IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

TANO GROUP, INC., Petitioner, v. MARK D. ZACHARES, Secretary of the Department of Labor and Immigration, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS and ROSALITO ESTOQUE, real party in interest, Respondents.	Civil Action No. 01-0191E **ORDER GRANTING MOTION TO DISMISS**

I. INTRODUCTION

The above matter came on for a hearing on May 23, 2001, at 9:00 a.m. on Respondent Rosalito Estoque's ("Estoque") Motion to Dismiss Petitioner's Request for Judicial Review of Administrative Decision Pursuant to Rules 12(b)(1) and (6). Joe Hill, Esq. appeared on behalf of Estoque. Eric S. Smith, Esq. appeared on behalf of Petitioner Tano Group, Inc. ("Tano Group"). Assistant Attorney General Andrew Clayton was also present on behalf of the Department of Labor and Immigration ("DOLI"). The court, having reviewed the briefs, exhibits, and affidavits, and having heard and considered the arguments of counsel, now renders its written decision.

II. FACTS

On May 2, 2000, Estoque received a letter from Tano Group giving notice of a good faith meeting at DOLI on May 3, 2000, to attempt to resolve employment disputes between the parties

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prior to any termination proceedings. Following the meeting, Tano Group notified Estoque of his termination effective May 9, 2000. Thereafter, on June 14, 2000, Estoque file a *pro se* labor complaint against Tano Group. On June 22, 2000, the Director of Labor issued a Determination/Notice of Violation/Notice of Hearing, finding Estoque to be in violation of the Nonresident Workers Act of 1983 and setting a hearing date for June 26, 2000.

At the hearing, Estoque requested a continuance, which the Hearing Officer granted and set for July 18, 2000. The Hearing Officer did not issue a formal notice of the continuance but, rather, gave Estoque a sheet of paper with the date and time of the new hearing. Though Estoque did not appear at the July 18 hearing, the hearing went ahead as scheduled.[1] On July 25, 2000, the Hearing Officer issued an Administrative Order entering judgment in favor of Tano Group. Estoque received the Administrative Order in the mail on August 11, 2000. He then requested for an extension in which to file an appeal and, on September 11, 2000, Estoque filed a Verified Motion for Reconsideration and to Set Aside Order and for a New Hearing. Tano Group opposed the motion, and on March 19, 2001, the Secretary of Labor granted Estoque's motion for reconsideration, set aside the July 25 Administrative Order and remanded the matter for a new hearing.

On March 30, 2001, before the new hearing, Tano Group filed a Motion to Stay Administrative Order of March 19, 2001 and Administrative Hearing Pending Judicial Review. On April 2, 2001, Tano Group filed with this court a Request for Judicial Review of Administrative Decision Pursuant to 3 CMC § 4446 requesting review of the March 19 Order. In response, Estoque filed this motion to dismiss. Tano Group opposes the motion.

III. ISSUE

Whether the March 19 Order setting aside the July 25 Administrative Order and remanding for a new hearing constitutes a final agency action appropriate for judicial review.

IV. ANALYSIS

Estoque asserts that this court lacks subject matter jurisdiction over the petition for judicial review because the March 19 Order issued by the Secretary is not a final action ripe for judicial

[1] In his motion to dismiss, Estoque asserts that he missed the July 18 hearing because he relied on the statements of a criminal investigator in the Attorney General's Office that the case would be postponed.

review. Tano Group, however, contends that the Secretary's order is final and subject to judicial review because the Secretary stated in the order that "[a]ny person or party aggrieved by this decision may seek judicial review . . . ," and that 3 CMC § 4445(c) makes any administrative appeal decision a final agency action.

Following an administrative order, any person affected by the agency findings may appeal to the director by written notice. *See* 3 CMC § 4445(a). "Upon completion of review, the director shall confirm or modify the agency findings, order or decision in writing . . . The director's decision shall constitute final action for purposes of judicial review." 3 CMC § 4445(c). "Judicial review of a final action of the Director is authorized after exhaustion of administrative remedies . . . ." 3 CMC § 4446.

