

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. 113

ORDER DENYING MOTION TO DISMISS

During the investigation herein, several days after counsel for Petitioner HGEA stated the HGEA had rested, the seven intervenors on March 22, 1977, filed a motion to dismiss. The grounds asserted as the bases for the motion were allegations that:

1. Petitioner had failed to meet its burden of proof;
2. The subject cases constituted a relitigation of issues determined in Case Nos. R-03-9, R-04-10, and R-13-11 and as such could not, by reason of collateral estoppel, be relitigated;
3. Petitioner failed to join necessary and indispensable parties (employees in positions which are the subject of these cases).

The HGEA asserts that the seven intervenors have no standing to bring the subject motion. The Board is of the opinion that they have standing to bring a motion to dismiss those portion of the cases which concern their individual positions and no other portions of the subject cases.

However, because of the disposition of the motion the Board makes herein, it is not necessary to dwell on this issue.

The fact that the Board has been conducting a "pre-hearing investigation" (see Order 98) rather than a formal hearing is reason enough to reject the motion. The HGEA rested prematurely; the Intervenors made their motion prematurely.

Moreover, after the HGEA had rested, it asked for permission to reopen its portion of the case should it become necessary for it to put on additional evidence later. It is within the discretion of the Board to grant this request, which it hereby does.

The HGEA request may be granted notwithstanding the fact that Intervenors filed a motion to dismiss. See, Virginia Ry & Power Co. v. Gorsuch, 91 S. E. 632 (Va. 1917); State v. Burbank, 163 A2d 639 (Maine 1960); 88 C.J.S. Trials §105. The basic reason this Board considers it equitable to grant the HGEA request is the Board's own failure to clarify the ground rules for the investigatory proceedings in progress.

The Intervenors' motion, to the extent it is based on the Petitioner's having failed to meet its burden of proof, is premature.

As to the matter of collateral estoppel, the Intervenors have failed to satisfy this Board that the doctrine

applies. The initial unit determinations in Units 3, 4 and 13 as well as in many other units, were done in haste; while they were approved of by the Board, all who participated in the proceedings therein knew that this Board has never had an opportunity to fully exercise its authority under Sections 89-6 and 89-5(b)(1), Hawaii Revised Statutes (HRS), to reach a final decision on the merits concerning the host of employees who were excluded from the units. It would be plainly wrong to invoke the doctrine of collateral estoppel to preclude full and reasoned consideration of the major issues presented by the instant cases.

Additionally, there have been developments in the law affecting these issues which were not present when the earlier decisions to which preclusive effect is sought to be given were issued. See, e.g. Decision 75.

The intervenors argue further that all individual employee incumbents in the positions covered by the petitions herein are indispensable parties. With this proposition the Board disagrees.

This Board has done extensive research to ascertain what the role of individual employees should be in proceedings such as these. The more common practice nationally in the public sector is to deny employees any role whatsoever. This Board, however, has, because it wishes to encourage employee participation and awareness, leaned over backwards to permit such participation. The individual employees are not indispensable parties and their participation will be permitted by the Board only insofar as it will serve the interests of developing a sound record and getting at the truth.

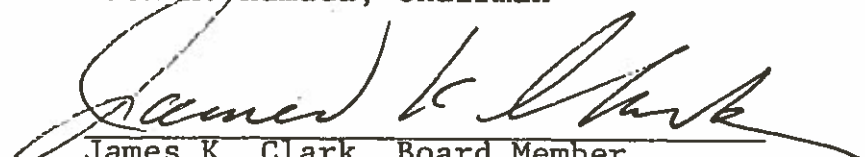
Thus, this Board, while of the opinion that the subject employees are not indispensable parties, will,

within reasonable boundaries, allow employee participation in unit determination and clarification proceedings to the extent such participation will serve, not subvert, the purpose of Chapter 89, HRS.

The Intervenor's Motion to Dismiss is denied.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: March 31, 1977

Honolulu, Hawaii