STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

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| In the Matter of<br><br>MICHAEL L. LAST,<br><br>Complainant,<br><br>and<br><br>UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,<br><br>Respondent. | CASE NO. CU-01-124<br><br>ORDER NO. 1539<br><br>ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT |

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT

On April 29, 1996, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) with the Hawaii Labor Relations Board (Board). LAST alleges that the UPW violated § 89-3.5, Hawaii Revised Statutes (HRS), when the UPW failed to respond to LAST's letter of March 12, 1996, requesting that the service fees deducted from his earnings be remitted to the Blood Bank of Hawaii.

On May 2, 1996, Respondent UPW filed a motion to dismiss the complaint with the Board. In its motion to dismiss, Respondent UPW cites several basis for granting the motion: 1) Complainant may not relitigate the issue of whether or not he qualifies for a religious exemption under § 89-3.5, HRS, as decided in Case No. CU-01-98; 2) the complaint fails to state a claim for relief; and 3) Complainant lacks requisite standing to bring the complaint

since he does not qualify for religious exemption under § 89-3.5, HRS.

On May 13, 1996, LAST filed a memorandum in opposition to the UPW's motion to dismiss complaint with the Board.

On May 28, 1996, the Board, by conference call, conducted a hearing on the UPW's motion to dismiss the complaint. Based on a thorough review of the record and the arguments presented, the Board makes the following findings of fact, conclusions of law and order.

## FINDINGS OF FACT

MICHAEL L. LAST was, at all times relevant, an employee, within the meaning of § 89-2, HRS, of the County of Hawaii whose position is included in bargaining unit 01. LAST is not a member of the UPW.

The UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO is the exclusive representative, within the meaning of § 89-2, HRS, of employees in bargaining unit 01.

By letter dated March 12, 1996, LAST requested that the UPW remit service fees deducted from his earnings to the Blood Bank of Hawaii in accordance with § 89-3.5, HRS.

Section 89-3.5, HRS, provides that:

> Notwithstanding any other provision of law to the contrary, any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall not be required to join or financially support any employee organization as a condition of employment; except that an employee may be required in a contract between

an employee's employer and employee organization in lieu of periodic dues and initiation fees, to pay sums equal to the dues and initiation fees to a nonreligious, non-labor organization charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in the contract or if the contract fails to designate any funds, then to any fund chosen by the employee.

DISCUSSION

On August 30, 1994, the Board issued Decision No. 359, Michael L. Last, 5 HLRB 396 (1994) in Case No. CU-01-98. In that case, Complainant LAST alleged that Respondent UPW violated § 89-3.5, HRS, when the Union refused to remit LAST's dues to the American Atheists, Inc. Complainant contended there that he was a member of the American Atheists which qualifies as a nonreligious nonlabor organization. Based upon the record in that case, the Board dismissed LAST's prohibited practice charges alleging a violation of § 89-3.5, HRS.

In Decision No. 359, supra, the Board found that on September 29, 1982, the UPW and the employer entered into a "Memorandum of Agreement" (MOA) which identifies three charities to which religious objectors can divert their service fees. The three charities were the Kuakini Home, Palama Settlement and Big Brothers/Big Sisters of Honolulu. The Blood Bank of Hawaii is not one of the charities set forth in the MOA. Based upon the record in that case, the Board further held that LAST "failed to demonstrate that he is a 'member of and adheres to established and traditional tenets or teachings of a bona fide religion.'"

Consequently, the Board dismissed LAST's prohibited practice complaint based upon an alleged violation of § 89-3.5, HRS.

LAST fails to distinguish the Board's findings in Decision No. 359 from the instant case except to state that the Respondent's statement that he lacks standing because he fails to qualify for a religious exemption is totally without basis in fact.

In fact, there is no basis in the record to find that LAST qualifies for a religious exemption under § 89-3.5, HRS. Thus, the Board finds that the issues raised in Decision No. 359 are identical to the issues in the instant case. The Board finds that LAST failed to prove that the Union violated § 89-3.5, HRS, or provide the Board with issues different from issues litigated in Decision No. 359.

The UPW contends that LAST is barred from relitigating issues which he previously had the opportunity to raise in the prior case based upon the doctrines of res judicata and collateral estoppel.

After reviewing the record and the arguments presented, the Board finds that this complaint is barred by the doctrine of collateral estoppel.

Res judicata and collateral estoppel are well-established judicial doctrines which preclude the relitigation of claims or issues which have been decided or might have been litigated in a prior case between the same parties or privies. In Ellis v. Crockett, 51 Haw. 45, 55-56 (1969), the Hawaii Supreme Court discussed the doctrines of res judicata and collateral estoppel.

In defining "res judicata" and "collateral estoppel," the Hawaii Supreme Court stated:

> The doctrine of res judicata basically provides that "[t]he judgment of a court of competent jurisdiction is a bar to a new action in any court between the same parties or their privies concerning the same subject matter, and precludes the relitigation, not only of the issues which were actually litigated in the first action, but also of all grounds of claim and defense which might have been properly litigated in the first action but were not litigated or decided." In re Bishop Estate, 36 Haw. 403, 416 (1943).
>
> Collateral estoppel is an aspect of res judicata which precludes the relitigation of a fact or issue which was previously determined in a prior suit on a different claim between the same parties or their privies. Yuen v. London Guarantee and Accident Co., 40 Haw. 213, 223 (1953); Henderson v. Pence, 50 Haw. 162, 163, 434 P.2d 309, 310 (1967). Collateral estoppel also precludes relitigation of facts or issues previously determined when it is raised defensively by one not a party in a prior suit against one who was a party in that suit and who himself raised and litigated the fact or issue. See Bernhardt v. Bank of America Nat'l Trust and Savings Ass'n., 19 Cal.2d 807, 122 P.2d 892 (1942); Homeowners Federal Savings and Loan v. Northeast Fire & Marine Ins. Co., Mass. 238 N.E.2d 55 (1968). [footnote omitted.]
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> 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 require 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, 167-68, 451 P.2d at 822 (1976).

The courts have held that res judicata and collateral estoppel apply to matters litigated before an administrative agency. 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); and Painters District Council No. 38 v. Edgewood Contracting Co., 416 F.2d 1081 (5th Cir. 1969).

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 LAST had a full and fair opportunity to litigate the issues involved in the previous case and failed to appeal the dismissal of his previous complaint. While this case involves a different beneficiary, the issue of whether LAST qualifies for a religious exemption has been addressed. Thus, there has been a final judgment on the merits between the same

parties on the issues presented to the Board. Therefore, the Board concludes that the instant complaint is barred by the doctrine of collateral estoppel as to claims already litigated and claims which could have been litigated in the previous action before the Board. Accordingly, the Board hereby grants the Respondent's motion to dismiss the instant complaint.

## CONCLUSIONS OF LAW

The Board has jurisdiction over this complaint pursuant to Sections 89-5(b)(4) and 89-14, HRS.

Collateral estoppel precludes the relitigation of issues and claims previously decided in prior actions involving the same parties or their privies. The Board finds that the instant complaint is barred by the doctrine of collateral estoppel.

## ORDER

The instant prohibited practice complaint is hereby dismissed.

DATED: Honolulu, Hawaii, October 17, 1997.

HAWAII LABOR RELATIONS BOARD

BERT M. TOMASU, Chairperson

RUSSELL T. HIGA, Board Member

Copies sent to:

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