

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. CU-01-118
MICHAEL L. LAST,)	ORDER NO. 1319
)	
Complainant,)	ORDER GRANTING RESPONDENT
)	UPW'S MOTION TO DISMISS
and)	COMPLAINT
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Respondent.)	

ORDER GRANTING RESPONDENT UPW'S MOTION TO DISMISS COMPLAINT

On November 17, 1995, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) with the Hawaii Labor Relations Board (Board). Complainant alleges that on November 9, 1995, the UPW held a meeting to elect certain persons to positions within the UPW organization. Complainant further contends that the UPW withheld vital information which was required for the vote. Complainant also contends that the UPW excluded Complainant from casting an informed ballot. Complainant contends that the Respondent violated § 89-7, Hawaii Revised Statutes (HRS), and seeks to have the election declared null and void.

On November 21, 1995, Respondent filed a motion to dismiss the complaint with the Board. The UPW contends that the instant complaint should be dismissed for lack of jurisdiction because the matter is subject to regulation under the Labor Management Reporting and Disclosure Act. In addition, the UPW

contends that the Complainant lacks standing to challenge the election because he is not a union member and fails to state a claim for relief under § 89-7, HRS.

LAST filed his memorandum in opposition to Respondent's motion on November 27, 1995. The Board conducted a hearing on Respondent's motion to dismiss on December 20, 1995. All parties were afforded full opportunity to present evidence and oral argument. After considering the evidence and arguments presented, the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Complainant LAST is an employee as defined in § 89-2, HRS, and included in bargaining unit 01 but is not a member of the UPW.

The UPW is the exclusive representative, as defined in § 89-2, HRS, of employees in bargaining unit 01.

The UPW is a labor organization which represents employees in the public and private sector, and as such the election of its officers is governed by the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 401, et seq.

Pursuant to the UPW Constitution and applicable federal law, only members of the UPW are authorized to nominate, vote and participate in internal union elections of the UPW.

During the month of November 1995, the UPW conducted internal union elections for various offices within the labor

organization. On November 9, 1995, an official union meeting to nominate and elect union officers was held in Hilo, Hawaii.

Complainant LAST attended the meeting of November 9, 1995 but was not afforded an opportunity to nominate, vote, or participate in the election of union officers.

DISCUSSION

Complainant LAST alleges that the UPW held elections on or about November 9, 1995 and that he was not provided notice of the elections nor provided information on which to cast his ballot and was further precluded from voting. LAST contends that the UPW violated § 89-7, HRS, by wilfully excluding LAST from casting an informed ballot and seeks to have the election declared null and void.

The election of officers of labor organizations consisting in whole or in part of private sector employees is governed by the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 401, et seq. The LMRDA requires the election of officers of a "local labor organization" every three years by "secret ballot among the members in good standing." 29 U.S.C. § 481(b).

In November 1995 the UPW held meetings throughout the State of Hawaii to nominate and elect certain union officers. Under the UPW's Constitution only UPW members in good standing are allowed to nominate, vote and participate in its internal union elections. The conduct of union elections is regulated by the LMRDA and any dispute regarding the conduct of elections falls within the exclusive jurisdiction of the Secretary of Labor of the

U.S. Department of Labor. 29 U.S.C. § 482(b); Calhoon v. Harvey, 379 U.S. 134 (1964).

Cognizant of the federal regulatory scheme over internal union matters, this Board has avoided regulation over union elections and related disputes. In the Matter of James Chang, et al., 1 HPERB 339 (1973); Pe'a, et al. v. State of Hawaii Organization of Police Officers, Order No. 713 (10/28/88). Clearly, this Board lacks subject matter jurisdiction over the dispute in question.

Moreover, a party seeking relief from this Board must have standing to bring a complaint on which basis he seeks relief. Standing is that aspect of justiciability focusing on the party seeking a forum for relief. Life of the Land v. Land Use Commission of State of Hawaii, 63 Haw. 166, 623 P.2d 431 (1981). To establish standing, a party must establish a "logical nexus" between the interest asserted and the claim sought to be adjudicated. Id. A party should not be permitted to assume a role and responsibility of a public official to enforce a public law without a "personal interest" that would be measurably affected by the outcome of the case. Reliable Collection Agency, Ltd. v. Cole, 59 Haw. 503, 511, 584 P.2d 107 (1978). The requirements of standing have been consistently applied by this Board. County of Hawaii v. UPW, Order No. 1022 (3/14/94); Lepere v. UPW; Order No. 1160 (3/2/95).

Under the LMRDA, only members of the union have standing to challenge internal union elections. Wirtz v. Independent Petroleum Workers, Local 1, 307 F.Supp. 462, 74 LRRM 2090 (N.D.

Ind. 1969). Parties other than union members, regardless of how directly they may be affected by a violation, have no standing to file a complaint with the U.S. Labor Department. Donovan v. Carpenters, 113 LRRM 2372, 2375 (N.D. Ohio 1983). As a nonmember, LAST does not have standing to challenge or nullify results of an internal union election.

Further, in his complaint, LAST alleges that the UPW violated § 89-7, HRS, which applies to the selection of exclusive bargaining agents. Section 89-7(a), HRS, provides as follows:

(a) Whenever, in accordance with regulations as may be prescribed by the board pursuant to chapter 91, a petition is filed by an employee organization to determine whether or by which organization employees desire to be represented for the purpose of collective bargaining, the board shall conduct an investigation and may conduct an election where appropriate as specified herein. A petition to decertify or to change the exclusive bargaining representative must be supported by fifty percent of employees in an appropriate bargaining unit, through verifiable written proof of the names and signatures of employees. Signatures of employees supporting such a petition must be obtained within two months of the date of the petition to be valid with the Board. In its investigation of the showing of interest, the Board shall afford all interested parties a contested case hearing.

Section 89-7, HRS, clearly does not apply to elections for union office. It "appears beyond doubt that [complainant] can prove no set of facts in support of his claim which would entitle him to relief" against the UPW. Bishop Est. Trust v. Castle & Cooke, 45 Haw. 409, 414 (1962), (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Based upon the foregoing, the Board concludes that LAST has failed to state a claim for relief.

CONCLUSIONS OF LAW

The Board lacks jurisdiction over internal union elections of the UPW as it is preempted by provisions of the LMRDA.

Complainant lacks standing to challenge procedures of an internal union election because he is not a member of the Union and is thereby not entitled to vote in the election.

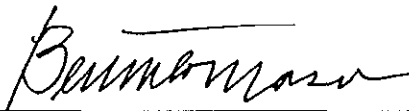
Complainant failed to state a claim of a violation of § 89-7, HRS, where he challenges an internal union election and the statute refers to the selection of a bargaining representative.

ORDER

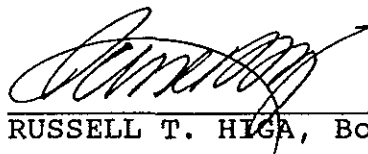
In accordance with the foregoing findings of fact and conclusions of law, the prohibited practice complaint of November 17, 1995 is hereby dismissed.

DATED: Honolulu, Hawaii, April 11, 1996.

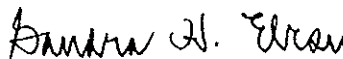
HAWAII LABOR RELATIONS BOARD



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