

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-12-316
STATE OF HAWAII ORGANIZATION)	ORDER NO. 1668
OF POLICE OFFICERS (SHOPO),)	ORDER DISMISSING PROHIBITED
Complainant,)	PRACTICE COMPLAINT WITHOUT
and)	PREJUDICE
JEREMY HARRIS, Mayor, City and)	
County of Honolulu,)	
Respondent.)	

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT WITHOUT PREJUDICE

On October 11, 1996, Complainant STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO or Union) filed a prohibited practice complaint against JEREMY HARRIS, Mayor, City and County of Honolulu (Employer) with the Hawaii Labor Relations Board (Board). Complainant alleged that Respondent unilaterally implemented a program of contracting with retired police officers to perform bargaining unit 12 work without first bargaining with the Complainant. Thus, SHOPO alleged that the Employer violated §§ 89-13(a)(2), (5), and (7), Hawaii Revised Statutes (HRS).

The Board conducted a hearing in this matter on November 20, 1996. All parties had full opportunity to present evidence and arguments to the Board. Closing briefs were filed by the parties on December 3 and 4, respectively. Based upon a review of the record, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

SHOPO is the exclusive representative, as defined in § 89-2, HRS, of police officers included in bargaining unit 12.

JEREMY HARRIS is the Mayor of the City and County of Honolulu, and is a public employer, as defined in § 89-2, HRS, of police officers included in bargaining unit 12.

By letter dated September 18, 1996, Honolulu Police Department (Department) Assistant Chief of Police Eugene Uemura (Uemura) requested SHOPO's support for the Department's plan to contract with recently retired officers to augment manpower due to a shortage of uniformed personnel from Raymond A. Ancheta, SHOPO President. Uemura indicated that the Department intended to contract with up to 100 officers and to keep the program in place until enough recruits were hired to reduce the number of vacancies to a safe level. The contracted officers would be assigned to areas on the basis of need, including desk duties to permit the officers currently assigned to be reassigned to the field. Uemura referenced a September 16, 1996 meeting with SHOPO when the matter was discussed. Uemura requested that SHOPO submit any concerns to the Department by September 24, 1996.

By letter dated October 4, 1996, Uemura wrote to Clifford Kaneaiakala (Kaneaiakala), SHOPO Acting Business Manager, indicating that the Department was contacted by SHOPO's General Counsel Michael Kaneshiro (Kaneshiro) by letter, dated September 24, 1996. Kaneshiro indicated that the Union believed that the contract hiring of retired police officers was negotiable. Kaneshiro referred the matter to another attorney who requested that the Department stipulate that the contracting of police

personnel is a negotiable matter before any discussion could take place. Uemura indicated that he had discussed the proposal with the Department of Personnel which assured him that the matter was nonnegotiable. Thus, Uemura offered the Union the opportunity to meet and discuss the matter further. Uemura indicated that if he did not receive a response by October 18, 1996, the Department would proceed with implementation of the plan.

On October 12, 1996, SHOPO filed the instant complaint with the Board.

Thereafter, by letter dated October 18, 1996, Lee D. Donahue, Acting Chief of Police, informed Kaneaiakala that the Department would not pursue a plan to contract with 100 officers. However, the Department wanted to continue to contract with the 34 retired officers presently employed until the Department could fill the 281 sworn vacancies, estimated to occur at the end of 1998. In addition, the Department wanted to contract with another 36 positions to work at the station desks to permit the assignment of the active sworn officers to field duties. The contracts would be phased out in increments as vacancies were filled. The Department offered to meet and confer with the SHOPO representatives.

At the hearing, John Souza, SHOPO Oahu Chapter Chairman, testified that SHOPO requested negotiations over the issue of contract hires and the Employer informed the Union that the matter was nonnegotiable. The retired officers do not belong to the Union and Souza believed that hiring the retirees would result in a loss of overtime opportunities for sworn officers and would also impact on promotional opportunities for Unit 12 members. Souza indicated that SHOPO had agreed prior to his term of office, by Memorandum of

Agreement,¹ to permit contract hires to fill desk positions, pending the filling of vacancies. Souza indicated that the retired officers were on 89-day or 90-day contracts and which were renewed or "rolled over" constantly.

The City did not present any witnesses at the hearing.

DISCUSSION

SHOPO contends that the Employer violated Chapter 89, HRS, by hiring retired police officers on contract and thereby privatizing Unit 12 work without negotiation.

