

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. CU-01-132
MICHAEL L. LAST,) ORDER NO. 1745
Complainant,) ORDER GRANTING RESPONDENT'S
and) MOTION TO DISMISS COMPLAINT
UNITED PUBLIC WORKERS, AFSCME,)
LOCAL 646, AFL-CIO,)
Respondent.)

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT

On August 8, 1997, COMPLAINANT MICHAEL L. LAST (LAST) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) alleging that Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) violated the provisions of § 89-13(b)(5), Hawaii Revised Statutes (HRS), when Dwight Takamine (Takamine) visited the Hilo Wastewater Treatment Plant to investigate a grievance. LAST contends that the UPW violated the provisions of § 4.01 of the Unit 01 collective bargaining agreement (contract) when it failed to notify the appropriate supervisor of the purpose of the visit, interfered with the normal operations, and violated the provisions of § 4.02 of the contract when Takamine was not identified on a list provided to the employer acknowledging that he was a duly certified representative of the UPW.

On August 18, 1997, the UPW filed a motion to dismiss the complaint. The UPW's motion asserts that: (1) Complainant

lacks standing to bring a complaint on behalf of a public employer; and (2) the complaint fails to state a claim for relief.

On September 9, 1997, LAST filed a memorandum in opposition to Respondent's motion to dismiss with the Board. Complainant also filed a motion to move the hearing to Hilo. LAST contends that with regard to standing, the alleged actions are very serious and directly pertain to Complainant's reputation and religious views. As to stating a claim for relief, LAST leaves the matter up to the Board. With respect to LAST's motion to move the hearing to Hilo, on September 25, 1997, the Board issued Order No. 1529 denying LAST's motion to move the hearing to Hilo.

On September 30, 1997, the Board held a hearing on the motion to dismiss. The hearing was held by telephone conference call. Despite notification of the time the teleconference was to be held, LAST was not available. The UPW presented its arguments through counsel.

After a thorough review of the record and arguments presented in the case, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

LAST is a public employee, as defined in § 89-2, HRS, employed by the County of Hawaii (County) and whose position is included in bargaining unit 01.

The UPW is the exclusive representative, as defined in § 89-2, HRS, of the employees included in bargaining unit 01.

The UPW and the County are parties to the contract which contains a provision, entitled Section 4. RIGHT OF ACCESS TO EMPLOYER'S PREMISES, which provides as follows:

4.01 Duly certified representatives of the Union shall be permitted on the Employer's premises during working hours for the purpose of investigating grievances that have arisen and ascertaining whether or not the Agreement is being observed. The Union agrees that its representative shall notify the appropriate supervisor of the purpose of his visit. In the event the supervisor is not present on the premises or job site, he may proceed with his business as cited above. While on the Employer's premises or job site, the representative will not interfere with normal operations.

4.02 The Union shall provide the employer with a list of duly certified representatives and maintain its currency.

DISCUSSION

The above-referenced provisions essentially ensures UPW access to the County's work premises with a concomitant obligation on the part of the representatives to not disrupt operations. With respect to standing, if the County were to allege a violation of this contractual provision, standing would clearly be present. LAST, however, is not an authorized representative of the County.

The requirements of standing have long been recognized by this Board. In Decision No. 348, Thomas Lepere, 5 HLRB 263 (1994), the complainant, a bargaining unit employee, alleged that the union had violated the collective bargaining agreement in contravention of § 89-13(b) (5), HRS. In dismissing the allegation, the Board stated:

Subsection 89-13(b)(5), HRS, prohibits an employee organization from violating the collective bargaining agreement. The facts in this case do not support a charge of contract violation on the part of UPW. Parties to the collective bargaining agreement include the public employer and the exclusive representative. Since LEPERE does not fall within the definition of "Employer," he lacks standing to maintain his allegation against the UPW. Thus, the Board dismisses LEPERE's allegation of a Subsection 89-13(b)(5), HRS, violation.

In addition, in Order No. 1319 in Case No. CU-01-118,

Michael L. Last and UPW (4/11/96), the Board stated:

... a party seeking relief from this Board must have standing to bring a complaint on which basis he seeks relief. Standing is that aspect of justiciability focusing on the party seeking a form for relief. Life of the Land v. Land Use Commission of the State of Hawaii, 63 Haw. 166, 623 P.2d 431 (1981). To establish standing, a party must establish a "logical nexus" between the interest asserted and the claim sought to be adjudicated. Id. A party should not be permitted to assume a role and responsibility of a public official to enforce a public law without a "personal interest" that would be measurably affected by the outcome of the case. Reliable Collection Agency, Ltd. v. Cole, 59 Haw. 503, 511, 584 P.2d 107 (1978). The requirements of standing have been consistently applied by this Board. County of Hawaii v. UPW, Order No. 1022 (3/14/94); Lepere v. UPW; Order No. 1160 (3/2/95).

Upon applying the principles enunciated above to the instant case, the Board concludes that LAST lacks standing to maintain this complaint. He is not a party to the contract and the provisions he seeks to enforce serves the interest of the employer in ensuring that normal operations are not disrupted by visits of union representatives. LAST does not have a "personal interest" that would be measurably affected by the outcome of this case.

CONCLUSIONS OF LAW

The Board has jurisdiction over the instant prohibited practice complaint, pursuant to § 89-5, HRS.

Complainant LAST lacks the requisite standing to file the instant complaint.

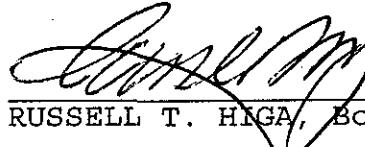
ORDER

The instant prohibited practice complaint is hereby dismissed.

DATED: Honolulu, Hawaii, August 10, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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