

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of) STEPHANIE CROWELL STUCKY,)) <p style="text-align: center;">Complainant,</p>) <p style="text-align: center;">and</p>) LINDA LINGLE, Governor, State of Hawaii;) DEPARTMENT OF EDUCATION, State of) Hawaii; PATRICIA HAMAMOTO, Superinten-) dent, Department of Education, State of Hawaii;) KEN NOMURA, Maui District Superintendent;) Department of Education, State of Hawaii; and) CATHERINE KILBORN, Principal, Iao School,) Department of Education, State of Hawaii,)) <p style="text-align: center;">Respondents.</p>	CASE NO. CE-05-561 ORDER NO. 2282 ORDER GRANTING RESPONDENTS' MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT
---	---

ORDER GRANTING RESPONDENTS'
MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT

On June 1, 2004, Complainant STEPHANIE CROWELL STUCKY (STUCKY), proceeding pro se, filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). The complaint alleges that Respondents LINDA LINGLE (LINGLE), Governor, State of Hawaii (SOH); DEPARTMENT OF EDUCATION (DOE), SOH; PATRICIA HAMAMOTO (HAMAMOTO), Superintendent, DOE, SOH; KEN NOMURA (NOMURA), Maui District Superintendent, DOE, SOH; and CATHERINE KILBORN (KILBORN), Principal, Iao School, DOE, SOH (collectively Respondents or Employer) violated the provisions of Hawaii Revised Statutes (HRS) § 89-13(a)(8), when the master schedule at Iao School mandated more than the 1285 instructional minutes per week as provided for in the Collective Bargaining Agreement (Contract) for bargaining unit (BU) 05.

On June 14, 2004, Respondents filed Respondents' Motion To Dismiss Prohibited Practice Complaint on the grounds that Complainant failed to exhaust the contractual grievance procedure and, alternatively, the remedy sought is moot as the DOE is currently revising the schedule and discussing the resolution with the Hawaii State Teachers Association (HSTA), the exclusive representative for BU 05.

On June 21, 2004, STUCKY filed a Memorandum In Opposition to Respondents' Motion to Dismiss Prohibited Practice Complaint contending that she has exhausted the grievance procedure under the Contract.

On July 23, 2004, the Board held a hearing on Respondents' motion to dismiss. The parties were afforded full opportunity to argue their respective positions. After a thorough review of the record, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. STUCKY is a teacher employed by the Board of Education, SOH and a public employee within the meaning of HRS § 89-2 and member of BU 05.
2. Respondents LINGLE, DOE, HAMAMOTO, NOMURA and KILBORN, were for all relevant times, the public employer or the designated representative, within the meaning of HRS §§ 89-2 and 89-13.
3. For all relevant times, the Respondents and the HSTA, the exclusive representative for BU 05, were parties to a collective bargaining agreement (Contract), which contains a grievance procedure, culminating in arbitration at Step 3.
4. Complainant and HSTA filed a grievance at Step 1 on May 14, 2004. The grievance alleges the same contract violations charged in the instant prohibited practice complaint.¹
5. On May 21, 2004, when the DOE failed to respond to the grievance within the procedural time frame set under the Contract, STUCKY filed a Step 2 grievance.
6. On June 1, 2004, when no answer was forthcoming from the Employer, STUCKY filed the instant prohibited practice complaint alleging that:

After the completion of a grievance at the Step II level the Grievance no longer belongs to the Complainant but to the Exclusive Representative HSTA. The Complainant has "exhausted all remedies" as defined in the CBA.

Further, STUCKY alleged that KILBORN has refused to alter the current master schedule to be compliant with the BU 05 Contract.

¹Complainant's grievance alleges that based on the "Iao Staff Bulletin," teachers are providing 1308 minutes of instructional time per week in violation of the BU 05 Agreement which under the master schedule for 2004-2005 school year requires a total of 1285 minutes of instructional time per week. See, Exhibit (Ex.) 1, attached to Respondents' Motion to Dismiss Prohibited Practice Complaint.

7. Based on the declaration submitted by Solette H. Perry, DOE's personnel specialist III, dated June 11, 2004, the Employer "is in the process of revising the schedule so that the number of instructional minutes will be in compliance with the unit 05 Collective Bargaining Agreement. . . . The grievance filed by STUCKY on May 14, 2004, with a step 2 grievance filed on May 21, 2004, is still pending and has not been finally resolved or otherwise disposed of."²

DISCUSSION

Complainant seeks relief for alleged violations of the applicable collective bargaining agreement. Respondents move to dismiss the instant complaint on the grounds that: 1) Complainant has failed to exhaust the contractual grievance procedure; and alternatively, 2) the complaint is moot.

Generally, such alleged contractual violations are adjudicated through the bargaining agreement's grievance process. Chapter 89 expressly authorizes parties to a collective bargaining agreement to establish a "grievance procedure culminating in final and binding decision...." (Emphasis added.) HRS § 89-11(a).

In Winslow v. State, 2 Haw.App. 50, 55, 612 P.2d 1046 (1981) (Winslow), the Hawaii 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. In Santos v. State, Dept. of Transp., Kauai Div., 64 Haw. 648, 646 P.2d 962 (1982), the Hawaii Supreme 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]." (Citation omitted). 64 Haw. at 655.