The Employer contends that the issue is not ripe for determination since the Department has not yet implemented any plan.² In addition, the Employer contends that there is a shortage of police officers which creates a danger to the public's health and safety and that SHOPO previously agreed to utilize retired officers to fill the shortfall.

¹At the close of the hearing held on November 20, 1996, the Board left the record of the proceedings open for SHOPO to submit the Memorandum of Agreement referenced by the parties. SHOPO did not submit the Memorandum of Agreement but another Memorandum of Understanding was submitted by the Employer with his Position Statement on September 5, 1997. The Memorandum of Understanding, between SHOPO and the City and County of Honolulu, dated March 14, 1997, states that the Employer has hired on a contract basis, 37 retired police officers to perform Unit 12 work although SHOPO disputes the negotiability of the subject matter. The parties agreed to maintain the 37 position until December 31, 1997.

²With regard to the issue of ripeness, the Supreme Court in Univ. of Hawaii Prof. Assem. v. Tomasu, 79 Haw. 154, 900 P.2d 161 (1995), discussed when the duty to bargain arises and held that the union need not wait until the employer attempts an implementation of an apparatus to effectuate the policy. Because implementation could affect bargainable topics in that case, the employer's duty to bargain with the union is triggered by the union's demand. Thus, the issue presented is ripe and the Employer did not have to actually implement its policy before the Union could demand bargaining on the matter.

On July 21, 1997, the Board requested position statements from the parties on the impact of the recent decision by the Hawaii Supreme Court in Konno v. County of Hawaii, et al., 85 Haw. 61, 937 P.2d 397 (1997) (Konno decision), on the instant case.

On August 4, 1997, SHOPO filed a response indicating that under its reading of Konno, this Board should find that the contract hiring of police officers violates the civil service laws. SHOPO contends that the essence of the instant dispute involves the Employer's unilateral assertion of its intent to hire retired police officers to perform duties customarily and traditionally performed by SHOPO members. SHOPO indicates that it is unaware whether the Employer complied with the requirements of the applicable civil service laws by obtaining the required certification of the contracts.

In its position statement, the Employer requests the dismissal of the instant complaint under the Konno decision on the basis that § 89-9(d), HRS, prohibits negotiation over privatized contracts. The Employer contends that the issue in the complaint is whether the Employer is required to negotiate with SHOPO over its hiring practices and that SHOPO's request to invalidate the contracts as being violative of the civil service laws goes far beyond the scope of the complaint as drafted. The Employer thus requests that the Board dismiss the complaint on the basis that the parties are barred from negotiating over a matter that has been deemed to violate civil service laws and the merit principles set forth under the Hawaii Constitution.

In reviewing the record and the position statements submitted by the parties, the Board finds that the Employer is

contracting with retired police officers to perform bargaining unit work. It is not contested that the retired police officers also perform the work of civil servants who are governed by the merit principles under Article XVI, section 1 of the Hawaii Constitution. SHOPO presented evidence that the contract hiring of retired officers impacts upon overtime and promotional opportunities for current bargaining unit members. The evidence also indicates that SHOPO believed that the subject matter was negotiable and the Employer responded that the matter was nonnegotiable and its plan would be implemented if the Union chose not to respond to the Employer. After the instant complaint was filed, the Employer notified SHOPO of the abandonment of its initial plan to contract with 100 retirees and instead proposed to continue contracting with 34 retirees and in addition, contract with an additional 36 retirees.

Based upon the foregoing, the Board finds that this case falls within the parameters of the Konno case. The contracted work at issue here is work customarily and traditionally performed by civil servants and bargaining unit members. There is no evidence in the record of any civil service exemption for the retirees or any other legislative enactment requiring the contracting out in this case. Under Konno, the refusal to bargain charge before the Board is subject to the court's determination on the validity of the instant contracts. The Board is not the proper forum to consider whether the Employer's contracting out of work performed by civil servants violates the merit principles. This issue must first be raised in and determined by the courts. If the instant contracts are determined by the court to not violate the civil

laws and merit principles and are therefore not void as against public policy, the Board will consider whether the Employer violated Chapter 89, HRS, in contracting out the instant bargaining unit work without negotiations.

Accordingly, as the instant case involves the contracting out of work customarily and traditionally performed by civil servants as well as bargaining unit members, the Board dismisses the instant complaint without prejudice.

CONCLUSIONS OF LAW


The Board lacks jurisdiction to consider whether the contracting out of civil service work violates the civil service laws and the merit principles.

ORDER

The Board hereby dismisses the instant complaint without prejudice.

DATED: Honolulu, Hawaii, September 14, 1998.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

Copies sent to:

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