

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-01-204
	)	
UNITED PUBLIC WORKERS, AFSCME,	)	ORDER NO. 1855
LOCAL 646, AFL-CIO,	)	
	)	ORDER DISMISSING PROHIB-
Complainant,	)	ITED PRACTICE COMPLAINT
	)	
and	)	
	)	
COUNTY OF HAWAII; STEPHEN K.	)	
YAMASHIRO; DONNA KIYOSAKI;	)	
WILLIAM G. DAVIS; and GEORGE	)	
YOSHIDA,	)	
	)	
Respondents.	)	

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ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

On November 15, 1993, Complainant UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) alleging that Respondents COUNTY OF HAWAII; STEPHEN K. YAMASHIRO (YAMASHIRO), Mayor; DONNA KIYOSAKI (KIYOSAKI), Chief Engineer, Department of Public Works; WILLIAM G. DAVIS (DAVIS), Managing Director; and GEORGE YOSHIDA (YOSHIDA), Director, Department of Parks and Recreation (collectively County or Employer) improperly hired Bradley Silva (Silva) as a Laborer II. UPW also alleged that YAMASHIRO, KIYOSAKI, and DAVIS discriminated against other Unit 01 employees in favor of Silva and Lance Manliguis (Manliguis) thereby violating §§ 89-13(a)(1), (7), and (8), Hawaii Revised Statutes (HRS).

Additionally, the UPW alleged that the Employer violated Unit 01 collective bargaining agreement (contract) provisions in violation of §§ 89-13(a)(1) and (8), HRS. Further, the UPW alleged that YAMASHIRO unlawfully retaliated against the Union by refusing to entertain grievances filed with the County in violation of §§ 89-13(a)(1), (3), (4), and (7), HRS.

On January 7, 1994, the County filed a motion to dismiss the complaint with the Board. The County contended that the instant complaint should be dismissed because there was no valid Unit 01 contract in effect; the dispute was moot since the employees were no longer in the challenged positions; the matter should be deferred to either the Civil Service Commission or the contractual grievance procedure; and the claims involving Silva are collaterally estopped. The Board conducted a hearing on Respondents' motion to dismiss the complaint on January 12, 1994 and denied the motion in Order No. 1090, dated August 11, 1994.

The Board conducted a hearing on the merits of the case on September 6 and 30, 1994. All parties had the opportunity to present evidence and arguments to the Board. At the conclusion of the hearing, the Board set October 28, 1994 as the deadline for the submission of briefs and/or proposed findings of facts and conclusions of law from the parties. The Board thereafter extended the deadline to December 9, 1994.

On November 16, 1994, the UPW filed a Motion to Amend Complaint with the Board. The UPW seeks to add a violation of § 89-13(a)(5), HRS, to Counts "I" and "IV" in paragraphs 25 and 48 of the complaint and a § 89-13(a)(6), HRS, violation to Count "IV"

in paragraph 48. The County filed a memorandum in opposition to the Complainant's motion to amend the complaint on December 1, 1994.

After a thorough review of the record and arguments made in the case, the Board makes the following findings of facts, conclusions of law and order.

FINDINGS OF FACT

The UPW is the exclusive representative, as defined in § 89-2, HRS, of the employees in bargaining unit 01 employed by the County.

STEPHEN K. YAMASHIRO was for all times relevant the Mayor of the County of Hawaii and a public employer as defined by § 89-2, HRS.

DONNA KIYOSAKI was for all times relevant the Chief Engineer of the Department of Public Works, County of Hawaii and the representative of a public employer as defined in § 89-2, HRS.

WILLIAM G. DAVIS was for all times relevant the Managing Director, County of Hawaii and the representative of a public employer as defined in § 89-2, HRS.

GEORGE YOSHIDA was for all times relevant the Director of the Department of Parks and Recreation, County of Hawaii and the representative of a public employer as defined in § 89-2, HRS.

On December 15, 1992, YAMASHIRO imposed a hiring freeze on all vacant positions within the County of Hawaii. Exceptions to the freeze were to be granted: (1) where the non-filling of a position would cause undue hardship, or (2) the position affected the public's health and safety. Pursuant to a memorandum issued on

December 23, 1992, the freeze was extended to all temporary assignments. On January 13, 1993, the UPW filed a class grievance challenging the freeze.

On May 3, 1993, the Employer hired Silva in a limited term Laborer II position in the Department of Parks and Recreation. On May 11, 1993, the UPW filed a grievance challenging Silva's hiring. On June 7, 1993, the Employer notified the UPW that Silva's appointment would be rescinded and the position filled in accordance with the contract. Thereafter, the Employer converted the position to a permanent one.

