*** **FOR PUBLICATION** ***

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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LINDA LINGLE,[1] Governor, State of Hawai'i,
Petitioner/Appellant-Appellee,

vs.

HAWAI'I GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, Local 152, AFL-CIO; MUFI HANNEMAN, Mayor, City and County of Honolulu; HARRY KIM, Mayor, County of Hawai'i; BRYAN J. BAPTISTE, Mayor, County of Kauai; and ALAN M. ARAKAWA, Mayor, County of Maui, Intervenors/Appellants-Appellees,

vs.

UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO, Intervenor/Appellee-Appellant,

vs.

HAWAI'I LABOR RELATIONS BOARD, Appellee-Appellee.

NO. 24237

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-2134-07 SSM)

MARCH 31, 2005

MOON, C.J., LEVINSON, NAKAYAMA, AND DUFFY, JJ.;
ACOBA, J., CONCURRING SEPARATELY

OPINION OF THE COURT BY MOON, C.J.

Intervenor-appellee-appellant United Public Workers, AFSCME Local 646, AFL-CIO [hereinafter, UPW] appeals from the

[1] Pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c) (2004), Governor Linda Lingle and Mayors Mufi Hanneman, Harry Kim, Bryan Baptiste, and Alan Arakawa were substituted as parties to the instant appeal.

first circuit court's[2] April 25, 2001 final judgment (1) remanding this case to appellee Hawai'i Labor Relations Board (HLRB) for further proceedings regarding its order denying petitioner-appellant-appellee the State of Hawai'i Department of Transportation's (DOT) petition for a declaratory ruling and (2) denying UPW's motion to dismiss intervenor-appellant-appellee Hawai'i Government Employees Association, AFSCME, Local 152, AFL-CIO's [hereinafter, HGEA] July 7, 2000 notice of appeal to the circuit court. On appeal to this court, UPW challenges the circuit court's: (1) determination that it had jurisdiction to review the HLRB's refusal to issue a declaratory ruling pursuant to Hawai'i Revised Statutes (HRS) § 91-14 (1993); (2) allowance of a collateral attack on a court-confirmed arbitration award; and (3) conclusion that the underlying dispute in this case was not moot.

Based on the following, we affirm the April 25, 2001 final judgment.

I. BACKGROUND

A. Factual Background

The dispute in the instant case originated from the DOT's temporary work assignment involving the landscaping crew of the highway maintenance operations in Kāne'ohe and implicates the

[2] The Honorable Sabrina S. McKenna presided over the matter at issue on appeal.

collective bargaining agreements (CBA) of UPW and HGEA.[3] Specifically, on June 17, 1996, the DOT temporarily awarded a vacant Bargaining Unit 2 (BU-02) position in the "Windward Crew" to a BU-02 employee from another baseyard. As a result, UPW -- the collective bargaining agent for Bargaining Unit 1 (BU-01) employees -- filed a grievance against the DOT on behalf of William Kapuwai, a BU-01 truck driver for the DOT and the most senior employee in the Windward Crew. UPW alleged that its CBA [hereinafter, CBA1] required the DOT to award the temporary assignment to Kapuwai.[4] After exhausting all the remedies required by CBA1, UPW submitted notice of its intent to arbitrate the grievance to the DOT.

B. Procedural Background

1. Arbitration Proceedings and Circuit Court Confirmation

On October 8, 1997, arbitration proceedings between UPW and the DOT commenced. HGEA was not a party to the arbitration.

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[3] The collective bargaining agreements for UPW and HGEA define temporary assignments as "the assignment by a competent authority and the assumption, without a formal change in position assignment, of the significant duties and responsibilities of another person[.]"

[4] BU-01 is made up of employees in the State in non-supervisory blue-collar positions. HRS § 89-6(a)(1) (Supp. 1996). Under CBA1, a temporary assignment must be awarded to the most qualified employee in the baseyard who is in the class immediately below that of the temporarily vacant position. CBA1 does not specify whether BU-01 employees may be assigned to non-BU-01 positions.

We note that BU-02 is made up of employees in the State in supervisory blue-collar positions, HRS § 89-6(a)(2) (Supp. 1996), and are represented by HGEA. Unlike CBA1, HGEA's CBA [hereinafter, CBA2] specifically provides that priority for temporarily vacant BU-02 positions must be given to the most senior BU-02 employee in the baseyard or the DOT's Highway Division who is in the class immediately below that of the vacancy. In other words, CBA2 requires that only BU-02 employees can fill temporary BU-02 vacancies.

