

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-272
)	
UNITED PUBLIC WORKERS, AFSCME,)	DECISION NO. 412
LOCAL 646, AFL-CIO,)	
)	FINDINGS OF FACT, CONCLUSIONS
Complainant,)	OF LAW, AND ORDER
)	
and)	
)	
BENJAMIN J. CAYETANO, Governor,)	
State of Hawaii and JAMES)	
TAKUSHI, Director, Department)	
of Human Resources Development,)	
State of Hawaii,)	
)	
Respondents.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On October 13, 1995, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). The complaint alleges that on or about October 6, 1995, the UPW submitted a request pursuant to the Unit 10 collective bargaining agreement (contract) for information regarding pending discharge grievances. The UPW alleges that Respondents BENJAMIN J. CAYETANO, Governor, State of Hawaii and JAMES H. TAKUSHI, Director, Department of Human Resources Development (DHRD), State of Hawaii (collectively Employer or Respondents) failed to comply with the UPW's request for information within five working days as required by § 15.09 of the contract thereby violating the provisions of §§ 89-13(a)(1), (7), and (8), Hawaii Revised Statutes (HRS).

On November 21, 1995, the Board held a hearing on the merits of the case.

On March 11, 1996, the UPW filed a motion to close the hearing and to set the deadline to file post-hearing briefs with the Board.

In Order No. 1302 issued on March 13, 1996, the Board, noting the stipulation of the parties, closed the record and ordered the parties to submit simultaneous briefs by April 12, 1996.

On March 14, 1996, the UPW filed Complainant's memorandum of fact and law with the Board and on April 12, 1996, Respondents filed their post-hearing brief.

Thereafter, on May 8, 1996, the Employer filed Respondents' motion to substitute a redacted copy of the post-hearing brief with the Board in order to prevent the disclosure of the identities of individuals who have been disciplined. On May 10, 1996, the Board issued Order No. 1329 granting Respondents' motion to substitute the redacted copy of Respondents' post-hearing brief.

On May 13, 1996, the UPW filed a motion with the Board to strike attachments, exhibits, and affidavits to Respondent's post-hearing brief. Complainant contends that the record was closed in the instant case pursuant to the stipulation of the parties and that Respondents sought to offer new evidence into the record in their attachments to their brief.

On May 24, 1996, Respondents filed a memorandum in opposition to Complainant's motion to strike attachments, exhibits, and affidavits to Respondent's post-hearing brief. Respondents

contend that exhibits attached to their brief have already been introduced into the record as Union exhibits and that Respondents' Exhibit F is correspondence which was sent to the Board and Complainant's counsel on December 18, 1995 prior to the closing of the record.

All parties were afforded full opportunity to present testimony, evidence and arguments before the Board. Upon a thorough review of the record and arguments in the instant case, the Board issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Complainant UPW is the exclusive representative, as defined in § 89-2, HRS, of the employees of the State of Hawaii who are included in bargaining unit 10.

BENJAMIN J. CAYETANO, Governor, State of Hawaii, is a public employer, as defined in § 89-2, HRS, of employees of the State of Hawaii.

JAMES H. TAKUSHI (TAKUSHI), Director, DHRD, State of Hawaii, was for all times relevant, the representative of a public employer as defined in § 89-2, HRS.

By letter dated October 6, 1995, the UPW, by its State Director Gary W. Rodrigues (Rodrigues) asked TAKUSHI for information in connection with pending grievances relating to discharge and other disciplinary actions undertaken by the State of Hawaii. Rodrigues stated, in part:

According to recent testimony from Edward (sic) Young, chief of your personnel audit branch, your department has a computerized account of all disciplinary

suspensions imposed from 1975 to the present (and the reasons for the adverse actions). See pages 302 through 304 in attachment "B". All entries to the data bank are retained under the code number 622. See page 309.

We hereby request a true and accurate (sic) of all records of disciplinary suspensions and discharges available to Mr. Young, imposed on State employees from 1975 to the present. Please be sure to identify the names of all employees disciplined (which is indicated in item #15 of the SF-5 form), the date of the SF-5's, the bargaining unit of the employee disciplined, the department the employee works for, the legal basis or authority for the discipline (which is indicated in item #17 of the SF-5 form), the reasons for the discipline, and other available information which is in the computer bank regarding the disciplinary actions.

Rodrigues requested the information within five working days pursuant to § 15.09 of the contract.

By letter dated October 13, 1995, TAKUSHI responded to Rodrigues that the information he requested was not retrievable in the format requested. TAKUSHI stated that the personnel master file may not contain the reasons for discipline and to retrieve the information in the format requested, a new computer program costing in excess of \$3,000 would have to be written and would take approximately three weeks. TAKUSHI further stated that the State of Hawaii already provides monthly reports of each employee's leave without pay status to the respective exclusive representative. TAKUSHI was willing to provide a printout for any one individual in the format used for the monthly reports but noted that the release of information would be limited to members of the bargaining units represented by the UPW.

At the hearing held on November 21, 1995, the UPW subpoenaed Edwin Young (Young), Chief of the Personnel Audit

Branch, DHRD to appear as a witness and produce, inter alia, any and all records of all disciplinary suspensions and discharges of employees of the State of Hawaii from 1975 to the present. Young did not produce the records requested by the UPW in a subpoena duces tecum issued by the Board in connection with the hearing. As the subpoena issued to Young was valid and not objected to by Respondents, the Board ordered Young to comply with the subpoena duces tecum and afforded Young additional time to gather the information required under the subpoena.

By letter dated December 18, 1995, Young submitted a List of State Employees with Disciplinary Actions from 7/1/75 to Present to the Board indicating a copy was sent to Complainant's counsel.

DISCUSSION

With respect to the UPW's motion to strike attachments, exhibits, and affidavits to Respondents' post-hearing brief filed on May 13, 1996, the Board finds that Respondents' attachments A-E were already introduced into the record as Union or Board Exhibits. Exhibit F is the correspondence to the Board transmitting records to the UPW pursuant to the Board's order to comply with the UPW's subpoena which was received in the Board's files prior to the close of the record. Accordingly, the Board denies the UPW's motion to strike the attachments to Respondents' post-hearing brief.

With respect to UPW's complaint that the Employer committed a prohibited practice by not providing information requested by Complainant, the Board finds that there was a dispute as to the request made by the UPW. TAKUSHI responded to the UPW in a timely fashion expressing his concerns with regard to the

information requested. The UPW thereafter subpoenaed the information it had previously requested and as no objections were filed to the subpoena duces tecum, the Board ordered Young to comply with the subpoena and produce the information which was the subject of the prohibited practice complaint. Young thereafter furnished the information to the UPW pursuant to the subpoena. The UPW then moved to close the hearing.

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).

The Board finds based on the foregoing that there is no further actual controversy remaining between the parties as to the information provided and the Board concludes that the issues are moot.

CONCLUSIONS OF LAW

The Board has jurisdiction over the instant complaint pursuant to §§ 89-5 and 89-14, HRS.

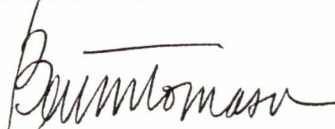
The Respondents provided the UPW with the information requested pursuant to a subpoena and there is no remaining actionable controversy between the parties before the Board. Accordingly, the Board finds that the issues underlying the instant complaint are moot.

ORDER

The Board hereby dismisses the instant case.

DATED: Honolulu, Hawaii, June 9, 2000.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

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