



CONTROL, County of Maui (Department); FRANK SILVA, WAYNE PAGAN and GLEN (sic) MUKAI, Department of Liquor Control, County of Maui; CLARENCE CHOW, HERMAN NASCIMENTO, MARY CABUSLAY, ELMER TOLENTINO, JAMES (MAC) LOWSEN, BUDDY FO, HELEN CHRISTMAN, WAYNE TAKEHARA, PETE GALICINAO, Liquor Control Commissioners; JOHN RAPACZ, Deputy Corporation Counsel, County of Maui and DOE RESPONDENTS 1-10 (collectively County or Employer).

By Order No. 1070, dated May 19, 1994, the Board consolidated both cases for hearing and disposition.

On or about June 17, 1994, BUNCH filed a motion to amend his complaint. By Order No. 1161, dated March 3, 1995, the Board granted Complainant's motion to amend his complaint. On March 15, 1995, Complainant filed a First Amended Complaint with the Board.

In his amended complaint, in Count 1 against the Union, BUNCH alleges that Respondent MURAKAMI acted in an arbitrary, capricious and discriminatory manner when he allegedly violated the Unit 03 collective bargaining agreement (contract), the HGEA/AFSCME charter and by-laws, and the Unit 03 by-laws when he allegedly restructured the Alternate Steward's position within the County of Maui, Department of Liquor Control, thus violating §§ 89-13(b)(3), (4) and (5), Hawaii Revised Statutes (HRS).

In Count 2 against the Union, BUNCH further alleges that on January 22, 1994, Respondent HGEA convened a hearing of its bargaining unit 03 board of directors for the purpose of reviewing allegations against BUNCH. Complainant alleges that he was denied a fair hearing and due process because the Union failed to provide him with a listing of the charges brought against him, failed to

follow prescribed procedures, and allowed the presentation of evidence and documents without providing BUNCH with an opportunity to review and dispute such evidence, thereby violating §§ 89-13(b)(3) and (4), HRS.

In Count 3 against the Union, the Complainant alleges that the Employer proposed a change in employee work rules prohibiting investigators from having social or business relationships with employees of licensed liquor establishments. Complainant also alleges that Respondent MURAKAMI failed to fully and fairly represent Unit 03 members by not assessing the impact of the rule change and securing input from members, thereby violating §§ 89-13(b)(3), (4) and (5), HRS.

In Count 4 against the Union, BUNCH alleges that on February 18, 1994, he hand-delivered a letter to Respondent WATANABE requesting that the Union file grievances against the Employer regarding changes in conditions of employment. BUNCH alleges that the Union failed to take appropriate action regarding the filing of a formal grievance, thereby violating §§ 89-13(b)(2), (3), (4) and (5), HRS.

In Count 5 against the Union, Complainant alleges that at the bargaining unit 03 board of directors meeting held on January 22, 1994, Respondent KHIM's appearance, conduct and presentation was arbitrary, capricious, discriminatory and a violation of the Union's charter, by-laws and Unit 03 by-laws, thus violating §§ 89-13(b)(4) and (5), HRS.

In Count 6 against the Union, BUNCH alleges that the conduct and actions of all Union respondents constitute a breach of the duty of fair representation, thus violating § 89-13(b)(4), HRS.

In Count 1 against the Employer, BUNCH alleges that on or about February 16, 1994, the Employer approved a work rule change which prohibited employees from having social or business relationships with employees of licensed liquor establishments, thereby violating §§ 89-13(a)(3), (5) and (8), HRS.

In Count 2 against the Employer, Complainant alleges that the Employer violated Article 19 of the contract when it changed employee working conditions by failing to provide adequate air-conditioning and denying employees access to certain facilities, thus violating §§ 89-13(a)(3), (5), (6) and (8), HRS.

On July 15, 1994, RICHARD CHERRY and ARTHUR DELIMA, SR. filed separate petitions for intervention in these proceedings. By Order No. 1096, dated August 18, 1994, the Board denied both petitions for intervention.

On April 7, 1995, the HGEA filed a motion to dismiss, or in the alternative, motion for summary judgment. On April 10, 1995, the Employer also filed a motion to dismiss, or in the alternative, motion for summary judgment. On May 19, 1995, Complainant filed a response to the Respondents' motions to dismiss or for summary judgment.

On July 7, 1995, the Board held a hearing on Respondents' motions in Honolulu, Hawaii. Based upon a thorough review of all documents and oral argument at the hearing, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Complainant CHARLES R. BUNCH, at all times relevant, was an employee of the County of Maui Department of Liquor Control, and included in bargaining unit 03.

Respondent HGEA is an employee organization and the exclusive representative, as defined in § 89-2, HRS, of employees in bargaining unit 03.

Respondents JOHN MURAKAMI and ALTON K. WATANABE are employees and agents of the HGEA. Respondent CHARLES KHIM is an attorney licensed to practice in Hawaii.

Respondent COUNTY OF MAUI is a political subdivision of the State of Hawaii, headed by Mayor Linda Crockett Lingle, who is a public employer as defined in § 89-2, HRS.

