

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-03-82
)	
B. THERESA PETRAMALA,)	DECISION NO. 336
)	
Complainant,)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER
and)	
)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	
)	
Respondent.)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 30, 1992, Complainant B. THERESA PETRAMALA (PETRAMALA) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). Complainant alleges that Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union) violated Section 89-13, Hawaii Revised Statutes (HRS), by its failure to file a grievance on her behalf.

A hearing was conducted before the Board in Wailuku, Maui on August 14, 1992. Post-hearing briefs were due on September 18, 1992. Counsel for Complainant filed a Memorandum in Support of Prohibitive Practice Complaint on September 3, 1992. Counsel for Respondent HGEA filed a Motion for Extension of Time to File Post-hearing Briefs on September 21, 1992 simultaneously with his Closing Memorandum. The affidavit of Dennis W.S. Chang, Esq., attached to HGEA's motion indicates that the work in his office was

backlogged and the parties agreed to extend the filing date until September 21, 1992. For good cause shown, the motion is hereby granted.

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 PETRAMALA was for all times relevant an employee of the Housing Division, Department of Human Concerns, County of Maui and included in bargaining unit 3. Complainant has been a member of HGEA since August 1985. Transcript from the hearing (Tr.) p. 13.

Respondent HGEA is the certified exclusive representative of bargaining unit 3.

PETRAMALA testified that she was harassed by her supervisor Godfrey Akina from March 1, 1991 through March 27, 1992. Tr. p. 16. She also states that Akina directed obscene gestures and used foul language towards her. Tr. p. 18. PETRAMALA contacted Alton Watanabe, HGEA agent for bargaining unit 3, in July 1991 and continually thereafter to complain about the harassment by Akina and other co-workers. Tr. p. 88.

In an effort to resolve Complainant's charges against the County of Maui, it was agreed that PETRAMALA would see a psychiatrist in February 1992. The first doctor referred PETRAMALA to a second doctor. When she went to see the second doctor, PETRAMALA decided not to proceed and the interview was terminated. Tr. p. 95.

PETRAMALA filed her prohibited practice complaint with the Board on March 30, 1992. Board Ex. 1. By letter dated March 31, 1992, Watanabe, apparently unaware of the filing of the complaint, wrote a letter to Complainant documenting his efforts to investigate her complaints. Watanabe outlined the alternatives which he presented to her in August 1991, when she chose to pursue her claim with the Civil Rights Commission. Watanabe indicated that contrary to her previous statements, Complainant requested HGEA on March 30, 1992 to file a grievance on her behalf against Akina. Watanabe indicated that the lack of corroborating evidence was the biggest obstacle in her case. Moreover, Watanabe indicated that PETRAMALA's co-workers did not support her allegations. Watanabe indicated that he would be willing to file a grievance on her behalf if she provided him with corroborating evidence, but at the time the Union would not proceed with a formal grievance. Watanabe indicated that PETRAMALA could appeal his decision to Chester Kunitake, HGEA Executive Assistant, within ten days. R's Ex. 6.

John Murakami, HGEA Maui Division Chief, was also involved with PETRAMALA's complaints because her co-workers requested his personal attention to address the strained work relationships in the office. Tr. p. 91. Watanabe indicated that there were many misstatements by PETRAMALA and that the co-workers felt that PETRAMALA lied and fabricated allegations. Tr. p. 92.

Watanabe told PETRAMALA that she could file her own grievance but that she never asked him how to file the grievance. Watanabe assumed she knew how to file a grievance because of her

experience as a Union steward. Tr. p. 86. Although Watanabe asked PETRAMALA to provide him with the names of witnesses, he did not receive any names of witnesses from her. Tr. p. 89. Watanabe continued to assist PETRAMALA in finding information to substantiate her case and in meetings with her employer after the filing of her prohibited practice complaint. R's Ex. 4; Tr. p. 96.

PETRAMALA indicated that she read the HGEA handbook but stated that she was not familiar with it and didn't understand the grievance portions. Tr. p. 52. She indicated that she didn't know what a grievance was; she asked for a form and was never given a form; she acknowledged that she was told that she could file a grievance and she claimed that she didn't know how to file a grievance. Tr. p. 71.

DISCUSSION

Complainant argues simply in her Memorandum in Support of Prohibitive Practice Complaint that she made numerous harassment complaints against Akina with HGEA, and HGEA agent Watanabe never filed a formal grievance on her behalf. Complainant contends that the HGEA improperly refused to file a grievance pursuant to Article 11 of the contract. Complainant alleges that HGEA's actions violated Section 89-13(b)(1), HRS.

Section 89-13(b)(1), HRS, provides:

It shall be a prohibited practice for a public employee or an employee organization or its designated agent wilfully to:

(1) Interfere, restrain or coerce any employee in the exercise of any right guaranteed under this chapter; . . .

