



to issue a declaratory order because:

- 1) the Board lacks jurisdiction over the City's petition as barred by the 90-day statute of limitations set forth in Hawaii Revised Statutes (HRS) § 377-9(l) and HAR § 12-42-42;
- 2) the City lacks standing as a minority employer in multi-employer collective bargaining agreements;
- 3) the issuance of a declaratory order may adversely affect the interests of the Board in related prohibited practice complaints;<sup>2</sup> and
- 4) the City has failed to show "good cause" for a Board ruling on its petition for declaratory relief.

On December 12, 2001, the City filed a memorandum in opposition to UPW's motion in which it contends that:

- 1) the UPW lacks standing to file a motion to dismiss because as of December 12, 2001, the permission to intervene had not been given by the Board;<sup>3</sup>
- 2) the statute of limitations provision does not apply to petitions for declaratory rulings under HAR § 12-42-9;
- 3) the City is a public employer with standing to seek the petition for declaratory ruling under HAR § 12-42-9(a); and

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(3) The issuance of a declaratory order may adversely affect the interests of the board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.

(4) The matter is not within the jurisdiction of the board.

<sup>2</sup>Case Nos. CE-01-471, CE-10-472, CU-01-181 and CU-10-182 were dismissed as time-barred in Board Order No. 2018. On appeal, the Circuit Court of the First Circuit affirmed Order No. 2018 in Civil No. 01-1-2293-08SSM on November 13, 2001. The City has appealed the Circuit Court's ruling to the Hawaii Supreme Court.

<sup>3</sup>The City's contention that UPW lacks standing is therefore moot and will not be addressed.

- 4) the petition for declaratory ruling will not adversely affect the Board in the appeal pending before the Hawaii Supreme Court. The only issue before the Court is the 90-day statute of limitations barring the prohibited practice complaints filed over the negotiations involving employer contributions into a UPW-sponsored deferred compensation plan.

By Order No. 2049, the Board granted intervenor status pursuant to HAR § 12-42-9(e) and HAR § 12-42-8(g)(14) to UPW, the exclusive representative of bargaining units 01 (BU 01) and 10 (BU 10) and the State of Hawaii (State) and the County of Maui (Maui County), who are public employers within the meaning of HRS § 89-2 and parties to the collective bargaining agreements for BU 01 and BU 10.

On January 14, 2002, the UPW filed a supplemental memorandum in support of its motion to dismiss and the State filed a memorandum in support of UPW's motion to dismiss the City's petition.

Having considered the memoranda and arguments presented, we deny the UPW's motion to dismiss the City's petition.

First, the 90-day statute of limitations applies specifically to filings of prohibited practice complaints under HAR Subchapter 3 (Prohibited Practices Pursuant to Sections 89-13 and 89-14, HRS) of the Board's rules of practice and procedure. The limitations period mimics HRS § 377-9(l).<sup>4</sup> Clearly, the 90-day limitations period does not apply to petitions for declaratory rulings filed with this Board as provided under HAR § 12-42-9 Subchapter 1 (Rules of General Applicability). The Board is not persuaded by the UPW's argument that the 90-day limitations period for prohibited practices should be "borrowed" to bar the City from seeking a declaratory ruling on issues which are neither speculative nor hypothetical.

Second, the City is a public employer within the meaning of HRS § 89-2 and HAR § 12-42-9(a). The City seeks a determination as to the applicability of HRS §§ 89-9(d) and (e) over certain provisions negotiated in the BU 01 and BU 10 contracts. The provisions in question obligate all public employers of BU 01 and BU 10 employees to contribute and transfer funds into a deferred compensation plan to be established and administered by the

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<sup>4</sup>HRS § 377-9(l) made applicable to prohibited practice complaints by HRS § 89-14 provides: "No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence."

UPW. The questions posed<sup>5</sup> by the City involve “existing facts or facts which can reasonably be expected to exist in the near future.” See, HAR § 12-42-9(f)(1).

As a public employer, the City is obligated to make certain contributions and transfer funds under provisions of the BU 01 and BU 10 agreements. As such, the Board is satisfied the City has a concrete interest in a determination as to whether the provisions in question are proper subjects of negotiation and therefore valid. Consequently, we reject the UPW’s contention that the City has no standing to file the instant petition because of its minority status for purposes of negotiating multi-employer agreements under HRS § 89-6. See, HAR §§12-42-9(f)(2).

Third, based on this Board’s familiarity with the prohibited practice complaints resulting in Board Order No. 2018, affirmed on appeal by the Circuit Court of the First Circuit in Civil No. 01-1-2293-08SSM on November 13, 2001 and presently pending before the Hawaii Supreme Court, we are not persuaded by the UPW’s contention that a declaratory order may adversely affect the interests of the Board.

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<sup>5</sup>The Board accepts the City’s statement of the issues regarding HRS § 89-9(d) and (e), but rejects the City’s issue regarding HRS § 88-1 because the Board lacks statutory authority to administer provisions of HRS Chapter 88. HAR §12-42-1 (Scope), limits the Board’s procedure for petitions for declaratory rulings to statutes administered by the Board. Therefore, the questions posed by the City which the Board will consider in its petition for declaratory ruling are:

1. Whether a proposal for public employer contributions to a union-sponsored deferred compensation plan is negotiable under Haw. Rev. Stat. § 89-9(d)?
2. Whether the transfer of funds set aside by previous collective bargaining agreements for the purpose of providing an adult dental plan are excluded from the subjects of negotiations by Haw. Rev. Stat. §§ 89-9(d) and (e), as matters that relate to health benefits (other than contributions)?

The Board will not consider the City’s third issue posed as follows:

Whether public employer contributions to the United Public Workers Deferred Compensation Plan would result in the use of public funds to provide retirement benefits outside the Employees Retirement System of the State of Hawaii, in violation of Haw. Rev. Stat. §§ 88-41?

Finally, the UPW contends that the City has the burden to establish "good cause" in order for this Board to issue a declaratory order. Having failed to do so, UPW argues this Board should refuse to issue an order. We disagree.

For all the reasons stated above, the UPW's motion to dismiss the City's petition for declaratory ruling filed on November 26, 2001 is hereby denied.

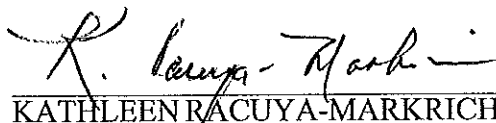
NOTICE IS HEREBY GIVEN THAT all parties to the above-captioned matter have until the close of business on March 18, 2002 to submit a position statement with points and authorities and supporting affidavits, for this Board to consider before issuing a declaratory order.

DATED: Honolulu, Hawaii, February 21, 2002.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
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