

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the matter of	)	
	)	
PETITION FOR DECLARATORY	)	
RULING by the BOARD OF	)	
EDUCATION,	)	Case No. <u>DR-05-11</u>
	)	
Petitioner,	)	Decision No. <u>56</u>
	)	
and	)	
	)	
HAWAII STATE TEACHERS	)	
ASSOCIATION,	)	
	)	
Intervenor.	)	
	)	

INTRODUCTION

This case was initiated on November 20, 1974, when the Petitioner Board of Education (sometimes hereafter referred to as the BOE) filed a petition with this Board for a declaratory ruling that the appointment of a mediator in the current negotiations between the BOE and the Respondent (sometimes hereafter referred to as the HSTA) was contrary to Section 89-11(b), Hawaii Revised Statutes (hereafter HRS).

The exact statement of the BOE's position as set forth in its petition was:

"The appointment of a mediator without filing a notice of impasse and a Board finding that impasse exists as provided in the Duration Clause of the Kagel decision is contrary to Sec. 89-11(b), HRS, and Chapter 4 of the Rules of this Board."

On November 22, 1974, the HSTA moved to intervene and its motion was granted.

After due notice, a formal hearing was held before the entire Board on November 25, 1974. Memoranda and exhibits were submitted and oral arguments were heard.

Upon a full review of all exhibits, memoranda, and arguments submitted, the Board makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

On April 16, 1973, the Hawaii State Teachers Association and the Petitioner executed a strike settlement agreement which terminated an illegal strike conducted by the HSTA. That agreement granted mediator-arbitrator Sam Kagel the authority to issue a final and binding decision on all issues in negotiations then in dispute. On June 25, 1973, mediator-arbitrator Kagel issued his Opinions and Decisions (sometimes referred to hereafter as the Kagel award). Said decision included a procedure by which the parties where to settle any further dispute over the terms of a renewal agreement.

In relevant part, for the purpose of this case, the Kagel award states:

"C. (Negotiations) If either party gives written notice between September 16 and September 30, 1974, of its desire to amend or modify this Agreement for a period to be effective after February 28, 1975, then negotiations on proposed amendments or modifications shall commence no later than October 7, 1974."

"D. (Impasse) If the parties fail through negotiations to reach mutual agreement on then existing differences by November 11, 1974, then either party shall have the right between November 12, 1974, and November 18, 1974, to declare in writing to the other party an impasse on such matters. . . ."

"E. (Procedure to Resolve Impasses) If written notice of an impasse is served by one party upon the other as provided in paragraph D above, then the following procedure only shall apply to resolve the impasses, and shall not include in any manner strikes or lockouts.

(1) (Mediation) A copy of the written notice of impasse on the date it is sent to the other party shall be sent to the State of Hawaii, Hawaii Public Employment Relations Board which shall within two (2) days after receipt of such letter assign a Mediator to assist the parties in the resolution of the impasses. Such mediation shall be continued until December 6, 1974."

In September 1974 the parties commenced negotiations under the terms of the Kagel decision. Unable to achieve agreement by November 11, 1974 over the contract terms the HSTA declared an "impasse", in the sense Mr. Kagel used the term in his award, to the petitioner and sent a copy of said declaration and a request for the appointment of a mediator to this Board on November 18, 1974. In accord with the Kagel award, upon receiving said notice from the HSTA, the Board appointed Robert Castrey as mediator. On November 19, 1974, the petitioner informally challenged the HSTA's notice of impasse contending that said notice failed to comply with §89-11(b) HRS. Subsequently, the BOE filed the formal petition which gave rise to this case.

#### CONCLUSIONS OF LAW

The Petitioner seeks to invoke the jurisdiction of this Board under Section 91-8, HRS, a part of Hawaii's Administrative Procedure Act, which provides:

"§91-8 Declaratory rulings by agencies. Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders."



Under said section and section 89-5, HRS, this Board has promulgated rule 1.09. Parts of said rule which are relevant to this matter are subparts (a) and (f) which provide:

"1.09 Declaratory Rulings by Board.

(a) WHO MAY FILE. Any public employee, employee organization, public employer or interested person or organization may petition the Board for a declaratory order as to the applicability of any statutory provision or of any rule or order of the Board."

\* \* \*

(f) REFUSAL TO ISSUE DECLARATORY ORDER. 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 purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future.

(2) The petitioner's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief.

(3) The issuance of the declaratory order may adversely affect the interests of the Board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.

(4) The matter is not within the jurisdiction."

As clearly demonstrated by the above, this Board may decline to issue a declaratory order for good cause. We believe, in the instant case that there is good cause to decline to issue an order.

Any way the BOE casts its prayer for relief, it is coming to this Board with a request that this Board overturn at least that part of the Kagel award which

triggers the mechanism he set up for resolutions of "impasses".\* If this Board were to overturn the Kagel award, in a case presenting a situation clearly distinguishable from that present in Case No. CE-05-5, Decision No. 22, it would be acting in a manner completely contrary to the spirit, intent and basic purpose of Chapter 89, HRS, and the mission of this Board which are to promote harmonious and cooperative relations between government and its employees, and encourage parties to any labor dispute to voluntarily settle their differences. Section 89-1, HRS, Board Rule 4.01, Senate Standing Committee Report No. 745-70.

Moreover, to overturn this award could result in destroying the entire mechanism fashioned by Mr. Kagel and could then leave the situation in chaos and open the way to a strike. Mr. Kagel clearly intended his mechanism, which culminates in final and binding arbitration or mediation-arbitration as a means of avoiding a strike. In the comment he included in his awards and decisions he stated:

" . . . In the Public interest, if not the Parties themselves, there should be no strikes during the life of the existing Agreement. Accordingly, the final step in resolving impasses if they should occur, is final and binding arbitration or mediation-arbitration. To provide otherwise could mean that the term of the existing Agreement could be interrupted by a strike, making the term certain of the present Agreement uncertain. Neither the Public nor the Parties should be required to endure such a possibility."

Although we rest our refusal to grant the requested declaratory order herein on the grounds stated above, we also take cognizance of the HSTA's argument that the proper forum to which the BOE should have taken its request for what is, in effect, a vacation or modification of the Kagel award is

---

\*It is clear that Mr. Kagel used and defined the word impasse in his own way. All that is required under the Kagel award is that the parties fail through negotiations to reach an agreement by November 11, 1974.

the Circuit Court under Chapter 658, HRS (Arbitration and Awards). The BOE is aware that the Circuit Court has in the past taken jurisdiction over a case involving an arbitration award rendered under Chapter 89, HRS. HAWAII STATE TEACHERS ASSOCIATION vs. BOARD OF EDUCATION, S.P. 3505 (May 30, 1974). Certainly, if the BOE felt it had grounds for a modification or vacation of the Kagel award, it should have moved the Circuit Court under Section 658-11, HRS, for relief. This it did not attempt to do. Had it done so, then long before the parties entered their current reopening negotiations there would have been certainty and all would have known whether they could rely on the Kagel award as written. Rather, the BOE waited, until now to challenge this seventeen (17) month-old award.


In view of the foregoing this Board concludes that it has good cause to refuse to grant the requested declaratory order.

ORDER

The petition for declaratory ruling is dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
John E. Milligan, Board Member

  
James K. Clark, Board Member

Dated: November 26, 1974

Honolulu, Hawaii