UPW contended that the DOT violated CBA1 by awarding the temporarily vacant BU-02 position in the Windward Crew to a BU-02 employee from another baseyard. The DOT responded that the right to award temporary assignments was a "management right" under HRS § 89-9(d) (1993)[5] and, therefore, preempted any contradictory provision in CBA1. In other words, the DOT asserted that, even if its award of a BU-02 temporary assignment to a BU-02 employee from another baseyard violated CBA1, it was entitled to do so as of right under HRS § 89-9(d).

On May 11, 1998, the arbitrator issued a final written decision and award in favor of UPW, in which he ruled that the right to issue temporary assignments was not a management right and, therefore, the DOT violated CBA1. On May 15, 1998, UPW moved the circuit court to confirm the arbitration award, which the circuit court, the Honorable Kevin S.C. Chang presiding, granted on July 21, 1998.

2. Proceedings Before the HLRB

While the arbitration proceedings were still in progress, the DOT, on October 20, 1997, submitted a petition to the HLRB for a declaratory ruling [hereinafter, petition] pursuant to HRS § 91-8 (1993)[6] and Hawai'i Administrative Rules

[5] HRS § 89-9(d)(3) provides in pertinent part: "The employer and the exclusive representative shall not agree to any proposal which would . . . interfere with the rights and obligations of a public employer to . . . hire, promote, transfer, assign, and retain employees in positions[.]"

[6] HRS § 91-8 is quoted in section III.A, infra.

(HAR) Rule 12-42-9 (1981)[7] as to whether a ruling by the arbitrator that the DOT must award a BU-01 employee a temporarily vacant BU-02 position would violate the DOT's management rights under HRS § 89-9(d). The DOT alleged that the arbitrator only had jurisdiction to interpret CBA1 and, therefore, a decision by the arbitrator requiring the DOT to award temporary BU-02 assignments to BU-01 employees would require the DOT to knowingly violate the CBA2 provision mandating that BU-02 temporary assignments be awarded to BU-02 employees.

On November 7, 1997, HGEA filed a petition to intervene in the declaratory proceedings, alleging, inter alia, that UPW's attempt to require the DOT to assign BU-02 positions to BU-01 employees infringed upon HGEA's rights as the exclusive bargaining representative of BU-02 employees to "bargain over the promotion and transfer of employees to positions within BU-02" under HRS § 89-8(a) (1993).[8] On November 10, 1997, UPW also filed a petition to intervene on the ground that the proceedings implicated the temporary assignment rights of BU-01 employees under CBA1. Soon thereafter, all counties in the State filed

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[7] HAR Rule 12-42-9 is quoted in section III.A, infra.

[8] HRS § 89-8(a) provides in pertinent part:

> The employee organization which has been certified by the board as representing the majority of employees in an appropriate bargaining unit shall be the exclusive representative of all employees in the unit. As exclusive representative, it shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

petitions to intervene on the ground that their rights to award temporary assignments could be affected by the HLRB's declaratory ruling. The HLRB granted all of the intervenors' motions on December 31, 1997.

On January 21, 1998, UPW filed a memorandum urging the HLRB to refrain from issuing a declaratory ruling, alleging, inter alia, that (1) the HLRB lacked jurisdiction because the dispute was properly submitted to "final and binding" arbitration; (2) the DOT lacked standing to seek relief because its practices and policies were consistent with the proper exercise of "management rights" under HRS § 89-9(d); (3) the proceedings for declaratory relief constituted an impermissible collateral attack on the confirmed arbitration award; and (4) the DOT was collaterally estopped from relitigating the same issues presented in the arbitration proceedings.

On June 7, 2000, the HLRB entered an order denying the petition for a declaratory ruling [hereinafter, HLRB's order] pursuant to HAR Rule 12-42-9(f), in which the HLRB found that "the issues herein are moot as the Arbitration Award has been rendered and confirmed and there is no actual controversy between the parties at this stage." In essence, the HLRB refused to issue a declaratory ruling on the merits.

