

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;  
and CONNECTIONS, A NEW CENTURY  
PUBLIC CHARTER SCHOOL,

Respondents.

CASE NO(S). CE-01-539

ORDER NO. 3774

ORDER DENYING MOTION TO ENFORCE

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On June 9, 2020, the Hawai‘i Supreme Court issued a decision on appeal in this case remanding this case the Hawai‘i Labor Relations Board (Board) for further proceedings to consistent with the memorandum opinion. The Court further provided that if the remedy ordered by the Board in its June 8, 2007 order was no longer available or appropriate that the legislature has empowered the Board with discretion in ordering affirmative remedies.

On February 16, 2021, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a motion for remedy and for award of attorney’s fees and costs (Motion for Remedies), which were supplemented. Respondents CHRISTINA KISHIMOTO, Superintendent, Department of Education, State of Hawai‘i; and CONNECTIONS, A NEW CENTURY PUBLIC CHARTER SCHOOL (Respondents) opposed the Motion for Remedy.

On March 9, 2021, the Board held an evidentiary hearing on the Motion for Remedies. UPW called as witnesses James Ah Sing and Luther Beck.

The parties submitted post-hearing briefs.

On May 10, 2021, the Board issued Order No. 3741 granting, in part, and denying, in part, the Motion for Remedies and for award of attorney’s fees and costs (Order No. 3741). Order No.

3741 ordered, among other things, lost wages and sick leave pay and vacation pay with interest, attorney's fees with taxes requested, and costs.

On May 14, 2021, Complainant filed a motion for clarification and modification of Order No. 3741 (Motion for Clarification) to remove a portion of the offset against the lost wages for 2004 of unemployment benefits.

Respondents filed no opposition to the Motion for Clarification.

On June 2, 2021, the Board issued Order No. 3741A, which amended Order No. 3741 to remove a portion of the offset against the lost wages for 2004.

On June 8, 2021, the UPW filed a motion for the Board to petition the circuit court to enforce Order No. 3741, as amended (Motion to Enforce), because Respondents have not paid the lost wages and interest, and attorney's fees and costs awarded.

Respondents filed no written response to the Motion to Enforce.

On June 29, 2021, the Board held a hearing on the Motion to Enforce. At the hearing, Deputy Attorney General James Halvorson (Mr. Halvorson), counsel for Respondents, did not dispute the facts and represented that the amount of the judgment will be placed in ATG 1 for the next legislative session and that most likely the money will not be paid out until July 1, 2022.

Payments of judgments against the State are required to be appropriated by the Hawai'i State Legislature because the Legislature must approve the funding from the State budget. *See*, Hawai'i State Constitution Article VII, § 5; Persin v State, 2018 Haw. App. LEXIS 440, at \*9-10 (2018) (summary disposition order).

Based on the representation by the Deputy Attorney General representing the Respondents that the judgment in this case will be placed in ATG 1 for the next legislative session, the Board is unable to find that Respondents have failed to comply with Order No. 3741, as amended, at this time, and denies the Motion to Enforce without prejudice.

DATED: Honolulu, Hawai'i, July 7, 2021.

HAWAI'I LABOR RELATIONS BOARD

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MARCUS R. OSHIRO, Chair

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SESNITA A.D. MOEPONO, Member

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J N. MUSTO, Member

Copies sent to:

Jonathan Spiker, Esq.  
James Halvorson, Deputy Attorney General

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<sup>i</sup> The Hawai'i Labor Relations Board (Board) substitutes CHRISTINA KISHIMOTO, current Superintendent, Department of Education (DOE), State of Hawai'i, for Respondent PATRICIA HAMAMOTO, who Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) named as a Respondent in the initial prohibited practice complaint (Complaint) in her capacity as then-Superintendent for the DOE. Hawai'i Rules of Civil Procedure Rule 25(d)(1) (HRCP) provides that, when a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and 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 not affecting the substantial rights of the parties shall be disregarded. The Board has applied the HRCP where its administrative rules are silent. Dep't of Public Safety, State of Hawaii v. United Public Workers, AFSCME, Local 646, AFL-CIO, Board Case No. CU-10-322, Order No. 2944, at \*2 n. 2 (2013).

UPW v. CHRISTINA KISHIMOTO, ET AL.  
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