

# **Bond Case Briefs**

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## **ZONING & PLANNING - HAWAII**

### **Unite Here! Local 5 v. Department of Planning and Permitting**

**Supreme Court of Hawai'i - December 13, 2019 - P.3d - 2019 WL 6798425**

Union representing hotel and restaurant employees brought action against city and county department of planning and permitting and its director, challenging zoning board of appeals' (ZBA) decision, in appeal in which developer intervened, finding that it did not have jurisdiction to address director's modification of special district permit for condo-hotel development project that removed conditions advocated for by union and that director's decision to approve a second-phase permit that depended on removal of those conditions was not abuse of discretion.

On appeal, the Circuit Court affirmed. Union appealed to the Intermediate Court of Appeals (ICA).

After accepting transfer of the case, the Supreme Court held that:

- Union's due process rights were violated by director's removal of conditions without notice to union, and
- Director acted arbitrarily and capriciously, and abused his discretion when he did not include permit conditions for condo-hotel development project in permit for tower being attached to the condo-hotel.

Due process rights of union representing hotel and restaurant employees were violated when city and county permitting and planning director removed conditions from permit for condo-hotel development project that required condo-hotel to provide sufficient number of parking stalls, comply with park dedication provisions, and meet other land use ordinance requirements without providing notice to union such that union was unable to later challenge the decision, where union advocated for those conditions in permit, permit was approved with those conditions, and director knew the importance of the conditions to the union.

City and county planning and permitting director acted arbitrarily and capriciously, and abused his discretion when he did not include permit conditions for special district permit for a condo-hotel development project into a permit for a 39-story tower to be connected to the condo-hotel, since tower and condo-hotel were operated jointly as a single business, director recognized the integrated nature of the projects when he approved the tower's permit, and decision to approve the tower's permit rested in part on removal of restrictive covenant conditions from condo-hotel permit, which was a permit modification requiring notice and opportunity to be heard for interested party that advocated for those conditions in condo-hotel permit's approval.