

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-03-225
LEWIS W. POE,)	ORDER NO. 1363
)	
Complainant,)	ORDER GRANTING RESPONDENT'S
)	MOTION TO DISMISS
and)	
)	
CALVIN M. TSUDA, Deputy)	
Director, Department of)	
Transportation, State of)	
Hawaii,)	
)	
Respondent.)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On July 5, 1994, Complainant LEWIS W. POE (POE) filed a prohibited practice complaint against Respondent CALVIN M. TSUDA, Deputy Director, Department of Transportation, State of Hawaii (TSUDA or Employer) with the Hawaii Labor Relations Board (Board).

POE alleges that on or about April 17, 1994, Barry Kim (Kim), Oahu District Manager for the Harbors Division, Department of Transportation, State of Hawaii, served letters upon three employees notifying them that they had been selected to fill three positions designated by the Board as essential positions. POE alleges that the Employer's decision not to select him to fill one of the essential positions was based on discrimination and retaliation for filing grievances and complaints against TSUDA and other employer representatives prior to the strike, in violation of § 89-13(a)(4), Hawaii Revised Statutes (HRS).

On September 1, 1994, the Board conducted a hearing on the Employer's motion to dismiss, or in the alternative, motion for summary judgment. All parties had full opportunity to present evidence and argument to the Board. The Board took the motions under advisement. On or about September 16, 1994, POE filed a motion for leave to amend his complaint. By Order No. 1178, dated April 19, 1995, the Board denied the motion.

Based upon a thorough review of the record, the Board makes the following findings and conclusions.

Complainant POE, at all times relevant, was an employee as defined in § 89-2, HRS, and is included in bargaining unit 03. POE is employed as a Tower Operator I with the Department of Transportation, State of Hawaii.

Respondent TSUDA was, at all times relevant, deputy director of the Department of Transportation, Harbors Division, State of Hawaii, and represents the public employer's interests with respect to departmental employees within the Harbors Division. As such, TSUDA is a public employer as defined in § 89-2, HRS.

On or about April 17, 1994, Kim served letters entitled "Notice to Essential Employees" upon Beverly Miller (Miller), Jerry Nakao (Nakao), and Perry Oda (Oda), notifying them that they had been selected by the Employer to fill the three Tower I Operator positions which were designated as essential by the Board.

POE was not selected by the Employer to fill one of the three positions designated by the Board as essential positions.

On April 18, 1994, all employees included in Bargaining Unit 03 who were not selected by the Employer to fill positions

designated by the Board as essential positions, were legally entitled to participate in a statewide strike.

Administrative Rules § 12-42-42, provides, in pertinent part:

(f) Only one complaint shall issue against a party with respect to a single controversy.

Under the foregoing rule, a party cannot file two separate complaints relative to the same controversy. Here, POE filed two prohibited practice complaints arising from essentially the same controversy. In Case No. CE-03-220, POE maintained that TSUDA committed a prohibited practice when he selected POE as an essential worker; in the instant case, POE maintains TSUDA committed a prohibited practice when he failed to select POE. While it appears ludicrous for Complainant to allege that, on the one hand, POE's selection violates §§ 89-3, 13(a)(1) and (7), HRS and, on the other, his non-selection violates § 89-13(a)(4), HRS, applying Administrative Rules § 12-42-42 to the instant case, the Board finds that Complainant's complaint in Case No. CE-03-220 operates as a bar to the allegations raised in the instant case. Both complaints arise from the same controversy surrounding TSUDA's selection of employees to fill essential positions during the strike which occurred in April of 1994. Consequently, the Board is compelled to dismiss the instant case. Therefore, no further discussion of other points of law, as raised in Respondent's motion, need be addressed by the Board.

ORDER

The instant complaint is hereby dismissed.

DATED: Honolulu, Hawaii, September 13, 1996.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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