*** * * NOT FOR PUBLICATION * * ***

NO. 21914

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

SUZETTE NAITO; PAMELA SOKEI; MERLE TAKASHIMA; HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO; JUANITO CABREROS; RAYMOND CATANIA; ROZEL EBINGER; VIRGINIA ESTENZO; REBECCA KAPAHU; CORA PASCUAL; and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Plaintiffs-Appellants

vs.

LAWRENCE MIIKE, DIRECTOR, IN HIS OFFICIAL CAPACITY AS DIRECTOR, DEPARTMENT OF HEALTH, STATE OF HAWAI‘I; STATE OF HAWAI‘I, DEPARTMENT OF HEALTH; BENJAMIN CAYETANO, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF HAWAI‘I; HAWAI‘I HEALTH SYSTEMS CORPORATION; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; ROE NON-PROFIT ORGANIZATIONS 1-10; and ROE GOVERNMENTAL ENTITIES 1-10 (97-109), Defendants-Appellees

and

ARC OF KAUAI, Intervenor-Defendant-Appellee

APPEAL FROM THE FIFTH CIRCUIT COURT
(CIV. NO. 97-0264)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Plaintiffs-Appellants Suzette Naito; Pamela Sokei; Merle Takashima; Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO; Juanito Cabreros; Raymond Catania; Rozel Ebinger; Virginia Estenzo; Rebecca Kapahu; Cora Pascual; and United Public Workers, AFSCME, Local 646, AFL-CIO [hereinafter collectively "the Plaintiffs"] appeal from the following: (1) the findings of fact, conclusions of law and order filed on June 17, 1998; (2) the judgment filed on July 13, 1998 in favor of Defendant-Appellees Lawrence Miike, Director, in his official

capacity as Director, Department of Health, State of Hawai‘i; Department of Health, State of Hawai‘i; Benjamin Cayetano, in his official capacity as Governor of the State of Hawai‘i; Hawai‘i Health Systems Corporation; unnamed defendant corporations, partnerships, non-profit organizations, and governmental entities [hereinafter collectively "the State"] and Intervenor-Defendant-Appellee Association for Retarded Citizens of Kaua‘i (ARC); and (3) the September 8, 1998 order clarifying the findings of fact, conclusions of law and order filed June 17, 1998 and denying the Plaintiffs' motion to amend findings of fact, conclusions of law and order filed June 26, 1998 by the Circuit Court of the Fifth Circuit, the Honorable George M. Masuoka presiding. On appeal, the Plaintiffs contend that: (1) under the "nature of the services" test as set forth in Konno v. County of Hawaii, 85 Hawai‘i 61, 937 P.2d 397 (1997), the State could not privatize positions at Hale Hauoli; (2) an implied exemption from the civil service law of the Hale Hauoli positions under Act 189, is contrary to constitutional and statutory standards; (3) Act 189 did not mandate privatization of the services provided at Hale Hauoli as it was intended to apply only to "phase out" Waimano training school and hospital (Waimano); and (4) private contracts to replace civil servants at Hale Hauoli were contrary to public policy.

Upon carefully reviewing the record and the briefs submitted, we hold as follows:

Act 189 mandated privatization of the services provided by Hale Hauoli for persons with developmental disabilities or mental retardation. The plain language of Act 189 clearly states that "all programs and services falling under [chapter 333F] shall be provided in the community." 1995 Haw. Sess. L. Act 189, § 4 at 359 (emphasis added). Because the services provided by Hale Hauoli (day treatment and day activity for a person with a developmental disability or mental retardation) are expressly included in the definition of services in Hawai‘i Revised Statutes (HRS) § 333F-1 (1993), Act 189 applies to Hale Hauoli. Assuming arguendo that the statute was ambiguous, the legislative history also supports applying Act 189 to Hale Hauoli as it shows that the act was intended to apply to all programs and services for persons with developmental disabilities or mental retardation, including services presently provided at Waimano. Sen. Conf. Comm. Rep. No. 375, in 1995 Senate Journal, at 971; Sen. Conf. Comm. Rep. No. 86, in 1995 Senate Journal, at 795. Konno v. County of Hawai‘i, 85 Hawai‘i 61, 937 P.2d 397 (1997) is inapposite to this case. In Konno, the County of Hawai‘i relied on HRS § 46-85 (1993) for authorization to enter into a landfill operation contract with the private sector. Upon examination of the legislative history of HRS § 46-85, we noted that the statute

was enacted as part of a bill intended to help finance the construction of garbage-to-energy plants through the issuance of special purpose revenue bonds. Nothing in the legislative history indicated that the statute was intended to authorize privatization of landfills or to exempt landfill workers from civil service coverage. We thus held that neither of the civil service exemptions relied upon by the County--HRS § 76-77(7) and HRS § 76-77(10)--were applicable. In the present case, Act 189 mandated that the State of Hawai‘i contract with the private sector to provide services for persons with developmental disabilities or mental retardation.

The implied exemption of the Hale Hauoli positions from the civil service law under Act 189 is not contrary to constitutional or statutory standards. Article XVI, § 1 of the Hawai‘i State Constitution provides that civil service positions are defined by law and HRS § 76-16 (1996) of the civil service law lists specific positions which are exempted from the civil service law. HRS § 76-16(17) additionally provides the following exemption: "positions specifically exempted from this part by any other law . . . ." While Act 189 does not expressly state that the Hale Hauoli positions are exempt from the civil service law, the clear legislative intent to privatize the services to be provided to the developmentally disabled or mentally retarded persons and restrict the State from providing direct services, by

implication mandates that the Hale Hauoli positions be eliminated and exempt from the civil service law. To hold otherwise would nullify Act 189 and be contrary to our rule of statutory construction that legislative enactments are presumptively valid and should be interpreted to give them effect. See State v. Spencer, 68 Haw. 622, 624, 725 P.2d 799, 800 (1996). In addition, the legislature has the power to abolish civil service positions, as will now be discussed.

The privatization of services provided by Hale Hauoli is not contrary to public policy. The legislative power to create a civil service position includes the power to abolish the position, particularly where the purpose of the abolishment of such position is that of economy or improvement in the public service. The legislative history of Act 189 shows that the legislature made a policy determination that privatization of services for the developmentally disabled or mentally retarded would improve the public service. Sen. Stand. Comm. Rep. No. 375 in 1995 Senate Journal, at 971; Hse. Stand. Comm. Rep. No. 1233 in 1995 House Journal, at 1499. Such policy determinations are expressly within the constitutional purview of the legislature. See Lee v. Corregedore, 83 Hawai‘i 154, 171, 925 P.2d 324, 341 (1996) (noting that broad public policy determinations are "best left to the branch of government vested with the authority and

fact-finding ability to make such broad public policy decisions, namely the Hawaii legislature"). Therefore,

IT IS HEREBY ORDERED that the circuit court's findings of fact, conclusions of law and order filed on June 17, 1998; judgment filed on July 13, 1998; September 8, 1998 order clarifying the findings of fact, conclusions of law and order filed June 17, 1998, and denying plaintiffs' June 26, 1998 motion to amend findings of fact, conclusions of law and order dated June 17, 1998 are affirmed.

DATED: Honolulu, Hawai'i, January 14, 2004.

On the briefs:

Herbert R. Takahashi, Stanford H. Masui, Danny J. Vasconcellos, and Rebecca L. Covert (Takahashi, Masui & Vasconcellos) for Plaintiffs-Appellants

Ruth I. Tsujimura, Douglas H. Inouye and Kris N. Nakagawa, Deputy Attorneys General, for Defendants-Appellees

Harold Bronstein for Intervenor-Defendant-Appellee