

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-03-284
)	
LEWIS W. POE,)	DECISION NO. 390
)	
Complainant,)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW, AND ORDER
and)	
)	
KAZU HAYASHIDA, Director,)	
Department of Transportation,)	
State of Hawaii,)	
)	
Respondent.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

On November 28, 1995, Complainant LEWIS W. POE (POE) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). In his complaint, POE alleges that Respondent KAZU HAYASHIDA (HAYASHIDA or Employer), Director, Department of Transportation (DOT), State of Hawaii, failed to respond to a Step 2 class grievance filed by POE, thus violating Article 11 of the Unit 03 Collective Bargaining Agreement (Contract) and thereby violating Section 89-13(a)(8), Hawaii Revised Statutes (HRS).

On January 11, 1996, the Board held a hearing on the merits of the prohibited practice complaint. All parties were given a full opportunity to present evidence and argument to the Board.

On May 2, 1996, POE filed a motion for permission to file a post-hearing affidavit with the Board.

On May 7, 1996, HAYASHIDA filed Respondent's memorandum in opposition to Complainant's motion for permission to file a post-hearing affidavit.

On May 14, 1996, the Board issued Order No. 1331, denying POE's motion to file a post-hearing affidavit.

Based on a thorough review of the record, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

POE is a Tower Operator I, at the Harbors Division, Department of Transportation, State of Hawaii. POE is an employee, as defined in Section 89-2, HRS, and is included in bargaining unit 03.

HAYASHIDA, at all times relevant, is the Director of the Department of Transportation, State of Hawaii, and a representative of a public employer, as defined in Section 89-2, HRS.

On October 25, 1995, POE filed a class grievance with HAYASHIDA at Step 2 of the Unit 03 grievance procedure. The grievance was filed on behalf of POE, Beverly Miller and Jerry Nakano, two Tower Operator I's. The grievance complained of violations of the Article 19 of the Contract because of the toilet facilities.

HAYASHIDA did not respond to the class grievance filed by POE.

Article 11 of the Unit 03 Contract states in pertinent part:

E. Step 2. If the grievance is not satisfactorily resolved at Step 1, the Employee or the Union may appeal the grievance

in writing to the department head or designee within seven (7) working days after receipt of the reply at Step 1. The department head or designee need not consider any grievance in Step 2 which encompasses different alleged violations or charges than those presented in Step 1.

A meeting to discuss the grievance shall be held within seven (7) working days after receipt of the appeal. The department head or designee shall reply in writing to the Employee and the Union within seven (7) working days after the meeting.

F. If the Union has a class grievance involving Employees within a department, it may submit the grievance in writing to the department head or designee. Time limits shall be the same as in individual grievances, as prescribed in Paragraph "A", and the procedures for appeal shall be the same as in Step 3.

Amador Casupang, Labor Relations Specialist, DOT, testified that the instant grievance was the third or fourth grievance received from POE within the month. Casupang held Step 2 meetings on December 28 and 29, 1995 and tried to discuss this grievance but POE said he should not discuss the grievance because the matter was before the Board. Casupang did not schedule a meeting on the instant grievance within seven (7) working days from receipt of the grievance. Casupang indicated that the Employer's failure to schedule a meeting on the instant grievance was inadvertent.

DISCUSSION

POE alleges that the Employer failed to meet with him on his class grievance within the seven (7) working-day time limit established in Article 11 of the Contract. POE also contends that the Employer failed to timely respond to his class grievance. POE

thus contends that the Employer violated the Contract and has committed a prohibited practice in violation of Section 89-13(b)(5), HRS.

With respect to the Employer's alleged failure to respond to the grievance, the Employer's designee admitted that he inadvertently failed to schedule a meeting to meet on the instant grievance. However, after discovering such failure, the Employer's designee contacted POE to schedule a meeting. At that time, POE replied that due to his filing of a prohibited practice complaint, he would not meet with the Employer at Step 2 until the prohibited practice complaint was resolved.

The Board has previously held that the failure of an employer to comply with the time requirements of the grievance procedure violates the contract and constitutes a prohibited practice. Thus, under the facts presented, if POE filed a proper grievance in this case, the Board would find that the Employer failed to process the grievance in a timely fashion. However, in reviewing the instant grievance, the Board finds that POE filed a class grievance with the Employer at Step 2. While POE contends that he has the right to file a class grievance under the terms of the Contract, in Decision No. 388, Lewis W. Poe, 5 HLRB ____ (1997), the Board found, inter alia, that Article 11, Section F of the Contract which restricts the filing of a class grievance to the exclusive representative does not violate Chapter 89, HRS.

In the instant case, since POE improperly filed a class grievance with his Employer, the Employer had no contractual duty to schedule a meeting with POE or to respond to an invalid

grievance under the strict timelines contained in the grievance procedure. Accordingly, the Board finds that POE failed to prove that the Employer violated the Contract by failing to schedule a meeting on or respond to his class grievance at Step 2.

CONCLUSIONS OF LAW

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

An employer commits a prohibited practice in violation of Section 89-13(a)(8), HRS, when he or she violates the terms of a collective bargaining agreement.


Complainant failed to prove that the Employer violated the contractual grievance procedure by failing to schedule a meeting on a class grievance filed by an employee. Under the terms of the Contract, only the exclusive representative may bring a class grievance.

ORDER

The subject prohibited practice complaint is hereby dismissed.

DATED: Honolulu, Hawaii, October 10, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

LEWIS W. POE and KAZU HAYASHIDA, Director, Department of Transportation, State of Hawaii; CASE NO. CE-03-284
DECISION NO. 390
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Copies sent to:

Lewis W. Poe
James E. Halvorson, Deputy Attorney General
Joyce Najita, IRC
William Puette, CLEAR
State Archives
Publications Distribution Center
University of Hawaii Library
Richardson School of Law Library
Library of Congress