

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)) HAWAII GOVERNMENT EMPLOYEES') ASSOCIATION, LOCAL 152,) AFSCME, AFL-CIO,)) Petitioner,)) and)) THEODORE B. JORDAN,)) Intervenor.) _____)	Case Nos. <u>SF-02-51</u> <u>SF-03-52</u> <u>SF-04-53</u> <u>SF-06-54</u> <u>SF-08-55</u> <u>SF-13-56</u> Order No. <u>156</u>
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ORDER REVOKING SUBPOENAS DUCES TECUM

The Hawaii Government Employees' Association (hereafter HGEA), petitioner in the above-entitled cases, has moved that this Board quash subpoenas duces tecum served by Theodore B. Jordan, Intervenor, in Case No. SF-08-55. Subpoenas were served on Russell Okata, Deputy Director of the HGEA; Albert Hamai, Hawaii Coordinator for the American Federation of State, County and Municipal Employees; and A. Van Horn Diamond, Executive Secretary-Treasurer of the Hawaii State Federation of Labor.

Attorneys for the HGEA and Intervenor appeared before this Board at the hearing on the motion to quash held on November 10, 1977.

The subpoena served on Russell Okata requires the production of

books, records, correspondence, documents, accounts, ledgers, journals, receipts, or memos relating to, explaining, justifying, or supporting the projected expenses of the Hawaii Government Employees' Association as described in the HGEA Budget Summary, Exhibit C in HGEA's Petition for Certification of the Reasonableness of Service Fees, excluding amounts for political contributions as disallowed by the Hawaii Public Employment Relations Board in Decisions No. 72 and 78.

The subpoenas served on Albert Hamai and A. Van Horn Diamond require them to produce, from their respective organizational records

books, records, correspondence, documents, accounts, ledgers, journals, receipts, or memos relating to, explaining, justifying, or establishing the expenses . . . in assisting the Hawaii Government Employees' Association in negotiating and administering contracts between HGEA and the Board of Regents of the University of Hawaii for Unit 8, or between HGEA and any other employer, as defined by Hawaii Revised Statutes §89-4.

Rule 1.08(g)(14)(d)(1) of the Board's Rules of Practice and Procedure states:

d. Ruling on Motion to Revoke.

1. Board or Hearings Officer. The Board or hearings officer may revoke a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry or hearing; or the subpoena does not describe with sufficient particularity the evidence sought or that the evidence sought from the witness is privileged under the law or the rules.

A subpoena duces tecum should not be used to search for evidence. As the Supreme Court of North Carolina has said:

Anything in the nature of a mere fishing expedition is not to be encouraged. (A party is not entitled) to have brought in a mass of books and papers in order that he may search them through to gather evidence.

Vaughn v. Broadfoot, 267 N.C. 691, 696;
149 S.E. 2d 37, 41 (1966).

It appears that the purpose of Intervenor Jordan's request for a subpoena is discovery. Available means of discovery should be used. The subpoenas do not describe the evidence sought with sufficient particularity. Intervenor


can require production of those documents which will be presented as evidence by the HGEA in support of its petition to this Board for certification of the reasonableness of its service fees; there is no support for allowing these sweeping subpoenas, either in the law or in Intervenor's arguments.

The motion to quash is granted. The Board hereby orders that the subpoenas issued to Russell Okata, Albert Hamai, and A. Van Horn Diamond, issued on October 19, 1977, be revoked.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: November 21, 1977

Honolulu, Hawaii