

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.:	DR-01-68a
	)		DR-02-68b
BENJAMIN J. CAYETANO, Governor,)		
State of Hawaii,	)	ORDER NO.	1881
)		
Petitioner,	)	ORDER CONSOLIDATING CASES	
	)	FOR DISPOSITION AND DIS-	
and	)	MISSING PROHIBITED PRAC-	
	)	TICE COMPLAINT AND PETITION	
	)	FOR DECLARATORY RULING	
HAWAII GOVERNMENT EMPLOYEES)		
ASSOCIATION, AFSCME, LOCAL 152,)		
AFL-CIO; UNITED PUBLIC WORKERS,)		
AFSCME, LOCAL 646, AFL-CIO;)		
JEREMY HARRIS, Mayor, City and)		
County of Honolulu; STEPHEN K.)		
YAMASHIRO, Mayor, County of)		
Hawaii; MARYANNE KUSAKA, Mayor,)		
County of Kauai; and LINDA)		
LINGLE, Mayor, County of Maui,)		
)		
Intervenors.)		

In the Matter of	)	CASE NOS.:	CU-01-137a
	)		CU-02-137b
BENJAMIN J. CAYETANO, Governor,)		
State of Hawaii,)		
)		
Complainant,)		
)		
and)		
)		
UNITED PUBLIC WORKERS, AFSCME,)		
LOCAL 646, AFL-CIO,)		
)		
Respondent.)		

ORDER CONSOLIDATING CASES FOR
DISPOSITION AND DISMISSING PROHIBITED
PRACTICE COMPLAINT AND PETITION FOR DECLARATORY RULING

On October 20, 1997, Petitioner BENJAMIN J. CAYETANO, Governor, State of Hawaii (CAYETANO), by and through his attorneys,

filed a petition for declaratory ruling with the Hawaii Labor Relations Board (Board) in Case Nos. DR-01-68a and DR-02-68b. CAYETANO sought a ruling to clarify whether in the exercise of management's rights the award of a temporary assignment for a Unit 02 position to a Unit 01 member without first considering efficiency and determining availability of other lower level Unit 02 employees is consistent with §§ 89-6, 89-9(d), and 89-13, Hawaii Revised Statutes (HRS). The petition arose from a pending arbitration between the State of Hawaii and the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) of a grievance filed on behalf of William Kapuwai.

According to Petitioner's Memorandum of Law and Authorities filed in support of its Petition for Declaratory Ruling, CAYETANO contends that the employer has a long-standing practice of determining the availability of other Unit 02 members who occupy lower level supervisory positions and who may want to be temporarily assigned to the F2-05 position. CAYETANO contends that management has the right to award temporary assignments under § 89-9(d), HRS. CAYETANO argued that under § 89-9(d), HRS, the award of temporary assignment is a management right, and that the employer is precluded from negotiating away the particular right except as provided for under § 89-9(d), HRS.

Thereafter, the Board granted petitions for intervention filed by the HAWAII GOVERNMENT EMPLOYEES, ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA); the UPW; JEREMY HARRIS, Mayor, City and County of Honolulu; STEPHEN K. YAMASHIRO, Mayor, City and County of Hawaii; MARYANNE KUSAKA, Mayor, County of Kauai; and LINDA LINGLE, Mayor, County of Maui in Order No. 1570, dated December 31, 1997.

The intervening parties filed memoranda of law and authorities with the Board.

On November 14, 1997, Complainant CAYETANO, by and through his attorneys, filed a prohibited practice complaint against the UPW with the Board in Case Nos. CU-01-137a and CU-02-137b. Complainant alleged that the UPW represents William Kapuwai in a grievance challenging the temporary assignment of a lower level bargaining unit (BU) 02 employee to a BU-02 position without first offering the temporary assignment to him, a BU-01 member. Complainant further alleges that he filed a Petition for Declaratory Ruling with the Board in Case Nos. DR-01-68a and DR-02-68b to clarify whether the award of temporary assignments is consistent with §§ 89-6, 89-9(d), and 89-13, Hawaii Revised Statutes (HRS). Complainant contends that the UPW asserts a position which violates § 89-9(d), HRS, and interferes with the rights of BU-02 employees.

On November 14, 1997, Complainant also filed a motion for interlocutory relief and an ex parte application to shorten time to hear Complainant's motion for interlocutory relief with the Board. Complainant requested that the Board stay the arbitration proceedings scheduled on November 17, 1997 until Case Nos. DR-01-68a and DR-02-68b can be decided.

On November 18, 1997, Respondent UPW filed a motion to consolidate Case Nos. CU-01-137a and CU-02-137b with Case Nos. DR-01-68a and DR-02-68b because the cases involve the same parties and issues. Thereafter, on November 28, 1997, Respondent UPW filed a motion to dismiss the complaint and/or for summary

judgment with the Board. The UPW contends that the complaint fails to state a claim for relief; the Board lacks jurisdiction; the UPW is entitled to judgment as a matter of law; Complainant lacks standing to raise claims for Unit 02 employees; and Complainant is estopped from challenging arbitrability.

