

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-09-117
)	
HAWAII GOVERNMENT EMPLOYEES)	ORDER NO. 742
ASSOCIATION, AFSCME LOCAL 152,)	
AFL-CIO,)	ORDER GRANTING RESPONDENTS'
)	MOTION TO DISMISS PROHIB-
Complainant,)	ITED PRACTICE COMPLAINT
)	
and)	
)	
JOHN WAIHEE, Governor of the)	
State of Hawaii and DEPARTMENT)	
OF HEALTH, State of Hawaii,)	
)	
Respondents.)	

ORDER GRANTING RESPONDENTS' MOTION
TO DISMISS PROHIBITED PRACTICE COMPLAINT

On May 23, 1988, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO [hereinafter referred to as HGEA or Union] filed a prohibited practice complaint with this Board. Complainant HGEA alleges that Respondent JOHN WAIHEE, Governor of the State of Hawaii and the DEPARTMENT OF HEALTH, State of Hawaii, have committed prohibited practices by unilaterally instituting changes in major personnel policies relating to the working conditions of registered professional nurses at Kohala Hospital without consultation with the Union.

On July 6, 1989, Respondents above-named filed Respondents' Motion to Dismiss Prohibited Practice Complaint accompanied by the affidavit of their counsel, Deputy Attorney

General Francis Paul Keeno. Respondents contend that the issues underlying the instant complaint have been settled through the collective bargaining grievance procedure and the issues are now moot. The HGEA did not file written arguments in response to Respondents' motion.

At the hearing held on the instant motion on August 10, 1989, Respondents produced a letter, dated July 25, 1988, under the signature of Jerry Walker, Deputy Director for Hospitals, Department of Health, addressed to Ralph Boyea, HGEA Business Agent and the representative of the HGEA in this case. The letter indicates that it is a Step One response to a grievance filed by the HGEA pertaining to Emergency Room operations at Kohala Hospital. The letter indicates the grievance alleged a change was made in the manner in which the physicians were required to respond to telephone calls from the Emergency Room nurses which should have been subject to consultation with the Union and that the new procedures placed an inappropriate liability on those nurses. Walker's letter indicates that an investigation was conducted and the Department concurred that the particular action was subject to consultation and should have been brought to the attention of the Union before the procedure was implemented. Hence, the "new" policy was apparently rescinded. Further, the letter indicates that the Emergency Room physicians are currently required to report to the Emergency Room each time a patient

presents himself or herself to the Emergency Room. In addition, the letter indicates that an advisory had been issued to all County/State hospitals to remind all staff that the dispensing of medication must be accomplished by a pharmacist or a physician. Hence, Respondents contend that the underlying issues of this prohibited practice complaint were addressed and satisfactorily settled in that Step One response and no further action was taken by the HGEA to appeal the grievance to a higher level.

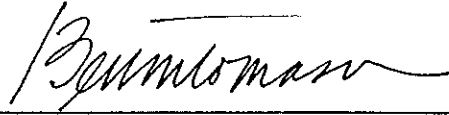
The Board concludes that the subject prohibited practice complaint has been rendered moot by the settlement of the grievance at Kohala Hospital. Allegations of past or potential reoccurrences of similar problems at other hospitals are not sufficient grounds for further proceedings on the instant complaint. By Boyea's statements, the alleged controversy is not presently occurring at Kohala or Honokaa Hospital. Where there is no actionable controversy existing between the parties, the case may be deemed moot and is subject to dismissal. SHOPO and Sanderson and Anderson, 3 HPERB 111 (1982), at 113.

While recognizing that no current controversy exists such as would sustain the instant prohibited practice complaint, the Board is concerned with HGEA's representations that the Employer has been inconsistent in adhering to the terms of Walker's letter at different work sites. If such lack of uniformity and consistency in policy continues to occur, the Board recognizes the potential basis for finding prohibited practices based upon wilful misconduct.

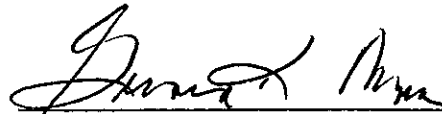
However, as stated above, the Board finds the issues underlying this complaint are moot and as such, the complaint is dismissed without prejudice.

DATED: Honolulu, Hawaii, August 28, 1989.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



GERALD K. MACHIDA, Board Member



RUSSELL T. HIGA, Board Member

Copies sent to:

Francis Paul Keeno, Deputy Attorney General
Ralph C. Boyea, HGEA
Joyce Najita, IRC