

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO; and
~~HAWAII GOVERNMENT
EMPLOYEES ASSOCIATION,
AFSCME, LOCAL 152, AFL-CIO,~~

Complainants,

and

CHRISTINA KISHIMOTO,
Superintendent, Department of
Education, State of Hawai'i; and
BOARD OF EDUCATION, State of
Hawai'i,

Respondents.

CASE NOS.: CE-01-565a
~~CE-02-565b~~
~~CE-03-565e~~
~~CE-04-565d~~

ORDER NO. 3776

ORDER SETTING DEADLINE TO FILE
EXCEPTIONS TO PROPOSED ORDER

**ORDER SETTING DEADLINE TO FILE
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On February 14, 2020, the Hawai'i Labor Relations Board (Board) issued Proposed Order Dismissing the Prohibited Practice Complaint as Moot, and for Failure to Prosecute, or Alternatively, Granting in Part and Denying in Part Respondents' Motion to Dismiss or in the Alternative for Summary Judgment (Proposed Order) in this case. The Proposed Order provided in relevant part:

Any person adversely affected by the above Proposed Order Dismissing the Second Amended Prohibited Practice Complaint as Moot; or Alternatively, Granting Respondents' Motion to Dismiss, or in the Alternative for Summary Judgment; and Denying Complainants' Motion for Summary Judgment may file exceptions with the Board, pursuant to HRS § 91-11, within ten days after service of a certified copy of this document. The exceptions shall specify which finding or

conclusions are being excepted to with citations to the factual and legal authorities therefor. A hearing for presentation of oral arguments will be scheduled should any party file exceptions, and the parties will be notified thereof.

On February 21, 2020 and May 6, 2020, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (Complainant or UPW) filed Complainant's Motions to Continue Deadline to File Exceptions to Proposed Order Dismissing the Prohibited Practice Complaint as Moot and for Failure to Prosecute, or Alternatively, Granting Respondents' Motion to Dismiss or in the Alternative for Summary Judgment (Motions for Extension) with the Board. The Motions for Extension requested continuances of the deadline for filing Exceptions to the Proposed Order (Exceptions) from February 25, 2020 to May 11, 2020 and from May 11, 2020 to July 13, 2020. These Motions for Extension were granted by Order Nos. 3599 and 3602.

On June 1, 2020, a Notice of Withdrawal and Substitution of Counsel was filed transferring the UPW's representation in the present case from the law firm of Takahashi and Covert to the Koshiba, Price, and Gruebner law firm.

On July 1, 2020, UPW filed Complainant's Motion to Extend Deadline to File Exceptions to Proposed Order Filed on February 14, 2020 (Motion for Third Extension). In the Motion for Third Extension, UPW sought an extension from July 13, 2020 to August 31, 2020 to file Exceptions.

On July 6, 2020, the Board issued Order No. 3620, granting, in part, and denying, in part, the Motion for Third Extension. Order No. 3620 granted a final extension for filing of Exceptions to August 13, 2020 at 4:30 p.m. and further ordered that "**No further extensions will be granted.**" (Emphasis in original order.)

However, on July 15, 2020, UPW filed Complainant's Motion for Reconsideration of Motion to Extend Deadline to File Exceptions to Proposed Order Filed on February 14, 2020 (Filed on July 1, 2020), and Order Granting, In Part, and Denying, In Part, Complainant's Motion, Etc., Filed on July 6, 2020 (Motion for Reconsideration). In the Motion for Reconsideration, UPW requested reconsideration of its Motion for Third Extension for an extension to August 31, 2020 deadline. Further, UPW requested that any order extending the deadline not include an order that no further extensions will be granted and that a status conference be held.

On July 23, 2020, the Board issued Order No. 3629, which granted, in part, the Motion for Reconsideration to extend the deadline for the filing of Exceptions to August 31, 2020. However, the Board denied the request in the Motion for Reconsideration that the order not include that no further extensions will be granted. The Board ordered that no further extensions to file Exceptions will be granted unless supported by a stipulation between the parties regarding any extension requested.

On August 19, 2020, UPW filed a Stipulation to Request a Fourth Extension of the Deadline to File Exception to Proposed Order Filed on February 13, 2020 and Order (Stipulation) to extend the deadline for the filing of Exceptions from August 31, 2020 to September 30, 2020.

On August 24, 2020, the Board issued Order No. 3641, which granted, in part, the Stipulation to extend the deadline for the filing of Exceptions for the fourth time from August 31, 2020 to September 30, 2020. However, the Board denied the part of the Stipulation requesting an order providing that any further extensions to file the Exceptions will be granted upon the stipulation of the Parties.

On September 9, 2020, the Board held a Status Conference and orally granted an extension for the filing of Exceptions to October 30, 2020.

On October 21, 2020, the Board held another Status Conference, and UPW requested that the deadline for the filing of Exceptions be held in abeyance pending a December 2, 2020 Status Conference, which was confirmed in writing by Order No. 3663, filed on October 22, 2020.

At the December 2, 2020 Status Conference, UPW's counsel requested that this case be held in abeyance pending the Board decision in accordance with the remand from the Hawai'i Supreme Court (Court) decision in the United Public Workers, AFSCME, Local 646, AFL-CIO v. Kishimoto, 2020 Haw. LEXIS 138 (Ah Sing appeal).

On May 10, 2021, the Board issued Order No. 3741 Granting in Part, and Denying, in Part, Complainant's Motion for Remedy and or Award of Attorneys' Fees and Costs. Order No. 3741 addressed the remedy issues remanded under the Court's decision in the Ah Sing appeal. Order No. 3741 ordered, among other things, lost wages, sick leave pay, and vacation pay with interest, attorney's fees with taxes requested, and costs. United Public Workers, AFSCME, Local 646, AFL-CIO v. Kishimoto, Board Case No. CE-01-539, Order No. 3741 (5/10/2021) (Ah Sing remand).

On May 14, 2021, UPW filed a Motion for Clarification and Modification of Order Granting in Part, and Denying, in Part, Complainant's Motion for Remedy and or Award of Attorneys' Fees and Costs in Ah Sing remand.

On June 2, 2021, the Board issued Order No. 3741A Amendment to Order No 3741 in the Ah Sing remand, which clarified the back pay award.

Based on Order No. 3741, as amended, which ruled on the remedy issues in the Ah Sing remand, the Board finds that this case should no longer be held in abeyance. Therefore, the Board orders that any Exceptions be filed by **Monday, August 9, 2021 at 4:30 p.m.**

DATED: Honolulu, Hawai'i, July 8, 2021.

HAWAI'I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

EXCUSED

J N. MUSTO, Member

Copies sent to:

Jonathan Spiker, Esq.

Richard Thomason, Deputy Attorney General

Liz Ho, AFSCME Administrator

UPW v. CHRISTINA KISHIMOTO, ET AL.

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ORDER SETTING DEADLINE TO FILE EXCEPTIONS TO PROPOSED ORDER