

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-303
BERT J.K. SAM FONG,)	ORDER NO. 1511
Complainant,)	ORDER GRANTING RESPONDENT'S
and)	MOTION TO DISMISS
GEORGE IRANON, Director,)	
Department of Public Safety,)	
State of Hawaii,)	
Respondent.)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

Previously in this case, the Board continued the hearing on Respondent's motion to dismiss the complaint and the prehearing conference in this matter to August 11, 1997. See, Order No. 1499, Order Granting Complainant's Request to Continue Prehearing Conference; Notice of Hearing On Respondent's Motion to Dismiss Complaint and Notice of Rescheduled Prehearing Conference, dated July 17, 1997. As Complainant's counsel indicated that he was unsure whether his client intended to pursue this matter, counsel was instructed to file a motion to withdraw the complaint by August 1, 1997, if appropriate, or to file a prehearing statement with the Board, two days prior to the prehearing conference. Complainant's counsel failed to file any document with the Board.

At the hearing held on August 11, 1997, counsel for Respondent GEORGE IRANON, Director, Department of Public Safety, State of Hawaii (Employer) argued that in addition to the previous grounds cited, the instant complaint should be dismissed because

Complainant failed to file any opposition to Respondent's motion to dismiss the complaint, including memoranda and affidavits.

Complainant's counsel did not dispute the fact that Complainant failed to file a grievance challenging the alleged improper discipline in this case. Complainant's counsel further indicated that Complainant did not disagree with one of the grounds for dismissal. However, Complainant's counsel represented that Complainant notified the union of his desire to arbitrate the grievances and was told that the grievances were filed. Thus, Complainant argued that timely grievances were sought in this matter.

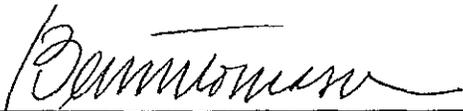
Upon reviewing the record and considering the arguments presented, the Board grants Respondent's motion to dismiss the instant complaint. In Order No. 1477, dated June 12, 1997, the Board previously dismissed the instant complaint against the Respondent United Public Workers, AFSCME, Local 646, AFL-CIO (UPW) because Complainant failed to file a response to the UPW's motion to dismiss in accordance with Administrative Rules § 12-42-8(g)(3)(C). Here again, Complainant failed to file any response to Respondent IRANON's motion to dismiss the complaint. The Board, however, permitted Complainant to respond to the motion to dismiss but Complainant's contentions consisted of unsworn factual statements addressing the UPW's alleged failure to file a grievance on Complainant's behalf.

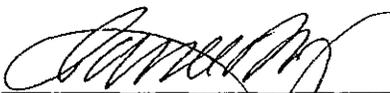
In addition, the Board agrees with the Employer that the Complainant failed to exhaust his contractual remedies in this case. The Board has previously dismissed allegations of contract

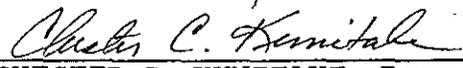
violations where the complainant failed to exhaust his contractual grievance remedies. Thomas Lepere, 5 HLRB 277 (1994). In the instant case, Complainant alleges that the Employer violated the contract by unjustly disciplining him and failed to file a grievance challenging the discipline. As Complainant's claim against the Employer in this case consists only of alleged violations of the contract, the Board finds that Complainant failed to exhaust his contractual remedies and hereby dismisses the complaint.

DATED: Honolulu, Hawaii, August 14, 1997 .

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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