

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of )  
JAMES SANDERS, )  
                  ) Complainant, )  
                  ) and )  
UNITED PUBLIC WORKERS, AFSCME, )  
LOCAL 646, AFL-CIO, )  
                  ) Respondent. )

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CASE NO. CU-10-76  
ORDER NO. 867  
ORDER GRANTING RESPONDENTS'  
AMENDED MOTION TO DISMISS

In the Matter of )  
JAMES SANDERS, )  
                  ) Complainant, )  
                  ) and )  
JOHN WAIHEE, Governor, State )  
of Hawaii and DEPARTMENT OF )  
PUBLIC SAFETY, State of Hawaii, )  
                  ) Respondents. )

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CASE NO. CE-10-154

ORDER GRANTING RESPONDENTS' AMENDED MOTION TO DISMISS

On April 5, 1991, Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a Motion to Dismiss with the Hawaii Labor Relations Board (Board). In its motion, UPW argued that the charge filed by Complainant JAMES SANDERS be dismissed for: 1) lack of prosecution, as the Complainant failed to appear at a pre-hearing conference scheduled on April 3, 1991; and 2) mootness, since the entire relief which

Complainant sought by his grievance had been satisfied through the advocacy of UPW.

On April 11, 1991, Respondent UPW filed an Amended Motion to Dismiss with the Board.

A hearing was held on the Respondent's Amended Motion to Dismiss on April 30, 1991. At the hearing, counsel for Respondents JOHN WAIHEE, Governor, State of Hawaii and DEPARTMENT OF PUBLIC SAFETY, State of Hawaii (STATE) orally joined in Respondent UPW's Amended Motion to Dismiss. Transcript (Tr.) p. 6. The STATE also argued that the case should be dismissed on the grounds that Complainant failed to file a particularization of his complaint in accordance with Board Order No. 824, Order Granting the State's Motion for Particularization. The STATE noted that according to Board Order No. 824, the Board indicated that it would dismiss the Complainant's case if the particularization was not timely filed; and in the instant case, no particularization was ever filed. Tr. pp. 6-7.

At the hearing on the Amended Motion to Dismiss, the following facts were stipulated to by the parties:

On February 21, 1990, the STATE issued two restrictions for employment on Complainant. The first prohibited the Complainant from being issued weapons by his employer, the DEPARTMENT OF PUBLIC SAFETY. The second prohibited the Complainant from being assigned to any gun post within the Oahu Community Correctional Center (OCCC).

On April 23, 1990, the UPW filed a grievance challenging the STATE's restrictions on the Complainant.

On May 31, 1990, the Employer denied the grievance at the first step, and the Union filed an appeal to the second step on June 1, 1990.

On February 8, 1991, the STATE sustained the grievance, in part, indicating that the Complainant would no longer be restricted from the gun post assignments, but that he would have to check in for weapons qualifications.

The Complainant objected to the Employer's weapons requalification requirement and rejected the STATE's settlement agreement.

On March 1, 1991, the STATE issued a second step grievance response, clarifying that they would rectify the entire situation by allowing the Complainant to work in a gun post as well as be weapons-qualified.

On April 24, 1991, the Union submitted a letter to the Complainant indicating that the Employer had accepted the grievance.

Respondent UPW, joined by Respondent STATE, argued at the hearing on the Amended Motion to Dismiss that the Complainant received the relief that he sought and that his grievance had been successfully prosecuted by UPW; and on that basis, there is

no live controversy for the Board to consider. Further, Respondents argued that the Complainant failed to state a claim for which there is any remedy, because the relief he sought through his grievance has been obtained.

The Respondents argued that the Employer sustained the grievance and rescinded the gun post and weapons restrictions that it placed on Complainant, thereby making the entire matter moot. Counsel for Respondent UPW cites Kona Old Hawaiian Trails Group v. Lyman, 69 Haw. 81 (1987), where the Hawaii Supreme Court ruled that a case is moot if it has lost its live controversy; something which must exist if courts and government agencies are to avoid having to issue advisory opinions.

The Complainant, who represented himself at the hearing, argued that the "mootness doctrine" does not apply because the dispute between himself and the STATE has not been resolved. The Complainant also maintained that the UPW failed to provide him with fair representation in an efficient and timely manner, and that the UPW should be held accountable for the financial damages he suffered, in the form of lost overtime assignments and possible promotions, as a result of the Union's ineffectiveness in handling this grievance.

Counsel for Respondent UPW argued that the prohibited practice complaint before the Board neither specifies nor makes a claim for relief for overtime and that the Complainant, over the course of the grievance procedure, informed the UPW's business

agent that he would not be making a claim for overtime. Moreover, Respondents argued, the Complainant could have amended his complaint or made more specific provisions to include his claim for overtime had he responded to the Board's order to particularize the complaint.

The Board finds that the Complainant filed a prohibited practice complaint against the STATE on February 12, 1991, in which he alleged that the Employer "engaged in unethical, immoral and unfair actions to preclude my assignment. . .to relieve gun posts and also in regard to overtime vacancies available at the gun posts". Subsequent to the filing of the complaint, the Board issued Order No. 824 granting Respondent STATE's Motion for Particularization of Complaint.

The Board also finds that Board Order No. 824, provided the Complainant with an opportunity to amend and/or clarify the allegations made against the Employer; however, the Complainant failed to respond. At the hearing on the motion, the Complainant stated that he never received any letter informing him of the Board's Order, and for that reason did not respond to Order No. 824. Tr. p. 14.

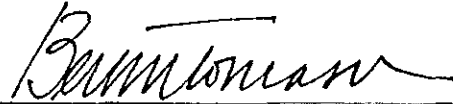
Given the fact that the Complainant failed to respond to Board Order No. 824, for whatever reason, the Board concludes that the only relief sought by the Complainant was the rescission of the Employer's restrictions which prohibited him from being issued any weapons, and restricted him from any gun post assignments within OCCC. The Board also holds that the UPW secured the

relief sought by the Complainant's grievance and that the Employer, by letter dated April 24, 1991, indicated that it would rescind the restrictions placed on the Complainant.


The instant cases are therefore dismissed on the grounds that the Complainant's grievance has been successfully prosecuted by the UPW and properly remedied by the Employer, thereby rendering the complaints moot.

DATED: Honolulu, Hawaii, March 10, 1992.

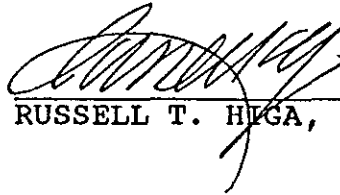
HAWAII LABOR RELATIONS BOARD



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GERALD K. MACHIDA, Board Member



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