In Hokama v. University of Hawai'i, 92 Hawai'i 268, 990 P.2d 1150 (1999) (Hokama), the Hawaii Supreme Court held that the contractual grievance procedure was the exclusive forum for any claims arising from the collective bargaining agreement. The Court stated:

HRS § 89-11(a) (1993) & Supp. 1998) provides: "A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit

²See Declaration of Solette H. Perry, attached to Respondents' Motion to Dismiss Prohibited Practice Complaint.

setting forth a grievance procedure culminating in a final binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement.” The plain language of the statute indicates that the grievance procedure shall serve as the exclusive vehicle for resolving disputes regarding the terms of the collective bargaining agreement.

Id., at 272-273. The Court explained the policy considerations underlying the exhaustion of administrative remedies requirement as follows:

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. [Citations omitted.] It also promotes judicial efficiency by encouraging the orderly and less time-consuming settlement of disputes through alternative means. [Citations omitted.]

Id., at 272.

Recently in Poe v. Hawai'i Labor Relations Bd., 105 Hawai'i 97, 94 P.3d 652 (2004), our Supreme Court held that an employee who is prevented from exhausting his or her contractual remedies may bring an action against an employer for breach of a collective bargaining agreement provided the employee can prove that the union as bargaining agent breached its duty of fair representation in its handling of the employee's grievance.

Thus, in cases where an employee charges a prohibited practice against the employer alleging a violation of the collective bargaining agreement pursuant to HRS § 89-13(a)(8) before exhausting the contractual remedies, this Board has declined jurisdiction in keeping with the prevailing National Labor Relations policy and Hawaii policy favoring arbitration as a dispute settlement mechanism.

STUCKY is under the mistaken impression that she has exhausted her contractual remedies by proceeding to Step 2 since the employer failed to respond within the contractual time frame. Therefore, STUCKY contends the grievance no longer belongs to the Complainant but to the Exclusive Representative, i.e., HSTA, and she has exhausted her contractual remedies provided by the Contract. STUCKY fails to understand that “ownership” of a grievance does not determine exhaustion. Further, the mechanical filing of a grievance without proper interaction between the “parties” of a contract does not meet the purpose and intent of the grievance process. See, e.g., Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53, 85 S.Ct. 614, 13 L.Ed.2d 580 (1965) (Maddox).³

³The Supreme Court in Maddox, supra, at pp. 652-53, explained the exhaustion of remedies policy as follows:

Here, STUCKY does not dispute that her Employer and Union are attempting to resolve the master schedule and instructional minutes issue that gave rise to STUCKY's grievance. Moreover, STUCKY has not shown how the lack of response or the DOE's failure to adhere to the exact time frame of the grievance process has prejudiced her in any way. Thus, the Board finds that STUCKY did not exhaust her contractual remedies and in keeping with the policy favoring the dispute settlement mechanism developed between the employer and the union, the Board defers to the grievance process and declines jurisdiction over the instant HRS § 89-13(a)(8) contract violation claim.

CONCLUSIONS OF LAW

1. Pursuant to HRS § 89-11(a), the contractual grievance procedure shall serve as the exclusive vehicle for resolving disputes regarding the terms of the collective bargaining agreement. In Hokama, supra, the Hawaii Supreme Court held that the contractual grievance procedure was the exclusive forum for any claims arising from the collective bargaining agreement.

As a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must attempt use of the contract grievance procedure agreed upon by employer and union as the mode of redress, (Footnote omitted.) If the union refuses to press or only perfunctorily presses the individual's claim, differences may arise as to the forms of redress then available. (Citations omitted). But unless the contract provides otherwise, there can be no doubt that the employee must afford the union the opportunity to act on his behalf. Congress has expressly approved contract grievance procedures as a preferred method for settling disputes and stabilizing the 'common law' of the plant. (Citations omitted). Union interest in prosecuting employees grievances is clear. Such activity complements the union's status as exclusive bargaining representative by permitting it to participate actively in the continuing administration of the contract. In addition, conscientious handling of grievance claims will enhance the union's prestige with employees. Employer interests, for their part are served by limiting the choice of remedies available to aggrieved employees. And it cannot be said in the normal situation, that contract grievance procedures are inadequate to protect the interests of an aggrieved employee until the employee has attempted to implement the procedures and found them so. [Emphasis added.]

2. As a grievance over the subject matter of this complaint is pending at Step 2, the Board concludes that STUCKY did not exhaust her contractual remedies. In keeping with the policy favoring the dispute settlement mechanism developed between the employer and Union, the Board defers to the grievance process, and declines jurisdiction over the prohibited practice complaint against the Employer.

ORDER

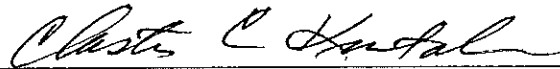
The Board hereby dismisses the instant prohibited practice complaint.

DATED: Honolulu, Hawaii, October 21, 2004.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Stephanie Crowell Stucky
Steve K. Miyasaka, Deputy Attorney General
Joyce Najita, IRC