Though §§ 4445(c) and 4446 both use the phrase "final action," these sections do not clarify when an agency action is "final" for judicial review. Under § 4445(c), the director's decision constitutes a final action. Yet, under § 4446, judicial review is not authorized until all administrative remedies are exhausted. Generally, an agency action is final when the agency has spoken decisively on the issue and when judicial involvement in the dispute will settle the matter. *See In re Bitoy v. Rodeo*, Civ. No. 93-1073 (Labor Case No. 205-91) (N.M.I. Super. Ct. May 5, 1994) (Decision and Order Granting Complainants Motion to Dismiss at 3) (citing CHARLES H. KOCH, JR. 2 ADMINISTRATIVE LAW AND PRACTICE § 10.31 (1992)). Finality of an order involves such considerations as to whether the impact of the order is direct and immediate, whether the order is a consummation of the agency's decision making process, whether rights and obligations have been determined, and whether legal consequences flow from that order. *See Colorado Farm Bureau Fed' v. United States Forest Serv.*, 220 F.3d 1171, 1173-74 (10th Cir. 2000); *Veldhoen v. United States Coast Guard*, 35 F.3d 222, 225 (5th Cir. 1994). "It has . . . been the firm and unvarying practice of Constitutional Courts to render no judgments . . . that are subject to later review or alteration by administrative action." *In re Bitoy*, Decision and Order at 4 (citing *Chicago & Southern Air Lines v. Waterman S.S. Corp.*, 68 S.Ct. 431, 437 (1948)).

In the case at hand, the Secretary's March 19 Order does not constitute a consummation of the agency's decision making process. The decision to set aside the July 25 Administrative Order

in its entirety and to remand the matter for a new hearing neither confirms or modifies the agency findings.[2] Rather, it sets the matter at the beginning of the agency process. Without further agency action the matter will not be resolved. "The decision to remand is not a resolution of the controversy on its merits." *Loffland Bros. Co. V. Rougeau*, 655 F.2d 1031 (10th Cir. 1981); *Newport News Shipbuilding & Dry Dock Co. v. Director*, 590 F.2d 1267 (4th Cir. 1978). Because the Secretary ordered a new hearing, the agency's jurisdiction over the matter has not reached an "administrative conclusion" and the rights and obligations between the parties have not been determined. Further, "an administrative agency cannot unilaterally confer jurisdiction on this Court to review an administrative action not otherwise reviewable merely by labeling the action a 'final order.' While the agency's characterization may have some persuasive value, this Court must make the final determination whether it has jurisdiction to review the administrative action." *Jacksonville Shipyards, Inc. v. Dole*, 54 Fair Empl.Prac.Cas. (BNA) 289, 1990 WL 255517, at *3 (M.D.Fla. Jan. 17, 1990). Thus, the court finds that the March 19 Order is not a "final action" ripe for judicial review.

V. CONCLUSION

For the foregoing reasons, Estoque's Motion to Dismiss Petitioner's Request for Judicial Review of Administrative Decision Pursuant to Rules 12(b)(1) and (6) is GRANTED.

SO ORDERED this 11th day of June, 2001.

/s/
DAVID A. WISEMAN, Associate Judge

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[2]The court notes that § 4445(c) only allows the director to "affirm or modify the agency findings." Such actions would constitute finality in the agency process. The statute, however, does not appear to allow for the possibility of remand, which does not constitute finality for appeal purposes. To not allow the director to remand would be too great a restriction on the director's power and autonomy to review agency decisions. The court, therefore, will not interpret the statute in such a manner. *See People v. Morris*, 756 P.2d 843, 851 (Cal. 1988) (holding that it is fundamental that a statute should not be interpreted in a manner that would lead to absurd results). Because remand is not contemplated by the statute, it is not appropriate to state that the remand in this case is a final action because § 4445(c) states that the director's decisions are final.