

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-13-453
LANCE M. RABACAL,	)	ORDER NO. 1949
Complainant,	)	ORDER GRANTING RESPOND-
and	)	ENT'S MOTION TO DISMISS PRO-
DEPARTMENT OF PUBLIC SAFETY,	)	HIBITED PRACTICE COMPLAINT
State of Hawaii,	)	
Respondent.	)	

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ORDER GRANTING RESPONDENT'S MOTION  
TO DISMISS PROHIBITED PRACTICE COMPLAINT

On August 31, 2000, Complainant LANCE M. RABACAL (RABACAL) filed a prohibited practice complaint against Respondent DEPARTMENT OF PUBLIC SAFETY, State of Hawaii (PSD) with the Hawaii Labor Relations Board (Board). RABACAL alleged that he was promoted to the position of Corrections Supervisor II and later displaced from the position pursuant to the Respondent's decision to re-do the selection process. RABACAL contended that Respondent violated Hawaii Revised Statutes (HRS) §§ 89-13(a)(1), (2), (3), and (7) and Chapter 378.

On September 15, 2000, Respondent PSD filed a motion to dismiss the instant complaint on the grounds that the complaint fails to state a claim upon which relief can be granted, that Complainant failed to exhaust his contractual remedies, and that the Board lacks jurisdiction to hear this complaint.

On October 2, 2000, the Board conducted a hearing on PSD's Motion to Dismiss Prohibited Practice Complaint, filed on September 15, 2000. Presiding at the hearing was Chair Brian K. Nakamura, and members Chester C. Kunitake and Kathleen Racuya-Markrich. Deputy Attorneys General Kathleen M. Sato and Daniel A. Morris appeared on behalf of Respondent and Complainant RABACAL appeared pro se. All parties had full opportunity to present evidence and argument to the Board.

Based upon a thorough review of the record and the evidence and arguments presented, the Board makes the following findings of fact and conclusions of law, and order granting Respondent's motion to dismiss the instant complaint.<sup>1</sup>

### **FINDINGS OF FACT**

1. RABACAL is in a CRS IV position and employed by PSD. RABACAL is a member of Bargaining Unit 13 and as such, is an employee within the meaning of HRS § 89-2.
2. PSD is the representative of the public employer within the meaning of HRS § 89-2.
3. RABACAL applied for and received a promotion to the position of Corrections Supervisor II at Oahu Community Correctional Center in PSD effective August 1, 2000. The Corrections Supervisor II position is excluded from collective bargaining.
4. By letter dated August 3, 2000, RABACAL was notified by PSD that the Administrator at the Oahu Community Correctional Center decided to re-do the interviews for the position.
5. The gravamen of RABACAL's complaint is that he was aggrieved by PSD's decision to redo the selection process for the excluded position of Corrections Supervisor II.
6. The movement from an included position to an excluded position is not covered by HRS Chapter 89 or the applicable Unit 13 contract.

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<sup>1</sup>At the close of the hearing held in this matter, the Board instructed Respondent to submit a proposed order dismissing the complaint on grounds that Complainant failed to exhaust his remedies after offering Complainant an opportunity to review the draft for approval as to form. On October 23, 2000, Respondent filed a proposed order with the Board indicating that Complainant did not respond to Respondent's request to review the proposed order. In reviewing the proposed order, however, the Board concludes that the appropriate basis for dismissal of the complaint is the lack of subject matter jurisdiction over Complainant's claims. As the selection procedure complained of involves movement to an excluded position, the process would not be governed by the contractual grievance procedure.

## CONCLUSIONS OF LAW

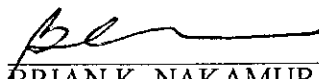
1. The Board has jurisdiction over prohibited practice complaints filed by employees, employers, or employee organizations..
2. HRS § 89-2 provides that "Employee" or "public employee" means any person employed by a public employer except elected and appointed officials and such other employees as may be excluded from coverage in section 89-6(c).
3. Although RABACAL is an employee included in a collective bargaining unit in his position of CRS IV, he challenges the Respondent's action in filling a position which is outside of the bargaining unit and excluded from collective bargaining. As such, the Board lacks jurisdiction over the complaint.
4. HRS § 89-13(a)(7) provides that it shall be a prohibited practice for a public employer to refuse or fail to comply with any provision of this chapter. "This chapter" refers to HRS Chapter 89. Thus violations of HRS Chapter 378 are not encompassed within the Board's prohibited practice jurisdiction and the Board concludes that Complainant's contentions that Respondent violated HRS Chapter 378 are outside of this Board's jurisdiction.

## ORDER

The Board hereby dismisses the instant prohibited practice complaint without prejudice.

DATED: Honolulu, Hawaii, November 1, 2000.

HAWAII LABOR RELATIONS BOARD

  
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BRIAN K. NAKAMURA, Chair

  
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CHESTER C. KUNITAKE, Member

  
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KATHLEEN RACUYA-MARKRICH, Member

LANCE M. RABACAL and DEPARTMENT OF PUBLIC SAFETY, State of Hawaii  
CASE NO. CE-13-453  
ORDER NO. 1949  
ORDER GRANTING RESPONDENT'S MOTION TO DISMISS PROHIBITED PRACTICE  
COMPLAINT

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