




STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-03-310
)	ORDER NO. 1418
Complainant,)	ORDER GRANTING RESPONDENT'S
and)	MOTION FOR SUMMARY JUDGMENT
VIRGINIA ENOKA, Supervisor,)	
Department of Human Services,)	
State of Hawaii,)	
Respondent.)	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

On September 11, 1996, Complainant  ( or Complainant) filed a prohibited practice complaint against VIRGINIA ENOKA, Supervisor, Department of Human Services, State of Hawaii (ENOKA or Respondent) with the Hawaii Labor Relations Board (Board). Complainant alleges that from February 1995 to June 1996, she performed work at an Income Maintenance Worker (IMW) III level but was paid at an IMW II rate. Complainant contends that Respondent committed prohibited practices in violation of § 89-13(a)(8), Hawaii Revised Statutes (HRS) and Article 14 of the applicable Unit 03 collective bargaining agreement (contract).

Thereafter, on February 24, 1997, Respondent ENOKA, by and through her attorney, filed a motion to dismiss or in the alternative, motion for summary judgment with the Board. Respondent contends that there are no genuine issues of material fact presented in this case and that Respondent is entitled to

judgment as a matter of law. Complainant was classified as an IMW II and paid at that level. For the purposes of this motion, Respondent does not dispute Complainant's allegation that she was performing work at the IMW III level. Respondent submits that [REDACTED] underlying complaint involves her supervisor's alleged failure to reallocate Complainant to a higher class. As such, Respondent contends that the complaint involves classification matters which are excluded from the scope of negotiations and collective bargaining and this Board lacks jurisdiction over the subject matter of the instant complaint.

On February 26, 1997, Complainant filed a Prehearing Statement in response to Respondent's motion to dismiss or in the alternative, motion for summary judgment. Complainant argues that she independently performed the duties of an IMW II for more than the required minimum one year and was therefore entitled to receive the pay of an IMW III. Complainant contends that Respondent failed to promote her without proper cause.

On February 27, 1997, prior to the hearing on the merits of the complaint, the Board heard arguments on Respondent's motion to dismiss or in the alternative, motion for summary judgment. Based upon a review of the record and the arguments presented, the Board hereby grants Respondent's motion to dismiss the complaint for lack of jurisdiction. As the Board has considered the affidavit submitted by Respondent in support of the instant motion, the instant motion is treated as a motion for summary judgment.

FINDINGS OF FACT

██████████ was, for all times relevant, an IMW II in Position No. ██████████ with the Department of Human Services, State of Hawaii.

ENOKA was, for all times relevant, ██████████ supervisor and employed by the Department of Human Services, State of Hawaii.

Complainant ██████████ was hired as an IMW I on July 30, 1990. She was reallocated to an IMW II on August 16, 1993. ██████████ resigned from her IMW II position on June 16, 1996.

According to Diana H. Kaapu, Chief of the Classification and Compensation Review Division, Department of Human Resources Development (DHRD), State of Hawaii, the Director of Human Resources Development is responsible for the development and maintenance of the State's position classification system. Each position in the State system has a position description which sets forth the duties and responsibilities assigned to the position by the appointing authority and each position is assigned to a class with a designated salary range based upon the position description. In order to change the class and salary range of a position to a higher level, i.e., by reallocation or reclassification, competent authority must change the work assignments of the position which is reflected in the position description. The new position description is submitted to DHRD and if warranted, the position is reclassified to a different class in the classification plan.

According to available records, Kaapu states that Position No. ██████████ was allocated as an IMW I, SR 12, effective March 16, 1989. ██████████ was initially appointed to that position

on August 1, 1990. In 1993, the position was redescribed to reflect the performance of work with greater independence. The position was reallocated to IMW II, SR 14, effective August 1, 1993. There were no subsequent changes in [REDACTED] work assignments and position description.

According to Kaapu, complaints arising from the classification process are filed with the State Civil Service Commission pursuant to § 76-48, HRS, or with the Public Employees Compensation Appeals Board which hears pricing appeals pursuant to § 77-4(c), HRS.

DISCUSSION

Complainant contends that she received less pay than she was entitled to because she was performing work as an IMW III although she was classified as an IMW II. Complainant alleges that Respondent violated Article 14A.2 of the Unit 03 contract. That provision states as follows:

For purposes of this Article, "basic rate of pay" means the rate of pay and step an Employee is receiving as compensation. For an employee whose position is not assigned to the salary range, "basic rate of pay" shall mean the actual rate of compensation an Employee is receiving as remuneration for services performed in a particular position, not including any differentials.

Upon considering Complainant's allegations, the Board finds that the instant complaint involves improper classification. The Board finds that the foregoing contract provision merely sets forth the definition of "basic rate of pay" as used in the Unit 03 contract.

Complainant contends, however, that § 89-9(d), HRS, provides that the employer cannot fail to promote employees without proper cause. Section 89-9(d), HRS, provides in part:

The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle for equal pay for equal work pursuant to section 76-1, 76-2, 77-31, and 77-33, or which would interfere with the rights of a public employer to . . . (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause;

Respondent contends that Complainant misreads the statute since a plain reading of the provision indicates that the proper cause standard applies to suspensions, demotions, discharges, or other forms of disciplinary actions and does not pertain to promotions. Based upon a review of the statute, the Board agrees with the Respondent that proper cause refers to disciplinary actions against employees. Based upon a plain reading of the statute, the Board concludes that § 89-9(d), HRS, refers to the scope of negotiations and does not convey to this Board any jurisdiction over this complaint.

Based on the foregoing, the Board finds that there is no genuine issue of material fact presented in this case and Respondent is entitled to judgment as a matter of law.

CONCLUSIONS OF LAW

The Board lacks jurisdiction over complaints which allege the improper classification of positions. As the gravamen of

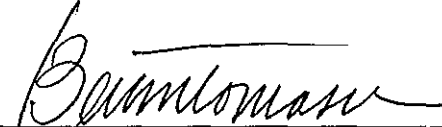
Complainant's allegations is that she was improperly classified and paid as an IMW II when she was performing at the IMW III level, the Board concludes that the Board lacks jurisdiction over the subject complaint.

ORDER

The Board hereby dismisses the instant complaint for lack of jurisdiction.

DATED: Honolulu, Hawaii, February 28, 1997.


HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

Copies sent to:


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