

Filipino Participation in Civil Rights Policies and Practices in Hawai‘i

Sheila M. Forman

Filipinos in Hawai‘i, both as individuals and as members of major advocacy organizations, have used existing legal avenues and opportunities to challenge dominant views about their eligibility (or non-eligibility, to be more accurate) for benefits protected by the Civil Rights Act of 1964. The Act provides that:

No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.¹

This article is a brief review of selected activities undertaken by Filipinos in Hawai‘i to assure compliance with this Act, and an analysis of the impact of these activities on the overall climate for the protection of the civil rights of other minorities in the state.

Other articles in this volume present basic information regarding the socio-economic status of Filipinos in Hawai‘i. Still others describe activities at the University of Hawai‘i and in the general community that represent major attempts to increase Filipino participation in educational and social benefits. These benefits, as the socio-economic profiles demonstrate, are still disproportionately distributed among ethno-cultural groups in Hawai‘i. This article will not address the broader issues of discrimination and exclusion in Hawai‘i that the data so forcefully bring to our attention. It will address the specific (some would say limited) protections Hawai‘i Filipinos can invoke under the Civil Rights Act as one approach to a more equitable distribution of these benefits.

The Act is important because, although its language restricts its applicability to programs receiving federal financial assistance, many large organizations, including government agencies, receive substantial amounts of federal assistance. In addition, the Act’s implementing regulations require that every agency which is an applicant for federal financial assistance take certain, affirmative steps to assure equal access to services, and equal opportunity to participate in their federally-funded programs, *as a condition of approval or extension* of federal financial assistance. In the language of the Office of Civil Rights they require a recipient to “develop and implement civil rights methods of administration to assure that the recipient will comply with all requirements imposed by or pursuant to the implementing regulation.”² Methods of administration which do not address the requirements of the Civil Rights Act are not likely to uncover

long-standing agency practices that exclude minorities from participation. Thus, they represent an important avenue for systematic change.

This article focuses on two major suits brought by Filipinos, Mangrobang vs. Yuen (then Director of the Hawai'i State Department of Health), 1976 and Fragante vs. the City and County of Honolulu, 1983; and an intensive lobby in 1988 to create a Hawai'i Civil Rights Commission, which arose at least in part as a result of the events and findings associated with these cases.

The first suit addresses equal access to health services from a state government agency; the second involves denial of employment in a city and county agency on the basis of accent. These suits are important because in Hawai'i, at the state level, the government is a major source of health services for low-income residents who cannot afford the high cost of health care in the private sector. The government is also a major employer, perhaps more so than in other states.

Prior to these suits, of course, there had already been considerable activity, including complaints filed by several groups with substantial Filipino membership, against the (then) Department of Social Services and Housing, the Department of Education, and the Department of Health. Many of these complaints resulted in specific findings of noncompliance and specific requirements for corrective action under threat of formal enforcement through administrative or legal proceedings or the withholding of federal funds.

The selection of the two suits for detailed discussion in this article is based partly on their direct association with named Filipino plaintiffs and partly on their impact on several Filipinos in the community who eventually became centrally involved in the creation of the Civil Rights Commission.

Mangrobang vs. Yuen

On October 4, 1976, Deditcho Mangrobang, a Filipino from the Ilocos region from which the majority of Filipinos in Hawai'i have emigrated, filed suit against the Department of Health (DOH) in federal court to compel them to provide access to health services for people who do not speak English. The Legal Aid Society of Hawai'i took up his case for him, and several individual Filipinos were involved in advocating for him and providing information on his behalf to his attorney, Paul Alston, now President of the Hawai'i Bar Association. Briefly, the events leading up to the suit were as follows:

Prior to the suit the executive budget had reflected a significant reduction in funds appropriated by the State Legislature to continue a bilingual health education project, previously funded through a federal agency. Judge Shintaku (a state judge) had upheld the state's action, stating "All of our ancestors were immigrants, my parents spoke only Japanese but they did not need this program. We all got along. We got medical care." Mangrobang decided to file in federal court.

