

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

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| In the Matter of |) | CASE NO. CU-03-97 |
| LEWIS W. POE, |) | ORDER NO. 1324 |
| |) | |
| Complainant, |) | ORDER GRANTING MOTION TO |
| |) | DISMISS |
| and |) | |
| |) | |
| HAWAII GOVERNMENT EMPLOYEES |) | |
| ASSOCIATION, AFSCME, LOCAL 152, |) | |
| AFL-CIO, |) | |
| |) | |
| Respondent. |) | |

ORDER GRANTING MOTION TO DISMISS

On October 14, 1993, Complainant LEWIS W. POE (POE or Complainant) filed a prohibited practice complaint against the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA, Union or Respondent), with the Hawaii Labor Relations Board (Board). The Complainant alleged that on October 7, 1993, he informed HGEA business agent Royden Kotake (Kotake) that he was not being paid in accordance with the Unit 03 collective bargaining agreement (contract). Kotake apparently did not support POE. POE alleges that the HGEA violated Chapter 89, Hawaii Revised Statutes (HRS), by wilfully failing to enforce provisions of the contract.

On October 31, 1994, Respondent HGEA filed a Motion to Dismiss Complaint or in the Alternative Motion for Summary Judgment with the Board. In its motion, the Respondent contends that the instant prohibited practice complaint is barred by the doctrine of collateral estoppel; that the Respondent did not breach its duty of

fair representation by failing to pursue a grievance regarding the payment of overtime hours for the work Complainant performed on a holiday; that Respondent did not breach its duty of fair representation when it determined that there was no merit to POE's claim concerning night differential premium pay; and that Complainant POE's claim has no merit because POE never made a request or demand of the Respondent that it bring such a grievance on the Complainant's behalf.

On November 10, 1994, POE filed a memorandum-in-opposition to HGEA's Motion to Dismiss or in the Alternative Motion for Summary Judgment. POE contends that the instant case and his claims are not barred by the doctrine of collateral estoppel since identical issues were not fully litigated in a court of competent jurisdiction. POE contends that the issues were administratively litigated before the Board in Case No. CU-03-93 and have not been finally adjudicated by a court of competent jurisdiction. POE agrees, however, that the Union did not breach its duty of fair representation because he never requested the HGEA to file a grievance for him.

On November 15, 1994, the Board conducted a hearing on the HGEA's Motion to Dismiss Complaint or in the Alternative Motion for Summary Judgment. All parties were afforded a full opportunity to present evidence and oral argument before the Board. The Board took the motions under advisement. Based upon a thorough review of the record, the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Complainant POE is a Tower Operator I employed by the Harbors Division, Department of Transportation (DOT), State of Hawaii and a member of bargaining unit 03.

Respondent HGEA is the exclusive representative, as defined in § 89-2, HRS, of employees who are included in bargaining unit 03.

The State of Hawaii and the HGEA are parties to a collective bargaining agreement for employees of Unit 03, effective July 1, 1991 through June 30, 1993 (contract). The expiration date was extended from July 1, 1993 through April 15, 1994.

On or about September 13, 1993, POE submitted an individual time sheet to his employer requesting payment for holiday overtime and night differential for September 6, 1993. Thereafter, POE submitted a Step 2 grievance regarding a September 30, 1993 payroll computational error. POE contended that he was paid at an incorrect rate for overtime work and for an incorrect number of hours for night differential. POE contended that he was underpaid in excess of five dollars. POE also indicated that the HGEA did not agree with his contentions.

According to the HGEA, POE contacted HGEA business agent Royden Kotake in 1992 and stated that when working on a holiday at night and the work hours fall between 6:00 p.m. through 6:00 a.m., pursuant to Articles 30.A. and 30.C. of the contract, an employee is entitled to an extra forty-five cents (\$.45) per hour for each hour of actual work performed as a night differential. Kotake

informed POE that the plain language of the contract and the past practice of the parties was not to permit an employee to apply the night differential twice to the same hour worked as POE suggested. Kotake disagreed with POE's interpretation and POE never requested Kotake nor the HGEA to pursue a grievance on his behalf regarding the payment of night differential.

