

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-10-370
)	
RICHARD CONDON,)	ORDER NO. 1575
)	
Complainant,)	ORDER GRANTING RESPONDENT
)	YAMAMOTO'S MOTION TO DIS-
and)	MISS PROHIBITED PRACTICE
)	COMPLAINT
ROY YAMAMOTO, Department of)	
Public Safety, State of Hawaii,)	
)	
Respondent.)	
)	

ORDER GRANTING RESPONDENT YAMAMOTO'S
MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT

On October 16, 1997, Complainant RICHARD CONDON (CONDON) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against ROY YAMAMOTO, Department of Public Safety, State of Hawaii (YAMAMOTO or Department). Complainant alleged that he filed an appeal of his departmental grievance to the State Civil Service Commission (Commission) on September 7, 1995. Since that time, Complainant contends that YAMAMOTO has not responded to the grievance as required by departmental grievance procedures and the Commission has failed to act on his grievance due, in part, to ex parte communications with persons at the Department of Public Safety. Complainant contends that he has not received any notification from the Commission as of October 15, 1997 despite numerous attempts to schedule his case and thus alleges that YAMAMOTO violated §§ 89-9, 89-13(5), (7), and (8), Hawaii Revised Statutes (HRS).

On October 30, 1997, Respondent YAMAMOTO, by and through his attorneys, filed a motion for summary judgment in this matter. YAMAMOTO contends that the Board lacks jurisdiction over this complaint because Complainant filed a departmental grievance with his employer in this matter which was subsequently appealed to the Commission.

In addition, Respondent contends that there is no genuine issue of material fact in dispute and Respondent is entitled to judgment as a matter of law. For the purposes of this motion, Respondent alleges that CONDON is an Adult Corrections Officer employed at the Oahu Community Correctional Center (OCCC) who filed a grievance dated February 27, 1995, with the Acting Warden of OCCC. The grievance alleged that Complainant had been improperly demoted. The warden returned the grievance to CONDON because CONDON failed to allege any specific contract violations and encouraged the Complainant to obtain union assistance.

Complainant resubmitted his grievance pursuant to the departmental grievance procedures and subsequently appealed the grievance to the Commission on September 1, 1995 where it is still pending.

Respondent contends that there is no evidence to support a finding that he is a public employer or his designated representative under § 89-2, HRS. Moreover, even if Respondent were an employer, Respondent contends that the grievance at issue in this case was not filed pursuant to the applicable collective bargaining agreement. Respondent argues that the departmental grievance is governed by Chapter 76, HRS, which is outside of this

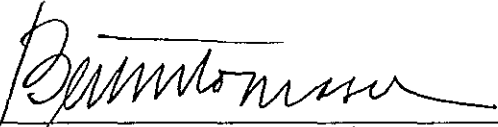
Board's jurisdiction. Further Respondent argues that the complaint fails to allege facts sufficient to find violations of §§ 89-13(a)(5), (7), and (8), HRS.

The Board held a hearing on the instant motion on December 11, 1997. At the hearing, Complainant, by and through his counsel, contended that YAMAMOTO interfered with his right to have his grievance heard. Complainant contended that he wants to be heard by the Commission and alleged that improper ex parte communications unduly influenced Commission staff. Complainant does not dispute that the grievance at issue was a departmental grievance.

After a review of the record in this case and considering the arguments presented, the Board finds that the gravamen of CONDON's complaint is that the Commission appeal from his departmental grievance has not been processed. CONDON believes that the Commission's failure to process his appeal is due to ex parte communications with personnel of the Department of Public Safety. The Board finds that these matters are governed by Chapter 76, HRS, and are beyond its jurisdiction under Chapter 89, HRS, and hereby dismisses the instant complaint.

DATED: Honolulu, Hawaii, January 9, 1998.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson

RICHARD CONDON and ROY YAMAMOTO, Department of Public Safety,
State of Hawaii; CASE NO. CE-10-370
ORDER NO. 1575
ORDER GRANTING RESPONDENT YAMAMOTO'S MOTION TO DISMISS PROHIBITED
PRACTICE COMPLAINT



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

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