

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

| | | |
|--------------------------------|---|------------------------|
| In the Matter of |) | CASE NO. CU-01-114 |
| MICHAEL L. LAST, |) | ORDER NO. 1316 |
| Complainant, |) | ORDER GRANTING UPW'S |
| and |) | MOTION TO DISMISS COM- |
| UNITED PUBLIC WORKERS, AFSCME, |) | PLAINT |
| LOCAL 646, AFL-CIO, |) | |
| Respondent. |) | |

ORDER GRANTING UPW'S MOTION TO DISMISS COMPLAINT

On November 2, 1995, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) with the Hawaii Labor Relations Board (Board). LAST alleges that the amount of regular dues required of UPW members and nonmember fees withheld from Complainant was increased from the pay period ending November 15, 1994 to the pay period ending March 15, 1995 and for the pay period ending July 15, 1995. LAST alleges that Respondent UPW failed or refused to notify Complainant of such increase and did not give Complainant an opportunity to comment on the pending increase prior to the increase. LAST contends that the UPW thereby violated §§ 89-1 and 89-13(b)(4), Hawaii Revised Statutes (HRS). LAST also contends the UPW violated Section 2.03 of the Unit 01 agreement and thereby § 89-13(b)(5), HRS.

On November 28, 1995, Respondent UPW filed a motion to dismiss the instant complaint with the Board. The UPW contends

that the complaint should be dismissed because LAST fails to state a claim for relief under the applicable statute; the complaint is time-barred by the applicable statute of limitations and Complainant lacks standing to assert the rights of Union members since he is not a member of the Union.

LAST submitted a memorandum in opposition to the motion on December 6, 1995. The Board conducted a hearing on Respondent's motion to dismiss on December 27, 1995. All parties were afforded a full opportunity to present evidence and argument. After considering the evidence and arguments presented, the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

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

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

LAST is not a member of the UPW and at all relevant times herein pays a fair share agency fee under § 89-4, HRS.

At all relevant times herein the UPW maintained a procedure for determining the amount of refund to any employee who demands the return of any part of a fair share agency fee amount which represents the employee's pro rata share of expenditures for activities of a political and ideological nature which is unrelated to the terms and conditions of employment.

On or about March 1, 1994, the UPW sent an agency fee fair share notice to LAST at his last known address affording him an opportunity to request a refund for expenditures of a political

and ideological nature unrelated to terms and conditions of employment.

LAST did not seek a refund for expenditures of a political and ideological nature unrelated to employment for calendar year 1994.

In calendar year 1995 the UPW sent an agency fee fair share notice to LAST at his last known address affording him an opportunity to request a refund for expenditures of a political and ideological nature unrelated to terms and conditions of employment for calendar year 1995.

LAST did not seek a refund within 30 days of receipt of the fair share notice in 1995.

Section 89-4, HRS, states in relevant portions:

Section 89-4. Payroll deductions. (a) Upon receiving from an exclusive representative a written statement specifying the amount of regular dues required of its members in the appropriate bargaining unit, the employer shall deduct this amount from the payroll of every member employee in the appropriate bargaining unit and remit the amount to the exclusive representative. Additionally, the employer shall deduct an amount equivalent to the regular dues from the payroll of every nonmember employee in the appropriate bargaining unit, and shall remit the amount to the exclusive representative; provided that the deduction from the payroll of every nonmember employee shall be made only for an exclusive representative which provide for a procedure for determining the amount of a refund to any employee who demands the return of any part of the deduction which represents the employee's pro rata share of expenditures made by the exclusive representatives for activities of a political and ideological nature unrelated to terms and conditions of employment. If a nonmember employee objects to the amount to be refunded, the nonmember employee may petition the board for review thereof within fifteen days after

notice of the refund has been received. If an employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction from the payroll of members and nonmembers shall terminate.

Section 2.03 of the Unit 01 collective bargaining agreement states:

2.03 Regular dues. The Employer shall deduct regular dues from every member employee in the bargaining unit as required by law. Additionally, the Employer shall deduct an amount equivalent to regular dues from every non-member employee in the bargaining unit as required by law. (Emphasis added).

Section 89-1, HRS, states in relevant portions:

The legislature finds that joint decisionmaking is the modern way of administering government. Where public employees have been granted the right to share in the decisionmaking process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, and to maintain a favorable political and social environment.

The legislature declares that it is the public policy of the State to promote the harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are best effectuated by (1) recognizing the right of public employees to organize for the purpose of collective bargaining, (2) requiring the public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours and other conditions

of employment, while, at the same time, (3) maintaining merit principles and the principle of equal pay for equal work among state and county employees pursuant to sections 76-1, 76-2, 77-31, and 77-33, and (4) creating a labor relations board to administer the provisions of chapters 89 and 377.

On November 2, 1995, Complainant LAST filed a prohibited practice complaint against the UPW alleging failure to provide notice of increases in member and nonmember fees withheld from November 15, 1994 through March 15, 1995 and for the pay period ending July 15, 1995.

