

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-01-131
)	
MICHAEL L. LAST,)	ORDER NO. 1870
)	
Complainant,)	ORDER GRANTING RESPONDENT'S
)	MOTION TO DISMISS COMPLAINT
and)	
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Respondent.)	
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ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT

On May 19, 1997, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) alleging that Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) violated § 3, Discrimination, of the Unit 01 collective bargaining agreement (contract) when the UPW allowed a religious prayer to be said at an informational meeting held at the Hilo Civic Center on March 3, 1997. LAST contends that the Union thereby violated § 89-13(b)(5), Hawaii Revised Statutes (HRS).

On May 27, 1997, the UPW filed a motion to dismiss the instant complaint with the Board contending that LAST failed to state a claim for relief and because LAST lacked standing to maintain a complaint since he has no religious leanings.

In response, on July 23, 1997, LAST filed a motion to dismiss Respondent's motion to dismiss complaint with the Board.

* * *

- (5) Violate the terms of a collective bargaining agreement.

In its motion to dismiss the instant complaint, the UPW contends that LAST fails to state a claim for relief under § 89-13(b)(5), HRS, on the grounds that the Board has previously held that the collective bargaining agreement does not provide for grievances to be filed against the Union. The UPW cites Order No. 1298, dated March 6, 1996, in Michael L. Last, Case No. CU-01-113, where the Board dismissed claims against the UPW for violations of the contract which only imposed certain obligations upon the employer. However, after reviewing § 3 of the applicable Unit 01 contract, the provision unambiguously states that the employer and the Union agree that neither party will discriminate against the employee on the basis of creed, which includes the employee's religious beliefs. Thus, the Board finds the holding in Case No. CU-01-113 is not applicable to the instant case.

The UPW further argues that LAST fails to allege any facts to indicate that there was discrimination by the UPW. The UPW contends that LAST concedes that the person making the prayer was not a Union official or a steward. LAST only asserts that someone made a prayer at the meeting and contends that the UPW's failure to stop the person constitutes a violation of § 3 of the contract. LAST thus argues that the giving of the prayer at the Union meeting, in and of itself, constitutes religious discrimination.

The Board is unable to find any authority to support such a proposition in the employment context. Generally cases dealing

with a union's liability for religious discrimination under Title VII of the Civil Rights Act¹ involve the union excluding or expelling an employee from union membership on the basis of religious beliefs, or otherwise discriminating against, limiting, segregating, or classifying the employee for membership. 42 USCS §§ 2000e-2(c), 2(d). The union is also prohibited from depriving or limiting the employee's employment opportunities, or otherwise adversely affecting the employee's employment status because of the employee's religion. Id. Thus, the courts have also considered the validity of union-security provisions under which employees are required as a condition of employment to join a union or make a financial contribution. Anderson v. General Dynamics Convair Aerospace Division, 589 F.2d 397 (9th Cir. 1978); Nottelson v. Smith Steel Workers D.A.L.U. 19806, AFL-CIO, 643 F.2d 445, 106 LRRM 2790 (7th Cir. 1981).

The context in which LAST brings the instant case appears to follow the reasoning of the cases finding that prayers in the schools are illegal because they violate the 1st Amendment of the Constitution, Establishment Clause. Doe v. Aldine Independent School District, 563 F.Supp. 883 (S.D. Tex. 1982). The instant contract provision by contrast prohibits religious discrimination rather than the establishment of religion or the limitation on the free exercise of religion. There are no further allegations of disparate treatment of LAST by the UPW on the basis of LAST's religious orientation. In this regard, LAST failed to even

¹Title VII of the Civil Rights Act is enforced by the Hawaii Civil Rights Commission and the Equal Employment Opportunity Commission.

establish in the record that he was of a different religious persuasion than the person offering the prayer. Accordingly, the Board finds that LAST can prove no set of facts which would entitle him to relief in this case, and the Board hereby grants Respondent's motion to dismiss the instant complaint.

CONCLUSION OF LAW

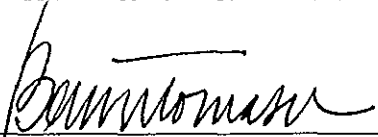
Complainant can prove no set of facts in support of his claim which would entitle him to relief against the Union for religious discrimination in violation of the Unit 01 contract. Thus, the Board dismisses the complaint for failure to state a claim for relief.

ORDER

The Board hereby dismisses the instant complaint.

DATED: Honolulu, Hawaii, May 23, 2000.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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