3. Appeal of the HLRB Decision to the Circuit Court

On July 7, 2000, HGEA filed a notice of appeal to the circuit court, the Honorable Sabrina S. McKenna presiding, from

the HLRB's order. On appeal, HGEA contended, inter alia, that the HLRB's deferral to the arbitration award was improper inasmuch as: (1) the issue of whether temporary assignments was a management right under HRS § 89-9(d) was not moot; and (2) HGEA's rights under HRS §§ 89-8(a) and 89-9(d) as the exclusive bargaining representative of BU-02 employees were violated. Thus, HGEA requested that the circuit court order the HLRB to issue a declaratory ruling on these issues. After reviewing the matter under HRS § 91-14(g)(4) (1993), the court determined that it was an "error of law" for the HLRB to conclude that the dispute was moot "inasmuch as the petition for declaratory ruling, as stated, indicates a recurring problem." As such, the circuit court remanded the case to the HLRB to enter a declaratory ruling.

Final judgment was entered on April 25, 2001. On April 30, 2001, UPW filed its timely notice of appeal to this court.

II. STANDARDS OF REVIEW

A. Jurisdiction

> The existence of jurisdiction is a question of law that we review de novo under the right/wrong standard. Questions regarding subject matter jurisdiction may be raised at any stage of a cause of action. When reviewing a case where the circuit court lacked subject matter jurisdiction, the appellate court retains jurisdiction, not on the merits, but for the purpose of correcting the error in jurisdiction. A judgment rendered by a circuit court without subject matter jurisdiction is void.

Amatiad v. Odum, 90 Hawai'i 152, 158-59, 977 P.2d 160, 166-67 (1999) (citations and quotation marks omitted).

. Statutory Interpretation

> Questions of statutory interpretation are questions of law to be reviewed de novo under the right/wrong standard.
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> Our statutory construction is guided by the following well established principles:
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> > our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.
> >
> > When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. . . .
> >
> > In construing an ambiguous statute, "[t]he meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning. Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool.
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> This court may also consider "[t]he reason and spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning."

Guth v. Freeland, 96 Hawai'i 147, 149-50, 28 P.3d 982, 984-85 (2001) (citations omitted) (ellipses points in original).

C. Review of an Agency Decision

> Review of a decision made by the circuit court upon its review of an agency's decision is a secondary appeal. The standard of review is one in which this court must determine whether the circuit court was right or wrong in its decision, applying the standards set forth in HRS § 91-14(g) [(1993)] to the agency's decision.

HRS § 91-14, entitled "Judicial review of contested cases," provides in relevant part:

> (g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:
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> (1) In violation of constitutional or statutory provisions; or
> (2) In excess of the statutory authority or jurisdiction of the agency; or
> (3) Made upon unlawful procedure; or
> (4) Affected by other error of law; or
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

> (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
>
> [U]nder HRS § 91-14(g), conclusions of law are reviewable under subsections (1), (2) and (4); questions regarding procedural defects under subsection (3); findings of fact under subsection (5); and an agency's exercise of discretion under subsection (6).

Paul's Elec. Serv., Inc. v. Befitel, 104 Hawai'i 412, 416, 91 P.3d 494, 498 (2004) (citations and some quotation marks omitted) (brackets in original).

III. DISCUSSION

On appeal, UPW contends that the circuit court: (1) did not have jurisdiction to review the HLRB's order under HRS § 91-14; (2) improperly allowed a collateral attack on a court-confirmed arbitration award; and (3) erred in concluding that the underlying dispute in this case was not moot.

A. Jurisdiction to Review the HLRB's Order

UPW contends that the circuit court did not have jurisdiction to review the HLRB's order under HRS § 91-14 because the HLRB's order did not result from a contested case. HGEA, on the other hand, maintains that, pursuant to HRS §§ 91-8 and 91-14, a contested case was unnecessary in order to confer jurisdiction upon the circuit court.

The right to appeal is purely statutory and exists only when jurisdiction is given by some constitutional or statutory provision. Burke v. County of Maui, 95 Hawai'i 288, 289, 22 P.3d 84, 85 (2001); Oppenheimer v. AIG Hawai'i Ins. Co., 77 Hawai'i 88, 91, 881 P.2d 1234, 1237 (1994); Chambers v. Leavey, 60 Haw. 52,

57, 587 P.2d 807, 810 (1978). Jurisdiction is conferred upon circuit courts to review administrative decisions by HRS § 91-14, which provides in pertinent part:

> (a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter . . . .

In other words, appellate review of a final administrative decision is available where the decision results from a "contested case." See Pub. Access Shoreline Hawai'i v. Hawai'i County Planning Comm'n, 79 Hawai'i 425, 431, 903 P.2d 1246, 1252 (1995) [hereinafter, PASH].

A contested case is defined in HRS § 91-1(5) (1993) as "a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." In Bush v. Hawaiian Homes Comm'n, 76 Hawai'i 128, 134, 870 P.2d 1272, 1278 (1994), this court held:

> If the statute or rule governing the activity in question does not mandate a hearing[9] prior to the administrative agency's decision-making, the actions of the administrative agency are not "required by law" and do not amount to "a final decision or order in a contested case" from which a direct appeal to circuit court is possible.

(Emphasis in original); see also PASH, 79 Hawai'i at 431, 903 P.2d at 1252. Thus, pursuant to HRS § 91-14, in order for proceedings before an agency to constitute a contested case from

[9] An "agency hearing" is defined as a "hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14." HRS § 91-1(6) (1993).

which an appeal can be maintained, the agency must be required by law to hold a hearing before a decision is rendered. Stated differently, discretionary hearings are not contested cases because they are not required by law. See Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 68, 881 P.2d 1210, 1214 (1994).

In the instant case, the HLRB's order was issued pursuant to HRS § 91-8 and HAR Rule 12-42-9. HRS § 91-8 provides:

> Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

(Emphasis added). HAR Rule 12-42-9 was promulgated pursuant to HRS § 91-8 and states in pertinent part:

> Declaratory rulings by the board.
>
> (a) Any public employee, employee organization, public employer, or interested person or organization may petition the board for a declaratory order as to the applicability of any statutory provision or of any rule or order of the board.
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> . . . .
>
> (f) The board may, for good cause, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the board may so refuse where:
>
> (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future.
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> (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.
>
> (3) The issuance of the declaratory order may adversely affect the interests of the board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.
>
> (4) The matter is not within the jurisdiction of the board.
>
> . . . .

> (h) Hearing:
> (1) Although in the usual course of processing a petition for a declaratory ruling no formal hearing shall be granted to the petitioner, the board may, in its discretion, order such proceeding set down for hearing.
> (2) Any petitioner who desires a hearing on a petition for declaratory ruling shall set forth in detail in a written request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda or legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts.

(Emphases added).

As illustrated above, HRS § 91-8 and HAR Rule 12-42-9 do not require the HLRB to hold a hearing prior to issuing a ruling on a declaratory petition. In fact, HAR Rule 12-42-9(h)(1) specifically provides that a hearing is discretionary. Because there is clearly no statutory mandate or administrative rule entitling the DOT to a hearing, it would appear that the HLRB's order does not result from a contested case.

HGEA, however, contends that the HLRB's order need not result from a contested case and that, read together, HRS §§ 91-8 and 91-14 conferred jurisdiction upon the circuit court. We agree. HRS § 91-8 provides that "[o]rders disposing of petitions [for declaratory rulings] shall have the same status as other agency orders." Inasmuch as the phrase "other agency orders" is not defined anywhere in the Hawai'i Administrative Procedure Act (HAPA), HRS Chapter 91, and is unclear on its face, we look to

extrinsic aids in order to determine what the legislature intended by "other agency orders." See Freeland, 96 Hawai'i at 149-50, 28 P.3d at 984-85 ("When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. . . . In construing an ambiguous statute . . . the courts may resort to extrinsic aids in determining legislative intent.")

One avenue in construing an ambiguous statute is the use of legislative history as an interpretive tool. Id. According to a House Standing Committee Report, a basic purpose of HAPA is to "provide for judicial review of agency decisions and orders on the record, except where the right of trial de novo, including the right of trial by jury, is provided by law." Hse. Stand. Com. Rpt. No. 8, in 1961 House Journal at 655 [hereinafter, House Report]. Additionally, in addressing an agency's refusal to issue a declaratory ruling under HAPA -- such as that in the instant case -- the House report states that, "[s]ince the refusal in itself would be an agency order, in appropriate cases, application for judicial review on the grounds that denial was an abuse of discretion on the part of the agency may be made." Id. at 659. Thus, we believe the legislature intended the phrase "other agency orders" to permit review of petitions for declaratory relief.