A letter to the editor criticized Judge Shintaku's remarks as insensitive and unfortunate:

The judge's argument about his immigrant parents' not needing this kind of program is not apropos to the current situation in Hawaii. Today's problems are different and much more complex. Referring to past experiences which occurred under different social and historical conditions is neither a helpful solution nor a constructive attitude in dealing with the problems of present-day Hawaii.³

Mangrobang's suit specifically asked the U.S. District Court to enjoin Defendant Yuen, then Director of the DOH,

from reducing the quality of services now available to non-English speaking patients of the federally assisted programs of the Department of Health and require him to improve the quality of those services so that said services are fully equal to those available to English speaking persons.⁴

On July 27, 1977 the parties agreed to a compromise which was entered as a Stipulated Judgment. It required the DOH to study the need for improving bilingual health services and to determine the number of non-English speaking people in Hawai'i. The department was further required to improve, if necessary, the methods for delivering bilingual health services. The judgment, in effect, prevented the governor's proposed budget cut by requiring the DOH to fund ten bilingual health aides until a court-appointed committee had made its recommendations

which shall be considered binding factual determinations, as to the combinations of outreach and non-outreach bilingual workers...which are minimally necessary to assist or enable the Department to serve the Hawaii population of non-English speaking people in a manner consistent with the obligations of the Department under the regulations of the United States Department of Health, Education and Welfare...and the most recent "Statement of Compliance with DHWE Regulations under Title VI, Civil Rights Act of 1964..."⁵

The Committee, composed of two community members selected by the Legal Aid Society, two DOH employees selected by the DOH, and a fifth community member elected by the four appointed members, made several recommendations on how the DOH could achieve adequate bilingual services in appropriate languages on May 11, 1978. In brief they were:

(1) The DOH must maintain an overall minimum ratio of one bilingual worker per 600 non-English speaking health care recipients and public health care recipients per year.

(2) The DOH must spell out numerical ratios of worker to limited English speaking populations for specific outreach and non-outreach job classifications which are comparable to those currently in effect for the English-speaking population in the DOH.

(3) To assure compliance the DOH must conduct a new survey or demonstrate that it has conducted a survey subsequent to May 1978 which determines the current number of non-English speakers in Hawai'i and bilingual workers in the DOH. The survey data should indicate which positions by job description specifically provide for services to non-English speakers.

(4) The DOH must assure adequate availability of bilingual capability in appropriate languages among professional workers engaged in direct mental health services to non-English speaking clients.

(5) The DOH must incorporate familiarity with cultural features of non-English speaking populations as a job performance criterion for DOH bilingual workers.

(6) The DOH must provide in-service training programs directed at cultural awareness for all staff in direct public contact.

(7) The DOH must spell out procedures to assure subcontractors achieve the same level of bilingual services as that required for the DOH as a whole.

(8) The DOH must assure sufficient support funds for the bilingual staff in terms of literature, other interpreted materials, and mass media.

On November 21, 1978 and on May 16, 1979, the Committee wrote the DOH that it had reviewed its performance and found it deficient. On November 29, 1979, the Committee sent its final evaluation. It found the DOH's performance wholly insufficient. The Committee concluded that:

It is our view that you have frustrated the Committee in its efforts, that you have failed to respond to this Committee's legitimate inquiries, that you have ignored

this Committee's binding findings of fact and that you have violated the terms of the 1977 judgment in this matter.

The Committee therefore requested that the DOH acknowledge that its findings were binding. It further requested that the Defendant provide the names and occupations and locations of applicants and employees claimed to be bilingual. The Committee requested in addition that staff language capability and accessibility be primary criteria in staffing offices. The committee further requested that routine computerized data be made available to it at not less than six month intervals. The DOH rejected all these requests. The DOH also rejected the Committee's position that it was empowered to make binding findings of fact under the 1977 judgment.⁶

Mangrobang's attorneys then asked the court to appoint a "special master" to assure compliance with the Committee's recommendations.

While the court denied the appointment of a special master, it agreed with Mangrobang's interpretation of the 1977 agreement and declared that the Committee's recommendations were indeed binding. On October 14, 1980, U.S. District Judge Samuel King adopted the Committee's recommendations almost verbatim as part of his ruling, and ordered the DOH to comply. This was a substantial victory for Mangrobang and assured a strong legal basis for equal access to health services. However, the four-year wait was a clear signal to advocates that a more responsive and efficient system of resolving complaints was needed. Further, the realization of the need for a special master to assure compliance led to broader discussion among advocates regarding the creation of a full time committee or commission in Hawai'i, both to receive and resolve complaints, and to provide continuing education to agencies about their responsibilities under the Civil Rights Act.

