

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
ICHIRO IZUKA,	)	Case No. <u>CE-03-57</u>
	)	
Complainant,	)	
	)	
and	)	
GEORGE R. ARIYOSHI, Governor	)	
of the State of Hawaii,	)	
	)	
Respondent.	)	

In the Matter of	)	
ICHIRO IZUKA,	)	Case No. <u>CU-03-37</u>
	)	
Complainant,	)	
	)	
and	)	Decision No. <u>127</u>
HAWAII GOVERNMENT EMPLOYEES'	)	
ASSOCIATION, LOCAL 152,	)	
AFSCME, AFL-CIO,	)	
	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

On December 5, 1979, Complainant Ichiro Izuka filed with the Board these prohibited practice complaints against Respondents George R. Ariyoshi, Governor of the State of Hawaii (hereafter State or Employer), and Hawaii Government Employees' Association, Local 152, AFSCME, AFL-CIO (hereafter HGEA or Union).

On January 9, 1980, Respondent Union filed with this Board a Motion to Dismiss Complaint in Case No. CU-03-37. On January 24, 1980, Respondent Employer filed with this Board a Motion to Dismiss in Case No. CE-03-57.

On January 15, 1980, the Board issued a Notice scheduling a prehearing conference on February 6, 1980 and a hearing on February 21, 1980 on the subject prohibited practice complaints. Subsequently, the Board decided to hold a hearing on the two motions to dismiss at the scheduled prehearing conference, and the parties were duly notified.

Upon a full review of all exhibits, testimony presented at the prehearing conference on the motions to dismiss, and arguments made orally and in writing, the Board makes the following findings of fact, conclusions of law, and order.

#### FINDINGS OF FACT

Complainant Izuka is a public employee pursuant to Section 89-2(7), Hawaii Revised Statutes (hereafter HRS), and is included in Unit 3 (Nonsupervisory employees in white collar positions).

Respondent State is a public employer as defined in Section 89-2(9), HRS.

Respondent HGEA is the exclusive bargaining representative of employees in Unit 3.

Complainant is employed in the Animal Science Department, University of Hawaii, Waialeale Unit, Haleiwa, Hawaii.

On April 13, 1978, Otto Thompson, the farm manager<sup>1</sup> of said Waialeale Unit, retired.

Dr. Richard Stanley, chairman of the Animal Science Department, asked Leonard Fisher, a research technician in Unit 3 who had served as temporary farm manager in previous years under Mr. Thompson, if he wanted to take a temporary

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<sup>1</sup>Agricultural Research Technician VI, SR-17, Position No. 428, University of Hawaii. The position is in bargaining unit 4 (Supervisory employees in white collar positions).

assignment as farm manager. Fisher declined, but served as temporary farm manager until Dr. Stanley appointed Robert Cherry as the temporary farm manager on May 3, 1978. At the time of this appointment, Cherry was an agricultural research aide on probationary status, having been hired on December 1, 1977.

Thereafter, announcement of the vacancy of the farm manager's position was posted, with May 18, 1978 as the deadline for applications. Probationary employees were precluded from applying, the announcement stating in pertinent part: "Employees seeking promotion must be regular or permanent civil service employees. . ."

Fisher applied for the position but was subsequently notified that there was an insufficient number of applicants. Asked whether he wished to leave his application in, Fisher said yes. Cherry could not and did not apply for the position because he was a probationary employee.

A second announcement of the vacancy was posted in October 1978. There were four applicants, including Fisher and Cherry, the latter by then a permanent employee and therefore eligible to be an applicant.

On February 7, 1979, Dr. Stanley announced the appointment of Robert Cherry as the permanent farm manager effective January 16, 1979. Written notification followed during the week of February 12, 1979.

On March 14, 1979, Complainant was elected Unit 3 steward.

On May 2, 1979, at a meeting attended by Complainant, Dr. Stanley, HGEA Business Agent Nelson Moku, and former Unit 3 steward Kathy Marciel, Complainant submitted a letter to Dr. Stanley entitled "Grievance Procedure--Statement of Facts," as Step 1 in the grievance procedure. Accompanying



the letter was a "resolution and petition" addressed to Dr. Stanley and signed by twelve Unit 3 employees (95% of Unit 3 members, according to Complainant) recommending Leonard Fisher as farm manager and stating that Article 13, "Promotions," of the Unit 3 contract should be applied. Complainant presented his grievance to Dr. Stanley as a "Class Grievance."

On May 7, 1979, HGEA Chief Business Agent Jesse Manlapit informed Complainant that his position as Unit 3 steward would be effective July 1, 1979.

By letter dated May 30, 1979, Complainant presented the same "Class Grievance," previously presented to Dr. Stanley, to Dr. Fujio Matsuda, President of the University of Hawaii (hereafter UH).

By letter dated June 6, 1979, Harold Masumoto, UH Director of Administration, informed Complainant that his May 30, 1979 letter could not be accepted because: (1) it was not a class grievance inasmuch as it was filed on behalf of one person; therefore, the grievance should have been filed with the "division head," in this case, the Chancellor of UH-Manoa; and (2) the action grieved was the appointment of a farm manager on January 16, 1979, and the deadline for filing this grievance was 20 days thereafter. Despite these defects, Masumoto stated that he would refer Complainant's letter to the Chancellor.

