

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of) Case No. CU-10-173
)
Joseph P. Kuehner,)
)
Complainant,)
)
vs.) ORDER GRANTING RESPONDENTS'
) MOTION TO DISMISS AND/OR FOR
) SUMMARY JUDGMENT
)
United Public Workers,)
AFSCME, Local 646, AFL-CIO;)
Laurie Santiago, Business)
Agent; and Diane Berndt (00-)
021),)
)
Respondents.)
_____)

ORDER GRANTING RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT

On September 12, 2000, Complainant Joseph P. Kuehner (Kuehner or Complainant) filed a prohibited practice complaint against the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW) and Laurie Santiago (Santiago), a business agent of UPW, with the Hawaii Labor Relations Board (Board). Kuehner alleges that the UPW breached its duty of fair representation in violation of § 89-13 (b) (5), Hawaii Revised Statutes (HRS), in the handling of grievance LS 00-17 filed by the UPW in his behalf on or about March 13, 2000.

On September 18, 2000 the UPW and Santiago filed a motion to dismiss and/or for summary judgment for want of jurisdiction and for failure to state a claim for relief. The UPW and Santiago contend that Complainant failed to file a timely complaint from a June 5, 2000 decision not to proceed further with grievance LS 00-17, and to settle the dispute at step 1 of the grievance procedure. They further contend that Kuehner fails to state a

claim for relief since the union has substantial latitude in resolving grievances.

On September 29, 2000 Kuehner filed a memorandum in opposition to the motion in a document entitled "Memorandum in Support of Complaint."

On October 2, 2000 the Board held a hearing on the instant motion. All parties were present or represented by counsel, and had a full and fair opportunity to present evidence and argument to the Board. After a thorough review of the record in the case and consideration of the argument presented the Board finds good cause to grant the motion and hereby renders its following findings of fact, conclusions of law, and order, accordingly.

Findings of Fact

Joseph P. Kuehner is an adult correction officer III of the State of Hawaii at the Halawa Correctional Facility.

The United Public Workers, AFSCME, Local 646, AFL-CIO is the exclusive bargaining agent of employees in bargaining unit 10. The UPW represents adult correctional officers at the Halawa Correctional Facility.

Laurie Santiago is a business agent of the UPW who at all relevant times herein was assigned to service unit 10 employees at the Halawa Correctional Facility.

On or about March 3, 2000 Kuehner sustained an industrial injury when he was stabbed in the neck with a pencil by an inmate named Muao Maelega. At no time was the compensability of the injury denied by the employer.

On March 7, 2000 Kuehner contacted the UPW regarding the alleged unsafe working conditions at Halawa, and was referred to Santiago.

On March 13, 2000 Santiago filed grievance LS 00-17 at step 1 of the contractual grievance procedure with Ted Sakai, director of the Department of Public Safety, State of Hawaii.

In grievance LS 00-17 the UPW alleged a violation of Section 46 of the unit 10 collective bargaining agreement for the employer's failure to take appropriate corrective action following the March 3, 2000 accident involving Kuehner.

Grievance LS 00-17 specifically requested corrective actions regarding the following conditions at Halawa:

- 1) Maelega was permitted a writing instrument the could be, and was, used as a weapon.
- 2) Maelega, although diagnosed as paranoid schizophrenic, was not treated with proper medication and was not properly housed.
- 3) Maelega was permitted to be placed in a mixed population.
- 4) No policy/procedure was set in place to require Maelega to be handcuffed in the back and be placed in leg shackles. Id.

On March 13, 2000, the UPW submitted to the employer a request for information in connection with the grievance LS00-17.

Santiago also conducted an independent investigation by obtaining copies of certain policies and guidelines which were in effect at the Halawa Correctional Facility.

On or about April 10, 2000 an amended grievance was filed to correct a typographical error in the initial grievance (where it incorrectly referred to a person named "Werner" in the remedy portion).

A step 1 meeting was held with representatives of the Department of Public Safety, State of Hawaii on April 10, 2000. Kuehner was present at the meeting, and the employer indicated that various "corrective" actions had been taken after the industrial accident of March 3, 2000 to provide a safe place to work.

