

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
STATE OF HAWAII ORGANIZATION)	Case No. <u>CE-12-18</u>
OF POLICE OFFICERS (SHOPO),)	
)	
Complainant,)	Order No. <u>124</u>
)	
CHIEF OF POLICE ERNEST)	
FERGERSTROM, HAWAII POLICE)	
DEPARTMENT, COUNTY OF)	
HAWAII,)	
)	
Respondent.)	
_____)	

ORDER FOR JOINDER OF PARTIES AND GRANTING
MOTION TO SET ASIDE ORDER OF DISMISSAL OF
PROHIBITED PRACTICE CHARGE

The above-captioned case was filed by complainant State of Hawaii Organization of Police Officers (hereafter SHOPO) on May 5, 1975. Thereafter, following the passage of over one year in which SHOPO made no effort to prosecute the case, this Board notified the subject parties that the case would be dismissed if no indication of SHOPO's intention to proceed was received by December 28, 1976 (Board Order No. 91). In the absence of any response from SHOPO, this case was dismissed on January 3, 1977, in Board Order No. 95.

On January 17, 1977, Michael Happy Hanohano filed a motion to set aside Order No. 95. Movant Hanohano and the other subject parties were then requested to file memoranda concerning Mr. Hanohano's standing to file this motion.

Upon consideration of the memoranda submitted by the parties on the question of standing, the Board concludes that Mr. Hanohano does have standing to move to set aside the order dismissing Case No. CE-12-18.

Movant has argued that, as the real party in interest, he should be substituted for complainant SHOPO in this case. However, proceedings under Chapter 89, HRS, involve the protection of statutorily granted public rights. As such, we do not believe that the distinction between nominal and real parties in interest, a concept deriving from the adjudication of private rights, must be applied to the instant proceedings. Questions of standing are instead governed by the provisions of Chapter 89, HRS, and HPERB Rules and Regulations. In this regard, our reasoning is similar to that followed by the NLRB, as enunciated in National Licorice Co. v. NLRB, 309 U.S. 350, 60 S.Ct. 569, 84 L.Ed. 799 (1940):

"The Board acts in a public capacity to give effect to the declared public policy of the Act to eliminate and prevent obstructions to interstate commerce by encouraging collective bargaining and by protecting the 'exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment...' (cites omitted) The immediate object of the proceeding is to prevent unfair labor practices which, as defined by Sections 7, 8, are practices tending to thwart the declared policy of the Act. To that end the Board is authorized to order the employer to desist from such practices, and by Section 10(c) it is given authority to take such affirmative remedial action as will effectuate the policies of the Act. NLRB v. Pennsylvania Greyhound, supra.

In a proceeding so narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules of joinder of parties in litigation determining public rights." 309 U.S. at 362-363.

Section 377-9(b), HRS, as incorporated by §89-14, HRS, provides in part that:

"Any party in interest may file with the board a written complaint, on a form provided by the board, charging any person with having engaged in any specific unfair labor practice." (emphasis added)

Section 3.02(a), HPERB Rules and Regulations, also states:

"A complaint that any public employer, public employee or employee organization has engaged in any prohibited act may be filed by public employee, employee organization, public employer, or any party in interest within ninety days of the alleged violation." (emphasis added)

Under these provisions, SHOPO constitutes a party in interest, and it is not limited to acting solely in a representative capacity (i.e., on behalf of a public employee) when it files a charge with the Board.

Nevertheless, §377-9(b), HRS, provides that:

"Any other person claiming interest in the dispute or controversy, as an employer, an employee or their representative, shall be made a party upon proof of interest."

See also §3.02(d), HPERB Rules and Regulations. Proof of Mr. Hanohano's interest in the subject proceedings is amply demonstrated by the fact that Mr. Hanohano's dispute with respondents forms the basis of the prohibited practice charge. He also appears to be more willing to prosecute this action than does SHOPO, which stated in its March 28, 1977 letter to the Board's Executive Officer:

"SHOPO, satisfied with the disposition it has made of Mr. Hanohano's claim, leaves it to Mr. Hanohano to advance his arguments in support of his position, and to corporation counsel for the county to oppose such motion."

Furthermore, the entry of an order dismissing Case CE-12-18 was purely a housekeeping measure that was not based on the merits of the charge. For these reasons, this Board hereby orders that

movant be joined as a party complainant. Mr. Hanohano's motion to set aside Order No. 95 is also granted.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


John E. Milligan, Board Member


James K. Clark, Board Member

Dated: May 4, 1977

Honolulu, Hawaii