STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
	)	
JAMES CHANG,	)	Case No. CU-13-1
ALBERT CHING,	)	CU-13-2
JANYCE OKASHIGE,	)	CU-13-3
JOHN MITCHELL,	)	CU-04-4
ANTHONY ORNELLAS, and	)	CU-04-5
GLENWOOD WILLIAMS,	)	CU-02-6
	)	
Complainants,	)	
	)	
and	)	Decision No. 30
	)	
HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION, Local 152, HGEA/AFSCME,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Appearances:

For the Complainants: Michael R. Sherwood

For the Respondent: Benjamin C. Sigal, Hawaii Government Employees' Association, Local 152, HGEA/AFSCME

FINDINGS OF FACT

These consolidated cases involve prohibited practice charges brought by the Petitioners in Units 2, 4, and 13, who were removed from membership in the Hawaii Government Employees' Association, Local 152, HGEA/AFSCME, (hereinafter HGEA) because during organizational drives between the HGEA and the Professionals and Supervisors Association of Hawaii, affiliated with Marine Engineers Beneficial Association, AFL-CIO, (hereinafter PSAH), a rival employee organization, they actively supported PSAH while maintaining membership in the HGEA.

The Petitioners allege that their expulsions from the HGEA violated Section 89-12(b)(1), Hawaii Revised Statutes. Said section states:

> "(b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:
>
> > "(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;"

The Petitioners claim that the rights violated by HGEA are those contained in Section 89-3, Hawaii Revised Statutes. This section provides:

> "Rights of employees. Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section 89-4."

The HGEA maintains that this Board does not have jurisdiction over these cases because the actions complained of related solely to internal union matters and the right of a union to protect itself from actions by members which threaten the very existence of the union.

An initial hearing hereon was held before the entire Board on Monday, October 16, 1972. Thereafter, one of the Petitioners caused to be issued a subpoena duces tecum directed to Mr. David K. Trask, Jr., HGEA executive director. A hearing was held on November 28, 1972, and was devoted primarily to the HGEA's motion to revoke said

subpoena. The arguments on said motion, in large part, were devoted to the assertion of lack of jurisdiciton of this Board to entertain this charge.

The Petitioners were present and represented by counsel during all hearings except that at the first hearing in October, Petitioners had not obtained counsel.

The Board finds that during said organizational drives the HGEA was an employee organization as defined in Section 89-2(8), Hawaii Revised Statutes, and that after the elections, it became the exclusive representative of Units 2, 4, and 13. Further, the Board finds that Petitioners are employees as defined in Section 89-2(7) and members of Units 2, 4, and 13, as the case may be.

The Board finds that Petitioners were members of the HGEA and were expelled therefrom because of their active support of a rival employee organization during pre-election organizational drives to select the exclusive representative for their respective units.

CONCLUSIONS OF LAW

The Board, during its deliberations in this case, asked counsel for the parties and the public employers and exclusive representatives to submit memorandum as to whether any rights, powers, or authority vested in the HGEA by Chapter 89 clothed it with sovereignty to such an extent that its actions could be considered state action for purposes of invoking constitutional restraints upon their

conduct respecting union members.* Based upon its own study of the issue and its consideration of all memoranda received, the Board is of the opinion that no constitutional questions arise in this case under either the Constitution of the United States or the Constitution of the State of Hawaii.

The Board believes that Chapter 89 does not vest it with jurisdiction to regulate discipline of union members who, while retaining membership in one union, seek to replace it with another. The Board restricts this holding to the facts of this case. There will be instances in which the Board will have jurisdiction over union actions directed at members under conditions not present in this case. For instance, violence by a union to coerce union membership or a change of union membership would be a flagrant violation of Chapter 89 and this Board would not hesitate to take jurisdiction. Also, if a union were to expel a member merely because he filed a prohibited practice charge with the Board against the Union, such action would, in our opinion, require the Board to assume jurisdiciton. These are only examples of instances in which the Board would have jurisdiciton; it is by no means an exhaustive listing of other situations in which the Board would have jurisdiction.

The Board regards the relationship between the HGEA and its members as a contractual one. See Association

---

*Amicus memoranda submitted by the State of Hawaii (Lawrence Kumabe), County of Hawaii (Haruo Oda), and the County of Maui (Boyd Mossman) all upheld the position that the HGEA was not clothed with such sovereignty by said Chapter and was not subject to constitutional restraints applicable to state action. No other amicus memoranda were received.

of Machinists v. Gonsales, 356 U.S. 617, 42 LRRM 2135 (1958). The existence and maintenance of a contractual relationship is based upon mutual voluntary action.

The Board finds nothing in Chapter 89 which confers jurisdiction upon it to intrude upon this contractual relationship given the facts of this case.

Section 89-13(b)(1), Hawaii Revised Statutes, is substantially similar to Section 8(b)(1)(A) of National Labor Relations Act except for one notable difference. The federal section contains a proviso* to the effect that although it is an unfair labor practice for a union to restrain or coerce employees in the exercise of their rights under Section 7 of the Act, the Act does not attempt to regulate the union's right to prescribe its own rules with respect to the acquisition or retention of membership therein. Chapter 89, Hawaii Revised Statutes, does not contain such a proviso. Nonetheless, the legislative history of the proviso and the interpretation given to it by the National Labor Relations Board and the courts support the conclusions that even in the absence of this particular proviso, a section such as Section 89-3, Hawaii Revised Statutes, should not be read as permitting intrusion of this Board into purely internal union matters.

The NLRB decided a case concerning the activities of union members who initiated decertification petition

---

* "It shall be an unfair labor practice for a labor organization . . . -- (1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in Section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;"

against their union and were, therefore, expelled from union membership. The NLRB held that the activities of the employees related to internal union matters and had no effect upon their job interest; another reason the Board found that the matter concerned internal union matters was that the employees had attacked the very existence of the union. Tawas Tube Products, Inc., 151 NLRB 46, 58 LRRM 1330 (1965).

In Automobile Workers, UAW, 145 NLRB 1097, 55 LRRM 1085 (1964), the NLRB review of the legislative history of Section 8(b)(1)(A) demonstrates that, even without the proviso mentioned above, Congress did not intend to interfere with a union's internal affairs when it made it an unlawful practice for the union to restrain or coerce employees in the exercise of their Section 7 rights. Said legislative history reveals that the intent behind Section 8(b)(1)(A) was to protect individual workers from union organizational tactics tinged with violence and duress.

For another case dealing extensively with the legislative history of the subject proviso see National Maritime Union, 78 NLRB 971, 22 LRRM 1289 (1948), enfd. (2nd Cir.) 175 F2d 686 (1949).

To hold that a union may not protect itself from actions such as those engaged in by Petitioners through the use of discipline, such as expulsion, would be to prevent a union from taking reasonable steps to preserve its existence. The conduct of Petitioners attacked the viability of the union. Expulsion, in such a case, can hardly result in coercing or restraining them in the exercise of their rights guaranteed under Section 89-3, for their actions,

in attempting to repudiate the union, showed how lightly they regarded membership therein, and expulsion from a union they sought to destroy can hardly, in these circumstances, have coercive or restraining effect upon them.

ORDER

In view of the foregoing, it is hereby ordered that the six prohibited practice charges which are the subject of this decision be and hereby are dismissed.

PUBLIC EMPLOYMENT RELATIONS BOARD

Mack H. Hamada, Chairman

Carl J. Guntert, Board Member

John E. Milligan, Board Member

Dated: March 15, 1973

Honolulu, Hawaii