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STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-03-286
)	
LEWIS W. POE,)	DECISION NO. 391
)	
Complainant,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND ORDER
and)	
)	
BENJAMIN J. CAYETANO, Governor,)	
State of Hawaii,)	
)	
Respondent.)	
_____)	

FINDINGS OF FACT
CONCLUSIONS OF LAW, AND ORDER

On November 14, 1996, LEWIS W. POE (POE) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board), alleging that Respondent BENJAMIN J. CAYETANO, Governor, State of Hawaii (Employer), violated the provisions of Section 89-13(a)(8), Hawaii Revised Statutes (HRS), when he or his representative refused to provide POE with information needed to investigate and process a class grievance.

On January 19, 1996, the Board held a hearing on the complaint. All parties were given full opportunity to present evidence and argument to the Board.

After a thorough review of the record in the instant complaint, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

POE is an employee, as defined in Section 89-2, HRS, of the Department of Transportation, State of Hawaii (DOT), and is included in bargaining unit 03.

CAYETANO is the Governor of the State of Hawaii and an employer as defined in Section 89-2, HRS.

Article 11 of the Unit 03 collective bargaining agreement (contract) refers to the grievance procedure. Paragraph A of Article 11 provides that upon request, the Employer shall provide relevant information needed by a grievant to process a grievance. That provision states in pertinent part:

Any relevant information specifically identified by the grievant or the Union in the possession of the Employer needed by the grievant or the Union to investigate and process a grievance, shall be provided to them upon request within seven (7) working days.

By memorandum dated September 29, 1995, POE requested information from his Employer pursuant to Article 11A. POE stated that he was a representative of a class grievance/class involving employees within the DOT and specifically requested:

- (a) applicable regulations [info] requiring safe, healthy (mental and physical, and including "privacy" considerations) and sanitary working conditions prescribed by the Dept. of Health, Dept. of Labor, or any other governmental body;
- (b) applicable provisions of the Hawaii Occupational Safety and Health Law, Act 57, SLH, 1972, as they relate to safe, healthy, and sanitary working conditions, including considerations of employees' privacy while on the job.
- (c) any and all directives documents, policies, and/or info relating to rest rooms (toilet facilities) for Employees

(which are separate from public rest rooms) and the use of said rest rooms by Employees.

- (d) any info which defines what a "work area" is.

Barry Kim, Oahu District Manager, Harbors Division, DOT, received POE's request for information and delegated the request to his subordinate, John Blackburn, to prepare a response for Kim. By memorandum dated October 11, 1995, Kim provided POE with a copy of Administrative Rules §§ 12-67-4 and 12-67-5 which was obtained from the State Department of Labor and Industrial Relations (DLIR). Kim also included a copy of Chapter 396, the Hawaii Occupational Safety and Health Law. Kim further indicated in his response that if POE identified specific references, he would make reasonable efforts to obtain them if necessary.

By memorandum dated October 14, 1995, POE made a follow-up request for relevant information to investigate and/or process a class grievance. POE specifically requested:

- (a) "Minimum Plumbing Facilities" requirements of the Uniform Plumbing Code (International Asstn. of Plumbing & Mechanical Officials);
- (b) documents showing/indicating the difference(s) between a "toilet facility" and a "lavatory";
- (c) documents/reports indicating the meaning of the phrase "toilet facility", as used in Article 19C.1 of the 1993-97 Unit 03 Contract Agreement and § 12-67-4;
- (d) all of chapter 67 of Title 12, H.A.R., of which §§ 12-67-4 and 12-67-5 are a small part thereof (and including the Section on definitions).

In addition, POE requested certain information from the Department of Human Resources Development or alternatively, from the DLIR, pertaining to workplace privacy.

Kim met with POE on or about November 9, 1995 to discuss the information request. Kim told POE that he did not have the items but would check further and get back to him. Kim again delegated the information request to Blackburn. Blackburn checked whether the information could be obtained at the Oahu District Office but was unable to locate the information. Kim called POE later that day and indicated that he looked for the items requested in the Oahu District Office but could not produce them. POE indicated that the information might be available from different departments. Kim indicated to POE that the information was not in the District's possession and no further action was taken. Kim felt it was unreasonable for Blackburn to continue researching POE's request outside of the District to provide the information. Kim did not respond to POE in writing to the follow-up information request since he felt it was unnecessary.

