

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of	)	CASE NO. CU-01-117
MICHAEL L. LAST,	)	ORDER NO. 1318
Complainant,	)	ORDER GRANTING UPW'S MOTION
and	)	TO DISMISS COMPLAINT
UNITED PUBLIC WORKERS, AFSCME,	)	
LOCAL 646, AFL-CIO,	)	
Respondent.	)	

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ORDER GRANTING UPW'S MOTION TO DISMISS COMPLAINT

On November 13, 1995, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) with the Hawaii Labor Relations Board (Board). Complainant alleges that he requested a refund of his fair share agency fees from the UPW. Complainant contends that in Case No. CU-01-108, Respondent UPW indicated that it refunded \$49.00 to Complainant but that he only received a check in the amount of \$45.40. Complainant contends that he attempted to ascertain why there was a discrepancy in the amount of the check but that he received no response from the UPW. Complainant contends that the UPW refused to comply with § 89-4, Hawaii Revised Statutes (HRS), by refusing to remit the correct amount of his refund and by refusing to respond to his request for information.

On November 22, 1995, Respondent UPW filed a motion to dismiss the complaint on the basis that the dispute was moot. Respondent contends that after the complaint was filed, the Union

determined that there was an inadvertent accounting error made and it promptly issued Complainant a check in the amount of \$3.60. The UPW attached checks issued on September 15, 1995 and November 17, 1995 to LAST in the amounts of \$45.40 and \$3.60, respectively, in support of the motion. Thus, the Union argues that no further amounts are owing to LAST.

LAST submitted his opposition to the motion in a memorandum dated December 6, 1995. The Board conducted a hearing on Respondent's motion to dismiss on December 20, 1995. All parties were afforded full opportunity to present evidence and oral argument. After considering the evidence and argument presented, the Board makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

Complainant LAST is an employee as defined in § 89-2, HRS, included in bargaining unit 01 but is not a member of the UPW.

The UPW is the exclusive representative, as defined in § 89-2, HRS, of employees who are included in bargaining unit 01.

LAST sought a refund of his fair share agency fees from the UPW during proceedings held before this Board in Case No. CU-01-108, pursuant to § 89-4, HRS.

On September 15, 1995, the UPW issued a check in the amount of \$45.40 to LAST as a refund of his fair share agency fees.

The check was inadvertently issued in an amount that was in error (i.e., the correct amount of the refund to LAST should have been \$49.00). Thereafter, the UPW refunded \$3.60 to LAST by check, dated November 17, 1995.

#### DISCUSSION

It is well-settled that judicial and quasi-judicial tribunals are required to decide "actual controversies" only and not give opinions upon moot questions or abstract propositions. Re: App'n of J.T. Thomas, 73 Haw. 223, 225-226, 832 P.2d 253 (1992); Wong v. Board of Regents, University of Hawaii, 62 Haw. 391, 394, 616 P.2d 201, 203-04 (1980); Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81, 87, 734 P.2d 161 (1987); Castle v. Irwin, 25 Haw. 786, 792 (1921). A case is moot if it has "lost its character as a present, live controversy." Kona Old Hawaiian Trails Group v. Lyman, supra. To escape the mootness bar, any action "must remain alive throughout the course of litigation." Wong v. Board of Regents, University of Hawaii, 69 Haw. 391, 394. This Board lacks jurisdiction to decide abstract propositions of law. Id., 69 Haw. at 395, 616 P.2d at 204.

UPW issued full payment of the refund of fair share agency fees due to LAST on or about November 17, 1995. LAST's complaint thus no longer presents a live controversy because "events have so affected the relations between the parties that the two conditions for justiciability relevant on appeal - adverse interest and effective remedy - have been compromised." Wong v. Board of Regents, University of Hawaii, 62 Haw. at 394. LAST filed his complaint on November 13, 1995. The Board concludes that the

full payment of \$49.00 to LAST has caused this prohibited practice complaint to become moot.

In Wong, a student who was subject to disciplinary actions for alleged misconduct while attending the University of Hawaii challenged the actions against him. Following the lower court's ruling on various motions, the University agreed to terminate its disciplinary proceedings against Wong and to keep his school record free from mention of the proceedings. The Hawaii Supreme Court dismissed the action on grounds of mootness, explaining,

The mootness doctrine is said to encompass the circumstances that destroy the justiciability of a suit previously suitable for determination. Put another way, the suit must remain alive throughout the course of litigation to the moment of final appellate disposition. Its chief purpose is to assure that the adversary system, once set in operation, remains properly fueled. The doctrine seems appropriate where events subsequent to the judgment of the trial court have so affected the relations between the parties that the two conditions for justiciability relevant on appeal -- adverse interest and effective remedy -- have been compromised. (Emphasis added).

62 Haw. 291, 394. Here too, there is no question that the two conditions for justiciability have also been compromised by events subsequent to the filing of the complaint. See, Re: App'n of J.T. Thomas, supra, (where the subsequent appointment of the Maui Corporation Counsel moots out the question of whether the Maui charter was violated by the appointment of an acting Corporation Counsel).

CONCLUSIONS OF LAW

The Board lacks jurisdiction over a prohibited practice complaint where the issues are moot.

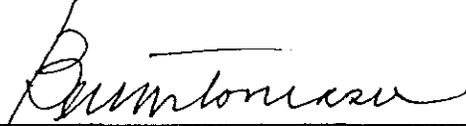
The UPW paid LAST the full amount of his refund and thus, the issues raised in the instant complaint are moot.

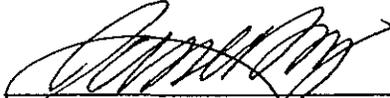
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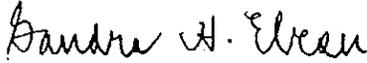
In accordance with the foregoing findings of fact and conclusions of law, the prohibited practice complaint of November 13, 1995 is hereby dismissed.

DATED: Honolulu, Hawaii, April 11, 1996.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
SANDRA H. EBESU, Board Member

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