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Case No. 17-DR-07-112

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

UNIVERSITY OF HAWAII PROFESSIONAL
ASSEMBLY,

Petitioner,

CASE NO. 17-DR-07-112

ORDER NO.: 3310

DISMISSING PETITION FOR
DECLARATORY RULING

DISMISSING PETITION
FOR DECLARATORY RULING

On December 8, 2017 UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (Petitioner) filed a Petition for Declaratory Ruling (Petition) with the Hawai'i Labor Relations Board (Board) requesting, *inter alia*, that the Board answer certain questions with regard to the potential impact of the yet undecided case Janus v. AFSCME, et al., (U.S.S.C. No. 16-1466) (Janus) pending before the United States Supreme Court (U.S. Supreme Court). The Petitioner asserts that a declaratory ruling "is ripe" for consideration by the Board "...because the USSC [U.S. Supreme Court] has granted certiorari in Janus. The decision is predictable, and will occur before June 30, 2018."

Hawaii Administrative Rules (HAR) §12-42-9 (f) provides in relevant part, as follows:

(f) The board may, for good cause, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.

The Board held in its Lewis W. Poe, Board Case No. DR-03-61, Order No. 1468 (5/22/97) of Petitioner, "...Poe's question posed is purely hypothetical and the Board hereby declines to issue declaratory ruling pursuant to HAR § 12-42-9(f)(1)." Further, the Hawaii Supreme Court has recognized the Board's discretion in refusing to issue a declaratory ruling. In Citizens Against Reckless Development v. Zoning Board of Appeals, 114 Hawai'i 184, 159 P.3d 143 (2007), the Hawaii Supreme Court recognized that administrative agencies have discretion in deciding whether to refuse to issue a declaratory ruling. "By empowering agencies generally with the authority to adopt rules regarding the manner in which declaratory ruling petitions shall be considered and disposed of, the legislature has granted agencies discretion with regard to the consideration of declaratory rulings." 114 Hawaii at 194-95, 159 P.3d at 153-54

As creative as the attached memorandum might be, the Board finds that the Petition is both speculative and hypothetical, and not based on existing fact. The provisions of Hawaii Revised Statutes (HRS) Chapter 89, including HRS §§ 89-3.5, 89-4, and 89-8, currently remain in effect and have not been struck down or otherwise invalidated by any court of competent jurisdiction. There is also no reasonable method to accurately predict how the U. S. Supreme Court might rule with respect to any case pending before it, or how such a ruling, if made, would affect an existing state constitution or statute. Further, the Petitioner is not prejudiced by the Board's decision to decline the Petition. Accordingly, the Board hereby declines to issue a declaratory ruling on the subject Petition.

ORDER

For the reasons discussed above, the Board hereby dismisses the instant Petition for Declaratory Ruling.

DATED: Honolulu, Hawaii _____ December 8 _____, 2017.

HAWAII LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A.D. Moepono
SESNITA A.D. MOEPONO, Member



J.N. MUSTO, Member

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