

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)
)
HAWAII GOVERNMENT EMPLOYEES')
ASSOCIATION, LOCAL 152,)
AFSCME, AFL-CIO,)
)
Petitioner,)
)
and)
)
GEORGE R. ARIYOSHI, Governor)
of the State of Hawaii,)
)
Employer,)
)
and)
)
ELSIE OSHITA, et al.,)
)
Intervenors.)

Case Nos. RA-03-11
RA-04-12
RA-13-13

Order No. 287

ORDER DENYING AMENDED MOTION FOR
RECONSIDERATION AND ALTERNATIVE
REQUEST TO STAY PARAGRAPH IN DECISION 95

On February 27, 1979, the Hawaii Government Employees' Association (hereafter HGEA) made a motion to reconsider a paragraph* in Hawaii Public Employment Relations Board (hereafter HPERB or Board) Decision No. 95. The HGEA subsequently amended its motion on June 25, 1979, to include an alternative request to stay the subject paragraph.

*The paragraph is as follows:

"The August 28, 1973 letter is hereby rescinded in its entirety. Henceforth, all changes in unit composition must be brought to the attention and receive the approval of this Board before they may 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

On June 28, 1979, HPERB conducted a hearing on the motion to reconsider and the alternate request to stay the paragraph.

Board Decision No. 95 is currently being appealed on its merits to the Circuit Court in Case No. 56547, filed on December 18, 1978 by Intervenor Public Employees Management Association of Hawaii (hereafter PEMAH). In the Statement of the Case, PEMAH asserted the following:

"26. Arriving at its determination, the Board also set aside a procedure adopted on or about August 28, 1973. On changes in unit composition, the Board announced it would continue to be considered with stipulations used in appropriate cases. The Board noted, 'While stipulations may be used, in the appropriate cases, it will be rejected unless accompanied by sworn affidavits stating for the sufficient facts as to the work performed by the occupants of the positions involved. . . .' Said determination by the Board is erroneous and constitutes arbitrary and capricious action in violation of the rule-making authority under Chapter 91 and in violation of HRS §91-14(g)(1), §91-14(g)(3), §91-14(g)(4), and §91-14(g)(6)."

This assertion clearly refers to the paragraph in question as evidenced by the contents of the assertion and the quote contained therein.

The body of authority maintains that a duly perfected appeal from the decision of an administrative agency divests the agency of jurisdiction as to those matters necessarily involved in the appeal.

"It is the general rule that when an order of an administrative agency is appealed to a court, the agency's power and authority in relation to the matter is suspended as to questions raised by the appeal. . . The court's jurisdiction over the subject matter of an appeal must be complete and not subject to being interfered with or frustrated by concurrent action by the administrative body." Fischback and Moore of Alaska, Inc. v. Lynn, 407 P.2d 174, 176 (1965), after remand, 430 P.2d 909 (1967) and 453 P.2d 478 (1969).

See also, Corpus Juris Secundum, Public Administrative Bodies and Procedure, Vol. 73, §179, pp. 525-526.

PEMAH has filed a notice of appeal, thereby perfecting its appeal. Hence, PEMAH's duly executed appeal divests HPERB of jurisdiction to reconsider the paragraph in Decision No. 95.

As to the HGEA's alternate request to stay the paragraph, HPERB declines, in the exercise of its discretion to grant the requested stay of the paragraph.

Accordingly, the motion to reconsider and request to stay the paragraph in Decision No. 95 are denied.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: September 12, 1979

Honolulu, Hawaii