

NO. 21838

IN THE SUPREME COURT OF THE STATE OF HAWAII

Civ. No. 97-4960
In the Matter of

UNITED PUBLIC WORKERS, AFSCME LOCAL 646, AFL-CIO
and HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION,
AFSCME, LOCAL 152, AFL-CIO, Complainants-
Appellants/Appellants,

and

HAWAII LABOR RELATIONS BOARD; BERT M. TOMASU,
RUSSELL T. HIGA, and CHESTER C. KUNITAKE,
Appellees/Appellees,

vs.

BENJAMIN J. CAYETANO, GOVERNOR STATE OF HAWAII;
LAWRENCE MIIKE, M.D., DIRECTOR, DEPARTMENT OF
HEALTH, STATE OF HAWAII; and JOHN H. WESTERMAN,
ACTING CEO, HAWAII HEALTH SYSTEMS CORPORATION,
Respondents-Appellees/Appellees.

Civ. No. 97-5033

BENJAMIN J. CAYETANO, GOVERNOR, STATE OF HAWAII;
LAWRENCE MIIKE, M.D., DIRECTOR, DEPARTMENT OF
HEALTH, STATE OF HAWAII; and JOHN H. WESTERMAN,
ACTING CEO, HAWAII HEALTH SYSTEMS CORPORATION,
Appellants/Appellees,

vs.

BERT M. TOMASU, RUSSELL T. HIGA, and CHESTER C.
KUNITAKE, Members of the Hawaii Labor Relations Board,
Appellees/Appellees,

and

*** * * NOT FOR PUBLICATION * * ***

UNITED PUBLIC WORKERS, AFSCME LOCAL 646, AFL-CIO
and HAWAII GOVERNMENT EMPLOYEES' ASSOCIATION,
AFSCME, LOCAL 152, AFL-CIO,
Appellees/Appellants.

APPEAL FROM THE FIRST CIRCUIT COURT
(Civ. Nos. 97-4960 & 97-5033)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, and Nakayama, JJ., and
Circuit Judge Simms, assigned by reason of vacancy;
Acoba, J., concurring in part and dissenting in part)

Plaintiffs-appellants United Public Workers, AFSCME, Local 646, AFL-CIO and Hawai'i Government Employees' Association, AFSCME, Local 152, AFL-CIO [hereinafter, the Unions] appeal from, inter alia, the June 28, 1998 order of the Circuit Court of the First Circuit, the Honorable Kevin C.S. Chang presiding, affirming the November 10, 1997 findings of fact, conclusions of law, and order of the Hawai'i Labor Relations Board (HLRB). The Unions contend that the circuit court erred in affirming the HLRB's decision because: (1) the legislature made privatization of the Hana Medical Center (HMC) contingent upon resolving the status of existing employees; (2) privatization of the HMC was a mandatory subject of collective bargaining; and (3) the relief granted by the HLRB was inadequate. Defendants-appellees Benjamin J. Cayetano, governor of the State of Hawai'i, Dr. Lawrence Miike, director of the department of health, and John H. Westerman, acting CEO of Hawai'i Health Systems Corporation [hereinafter, collectively, Employer] argue, inter alia, that this court lacks jurisdiction over the present appeal.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the issues raised and the arguments presented, we hold that:

*** * * NOT FOR PUBLICATION * * ***

(1) because the HLRB acted within its jurisdiction in interpreting Act 263 to determine the act's effects on Employer's duties under HRS chapter 89, we have jurisdiction over this appeal; (2) based upon the plain language of Act 263, the decision to privatize the HMC was not conditioned upon resolving the status of existing employees; (3) based on this court's decision in State of Hawai'i Organization of Police Officers (SHOPO) v. Society of Professional Journalists -- University of Hawai'i Chapter, 83 Hawai'i 378, 405, 927 P.2d 386, 413 (1996), the decision to privatize the HMC was not a mandatory subject of collective bargaining; and (4) neither HRS chapter 89 nor chapter 377 granted the HLRB jurisdiction over the Hana Community Health Corporation, Inc. Accordingly,

IT IS HEREBY ORDERED that the circuit court's July 28, 1998 judgment affirming the November 10, 1997 findings of fact, conclusions of law and order of the HLRB is affirmed.

DATED: Honolulu, Hawai'i, April 10, 2003.

On the briefs:

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Rebecca L. Covert (of
Takahashi, Masui &
Vasconcellos), for
complainants-appellants/
appellants

Ruth I. Tsujimura,
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for respondents-appellees/
appellees

Valri Lei Kunimoto, for
appellees/appellees