

Complainant alleged violations of the collective bargaining agreement and there is no indication that the union representative was ever advised of the claim and that the grievance procedure was utilized and exhausted prior to the filing of the complaint.

On January 30, 2002, Complainant filed a Motion to Amend the Original Complaint to Include Names and on February 1, 2002, Complainant filed an opposition to Respondents' motion to dismiss.

The Board conducted a hearing on the motions by conference call on February 7, 2002. Complainant appeared pro se by telephone and counsel for Respondents appeared before the Board. The parties had full opportunity to present argument to the Board.

Based upon a review of the record and consideration of the arguments presented, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. SAM FONG is an Adult Corrections Officer III assigned to the Maui Community Correctional Center (MCCC), PSD. SAM FONG is an employee within the meaning of HRS § 89-2 and included in bargaining unit 10.
2. TED SAKAI is the Director of PSD and represents the public employer within the meaning of HRS § 89-2.
3. ALBERT MURASHIGE is the Warden of the MCCC and represents the public employer within the meaning of HRS § 89-2.
4. The United Public Workers, AFSCME, Local 646, AFL-CIO (UPW) is an employee organization and the exclusive representative, within the meaning of HRS § 89-2, of bargaining unit 10.
5. The Board takes notice that the applicable Unit 10 Contract provides in part, in Section 15. Grievance Procedure as follows:

15.01 PROCESS.

A grievance which arises out of alleged Employer violation, misinterpretation, or misapplication of this Agreement, its attachments, exhibits, and appendices shall be resolved in Section 15.

15.02 DEFINITION.

The term grievance shall mean a complaint filed by a bargaining unit Employee, or by the Union, alleging a violation, misinterpretation, or misapplication of a specific section of this Agreement.

* * *

15.10 FORMAL GRIEVANCE.

In the event the grievance is not satisfactorily resolved on an informal basis, the grieving party and/or the Union may file a grievance by completing the grievance form provided by the Union.

6. The grievance procedure provides for an informal grievance step, two formal steps and arbitration, which only the UPW can initiate.
7. SAM FONG alleges that the State violated the terms of the Unit 10 Contract by authorizing or permitting supervisors to perform non-supervisory work on an overtime basis. Specifically SAM FONG alleges that the State violated the following provisions of Section 21. Supervisors Performing Non-Supervisory Work:

21.01 The Employer shall not require supervisors to perform non-supervisory work except:

21.01a. When the work of supervisory personnel include the performance of the work as a regular work assignment in keeping with their job descriptions; or

21.01b. When performance of non-supervisory work is incidental to supervisory responsibilities as in an emergency, training, or temporary relief where qualified personnel are not readily available; provided that in an emergency or for temporary relief where qualified personnel are not readily available, the supervisor shall not continue performing non-supervisory work beyond the time that the appropriate and qualified Employee(s) can be called and reports to work.

8. SAM FONG contacted a UPW representative with regard to his claim but no grievance has been filed by either SAM FONG or the Union.

9. The Board finds that SAM FONG has not initiated his claim of Contract violations through the grievance process.

CONCLUSIONS OF LAW

1. The general rule is that an employee is required to exhaust contractual remedies before bringing suit. The individuals who sue their employers for breach of a collective bargaining agreement must first attempt exhaustion of remedies under that agreement.
2. In Winslow v. State, 2 Haw.App. 50, 55, 612 P.2d 1046, 1050 (1981), the Intermediate Court of Appeals held that where the terms of public employment are covered by a collective bargaining agreement pursuant to HRS Chapter 89 and the agreement includes a grievance procedure to dispose of employee grievances against the public employer, an aggrieved employee is bound by the terms of the agreement. The court in Winslow found that the employee had failed to exhaust her available remedies because she failed to proceed to Step 4 (appeal to the employer) of the grievance procedure.
3. In Santos v. State, 64 Haw. 648, 646 P.2d 966 (1982), the Court stated that “[i]t is the general rule that before an individual can maintain an action against his [or her] employer, the individual must at least attempt to utilize the contract grievance procedures agreed upon by his [or her] employer and the [union].” 64 Haw. at 655, 646 P.2d at 967 (citation omitted).
4. In Hokama v. University of Hawai`i, 92 Hawai`i 268, 990 P.2d. 1150 (1999), the Court explained the policy considerations underlying the exhaustion of administrative remedies requirement as follows:

[s]trong policy considerations support [the] rule [that an employee must exhaust any grievance or arbitration procedures provided under a collective bargaining agreement before bringing a court action pursuant to the agreement]. The exhaustion requirement, first, preserves the integrity and autonomy of the collective bargaining process, allowing the parties to develop their own uniform mechanism of dispute resolution. It also promotes judicial efficiency by encouraging the orderly and less time-consuming settlement of disputes through alternative means.

92 Hawai`i at 272, 990 P.2d at 1154.

5. In Lewis W. Poe v. Hawai'i Labor Relations Board, ___ Hawai'i ___, ___ P.2d ___ (February 25, 2002), the Court held that under HRS Chapter 89, a public employee pursuing an individual grievance exhausts his or her administrative remedies when the employee completes every step available to the employee in the grievance process and a request to the employee's exclusive bargaining representative to proceed to the last grievance step would be futile.
6. The Board lacks jurisdiction over the instant complaint because SAM FONG failed to initiate, let alone, exhaust the contractual grievance process. Accordingly, the Board also denies Complainant's motion to amend his complaint.

ORDER

The Board hereby grants the Respondents' motion to dismiss the complaint and denies Complainant's motion to amend his complaint.

DATED: Honolulu, Hawaii, _____ April 24, 2002 _____.

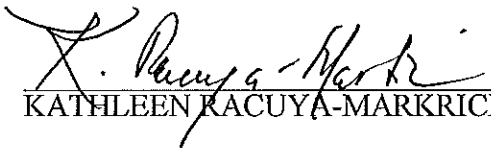
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