The Employer also hired Manliguis on an emergency hire basis to fill an automotive mechanic's position in the Department of Public Works. However, Manliguis did not qualify for the position and was given a Laborer's position on a County road crew. Several days later, a complaint was filed with the Civil Service Commission alleging that Manliguis was being paid as a mechanic, i.e., at \$13.17 an hour, even though he performed Laborer duties which was payable at \$9.78 an hour. As a result of the complaint, the Employer offered Manliguis a limited term contract to work as a Landfill Spotter. However, Manliguis quit after the first day on the job and the Employer rescinded the contract. Thereafter, the Employer appointed Manliguis to a temporary position in the Department of Parks and Recreation.

#### DISCUSSION

At the outset, the Board addresses the UPW's motion to amend its complaint which seeks to add violations to the complaint. After reviewing the arguments of the parties on the motion, the

Board denies the UPW's Motion to Amend Complaint. Since the hearings concluded on September 30, 1994 and the UPW filed its motion to amend on November 16, 1994 subsequent to its motion for a second extension of time to file its closing arguments, the Board will not allow the late amendment of the complaint. The Board thus denies Complainant's motion to amend its complaint.

The Board takes notice of the arbitration award issued by Philip S. Uesato on June 7, 1995 in the arbitration between the UPW and the County of Hawaii over the class grievance involving the instant hiring freeze. The Board notes that the contract violations raised in the instant prohibited practice complaint were raised and decided in the arbitration. Arbitrator Uesato found, inter alia, that the County violated § 14.01 of the Unit 01 contract by filling non-entry level positions and § 16 by filling entry and non-entry level positions. The Arbitrator also found that the Employer failed to consult with the Union regarding the freeze and related matters. The Arbitrator further ordered the Employer to make whole those employees who would have qualified for temporary assignments if the improper appointment had not been made.

In Decision No. 22, Hawaii State Teachers Association, 1 HPERB 253 (1972), the Board announced its policy to attempt to foster the peaceful settlement of disputes by deferral of matters concerning contractual interpretation and application to the arbitration process agreed to by the parties. The Board indicated that it would retain jurisdiction for the limited purposes of determining whether the arbitrator's award is within the scope of

his powers, the proceedings were expeditious, lawful and fair, and the award is consistent with Chapter 89, HRS. In Decision No. 377, State of Hawaii Organization of Police Officers (SHOPO), V HLRB 597 (1996), the Board recognized its long-settled policy of deferral to the contractual grievance process and indicated that it reserved the right to decide on a case-by-case basis whether to exercise its jurisdiction over contract violations, especially where there were attendant statutory violations and allegations that the contractual grievances were not being properly processed. Here, an arbitration award was rendered on the contractual violations alleged in this complaint and there are no charges that the award is inconsistent with Chapter 89, HRS. The Board thus defers to the arbitrator's award on the allegations regarding the violations of the contract.

The remaining statutory allegations in the instant complaint involve the Employer's repudiation of the Unit 01 contract and the refusal to entertain grievances filed by the UPW and its members based upon its interpretation that the contract had expired and the contract extensions were not valid. This issue was addressed by the Board in this case in Order No. 1090, dated August 11, 1994 and also in Board Order Nos. 1190, 1225, 1226, 1228, 1236, 1237, 1238, 1242, 1243, 1244, 1245, and 1246.<sup>1</sup>

At this stage of the proceedings there are no remaining issues for determination and the case has lost its character as a

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<sup>1</sup>These Board Orders were appealed to the Third Circuit Court and affirmed in Civil Nos. 95-502, 95-508, 95-509, 95-250, 95-543, 95-549, 95-550, 95-568, 95-575, 95-576, 95-577, and 95-578. The Hawaii Supreme Court affirmed the Third Circuit Court in S. Ct. No. 19954 (judgment entered June 4, 1998).

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).

The Board concludes that the issues are moot as there is no actual controversy between the parties at this stage.

ORDER

The Board hereby dismisses the instant case.

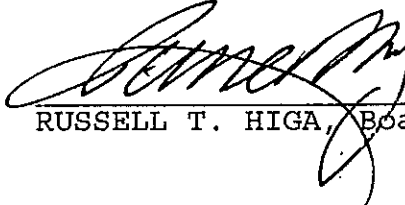
DATED: Honolulu, Hawaii, April 28, 2000.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson

UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and COUNTY OF  
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RUSSELL T. HIGA, Board Member

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