

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-03-50
)	
HAWAII GOVERNMENT EMPLOYEES)	DECISION NO. 289
ASSOCIATION, AFSCME LOCAL 152,)	
AFL-CIO,)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND DECLARA-
Petitioner,)	TORY RULING
)	
and)	
)	
UNIVERSITY OF HAWAII PROFES-)	
SIONAL ASSEMBLY and HAWAII)	
STATE TEACHERS ASSOCIATION,)	
)	
Intervenors.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECLARATORY RULING

On September 6, 1988, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO [hereinafter referred to as HGEA or Petitioner] filed a Petition for Declaratory Ruling with this Board. Petitioner seeks a ruling from this Board as to whether an employee continues as a member of the appropriate bargaining unit while on leave-without-pay status.

On September 19, 1988, the Board issued a Notice of Receipt of Petition for Declaratory Ruling; Notice of Deadline for Filing Petitions for Intervention; Notice of Prehearing Conference. On September 30, 1988, in response to the Notice, the UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY [hereinafter referred to as UHPA] and the HAWAII STATE TEACHERS ASSOCIATION

[hereinafter referred to as HSTA] filed petitions for intervention. The Board granted the petitions for intervention in Order No. 708 which was issued on October 6, 1988.

A prehearing conference was held on October 6, 1988 and a briefing schedule established based upon the facts presented by the HGEA. In addition, a notice was issued by the Board on October 7, 1988 requesting the assistance of the public employers to submit their opinion on the foregoing factual situation. In essence the question posed was, whether the individual remained an employee and a member of the bargaining unit while on leave-without-pay status.

Briefs were filed by the parties and a response was submitted by the State of Hawaii. The Petitioner takes no position in this case. The Intervenors contend strongly that an employee on leave of absence without pay remains an employee and a member of the bargaining unit. The State of Hawaii, with the concurrence of the other public employers, agree that the individual remains an employee.

FINDINGS OF FACT

Petitioner HGEA is an employee organization as defined by Section 89-2, Hawaii Revised Statutes [hereinafter referred to as HRS], and is the exclusive representative for employees in bargaining unit 3.

Intervenors UHPA and HSTA are also employee organizations as defined by Section 89-2, HRS, and are the exclusive representatives for employees in bargaining units 7 and 5, respectively.

The State of Hawaii is a public employer as defined in Section 89-2, HRS, of employees in bargaining unit 3 and is party to the collective bargaining agreements covering those employees represented by the HGEA.

The factual situation provided by the HGEA is as follows. An Educational Assistant III, SR-09, Position No. 23270, at King Kamehameha III School, Maui School District, Department of Education has been on sabbatical leave from her position since September 1, 1987. The employee will continue to be on sabbatical leave until August 31, 1988. The employee has exhausted her paid leave status and will be on leave without pay for the period, September 1, 1988 to August 30, 1989. Concurrently, the employee was elected to a three-year term to sit on the HGEA's Board of Directors representing employees in bargaining unit 3, nonsupervisory employees in white collar positions. Her term of office runs from July 1, 1988 to June 30, 1991.

CONCLUSIONS OF LAW

Subsection 89-6(a), HRS, provides that all employees throughout the State within any of the specified categories shall constitute an appropriate bargaining unit. In this case, the appropriate bargaining unit is unit 3, nonsupervisory employees in white collar positions. Section 89-2, HRS, defines "employee" as "any person employed by a public employer except elected and appointed officials and such other employees as may be excluded from coverage in section 89-6(c)." We note here, that there is

nothing in Subsection 89-6(c), HRS, which would exclude the instant individual from collective bargaining.

Sabbatical leave for civil service employees is provided for by Section 76-33, HRS, which specifically recognizes that the "employee shall have the right to return to the employee's position at the expiration of the sabbatical leave of absence." Further, Section 76-32, HRS, which provides educational and certain other leaves, indicates that the employee shall have the right to return to the employee's position at the expiration of the leave of absence. Moreover, Section 38 of the agreement between the HGEA and the public employers for bargaining unit 3 members, provides for leaves without pay and specifically indicates that the individual is entitled to return to the employee's position at the expiration of the leave without pay.

We also find the cases cited by the Intervenors to be instructive. The National Labor Relations Board in Atlanta Dairies Cooperative, Inc., 283 NLRB No. 51, 124 LRRM 1306 (1987), held that an employee on leave status could properly vote in a bargaining unit election even though the employee had not worked for three years because of a disability. Absent evidence that the employee had been terminated or resigned, the National Labor Relations Board there considered such employee a member of the unit and eligible to vote.

Based upon the authorities submitted, it is clear that employees on authorized leaves of absence retain their position with the employer and are entitled to certain rights and benefits as employees. Thus, the Board concludes that the individual

remains an employee and a member of the respective collective bargaining unit while on leave without pay.

DECLARATORY RULING

A classified employee of the Department of Education in bargaining unit 3 who has exhausted her sabbatical leave and is placed on leave without pay while she completes her education, remains an employee and a member of the bargaining unit.

DATED: Honolulu, Hawaii, October 31, 1988.

HAWAII LABOR RELATIONS BOARD


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GERALD K. MACHIDA, Board Member

Copies sent to:

Russell K. Okata, HGEA
T. Anthony Gill, Esq.
Lawrence D. Kumabe, Deputy Attorney General
Joyce Najita, IRC
Robert Hasegawa, CLEAR
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