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STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Complainant,

and

BENJAMIN J. CAYETANO, Governor, State
of Hawaii; SEIJI NAYA, Director, Department
of Business Economic Development and
Tourism, State of Hawaii; and SHARYN
MIYASHIRO, Executive Director, Housing and
Community Development Corporation of
Hawaii, State of Hawaii,

Respondents.

CASE NOS.: CE-03-478a
CE-13-478b

ORDER NO. 2048

ORDER GRANTING RESPONDENTS'
MOTION TO DISMISS, OR IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT

ORDER GRANTING RESPONDENTS' MOTION TO
DISMISS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

On October 2, 2001, Respondents BENJAMIN J. CAYETANO, Governor, State of Hawaii; SEIJI NAYA (NAYA), Director, Department of Business, Economic Development, and Tourism (DBEDT), State of Hawaii; and SHARYN MIYASHIRO, Executive Director, Housing and Community Development Corporation of Hawaii (HCDCH), State of Hawaii (collectively Respondents or EMPLOYER) moved to dismiss the above-captioned complaint filed September 17, 2001 by the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA, Complainant, or UNION) with the Hawaii Labor Relations Board (Board).

On October 4, 2001, the UNION filed Complainant's Memorandum in Opposition to Respondent's Motion to Dismiss or in the Alternative for Summary Judgment. At the October 10, 2001 prehearing conference, the Board scheduled oral arguments on Respondent's motion to dismiss and postponed the hearing scheduled for October 25, 2001. On October 19, 2001, Respondents filed a Supplemental Memorandum in Support of Motion to Dismiss or in the Alternative for Summary Judgment filed October 2, 2001.

On October 25, 2001, the Board gave the parties a full and fair opportunity to be heard and considered the memoranda and the arguments presented by the parties, before

rendering this decision to grant Respondents' Motion to Dismiss or in the Alternative for Summary Judgment.

FINDINGS OF FACT

1. The HGEA, at all relevant times, is an employee organization and the certified exclusive representative for public employees of bargaining units (Units) 03 and 13 within the meaning of Hawaii Revised Statutes (HRS) § 89-2.
2. BENJAMIN J. CAYETANO, Governor, State of Hawaii, at all relevant times, is the public employer; NAYA, Director, DBEDT, State of Hawaii and SHARYN MIYASHIRO, Executive Director, HCDCH, State of Hawaii, at all relevant times, are representatives of the public employer, in dealing with certain employees in Units 03 and 13, within the meaning of HRS § 89-2.
3. The HGEA and EMPLOYER, at all relevant times, have been parties to consecutive collective bargaining agreements (Contracts) covering certain Units 03 and 13 employees employed by the EMPLOYER.
4. On September 17, 2001, the HGEA filed a complaint alleging the EMPLOYER was engaging in prohibited practices in violation of HRS §§ 89-13(a)(5), (7), and (8), by failing to consult and negotiate over changes to the status of HCDCH employees with a certain Salary Range (SR) identification thus impacting the receipt of Step Movements in violation of the Units 03 and 13 Contracts.
5. The Unit 03 Contract contains Article 52 - Salaries, and Article 14 - Compensation Adjustments which include Step Movements.
6. The Unit 13 Contract contains Article 50 - Salaries, and Article 14 - Compensation Adjustments which include Step Movements.
7. Prior to June 20, 2001, certain employees employed at HCDCH were entitled to and received Step Movements as provided in the Units 03 and 13 Contracts.
8. On June 26, 2001, NAYA, as the appointing authority, rehired six employees in Unit 03 and 19 employees in Unit 13 at HCDCH, DBEDT, when their temporary assignments ended on June 25, 2001. The personnel actions taken resulted in a change of the Grade/Step category (indicating salary range and step) in the temporary assignment positions to a Grade/Step of "A99" in the permanent positions in which the employees were rehired.

9. On August 13, 2001, the HGEA and HCDCH held a Step 1 meeting, pursuant to the Grievance Procedure in the Units 03 and 13 Contracts, for the class grievance filed on behalf of the affected employees. The class grievance sought to overturn NAYA's rehiring of the employees at the contested grade and step.
10. The HCDCH denied the grievance at Step 1 in a decision HGEA received on or about August 30, 2001.
11. On September 7, 2001, the HGEA pursued the class grievance at Step 2,¹ as provided under the Grievance Procedures in the Units 03 and 13 Contracts.
12. The instant prohibited practice complaint challenging the specific personnel actions taken by NAYA, which allegedly deprived the employees of step movements to which they were entitled under the Units 03 and 13 Contracts, is based upon, and identical to, EMPLOYER's actions which were the subject of the class grievance filed by HGEA and pending at Step 2.
13. On October 12, 2001, the EMPLOYER granted the class grievance at Step 2, and the remedy sought for the affected HCDCH employees in Units 03 and 13.

¹The Step 2 grievance to NAYA, Director, DBEDT, states:

The affected employees received a State of Hawaii Employee Personnel Action(s) Report which converted their exempt positions from a specified Grade/Step of numerical salary range or "Grade" and an alphabetical assignment or "Step" to a Grade/Step of A99. This action became effective June 26, 2001 and removed the affected employees from the assignment to the Units 13 and 3 Collective Bargaining Agreement Salary Schedules. This action denied the Grievant Class rights and privileges authorized by both collective bargaining agreements.

