

jurisdiction over the complaint because it is untimely and Complainant fails to state a claim for relief.

On December 7, 1995, LAST filed Complainant's Motion to Dismiss Respondent's Motion to Dismiss Complaint with the Board.

The Board conducted a hearing on Respondent's motion to dismiss on December 20, 1995. All parties were afforded a full opportunity to present evidence and argument. After considering the evidence and argument presented, the Board dismisses the instant prohibited practice complaint.

FINDINGS OF FACT

Complainant LAST is an employee as defined in § 89-2, HRS, in bargaining unit 01.

The UPW is the exclusive representative, as defined in § 89-2, HRS, of bargaining unit 01.

The Board takes notice that on or about March 8, 1994, the Board held a hearing in Case No. CU-01-98 during which the UPW introduced into evidence, without objection, exhibits relating to LAST, consisting of LAST's certification form and two Payroll Certifications.

On November 2, 1995, Complainant LAST filed a prohibited practice complaint against the UPW for disclosure of "sensitive" personnel information during said hearing of March 8, 1994.

The complaint filed by LAST was filed with the Board more than one year and eight months from the date of the alleged prohibited practice by the UPW.

The Unit 01 collective bargaining agreement states in relevant portions as follows:

1.07 The Employer further agrees to provide the Union, upon request, but not more than twice a year, a list showing the names of the employees, their most recent dates of continuous hire, classification titles, and departments.

1.08 The Employer further agrees to provide the Union upon request, relevant personnel information needed to chart accurately an individual employee's personnel transactions.

CONCLUSIONS OF LAW

Administrative Rules § 12-42-42(a) requires prohibited practice complaints to be filed within ninety days from the date of the alleged violation. That section provides:

A complaint that any public employer, public employee, or employee organization has engaged in any prohibited practice, pursuant to Section 89-13, HRS, may be filed by a public employee, employee organization, public employer or any party in interest or their representative within ninety days of the alleged violation.

In this case Complainant LAST filed the complaint more than one year and eight months after the alleged March 8, 1994 violation committed by the UPW. While LAST alleges that the UPW's disregard for Complainant's privacy occurred most recently on November 22, 1995, Complainant failed to present any evidence before the Board to support this claim.

This Board lacks jurisdiction to entertain a complaint which is filed more than ninety days from the date of the alleged occurrence. Ledward v. Fasi, 2 HPERB 539, 546-547 (1980); Fitzgerald v. Ariyoshi, 3 HPERB 186, 197-199 (1983); Kimura v. Waihee, 4 HLRB 543, 550-551 (1988). As the instant complaint was

filed more than ninety days after the alleged violation, the Board concludes that it lacks jurisdiction over this matter.

Assuming arguendo, that the Board has jurisdiction over this complaint, the Board nevertheless concludes that Complainant fails to state a claim for relief.

In his complaint, LAST alleges that the UPW violated §§ 1.07 and 1.08 of the Unit 01 collective bargaining agreement. The clear and unambiguous terms of the contract set forth above impose certain obligations upon a "public employer", but none upon the exclusive representative. It thus, "appears beyond doubt that [complainant] can prove no set of facts in support of his claim which would entitle him to relief" against the UPW. Bishop Est. Trust v. Castle & Cooke, 45 Haw. 409, 414 (1962), (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Hence, the Board concludes that LAST failed to state a claim that the UPW violated §§ 1.07 and 1.08 of the contract by submitting the documents to the Board.

ORDER

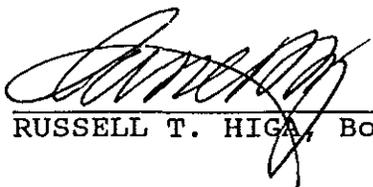
In accordance with the foregoing findings of fact and conclusions of law, the instant prohibited practice complaint filed on November 2, 1995 is hereby dismissed.

DATED: Honolulu, Hawaii, March 6, 1996.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

MICHAEL L. LAST v. UNITED PUBLIC WORKERS, AFSCME, LOCAL 646,
AFL-CIO; CASE NO. CU-01-113
ORDER NO. 1298
ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

Sandra H. Ebesu

SANDRA H. EBESU, Board Member

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