

NO. CAAP-17-0000529

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

IN THE MATTER OF THE ARBITRATION BETWEEN
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,
Union-Appellant-Appellant,
and
STATE, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION,
HILO BASEYARD (GRIEV. OF ELGIN SANTOS RE: PROMOTION);
SECTIONS 1, 14, 16, 64 AND 66; AN-15-04 (2016-011),
Employer-Appellee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. NO. 17-1-0112)

SUMMARY DISPOSITION ORDER

(By: Fujise, Presiding Judge, Leonard and Chan, JJ.)

United Public Workers, AFSCME, Local 646, AFL-CIO (the **Union**) appeals from the Judgment filed June 23, 2017, by the Circuit Court of the First Circuit (**Circuit Court**).¹ The Union also challenges the Circuit Court's Order Granting in Part and Denying in Part Union's Motion to Confirm Arbitration Decision and Award, to Enter Judgment, and for Other Appropriate Relief (**Order**), entered on June 23, 2017.

¹

The Honorable Gary W.B. Chang presided.

On appeal, the Union argues, on various grounds, that the Circuit Court abused its discretion in denying the Union's request for an award of costs on the Union's motion to confirm a stipulated arbitration award.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve the Union's contentions as follows:

Hawaii Revised Statutes (**HRS**) 658A-25 (2016) provides:

§ 658A-25 Judgment on award; attorney's fees and litigation expenses. (a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under section 658A-22, 658A-23, or 658A-24, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

(Emphasis added).

As the Circuit Court concluded, HRS § 658A-25(b), rather than the rule cited by the Union, Hawai'i Rules of Civil Procedure (**HRCP**) Rule 54(d) is applicable here.² The award of costs pursuant to HRS § 658A-25(b) is discretionary, not mandatory. The Circuit Court was not estopped from exercising its discretion based on the State of Hawai'i Department of Transportation, Highways Division, Hilo Baseyard's (the **State's**) statement that it had no objection to the Court awarding

² HRCP Rule 54(d)(1) provides that it is applicable except where there is an express provision in a statute or another rule governing costs.

reasonable costs to the Union, as determined by the Court. The Circuit Court denied an award of costs on the grounds that the confirmation of the stipulated arbitration award was unnecessary because the State had already fully complied with the stipulated arbitration decision and the Union's reasons for seeking the entry of a judgment were unrelated to the dispute at bar. The Circuit Court recognized that the Union had a right to reduce the award to a judgment for other purposes, but declined to order the State to bear the Union's nominal costs under these circumstances. We conclude that the Circuit Court did not abuse its discretion in denying an award of costs to the Union.

For these reasons, the Circuit Court's June 23, 2017 Judgment is affirmed.

DATED: Honolulu, Hawai'i, August 30, 2019.

On the briefs:

Herbert R. Takahashi,
Rebecca L. Covert,
(Takahashi and Covert),
for Union-Appellant-Appellant.

Presiding Judge

Associate Judge

James E. Halvorson,
William M. Levins,
Deputy Attorneys General,
State of Hawai'i,
for Employer-Appellee-Appellee.

Associate Judge