

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-01-53
)	
STEPHEN K. YAMASHIRO,)	ORDER NO. 1021
)	
Petitioner,)	ORDER DENYING INTERVENOR'S
)	MOTION TO DISMISS AND SETTING
and)	BRIEFING SCHEDULE
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Intervenor.)	

ORDER DENYING INTERVENOR'S MOTION TO
DISMISS AND SETTING BRIEFING SCHEDULE

On August 2, 1993, STEPHEN K. YAMASHIRO, Mayor of the County of Hawaii (Petitioner), filed a Petition for Declaratory Ruling with the Hawaii Labor Relations Board (Board). Petitioner states the issue as to whether or not the employer may impose a freeze on the filling of vacant positions by hiring, promotion and temporary assignments. Thereafter, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) filed a Petition for Intervention on August 17, 1993. On August 18, 1993, UPW filed a motion to dismiss the petition on the grounds that the claim is a prohibited practice complaint which is time-barred and there is "good cause" to deny the petition because the matter is before an arbitrator.

The Board conducted a hearing on UPW's motion to dismiss on September 13, 1993. Both parties had full opportunity to present evidence and arguments before the Board. Based upon the record and the arguments of counsel, the Board hereby denies UPW's motion to dismiss the petition for declaratory ruling.

According to Administrative Rules § 12-42-9(f), the Board may for good cause refuse to issue a declaratory order. The rule further sets forth several grounds for refusal where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.
- (3) The issuance of the declaratory order may adversely affect the interests of the board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.
- (4) The matter is not within the jurisdiction of the board.

The instant controversy does not fall within the foregoing categories and the Board has the discretion to entertain the petition. Intervenor contends however, that this matter is time-barred because it is actually a prohibited practice complaint. The Board disagrees. The question before the Board is one of statutory construction, to declare whether the imposition of a hiring freeze is a management right. Hence, the ninety-day statute of limitations filing requirement is inapplicable to the instant petition.

UPW further argues that the matter is before an arbitrator and the Board should decline to rule on the petition because it involves the interpretation of Section 1.05 of the Unit 1 collective bargaining agreement. The Board finds that the fact that a related matter is before an arbitrator does not infringe upon the Board's jurisdiction to rule on the instant declaratory ruling

petition which requests an interpretation of Chapter 89, Hawaii Revised Statutes.

Accordingly, the Board denies Intervenor's motion to dismiss. The Board further sets forth the following briefing schedule: Petitioner shall file a brief with the Board which shall include a definition of the issue in this case by the close of business on April 11, 1994. Intervenor shall file its brief by the close of business on May 9, 1994.

DATED: Honolulu, Hawaii, March 14, 1994.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGH, Board Member



SANDRA H. EBESU, Board Member

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