Moreover, we note that this court has consistently recognized that circuit courts have jurisdiction, pursuant to HRS

§ 91-14, to review orders disposing of petitions for declaratory rulings. See e.g., Vail v. Employees' Ret. Sys., 75 Haw. 42, 49-51, 856 P.2d 1227, 1232-33 (1993) (entertaining an appeal, brought pursuant to HRS § 91-14, of an HRS § 91-8 declaratory order); Fasi v. State Pub. Employment Relations Bd., 60 Haw. 436, 437-43, 591 P.2d, 113, 114-16 (1979) (noting that the "circuit court acquired jurisdiction [over a declaratory ruling] . . . pursuant to HRS § 91-14"); see also Sierra Club v. Hawai'i Tourism Auth., 100 Hawai'i 242, 264, 59 P.3d 877, 899 (2002) (explaining that HAPA "applies only to judicial review of contested case hearings, see HRS § 91-14, or . . . a declaratory order from an agency regarding the 'applicability of any statutory provision or of any rule or order of the agency,' HRS § 91-8"). Accordingly, we hold that orders disposing of petitions for declaratory rulings under HRS § 91-8 are appealable to the circuit court pursuant to HRS § 91-14. Consequently, the circuit court in the instant case had proper jurisdiction to review the HLRB's order.

B. Collateral Attack and Collateral Estoppel

Although unclear, UPW appears to allege that the circuit court erred in remanding the case to the HLRB because the proceeding for declaratory ruling constituted an impermissible collateral attack and was barred by collateral estoppel.

1. Collateral Attack

A collateral attack "is an attempt to impeach a judgment or decree in a proceeding not instituted for the express purpose of annulling, correcting or modifying such judgment or decree." First Hawaiian Bank v. Weeks, 70 Haw. 392, 398, 772 P.2d 1187, 1191 (1989) (citing Kapi'olani Estate, Ltd. v. Atcherly, 14 Haw. 651, 661 (1903)) (quotation marks omitted). As a general rule, a collateral attack may not be made upon a judgment rendered by a court of competent jurisdiction. Id.; see also In re Genesys Data Tech., Inc., 95 Hawai'i 33, 40, 18 P.3d 895, 902 (2001).

UPW appears to contend that HGEA's pursuit of a declaratory ruling and subsequent appeal of the HLRB's order refusing to issue such a ruling constitute impermissible collateral attacks on a final judgment. In the instant case, the arbitration award became a final judgment under HRS §§ 658-12 and 658-14 (1993)[10] when it was confirmed by the circuit court. However, HGEA filed its petition for intervention in the HLRB proceedings while the arbitration was still ongoing and, thus, well before the arbitration award was rendered or confirmed. As such, the HGEA's petition for intervention and subsequent appeal of the HLRB's order cannot, as UPW contends, be characterized as

[10] HRS Chapter 658 was repealed in its entirety in connection with the enactment of the Uniform Arbitration Act, HRS Chapter 658A, 2001 Haw. Sess. Laws Act 265, § 5, at 820. Although HRS Chapter 658 was repealed, it is applicable to the instant case because the recodified chapter became effective after the arbitration award was confirmed on May 15, 1998. 2001 Haw. Sess. Laws Act 265, § 8, at 820. ("This Act shall take effect on July 1, 2002.").

attempts to "impeach a judgment" because there was no judgment or award to impeach at the time HGEA brought its petition.

2. Collateral Estoppel

UPW appears to argue that HGEA was collaterally estopped from seeking declaratory relief from the HLRB because HGEA was in privity with the DOT, who was a party to the arbitration proceedings. "Collateral estoppel is an aspect of res judicata which precludes the relitigation of a fact or issue which was previously determined in a prior suit on a different claim between the same parties or their privies." Marsland v. Int'l Soc'y for Krishna Consciousness, 66 Haw. 119, 124, 657 P.2d 1035, 1039 (1983) (citation omitted). In order to establish a claim of collateral estoppel, the party asserting the claim has the burden of establishing that:

> (1) [T]he issue decided in the prior adjudication is identical to the one presented in the action in question; (2) there is a final judgment on the merits; (3) the issue decided in the prior adjudication was essential to the final judgment; and (4) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication[.]