LAST filed the instant complaint with the Board more than ninety days from the dates of the alleged prohibited practices by the UPW.

DISCUSSION

Complainant alleges, inter alia, that he is entitled to notice and consent to any increases in service fees or dues prior to any increase. Complainant claims such increases occurred for the payroll periods ending March 15, 1995 and July 15, 1995.

In this case, LAST filed the complaint more than ninety days from the date he alleges the UPW failed to provide notice or seek his consent to the challenged increases in service fees. LAST contends that for payroll period November 15, 1994 to March 15, 1995 and for payroll ending July 15, 1995, the UPW improperly received remittance of funds from him without proper notice of consent of the purported increase.

This Board lacks jurisdiction to entertain a complaint which is filed more than ninety (90) 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). Clearly, the instant complaint is time-barred by the applicable statute of limitations.

Assuming arguendo, that the Board has jurisdiction over this complaint, it has long been recognized by the U.S. Supreme Court that employees who choose not to be members of a union, but share in the benefits of collective bargaining are required to pay their fair share through "agency fees." NLRB v. General Motors, 373 U.S. 734 (1963); Hawaii Government Employee's Association v. Armbruster, 5 Haw.App. 158 (1984). To avoid "free riders," all employees in bargaining units are required to pay their exclusive representatives "reasonable service fees necessary to defray the costs of its services rendered in negotiating and administering an agreement." Id., Act 171, Section 4, 1971 Sess. Laws of Hawaii. Thus under Hawaii law, payroll deductions of amounts equivalent to regular dues payable by union members have been authorized since 1971 from all nonmember employees in various bargaining units in the public sector. Id.

To be consistent with the requirements of the First Amendment of the U.S. Constitution, nonmember employees are also afforded the right to a refund of a pro rata portion of the payroll deduction for expenditures made by the "exclusive representative for activities of a political and ideological nature unrelated to the terms and conditions of employment." Section 89-4(a), HRS; See, Abood v. Detroit Board of Education, 431 U.S. 209 (1977). Section 89-4(a), HRS, requires the exclusive representative to

establish a procedure for determining the amount of the refund of that portion of agency fees which represents an objecting employee's pro rata share of expenditures made by the union for activities of a political and ideological nature.

Here, the UPW has a fair share agency fee procedure for the deduction of amounts equivalent to regular dues from nonmembers and also provides for the refunds of monies for activities of a political and ideological nature unrelated to the terms and conditions of employment. The procedure established by the UPW is in full compliance with the requirements of § 89-4(a), HRS. All amounts remitted to the UPW have been properly authorized by statute, and LAST has been afforded an opportunity to seek refunds of his pro rata portion of agency fees for expenditures of a political and ideological nature unrelated to terms and conditions of employment for calendar years 1994 and 1995. LAST chose not to seek a refund for calendar years 1994 and 1995 (in a timely manner).

LAST's complaint fails to state a claim for relief because neither § 89-1, HRS nor § 2.03 of the Unit 01 contract requires notice or consent of service fee members for an increase in service fees or dues as alleged. It "appears beyond a doubt that [complainant] can prove no set of facts in support of his claim which would entitle him to relief" against the UPW under §§ 89-13(b)(4) or (b)(5), HRS. Bishop Est. Trust v. Castle & Cooke, 45 Haw. 409, 414 (1962). (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

LAST also contends that the UPW has failed to properly notify its members of the increase in the amount of regular dues. A party seeking relief from this Board must have standing to bring a complaint on which basis he seek appropriate relief. Life of the Land v. Land Use Commission of State of Hawaii, 63 Haw. 166, 623 P.2d 431 (1981). To establish standing a party must establish a "logical nexus" between the interest asserted and the claim sought to be adjudicated. A party should not be permitted to assume a role and responsibility of another without a "personal interest" that would be measurable affected by the outcome of the case. Reliable Collection Agency, Ltd. v. Cole, 59 Haw. 503, 511, 584 P.2d 104 (1973). As a nonmember of the UPW, LAST lacks the requisite "interest" to assert the rights of members of the Union. Lepere v. United Public Workers, AFSCME, Local 646, AFL-CIO, Order No. 1160 (1995).

CONCLUSIONS OF LAW

The instant complaint is time-barred insofar as the alleged violations occurred more than ninety days prior to the filing of the instant complaint, and the Board, therefore, lacks jurisdiction over the complaint.

Complainant failed to state a claim for relief because neither Chapter 89, HRS nor § 2.03 of the Unit 01 contract require notice and consent to the Union's increase in service fees.

Complainant lacks standing to assert the rights of Union members because he is not a member of the Union.

ORDER

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

DATED: Honolulu, Hawaii, April 11, 1996.

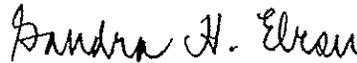
HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

Copies sent to:

Michael L. Last
Herbert R. Takahashi, Esq.
Joyce Najita, IRC