

**Electronically Filed
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SCPW-23-0000461

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

RICK BLANGIARDI, Mayor, City and County of Honolulu,
Petitioner,

vs.

THE HONORABLE JAMES H. ASHFORD,
Judge of the Circuit Court of the First Circuit,
State of Hawai'i, Respondent Judge,

and

HAWAI'I GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,
LOCAL 152, AFL-CIO, HAWAI'I LABOR RELATIONS BOARD, MARCUS R.
OSHIRO, SESNITA A.D. MOEPONO, J N. MUSTO, Respondents.

ORIGINAL PROCEEDING
(CASE NO. 1CCV-23-0000998)

ORDER DENYING PETITION FOR WRIT OF MANDAMUS
(By: Recktenwald, C.J., McKenna, and Eddins, JJ.,
Circuit Judge Johnson and Circuit Judge Tonaki,
assigned by reason of vacancies)

Petitioner Rick Blangiardi, Mayor of the City and County of Honolulu (the City), asserts that the Hawai'i Labor Relations Board's (HLRB's) original jurisdiction over prohibited practice complaints under Hawai'i Revised Statutes (HRS) Chapter 89 was

effectively suspended by Governor David Y. Ige's emergency proclamations issued during and concerning the COVID-19 pandemic. The City's petition for a writ of mandamus asserts that, pursuant to HRS Chapter 127A, "the breadth, jurisdictional, and preemptive reach of the Governor's emergency powers" "should be decided by the Judiciary," not the HLRB.

Yet that is what the HLRB decided when the HLRB denied the City's motion to dismiss, the decision underlying the City's petition for a writ of mandamus. The HLRB clearly ruled that the jurisdictional reach of HRS Chapter 127A is the judiciary's call. The HLRB concluded it has jurisdiction over issues related to HRS Chapter 89, and because HRS Chapter 127A and Governor Ige's emergency proclamations are not within HRS Chapter 89, the HLRB does not have jurisdiction to decide the applicability of HRS Chapter 127A and the emergency proclamations. The HLRB also concluded that HRS Chapter 127A and the emergency proclamations may be raised on judicial review after the HLRB decides the prohibited practice issues under HRS Chapter 89.

The City appealed the HLRB's decision on the City's motion to dismiss to the circuit court. But the City also filed a petition for a writ of mandamus in this court on August 4, 2023, requesting an order requiring (1) the parties to submit

expedited briefing in the appeal, and (2) a temporary stay of the August 8, 2023 HLRB hearing.

A writ of mandamus is not meant to be used to interfere with or control the exercise of an agency's or circuit court's discretion. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999); Barnett v. Broderick, 84 Hawai'i 109, 111, 929 P.2d 1359, 1361 (1996); Salling v. Moon, 76 Hawai'i 273, 274 n.3, 874 P.2d 1098, 1099 n.3 (1994).

Nor is a writ of mandamus meant to be used in lieu of normal appellate procedures. See Kema, 91 Hawai'i at 204-05, 982 P.2d at 338-39; Barnett, 84 Hawai'i at 111, 929 P.2d at 1361.

Here, the HLRB has jurisdiction to consider whether it has jurisdiction, as well as jurisdiction to decide which issues it has authority to adjudicate. See HOH Corp. v. Motor Vehicle Industry Licensing Bd., 69 Haw. 135, 141, 736 P.2d 1271, 1275 (1987). Thus, it was within the HLRB's discretion to deny the City's motion to dismiss and decide which issues it has and does not have jurisdiction to consider. That's what happened here.

If a party disagrees with the decision, that party may appeal that decision, as appropriate. What a party should not do is sidestep normal appellate procedures by filing a petition for writ of mandamus merely because the party wants a speedy decision from this court. That's also what happened here.

Upon consideration of the City's August 4, 2023 petition and the record, it is ordered that the petition is denied.

DATED: Honolulu, Hawai'i, August 7, 2023

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Ronald G. Johnson

/s/ John M. Tonaki