See Dorrance v. Lee, 90 Hawai'i 143, 149, 976 P.2d 904, 910 (1999).

As stated above, a party asserting collateral estoppel must satisfy all four elements of the claim. Inasmuch as the fourth element is lacking in the instant case, UPW's claim is without merit. In addressing privity, this court has previously stated that "[p]reclusion is fair in circumstances where the nonparty and party had the same practical opportunity to control

the course of the proceedings." Bush v. Watson, 81 Hawai'i 474, 480, 918 P.2d 1130, 1136 (1996) (citation omitted). "Preclusion may also be appropriate where the party in the previous action was acting in a representative capacity for the current party. However, several important rules limit the extent of preclusion by representation. The most obvious rule is that the representative must have been appointed by a valid procedure." Id. at 481, 918 P.2d at 1137 (citation, brackets and quotation marks omitted).

In the instant case, HGEA's participation in the arbitration proceedings was limited to the testimony of HGEA representatives who were called to testify by UPW. HGEA was not a party in the arbitration and, thus, was not allowed to call its own witnesses or cross-examine witnesses for UPW. As such, it cannot be said that HGEA had the same opportunity as the DOT to control the arbitration proceedings. In addition, although UPW argues that the DOT served as a representative of HGEA, there is no evidence in the record that HGEA appointed the DOT to represent its interests by any valid procedure. Accordingly, because HGEA was not in privity with the DOT, we hold that HGEA was not collaterally estopped from seeking a declaratory ruling from the HLRB.

C. Mootness

UPW contends that the circuit court erred in concluding that the HLRB committed an error of law in ruling that the issues

presented in the petition for a declaratory ruling were rendered moot by the confirmed arbitration award. It is well-established that "[c]ourts [will] not consume time deciding abstract propositions of law or moot cases, and have no jurisdiction to do so." Wong v. Bd. of Regents, Univ. of Hawai'i, 62 Haw. 391, 395, 616 P.2d 201, 204 (1980) (citing Territory v. Aldridge, 35 Haw. 565, 567-68 (1940)).

HGEA, however, contends, inter alia, that, even if the confirmed arbitration award rendered the petition moot, the circuit court properly remanded the case to the HLRB inasmuch as the issues presented in the petition fell within an exception to the mootness doctrine. "[W]e have repeatedly recognized an exception to the mootness doctrine in cases involving questions that affect the public interest and are 'capable of repetition yet evading review.'" Okada Trucking Co. v. Bd. of Water Supply, 99 Hawai'i 191, 196, 53 P.2d 799, 804 (2002) (citations omitted).

In the instant case, it appears that the circuit court remanded this case to the HLRB "inasmuch as the petition for declaratory ruling, as stated, indicates a recurring problem." We read the foregoing as a determination by the circuit court that the issues raised by HGEA involved questions affecting the public interest and presented a problem that was capable of repetition yet evading review. UPW fails to challenge this determination and the record contains evidence indicating that the issues presented by HGEA have arisen in past arbitrations and

are likely to recur in the future. Thus, to the extent that the circuit court's ruling and the record support a determination that the issues presented to the HLRB fell within an exception to the mootness doctrine, we hold that the circuit court did not err in concluding that the HLRB committed an error of law.

IV. CONCLUSION

Based on the foregoing, we affirm the circuit court's April 25, 2001 final judgment.

On the briefs:

Herbert R. Takahashi (of Takahashi, Masui & Vasconcellos), for intervenor/appellee-appellant United Public Workers, AFSCME, Local 636

Charles K. Y. Khim, for intervenor/appellant-appellee Hawai'i Government Employees Association, AFSCME, Local 152, AFL-CIO

Kathleen N. A. Watanabe and Daniel A. Morris, Deputy Attorneys General, for petitioner/appellant-appellee Linda Lingle, Governor, State of Hawai'i, joining in HGEA's first amended answering brief

Paul T. Tsukiyama, Deputy Corporation Counsel, for intervenor/appellant-appellee Mufi Hanneman, Mayor, City and County of Honolulu, joining in HEGA's first amended answering brief