

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-12-248
STATE OF HAWAII ORGANIZATION)	ORDER NO. 1232
OF POLICE OFFICERS (SHOPO),)	ORDER GRANTING RESPONDENT'S
Complainant,)	MOTION TO DISMISS
and)	
STEPHEN YAMASHIRO, Mayor of the)	
County of Hawaii,)	
Respondent.)	

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS

On or about April 21, 1995, Complainant STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO or Union) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against STEPHEN YAMASHIRO, Mayor, County of Hawaii (County or Employer). SHOPO alleges that the County violated §§ 76-101(10), 89-13(a)(1), (2), (3), (5) and (8), Hawaii Revised Statutes (HRS), and Articles 1, 4, 7, 25 and 35, of the collective bargaining agreement (contract).

The gravamen of SHOPO's complaint involves the County's denial of paid time-off for Union officials to attend Union meetings during normal work hours. SHOPO relies upon a long standing practice in which the County granted paid time-off to officials attending these meetings. SHOPO also asserts a statutory entitlement to paid time-off under § 76-101(10), HRS.

A prehearing teleconference was held on May 19, 1995. On May 23, 1995, the County filed a motion for leave to amend its answer which was granted by this Board. On May 24, 1995, the County filed its motion to dismiss, which was heard on June 19, 1995.

In its motion to dismiss, the County argues that the case should be dismissed on two grounds: (1) SHOPO's claims are barred by res judicata and/or collateral estoppel; and (2) SHOPO has failed to exhaust its remedies under the contractual grievance procedure.

As to the application of the doctrines of res judicata and collateral estoppel, the County argues that the issue before this Board was litigated previously before this Board's predecessor, the Hawaii Public Employment Relations Board (HPERB), and cites Decision 162, SHOPO, et al. v. Fasi, et al., 3 HPERB 47 (1982) (Fasi case), as binding precedent, and a bar to relitigation.

In Santos v. State, 64 Haw. 648, 646 P.2d 962 (1982) (Santos), the Hawaii Supreme Court defined the doctrines of res judicata and collateral estoppel stating, in part:

The doctrines of res judicata and collateral estoppel provide that the judgment of a court of competent jurisdiction is a bar to a new action in another court between the same parties or their privies concerning the same subject matter. It precludes relitigation, not only of the issues that were actually litigated in the first action, but also of all grounds of claim and defense which might have been litigated in the first action but were not litigated or decided.

Id. at 651-52.

With respect to the doctrine of collateral estoppel, the Court in Santos, cited Ellis v. Crockett, 51 Haw. 45, 451 P.2d 814 (1969) stating,

Collateral estoppel is an aspect of res judicata which precludes the relitigation of a fact or issue which was previously determined in a prior suit on a different claim between the same parties or their privies.

Id. at 652.

The three critical questions in determining whether res judicata and collateral estoppel apply are:

Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?

Id. at 653.

In determining whether one or both of these doctrines are applicable, the Board must compare the instant case with the Fasi case to determine if each required element is present. With respect to subject matter, in the Fasi case SHOPO attempted to establish, through past practice, a right to paid time-off for Union officials to attend Union meetings. SHOPO alleged violations of §§ 89-13(a)(1), (2), (3), (5), (7) and (8), HRS. SHOPO further alleged violations of Article 8 of the contract, and § 76-101(10), HRS.

In the instant case, SHOPO seeks to establish, by way of past practice, essentially the same right to paid time-off, which was denied by this Board's predecessor in the Fasi case. SHOPO

alleges violations of §§ 89-13(a)(1), (2), (3), (5) and (8), HRS; Articles 1, 4, 7 and 25 of the contract, and § 76-101(10), HRS.

Thus, subject matter and issues presented in both cases are identical. HPERB's decision in the Fasi case is sound, and there is no reason for this Board to revisit the same issues resolved in that case. Moreover, the relevant contract provisions have not been modified. With respect to the alleged violation of § 76-101(10), HRS, SHOPO argues that the previous Board dismissed this claim on grounds of lack of evidence. The doctrines of res judicata, however, nevertheless applies as a bar to relitigation of matters which were actually litigated or could have been litigated. In addition, this Board defers the question of whether § 76-101(10), HRS, was violated to the County of Hawaii Civil Service Commission.

In addition, the Fasi case is a final judgment on the merits. Although the decision was appealed, the Circuit Court dismissed the appeal with prejudice. SHOPO, et al v. HPERB, et al., Civil No. 72183 (10/19/82).

Finally in the Fasi case, SHOPO, the exclusive representative of Unit 12 employees, filed a complaint against employers of Unit 12 employees, the mayors of the four counties, including Herbert T. Matayoshi, then Mayor of Hawaii County, and a predecessor to STEPHEN YAMASHIRO. Clearly, it cannot be disputed that the parties are somehow different, or that YAMASHIRO is not in privity with Matayoshi, in the instant case.

Therefore, the Board finds that the doctrines of res judicata and collateral estoppel are applicable to this case and dismissal is appropriate.

Based on the Board's decision, the County's motion for dismissal on grounds that the Union failed to exhaust its administrative remedies under the contractual grievance procedure need not be addressed.

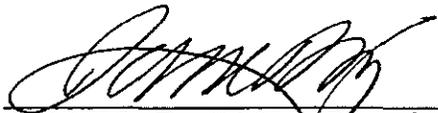
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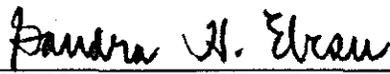
For the foregoing reasons, the County's motion to dismiss the instant prohibited practice complaint is hereby granted.

DATED: Honolulu, Hawaii, October 3, 1995.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

Copies sent to:

Sue Ann Gregory, Esq.
Ivan Torigoe, Deputy Corporation Counsel
Joyce Najita, IRC