

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-05-531
JOHN MUSSACK,)	ORDER NO. 2206
Complainant,)	ORDER GRANTING STATE RESPONDENTS' MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT
and)	
PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawaii and DEPARTMENT OF EDUCATION, State of Hawaii,)	
Respondents.)	

ORDER GRANTING STATE RESPONDENTS'
MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT

On May 7, 2003, Complainant JOHN MUSSACK (MUSSACK), pro se, filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). In his complaint, MUSSACK alleges that Respondents PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawaii and the DEPARTMENT OF EDUCATION, State of Hawaii (collectively EMPLOYER) violated Hawaii Revised Statutes (HRS) § 89-13(a)(8) when they terminated his employment without proper cause.

On May 19, 2003 the EMPLOYER filed State Respondents' Motion to Dismiss Prohibited Practice Complaint. The EMPLOYER contends that the Board lacks jurisdiction over this matter; Complainant is barred from bringing this action before the Board under the doctrines of Res Judicata/Collateral Estoppel, and the Complaint is untimely.

On June 19, 2003, the Board held a hearing on the motion. The parties were afforded full opportunity to be heard. After a thorough review of the record in the case, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Complainant MUSSACK was, for all relevant times, an employee as defined in HRS § 89-2 and included in bargaining unit 05.¹

¹Unit 05 is composed of teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week

2. Respondents HAMAMOTO and DOE represent the interests of the Public Employer in dealing with public employees so as to be deemed public employers as provided in HRS § 89-2.
3. The Hawaii State Teachers Association (HSTA) is the exclusive representative of employees included in Unit 05.
4. At all relevant times, the Public Employer and the HSTA were parties to a collective bargaining agreement for Unit 05 which included a grievance procedure which culminated in final and binding arbitration.
5. Effective May 1, 2002, MUSSACK was terminated by the EMPLOYER. The HSTA contested the termination in Grievance No. 0-02-74. The grievance was pursued through arbitration.
6. On February 21, 2003, arbitrator Gail M. Kang, Esq., rendered a decision sustaining MUSSACK's discharge.
7. On February 18, 2003, the Circuit Court reversed the denial of MUSSACK's unemployment benefits in Civil No. 02-1-1903-08.

DISCUSSION

In his complaint, MUSSACK alleges that the EMPLOYER violated Articles V(J) and (K) of the Unit 05 collective bargaining agreement by disciplining him without proper cause. MUSSACK also claims that he was terminated in retaliation for whistleblowing in violation of HRS § 378-62.

Respondents contend that the issue presented to the Arbitrator was whether there was proper cause for Grievant's termination and the Arbitrator indeed found that Respondents had proper cause to terminate MUSSACK. Article V subsection E(b) of the Unit 05 agreement provides, in part, that the arbitrator's decision shall be ... final and binding on the parties. Respondents thus contend that Complainant has already litigated the issue of whether Respondents terminated him in violation of Article V subsections J and K of the Unit 05 agreement and Complainant is barred by the doctrines of res judicata and collateral estoppel from bringing the instant complaint.

Res judicata operates to limit a plaintiff to one opportunity to present his or her case. The purpose of the doctrine is to "prevent a multiplicity of suits and to provide a limit to litigation." The Hawaii Supreme Court has recognized that:

who are equal to one-half of a full-time equivalent. HRS § 89-6(a)(5).

The judgment of a court of competent jurisdiction is a bar to a new action in any court between the same parties or their privies concerning the same subject matter, and precludes the relitigation, not only of the issues which were actually litigated in the first action, but also of all grounds of claim and defense which might have been properly litigated in the first action but were not litigated or decided.

Pele Defense Fund v. Paty, 73 Haw. 578, 599, 837 P.2d 1247, 1261 (1992) (quoting Morneau v. Stark Enterprises, Ltd., 56 Haw. 420, 422-23, 539 P.2d 472, 474-75 (1975) (Emphasis added.) Generally, “[i]ssue preclusion, or the doctrine of collateral estoppel, applies in a subsequent suit between the same parties or their privies on a different cause of action and prevents the parties or their privies from relitigating any issue that was actually litigated and finally decided in the earlier action.” State v. Miyahira, 98 Hawai‘i 287, 293, 47 P.3d 754, 760 (Haw.App. 2002) (citing State v. Adam, 97 Hawai‘i 413, 419, 38 P.3d 581, 587 (2001)).

Respondents also contend that the Board lacks jurisdiction to vacate or modify the Arbitrator’s award and further lacks jurisdiction over the alleged violation of HRS § 378-62. In addition, Respondents contend that the instant complaint is untimely because Complainant failed to file his complaint within 90 days of his termination on May 1, 2002. Thus, Respondents contend the instant complaint is time-barred.

In the instant case, Complainant’s sole prohibited practice charge is an HRS § 89-13(a)(8) contractual violation, i.e., whether Complainant was terminated without proper cause. This issue has been pursued through the contractual grievance procedure and addressed in a “final and binding” decision by an arbitrator.

HRS §89-10.8 Resolution of disputes; grievances, provides in relevant part in paragraph (a):

A public employer shall enter into written agreement with the exclusive representative setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. The grievance procedure shall be valid and enforceable and....

In Hokama v. University of Hawaii, 92 Hawai‘i 268, 990 P.2d 1150 (1999), the Hawaii Supreme Court held that the contractual grievance procedure was the exclusive forum for any claims arising from the collective bargaining agreement. Therefore the Board concludes that the doctrine of res judicata is applicable here and bars the Board’s

consideration of the contractual claims raised by Complainant. The Board therefore lacks jurisdiction over such contractual claims.

In addition, there is no authority for the Board to assert jurisdiction over a whistleblower claim under HRS § 378-62.²

CONCLUSIONS OF LAW

1. Under the doctrine of res judicata, the arbitration award rendered in Complainant's grievance alleging his termination was not for proper cause precludes the relitigation of the same or related issues by the Board. The Board therefore lacks jurisdiction over the instant allegations of contractual violations because they have been addressed by an arbitrator which is final and binding upon the parties to the grievance.

2. The Board lacks jurisdiction over claims arising under HRS § 378-62.

ORDER

The Board grants State Respondents' motion to dismiss the instant complaint and hereby dismisses the instant prohibited practice complaint.

DATED: Honolulu, Hawaii, July 30, 2003

HAWAII LABOR RELATIONS BOARD


CHESTER C. KUNITAKE, Member

²HRS § 378-63 provides, in part, as follows:

(a) A person who alleges a violation of this part may bring a civil action for appropriate injunctive relief, or actual damages, or both within ninety days after the occurrence of the alleged violation of this part.

(b) An action commenced pursuant to subsection (a) may be brought in the circuit court for the circuit where the alleged violation occurred, where the complainant resides, or where the person against whom the civil complaint is filed resides or has a principal place of business.

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KATHLEEN RACUYA-MARKRICH, Member

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