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NO. 29092

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

2008 SEP -2 AM 10: 21
NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I
FILED

In the Matter of the Arbitration Between
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO
Union-Appellee, Cross-Appellant,

and

STATE OF HAWAI'I, DEPARTMENT OF EDUCATION,
HAWAII CHARTER SCHOOL, WAI'ALAE SCHOOL,
Employer-Appellant, Cross-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. NO. 07-1-0422)

ORDER GRANTING JULY 11, 2008 MOTION TO DISMISS THIS APPEAL
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) the July 11, 2008 motion by Union/Appellee/Cross-Appellant United Public Workers, AFSCME, Local 646, AFL-CIO (Appellee UPW), to dismiss appellate court case number 29092 for lack of jurisdiction, (2) the August 14, 2008 memorandum by Employer-Appellant Hawai'i Public Charter School, Waialae School (Appellant Waialae School) in opposition to Appellee UPW's July 11, 2008 motion to dismiss, and (3) the record, it appears that we lack of jurisdiction over this appeal.

We note that Appellant Waialae School designated the following two orders in its notice of appeal:

(1) the March 10, 2008 "Order Denying Employer State of Hawaii, Department of Education's Motion to Confirm Arbitrator Philip S. Uesato's Arbitration Decision and Award Dated December 18, 2007 and Granting in Part and Denying in Part UPW's Motion to Confirm in Part, to Vacate in Part, and to Modify or Correct in Part Arbitration Award and Orders" (the March 10, 2008 order); and

(2) the March 18, 2008 "Order Granting in Part Employer State of Hawaii, Department of Education's Motion to Reconsider Order Denying the Motion to Confirm Arbitration Philip S. Uesato's Arbitration Decision and Award Dated December 18, 2007" (the March 18, 2008 order).

Because the March 18, 2008 order effectively amends the March 10, 2008 order by making material and substantial changes to the March 10, 2008 order, the March 18, 2008 order is the appealable order, if any, at this time in this matter. See Poe v. Hawai'i Labor Relations Bd., 98 Hawai'i 416, 418, 49 P.3d 382, 384 (2002). If the March 18, 2008 order is appealable, then a valid appeal from the March 18, 2008 order entitles appellate review of the March 10, 2008 order. Cf. Ueoka v Szymanski, 107 Hawai'i 386, 396, 114 P.3d 892, 902 (2005) ("An appeal from a final judgment brings up for review all interlocutory orders not appealable directly as of right which deal with issues in the case." (Citation and internal quotation marks omitted)).

Hawaii Revised Statutes (HRS) § 658A-28(a)(3) (Supp. 2007) authorizes an appeal from an order that either confirms or denies an arbitration award:

> § 658A-28. Appeals.
>
> (a) An appeal may be taken from:
>
> (1) An order denying a motion to compel arbitration;
>
> (2) An order granting a motion to stay arbitration;
>
> (3) An order confirming or denying confirmation of an award;
>
> (4) An order modifying or correcting an award;
>
> (5) An order vacating an award without directing a rehearing; or
>
> (6) A final judgment entered pursuant to this chapter.
>
> (b) An appeal under this section shall be taken as from an order or a judgment in a civil action.

HRS § 658A-28 (emphasis added). The March 18, 2008 order purports to confirm the arbitration award as to Employer/Appellee/Cross-Appellee State of Hawai'i, Department of Education (Appellee Department of Education), as well as all of the

supporting findings of fact and conclusions of law. However, the March 18, 2008 order also vacates the arbitrator's dismissal of Appellant Waialae School and remands this matter to the arbitrator with instructions to hold a hearing on Appellee UPW's grievance as to Appellant Waialae School. Therefore, according to Appellee UPW, the language in HRS § 658A-28(a)(5) (Supp. 2007) precludes appellate jurisdiction, because HRS § 658A-28(a)(5) authorizes an appeal from an order vacating an arbitration award only when such an order does so "without directing a rehearing[.]"

There is no Hawai'i case law that addresses the possible conflict between subsection (3) and subsection (5) of HRS § 658A-28(a). However, we need not decide the issue whether HRS § 658A-28(a)(5) precludes appellate jurisdiction under these circumstances, because HRS § 658A-28(a)(3) does not authorize the instant appeal. HRS § 658A-28(a)(3) authorizes an appeal from an order that finally determines the issue whether a circuit court should confirm an arbitration award. In general, a final order is "an order ending the proceedings, leaving nothing further to be accomplished." Familian Northwest, Inc. v. Central Pacific Boiler & Piping, Ltd., 68 Haw. 368, 370, 714 P.2d 936, 937 (1986) (citations and internal quotation marks omitted). Although the March 18, 2008 order purports to confirm the arbitration award as to Appellee Department of Education, the March 18, 2008 order also specifically authorizes the arbitrator to modify the remedy as to Appellee Department of Education, if appropriate, at the conclusion of the future arbitration hearing on Appellee UPW's grievance as to Appellant Waialae School. In effect, the March 18, 2008 order lacks finality because it does not end the proceedings regarding the issue whether to confirm the arbitration award. Therefore, the March 18, 2008 order does not satisfy the requirements for appealability under HRS § 658A-28(a)(3). Accordingly,

IT IS HEREBY ORDERED that Appellee UPW's July 11, 2008 motion to dismiss appellate court case number 29092 is granted, and appellate court case number 29092 is dismissed.

DATED: Honolulu, Hawai'i, September 2, 2008.

Presiding Judge

Associate Judge

Associate Judge