On March 10, 1993, POE filed a prohibited practice complaint in Case No. CU-03-93 against the HGEA, alleging inter alia, that the HGEA failed or refused to represent POE in his grievances regarding payroll computational errors thereby breaching its duty of fair representation in violation of § 89-13(b)(4), HRS. Thereafter, on March 18, 1993, POE filed another prohibited practice complaint in Case No. CE-03-183 with the Board against John D. Waihee, Governor, State of Hawaii; Sharon Y. Miyashiro, Director, Department of Personnel Services, State of Hawaii; and Rex D. Johnson, Director, Department of Transportation, State of Hawaii (collectively Employer), alleging that the Employer failed to compensate him at the holiday overtime rate of one-and-one-half times the premium rate for one-and-one-half hours worked on April 17, 1992, Good Friday, a State-recognized holiday. In addition, Complainant alleged that the Employer failed to include an additional night differential in its calculation of his pay for work performed on the holiday, thus violating Articles 23 and 30 of the Unit 03 contract.

The Board consolidated Case Nos.: CE-03-183 and CU-03-93 for further proceedings and on October 27, 1993, the Board issued

Order No. 986, Order Granting Respondents' Motions for Summary Judgment. In that order, the Board found that the contract provides that an employee is entitled to holiday pay at the overtime rate for the entire shift where a majority of the hours in that job shift fall within a legal holiday. In addition, the proviso in the contract states that once an employee has been paid holiday pay at the overtime rate for the whole job shift which falls on the holiday, the employee cannot collect any further holiday pay for the holiday in question. Thus, the Board held that POE failed to prove that the Employer and Union committed prohibited practices by the denial of holiday pay. In addition, the Board found that POE failed to prove that the Union committed prohibited practices by its refusal to grieve the denial.

Moreover, the Board also found that POE failed to establish that the Employer's calculation of night differential was erroneous and that the Union committed prohibited practices when it agreed with the Employer's interpretation of the contract. The Board stated:

With respect to the HGEA's denial of support for Complainant's grievances, the Board recognizes that a union has a certain degree of discretion in its decision to file or otherwise support the filing of a grievance. Clearly, where both the Employer and Union are in total agreement over the interpretation and application of certain contractual provisions, it would be illogical and irresponsible on the part of the union to challenge an interpretation to which it subscribes.

Thereafter, on or about October 7, 1993, Kotake was contacted by POE who complained that he was paid less than he should have received because he did not receive the night

differential twice for the same hour worked in calculating POE's overtime pay. Kotake asked POE if the situation was identical to the situation in Case No. CU-03-93 where his paycheck was subject to a shortage and POE said that the situation was identical. POE asked Kotake whether the HGEA would take the same position that it took in Case No. CU-03-93 and Kotake replied that the HGEA would take the same position. POE informed Kotake that POE would file his own grievance against his employer without HGEA's assistance and never requested HGEA's assistance in pursuing the grievance.

DISCUSSION

The HGEA contends that the instant complaint is barred by the doctrine of collateral estoppel. The Union contends that this case raises identical issues to those raised and decided in Case No. CU-03-90. The HGEA submits that the Board held in the previous case that the Employer and the Union properly construed the contract provisions at issue in this case. Thus, the Union did not commit a prohibited practice in its interpretation of the contract provisions as alleged by POE. In addition, the Union contends and POE agrees that he never requested the Union to pursue a grievance on his behalf. Therefore, the Union contends that it did not breach its duty of fair representation as to POE.

In accordance with the foregoing, the Board finds that the case is barred by the doctrine of collateral estoppel. The issue in the instant case is identical to the issue decided in Case No. CU-03-93 except that different holidays are involved. In addition, POE had the opportunity to fully and fairly litigate his

case. Finally, the parties are the same in the instant complaint as were in the prior case.

The Hawaii Supreme Court explained the policy reason underlying res judicata and collateral estoppel in Ellis v. Crockett, 51 Haw. 45, 56, 451 P.2d 814, 822 (1969).

The policy reasons underlying both res judicata and collateral estoppel are several. The public interest staunchly permits every litigant to have an opportunity to try his case on the merits; but it also requires that he be limited to one such opportunity. Furthermore, public reliance upon judicial pronouncements requires that what has been finally determined by competent tribunals shall be accepted as undeniable legal truth. Its legal efficacy is not to be undermined. Also, these doctrines tend "to eliminate vexation and expense to the parties, wasted use of judicial machinery and the possibility of inconsistent results." *Developments in the Law - Res Judicata*, 65 Harv. L. Rev. 818, 820 (1952).

