

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-01-285
	)	
MICHAEL L. LAST,	)	ORDER NO. 1761
	)	
Complainant,	)	ORDER GRANTING RESPONDENT
	)	DEPARTMENT OF PUBLIC WORKS'
and	)	MOTION TO DISMISS COM-
	)	PLAINT
DEPARTMENT OF PUBLIC WORKS,	)	
County of Hawaii,	)	
	)	
Respondent.	)	

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ORDER GRANTING RESPONDENT DEPARTMENT OF  
PUBLIC WORKS' MOTION TO DISMISS COMPLAINT

On December 7, 1995, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against the Respondent DEPARTMENT OF PUBLIC WORKS, County of Hawaii (Employer or County). LAST alleges that on November 9, 1995 he attended a meeting which was held to elect officials of the United Public Workers union (Union). LAST also alleges that on November 13, 1995, he requested authorized leave of absence with pay for an amount of time equal to that which Unit 01 members were granted to attend the meeting. In addition, LAST also requested leave of absence without pay for one hour. LAST further alleges that on November 22, 1995, Respondent notified Complainant that his request for leave of absence with pay was denied. LAST therefore contends that the Employer violated §§ 1.02 and 3.01 of the collective bargaining agreement (contract).

On January 8, 1996, the County filed a Motion to Dismiss and/or for Summary Judgment with the Board. The County alleges that LAST attended the Union meeting on work time and thereafter requested paid time off for one hour in lieu of attendance at the meeting. The County contends that LAST, a non-member of the Union, has the right to attend the Union meetings on work time, just as Union members do. The County however, contends that LAST has no further right to ask for additional time off in lieu of attendance. Thus, LAST was not discriminated against because of his non-member status because he was treated like any other Union member and the County contends that the complaint fails to state a claim for discrimination. Further, the County contends that LAST failed to exhaust his contractual remedies prior to filing the instant complaint.

On August 13, 1997, the Board held a hearing on the County's motion to dismiss and/or for summary judgment. All parties were afforded an opportunity to present evidence and argument to the Board. After a thorough review of the record, the Board makes the following findings of fact, conclusions of law, and order.

#### FINDINGS OF FACT

Complainant LAST is an employee, as defined in § 89-2, HRS, of the County, in a position which is included in bargaining unit 01. LAST is not a member of the Union.

The County is a public employer, as defined in § 89-2, HRS.

On November 9, 1995, the Union conducted a meeting for the election of Union officers. LAST attended the meeting on work time.

On November 13, 1995, LAST requested authorized leave of absence with pay for a time period equal to that received by Unit 01 members who chose to attend the meeting. The County denied the request. LAST also had requested leave of absence without pay. LAST filed the instant complaint with the Board without first filing a contractual grievance on the denial of leave.

#### DISCUSSION

In its motion, the County contends that the complaint should be dismissed because Complainant failed to exhaust his contractual remedies. Further, the County contends that the complaint fails to state a claim upon which relief can be granted since the County did not discriminate against LAST. Thus, the County contends that there are no genuine issues of material fact and the County is entitled to judgment as a matter of law.

Section 1.02 of the Unit 01 contract provides, in part:

The Employer and the Union recognize the rights and obligations of the parties to negotiate wages, hours and other terms and conditions of employment and to administer this Agreement on behalf of covered employees, and that such administration shall apply equally to all employees in the bargaining unit without regard to membership or non-membership in the Union.

Section 3.01 of the contract also provides, in part:

The Employer and the Union agree that neither party will discriminate against any employee because of membership or non-membership or lawful activity in the Union or on the basis of race, color, creed, sex, age, disability,

or lawful political activity, except for bona fide occupational or legal requirements.

Further, Section 8.01 of the contract provides, in part:

The Union may hold informational and educational meetings four times each fiscal year to be conducted by its duly recognized officers and/or stewards and which shall be open to all employees in the bargaining unit, including members and non-members of the Union. Such meetings shall be held during working hours, and the Employer or his duly designated representatives shall permit its employees not more than two (2) hours off with pay to attend such meetings.

Section 76-102, HRS, provides in part:

Meetings. Each department shall permit its employees to attend informational and educational meetings conducted during working hours by duly recognized governmental employee organizations, provided that these meetings shall permit the attendance of members and nonmembers and shall be scheduled for periods of not more than two hours once every three months at times which do not interfere with the normal operations of the respective departments.

In his complaint, LAST claims that the Employer violated the collective bargaining agreement provisions by denying him leave with pay. In Santos v. State, 64 Haw. 648, 646 P.2d 966 (1982), the Supreme Court recognized that as a general rule, before an individual can maintain an action against his employer, the individual must at least attempt to utilize the contract procedures agreed upon between his employer and the union. Here, LAST failed to file a grievance challenging the denial of leave prior to filing the instant complaint and the Board concludes that LAST failed to exhaust the contractual grievance procedure. Accordingly, the

Board concludes that it lacks jurisdiction over this complaint and hereby dismisses the complaint.<sup>1</sup>

CONCLUSIONS OF LAW

Complainant must exhaust his available contractual remedies prior to bringing a prohibited practice complaint against the Employer alleging a violation of the collective bargaining agreement. As Complainant failed to file a grievance on the denial of leave, he failed to exhaust his contractual remedies and the Board lacks jurisdiction over the instant complaint.

ORDER

The instant prohibited practice complaint is hereby dismissed.

DATED: Honolulu, Hawaii, September 8, 1999.

HAWAII LABOR RELATIONS BOARD




BERT M. TOMASU, Chairperson

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<sup>1</sup>Even if the Board had jurisdiction over this complaint, the Board takes notice that in Order No. 1397, Order Dismissing Prohibited Practice Complaint, dated January 8, 1997, in Case No. CE-01-252, the Board previously held that LAST was not entitled to leave with pay because he worked while other employees attended the Union's informational and educational meetings. The Board found in that case that the denial of leave did not violate §§ 1.02 and 3.01 of the contract and LAST failed to establish that he was entitled to additional leave with pay pursuant to a statute, rule, or contract provision.

Similarly in the instant case, the Board would find its previous order controlling. Here again, LAST asserts no basis for the Employer to provide additional compensation for a non-member who chooses to attend the Union meetings and LAST further fails to establish that the County discriminated against him as a non-member of the Union by denying him leave with pay. Thus, the Board would further find that LAST failed to establish a claim for relief of discrimination.

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RUSSELL T. HIGA, Board Member



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CHESTER C. KUNITAKE, Board Member

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