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NO. 24415

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of

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

vs.

LINDA LINGLE, Governor, State of Hawai'i, CHIYOME  
LEINAALA FUKINO, M.D., Director, Department of  
Health, State of Hawai'i, Respondents-Appellees,<sup>1</sup>

and

HAWAI'I LABOR RELATIONS BOARD; BRIAN K. NAKAMURA,  
Chairperson; CHESTER C. KUNITAKE, Board Member;  
and KATHLEEN RACUYA-MARKRICH, Board Member;  
Appellees-Appellees.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NOS. 00-1-3460-11 & 01-1-0161)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Complainant-appellant United Public Workers, AFSCME, Local 646, AFL-CIO [hereinafter, UPW] appeals from the July 10, 2001 amended final judgment of the Circuit Court of the First Circuit, the Honorable Sabrina S. McKenna presiding, affirming the October 25, 2000 order of the Hawai'i Labor Relations Board [hereinafter, HLRB or Board). UPW contends that the circuit

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<sup>1</sup> Pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c) (2004), Governor Linda Lingle and Dr. Chiyome Fukino were substituted as parties to the instant appeal.

court erred in affirming the HLRB's order, arguing that the HLRB: (1) exceeded its authority and jurisdiction by "relitigating" (i.e. altering the remedial provisions of) a prior, final order and (2) erred in failing to enforce its prior order.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments presented, we hold that: (1) the language of the HLRB's May 5, 2000 findings of fact, conclusions of law, and order [hereinafter, Decision No. 408] and the record support the HLRB's subsequent findings in its October 25, 2000 order [hereinafter, Order 1947] that "the make whole provision contained in item (1) of the Board's order in Decision No. 408 does not imply nor require the restoring the affected PMAs to their positions at the Hawai'i State Hospital pharmacy or returning them to Bargaining Unit 10," and "Decision No. 408, item (2) does not impose on Respondents a duty to bargain over any new contracts for pharmacy operations at the Hawai'i State Hospital"; (2) based on Hawai'i Revised Statutes § 89-6(c) (2000) and the record on appeal, UPW fails to demonstrate that the HLRB's findings in Order 1947 regarding Kirin Tan and Derek Cabral are clearly erroneous; (3) UPW fails to demonstrate that Order 1947 is inconsistent with the remedial provisions of Decision No. 408; and (4) based upon the plain language of HRS § 377-9(e) (1993), UPW has failed to show that the HLRB's conclusion that it had discretion over the decision to petition

the circuit court to enforce one of the Board's orders was in violation of constitutional or statutory provisions, in excess of the statutory authority or jurisdiction of the agency, or affected by other error of law, see State v. Mueller, 102 Hawai'i 391, 394, 76 P.3d 943, 946 (2003), Gray v. Admin. Dir. of the Court, State of Hawai'i, 84 Hawai'i 138, 149, 931 P.2d 580, 591 (1997). Accordingly,

IT IS HEREBY ORDERED that the circuit court's July 10, 2001 amended final judgment affirming the October 25, 2000 order of the HLRB is affirmed.

DATED: Honolulu, Hawai'i, October 28, 2004.

On the briefs:

Herbert R. Takahashi (of  
Takahashi, Masui and  
Vasconcellos), for  
complainant-appellant

Kathleen N. A. Watanabe  
and Daniel A. Morris,  
Deputy Attorneys General,  
for respondents-appellees

Valri Lei Kunimoto, for  
appellees-appellees