341, Order No. 3172 (June 28, 2016). When considering such motions, the Board has adhered to the well-established principles set forth by the Hawai‘i Supreme Court that “the purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudication [decision].” *Amfac, Inc. v. Waikiki Beachcomber Investment Co.*, 74 Haw. 85, 114, 839 P.2d 10, 26-27 (1992); *Omerod v. Heirs of Kainoa Kupuna Keheananui*, 116 Hawai‘i 239, 270, 172 P.3d 983, 1014 (2007). Reconsideration “is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding.” *Tagupa v. Tagupa*, 108 Hawai‘i 459, 465, 121 P.3d 924, 930 (2005).

Based on these principles, and because UPW has not presented any new evidence and/or arguments but rather is seeking to “relitigate old matters or raise arguments or evidence that could and should have been brought during the earlier proceeding,” the Motion for Reconsideration is denied.

DATED: Honolulu, Hawai‘i, \_\_\_\_\_ August 5, 2019 \_\_\_\_\_.

HAWAI‘I LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair

SENITA A.D. MOEPONO, Member

IN MUSTO, Member

Copies sent to:

Herbert Takahashi, Esq.  
Henry S. Kim, Deputy Attorney General

<sup>i</sup> HAR § 12-42-8(g)(3)(C) generally outlines the requirements of motions “other than those made at a hearing.”