The Union requested the following remedy:

1. Return and convert any and all affected Grievant Class employees from a Grade/Step of A99 to the pre-existing and appropriate Salary Range and Step which grants the employees shredding and step movement along the salary schedule effective June 26, 2001.
2. Assurance that there will not be any acts of retaliation against the Grievant Class for raising this issue.

As a result, the EMPLOYER agreed to “return and convert any and all affected Grievant Class employees from a Grade/Step of A99 to the pre-existing and appropriate Salary Range and Step which grants the employees shredding and step movement along the salary schedule effective June 26, 2001.”

DISCUSSION

The HGEA alleges, inter alia, that prior to, on and after June 20, 2001, Respondents failed to consult and negotiate, as required under HRS § 89-9, over changes in the salary range designation of certain employees employed at HCDCH, that took effect June 26, 2001, which impacted wages by depriving employees of step movements as provided in the respective collective bargaining agreements. The HGEA alleges the EMPLOYER violated HRS § 89-9 and the Units 03 and 13 Contracts thereby committing prohibited practices in wilful violation of HRS §§ 89-13(a)(5), (7), and (8).

On October 2, 2001, the EMPLOYER moved to dismiss the instant complaint on the grounds that: 1) the UNION failed to exhaust administrative remedies; 2) the Board lacked jurisdiction; and 3) the UNION’s complaint was untimely to the extent that allegations covered similar or identical personnel actions taken prior to June 20, 2001 by the EMPLOYER without negotiations and/or consultation.

On October 19, 2001, the EMPLOYER supplemented its Memorandum in Support of Motion to Dismiss or in the Alternative for Summary Judgment, contending the instant complaint be dismissed for mootness based on the EMPLOYER’s granting the Class Grievance at Step 2.

The gravamen of HGEA’s complaint is the EMPLOYER’s change of the salary range designation for certain HCDCH employees that impacted their receipt of salary increases through step movements in accordance with the Units 03 and 13 Contracts. The HGEA contends the EMPLOYER violated the Contracts and implemented the changes without consultation and negotiation. The HGEA brought a class grievance seeking as a remedy a rescission of the specific personnel actions taken and “restor[ing] all rights and benefits of the Unit 03 and 13 employees to the status quo ante.” The record shows the class grievance was resolved at Step 2 when the EMPLOYER granted the remedy requested. As a result, the EMPLOYER submits the instant complaint before the Board is now moot, and should be dismissed. We agree.

A case that previously had been suitable for determination may be rendered non-justiciable by mootness. In re App’n of J.T. Thomas, 73 Haw. 223, 225-26, 832 P.2d 253, 254-55 (1990). The mootness doctrine is properly invoked where “events...have so affected the relations between the parties that the two conditions for justiciability... – adverse interest and effective remedy – have been compromised.” Id. at 226, 832 P.2d at 254-55

(quoting Wong v. Board of Regents, University of Hawaii, 62 Haw. 391, 394, 616 P.2d 201, 203-04 (1980)). The duty of a court is to decide actual controversies by a judgment which can be carried into effect, not to declare principles or rules of law which cannot affect the matter in issue in the case before it. Id. Courts have no jurisdiction to decide abstract propositions or moot cases. Id.

HGEA contends that statutory violations remain under HRS §§ 89-13(a)(5) and (7) because the EMPLOYER allegedly failed to consult and negotiate before making changes to the salary range designation of certain employees. EMPLOYER contends that the grievance procedure is the proper avenue for challenging the specific personnel changes made to the status of HCDCH employees. Furthermore, to require consultation and/or negotiation with the exclusive representative every time the EMPLOYER takes personnel actions impacting an employee's status would lead to an absurd result. We agree.

Because it has been clearly demonstrated that the specific personnel changes made by the EMPLOYER were subject to a grievance procedure and resolved at Step 2 pursuant to the collective bargaining agreements, any dispute as to whether the EMPLOYER was first required to consult and negotiate with HGEA prior to making said changes is also moot. Therefore, we conclude that the two conditions for justiciability – adverse interest and effective remedy – are no longer present.

CONCLUSIONS OF LAW

1. Where the prohibited practice complaint charging a violation of the collective bargaining agreement pursuant to HRS § 89-13(a) is the subject of a grievance procedure and the dispute is resolved at Step 2 by providing substantially the relief sought in the prohibited practice complaint, it renders the prohibited practice complaint moot.
2. We conclude that the two conditions for justiciability – adverse interest and effective remedy – are no longer present because the EMPLOYER granted the HGEA's class grievance at Step 2 and agreed to return and convert any and all affected Grievant Class employees from a Grade/Step of A99 to the pre-existing and appropriate Salary Range and Step which grants the employees shredding and step movements along the salary schedule effective June 26, 2001.


ORDER

For the reasons given above, the Board hereby dismisses the instant prohibited practice complaint.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL- CIO
v. BENJAMIN J. CAYETANO, et al.
CASE NOS.: CE-03-478a, CE-13-478b
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FOR SUMMARY JUDGMENT

DATED: Honolulu, Hawaii, December 12, 2001

HAWAII LABOR RELATIONS BOARD



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CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

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