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NO. 27018

IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII

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FILED

In the Matter of

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,
Union-Appellee

and

CITY AND COUNTY OF HONOLULU, MUFI HANNEMAN¹, Mayor,
and ERIC TAKAMURA, Director, Department of Environmental
Services, City and County of Honolulu (2004-027),
Employer-Appellants

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P. NO. 04-1-0475)

ORDER

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

Upon consideration of Appellee United Public Workers' motion to dismiss the appeal of Employer-Appellant City and County of Honolulu for lack of jurisdiction, the papers in support and opposition, and the records and files herein, it appears that: (1) Appellant is appealing from a circuit court order granting a motion for provisional remedies pursuant to HRS § 658A-8 (Supp. 2004) and an order denying a motion to vacate the order granting provisional remedies; (2) the right to appeal is purely statutory and exists only when given by some constitutional and statutory provision. Chambers v. Leavey,

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

60 Haw. 52, 57, 587 P.2d 807, 810 (1978); (3) the circuit court did not enter a final judgment in the underlying case; (4) HRS § 658A-28 governs appeals in cases brought pursuant to HRS chapter 658A, and the orders being appealed in the instant case do not fall within that group of orders set forth in HRS § 658A-28 from which an appeal may be taken; (5) the underlying circuit court proceeding was not brought pursuant to HRS chapter 380; thus, HRS § 380-10, which allows appeals in cases brought pursuant to HRS chapter 380, is inapplicable; (6) Association of Owners of Kukui Plaza v. Swinerton & Walberg Co, 68 Haw. 98, 705 P.2d 28 (1985) is inapplicable. Therefore,

IT IS HEREBY ORDERED that the motion to dismiss is granted, and this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 9, 2005.

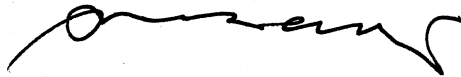
Herbert R. Takahashi
for Union-Appellee
on the motion

Kenneth B. Hipp and
Nichole K. Shimamoto
(of Marr Hipp Jones &
Wang) and Paul T.
Tsukiyama, Clark Hirota,
and Florencio C. Baguio,
Jr., Deputies Corporation
Counsel, for Employer-
Appellants in opposition.



Steven Levinson

Puma A. Takahashi



Puma A. Takahashi