

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-12-317
)	
STATE OF HAWAII ORGANIZATION)	ORDER NO. 1564
OF POLICE OFFICERS,)	
)	ORDER GRANTING COMPLAIN-
Complainant,)	ANT'S MOTION TO WITHDRAW
)	PROHIBITED PRACTICE COM-
and)	PLAINT WITH PREJUDICE
)	
BENJAMIN J. CAYETANO, Governor,)	
State of Hawaii; JEREMY HARRIS,)	
Mayor, City and County of)	
Honolulu; LINDA CROCKETT LINGLE,)	
Mayor, County of Maui; STEPHEN)	
YAMASHIRO, Mayor, County of)	
Hawaii; and MARYANNE KUSAKA,)	
Mayor, County of Kauai,)	
)	
Respondents.)	

ORDER GRANTING COMPLAINANT'S MOTION TO
WITHDRAW PROHIBITED PRACTICE COMPLAINT WITH PREJUDICE

On November 21, 1997, the STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO), by and through its counsel, filed a motion to withdraw the instant prohibited practice complaint with the Hawaii Labor Relations Board (Board). SHOPO's counsel states in an affidavit filed in support of the motion that his client has instructed him to seek leave to withdraw the instant complaint.

On December 1, 1997, Respondent STEPHEN YAMASHIRO, by and through his counsel, filed a memorandum in opposition to Complainant's motion to withdraw complaint with the Board. YAMASHIRO alleges that Respondents incurred substantial costs and time spent having legal counsel and witnesses testifying before the Board on the issue of promotions. YAMASHIRO further argues that:

In the present case, it is reasonable to assume that the HLRB will rule in favor of the Complainant and further erode the statutory rights of the public sector employers under Sec. 89-9, HRS. At a minimum, HLRB will rule that promotion "criteria" must be negotiated. Allowing the Complainant to withdraw its Prohibited Practice Complaint will delay the inevitable task of appealing HLRB's ruling against "management's rights."

The Respondent seeks a judicial determination of the scope of "management's rights." The Respondent believes that there has been a steady and deliberate erosion of "management's rights" and only a judicial determination of what Sec. 89-9(d), HRS (sic) will resolve present and future labor-management misunderstandings, conflict and prohibited practices. Until that happens, the Respondent and other public sector employers will be subject to the whims and agendas of the public sector unions and the HLRB.

Thus, based on the foregoing argument YAMASHIRO respectfully requested that the Board deny Complainant's motion to withdraw its complaint in this case.

On November 28, 1997, Respondent BENJAMIN J. CAYETANO, Governor, State of Hawaii, by and through his counsel, joined YAMASHIRO's memorandum. Similarly, on December 1, 1997 Respondents MARYANNE KUSAKA, Mayor, County of Kauai, and LINDA CROCKETT LINGLE, Mayor, County of Maui, by and through their respective counsel, filed joinders in YAMASHIRO's arguments.

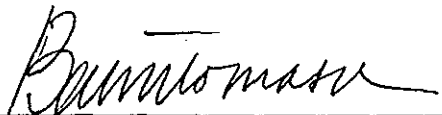
Also on December 1, 1997, Respondent JEREMY HARRIS, Mayor, City and County of Honolulu, by and through his counsel, filed a memorandum in opposition to Complainant's motion to withdraw its complaint with the Board. HARRIS also argued that procedural fairness, the possibility that the issue will recur, and the potential waste of administrative resources support the Board's

denial of Complainant's motion to withdraw the instant complaint at this stage.

Pursuant to Administrative Rules § 12-42-44, a prohibited practice complaint may be withdrawn at any time prior to the issuance of a final order, upon motion and with the Board's consent. In this case, SHOPO indicates that it no longer seeks to litigate this matter. While the Board appreciates that the Respondents have incurred costs in defense of their position, the Board does not find Respondents' arguments that the delay in the "inevitable" judicial review of a presumed unfavorable Board decision constitutes adequate justification for denial of Complainant's motion. Accordingly, in view of the costs incurred by the Respondents in this case, the Board grants the withdrawal of the instant complaint with prejudice.

DATED: Honolulu, Hawaii, December 3, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

Copies sent to:

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STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS and BENJAMIN J.
CAYETANO, Governor, State of Hawaii; et al.; CASE NO. CE-12-317
ORDER NO. 1564
ORDER GRANTING COMPLAINANT'S MOTION TO WITHDRAW PROHIBITED
PRACTICE COMPLAINT

Copies sent to (cont'd):

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Joyce Najita, IRC