See also, Gomes v. Tyau, 57 Haw. 163, 167-168, 451 P.2d at 822 (1976).

In determining whether res judicata and collateral estoppel are applicable, a three-part test must be applied. The pertinent questions are: 1) Was the issue decided in the prior adjudication identical with the one presented in the action in question? 2) Was there a final judgment on the merits? and 3) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? Morneau v. Stark Enterprises, Ltd., *supra*, 56 Haw. 420, 424, 539 P.2d 472 (1975).

The Board finds that the issue in question is identical to one which was raised in the previous case. POE argues that the previous case dealt with issues, facts and arguments over a type of

overtime he calls the one-and-a-half-near-midnight shift and dealt with compensatory time whereas the instant case does not have compensatory time being elected. POE's reasoning is erroneous. The question of whether compensatory time is being offered or not is irrelevant. The issue is whether the Union's interpretation of overtime and night differential was presented and reviewed in the previous case. The Board finds that the issue was presented. In addition, the Board found that POE failed to prove the Union violated the contract or breached its duty to POE where it refused to pursue a grievance for him on a contract interpretation the Union did not agree with nor was justified. This issue is collaterally estopped by the Order in Case No. CU-03-93, which resolves that issue.

The Board finds that there was a final judgment on the merits because the Board had jurisdiction over the matter, that POE had a full and fair opportunity to litigate the issues involved and that POE failed to prove any blatant unfairness against him in the prior or instant case.

POE contends that under the doctrine of collateral estoppel, identical issues must have been actually and fully litigated in a court of competent jurisdiction. POE argues that the Board is not a court whereas the Federal District Court and the Circuit Court of the First Circuit are courts of competent jurisdiction. We disagree.

The courts have held that res judicata and collateral estoppel apply to matters litigated before an administrative agency, which includes this Board's predecessor, the Hawaii Public

Employment Relations Board. David Santos v. State of Hawaii, 64 Haw. 648, 653 (1982); United States v. Utah Constr. Co., 384 U.S. 394, 421-22 (1966); International Wire v. Local 38, International Brotherhood of Electrical Workers, 475 F.2d 1078 (6th Cir. 1973); Texaco, Inc. v. Operative Plasterers & Cement Masons International, Local 685, 472 F.2d 594 (5th Cir. 1973); Paramount Transport Systems v. Chauffeurs, Teamsters & Helpers, Local 150, 436 F.2d 1064 (9th Cir. 1971); Painters District Council No. 38 v. Edgewood Contracting Co., 416 F.2d 1081 (5th Cir. 1969).

POE also argues that he did not have a full and fair opportunity to litigate the issues involved. He contends that he is entitled to fully litigate the complaint. However, to allow POE to present this case with the identical issue is a waste of Board resources and this Board will not allow POE to relitigate the same claim for every holiday that he worked at night. POE had the opportunity to fully present his case in Case No. CU-03-93 and now he cannot have the proverbial second bite of the apple.

POE also contends there was blatant unfairness in Case No. CU-03-93 in the Board's procedures, process and administrative atmosphere to effectively deprive POE of a "full and fair opportunity to litigate." He contends that in the prior case, the Employer's motion for summary judgment was not timely filed. However, the instant case was not filed against the Employer and POE's argument is not relevant to the instant complaint. In addition, there is nothing in the record to support POE's allegations that he was deprived of a full and fair opportunity to litigate Case No. CU-03-93. Furthermore, POE could have raised the

issue of unfairness on his appeal of Case No. CU-03-93. The Circuit Court in that appeal, however, found no error in the Board's application of the law and dismissed POE's appeal.

Thus, the Board finds that POE's claim is barred by the doctrine of collateral estoppel because it satisfies the third and final requirement. In the instant complaint, both the HGEA and POE were parties in the prior Case No. CU-03-93 and the parties had a full opportunity to present evidence and argument for the Board's consideration. Even if the Employer is not a party to the instant case, the issue with respect to the Union remains the same. In the previous case, the Board found that the Union's interpretation of the contract provisions was consistent with the language of the contract and the intent of the parties and POE failed to prove any prohibited practice by the Union. The Board concludes that the parties are therefore bound by that ruling.


Based on the foregoing, the Board hereby dismisses the instant complaint, and need not address the issues raised in the HGEA's motion for summary judgment.

DATED: Honolulu, Hawaii, May 2, 1996 .

HAWAII LABOR RELATIONS BOARD



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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