

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-01-105
)	
HOWARD F. GUSHIKEN,)	ORDER NO. 609
)	
Complainant,)	ORDER GRANTING RESPONDENT
)	STATE OF HAWAII'S MOTION
and)	TO DISMISS CHARGES
)	
GEORGE R. ARIYOSHI, Governor)	
of the State of Hawaii,)	
)	
Respondent.)	
)	

ORDER GRANTING RESPONDENT STATE OF HAWAII'S MOTION TO DISMISS CHARGES

On October 3, 1986, Respondent GEORGE R. ARIYOSHI, Governor of the State of Hawaii [hereinafter referred to as Respondent or State], filed a Motion to Dismiss Charges in the above-entitled case. In its motion, the State moved that the Hawaii Labor Relations Board [hereinafter referred to as Board] dismiss, without prejudice, the prohibited practice charges filed herein on the grounds that:

1. The charges failed to state a claim upon which relief can be granted; and
2. The Complainant has failed to exhaust contractual remedies.

In its Memorandum in Support of its Motion to Dismiss, the State alleges that:

1. The charges must be dismissed without prejudice because the prohibited practice complaint does not state grounds

for relief under the Hawaii Public Employment Relations Act, Chapter 89, Hawaii Revised Statutes [hereinafter referred to HRS]; and

2. The charges must be dismissed without prejudice because the Complainant has failed to exhaust contractual remedies.

In his handwritten complaint, Complainant alleges that:

1. The Complainant's supervisor, David Harbottle, was guilty of numerous safety and health violations. GUSHIKEN claims that he was made to work on electrical lines "hot," or energized, when changing ballasts, switches and outlets. He states he received no hazard pay for this work. He further alleges he had to work with asbestos. No dates are specified for these alleged violations.

2. These complaints were raised with the State Department of Labor as alleged Occupational Safety and Health Act [hereinafter referred to as OSHA] violations. An informational meeting was held with State OSHA representatives. Allegedly, nothing was done.

3. His supervisor threatened him, inquired about his finances and asked him to buy him breakfast. No dates are specified for these violations.

In oral testimony before the Board, Complainant further stated that:

1. He wrote a letter regarding the lack of safety on the job to Steve Fernandes, Chief, Public Building and School Repairs and Maintenance Branch, Central Services Division,

Department of Accounting and General Services, but that no action was taken on his complaints. He also alleged that Fernandes' reply to him in a letter included the question, "Since when do you supervise your supervisor?" Transcript [hereinafter referred to as Tr.], pp. 11, 13, 22, 23.

2. His complaint regarding the use of aluminum ladders was corrected so that wooden ladders were used instead of the aluminum ladders. Tr., p. 15.

3. He wants to receive hazard pay for working electrical lines which are "hot." Tr., p. 18. He stated that Harbottle told him that the lines must be worked "hot" and the practice is entirely lawful. Tr., p. 16. Complainant did state, however, that "lock and tags," gloves, and other equipment were issued to him in August 1986 after he complained about working lines when the main switch was off. Tr., p. 24.

4. He objected to the lack of a safety belt on the aerial bucket truck. Tr., p. 25. Complainant further objected to replacing ceiling lights in the DAGS warehouse with what the Complainant stated was inadequate ventilation. Tr., pp. 26-28.

Complainant stated before the Board that he never refused work orders which he felt were hazardous or unsafe. Tr., pp. 13, 14, 15.

Complainant alleged that when he sought union help regarding his complaints and that the United Public Workers failed to assist him. Tr., pp. 12, 30, 32.

The Board concludes that Respondent's motion to dismiss must be granted for Complainant's failure to exhaust contractual

remedies. The prohibited practice charge contains no allegations that grievances regarding Complainant's working conditions were filed pursuant to the collective bargaining agreement. Complainant, in his testimony, made no allegations that he filed such grievances. The law clearly provides that where the terms of public employment are covered by a collective bargaining agreement, pursuant to Chapter 89, HRS, and the agreement includes a procedure to dispose of employee grievances against the public employer, an aggrieved employee is bound by the terms of the agreement. Winslow v. State, 2 Haw. App. 50, 625 P.2d 1046 (1981).

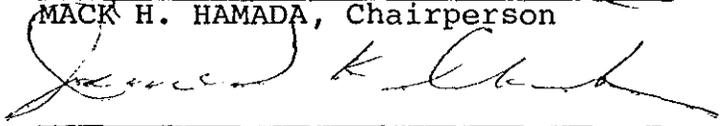
Without any allegations that the collective bargaining contract or Chapter 89 were violated, the Board has no jurisdiction to entertain Complainant's grievances herein.

The motion is granted without prejudice. The Complainant is hereby instructed that this Board shall hear his allegations of employer violations of the collective bargaining agreement or Chapter 89, HRS, upon his exhaustion of contractual remedies.

DATED: Honolulu, Hawaii, November 12, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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