

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-138
)	
THOMAS LEPERE,)	ORDER NO. 817
)	
Complainant,)	ORDER GRANTING, IN PART,
)	RESPONDENTS JOHN WAIHEE AND
and)	DEPARTMENT OF CORRECTIONS'
)	MOTION TO DISMISS
JOHN WAIHEE, Governor, State)	
of Hawaii and DEPARTMENT OF)	
CORRECTIONS, State of Hawaii,)	
)	
Respondents.)	
)	

ORDER GRANTING, IN PART, RESPONDENTS JOHN WAIHEE
AND DEPARTMENT OF CORRECTIONS' MOTION TO DISMISS

On March 5, 1990, Complainant THOMAS LEPERE filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). Complainant alleged that Respondent DEPARTMENT OF CORRECTIONS, State of Hawaii and the management of the community-based section are in violation of Sections 89-13(a)(1), (4), (5), (6), (7), and (8), Hawaii Revised Statutes (HRS). Complainant alleged that Respondents are engaged in forms of reprisal against him for initiating grievances or actions before this Board by taking disciplinary action or warning Complainant of rules violations involving tardiness and reports of telephone abuse.

On May 31, 1990, Respondents JOHN WAIHEE and DEPARTMENT OF CORRECTIONS (Employer) filed a Motion to Dismiss this

case on the grounds that Complainant failed to exhaust his contractual remedies prior to bringing this complaint and therefore the Board lacks jurisdiction over this matter.

A hearing was held on Respondents' Motion to Dismiss on June 19, 1990. The parties were given the opportunity to present arguments before the Board. Based on the arguments presented and the record, the Board hereby grants Respondents' Motion to Dismiss Complainant's breach of contract allegations.

It is a well-settled principle that an employee must at least attempt to utilize the contractual grievance process before maintaining a breach of contract action against his employer. Santos v. State, 64 Haw. 648 (1982). In the Santos case, the employee who did not receive the promotion appealed to the Civil Service Commission rather than file a grievance. The Commission declined jurisdiction over the case indicating that the proper procedure was the grievance process. Since the time limits for filing a grievance had expired, the employee filed a complaint with the Board. The Complainant alleged only breach of contract, Section 89-13(a)(8), HRS, violations against the employer. The Hawaii Supreme Court reversed the Board's finding that the State had committed a prohibited practice by violating the terms of the collective bargaining agreement because the Complainant had failed to utilize the contractual grievance procedure. The Court cited the Intermediate Court of Appeals' decision in Winslow v. State, 2 Haw. App. 50 (1981) where the Intermediate Appellate Court stated:

[W]e hold that where the terms of public employment are covered by a collective bargaining agreement pursuant to HRS Chapter 89 and the agreement includes a grievance procedure to dispose of employee grievances against the public employer, an aggrieved employee is bound by the terms of the agreement.

Id. at 55.

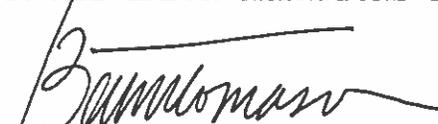
The facts in the record indicate that Complainant took documents containing "Particulars of Grievance" to the union but these were never filed as a grievance with the Employer's representative in accordance with the bargaining unit 10 contract. Transcript (Tr.) pp. 23-24. Complainant alleges that a seven-page document, dated February 23, 1990, Complainant's Exhibit No. 1, was given to his supervisor, Ignacio Riveira, and to Prison Master Kip Kautzsky's receptionist, but this document did not allege contract violations. Tr. pp. 33-36. Under these facts, the Board concludes that Complainant did not file a "grievance" with his employer and thus, failed to exhaust his contractual grievance remedies.

The doctrine of exhaustion of contractual remedies, however, bars only the allegations of the Section 89-13(a)(8), HRS, breach of contract violation. Accordingly, the charges stemming from the Section 89-13(a)(8), HRS, violation are dismissed. Complainant's allegations of violations of Section 89-13(a)(1), (4), (5), (6), and (7), HRS, remain for adjudication.

THOMAS LEPERE and JOHN WAIHEE, Governor, State of Hawaii and
DEPARTMENT OF CORRECTIONS, State of Hawaii; CASE NO. CE-10-138
ORDER NO. 817
ORDER GRANTING, IN PART, RESPONDENTS JOHN WAIHEE AND DEPARTMENT
OF CORRECTIONS' MOTION TO DISMISS

DATED: Honolulu, Hawaii, December 28, 1990 .

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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