Fragante vs. City and County of Honolulu

Mr. Manuel Fragante is a United States citizen born in the Philippines. He was well educated and earned honors while in school in the Philippines. In April 1981, he and his wife immigrated to the United States where he was naturalized as a citizen in Honolulu, Hawai'i in 1983.

On November 10, 1981, the City placed an advertisement in the daily newspapers for an employment opportunity as a clerk. On November 10, 1981, Fragante submitted his application for the advertised position. On December 19, 1981 he took the Civil Service written examination. He received a grade of

96 and was ranked number 1 on the list of applicants. A total of 721 applicants took the exam, 371 passed and 350 failed.

On April 6, 1982, Fragante reported to the Division of Motor Vehicles and Licensing for a scheduled interview. The interviewers both prominently noted Fragante's accent. One of them wrote: "Because of his accent I would not recommend him for the job." Realizing that there were laws prohibiting employment discrimination on the basis of national origin and that discrimination on the basis of accent can be interpreted as the equivalent of such discrimination, Fragante filed suit with the help of *Na Loio no na Kanaka* (The Lawyers for the People of Hawai'i). He was referred to this legal services agency by several Filipino individuals and members of community groups, who later became involved in community educational efforts regarding his case.

The City never refuted the fact that the reason for Fragante's rejection was his accent, and the judge's ruling clearly states: "Fragante was bypassed because of his 'accent'."

Nonetheless, the judge ruled on September 29, 1987 that Fragante had failed to prove discriminatory intent. Further appeals, which took two more years, also failed.

Ironically, the defeat may have attracted more attention within the Filipino community than a victory. Public sentiment among Filipinos was strongly in support of Fragante. The *FilAm Courier*, a local Filipino newspaper, headlined an article "Fragante: Discrimination based on 'Filipino Accent'" and devoted more than a full page to his case. Below are excerpts from a statement issued by the United Filipino Council of Hawai'i, a statewide federation of Filipino community organizations:

The United Filipino Council of Hawai'i strongly supports the case of Manuel Fragante against the City and County of Honolulu, which will be appealed to the Ninth Circuit Court of Appeals. We believe that Mr. Fragante was discriminated against on the basis of race and national origin when he applied for and was rejected for a position as clerk in the Licensing Division of the City Department of Finance in 1982...

Employers should not confuse the ability to communicate with accent. All too often, the fact that a job applicant speaks with an accent obscures the reality that he or she can actually communicate well, and sometimes in flawless English. However, some listeners immediately erect a mental barrier upon hearing an accent...

The United Filipino Council of Hawai'i commends Manuel Fragante for pursuing his rights under the law in a very lengthy, time-consuming process. We also commend William Hoshijo, attorney and director of the non-profit legal corporation, Na Loio No Na Kanaka, for representing Fragante. This case should serve as an example to others who may have been discriminated against to seek justice through the courts. And this case should also serve as notice to employers that employment discrimination is illegal, whether it be against people of color, women, older workers or the handicapped. It is particularly incumbent upon state and local government to set an example as equal employment opportunity employers.⁸

A fundraising committee was organized to support an appeal fund, a prominent University of Hawai'i Law School professor agreed to handle the appeal, and several young Filipino lawyers began to organize on Fragante's behalf.

The two largest Honolulu dailies, the *Honolulu Star-Bulletin* and the *Honolulu Advertiser*, ran letters from Fragante sympathizers: "Why did Mayor Fasi allow this case to go to trial? The mayor always claims to be a friend of the Filipino people especially when election time comes around..." "[O]ut of 1 million Hawaii residents, at least 950,000 have accents... [I]t would be appropriate for our city officials to move quickly to make amends—a settlement with Fragante."

In addition the trial underlined the state's poor record in enforcing laws governing employment practices and the Civil Rights Act. The investigator assigned to Fragante's case (after Fragante filed a complaint with the State Department of Labor) testified during the trial that out of a total of 200 cases he had investigated, he found in favor of the complainant in only two cases. At his deposition before the trial, he revealed that he had found in favor of none. Between the deposition and the actual trial date, he found in favor of two complainants. In other words, prior to his deposition, the investigator had found 100% in favor of the employer. As a result of testimony at the trial, facts about the complaint and investigation process had become part of the public record, and Fragante advocates raised pointed questions about the impartiality of the enforcement agency.

