

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.: CU-01-133
	)	CE-01-360
PAUL S. SAPLA,	)	
	)	ORDER NO. 1600
Complainant,	)	
	)	ORDER GRANTING RESPOND-
and	)	ENT HUGH Y. ONO'S MOTION
	)	FOR SUMMARY JUDGMENT
UNITED PUBLIC WORKERS, AFSCME,	)	
LOCAL 646, AFL-CIO <sup>1</sup> and HUGH Y.	)	
ONO, Department of Transporta-	)	
tion, Highways Division, State	)	
of Hawaii,	)	
	)	
Respondents.	)	
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ORDER GRANTING RESPONDENT  
HUGH Y. ONO'S MOTION FOR SUMMARY JUDGMENT

On September 18, 1997, Respondent HUGH Y. ONO (ONO), by and through his counsel, filed a motion to dismiss the instant complaint or in the alternative, motion for summary judgment with the Hawaii Labor Relations Board (Board). Respondent ONO contends that the complaint should be dismissed because he is not the real party in interest and that Complainant PAUL S. SAPLA (SAPLA) fails to state a claim for contractual violation because the Unit 01 contract is not applicable here.

On October 21, 1997, the Board conducted a hearing on the instant motion. Complainant appeared pro se and Respondent ONO was represented by counsel. The parties had full opportunity to

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<sup>1</sup>The Board dismissed the complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO in Order No. 1533, dated October 7, 1997.

present evidence and argument to 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 SAPLA is a Bridge Maintenance Worker II who is included in Unit 01 and is an employee within the meaning of § 89-2, HRS.

Respondent ONO is the Administrator for the Highways Division, Department of Transportation, State of Hawaii and is a representative of the public employer within the meaning of § 89-2, HRS.

Complainant SAPLA sought appointment to, but was not selected to, fill the position of Bridge Maintenance Supervisor I, which is included in Unit 02. According to Jeanne Whitmire, Personnel Specialist, Highways Division, Department of Transportation, State of Hawaii, the selectee was chosen from a list of eligibles provided from the Department of Human Resources Development when no applicant was chosen from the noncompetitive internal list.

#### DISCUSSION

At the hearing, Respondent ONO, by and through his counsel, argued that ONO should be dismissed as a respondent in this case because he does not have the authority to hire or fire employees. ONO also contended that Complainant SAPLA is a Unit 01 member and has no standing to challenge a promotion under the Unit 02 collective bargaining agreement. ONO also argued that the

instant complaint should be dismissed because SAPLA failed to exhaust his contractual remedies.

SAPLA argued that the complaint should not be dismissed because he was unfairly denied a promotion. SAPLA alleges that he was the qualified applicant with the greatest baseyard/workplace seniority for the Bridge Maintenance Supervisor I position but the employer selected a person from outside of the Highways Division in the Department of Transportation. SAPLA also contended that the appointment was racially motivated. SAPLA confirmed that he is a member of Unit 01 and sought a promotion to a Unit 02 position. Further, SAPLA filed an appeal before the State Civil Service Commission which is pending.

Although ONO argues that he does not possess the authority to hire or fire employees, ONO's counsel admits that he has the authority to effectively recommend appointments. In addition, ONO's counsel admits that ONO is a representative of the public employer. Thus, based upon these facts the Board finds that ONO is a representative of the public employer and should not be dismissed from the complaint on this basis.

There is no dispute here that SAPLA, a Unit 01 member, contests his nonselection to a Unit 02 position. SAPLA's complaint before the Board, however, alleges violations of the Unit 01 collective bargaining agreement. SAPLA contends that he was qualified for the position and had the greatest baseyard seniority. Nonetheless, under the facts presented, the provisions of the Unit 01 contract do not apply to a promotion outside of the bargaining unit. In the arbitration of Frank Pavao, Jr. (June 9, 1977), Arbitrator Stanley Ling found that Unit 01 agreement

provisions covering seniority and promotions cannot by implication bridge into the selection process for a Unit 02 position. Thus, Arbitrator Ling held that a grievance arising from a "promotion" between bargaining units 01 and 02 was not arbitrable. Although ONO argued that SAPLA failed to exhaust his contractual remedies, ONO acknowledged that SAPLA could not properly file a grievance over the denial of his promotion under the Unit 01 contract.

Based upon the foregoing, the Board finds that there are no genuine issues of material fact presented in this case and that Respondent ONO is entitled to judgment as a matter of law. The Board concludes that SAPLA fails to state a claim for relief under the Unit 01 agreement and Chapter 89, HRS.

CONCLUSION OF LAW

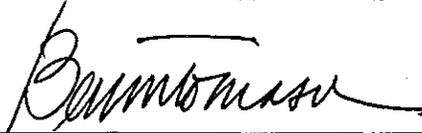
Complainant failed to state a claim for relief against the employer under the Unit 01 contract and Chapter 89, HRS, where he contested his nonselection to a Unit 02 position.

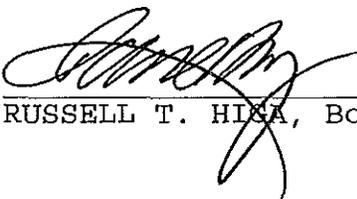
ORDER

The instant prohibited practice complaint is hereby dismissed.

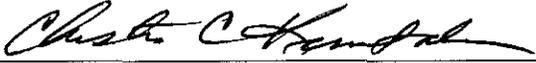
DATED: Honolulu, Hawaii, March 10, 1998,

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

PAUL S. SAPLA and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO  
and HUGH Y. ONO, Department of Transportation, Highways Division,  
State of Hawaii  
CASE NOS.: CU-01-133, CE-03-360  
ORDER NO. 1600

  
CHESTER C. KUNITAKE, Board Member

Copies sent to:

Paul S. Sapla  
Herbert R. Takahashi, Esq.  
Maria C. Fidelino-Cook, Deputy Attorney General  
Joyce Najita, IRC