

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of )  
HAWAII GOVERNMENT EMPLOYEES' )  
ASSOCIATION, LOCAL 152, )  
AFSCME, AFL-CIO, )  
                                  ) Petitioner, )  
                                  ) and )  
STATE OF HAWAII, )  
                                  ) Employer, )  
                                  ) and )  
ELSIE OSHITA, FLORENCE MAEDA, )  
FRANCIS S. C. FONG, DONALD )  
E. GATELY, NED GLENN, WARREN )  
Y. YAMADA, ROBERT MURASHIGE, )  
                                  ) Intervenors. )

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Case No. RA-03-11  
RA-04-12  
RA-13-13

Order No. 100

ORDER DENYING MOTION OF PEMAH TO  
INTERVENE HEREIN AND GRANTING MOTIONS  
OF SEVEN INDIVIDUAL EMPLOYEES TO INTERVENE

These consolidated cases were brought by the Hawaii Government Employees' Association, Local 152, AFSCME, AFL-CIO, (hereafter HGEA) exclusive representative for collective bargaining units 3, 4, and 13.

The amended petitions filed herein on October 21, 1976, request that 143 presently excluded positions be included in unit 3, that 20 excluded positions be included in unit 4 and that 179 excluded positions be placed in unit 13.

All of the 302 positions are in the employment of the State of Hawaii (hereafter State).

The HGEA and the State have stipulated to the inclusion of the subject positions in the respective units. The stipulation has been filed with this Board.

The Public Employee Management Association of Hawaii (hereafter PEMAH) has petitioned to intervene in these proceedings.

Additionally, seven individuals who occupy excluded positions (which the HGEA and the State have stipulated should be included in the respective units) have petitioned to be permitted to intervene. They are Francis S. C. Fong, Donald E. Gately, Ned Glenn, Warren Yamada and Robert Murashige whose positions, under the terms of the stipulation, would be placed in unit 13, and Florence Maeda and Elsie Oshita whose positions, according to the terms of the stipulation, would be placed in units 4 and 3, respectively.

Before discussing the matter of intervention, it should be made clear that the Board gives weight and due consideration to stipulations arrived at between public employers and exclusive representatives concerning unit placement, but has a duty under the law to conduct its own inquiry into the merits of proposed unit modifications and reach an independent judgment on them. The Board will do so in this case through use of both its investigatory powers and adjudicatory functions in order to effectuate the policies of Chapter 89, Hawaii Revised Statutes (hereafter HRS).

Turning now to the questions of intervention, upon which this Board heard oral testimony and argument and received written briefs, the Board has concluded that PEMAH has failed to demonstrate that it, an organization made up primarily of excluded employees, has any statutory or other right or legally assertable interest which would justify granting it intervenor status in these proceedings. PEMAH's argument that it might lose members is speculative and asserts

a result that would be too remote to warrant intervention in proceedings of this type. As to PEMAH's other concerns, they are in the nature of those which might be held by any interested or concerned bystander. PEMAH has not made out a case for intervention. Accordingly, PEMAH's motion for intervention is hereby denied.

The seven individual employees, all of whom occupy positions whose status and the terms and conditions of employment attached thereto could, as a direct and immediate result of these hearings, be changed by converting them from excluded to included positions have, in the opinion of this Board an interest in these proceedings which is not speculative or remote. Moreover, the Board, in its discretion, has determined that permitting affected employees to participate, within reasonable limitations, in cases of this sort would foster the objectives of Chapter 89, HRS: to achieve harmonious employment relations in the government service and permit government employees a voice in their working conditions. Quite apart from these general concerns, if these employees have facts which would aid the Board in reaching a correct result in these proceedings, then the Board welcomes their participation. In this connection, it should be noted that the State, which is the employer of these employees, has no objections to these employees being permitted to intervene.

Accordingly, the seven individuals named above are hereby granted intervenor status subject to the following restrictions:

1. They may not introduce or seek to introduce evidence as to their personal wishes to be included in or excluded from the respective collective bargaining units;

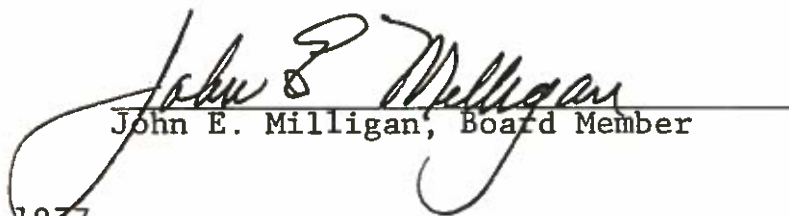
2. Their participation will be limited to the production or questioning of evidence related solely to the duties and functions of the specific positions they occupy.

A question has arisen as to whether PEMA, although not an intervenor herein, can during these hearings represent the individuals in a capacity such as an attorney might function in representing clients (a representative capacity). The Board is of the opinion that PEMA, a corporation, is a person as that term is used in Rule 1.07(b) of the Rules and Regulations of this Board\* and hence may represent the individual intervenors provided that they authorize PEMA to act in a representative capacity for them. Rule 1.07(c). The employees may, of course, choose instead, under the rule, to be represented by counsel.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: January 26, 1977

Honolulu, Hawaii

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\*Rule 1.07(b) states: "(b) REPRESENTATION. In any proceeding under these rules, any public employee, employee organization or public employer may be represented by counsel or any other authorized person."