

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
RUSSELL C. HENION, JR.,)	Case No. <u>CE-10-73</u>
Complainant,)	
and)	Order No. <u>398</u>
FRANK F. FASI, Mayor of the)	
City and County of Honolulu,)	
Respondent.)	

ORDER GRANTING MOTION TO DISMISS CASE

On December 16, 1980, Complainant Russell C. Henion, Jr., filed with this Board a Prohibited Practice Complaint against City and County of Honolulu. Subsequently, on December 23, 1980, Respondent filed a Motion for Particularization of Complaint. Said motion was granted by the Board in Order No. 375 on December 31, 1980. Pursuant to Order No. 375, Complainant filed a particularization of the Complaint on January 8, 1981.

At the hearing of this case on March 24, 1981, Allen K. Hoe, counsel for Respondent, orally offered a Motion to Dismiss on the grounds that: (1) Complainant has not stated a claim for which the Board has jurisdiction and for which the Board may grant relief; (2) Complainant failed to exhaust the administrative remedies provided in the Unit 10 agreement dated January 25, 1980; (3) the Board does not have jurisdiction to hear or resolve issues arising from Chapter 378 as alleged in the particularized Complaint as that chapter is only concerned with private employment actions and specifically excludes public sector employer actions; and (4) the filing of the Complaint was outside the 90-day statute of limitations requirement which is provided in Subsection 377-9(1), HRS, and made applicable to Board cases by Section 89-14, HRS.

Responding to the above contentions, John Gillmor counsel for Complainant, stated that: (1) Complainant is alleging, under Subsection 89-13(a)(8), HRS, a violation of the terms of the collective bargaining agreement; more particularly a violation of Section 14.01, the prior rights, benefits and prerequisites section of the Unit 10 contract; (2) Complainant attempted to seek redress through his union but nothing was done; (3) the reference to Section 378-32, HRS, in the particularized complaint was proper in that said section establishes a distinct policy regarding the discharge of employees with work-related injuries and that said section preempts any other ordinance or civil service rule repugnant to it; and (4) by the time Complainant realized nothing was going to be done for him, he filed his Complaint with the Board within the 90-day requirement.

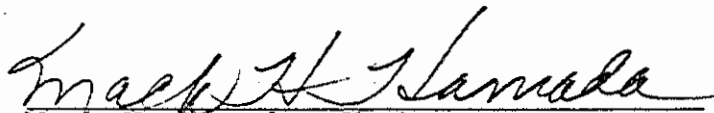
After careful consideration of the arguments, the Board is inclined to agree with Respondent that the Board does not have jurisdiction to hear this case. While it appears that the Complaint was timely filed, the Board agrees with Respondent that the particularized Complaint made it clear that the charges refer to Chapter 378 and Civil Service procedures, not Chapter 89.

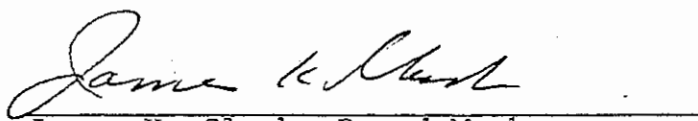
The primary problem in this case has been a lack of sufficient facts in the Complaint, even after particularization, from which the Board could make a determination that a possible Chapter 89 violation exists. Although Complainant did allege a violation of the Unit 10 contract at the hearing on the Motion to Dismiss, Complainant failed to provide facts to support this assertion. Moreover, it is important to note that when a contractual violation is charged, the Board cannot take jurisdiction in the case unless contractual grievance procedures have been exhausted. Mr. Gillmor's assertion at the hearing that exhaustion was not possible because Complainant approached his union

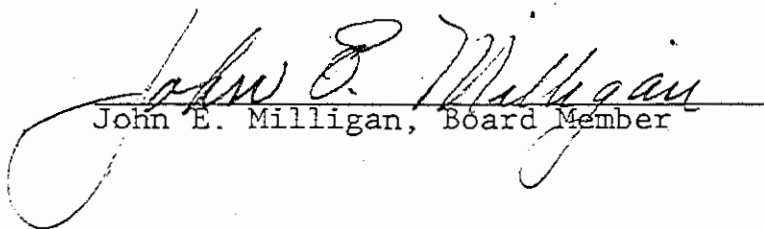
but nothing was done is not sufficient for the Board to exempt Complainant from the exhaustion requirement because the Unit 10 contract does provide for the processing of a grievance by individual employees without union assistance.

For the reasons stated above, the Board hereby grants Respondent's Motion to Dismiss and orders that this case be dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: April 2, 1981

Honolulu, Hawaii