

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CU-10-54
	)	
BUDDY H. KIMURA,	)	DECISION NO. 235
	)	
Complainant,	)	FINDINGS OF FACT, CONCLU-
	)	SIONS OF LAW AND ORDER
and	)	
	)	
UNITED PUBLIC WORKERS, AFSCME,	)	
LOCAL 646, AFL-CIO,	)	
	)	
Respondent.	)	

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FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On June 19, 1986, Complainant BUDDY H. KIMURA filed a prohibited practice complaint with the Hawaii Labor Relations Board [hereinafter referred to as HLRB or Board] in which he alleged that the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO [hereinafter referred to as UPW], violated Subsections 89-13(b)(1) and (4), Sections 89-3 and 89-8, Hawaii Revised Statutes [hereinafter referred to as HRS], by improperly handling the grievance that he filed with the Oahu Community Correctional Center.

FINDINGS OF FACT

Complainant is a member of bargaining unit 10 as defined in Section 89-6(a), HRS.

The UPW is the exclusive representative, as that term is defined in Section 89-2, HRS, of employees in bargaining unit 10.

Complainant filed a grievance on September 25, 1985 with the assistance of Walter Harrington and Tony Gonzalez of the UPW. In the grievance, Complainant, an Adult Corrections Officer [hereinafter referred to as ACO] III, charged that he should have received certain temporary assignments to ACO IV in situations where ACOs with less seniority were granted the temporary assignments. Transcript [hereinafter referred to as Tr.], p. 13.

Complainant was represented at Step IV by the UPW. At Step IV, Complainant was reimbursed for the temporary assignments which were deemed to have been improperly denied to him from September 23, 1985 to November 30, 1985. Tr., p. 30. Complainant, at the hearing before the Board, stated that he considered the reimbursements to be an incomplete remedy because he should have been awarded a permanent promotion. Tr., pp. 14, 23, 33. Complainant also sought as a remedy, an apology and explanation for the denial of the temporary assignments from the Employer. However, these remedies were declared moot. Tr., pp. 16, 30. Thereafter, the UPW received an extension until July 30, 1986 to request arbitration of the Step IV decision. Since then, the Employer has not received any communications from the UPW on the matter of arbitration. Tr., pp. 16-17, 23.

Complainant was, and still is, dissatisfied with the remedy granted him in his grievance above mentioned. In addition, he filed a second grievance claiming improper denial of temporary assignments subsequent to the period for which he received reimbursement in his first grievance up to the time when he went on medical leave. Tr., p. 17. The UPW also filed

a grievance for Complainant on similar grounds. Tr., pp. 15, 25. These two grievances involve resolution of the issue of whether Complainant is eligible for temporary assignments on a facility-wide basis or only in the module in which he works and have yet to be decided by the Employer. Tr., pp. 32, 34-35. Complainant states that the failure to award him temporary assignments on a facility-wide basis is wrongful. Tr., pp. 18-19.

#### CONCLUSIONS OF LAW

At the opening of hearings on October 9, 1986, the UPW entered a Motion to Disqualify Board Members Mack H. Hamada and James K. Clark. The motion was based on a confrontation between Gary Rodrigues, Executive Director of the UPW, and Board Members Hamada and Clark at the State Capitol on February 28, 1986. The UPW alleged that Chairperson Hamada addressed Rodrigues using a racial epithet and the UPW further alleged that Board Member Clark made verbal threats on Rodrigues' life. On the basis of these allegations, the UPW argues that Board Members Clark and Hamada harbor bias and prejudice against Gary Rodrigues and the UPW. The UPW argues that a fair hearing is required by law and by the principle of due process. The alleged bias and prejudice, the UPW argues, deprives the union of due process. Because of the alleged bias and prejudice, the UPW requested that Board Members Hamada and Clark recuse themselves and not hear the present case. Tr., pp. 4-7.

