

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-339
MARISA MIA PLEMER; LEONIE	)	ORDER NO. 1510
RANDALL; and PAMELA SAKUMA,	)	ORDER DISMISSING PROHIBITED
Complainants,	)	PRACTICE COMPLAINT
and	)	
LINDA COLBURN, Administrator,	)	
Office of Hawaiian Affairs,	)	
State of Hawaii,	)	
Respondent.	)	

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

On December 18, 1996, Complainants MARISA MIA PLEMER, LEONIE RANDALL, and PAMELA SAKUMA filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). Complainants alleged that they were employed by the Office of Hawaiian Affairs (OHA) as secretaries to the Board of Trustees and were wrongfully terminated effective November 25, 1996.

On December 30, 1996, the STATE OF HAWAII (STATE), by and through its counsel, filed a motion with the Board to dismiss the instant complaint for lack of jurisdiction. The STATE contends that OHA is not part of the executive branch of the State and is not a public employer for the purposes of Chapter 89, Hawaii Revised Statutes (HRS). In the alternative, the STATE contends that OHA's employees serve at the discretion of the OHA administrator and therefore the STATE should be dismissed as a party to these proceedings.

In their prehearing conference statement, the Complainants contend that they receive fringe benefits and medical coverage similar to other public employees. Complainants state that they were assigned to their respective Trustees and upon the non-election of their Trustees, they relied upon an oral representation by the Respondent LINDA COLBURN, Administrator, OHA, State of Hawaii (COLBURN) that they would be retained in their positions. Thereafter, COLBURN explained that the newly-elected Trustees desired hiring their own staff and terminated the Complainants. Complainants further complain of nepotism and contend that OHA has failed to comply with a 1993 State Audit to clarify the status and rights of employees.

Respondent COLBURN joined the STATE's motion to dismiss on January 14, 1997.

Thereafter, on January 28, 1997, Complainants filed a motion to continue the hearing scheduled in this matter in order to retain counsel. By Order No. 1409, dated January 29, 1997, the Board continued this matter until Complainants retained counsel.

On August 7, 1997, the Board conducted a hearing on the STATE's motion to dismiss the prohibited practice complaint. Counsel for the STATE argued that the Board lacked jurisdiction over OHA since it was not a public employer under Chapter 89, HRS, and that pursuant to § 10-12, HRS, employees of OHA serve at the pleasure of the Board. The STATE also objected to any argument by Complainant's counsel since no memorandum in opposition to the motion had been filed with the Board. Counsel for OHA joined in the STATE's motion to dismiss the complaint.

At the hearing, Complainant's counsel admitted that OHA was not an employer under the collective bargaining law and that the instant complaint had been filed primarily to exhaust available administrative remedies.

Based upon the arguments presented, the Board finds that OHA is not a public employer within the meaning of Chapter 89, HRS. Section 89-13(a), HRS, provides the Board with jurisdiction over prohibited practices committed by a public employer or a designee. Section 89-2, HRS, defines "employer" or "public employer" as follows:

. . . the governor in the case of the State, the respective mayors in the case of the city and county of Honolulu and the department of education, and the board of regents in the case of the University of Hawaii, and any individual who represents one of these employers or acts in their interest in dealing with public employees. In the case of the judiciary, the governor shall be the employer for the purposes of this chapter.

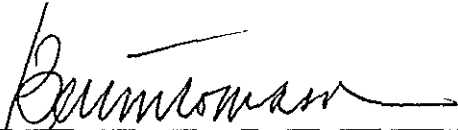
Section 10-4, HRS, provides that OHA is constituted as a body corporate which is a separate entity independent of the executive branch. In reviewing these statutes, it is clear that OHA is an entity apart from the executive branch of the State of Hawaii and is not encompassed within the definition of "public employer" in Chapter 89, HRS.

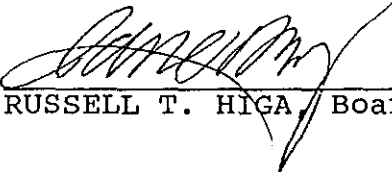
Based upon the foregoing, the Board concludes that it lacks jurisdiction over the instant dispute and hereby grants the STATE's motion to dismiss the instant complaint.

MARISA MIA PLEMER; LEONIE RANDALL; and PAMELA SAKUMA and LINDA COLBURN, Administrator, Office of Hawaiian Affairs, State of Hawaii; CASE NO. CE-339  
ORDER NO. 1510  
ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

DATED: Honolulu, Hawaii, August 14, 1997.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
CHESTER C. KUNITAKE, Board Member

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