

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-01-279
MICHAEL L. LAST,	)	ORDER NO. 1313
	)	
Complainant,	)	ORDER GRANTING RESPONDENT'S
	)	MOTION TO DISMISS COMPLAINT
and	)	
	)	
DEPARTMENT OF CIVIL SERVICE,	)	
County of Hawaii,	)	
	)	
Respondent.	)	

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ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS COMPLAINT

On November 2, 1995, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against the DEPARTMENT OF CIVIL SERVICE, County of Hawaii (County or Employer). LAST alleges that the County violated §§ 89-13(a)(2), (3) and (7), Hawaii Revised Statutes (HRS).

The gravamen of LAST's complaint involves the County's alleged wilful failure to advise him at the time of applying for a County civil service position that payment of a union membership or fair share fee was required or that union membership was not required and affords no advantage regarding advancement. LAST claims that the County should have informed him of the foregoing, and of the amount of fees required. LAST also alleges that the County wilfully avoided informing prospective employees of the dues/fees requirement, and that such information could cause individuals to not seek employment with the County.

On November 29, 1995, the County filed a Motion to Dismiss Complaint as Untimely. A prehearing teleconference was held on December 1, 1995. The Motion to Dismiss was heard by telephone conference, by agreement of the parties, on December 12, 1995.

In its motion to dismiss, the County argues that the case should be dismissed because the dates of the alleged violations were more than ninety days before the filing of the complaint, as shown by the pleadings and the affidavit of Michael R. Ben (Ben), County of Hawaii Director of Personnel. At hearing, the County further argued that there is no statute, rule or collective bargaining agreement which requires the County to give the notice desired by LAST, and thus, that the complaint fails to state a claim for relief.

Based on the pleadings and files herein, and the affidavit of Michael R. Ben, and having considered the entire record and the arguments of the parties, the Board hereby makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

LAST is an employee, within the meaning of § 89-2, HRS, of the County of Hawaii, Department of Public Works. LAST is not a union member, but his position is included in bargaining unit 01.

The DEPARTMENT OF CIVIL SERVICE, County of Hawaii is a department which acts in the interest of the employer in dealing with public employees. The department is deemed to represent the employer, within the meaning of § 89-2, HRS.

LAST alleges prohibited practices as follows in the instant complaint:

Respondent wilfully failed to advise Complainant at the time of filing for a County of Hawai'i Civil Service position, that union membership or fair share fee payment is required for the position if it exceeds three months duration.

Respondent willfully failed to advise complainant at the time of filing for a County of Hawai'i Civil Service position, the amount of such union fee and fair share fee required for the position if it exceeds three months duration.

Respondent willfully failed to advise Complainant at the time of filing for a County of Hawai'i Civil Service position, that union membership is not required and affords no benefits with regard to advancement, if the position exceeds three months duration.

Respondent willfully and consistently took steps to not make any prospective candidate for County of Hawai'i employment cognizant of the dues/fee requirement.

Such knowledge could cause individuals to not seek employment with the County of Hawai'i.

According to County employment records, the last time that LAST filed for a County of Hawaii civil service position was April 25, 1994. LAST presented no evidence to the contrary.

LAST wrote a letter, dated November 10, 1994, to Michael R. Ben, Director of Personnel, County of Hawaii (Ben), a copy of which is appended to Mr. Ben's affidavit in support of the motion to dismiss. LAST's November 10, 1994 letter stated in part as follows:

I would like your response to the following suggestion:

Indicate on all County of Hawai'i announcements of promotional and/or open-competitive examinations, where applicable, that union membership or fair share fee payment is required for this position. Also indicate the amount of such union fee and fair share fee. Additionally, include a statement that union membership is not required and affords no benefits with regard to advancement.

There are those who consider the agency shop, to which the County of Hawaii can be classified, as a means of extortion! The payment of union dues OR a service fee is required for County of Hawai'i employment. Likewise, persons might not even consider employment with the County of Hawai'i if it was indicated that there was the legally required fee.

On December 12, 1994, Ben responded to LAST's November 10, 1994 letter, acknowledging the letter and stating that a general statement pertaining to union membership will be placed on the recruitment announcement.

The foregoing letters establish that LAST was aware, as of November 10, 1994, of the matters he now alleges were prohibited practices. The record also reflects that LAST applied for a County of Hawaii civil service position on April 25, 1994. Either of the foregoing dates is in excess of ninety days before the filing of the instant complaint on November 2, 1995.

The record contains no evidence that the failure to notify prospective employees of fee deductions and union membership as sought by Complainant is a wilful attempt to dominate, interfere, or assist in the formation, existence, or administration of any employee organization, or to discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization.



prospective employees of the union dues or other fees or the other matters as contended by Complainant. Thus, the County's failure to disclose the information desired by LAST cannot, under any state of the facts set forth in the pleadings, be held to constitute a prohibited practice.

Therefore, the Board finds that the complaint fails to state a claim upon which relief can be granted under §§ 89-13(a)(2), (a)(3) or (a)(7). HRS.

#### CONCLUSIONS OF LAW

A prohibited practice complaint shall be filed with the Board within ninety days of the alleged violation.

The instant complaint was filed in excess of ninety days from the alleged violation and the Board lacks jurisdiction over the complaint.

Complainant failed to state a claim under §§ 89-13(a)(2), (a)(3) and (a)(7), HRS, because the County is not required to provide notice to all job applicants that the payment of service fees is required for the position.

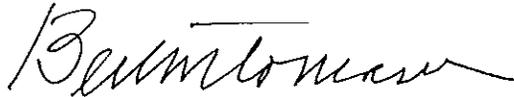
#### ORDER

Based on the foregoing, the Board hereby orders that the instant prohibited practice complaint is dismissed for lack of jurisdiction because the complaint was filed beyond the statute of limitations and for failure to state a claim for relief under §§ 89-13 (a)(2), (a)(3) or (a)(7), HRS.

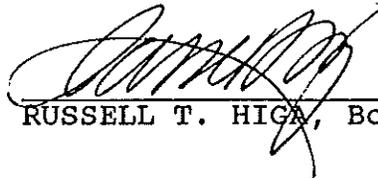
MICHAEL L. LAST and DEPARTMENT OF CIVIL SERVICE, County of Hawaii;  
CASE NO. CE-01-279  
ORDER NO. 1313  
ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT

DATED: Honolulu, Hawaii, April 9, 1996.

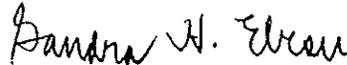
HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

Copies sent to:

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Ivan M. Torigoe, Deputy Corporation Counsel  
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