

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD.

In the Matter of)
)
GEORGE R. ARIYOSHI, Governor)
of the State of Hawaii,)
)
Petitioner,)
)
and)
)
HAWAII GOVERNMENT EMPLOYEES')
ASSOCIATION, LOCAL 152,)
AFSCME, AFL-CIO; UNITED)
PUBLIC WORKERS, LOCAL 646,)
AFSCME, AFL-CIO; HAWAII)
STATE TEACHERS ASSOCIATION,)
NEA; UNIVERSITY OF HAWAII)
PROFESSIONAL ASSEMBLY, NEA-)
AAUP; FRANK F. FASI, Mayor)
of the City and County of)
Honolulu; HERBERT T.)
MATAYOSHI, Mayor of the)
County of Hawaii; and)
PUBLIC EMPLOYEES MANAGE-)
MENT ASSOCIATION OF HAWAII,)
)
Intervenors.)

Case Nos. DR-03-34
DR-04-34
DR-13-34

Order No. 262

ORDER GRANTING ORAL MOTION TO DISMISS

At the March 19, 1979 hearing in the above-entitled case, the Public Employees Management Association of Hawaii (hereafter PEMAH) made an oral motion to dismiss the petition for a declaratory ruling on the grounds that the Hawaii Public Employment Relations Board (hereafter HPERB or Board) lacked jurisdiction to stay a paragraph in Decision 95* as several

* The paragraph states as follows:

"Henceforth, all changes in unit composition must be brought to the attention of and receive the approval of this Board before they become effective. While stipulations may be used, in appropriate cases, they will be rejected unless accompanied by sworn affidavits setting forth sufficient facts as to the work performed by the occupants of the positions involved, to enable the Board to rule on the desired unit change." p. 53

appeals stemming from the proceedings which resulted in Decision 95 are pending in the Circuit Court and the Supreme Court.

On April 26, 1979, in response to a Board directive, PEMAH filed a written memorandum in support of its motion to dismiss. Memos in opposition to the motion were filed on May 11, 1979 by the Petitioner (hereafter State) and the Hawaii Government Employees' Association (hereafter HGEA).

Without reaching the question of jurisdiction, the Board has determined, for good cause, to dismiss the instant petition for the following reasons.

The State's initial petition for a declaratory ruling was couched in terms of seeking a clarification of Section 89-6, HRS. During the hearings, however, it became abundantly clear from the testimony of the State's witnesses that the State was not in actuality seeking a clarification of the statutory language, but instead was seeking either a reinstatement of the pre-Decision 95 procedure or establishment of a new procedure. See Transcripts, 3/19/79, pp. 41-44, 126-127, 131, 134-136 and 3/27/79, pp. 17, 19-20.

Throughout the hearings, emphasis was placed upon the burden and delay that would result from implementation of the above-quoted paragraph in Decision 95. The State's witness, Diana Kaapu,** stated that the Department of Personnel Services (hereafter DPS) is uncertain as to how to proceed with bargaining unit determinations without the guidance of the pre-Decision 95 procedure (as outlined by

** Diana Kaapu is chief of classification and compensation review division of Department of Personnel Services.

two 1973 advisory letters). Ms. Kaapu repeatedly stressed that the procedure outlined by the subject paragraph in Decision 95 would greatly burden DPS. Tr., 3/19/79, pp. 43, 126, 135.

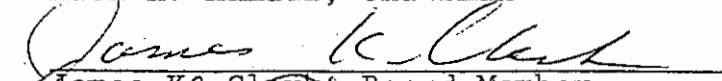
As it appears that the State's objective in the present case is either a return to the pre-Decision 95 procedure or establishment of a new procedure, a declaratory ruling petition requesting clarification of statutory language is not the appropriate procedure.

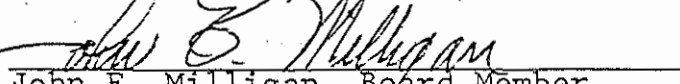
Pursuant to Subsection 89-5(b)(9), HRS, the Board has the authority to promulgate rules and regulations. The hearings in the instant case, the complexity of the responsibility imposed upon DPS to make initial unit determinations, the need for clear procedures concerning unit determinations which minimize unnecessary effort, the large number of people involved, and the inappropriateness of a quasi-judicial proceeding for establishing comprehensive guidelines have convinced the Board of the wisdom of establishing the necessary procedures for processing unit determinations by rules rather than a case by case approach.

In view of the above, the motion to dismiss the petition for a declaratory ruling is hereby granted. The Board will proceed to rule making as soon as practicable.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: June 6, 1979

Honolulu, Hawaii