

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of )  
 )  
 JAMES N. ROWLAND, JR., )  
 )  
 Complainant, )  
 )  
 vs )  
 )  
 OPERATING ENGINEERS, LOCAL UNION #3, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 DIRECTOR, DEPT. OF LABOR AND IND. )  
 RELATIONS. )

CASE NO. OSAB 82-10

FILED  
 LIR APPEALS DIV.  
 STATE OF HAWAII  
 83 SEP 30 12:13

DECISION AND ORDER

This Occupational Safety and Health case is before the Board on notice of contest of an Order of the Administrator of the Occupational Safety and Health Decision of the Department of Labor and Industrial Relations denying a complaint of discrimination filed by Complainant JAMES N. ROWLAND, JR.

The threshold issue is whether Complainant has alleged a violation of Section 396-8, Hawaii Revised Statutes, so as to invoke the jurisdiction of this Board pursuant to Section 396-11, Hawaii Revised Statutes.

FINDINGS OF FACT

1. On September 22, 1982 Complainant JAMES N. ROWLAND, JR. wrote to Mr. Gabriel J. Gillotti, Regional Administrator of the Occupational Safety and Health Administration of the United States Department of Labor. In his letter Complainant complained that he had been dismissed as safety representative of the Operating Engineers, Local Union #3 and that he believed his

dismissal was retaliation on the part of management of the union for his activity in assisting certain union members in the pursuit of their federal occupational safety and health claims.

2. On September 28, 1983 Complainant again wrote to Mr. Gillotti complaining of his arbitrary dismissal as safety representative of Operating Engineers Local Union #3. In this letter Complainant indicated that his functions did not include establishing union policy or procedures. Complainant reiterated the contention that his termination was retaliation for his activity in pending federal occupational safety and health cases. Complainant requested that the matter be investigated by the United States Department of Labor.

3. On October 1, 1982 Kenneth Larson the Assistant Regional Administrator of the Occupational Safety and Health Administration of the United States Department of Labor wrote to the Administrator of the Hawaii State Division of Occupational Safety and Health of the Department of Labor and Industrial Relations. In that letter Mr. Larson indicated that pursuant to a federal pilot policy Complainant's complaint was being referred to the State for action.

4. On October 1, 1982 Mr. Larson also wrote to Complainant informing him that the discrimination complaint had been referred to the Division of Occupational Safety and Health of the Hawaii State Department of Labor and Industrial Relations.

5. On October 20, 1982 Complainant wrote to the Administrator of the Division of Occupational Safety

and Health of the Hawaii State Department of Labor and Industrial Relations. Complainant again complained that his dismissal as an employee of Operating Engineers Union #3 resulted from his activity with respect to pending federal occupational safety and health cases.

6. On November 3, 1982 the Administrator of the Division of Occupational Safety and Health informed Complainant that he found no relationship between Complainant's termination and his federal OSHA activity. Complainant contested this determination.

#### CONCLUSIONS OF LAW

The question to be decided herein is whether Complainant ROWLAND's letters dated September 22, 1982, September 28, 1982, and October 20, 1983 taken in a light most favorable to him state a cognizable claim of discrimination in violation of Section 396-8, Hawaii Revised Statutes. We conclude that they do not.

Complainant's letters alleges in substance that he was terminated as safety representative of Operating Engineers Local Union #3 because he assisted certain union members in pursuing occupational safety and health claims against third-party employers. Complainant admits that he makes no allegation that the Operating Engineers Local Union #3 engaged in any violation of Chapter 396, Hawaii Revised Statutes, other than his termination.

Respondent urges that his discharge is nonetheless violative of Section 396-8(e)(1)(D) which provides:

"(e) Discharge or discrimination against employee for exercising rights prohibited.

(1) No person shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:

...

(D) His filing a complaint, having instituted or caused to be instituted any proceeding under or related to this [Chapter], or his intent to testify in any such proceedings, or otherwise acting to exercise rights under this chapter for himself or others."

We believe that Complainant's reading of the foregoing provision is excessively broad. He asks this Board not to decide if any unsafe condition or other violation of Chapter 396, Hawaii Revised Statutes, occurred, but whether his discharge was arbitrary. We do not believe that the State Occupational Safety and Health Act was intended to become a means of redress of termination disputes between a union employer and its employee of where there is no allegation that the employer has failed to provide a safe place of employment or otherwise meet its responsibilities under Section 396-6, Hawaii Revised Statutes.

ORDER

The Order of the Administrator denying Complainant's discrimination complaint is affirmed.

Dated: Honolulu, Hawaii, SEP 30 1983.



E. JOHN MCCONNELL, Chairman



YUKIO TAKEMOTO, Member



EDUARDO E. MALAPIT, Member

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