After deliberations on the motion, the Board denied the motion and proceeded to hear the case. Tr., p. 8. The Board now



reiterates its oral decision stated at the hearing that it deems Members Clark and Hamada fit to hear the instant case. After consideration of the arguments presented in favor of the motion, the Board has determined that there is no personal bias or hostility on the part of Mack Hamada or James Clark towards the union involved in this case or any of its officers that would affect the decision in this case. Likewise, there has been no prejudgment of any issues or facts in this case to warrant disqualification of any Board member. As in any other case, the Board is fully prepared to entertain the facts and arguments to be presented and render an impartial decision based on the merits of the case. Accordingly, the motion is denied.

Upon the Board's denial of the motion at the hearing, the UPW's counsel withdrew from the hearing and the hearing proceeded without him. Tr., pp. 9-10. The Board has jurisdiction to hold hearings under these circumstances and to render a valid decision.

A party must be given the opportunity to be present, but if that opportunity is given, their absence during the trial does not affect the right to proceed. Hiltibrand v. Brown, 234 P.2d 618, 124 Colo. 52 (Colo. 1951). Moreover, jurisdiction to proceed is not taken away by absence of counsel if opportunity to be present has been accorded. Stoyle v. State, 165 N.E. 596, 32 Ohio App. 133, 7 Ohio L. ABS 398 (C.A. Ohio 1928).

Section 89-8(a), HRS, provides for the union's duty of fair representation towards bargaining unit members and reads as follows:

§ 89-8 Recognition and representation; employee participation. (a) The employee organization which has been certified by the board as representing the majority of employees in an appropriate bargaining unit shall be the exclusive representative of all employees in the unit. As exclusive representative, it shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

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Complainant alleges that the UPW violated this provision and thus violated Subsections 89-13(b)(1) and (4) and Section 89-3, HRS, when it failed to seek arbitration after the Step IV decision was rendered in Complainant's first grievance. Testimony indicates that the union considered that the reimbursement for wrongfully denied temporary assignments at Step IV was an adequate remedy for Complainant's grievance and that further remedies such as an apology from the Employer and an explanation as to why he is being further denied temporary assignments were not necessary for an adequate remedy.

It is apparent after hearing testimony from Complainant and Walter Harrington, who filed Complainant's first grievance and who is now handling Complainant's second and third grievances at the Employer level, that further issues regarding Complainant's eligibility for temporary assignments on an ongoing basis, which were not resolved in Complainant's first grievance, are still presently pending resolution at Step IV of the grievance procedure.

Based upon the evidence and arguments presented, the Board concludes that the remedy received by Complainant in his first grievance is adequate insofar as he received monetary reimbursement for temporary assignments wrongfully denied him. Complainant's further desire for an apology or explanation of denial of future temporary assignments are not grievable issues under the Unit 10 contract. Since the remedy in the first grievance is adequate, the UPW is not deemed to have violated the duty of fair representation in the handling of Complainant's first grievance.

Further, since the second and third grievances are in the process of being considered at Step IV, they cannot be the basis of a claim of the violation of the duty of fair representation before this Board at this time. Only the first grievance is the proper subject of the prohibited practice charge now under consideration. The Complainant must first exhaust his contractual remedies regarding the second and third grievances before they can be properly considered by the Board. Winslow v. State, 2 Haw. App. 50, 625 P.2d 1046 (1981).

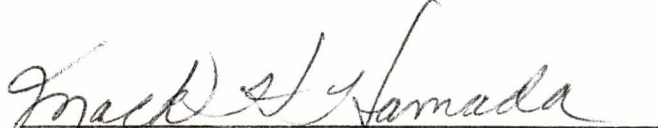
#### ORDER

The instant prohibited practice charges are hereby dismissed. Complainant's charges regarding issues raised in the second grievance filed by him and the second grievance filed by the UPW are dismissed for failure to exhaust contractual remedies.

In the Matter of BUDDY H. KIMURA vs. UNITED PUBLIC WORKERS  
CASE NO. CU-10-54  
DECISION NO. 235  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATED: Honolulu, Hawaii, December 16, 1986.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES K. CLARK, Board Member

  
JAMES R. CARRAS, Board Member

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