Order

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

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| In the Matter of<br><br>HAWAII NURSES ASSOCIATION,<br><br>Complainant,<br><br>and<br><br>GEORGE R. ARIYOSHI, Governor of the State of Hawaii, and GEORGE YUEN, Director of Health, State of Hawaii,<br><br>Respondents. | Case No. CE-09-41<br><br>Order No. 271 |

ORDER DISMISSING HAWAII NURSES ASSOCIATION AS COMPLAINANT AND GIVING THE HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION AN OPPORTUNITY TO BE SUBSTITUTED AS COMPLAINANT

In Decision 104 rendered on April 4, 1979, in the above-referenced case this Board ruled, in part, as follows:

> (2) The questions regarding interpretation of the Unit 9 contract be resolved by the parties through the grievance arbitration procedure provided in the Unit 9 contract. The Board shall retain limited jurisdiction for the purpose 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; and
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> (3) The prohibited practice charge alleging violation of Subsection 89-13(8), HRS, be conditionally dismissed, subject to a motion to reopen if the Employer is unwilling to settle this dispute through the grievance arbitration procedure in the Unit 9 contract based on the ground that the time limit for filing a grievance has expired. The Board notes that while there is a time limit for filing a grievance in the Unit 9 contract, it can be waived by the Employer.

On May 24, 1979, the Complainant Hawaii Nurses Association (hereafter HNA) filed a motion to reopen asserting that the Employer disputed the arbitrability of the contractual question on the basis of time limits. A hearing was held on said motion on June 22, 1979. The motion is still pending decision by this Board.

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On July 10, 1979, the HNA lost its status as the exclusive representative of Unit 9; the Hawaii Government Employees' Association (hereafter HGEA) was certified as the exclusive representative of that unit.

In view of the change of exclusive representative, this Board concludes that the HNA no longer has standing to act as the Complainant in this case. Fraternal Order New York State Troopers, Local 1908, AFSCME, AFL-CIO v. State of New York, Director of Employee Relations and the Police Benevolent Association of the New York State Police, Inc., 5 New York PERB 3060 (1972); Modine Mfg. Co. v. Assn. of Machinists, 216 F.2d 326, 35 LRRM 2003 (6th Cir. 1954).

In the New York case, that State's PERB said:

> In dealing with a similar problem under the National Labor Relations Act, the United States Court of Appeals for the Sixth Circuit has also reached a similar result. In Modine Manufacturing Co. v. Association of Machinists, 216 F.2d 326, 329 (1954), the court said:
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> > "The decision that I.A.M. continued to have rights existing under the extended contracts after I.A.M. was repudiated by its members was therefore erroneous. While the employees did not repudiate the substantive provisions of the contract, they did formally declare that they desired to operate through a completely different bargaining agent. . . .
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> > "Under the National Labor Relations Act and the applicable decisions of the Federal courts, the bargaining contract must be administered by a representative of the employees' own choosing. It is an unfair labor practice for an employer to refuse to bargain collectively with the representative of his employees."
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> See also Retail Clerks v. Montgomery Ward, 316 F.2d 754, 757 (7th Circuit, 1963):
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> > "Any right to recognition as a bargaining agent, which the plaintiff unions secured by virtue of their contracts, ceased and became nonoperative on decertification.";
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> Glendale Manufacturing Co. v. ILGWU Local 520, 283 F.2d 936, 940 (4th Circuit, 1960):

> "We conclude that the union cannot exercise a right of representation it no longer possesses and the employer should not be forced to commit an unfair labor practice by dealing with the union as the representative of the employees."

In the instant case, a contractual provision allegedly violated by the public employer requires the employer to consult with the HNA "when formulating and implementing personnel policies, practices and any matter affecting working conditions." The provision also states:

> No changes in wages, hours, or other condition of work contained herein may be made except by mutual consent.

A finding in favor of the HNA relating to the alleged contractual violation would be meaningless because no remedy commanding the employer to consult with the HNA could be legally issued. The employer must deal with the HGEA now, not the HNA.

In view of the foregoing, the Board dismisses the HNA as a Complainant herein and will permit the HGEA, if it chooses to do so, to be substituted for the HNA as Complainant in the instant case.

The HGEA has until 4:30 p.m., Friday, August 3, 1979, in which to notify this Board, in writing, that it elects to become the Complainant in this case. If it fails to so notify the Board, this case will be dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

Mack H. Hamada, Chairman

James K. Clark, Board Member

John E. Milligan, Board Member

Dated: July 11, 1979

Honolulu, Hawaii