

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
STATE OF HAWAII ORGANIZATION)	CASE NO. <u>CE-12-31</u>
OF POLICE OFFICERS (SHOPO),)	
)	
Petitioner,)	ORDER NO. <u>82</u>
)	
and)	
)	
COUNTY OF HAWAII,)	
)	
Respondent,)	
)	
and)	
)	
ARTHUR A. HOKE, JR.,)	
)	
Intervenor.)	
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ORDER DENYING
MOTION FOR RESTRAINING ORDER

The subject prohibited practice charge was filed by petitioner State of Hawaii Organization of Police Officers (hereafter SHOPO) on October 7, 1976. The complaint alleges that respondent County of Hawaii's manner of conducting the Step III grievance hearing of Arthur A. Hoke, Jr., violated Sections 89-13(a)(1) and (8), Hawaii Revised Statutes (hereafter HRS).

On October 15, 1976, a deputy corporation counsel for the County of Hawaii, on behalf of the Police Department of the County of Hawaii, filed a Motion for Restraining Order. The Police Department's Motion for Restraining Order seeks to have the County's Managing Director, John P. Keppeler, restrained from continuing the Hoke grievance hearing pending a decision on the prohibited practice charge. A hearing on this motion was held on October 25, 1976. At the hearing Arthur A. Hoke, Jr.'s motion to intervene in this case was granted orally.

Both the movant and the intervenor have submitted memoranda concerning the Board's issuance of the requested restraining order.

There are two reasons which compel the denial of the motion.

The first involves the standing of the movant Police Department of the County of Hawaii to make, in these proceedings, motions against other entities or officials of the County of Hawaii of which said department is itself a part. It is undisputed by the parties herein that one department of the county government cannot sue another department of the same county. McCoy v. Corbett, 35 H. 743 (1940). In the McCoy case the Hawaii Supreme Court dismissed an action brought by the Parks Board of the City and County of Honolulu to compel the County's controller and auditor to pay for a parks board project, because the board was not authorized by law to sue or be sued. Similarly, in this case, the Police Department of the County of Hawaii is not authorized by law to initiate or to respond to actions as a legal entity separate from the County.

It is the ruling of this Board that the Police Department of the County of Hawaii has no standing to move this Board for a restraining order to compel the Managing Director of the County of Hawaii to halt the Step III grievance hearing. The motion, in effect, amounts to an effort by the County of Hawaii to restrain itself.

The second reason for denial of the motion concerns this Board's authority to issue restraining orders. There is no provision in Chapter 89, HRS, or in Chapter 91, HRS, or in any other statute which empowers the Board to issue restraining orders or grant any other form of injunctive relief. The Board authorized to seek injunctive relief

in circuit court in two instances: (1) for enforcement of Board orders in prohibited practices cases, pursuant to Sections 89-14 and 377-9(e), HRS; and (2) for enforcement of the provisions of Section 89-12, pursuant to Section 89-12(e), HRS. Neither of these procedures would be relevant to the subject motion.

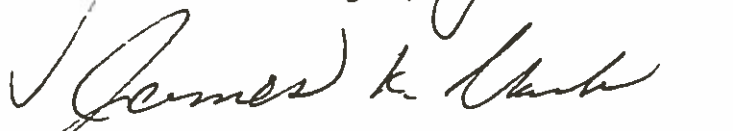
This Board is, therefore, of the opinion that it lacks authority to provide the requested injunctive relief.

Accordingly, the subject motion is denied.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


John E. Milligan, Board Member


James K. Clark, Board Member

Dated: November 15, 1976

Honolulu, Hawaii