

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS  
ASSOCIATION,

Complainant,

and

GEORGINA K. KAWAMURA, Director,  
Department of Budget and Finance, State of  
Hawaii; RALPH SCHULTZ, Department of  
Budget and Finance, State of Hawaii; LINDA  
LINGLE, Governor, State of Hawaii; BOARD  
OF EDUCATION, Department of Education,  
State of Hawaii; and PATRICIA  
HAMAMOTO, Superintendent,  
Department of Education, State of Hawaii,

Respondents.

CASE NO. CE-05-742

ORDER NO. 2846

ORDER GRANTING RESPONDENTS'  
MOTION TO DISMISS COMPLAINT  
BASED ON MOOTNESS, FILED ON  
JULY 27, 2011, AND DISMISSING  
THE COMPLAINT WITH PREJUDICE

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On December 16, 2009, Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA) filed a Prohibited Practice Complaint with the Hawaii Labor Relations Board (Board). HSTA alleged in its Complaint, *inter alia*, that following ratification of the collective bargaining agreement (CBA) entered into on September 22, 2009, and pursuant to its terms, HSTA submitted in writing to Respondents for execution by both parties as required by Hawaii Revised Statutes (HRS) § 89-10(a), modifications to Appendix XXII regarding VEBA Trust Fund and the provisions of the supplemental agreement for furloughs without layoffs or contracting out; on October 22, 2009, designated representatives of HSTA and Respondents executed and signed the terms of the supplemental agreement for furloughs; on November 3, 2009, HSTA requested Respondents execute and sign the memorandum of agreement containing the modifications to Appendix XXII on VEBA Trust Fund, but Respondents repudiated the terms of the agreement and thereafter declined to make appropriate payments to the VEBA Trust Fund for retirees in accordance with said agreement. Complainant contends that Respondents engaged in prohibited practices by violating HRS §§ 89-9(a), 89-10(a), 89-13(a)(1), (5), (7), and (8).

The Board conducted a prehearing/settlement conference in this matter and rescheduled the hearing on the merits of the Complaint to March 24, 2010 due initially to conflicts in Complainant's counsel's schedule and thereafter, pursuant to the agreement of the parties to afford them additional time to resolve the dispute. See Notice of Rescheduled Hearing on Prohibited Practice Complaint, dated February 18, 2010. By letter dated March 12, 2010, Respondents' counsel was notified by Complainant's counsel that the instant Complaint was resolved. See Respondents' Motion to Dismiss Complaint Based on Mootness, filed on July 27, 2011. No further hearings were scheduled in this matter.

On July 15, 2011, Complainant filed a Motion to Expedite Resolution of Issues Before the Board with the Board. On July 19, 2011, the Board issued a notice scheduling a second prehearing conference on August 1, 2011 and a hearing on the instant Complaint on August 24 - 25, 2011.

On July 27, 2011, Respondents filed a Motion to Dismiss Complaint Based on Mootness (Respondents' Motion to Dismiss) with the Board. At the second prehearing conference held on August 1, 2011, the Board scheduled a hearing on Respondents' Motion to Dismiss on August 9, 2011. On August 2, 2011, HSTA filed a Memorandum in Opposition to Respondents' Motion to Dismiss Filed on July 27, 2011.

On August 9, 2011, the Board conducted a hearing on Respondents' Motion to Dismiss. After hearing arguments on the instant motion, the Board orally granted Respondents' Motion to Dismiss and instructed Respondents' counsel to prepare a proposed order for the Board. On September 20, 2011, Respondents filed a Notice of Submission of Findings of Fact, Conclusions of Law, and Order Granting Respondents' Motion to Dismiss Complaint Based on Mootness and Dismissing with Prejudice the Complaint Filed on July 27, 2011 (sic) (Proposed Order) with the Board.

By letter dated September 27, 2011, Complainant's counsel requested a one-week extension of time (to October 4, 2011) to submit Complainant's objections and response to the Proposed Order.

To date, Complainant's counsel has not filed any objections or response to the Proposed Order with the Board.

Thus, after reviewing Respondents' Proposed Order, the Board adopts the proposed findings of fact and conclusions of law set forth therein and hereby makes the following findings of fact, conclusions of law, and order.

#### FINDINGS OF FACT

1. To the extent that any of these Findings of Fact are better characterized as Conclusions of law, they are to so construed.