Respondent DEPARTMENT OF LIQUOR CONTROL, County of Maui, is an administrative agency which represents the interests of the public employer.

Respondents FRANK SILVA, WAYNE PAGAN and GLEN (sic) MUKAI, at all times relevant, are employees of the Department, County of Maui.

Respondents CLARENCE CHOW, HERMAN NASCIMENTO, MARY CABUSLAY, ELMER TOLENTINO, JAMES (MAC) LOWSEN, BUDDY FO, HELEN CHRISTMAN, WAYNE TAKEHARA and PETE GALICINAO, at all times relevant, are members of the Liquor Control Commission, which oversees the Department.

Respondent JOHN RAPACZ, at all times relevant, is a Deputy Corporation Counsel with the Department of the Corporation Counsel, County of Maui.

The HGEA and County of Maui are parties to a multi-employer collective bargaining agreement covering bargaining unit 03 employees.

On or about December 15, 1993, the Employer proposed to promulgate a work rule prohibiting social or business relationships between a liquor licensee and employees of the Department. The Employer consulted with the HGEA, pursuant to § 89-9(c), HRS, and in response to MURAKAMI's comments that the rules were overly broad, amended the rule to prohibit such relationships where the relationship adversely affected the employee's ability to perform the employee's job duties.

The Employer also proposed another work rule which prohibits the use of any chemical, medication, tranquilizer, narcotic, depressant and/or stimulating drug or any substance that affects the employee's work performance or driving. After consulting with the Employer, the Union did not object to the rule.

On or about February 16, 1994, the Employer promulgated the rule regarding social and business relationships of Department employees.

BUNCH resigned from his employment on or about February 18, 1994.

Also, by letter dated February 18, 1994, Complainant requested the HGEA to file grievances on a number of changes in working conditions, which included changes in the availability of office facilities, the work rule above-cited, and problems with Complainant's pay.

By letter dated February 24, 1994, Jackie Ferguson-Miyamoto, President of the Unit 03 Board, informed BUNCH that he would be removed from his alternate steward's position and the reasons therefor. Ferguson-Miyamoto also notified BUNCH that he could appeal the removal in accordance with the bargaining unit 03 by-laws.

By letter dated March 2, 1994, BUNCH's attorney informed the Director of the Department that BUNCH contends that he was wrongfully discharged from employment because the Employer caused his working conditions to be intolerable and engaged in discriminatory conduct.

A grievance meeting was held on March 4, 1994 with Complainant, representatives from the Employer and ALTON WATANABE to discuss BUNCH's concerns. At that meeting, BUNCH informed WATANABE that he had resigned from his job.

By letter dated June 28, 1994, WATANABE indicated to Complainant that he would consult with the Employer on the changes in the working conditions cited by BUNCH in his February 18, 1994 letter but that the HGEA would not apprise BUNCH of the results of consultation since BUNCH was no longer employed by the Department. In addition, WATANABE indicated that at the March 4, 1994 meeting, BUNCH withdrew his complaints as to his pay since those matters had been satisfactorily resolved. WATANABE also informed BUNCH that he could appeal the HGEA's decisions if he disagreed with them. BUNCH did not respond to HGEA's letter.

By letter dated October 17, 1994, MURAKAMI informed Complainant that the HGEA had pursued the grievance concerning

BUNCH's placement on involuntary leave without pay pending medical clearance on November 22, 1993. The HGEA indicated that the leave without pay was converted to administrative leave with pay with the restoration of benefits. The HGEA forwarded a Settlement Agreement to BUNCH who refused to execute the Agreement.

#### DISCUSSION

In its motion, the HGEA contends that BUNCH's complaints concerning his removal from the alternate steward position concern internal Union matters and should be dismissed because the Board lacks jurisdiction over the claims. In addition, the HGEA contends that the matter is barred by the statute of limitations and BUNCH failed to exhaust his internal Union administrative remedies prior to bringing the instant complaint. The HGEA also contends that BUNCH's complaints regarding the work rules are moot because BUNCH is no longer an employee. Similarly, the HGEA contends that BUNCH's complaint that the HGEA failed to pursue his request to file grievances is moot since BUNCH is no longer an employee. Further, the HGEA contends that Count 4 of the First Amended Complaint should be dismissed because the HGEA obtained a fair settlement of his claim. The HGEA also contends that the duty of fair representation does not extend to the Union's right to consult over the work rules which the Union considered to be non-negotiable. In the alternative, the Union contends that it did not act in an arbitrary or capricious manner with respect to such consultation.

The Employer likewise contends that the Complainant's allegations are moot because Complainant is no longer employed by



the County. Also, the Employer contends that BUNCH's claim contesting the work rule pertaining to drugs is moot because the Union and the Employer were in the process of settling Complainant's grievance. In addition, the Employer contends that Complainant was never charged with violating the work rule regarding social relationships, thus, Complainant's claim is speculative. Further, the Employer contends that BUNCH failed to exhaust his contractual remedies and is therefore barred from bringing his claims before the Board. Finally, the Employer contends that BUNCH has failed to state a claim for relief.