The Fragante case, like the Mangrobang case, took at least four years from initial filing to decision at the District Court level. The appeals added another two years. The United Filipino Council of Hawai'i statement above made special mention of this lengthy, time-consuming process and the growing number of advocates for Fragante, who had already been discussing enforcement alternatives, decided it was time for action at a different level. They became key

participants in the drafting of, and successful lobbying for, a bill creating the Hawai'i Civil Rights Commission. They formed a broad-based coalition comprising major civil rights organizations in the state. There were at least five representatives of Filipino community organizations who played key roles in this lobbying effort. Among the other coalition members were representatives of local women's groups, Common Cause, the NAACP, the YWCA, the Interagency Council for Immigrant and Refugee Services, the Hawai'i ACLU, Na Loio no na Kanaka and numerous individuals with a strong interest in civil rights issues. Fragante's attorney was asked to play a lead role in the drafting of the bill creating the commission and in the formal and informal negotiations with state legislators which were to follow immediately.

The time was right for the proposal. Key legislators agreed to submit and support the bill, and several regular meetings were held before and during the 1988 legislative session to strategize around all aspects of the campaign to create the civil rights commission. Persons familiar with commissions in other states were asked to provide information about the strengths and weaknesses of different commission models, to discuss the record of some states in actual enforcement of the provisions of the Civil Rights Act and to recommend criteria for the appointment of commission members.

It is no coincidence, then, that the commission was established during the legislative session immediately following the Fragante decision and that specific timelines are among the most prominent provisions in the Act creating it:

Sec. 368-13 Investigation and conciliation of complaint... In the event that the commission determines after the investigation that there is reasonable cause to believe that an unlawful discriminatory practice within the commission's jurisdiction has been committed, the commission shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods, such as conference, conciliation and persuasion... Where the commission has been unable to secure from the respondent a conciliation agreement acceptable to the commission *within sixty days of the filing of the complaint*, the commission shall demand that the respondent cease the unlawful discriminatory practice... [emphasis supplied]

Sec. 368-14 Commission hearings (a) If, *fifteen days after service of the final conciliation demand*, the commission finds that conciliation will not resolve a complaint, the commission shall appoint a hearings examiner and schedule a public hearing. [emphasis supplied]

It is also no coincidence that a compliance review is included in the provisions. Advocates had learned from the Mangrobang case that agencies/

employers would not necessarily comply even with court orders, unless an outside body monitored their performance and compelled them to do so:

Sec. 368-15 Compliance review. At any time in its discretion but not later than one year from the date of a conciliation agreement, or after the date of a commission's order to cease an unlawful practice and to take appropriate remedy, the commission shall investigate whether the terms of the agreement or order are being complied with by the respondent. Upon a finding that the terms of the agreement or the terms of the commission's orders, are not being complied with by the respondent, the commission shall take affirmative action...⁹

Following the passage of the bill, the state agency assigned to provide interim staff support for the commission initiated a community consultation process. They invited Mangrobang and Fragante advocates to sit on a committee that discussed specific procedures and actions to be accomplished in the following years, including the appointment of Commission members, the development of a transition plan and the specification of staffing requirements for successful implementation of the new mandates.

Current Commission members include nominees put forward by Mangrobang and Fragante advocates, with significant (some might say over-) representation by members of the Filipino community. Two of the five members, including the Chair, are Filipinos.

The Commission's Transition Plan reflects concerns about the previous enforcement record for Civil Rights statutes, including a section three pages long directly addressing the Department of Labor and Industrial Relations (the agency that had found in favor of only two complainants in testimony during the Fragante trial). The following are brief excerpts from the relevant section of the Transition Plan.¹⁰

As of March 14, 1990, there were 265 pending complaints. 135 of these complaints had not yet been assigned to an investigator...

A backlog of cases has been a consistent problem... In the fiscal years 1985 to 1990, more than half of the total number of complaints annually have not been resolved...

In 1988, there were 32 complaints which took longer than one year to be resolved. There were 2 complaints which took over 500 days to be resolved. Among the pending complaints, there are 2 complaints filed on July 15, 1987 and September 19, 1987, which are still being investigated. Of the outstanding complaints, there were 267 filed in 1988...

Several conclusions may be drawn. There is a lack of prosecution or enforcement of these complaints. The backlog is unfair to complainants and respon-