Respondent HGEA maintains that its agent Alton Watanabe acted reasonably and in good faith in attempting to resolve PETRAMALA's complaints. Watanabe investigated PETRAMALA's complaints and requested corroborating evidence from PETRAMALA but she failed to present any to him. Further, Watanabe did not instruct PETRAMALA on filing a grievance because she had been a Union steward and should be familiar with the contractual grievance procedures.

At the outset, the Board dismisses Complainant's allegations of prohibited practices which are outside the applicable ninety-day statute of limitations. Section 377-9(1), HRS, made applicable to the Board by Section 89-14, HRS, provides that no unfair labor practice complaints shall be considered unless filed within ninety days of its occurrence. The Board has previously held that statutes of limitation are to be strictly construed and therefore dismissed a prohibited practice complaint which was filed one day beyond the limitations period. Alvis Fitzgerald, 3 HPERB 186 (1983); Michael K. Iwai, 5 HLRB ____ (1993). While it appears that witnesses before the Board testified to events occurring one year prior to her filing of the complaint, the Board is precluded by the applicable law from considering those time-barred complaints. Thus, the only specific instance in the record before the Board of any alleged Union refusal to file a grievance occurred on or about March 30, 1992.

Complainant cites Article 11(D) of the unit 3 collective bargaining contract which states:

D. Step 1. If the grievant is not satisfied with the result of the informal conference, the grievant or the Union may submit a written statement of the grievance within seven (7) working days after receiving the answers to the informal complaint to the division head or designee; or if the immediate supervisor does not reply to the informal complaint within seven (7) working days, the Employee or the Union may submit a written statement of the grievance to the division head or designee within fourteen (14) working days from the initial submission of the informal complaint; or if the grievance was not discussed informally between the Employee and the immediate supervisor, the Employee or the Union may submit a written statement of the grievance to the division head or designee within the twenty (20) working day limitation provided form in paragraph "A" above. (Emphasis added.)

The foregoing contract provision states that either the employee or the Union can file a grievance against the employer. If the Union refuses or fails to file a grievance, the employee can proceed to file a grievance on his or her own behalf. The issue is whether the HGEA wilfully interfered with or restrained PETRAMALA in her efforts to file a grievance against Akina in violation of Section 89-13(b)(1), HRS.

The facts in the record clearly establish Watanabe's efforts to assist PETRAMALA and investigate her numerous complaints. In his letter to Complainant on March 31, 1992 (R's Ex. 6), Watanabe indicated that there was insufficient evidence upon which to file a formal grievance on her behalf and requested corroborating evidence. Given the nature of the allegations against Akina and PETRAMALA's contentions that Akina's actions were continual and pervasive, Watanabe required evidence to support Complainant's allegations. According to Watanabe, PETRAMALA never

provided him with the identities of any corroborating witnesses or supporting documentation.

Further, Watanabe indicated that he informed PETRAMALA that she could file her own grievance but that she never requested information from him on how to file it. Watanabe stated that PETRAMALA was a Union steward and he assumed she was familiar with the grievance procedures. In this regard we find PETRAMALA's testimony regarding her ignorance of the grievance procedure to be rather suspect given her presumed experience as a steward. Thus, the Board concludes that Complainant failed to prove that the HGEA improperly refused to file a formal grievance on PETRAMALA's behalf. The HGEA rightfully informed Complainant that she had the option of pursuing the matter on her own.

CONCLUSIONS OF LAW

The Board has jurisdiction over this complaint pursuant to Sections 89-5 and 89-13, HRS.

The employee organization commits a prohibited practice by interfering, restraining, or coercing an employee in the exercise of any rights under chapter 89, HRS.

Complainant failed to prove that the HGEA committed a prohibited practice in violation Section 89-13(b)(1), HRS, by its refusal to file a grievance on her behalf.

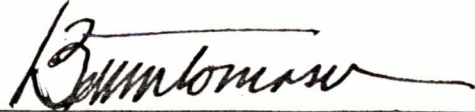
ORDER

The instant prohibited practice complaint is dismissed.

B. THERESA PETRAMALA v. HAWAII GOVERNMENT EMPLOYEES ASSOCIATION,
LOCAL 152, AFL-CIO; CASE NO. CU-03-82
DECISION NO. 336
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATED: Honolulu, Hawaii, April 12, 1993.

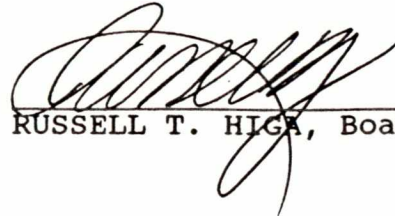
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