

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
HAWAII STATE TEACHERS)	Case No. <u>DR-05-8</u>
ASSOCIATION,)	
)	Decision No. <u>44</u>
Petitioner,)	
)	
and)	
)	
HAWAII FEDERATION OF TEACHERS,)	
)	
and)	
)	
BOARD OF EDUCATION,)	
STATE OF HAWAII,)	
)	
Intervenors.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RULING

The petition for declaratory ruling in the instant case was filed by the Hawaii State Teachers Association (hereafter Petitioner) on March 25, 1974. The Petitioner has requested that the Hawaii Public Employment Relations Board (hereafter Board) determine whether or not a representation election in Unit 5 can be held prior to June 3, 1974, upon the agreement of the parties or in the alternative, that all preparatory work for such an election be completed prior to June 3, 1974, and an election be then directed and conducted by the Board on or soon after said date. A petition for intervention was filed by the Hawaii Federation of Teachers (hereafter HFT) and a motion to intervene was made by the Board of Education (hereafter BOE). Both requests for intervention were approved by the Board.

On April 4, 1974, the Board held a hearing. The Board has completed a review of the record and briefs submitted by all parties and hereby makes the following findings of fact, conclusions of law and declaratory ruling.

FINDINGS OF FACT

1. The Petitioner is the exclusive bargaining representative of Unit 5 (teachers and other personnel of the Department of Education under the same salary schedule).
2. The HFT is an employee organization and the principal rival of the Petitioner.
3. The BOE is the public employer.
4. The Petitioner and the BOE have in force and effect a collective bargaining agreement which has an expiration date of August 31, 1974, for contract bar purposes.
5. Pursuant to the Board ruling in Hawaii Federation of Teachers, HPERB Dec. No. 38, Case No. DR-05-6, Oct. 30, 1973, the earliest date by which an employee organization can file an election petition is June 3, 1974.
6. An election conducted during the summer months would coincide with the vacations of Unit 5 employees and would affect voter turnout.

CONCLUSIONS OF LAW

The language of Section 89-7, Hawaii Revised Statutes (hereafter HRS), states in pertinent part:

"No election shall be directed by the board in any appropriate bargaining unit within which. . . a valid collective bargaining agreement is in force and effect,

except upon a petition as provided herein not more than ninety days, but not less than sixty days prior to the expiration of the agreement."

The prohibition is unequivocally clear and unambiguous.

The Board cannot direct an election absent a petition filed within the period beginning 90 and ending 60 days prior to the expiration of the collective bargaining agreement.

In Gomez v. Timon, 60 Tex. Civ. App. 311, 314, 128 S.W. 656, 657, (1910), the court stated:

"There is but one way to obey a command 'thou shalt not' which is to refrain altogether from doing the forbidden act."

Moreover, Section 1-6, HRS, states that:

"Whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed."

In face of such language this Board will not order an election prior to June 3, 1974, in contravention of the unequivocal prohibition of Section 89-7, HRS.

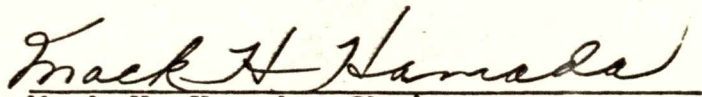
However, in view of the fact that all parties want or do not oppose an election to be held as soon as possible, in addition to the fact that an early election would be more desirable than one held during the late summer months, the Board approves Petitioner's alternate proposal.

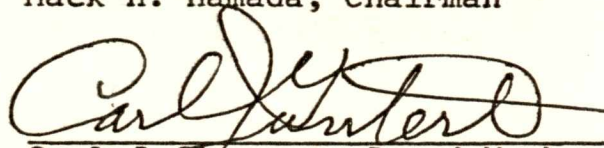
The Board, upon the facts in this case, finds nothing in the law which would preclude implementing the following course of action: 1. An agreement of the parties to permit and cooperate in an expeditious preparation for the election; 2. The filing of a certification election petition by the HFT on June 3, 1974; and 3. The direction and conduct of a representation election a few days thereafter on a date to be agreed to by the parties or directed by the Board.

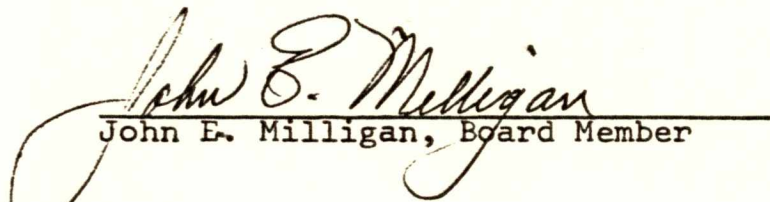
RULING

For the reasons set forth above, the Board rules that Section 89-7, HRS, prohibits the direction or conduct of an election prior to June 3, 1974. However, the Board holds that if the parties should agree that all election preparatory work be completed prior to June 3, 1974, the Board will entertain an election petition on said date and direct and conduct an election as soon thereafter as possible. Such a procedure would not be in violation of Section 89-7, HRS.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


Carl J. Guntert, Board Member


John E. Milligan, Board Member

Dated: April 17, 1974

Honolulu, Hawaii