

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-01-252
)	
MICHAEL L. LAST,)	ORDER NO. 1397
)	
Complainant,)	ORDER DISMISSING PROHIBITED
)	PRACTICE COMPLAINT
and)	
)	
DEPARTMENT OF PUBLIC WORKS,)	
County of Hawaii,)	
)	
Respondent.)	

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

On or about June 5, 1995, Complainant MICHAEL L. LAST (LAST) filed a complaint against the DEPARTMENT OF PUBLIC WORKS, County of Hawaii (County or Employer) with the Hawaii Labor Relations Board (Board).

LAST alleges that the County's refusal to grant him ten (10) hours of authorized leave of absence with pay constituted violations of §§ 1.02, 3.01 and 8.01 of the Unit 01 collective bargaining agreement (contract), thereby violating § 89-13(a)(8), Hawaii Revised Statutes (HRS).

On July 13, 1995, the Board conducted a hearing in Hilo, Hawaii. At the hearing the parties were afforded a full opportunity to present evidence and examine witnesses. Post-hearing briefs were also filed with the Board. Based upon a thorough review of the record, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Complainant LAST was, at all times relevant, employed as an Assistant Wastewater Treatment Plant Operator with the County. Complainant occupies a position which is included in bargaining unit 01, as defined in § 89-6, HRS, but is not a member of the United Public Workers (UPW).

Respondent DEPARTMENT OF PUBLIC WORKS, County of Hawaii, is an agency under Donna Fay Kiyosaki (KIYOSAKI) who acts on behalf of Stephen Yamashiro, Mayor of Hawaii County, in matters dealing with public employees, and is thus a public employer as defined in § 89-2, HRS.

Section 1.02 of the Unit 01 contract provides, in pertinent part:

The Employer and the Union recognizes the right and obligations of the parties to negotiate wages, hours and other terms and conditions of employment and to administer this Agreement on behalf of covered employees, and that such administration shall apply equally to all employees in the bargaining unit without regard to membership or non-membership in the Union.

Section 3.01 of the Unit 01 contract provides, in pertinent part:

The Employer and the Union agree that neither party will discriminate against any employee because of membership or non-membership or lawful activity in the Union or on the basis of race, color, creed, sex, age, handicap, or lawful political activity, except for bona fide occupational or legal requirements.

Section 8.01 of the Unit 01 contract provides, in pertinent part:

The Union may hold informational and educational meetings four times each fiscal

year to be conducted by its duly recognized officers and/or stewards and which shall be open to all employees in the bargaining unit, including members and non-members of the Union. Such meetings shall be held during working hours, and the Employer or his duly designated representatives shall permit its employees not more than two (2) hours off with pay to attend such meetings. The Union shall give written notice to the Employer at least five (5) days prior to the date of the meetings, and the Employer shall approve the date for the meetings provided that they do not unduly interfere with the normal operations of the respective departments. These meetings may include multiple sessions in order to accommodate employees in the bargaining unit. Unless a meeting site is provided by the Union, the Employer shall provide meeting sites as available. In addition to the foregoing meetings, additional meetings may be held by mutual agreement between the Union and the Employer.

Complainant's Exhibit (C's Ex.) 1.

Section 76-102, HRS, provides, in pertinent part:

Meetings. Each department shall permit its employees to attend informational and educational meetings conducted during working hours by duly recognized governmental employee organizations, provided that these meetings shall permit the attendance of members and nonmembers and shall be scheduled for periods of not more than two hours once every three months at times which do not interfere with the normal operations of the respective departments.

By letter dated April 20, 1995, from LAST to KIYOSAKI, LAST requested authorized leave of absence with pay for a period of ten (10) hours. LAST based his claim on the provisions of § 8.01 of the contract and the County's practice of granting authorized leave of absence with pay to bargaining unit 01 employees who attend informational and educational meetings conducted by the UPW during business hours. LAST contends that he continues to perform

his regular duties when these meetings take place, and should be granted the ten-hour leave with pay in lieu of his attendance at these meetings. Respondent's Exhibit (R's Ex.) 2.

By letter dated May 5, 1995, from KIYOSAKI to LAST, KIYOSAKI denied his request, stating that § 76-102, HRS, did not authorize the employer to comply with his request for paid leave in lieu of his attendance at such meetings. R's Ex. 3.

DISCUSSION

Section 76-102, HRS, requires the Employer to permit its employees, both Union members and non-members, to attend informational and educational meetings for periods of up to two (2) hours, once every three (3) months, so long as the specified times do not interfere with operations. Section 8.01 of the contract allows the Union to conduct informational and educational meetings up to four (4) times per year and requires the Employer to give two (2) hours leave with pay to employees in bargaining unit 01, both Union members and non-members alike, for the purpose of attending these meetings.

LAST contends that his non-attendance at these meetings and performance of duties during the two-hour period somehow entitles him to additional leave with pay. The Board finds this argument to be without merit. Both the statute and contractual provision allow non-members, such as Complainant, time-off to attend these meetings. However, if an employee does not attend these meetings, the two-hour leave provision is inapplicable and the employee is required to perform his or her regular duties. LAST's allegations that the conduct of some employees, who sign out

for the meetings and fail to attend while pursuing private business, constitutes abuse and should be investigated is a matter for the Employer to address. However, to use these allegations as a basis to provide additional compensation for an individual who chooses not to attend and continues to perform his or her regular duties is wholly without justification. LAST failed to establish that he is entitled to additional leave with pay pursuant to a statute, rule or contract provision. Therefore, LAST is not entitled to any additional compensation or time-off and the Board concludes that the Employer did not violate § 8.01.

With regard to his contention that §§ 1.02 and 3.01 of the contract were violated because Union members and non-members are treated differently, the leave provision as set forth in § 8.01 of the contract, as well as the Employer's practice of granting leave, makes no distinction in its application to both members and non-members alike. Therefore, the Board finds no violation of §§ 1.02 and 3.01 of the contract.

CONCLUSIONS OF LAW

An Employer who violates the collective bargaining agreement, commits a prohibited practice under § 89-13(a)(8), HRS.

The Employer did not violate the contract and therefore, did not commit a prohibited practice under § 89-13(a)(8), HRS.

ORDER

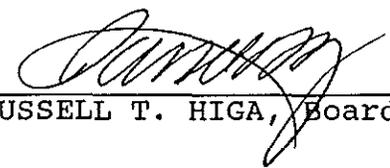
The instant prohibited practice complaint is hereby dismissed.

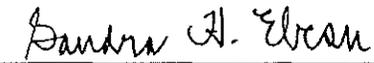
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DATED: Honolulu, Hawaii, January 8, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

Copies sent to:

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