

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. R-03-20
	)	
NATIONAL UNION OF POLICE	)	ORDER NO. 1676
OFFICERS, LOCAL 856,	)	
	)	ORDER DENYING MOTION TO
Petitioner,	)	REOPEN CASE NO. R-03-20 AND
	)	TO AMEND PETITION
and	)	
	)	
BENJAMIN J. CAYETANO, Governor,	)	
State of Hawaii,	)	
	)	
Public Employer,	)	
	)	
and	)	
	)	
HAWAII GOVERNMENT EMPLOYEES	)	
ASSOCIATION, AFSCME, LOCAL 152,	)	
AFL-CIO,	)	
	)	
Exclusive	)	
Representative of	)	
Unit 03,	)	
	)	
and	)	
	)	
STATE OF HAWAII ORGANIZATION	)	
OF POLICE OFFICERS,	)	
	)	
Exclusive	)	
Representative of	)	
Unit 12.	)	

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ORDER DENYING MOTION TO REOPEN  
CASE NO. R-03-20 AND TO AMEND PETITION

On September 16, 1998, the Professional Organization of State Sheriffs Employees (POSSE), by Richard Andrade (Andrade), its principal representative, and principal representative of the NATIONAL UNION OF POLICE OFFICERS, LOCAL 856 (NUPO) filed a motion to reopen Case No. R-03-20, to amend the petition and to set hearing on amended petition with the Hawaii Labor Relations Board

(Board). Andrade moved to amend the petition to replace Petitioner NUPO with the POSSE. Andrade requested the Board to recognize that the petition was withdrawn without prejudice and that the underlying issue has not been otherwise determined or resolved, that no other events have occurred which would otherwise prevent the allowance of the motion, that there would be no undue burden to any party, and that its allowance would be in the interest of justice.

On September 28, 1998, Public Employer BENJAMIN J. CAYETANO, Governor, State of Hawaii (Employer), by and through his counsel, filed a memorandum in opposition to the instant motion to reopen Case No. R-03-20 and to amend petition. The Employer contends that this case should not be reopened because the petition was withdrawn and there is no case presently pending before the Board. In addition, the Employer contends that the POSSE was not a party to the original case and that it has no standing to move to reopen the case. The Employer further contends that the Petitioner seeks to move Unit 03 members with law enforcement power to Unit 12. However, the Board previously determined on March 17, 1972 that Unit 12 was an optional appropriate bargaining unit composed of police officers in the respective counties. The Employer contends that NUPO's predecessor participated in that proceeding and therefore res judicata and collateral estoppel preclude relitigation of that issue. The Employer also contends that the POSSE is not an exclusive representative and thus cannot bring a petition for bargaining unit clarification with the Board. Moreover, the Employer contends that the Petitioner must present a showing of interest of at least 30% of the employees in the claimed

appropriate bargaining unit, Unit 12, and there has been no such showing here.

Also on September 28, 1998, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA), by and through its counsel, filed an objection to the instant motion. The HGEA also contends that the POSSE lacks standing to bring its motion to amend the petition and to set the case for hearing. The HGEA argues while Andrade may be the principal representative of the POSSE as well as the principal representative of NUPO, Andrade cannot merely substitute the parties in Case No. R-03-20. In addition, the HGEA contends that the POSSE has not established any statutory right to relief and has not complied with the requirement for a showing of interest to support the amended petition. The HGEA thus contends that the instant motion should be denied and alternatively, requests to rule on its motion to dismiss previously filed in Case No. R-03-20.

In addition, on September 28, 1998, the STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO), by and through its counsel, filed a memorandum in opposition to the instant motion with the Board. SHOPO opposed the efforts of the POSSE to reopen Case No. R-03-20 to become members of Unit 12. SHOPO contends that the POSSE and Andrade lack standing to reopen the case since neither was a party to the former action. SHOPO also contends that there is no evidence that POSSE is an employee organization. In addition, SHOPO contends that the petition is untimely.

After reviewing the instant motion and the record in this case, the Board hereby denies the instant motion to reopen the record in this case.

On December 16, 1997, NUPO filed a Petition for Determination of Optional Appropriate Bargaining Unit with the Board. NUPO described the appropriate bargaining unit as consisting of any and all law enforcement personnel presently in Unit 03 vested with the authority to make and/or execute a warrant for arrest. NUPO contended that members of the claimed optional appropriate unit have been placed in Unit 03 and more properly belong in Unit 12. Andrade was listed on the petition as the president and principal representative of NUPO.

On February 20, 1998, NUPO filed a withdrawal of its petition without prejudice. On February 24, 1998, the Board approved the withdrawal of the petition in Order No. 1596.

The Board agrees with the Employer's position that this case should not be reopened because the petition was withdrawn and there is no case presently pending before the Board. In this regard, the Board's order approving withdrawal of the petition is a final order which ended the proceedings. Gealon v. Keala, 60 Haw. 513, 591 P.2d 621 (1979); In re Haw. Gov't Employees' Ass'n, 63 Haw. 85, 621 P.2d 361 (1980). In effect, there is no petition before the Board to amend.

In addition, Andrade and the POSSE were not parties to the previous proceeding. Thus, they have no standing before this Board to move to reopen the case and to amend NUPO's petition.

Lastly, the Board notes that § 89-6(a), Hawaii Revised Statutes, provides that Units 09 to 13 are optional appropriate bargaining units and that employees in any of these optional units may vote for separate units or for inclusion in their respective units 01 through 04. Thus, employees in Units 09 to 13 can vote to

move into Units 01 through 04 but the statute does not provide for the transfer of employees included in Unit 03 to Unit 12.

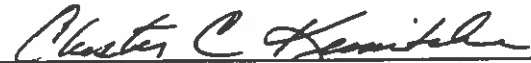
Accordingly, based upon the foregoing, Andrade's motion to reopen Case No. R-03-20 and to amend petition are hereby denied.

DATED: Honolulu, Hawaii, October 6, 1998.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



CHESTER C. KUNITAKE, Board Member

Copies sent to:

Richard Andrade  
James E. Halvorson, Deputy Attorney General  
Peter Liholiho Trask, HGEA  
Debra A. Kagawa, SHOPO  
Joyce Najita, IRC