

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

LEWIS W. POE,

Complainant,

and

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

Respondent.

CASE NO. CU-03-186

ORDER NO. 2050

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS PROHIBITED
PRACTICE COMPLAINT FILED ON
SEPTEMBER 7, 2001

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS
PROHIBITED PRACTICE COMPLAINT FILED ON SEPTEMBER 7, 2001

On November 26, 2001, Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (Respondent, Union, or HGEA) moved to dismiss the above-captioned prohibited practice complaint filed on September 7, 2001 by LEWIS W. POE (Complainant or POE) with the Hawaii Labor Relations Board (Board).

On November 30, 2001, the Board continued oral argument and the evidentiary hearing to December 18, 2001, to allow Complainant additional time to submit a written response to Respondent's motion to dismiss. On December 3, 2001, Complainant filed the Answering Affidavit of Lewis W. Poe.

On December 18, 2001, the Board heard oral arguments on Respondent's motion to dismiss and gave the parties a full and fair opportunity to be heard. Having considered the memorandum, answering affidavit and the arguments presented by the parties, the Board renders this decision to grant Respondent's Motion to Dismiss Prohibited Practice Complaint Filed on September 7, 2001.

FINDINGS OF FACT

1. Complainant POE, at all relevant times, was a public employee, within the meaning of Hawaii Revised Statutes (HRS) § 89-2, and a member of Bargaining Unit (BU) 03.

2. Respondent HGEA, at all relevant times, is an employee organization and the certified exclusive representative, within the meaning of HRS § 89-2, for employees included in BU 03.
3. By letter dated August 19, 2001, addressed to Union officials Russell Okata and Randy Perreira, Complainant asked:

to inspect, peruse, and examine the complete documentation which presently constitutes said 7-1-99 to 6-30-03 CBA [collective bargaining agreement] for BU 03. I'll be happy to come to the Kendall Building to make my inspection, etc. . . . Time is of the essence. Please respond in writing to this request.
4. On September 7, 2001, Complainant filed the instant complaint alleging:

[a]s of today, the HGEA (by and through its agents and/or Mr. Perreira and/or Mr. Okata of the HGEA) has failed to respond to POE's letter, dated 8-19-2001, and has failed to allow access to the requested information/materials on a timely basis, thereby effectively and/or deliberately restraining and/or interfering with Poe's exercising of his right guaranteed under Chapter 89, HRS.
5. On October 10, 2001, at the prehearing conference before the Board, Respondent, by and through its attorney, offered Complainant the opportunity to review the collective bargaining contracts that were not fully executed by the parties but constituted the basis of the BU 03 CBA for the contract period July 1, 1999 through June 30, 2003, as requested by letter dated August 19, 2001. This offer was confirmed in writing in a follow-up letter to Complainant dated October 27, 2001.
6. On November 1, 2001, by letter to Respondent's Field Services Officer Guy Tajiri (Tajiri), Complainant agreed to an inspection of the documents requested at the HGEA office; offered several dates and times; and requested a written reply on or prior to November 6, 2001.
7. On November 3, 2001, Tajiri replied to Complainant by offering to schedule an appointment to inspect the documents on November 12, 2001 at 3:00 p.m. at the HGEA Office.
8. Due to illness, Complainant was unable to inspect the documents as originally scheduled.

9. On December 12, 2001, Complainant inspected the current BU 03 CBA in effect from July 1, 1999 to June 30, 2003 at the HGEA office. Upon inspecting the documents, Complainant was satisfied that it met his request.¹
10. The HGEA agrees and understands that Complainant has a right to inspect the collective bargaining documents as requested in his letter of August 19, 2001.

DISCUSSION

POE's complaint rests solely on the Union's alleged failure to respond to his written request to inspect the collective bargaining agreement for BU 03 currently in effect within a set time frame.² Complainant contends that by failing to timely respond as of the filing of the instant complaint to his request of August 19, 2001, the Union interfered with his rights under HRS Chapter 89 in wilful violation of HRS § 89-13(b)(1).

HGEA contends the complaint is moot based on actions taken to respond to Complainant's August 19, 2001 request. Specifically, at the prehearing conference on October 10, 2001, HGEA made a good faith offer to inspect a copy of the current collective bargaining agreement for BU 03 even though it was not fully executed. A follow-up letter was sent to Complainant. A scheduled date and time was set for Complainant to review the collective bargaining agreement as requested in his letter of August 19, 2001. Although Complainant was unable to make the original appointment due to illness, the Union's offer continued.

On December 12, 2001, Complainant did review and inspect the collective bargaining documents at the Union's office. Complainant was satisfied the review of

¹Complainant is not satisfied that HGEA responded in a timely manner. The instant complaint alleges a violation of HRS § 89-13(b)(1). Complainant does not allege that the Union has breached its duty of fair representation under HRS § 89-13(b)(4).

²HRS § 89-13 states, in part:

- (b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:
 - (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;....

documents met his request. Understandably, Complainant was not satisfied about the length of time it took the Union to respond.³

A case that previously had been suitable for determination may be rendered nonjusticiable by mootness. In re: App'n of J.T. Thomas, 73 Haw. 223, 225-226, 832 P.2d 253, 254-255 (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 254-255 (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 give opinions on moot questions or abstract propositions, or 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 of law or moot cases. Id.

The record shows that the Union provided an effective remedy to Complainant not only by scheduling an actual date and time to inspect the documents requested, but also by doing so in a timely manner after the instant complaint was filed. For example, when Complainant provided dates and times convenient to his schedule and asked for a reply by November 6th, the Union selected a date and time suggested by Complainant and sent a written reply dated November 3rd. The Union also accommodated Complainant when he became ill and was unable to keep the scheduled appointment.

Indeed, had the Union been as responsive and accommodating to Complainant when it first received the August 19, 2001 letter requesting information, then Complainant might not have felt so compelled to bring this prohibited practice charge against the Union. As Complainant put it to the Board, if the Union had responded by phone "we wouldn't be here today."

Based on the record and actions taken by both parties, we conclude the complaint is moot.

³The Union counts nineteen days from August 19, 2001 to September 7, 2001 when the instant complaint was filed. Complainant counts up to October. In any event, the delay, if any, by the Union is immaterial to the HRS § 89-13(b)(1) charge brought by Complainant. While it may be a viable issue under a breach of duty of fair representation charge brought under HRS § 89-13(b)(4), Complainant does not allege a breach of duty by the Union. See, e.g., Bernandine L. Brown, 5 HLRB 16 (1991), where the Board held that a breach of the union's duty of fair representation did, in fact, occur because of the union's all but absolute unresponsiveness to complainant's requests for information regarding her grievance, regardless of the validity of claims raised. See also, Decision No. 430, Richard Hunt, 6 HLRB ____ (12/14/01).

CONCLUSION OF LAW

We conclude that the prohibited practice complaint charging the Union violated HRS § 89-13(b)(1) by failing to respond to a request to inspect the current collective bargaining agreement in a timely manner is moot because the two conditions for justiciability – adverse interest and effective remedy—are no longer present.

ORDER

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

Dated: Honolulu, Hawaii, January 7, 2002.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN R. ACUYA-MARKRICH, Member

Copies sent to:

Peter Liholiho Trask, Esq.
Lewis W. Poe
Joyce Najita, IRC