With respect to Complainant's allegations regarding his removal from the alternate steward position, the Board has long-recognized that there exists a contractual relationship between the exclusive representative and its members and that this relationship is based on mutual voluntary action. Moreover, there is no authority in Chapter 89, HRS, which confers the Board with jurisdiction to intrude upon this contractual relationship. James Chang, et al., 1 HPERB 339 (1973).

Thus, in the James Chang case, supra, the Board held that Chapter 89, HRS, does not vest the Board with jurisdiction to regulate the discipline of union members. In that case, the union expelled certain members because of their support of a rival employee organization and the individual employees filed prohibited practice complaints with the Board. The Board, however, held that it did not have jurisdiction to regulate internal union matters and dismissed the complaints.

Based on the foregoing, the Board concludes that it lacks jurisdiction over BUNCH's complaints arising from his removal from the alternate steward position because the issue is an internal Union matter. In addition, according to the February 24, 1994 letter from Ferguson-Miyamoto, BUNCH had the right to pursue the matter through the procedures contained in the bargaining unit 03 by-laws and, according to the record, Complainant failed to file an appeal from the HGEA's decision. Thus, he failed to pursue his available administrative remedies. More importantly, however, on February 24, 1994, BUNCH had already resigned from his employment at the Department when he was removed as a steward. Since BUNCH was no longer an employee he could no longer serve as a steward. Thus, BUNCH also lacks standing to challenge his removal as a steward.

Both Respondents HGEA and Employer contend that the instant complaints should be dismissed because BUNCH is no longer an employee of the Employer nor included in bargaining unit 03. The record indicates that BUNCH resigned<sup>1</sup> from service on February 18, 1994, prior to the filing of the instant complaints against the Union and Employer on March 21, 1994 and April 28, 1994, respectively.

---

<sup>1</sup>In his Response to HGEA et al and County of Maui et al's Motion to Dismiss or Motion for Summary Judgment filed on May 19, 1996, Complainant raises the issue that he was constructively discharged because of the hostile work environment caused by Respondents. The Board notes however, that there is no evidence in the record which indicates that Complainant filed a grievance challenging the alleged termination. In addition, Complainant's First Amended Complaint does not include an allegation against the Employer for unlawful termination and accordingly, such allegation is not properly before the Board.

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 the 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 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).

BUNCH's claims against the Employer arise from changes in working conditions and work rules imposed upon employees of the Department. Since BUNCH was no longer an employee at the time the complaint was filed, BUNCH lacked the requisite "interest" to assert the rights of an employee and challenge any adverse actions taken pursuant to the work rules. As to his claims against the Union, BUNCH likewise lacked the requisite "interest" to pursue a grievance challenging the work rules or changes in working conditions because he was no longer an employee and included in bargaining unit 03 at the time the complaint was filed. Thus, the Union was not obligated to pursue the claim on BUNCH's behalf because he lacked standing to raise such claims.

Moreover, with regard to the work rules, the Board finds that there is no evidence in the record to support a finding that the work rule regarding social relationships was applied to BUNCH. Although BUNCH alleges that the rule would have adversely affected him, no administrative action was taken against BUNCH pursuant to the rule. Thus, BUNCH lacks standing to challenge the work rule.

BUNCH also argues that the HGEA failed to pursue a grievance on Complainant's behalf concerning the requirement to obtain medical clearances which arose in November 1993. BUNCH contends that HGEA failed to timely pursue the grievance within the contractual time limits which nullified the grievance. According to the Union, however, a settlement was reached, albeit in October 1994, where Complainant received full back pay and the restoration of benefits. Thus, the Board finds that Complainant's claim with regard to the nonpursuit of his grievance is also moot.

#### CONCLUSIONS OF LAW

The Board lacks jurisdiction over complaints involving internal Union discipline policies and procedures as the relationship between an exclusive representative and its members is a contractual one, based on mutual voluntary action, and Chapter 89 does not confer jurisdiction to this Board to intrude upon this contractual relationship.

Complainant lacks standing to challenge the Employer's imposition of work rules impacting working conditions and the Union's failure to file grievances because he is not an employee or included in bargaining unit 03.

Complainant lacks standing to challenge the Employer's work rules where he has not been adversely affected by the rule.

The Union obtained full back pay and benefits for Complainant pursuant to Complainant's grievance. Thus, Complainant's claim that the Union allowed the grievance to lapse for failure to adhere to contractual time limits is moot.

ORDER

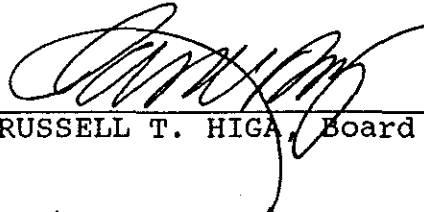
In accordance with the foregoing findings of fact and conclusions of law, the prohibited practice complaints against Respondents HGEA and Employer are hereby dismissed.

DATED: Honolulu, Hawaii, July 30, 1996.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

Copies sent to:

Charles R. Bunch  
Charles K.Y. Khim, Esq.  
Howard Fukushima, Deputy Corporation Counsel  
Joyce Najita, IRC