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**Transaction ID 58122334**  
**Case No. CE-13-860**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

LEE SCRUTON,

Complainant,

and

DEPARTMENT OF PUBLIC SAFETY,  
STATE OF HAWAII,

Respondent.

CASE NO. CE-13-860

ORDER NO. 3117

ORDER GRANTING MOTION TO  
DISMISS COMPLAINT

ORDER GRANTING MOTION TO DISMISS COMPLAINT

I. Procedural Background

On May 11, 2015, LEE SCRUTON (Complainant) filed a prohibited practice complaint against Respondent DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAII (Respondent). The Complainant alleges Respondent engaged in a prohibited practice as defined in Hawaii Revised Statutes (HRS) Section 89-13 when the newly appointed warden at Oahu Community Correctional Center (OCCC) changed Complainant's flexible hours work schedule (aka "Flex Time") effective April 1, 2015.

On May 21, 2015, Respondent filed a Motion to Dismiss Complaint (Motion to Dismiss), together with its Memorandum in Support of Motion, Declaration of Miriam P. Loui and Exhibit A, Declaration of Renee Laulusa and Exhibit A, Declaration of Michael Hoffman and Exhibits A-F.<sup>1</sup> The Motion to Dismiss is based on Complainant's failure to exhaust the administrative grievance and arbitration procedures mandated by Article 11 of the Unit 13 collective bargaining agreement (Unit 13 Contract).

On July 1, 2015, Complainant filed a Memorandum of Opposition dated June 30, 2015, (Opposition Memo), together with Attachments A and B. In the Opposition Memo, Complainant asserts, *inter alia*, that he chose not to go through the grievance process because his Union representative told him he "would not win."

On July 14, 2015, Respondent filed Respondent Department of Public Safety, State of Hawaii's Reply to Complainant's Memorandum of Opposition (Reply Memo). In the Reply Memo, Respondent restated its argument in the Motion to Dismiss and addressed Complainant's

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<sup>1</sup> Respondent's Motion to Dismiss also incorporated the records and pleadings filed in this case.

explanation for his failure to file a grievance and argued that his contention that he would not prevail in a grievance was "mere speculation" that lacked merit and notwithstanding the Union's position, Complainant should have attempted to pursue his grievance at the step 1 and step 2 levels pursuant to the requirements of Article 11 of the Unit 13 Contract.

Oral arguments were held by the Board on July 24, 2015.

## II. LEGAL STANDARDS

The Board adheres to the legal standards set forth by the Hawaii appellate courts for motions to dismiss under the Hawaii Rules of Civil Procedure (HRCP) Rule 12(b).

A motion to dismiss for lack of subject matter jurisdiction pursuant to HRCP Rule 12(b)(1) is based on the contents of the complaint, the allegations of which must be accepted as true and construed in the light most favorable to the plaintiff. Dismissal is improper unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." In considering a motion to dismiss for lack of subject matter jurisdiction, the Board is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony to resolve factual disputes concerning the existence of jurisdiction. Casumpang v. ILWU, Local 142, 94 Hawaii 330, 337, 13 P.3d 1235, 1242 (2000); Right to Know Committee v. City Council, City and County of Honolulu, 117 Hawaii 1, 7, 175 P.3d 111, 117 (App. 2007).

## III. DISCUSSION, CONCLUSIONS OF LAW AND ORDER

If it should be determined that any of these Conclusions of Law should have been set forth as Findings of Fact, then they shall be deemed as such.

The Hawaii Supreme Court has held that a prohibited practice complaint should be dismissed if the complainant is unable to establish that he has exhausted contractual remedies through a grievance procedure of the applicable collective bargaining agreement. Poe v. Hawaii Labor Relations Bd., 97 Hawaii 528 (2002). As indicated in Hokama v. Univ. of Hawaii, 92 Hawaii 268, 272 (1999), the exhaustion requirement is well founded in strong public policy considerations, including the integrity and autonomy of the collective bargaining process and the need for orderly and less time consuming settlement of disputes.

Complainant's dispute with his employer, Respondent, is about OCCC's change of his Flex Time schedule. Although he does not specifically state in his Complaint that he is alleging a violation of the Unit 13 Contract, he does not dispute that he could have filed a grievance with Respondent on this matter.

Section 11 of the Unit 13 Contract establishes a three step process by which Complainant could have filed a grievance to challenge Respondent's change of Complainant's Flex Time schedule; however, Complainant failed to do so. As such, the Board finds that Complainant failed to exhaust his contractual remedies under the Unit 13 Contract and that his prohibited practice complaint must be dismissed.

As such, the Board hereby grants the Motion to Dismiss and closes this case.

DATED: Honolulu, Hawaii, November 5, 2015.

HAWAII LABOR RELATIONS BOARD



  
KERRY M. KOMATSUBARA, Chair

  
SESNITA A.D. MOEPONO, Member

  
ROCK B. LEY, Member

Copies sent to:

Mr. Lee Scruton, *Pro Se*

Miriam P. Loui, Deputy Attorney General, Attorney for Respondent