2. On or about September 2009, HSTA submitted a proposal to the Employer group containing provisions concerning payment of monies to retirees who transferred from Employer-Union Trust Fund (EUTF) to VEBA Trust Fund in January 2007, specifically for the difference in the premium amounts paid by the retirees for plan year 2010.
3. HSTA and the Employer agreed to revisions in payments made to the retirees, but the parties differed on the effective date of such payment. The Employer's position was that the effective date should be October 2009 to avoid retroactive changes, as it was agreed to for other employees and retirees covered under the memorandum of agreement submitted by HSTA. HSTA's position, however, was that the effective date should be July 1, 2009.
4. On December 16, 2009, HSTA filed a Complaint with the Board. In relevant part, HSTA alleges as follows:

\* \* \*

15. On or about November 3, 2009 and thereafter, respondents willfully breached their duty to bargain in good faith by refusing to sign and execute the memorandum of agreement submitted on September 22, 2009 by HSTA containing the amendments and modifications to Appendix XXII on VEBA Trust Fund, and by repudiating the terms of the September 18, 2009 agreement on VEBA trust fund.
  16. On or after November 3, 2009, respondents have wilfully failed to comply with the agreed upon terms and provisions of the September 18, 2009 agreement by declining to make appropriate payments to the VEBA trust fund for retirees in accordance with said agreement.
5. By letter dated March 10, 2010, Ray Camacho (Camacho), HSTA Deputy Executive Director, informed Herbert Takahashi, Esq., counsel for HSTA, that the "HSTA and the Employer have reached an agreement on the dispute over the effective date of VEBA contributions for retirees who transferred from the EUTF to VEBA beginning on January 1, 2007." According to Camacho, the parties have agreed that the "effective date of the contribution shall be July 1, 2009." The agreement was memorialized in a memorandum of agreement (MOA) for Appendix XVIII, which was attached to Camacho's letter.

6. By letter dated March 12, 2010, Herbert Takahashi, Esq., counsel for HSTA, informed counsel for Respondents that the instant Complaint was resolved by Respondent Marie Laderta, former DHRD Director, and James Williams of HSTA, and that “in accordance with the resolution, the HSTA and the Board of Education signed an agreement memorializing the terms through an amended Appendix XVIII.” HSTA’s counsel stated that “once payment is received by HSTA VEBA, HSTA will file a motion to withdraw the complaint before the HLRB.”
7. Starting in April 2010, detailed billing statements for the affected retirees were submitted by VEBA to the Department of Budget and Finance for review and payment.
8. On May 26, 2010, the State issued a check for \$380,361.67 as payment of the amounts due under paragraph 7 of the MOA representing the difference in the contributions for retirees who transferred from the EUTF to VEBA beginning January 1, 2007, effective July 1, 2009 for plan year 2010.
9. On July 12, 2010, Rod Shino, VEBA representative, confirmed in writing the receipt of the \$380,361.67 payment from the State of Hawaii on May 27, 2010 and the satisfaction of all amounts due for the invoice submitted by HSTA VEBA.
10. On July 27, 2011, Respondents filed a motion to dismiss Complaint based on mootness.

#### CONCLUSIONS OF LAW

1. To the extent that any of these Conclusions of Law are more properly characterized as Findings of Fact, they are to be so construed.
2. “Mootness is an issue of subject matter jurisdiction.” Doe v Doe, 120 Hawaii 149, 164, 202 P.3d 610, 627 (2009). “[I]f a court lacks jurisdiction over the subject matter of a proceeding, any judgment rendered in that proceeding is invalid[.]” Bush v. Hawaiian Homes Comm’n, 76 Haw. 128, 133, 870 P.2d 1272, 1277 (1994). The Hawai’i Supreme Court has articulated the mootness doctrine in more concrete terms:

[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 Hawaii 155, 164, 997 P.2d 567, 576 (2000).

3. Respondents have produced substantial evidence by way of admissions by party representatives that the instant complaint is moot. The letter from the Deputy Director of HSTA dated March 10, 2010, unambiguously stated that HSTA and the Employer have reached an agreement on the dispute over the effective date of VEBA contributions for retirees, as stated in paragraph 7 of the MOA. Similarly, the letter from HSTA counsel to Respondents' counsel, dated March 12, 2010, stated that the instant case was resolved, and the agreement memorialized the terms through an amended Appendix XVIII. Finally, the letter from the VEBA representative confirmed full payment of the disputed amounts. The statements made by HSTA representatives were corroborated by Respondent Ralph Schultz.
4. Once the Board's jurisdiction is placed in issue by Respondents, it is HSTA's burden to show that the Board has jurisdiction. Sheehan v. Grove Farm Co., Inc., 114 Hawai'i 376, 390, 163 P.3d 179, 193 (Hawai'i App., 2005) (The prerequisites to the exercise of jurisdiction . . . are conditions which must be met by the party who seeks the exercise of jurisdiction in his favor).
5. HSTA failed to provide the Board with any evidence to contradict the evidence presented by the Respondents indicating that the instant Complaint had been resolved and is therefore, moot.

#### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board grants Respondents' Motion to Dismiss Complaint, based on mootness, and orders that the instant prohibited practice complaint, shall, and is hereby, dismissed with prejudice.

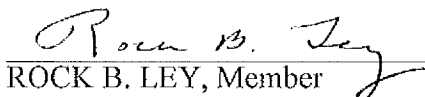
DATED: Honolulu, Hawaii, May 8, 2012.

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

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SESNITA A.D. MOEPONO, Member

  
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ROCK B. LEY, Member

Copies sent to:

Herbert R. Takahashi, Esq.  
Maria C. Cook, Deputy Attorney General