At some point in time, Allen Sandry, POE's supervisor, indicated that he would give POE time-off to obtain the information if it did not involve excessive time.

Sometime after the instant prohibited practice complaint was filed, Amador Casupang, Labor Relations Specialist, DOT, was asked by Respondent's counsel to gather the information POE requested for another complaint. Casupang indicated that he obtained the 1991 Uniform Plumbing Code after numerous calls. Casupang could not find items (b) and (c) of POE's information

request. Casupang located the Administrative Rules in the DOT Safety Office. Casupang then attempted to turn the information over to POE but POE refused to accept it.

DISCUSSION

POE contends that he requested information from the public employer which was needed to investigate or process a class grievance. POE alleges that Kim provided him with some relevant information and POE requested further specific references, i.e., Chapter 67 of Title 12 of the Hawaii Administrative Rules, and the Minimum Plumbing Facilities requirements of Uniform Plumbing Code. When he was not provided with the information, POE alleged that the Employer did not respond to POE's further request and thereby violated Article 11 of the contract and Section 89-13(a)(8), HRS.

The Employer contends that there was no wilful violation of the contract since the Employer attempted to obtain the information for POE but was unable to locate the information in the District Office. The Employer argues that if the contract was violated, any violation was negligent and not wilful. In addition, the Employer contends that the issues herein are moot since the documents were provided to POE to the extent available. Lastly, the Employer contends that based upon the facts in the record, Kim provided information on POE's first request. Kim then met with POE and continued to search for the additional information requested but that he orally informed POE that the information was not available in the District Office. The Employer contends that Kim reasonably defined the search and was not obligated to locate materials outside of his Office. The Employer contends that POE

knew where to get the information but wanted his Employer to provide the information to him. The Employer thus contends POE's request was unreasonable.

The Board has previously held that the failure of an employer to provide relevant information needed to investigate and process a grievance violates the applicable contract provision pertaining to the grievance process and constitutes a prohibited practice. United Public Workers, Order No. 1405, Case No. CE-10-331 (January 27, 1997); United Public Workers, Order No. 1406, Case No. CE-10-332 (January 27, 1997). While the facts in the record establish that POE requested the information from the Employer and the Employer attempted to obtain the information for POE, the Employer also met with POE and informed him that the documents were not available in the Office. The record is also clear that POE requested the information in order to process or investigate a class grievance under the Agreement. Thus, in order to determine whether the Employer in this case violated the contract by refusing to provide information to POE, the Board must first consider whether POE was entitled to the information requested.

In this case, POE contends he needed the information to process or investigate a class grievance. In Decision No. 388, Lewis W. Poe, 5 HLRB ____ (1997), the Board considered whether Article 11 of the Unit 03 contract which restricts the filing of a class grievance to the exclusive bargaining representative violates Sections 89-1, 89-3 and 89-8(b), HRS. In that case, the Board

held that the restriction on filing a class grievance did not violate Chapter 89, HRS.

Based on its ruling in Decision No. 388, the Board finds that since POE could not properly file a class grievance under the applicable contract provision, logically, the Employer was not obligated to provide the information to POE pursuant to the instant request. To find that the Employer violated the contract when it failed to produce information requested for an invalid grievance would lead to an absurd result.

Based upon the facts in the record, the Board finds that POE was not entitled to the information requested under the terms of the contract because he did not have the right to file a class grievance. As such, the Employer did not commit a prohibited practice when it failed to provide the information requested by POE and the Board hereby dismisses POE's complaint.

CONCLUSIONS OF LAW

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

An employer commits a prohibited practice when it violates the terms of a collective bargaining agreement.


The Employer did not violate the contract provision requiring it to provide information relevant to process a grievance where the employee sought to file a class grievance and the contract reserves the right to file a class grievance to the union.

ORDER

The subject prohibited practice complaint is hereby dismissed.

DATED: Honolulu, Hawaii, October 17, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

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