

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of  
  
KAEO KAWAA,

Complainant,

and

LYDIA TRINIDAD, Principal, Kualapuu  
Public Conversion Charter School,

Respondent.

CASE NO. CE-05-675

ORDER NO. 2795

ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

In Order No. 2596, dated March 17, 2009, the Hawaii Labor Relations Board (Board) denied Respondent's July 7, 2008 Motion to Dismiss the Complaint. Respondent contended that the matters were untimely; Complainant failed to exhaust contractual remedies; and Complainant failed to state a valid claim for relief. The Board found in Order No. 2596, *inter alia*, that the allegations of events that occurred more than ninety days prior to June 16, 2008 were untimely, except to the extent such allegation required exhaustion of contractual remedies, and exhaustion occurred within ninety days prior to June 16, 2008; that the parties had not submitted a Memorandum of Agreement containing the applicable grievance procedure into evidence; and that there were facts in dispute or not sufficiently demonstrated regarding the failure to exhaust contractual remedies. The Board also denied the dismissal of the instant prohibited practice complaint (Complaint) for failure to state a claim for relief as the Board found that the Complaint contained enough detail to provide fair notice to Respondent of the violations alleged and Respondent had failed to file a Motion for Particularization to obtain a more specific statement of allegations. The Board further scheduled a second prehearing/settlement conference in the matter on April 7, 2009.

At the second prehearing/settlement conference, the Board set April 21, 2009, as the deadline to file dispositive motions; with responses due by April 29, 2009; and scheduled a hearing on any motions on May 6, 2009.

On April 21, 2009, Respondent filed a Motion to Dismiss with the Board. Respondent contended that Complainant had signed a settlement of the grievances on December 17, 2008 and thus the Complaint was moot. Respondent alleged that the

settlement agreement rescinded the placement of Complainant on PEP-T, rescinded the unsatisfactory rating, paid Complainant a \$3,000 hard-to-staff differential, and confirmed Complainant's resignation. Thus, Respondent contended that the dispute underlying the instant Complaint had been resolved through the grievance process. Respondent attached a copy of the Settlement Agreement, as well as a copy of the applicable agreement between the Hawaii State Teachers Association (HSTA) and the Ho'okako'o Corporation, effective July 1, 2007 - June 30, 2009, to her Motion.

On April 30, 2009, Complainant filed a Response to Motion to Dismiss with the Board. Complainant alleged that the Respondent had not complied with the agreement to rescind the unsatisfactory rating and to expunge any and all related documents from the Complainant's personnel file. Complainant also alleged that he resigned to avoid further mistreatment from Respondent and that the Settlement Agreement did not resolve the PEP-T violations.

On May 6, 2009, Respondent filed a Supplement to Motion to Dismiss with the Board. Respondent contended that the Board lacked jurisdiction over the instant Complaint and the Complaint should be dismissed because, *inter alia*, Complainant admitted exhausting the grievance process and settling the grievance; since Complainant resigned, he is no longer a public employee and subject to the Board's jurisdiction; and that Respondent rescinded the unsatisfactory rating and removed related documents from Complainant's file. Respondent also contended that the Board should dismiss the Complaint because the Settlement Agreement provides that any dispute arising from the Settlement Agreement should be resolved through arbitration.

On May 6, 2009, the Board conducted a hearing on the instant motions. At the close of the hearing, the parties indicated that they would attempt to settle the case. The Board took the matter under advisement, in the event the matter was not resolved.

After reviewing the record and the Settlement Agreement submitted in support of Respondent's Motion to Dismiss filed on April 30, 2009, the Board concludes that the Settlement Agreement resolves the underlying grievances filed by the HSTA on Complainant's behalf as well as the issues raised in this Complaint. The Settlement Agreement further provides that the parties agree to submit all disputes which may arise over the terms and conditions in the settlement or over a breach of the grievance settlement to an arbitrator, in accordance with Article V. of the Agreement between the HSTA and the Ho'okako'o Corporation, effective July 1, 2007 and June 30, 2009. Thus, the parties clearly intended that any disputes arising over the compliance with the Settlement Agreement be resolved by an arbitrator.

In Right to Know Committee v. City Council, City and County of Honolulu, 117 Hawai'i 1, 8, 175 P.3d 111, 118 (Hawai'i App., 2007), the Intermediate Court of Appeals discussed mootness and stated:



The Hawai'i Supreme Court has required a case to remain continually viable to avoid mootness:

A case is moot if it has lost its character as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions on abstract propositions of law. The rule is one of the prudential rules of judicial self-governance founded in concern about the proper-and properly limited-role of the courts in a democratic society. We have said the suit must remain alive throughout the course of litigation to the moment of final appellate disposition to escape the mootness bar. Kemp v. State of Hawaii Child Support Enforcement Agency, 111 Hawai'i 367, 385, 141 P.3d 1014, 1032 (2006) (quoting Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81, 87, 734 P.2d 161, 165 (1987)).

The Hawai'i Supreme Court has articulated the mootness doctrine in more concrete terms, stating that [a] case is moot where the question to be determined is abstract and does not rest on existing facts or rights. Thus, the mootness doctrine is properly invoked where "events ... have so affected the relations between the parties that the two conditions for justiciability relevant on appeal-adverse interest and effective remedy-have been compromised.

Carl Corp. v. State, Dept. Of Educ., 93 Hawai'i 155, 164, 997 P.2d 567, 576 (2000) (cite omitted) (quoting In re Application of Thomas, 73 Haw. 223, 226, 832 P.2d 253, 254 (1992) (quoting Wong v. Bd. of Regents, University of Hawai'i, 62 Haw. 391, 394, 616 P.2d 201, 203-04 (1980))). Okada Trucking Co., Ltd. v. Bd. of Water Supply, 99 Hawaii 191, 195-96, 53 P.3d 799, 803-04 (2002).

Accordingly, based upon a review of the record and the arguments raised, the Board concludes that the issues underlying the instant Complaint have been resolved and are moot. The Board hereby dismisses the instant Complaint.

DATED: Honolulu, Hawaii, \_\_\_\_\_ June 13, 2011 \_\_\_\_\_.

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

KAEO KAWAA v. LYDIA TRINIDAD  
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SARAH R. HIRAKAMI, Member

Copies sent to:

Kaao Kawaa  
David Fitzpatrick, Deputy Attorney General