In a reply letter of June 18, 1979, Complainant refuted Masumoto's statements. Consequently, by letter of June 22, 1980, UH President Matsuda informed Complainant that the University would hear his grievance, with David Luke, UH Director of Personnel, as Dr. Matsuda's designee.

After a meeting held with Complainant on June 28, 1979, David Luke, by letter dated July 6, 1979 to Complainant,

essentially reiterated Masumoto's letter of June 6, 1979, and denied the grievance.

By letter of July 17, 1979 to Luke, Complainant disputed his findings. In a reply letter of July 18, 1979, Luke suggested that Complainant contact HGEA for advice if he wished to pursue the grievance.

On July 25, 1979, Complainant wrote to HGEA's Jesse Manlapit for advice on pursuing the grievance. Union Agent Michael Miller replied to Complainant in a letter of July 27, 1979, which stated in pertinent part:

It is my sincere conclusion that the grievance is without merit and the Union's official position is not to pursue the alleged grievance. There is no contract violation, the complaint is untimely, and Mr. Leonard Fisher is not a party to the alleged grievance. For these reasons, the Union respectfully requests that you not pursue the matter as a representative of the HGEA.

Before receiving Miller's letter, Complainant, on July 30, 1979, wrote to Governor Ariyoshi concerning the subject grievance. By letter of August 15, 1979, Governor Ariyoshi informed Complainant that he had designated Donald Botelho, Director of the State Department of Personnel Services (hereafter DPS), as his representative to hear Complainant's appeal at Step 3. The matter was heard on August 31, 1979.

By letter dated September 11, 1979, Botelho informed Complainant that his grievance was untimely. However, an administrative review was made of Complainant's allegations; no violations of the collective bargaining agreement were found.

Complainant requested arbitration in a letter of September 20, 1979 to Botelho. This letter was referred to HGEA Contracts Officer Chester Kunitake, who advised Complainant, by letter dated October 5, 1979, that the right to request for arbitration was reserved to the Union, and that the Union,



consistent with Union Agent Miller's letter of July 27, 1979, would not pursue the grievance. A copy of this letter was sent to Botelho.

On October 15, 1979, Botelho wrote to Complainant that, pursuant to Kunitake's letter that the Union was not requesting arbitration, DPS would take no further action on the grievance.

On December 5, 1979, Complainant filed with the Board the subject prohibited practice complaints.

#### CONCLUSIONS OF LAW

Both Respondents Union and Employer moved to dismiss their respective cases on the same grounds: (1) that the actions were untimely filed; and (2) that Complainant had no standing to bring these actions.

The Board grants both motions to dismiss on the ground of untimely filing. The Board does not reach the issue of standing and makes no ruling thereto.

Prohibited practice complaints filed with the Board must be filed in a timely manner pursuant to Section 377-9(1), HRS, as incorporated by Section 84-14, HRS, and Rule 3.02(a), HPERB Rules and Regulations. These provisions state, in pertinent part:

Sec. 377-9. Prevention of unfair labor practices.

\* \* \*

(1) No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence.

Sec. 89-14. Prevention of prohibited practices. Any controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided in section 377-9. . . .

#### 3.02 Complaint

(a) WHO MAY FILE; TIME LIMITATION. A complaint that any public employer, public employee

or employee organization has engaged in any prohibited act may be filed by a public employee, employee organization, public employer, or any party in interest or their representatives within ninety days of the alleged violation.

Complainant's charges against Employer stem from Employer's appointment of Robert Cherry as permanent farm manager either on January 16, 1979, the effective date, or February 7, 1979, when Cherry's appointment was announced. Taking the latter date of February 7, 1979, for Complainant's benefit, the prohibited practice charge against Employer would have had to be filed with the Board by May 8, 1979.

Complainant's charge against the Union appears to be that HGEA breached its duty of fair representation when it failed to support Complainant in the grievance he filed.

The Unit 3 collective bargaining agreement between HGEA and the public employers provides, in pertinent part, in Article 11, Grievance Procedure, Section A, that:

The grievance shall be presented to the appropriate supervisor within twenty (20) working days after the occurrence of the alleged violation, or if it concerns an alleged continuing violation, then it must be filed within twenty (20) working days after the alleged violation first became known or should have become known to the Employee involved, . . . or the grievance may not be considered.

Complainant presented his "Class Grievance" to Dr. Stanley on May 2, 1979, and to Dr. Matsuda on May 30, 1979. Both dates were beyond the period of 20 working days for filing a grievance. Twenty working days after the alleged violation when Cherry's appointment was announced on February 7, 1979 would have been March 8, 1979. Notwithstanding his initial untimeliness, Complainant pursued the matter with Employer. By letter of July 27, 1979 to Complainant, as previously cited, Union Agent Miller stated the Union's position that it would not support Complainant's grievance. Despite the clear dictates of Miller's letter, Complainant persisted

in his grievance, as delineated in the findings of fact hereinabove. It is the Board's opinion that since a reasonable interpretation of Miller's letter would be that the Union dissociated itself from Complainant's grievance, the 90-day filing period for Complainant's action of the Union should have run from the date of the letter, July 27, 1979. Ninety days thereafter would have been October 25, 1979.

As to both Respondents Employer and Union, the complaints filed on December 5, 1979 were untimely and accordingly are dismissed.

ORDER

Case No. CE-03-57, against the Employer, and Case No. CU-03-37, against the Union, are hereby dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: May 12, 1980

Honolulu, Hawaii