On December 5, 1997, the HGEA filed a petition for intervention and motion for stay of proceedings on motion for summary judgment pending intervention with the Board. On December 10, 1997 the UPW filed a memorandum in opposition to the HGEA's petition for intervention and motion for stay of proceedings.

With respect to the UPW's motion to consolidate the instant cases for disposition, the Board finds that both cases involve primarily the same parties and issues. Each case involves the temporary assignment issues raised in the William Kapuwai grievance. Thus, the Board finds that the consolidation of the cases will be conducive to the proper dispatch of business and to the ends of justice. Pursuant to Administrative Rules § 12-42-8(g)(13), the Board hereby consolidates these cases for disposition.

On July 28, 1998, the UPW filed the Arbitrator's Decision and Award in the Grievance of William Kapuwai dated May 11, 1998 as a Supplemental Submission, Exhibit 93, to its Memorandum with the Board in Case Nos. DR-01-68a and DR-02-68b. In his award, Arbitrator Keith W. Hunter found that the Employer violated the Unit 01 agreement by failing to grant temporary assignments to the grievant for the Highway Maintenance Supervisor F-2 position in the

District Windward Crew. The Arbitrator found that there was a long-standing practice of offering temporary assignments to qualified Unit 01 employees which was binding on the employer and any changes to such practice could only be obtained with the consent of the Union. The Arbitrator awarded grievant backpay for missed temporary assignment opportunities and the parties were directed to meet and negotiate in good faith to develop and implement a mutually acceptable policy of temporary assignments which eliminated conflicts between the Units 01 and 02 contracts. The UPW also attached the Order Granting Union's Motion to Confirm Arbitrator Keith W. Hunter's Arbitrator's Decision and Award dated May 11, 1998, Filed 5/15/98 to its exhibit.

In Decision No. 22, Hawaii State Teachers Association, 1 HPERB 253 (1972), the Board announced its policy to attempt to foster the peaceful settlement of disputes by deferral of matters concerning contractual interpretation and application to the arbitration process agreed to by the parties. The Board indicated that it would retain jurisdiction for the limited purposes of determining whether the arbitrator's award is within the scope of his powers, the proceedings were expeditious, lawful and fair, and the award is consistent with Chapter 89, HRS. In Decision No. 377, State of Hawaii Organization of Police Officers (SHOPO), 5 HLRB 597 (1996), the Board recognized its long-settled policy of deferral to the contractual grievance process and indicated that it reserved the right to decide on a case-by-case basis whether to exercise its jurisdiction over contract violations, especially where there were

attendant statutory violations and allegations that the contractual grievances were not being properly processed.

Here, the Arbitrator ruled that the employer violated the contract by failing to award temporary assignments to qualified Unit 01 employees. In addition, CAYETANO did not challenge the arbitrability of the grievance and there is nothing in the record which tends to prove that the Arbitrator's Award is not consistent with Chapter 89, HRS. The Board thus defers to the arbitrator's award regarding the employer's misapplication and violation of the contract.

At this stage of the proceedings there are no remaining issues for determination and the case has lost its character as a present, live controversy. Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81, 734 P.2d 161 (1987). In Wong v. Board of Regents, University of Hawaii, 62 Haw. 391, 616 P.2d 201 (1980), the Court dismissed the action on grounds of mootness, stating:

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 the 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.

Id., at 394. See also, State v. Rogan, 91 Hawai'i 405, 984 P.2d 1231 (1999); State v. Fukusaku, 85 Hawai'i 462, 946 P.2d 32 (1997); AIG Hawaii Ins. Co. v. Bateman, 82 Hawai'i 453,

923 P.2d 395 (1996); In re Application of J.T. Thomas, 73 Haw. 223, 832 P.2d 253 (1992).

Administrative Rules § 12-42-9(f) provides that:

The board, may for good cause, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the board may so refuse where:

(1) The question is speculative or hypothetical and does not involve existing facts or facts which can be reasonably expected to exist in the near future. . . .

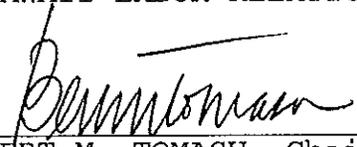
Based on the record before the Board, the Board concludes that the issues herein are moot as the Arbitration Award has been rendered and confirmed and there is no actual controversy between the parties at this stage.

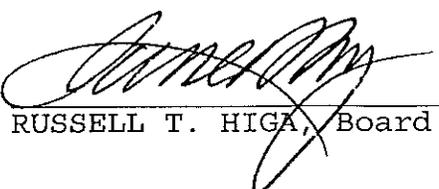
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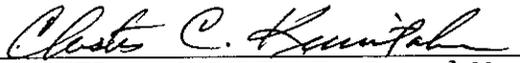
The Board hereby dismisses the instant cases.

DATED: Honolulu, Hawaii, June 7, 2000.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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BENJAMIN J. CAYETANO and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION,
AFSCME, LOCAL 152, AFL-CIO
CASE NOS.: DR-01-68a, DR-02-68b
BENJAMIN J. CAYETANO and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646,
AFL-CIO
CASE NOS.: CU-01-137a, CU-02-137b
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