Order

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of TURNER K. PE'A, Complainant, and STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, Respondent.	CASE NO. CU-12-59 ORDER NO. 713 ORDER CONSOLIDATING CASES FOR DISPOSITION; ORDER GRANTING RESPONDENT'S MOTION TO DISMISS
In the Matter of WILL R. CLUNEY, Complainant, and STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, Respondent.	CASE NO. CU-12-60

ORDER CONSOLIDATING CASES FOR DISPOSITION;
ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On November 17, 1987, TURNER K. PE'A and WILL R. CLUNEY [hereinafter referred to as Complainants] filed with this Board prohibited practice complaints, Case Nos. CU-12-59 and CU-12-60, respectively, against Respondent STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS [hereinafter referred to as SHOPO].

The Complainants allege that SHOPO committed prohibited practices by suspending their union membership and disqualifying them from union office because of alleged misconduct related to

submission of an altered petition for nomination to union office in a recent union election.

On December 7, 1987, SHOPO, by and through its counsel, Herbert R. Takahashi, Esq., filed with the Board a Motion to Dismiss Complaints. On December 8, 1987, counsel for SHOPO filed with the Board a motion to consolidate the two cases.

A hearing on these motions was held on January 26, 1988. As the complaints involved the same factual situation, the Board consolidated the two complaints under Administrative Rules § 12-42-8(g)(13). Complainants appeared pro se at the hearing in these two consolidated cases. The arguments on the motions largely were devoted to the issue of lack of jurisdiction of this Board to adjudicate the charges against SHOPO.

Respondent SHOPO counsel's argument was based upon his supporting memorandum, affidavit of counsel and exhibits attached thereto and oral arguments presented at the hearing.

The question in these cases is whether SHOPO's actions in suspending Complainants' union memberships and precluding them from "voting, holding office, or running for an elected position within the union for the duration of the period in which the suspension is imposed," constitute an "interference, restraint, or coercion" which infringes upon a right guaranteed by Chapter 89, Hawaii Revised Statutes.

Counsel for SHOPO contends on the following succinct argument that:

1. The dispute in question pertains to internal union affairs and no adverse impact on Complainants'

employment are alleged. Therefore, this Board lacks subject matter jurisdiction. Complainants' employer, the Honolulu Police Department is not a party in this action and the Complainants have suffered no wrongful actions in terms of their employment with the City and County of Honolulu.

2. The Complaints arise from internal union affairs which does not have "substantial impact" on an employee's relationship with his employer.

3. In NLRB v. Boeing Co., 412 U.S. 67, at 74, the U. S. Supreme Court held under the federal Act that certain provisions such as imposition by the union of fines not affecting the employer-employee relationship "must be decided upon the basis of the law of contracts, voluntary association, or such other principles of law as may be applied in a forum competent to adjudicate the issue . . . "

4. Restoration of union membership status and for eligibility to serve in union office for Complainants herein, are not remedial actions within the powers of this Board. See, Association of Machinists v. Gonzales, 356 U.S. 617, 42 LRRM 2135 (1958).

5. There is no duty of fair representation (DFR) issue in these cases. The dispute focuses entirely on Complainants' rights under SHOPO's constitution and by-laws. When a union member's dispute has no

bearing on their employment status, the law imposes no duty of fair representation upon the bargaining representative. "A DFR breach occurs only when a union's dealings with the employer, . . . show that the union's conduct toward the member has been arbitrary, discriminatory, or in bad faith." See, Smith v. Local No. 25, Sheet Metal Workers Int. Ass'n., 500 F.2d 741, 750 (1974).

6. Complainants were "assured of union representation under the terms of the collective bargaining agreement" . . . See, November 13, 1987 letters, Respondent's Exhibits C and D.
7. Legislative history confirms that the intent behind Chapter 89, Hawaii Revised Statutes, was to improve employee-employer relations and not to directly govern internal affairs of unions.