On or about May 16, 2000 a step 2 appeal was filed by Santiago because the employer failed to issue a written decision at step 1. On the same date (May 16, 2000), Ted Sakai responded in writing to the union's grievance at step 1 and submitted the information requested earlier by the union. Sakai's response indicated that the employer had taken specific "corrective" actions as requested in the grievance as follows:

- * Pens and pencils are now controlled items in the Special Holding Units.
- * The Department has on order a special writing instrument that cannot be used as a weapon.
- * Revisions to the Special Holding Units Inmate Guidelines now require inmates to be restrained from behind and legal ironed.
- * Current weekly shakedown schedule shall continue. Additionally, routine cell inspections have been incorporated into the Special Holding Unit's Inmate Guidelines.
- * Additional training was not currently identified as an incident related need at this time. However, Halawa will produced is a video portraying the proper restraint procedure. This tape, along with the Special Holding Unit's Inmate Guidelines, shall be routinely viewed by staff assigned to the Special Holding Units.
- * The medical staff is bound to confidentiality and therefore, unable to discuss medical concerns with Security. Security staff have been instructed to seek medical input on all matters deemed practical.
- * The facility will request of the Union the designation of the Sergeants positions on the second and third watches, at both Special Holding Units as Warden select, in order to allow for the type of "team" concept expressed by the grievant.

Under Section 15 of the unit 10 collective bargaining agreement the UPW had a deadline to determine whether to appeal the May 16, 2000 decision issued by Ted Sakai or to accept the decision at step 1 to resolve the dispute.

Based on the investigation conducted and a review of all relevant information Santiago concluded that the employer had taken the necessary "corrective" measures to provide a safe place to work.

On June 5, 2000 Santiago informed Kuehner of her determination and indicated that grievance LS 00-17 would be deemed resolved at step 1 of the grievance procedure.

Santiago submitted a recommendation accordingly to the State Director of UPW on June 5, 2000 accordingly, and grievance LS 00-17 was deemed resolved by the UPW in accordance with the decision at step 1 issued by Ted Sakai (on May 16, 2000), effective June 5, 2000.

Kuehner filed a prohibited practice complaint with the Board on September 12, 2000.

The complaint by Kuehner was filed ninety nine (99) days after the June 5, 2000 decision by the UPW not to proceed further with grievance LS 00-17 beyond step 1 of the grievance procedure.

Conclusions of Law

1. For the Board to have jurisdiction over a prohibited practice, a complaint must be filed within 90 days of the alleged violation of chapter 89, HRS. § 377-9, HRS & Administrative Rule

12-42-42.¹

2. In the case of an alleged violation of the duty of fair representation by a union for failure to proceed with a grievance, the 90 day statute of limitations is triggered by notification to the grievant of the union's decision not to proceed further with the grievance. Kimura v. Waihee, 4 HLRB 543, 552. In the present case the "occurrence" under § 377-9, HRS, took place on June 5, 2000 when Kuehner was notified by Santiago of her conclusions and the action being taken by the union.

3. This Board has previously held that the 90 day statute of limitations must be strictly applied. In Fitzgerald v. Ariyoshi, 3 HPERB 186, 197-99 (1983), the board stated "[D]espite the fact that complainant missed the deadline by only one day, the Board cannot waive the defect on the basis of substantial compliance, as it is clear that statutes of limitations are strictly construed." In this case Kuehner missed the deadline by nine days.

Order

For want of jurisdiction the instant prohibited practice complaint is hereby dismissed.


¹ Section 377-9 states as follows:

(1) No complaints of any specific unfair labor practice shall be considered unless filed ninety days of its occurrence.

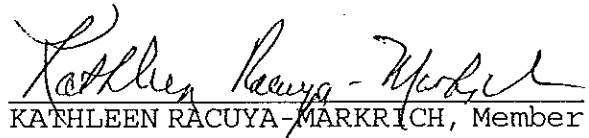
Joseph P. Kuehner vs. United Public Workers, AFSCME, Local 646, AFL-CIO; Laurie Santiago, Business Agent; and Diane Berndt (00-021); Case No. CU-10-173; PROPOSED ORDER GRANTING RESPONDENTS' MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

Dated: Honolulu, Hawaii, October 12, 2000.

HAWAII LABOR RELATIONS BOARD

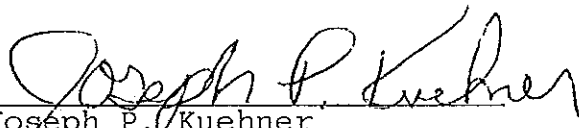

BRIAN K. NAKAMURA, Chairperson


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

ORDER NO. 1942

APPROVED AS TO FORM:


Joseph P. Kuehner
Complainant, Pro Se