

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-01-85
RODNEY STEPHENSON,)	ORDER NO. 930
Complainant,)	ORDER GRANTING RESPONDENTS'
and)	MOTION TO DISMISS
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO)	
Respondent.)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On August 12, 1992, Complainant RODNEY STEPHENSON (STEPHENSON) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or UNION). STEPHENSON contends that Respondent UPW breached its duty of fair representation under Section 378-51, Hawaii Revised Statutes (HRS), by refusing to file a grievance on his behalf regarding the rescision of his promotion.

On September 25, 1992, Respondent UPW filed a Motion to Dismiss with the Board. In its motion, UPW argued, inter alia, that the charge filed by the Complainant STEPHENSON should be dismissed because the Board lacks jurisdiction to entertain the complaint which is time-barred.

A hearing was held on the Respondent's Motion to Dismiss on February 17, 1993.

Complainant STEPHENSON was at all times relevant an employee of the Department of Transportation, State of Hawaii and a member of bargaining unit 1.

Respondent UPW is the certified exclusive representative of employees of the State of Hawaii included in bargaining unit 1.

The instant complaint arose because Complainant's promotion was rescinded pursuant to a settlement agreement in a grievance pursued by UPW on behalf of another employee. STEPHENSON applied for and received a promotion to a Truck Driver-Laborer position in the Highways Division of the State Department of Transportation (Employer). After the selection was made, UPW filed a grievance on behalf of the unsuccessful applicant with the greatest base yard seniority, Darren Delos Santos, on January 17, 1991.

On October 14, 1991, UPW Business Agent Novena Dunhour sent Complainant a letter notifying him that the UPW was representing the senior employee in a grievance challenging Complainant's promotion. The letter further indicated that STEPHENSON would be adversely affected if the UPW prevailed.

The Delos Santos grievance challenged the Employer's consideration of the grievant's sick and vacation leave records during the selection process. The grievance was held in abeyance pending the resolution of another arbitration case which raised the same issue. On February 21, 1992, Arbitrator Stanley Ling determined that the Employer's selection process was defective, holding that it was improper to use an employee's sick leave record against him in promotion cases. Based upon Arbitrator Ling's

award, the parties, UPW, Delos Santos and the Employer's representatives, entered into a settlement agreement on May 5, 1992. Under the terms of the agreement, Delos Santos would be promoted to the Truck Driver-Laborer position and Complainant STEPHENSON would return to his former position.

On May 13, 1992, STEPHENSON received a letter from the Employer indicating that he would be returned to his former General Laborer position. An agent from UPW was present and STEPHENSON asked the UPW for assistance at that time and the Union representative refused to file a grievance on his behalf. STEPHENSON filed the instant prohibited practice complaint with the Board on August 12, 1992.

At the hearing, Respondent UPW argued, inter alia, that the complaint is barred by the statute of limitations. UPW contends that STEPHENSON's cause of action accrued on October 14, 1991 when Complainant received notice from Dunhour that UPW represented the senior employee in a grievance and he would be affected if UPW's grievance was successful. UPW argues that even if the date upon which STEPHENSON was notified that he would be returned to his former position was deemed to be the date which the cause of action accrued, that date is also outside the applicable ninety-day limitations period.

Section 377-9(1), HRS, which is applicable to the Board by Section 89-14, HRS, provides that no unfair labor practice complaint shall be considered unless filed within ninety days of its occurrence. Previously, the Board held that statutes of limitation are to be strictly construed and therefore dismissed a

prohibited practice complaint which was filed one day beyond the limitations period. Alvis W. Fitzgerald, 3 HPERB 186 (1983); Michael K. Iwai, 5 HLRB ____, (1993).

In this case, the Board finds that Complainant's cause of action to challenge the UNION's refusal to represent him accrued on May 13, 1992, when he was notified that he would be returned to his former position. STEPHENSON asked the UNION to represent him and the agent declined. Complainant's filing of the instant prohibited practice complaint on August 12, 1992 was ninety-one days after his cause of action accrued and beyond the applicable limitations period.

Based upon the foregoing, the Board lacks jurisdiction over this matter and hereby dismisses STEPHENSON's prohibited practice complaint.

DATED: Honolulu, Hawaii, March 12, 1993.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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