The Complainants, on the other hand, maintained that:

1. There is no existing by-law which directly addressed the action taken against Complainants by SHOPO. See, Transcript, p. 29.
2. SHOPO's procedural section involving the suspension was not followed. Id. at p. 29.
3. There was no direct testimony nor factual information warranting Complainants' suspension.
4. The minimum two candidate rule for each office was not followed by SHOPO; therefore, membership was

not fairly represented in the election process. Transcript, p. 30; Complainants' Exhibit 2.

5. Complainants have nowhere else to turn to about their complaints. Therefore, this Board should have jurisdiction in this matter.

Because of the posture in which these cases come before us, the record indicates that Complainants somehow altered the petition for election of a certain office by inserting another name for nomination in the subject union election when the petitions had already been signed. This action by Complainants was not disputed; therefore, the SHOPO Board of Directors determined that this act was misconduct under the terms of the Union's constitution and by-laws--requiring the suspension of membership.

At the outset, the Board believes the line between those matters that are internal union affairs and those that are external may not always be clear. A suspension discretely related to a legitimate union need and reflecting principled motivations under the law is one thing. A suspension that reflects the raw power exercised by a union in its hunger for all-pervasive authority over members is quite another problem.

To the extent that the Board was required to have a hearing and examine into such questions as a union's motivation for imposing the suspensions in these cases, it would be delving into internal union affairs in a manner which we have previously held the Legislature did not intend.

However, the Board was pique to note that SHOPO's Board of Directors presumably acted in the dual capacity of

being prosecutor and judge in these cases. In order to alleviate this kind of potential problem in the future, we strongly recommend that SHOPO institute a system of internal appeal remedies that involves neutrals within its procedures. It is no answer, as a matter of policy, to say that the question of union membership status may be tested in a state-court suit. That envisages a powerful union being sued by a less-powerful member. Individual members, however, are often at the bottom of the totem pole, not rich and unworldly when it comes to litigation. Such a suit is likely to be no contest.

The Board empathizes with the Complainants' problems concerning their membership problems. However, if the Board is faithful to its normal prudential restraints and to the principle of stare decisis, we must address the question of jurisdiction to adjudicate the charges against SHOPO in light of our precedent that we have held involving similar circumstances.

The Board held in Decision No. 30, In the Matter of James Chang, et al., 1 HPERB 339 (1973):

> The Board believes that Chapter 89 does not vest it with jurisdiction to regulate discipline of union members who, while retaining membership in one union, seek to replace it with another. The Board restricts this holding to the facts of this case. There will be instances in which the Board will have jurisdiction over union actions directed at members under conditions not present in this case. For instance, violence by a union to coerce union membership or a change of union membership would be a flagrant violation of Chapter 89 and this Board would not hesitate to take jurisdiction. Also, if a union were to expel a member merely because he filed a prohibited practice charge with the Board against the Union, such action would, in our opinion, require the

Board to assume jurisdiction. These are only examples of instances in which the Board would have jurisdiction; it is by no means an exhaustive listing of other situations in which the Board would have jurisdiction.

The Board regards the relationship between the HGEA and its members as a contractual one. See Association of Machinists v. Gonzales, 356 U.S. 617, 42 LRRM 2135 (1958). The existence and maintenance of a contractual relationship is based upon mutual voluntary action.

The Board finds nothing in Chapter 89 which confers jurisdiction upon it to intrude upon this contractual relationship given the facts of this case.

Id. at 342.

Accordingly, this Board is without jurisdiction to entertain the merits of Complainants' prohibited practice complaints. The Respondent's Motion to Consolidate Cases and Motion to Dismiss are hereby granted. The cases herein are closed.

DATED: Honolulu, Hawaii, October 28, 1988.

HAWAII LABOR RELATIONS BOARD

MACK H. HAMADA, Chairperson

JAMES R. CARRAS, Board Member

GERALD K. MACHIDA, Board Member

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