

*** NOT FOR PUBLICATION ***

NO. 26168

IN THE SUPREME COURT OF THE STATE OF HAWAII

K. HAKKARANA
LEHR, AT
ST. AL. MAE
LAWYERS
LAWYERS

2005 APR -4 AM 7:52

FILED

Civ. No. 03-1-0546UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,
Complainant Appellant-Appellee,

vs.

KENNETH A. SHIMIZU, Deputy Director, Department of
Environmental Services, City and County of Honolulu;
ERIC TAKAMURA, Director, Department of Environmental
Services, City and County of Honolulu; KENNETH
NAKAMATSU, Director, Department of Human Resources,
City and County of Honolulu; and MUFI HANNEMAN,
Mayor, City and County of Honolulu,¹
Respondents Appellees-Appellants,

and

HAWAII LABOR RELATIONS BOARD, BRIAN K. NAKAMURA,
Chairperson; CHESTER C. KUNITAKE, Board Member; and
KATHLEEN RACUYA-MARKRICH, Board Member, Appellees-Appellees.Civ. No. 03-1-0552UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,
Complainant Appellant-Appellee,

vs.

KENNETH A. SHIMIZU, Deputy Director, Department of
Environmental Services, City and County of Honolulu;
ERIC TAKAMURA, Director, Department of Environmental
Services, City and County of Honolulu; KENNETH
NAKAMATSU, Director, Department of Human Resources,
City and County of Honolulu; and MUFI HANNEMAN,
Mayor, City and County of Honolulu,²
Respondents Appellees-Appellants,

¹ Pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c) (2004), Kenneth A. Shimizu, Eric Takamura, Kenneth Nakamatsu, and Mufi Hanneman were substituted as parties to the instant appeal.

² See supra note 1.

and

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

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NOS. 03-1-0546 & 03-1-0552)

SUMMARY DISPOSITION ORDER AND ORDER DENYING
MOTION FOR RETENTION OF ORAL ARGUMENT

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

Appellants Kenneth A. Shimizu, Deputy Director,
Department of Environmental Services, City and County of
Honolulu; Eric Takamura, Director, Department of Environmental
Services, City and County of Honolulu; Kenneth Nakamatsu,
Director, Department of Human Services, City and County of
Honolulu; and Mufi Hanneman, Mayor, City and County of Honolulu
[hereinafter, collectively, the City] appeals from the September
22, 2003 judgment of the Circuit Court of the First Circuit, the
Honorable Sabrina S. McKenna presiding, reversing in part and
affirming in part Decision No. 440 of the Hawai'i Labor Relations
Board [hereinafter, HLRB or the Board]. On appeal, the City
argues that the circuit court erred in: (1) finding that
Decision No. 440 ruled that the City had committed a prohibited
practice; (2) overturning or otherwise modifying the HLRB's
findings of fact regarding evidence of frustration of purpose;
and (3) ruling that the frustration of purpose doctrine applied
by the HLRB was erroneous and contrary to the manifest purpose of
Hawai'i Revised Statutes (HRS) chapter 89. Additionally, after

briefing was complete in the instant case, appellee United Public Workers, AFSCME, Local 646, AFL-CIO [hereinafter, UPW or the Union] moved for retention of oral argument in the instant case.

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 as follows:

Notwithstanding the circuit court's ruling that the City was bound to "restore collection services for the city which had been privatized and to expand services to businesses, condominiums, and churches and compete with private haulers to contract services for military bases and public schools," the unchallenged language of Decision No. 440 bound the City to the same contractual obligations when this court reversed the HLRB's prior decision in United Public Workers, AFSCME, Local 646, AFL-CIO, v. Hanneman, 106 Hawai'i 359, 362-63, 105 P.3d 236, 239-40 (2005). Thus, in the instant case, "[the] result will not be affected by the question[s] . . . raised on this appeal, whichever way [they are] decided. In this situation, any consideration of the question will be academic. A question which has become academic is moot." In re Kuwaye Bros., Inc., 50 Haw. 172, 174, 435 P.2d 21, 22-23 (1965); see also Ford Motor Co. v. Nat'l Labor Relations Bd., 305 U.S. 364, 375 (1939) ("It is elementary that the court is not bound to determine questions which have become academic."). Therefore, this court lacks jurisdiction to decide the merits of the instant case. Wong v.

Bd. of Regents, Univ. of Hawai'i, 62 Haw. 391, 394-95, 616 P.2d
201, 203-04 (1980).

UPW's arguments for retention of oral argument are based upon its perception of the complexity of and public interest in the issues raised in the instant appeal. Because this court lacks jurisdiction to address such issues, UPW's arguments are inapposite. Accordingly,

IT IS HEREBY ORDERED that UPW's motion to retain oral argument is denied, and the instant appeal is dismissed.

DATED: Honolulu, Hawai'i, April 4, 2005.

On the briefs:

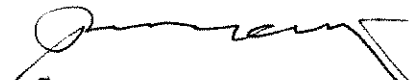
Herbert R. Takahashi (of
Takahashi, Masui, Vasconcellos
& Covert), for appellant
appellee-appellee

Seth R. Harris and
Paul T. Tsukiyama,
Deputies Corporation Counsel,
for respondents appellees-
appellants



Steven H. Levinson

Fuma A. Nakayama



James E. Duggan, Jr.