

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: CE-03-335a
)	CE-13-335b
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	ORDER NO. 1846
AFL-CIO,)	
)	ORDER GRANTING RESPONDENT'S
Complainant,)	MOTION TO DISMISS COMPLAINT
)	
and)	
)	
DEPARTMENT OF HEALTH, CHILD &)	
ADOLESCENT MENTAL HEALTH)	
DIVISION, State of Hawaii,)	
)	
Respondent.)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT

On December 13, 1996, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, LOCAL 152, AFL-CIO (HGEA or Union) filed a prohibited practice complaint against the above-named Respondent with the Hawaii Labor Relations Board (Board). Complainant alleged that the Respondent entered into and later repudiated an agreement to consult over the planned relocation of the Hawaii Family Guidance Center. Complainant also alleged that Respondent failed to provide the Union with relevant information and improperly contracted out bargaining unit work. Thus, Complainant contends that Respondent wilfully violated §§ 89-13(a)(1) through (10), Hawaii Revised Statutes (HRS).

The parties attempted to informally resolve their differences but were unable to settle their dispute.

On October 22, 1999, Respondent, by and through its counsel, filed a motion to dismiss the instant complaint and/or for

summary judgment on the grounds that Complainant failed to exhaust its contractual remedies and that the Complaint was moot. Christina Donkervoet (Donkervoet), Division Chief of the Child and Adolescent Mental Division, Department of Health, State of Hawaii, states in an affidavit attached to the motion that the relocation of the Family Guidance Center staffs to the schools was pursuant to a requirement under a consent decree in conjunction with the Big Island Demonstration Project. Donkervoet states that the Project was terminated on October 31, 1998 and that all of the personnel who were still in the division and who were deployed to the schools during the Project have been reassigned back to the Family Guidance Center with offices in Hilo, Kona, and Waimea, and a satellite office in Ka'u.

Respondent contends that the HGEA filed a grievance on October 31, 1996 challenging the relocation of the Family Guidance Center staff to the schools but has not pursued it since that time and therefore the Board lacks jurisdiction over this complaint. In addition, Respondent contends that the remedies requested by the Union in its complaint are no longer viable and therefore the complaint is moot. In its complaint, the Union requests that the Board order Respondent to cease the reorganization of the Family Guidance Center until consultation is concluded and to extend the leases at the Hilo and Kona offices to facilitate consultation. The Union also expressed concerns about the contracting out of certain work to private providers. Accordingly, Respondent contends that the issues before the Board are moot and requests that the instant complaint be dismissed.

On October 29, 1999, Complainant filed a memorandum opposing Respondent's motion to dismiss the complaint and/or for summary judgment with the Board. Complainant contends that Respondent committed prohibited practices by ignoring its requests to consult over the proposed reorganization of the program as well as its requests for information. Complainant further contends that 21 bargaining unit positions were eliminated by the reorganization. While Complainant concedes that certain aspects of the complaint such as the request for a cease and desist order are moot, Complainant contends that the Board nevertheless has jurisdiction to determine whether Respondent committed a prohibited practice by unilaterally carrying out its reorganization or whether the Board should restore all rights and benefits that were lost by the unlawful implementation of the reorganization.

The Board conducted a hearing on Respondent's motion to dismiss the complaint and/or for summary judgment on November 16, 1999. Based upon the record in this case and the arguments presented, the Board hereby dismisses the instant complaint.

The gravamen of the instant complaint is that the Respondent failed to consult over the reorganization of the Family Guidance Center which Respondent contends was directed by the Monitor for the Felix v. Waihee Consent Decree. The Union also contended that the Respondent failed to provide it with information which was requested and relevant to the consultation. Thus, Complainant requested that the Board issue a cease and desist order to prevent the reorganization of the Center until consultation was concluded, order the extension of the leases at the Hilo and Kona

offices of the Center to permit consultation, order Respondent to provide information for the consultation, and restore any and all rights and benefits lost as a result of the reorganization.

Under the present facts, however, the reorganization complained of was terminated as a pilot project in 1998. Thus, at this stage of the proceedings the case has lost its character as a present, live controversy. Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81, 734 P.2d 161 (1987). In Wong v. Board of Regents, University of Hawaii, 62 Haw. 391, 616 P.2d 201 (1980), the Court dismissed the action on grounds of mootness, stating:

The mootness doctrine is said to encompass the circumstances that destroy the justiciability of a suit previously suitable for determination. Put another way, the suit must remain alive throughout the course of the litigation to the moment of final appellate disposition. Its chief purpose is to assure that the adversary system, once set in operation remains properly fueled. The doctrine seems appropriate where events subsequent to the judgment of the trial court have so affected the relations between the parties that the two conditions for justiciability relevant on appeal - adverse interest and effective remedy - have been compromised.

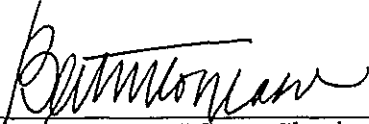
Id., at 394. See also, State v. Rogan, 91 Hawai'i 405, 984 P.2d 1231 (1999); State v. Fukusaku, 85 Hawai'i 462, 946 P.2d 32 (1997); AIG Hawaii Ins. Co. v. Bateman, 82 Hawai'i 453, 923 P.2d 395 (1996); In re Application of J.T. Thomas, 73 Haw. 223, 832 P.2d 253 (1992).

In this case, the Board finds that the conditions of justiciability have been compromised by the termination of the project and the relocation of the staff back to the Center. The Board concludes that the issues are moot as there is no actual

controversy between the parties and there is no meaningful remedy that it could impose in this matter at this stage. Accordingly, the Board hereby dismisses the instant complaint.

DATED: Honolulu, Hawaii, March 30, 2000.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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