

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-13-81
)	
MICHAEL K. IWAI,)	DECISION NO. 330
)	
Complainant,)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER
and)	
)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	
)	
Respondent.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 19, 1992, Complainant MICHAEL K. IWAI (IWAI) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). Complainant alleges that the Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) violated Subsections 89-13(b)(1) and (b)(3), Hawaii Revised Statutes (HRS) by its handling of an arbitration case on his behalf.

On June 23, 1992, the HGEA filed a motion to dismiss for failure to follow internal and international remedies and because the complaint was untimely filed. The motion to dismiss was heard at the hearing on the merits on June 26, 1992 in Lihue, Kauai. After hearing the arguments, the Board denied the motion to dismiss, in part. Complainant alleged that he was entitled to have a three-member arbitration panel instead of a single arbitrator hear his arbitration case as provided for by Section 89-11, HRS.

The Board held that IWAI's reliance upon that statutory provision was misplaced. The Board held that the three-member arbitration panel referred to in Section 89-11, HRS, pertains to interest arbitrations to resolve disputes over the terms of an initial or renewed collective bargaining agreement. That section, as well as Section 89-13(b)(3), HRS, are not applicable for grievance arbitrations to resolve contract violations as presented by IWAI. The Board indicated, however, that Complainant could proceed with the breach of duty of fair representation case against the HGEA.

The hearing was held before the Board and concluded on June 26, 1992. Briefs were submitted by the HGEA on August 25, 1992 and by IWAI on September 14, 1992, respectively. Based upon a thorough review of the record, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Complainant IWAI was at all times relevant the Victim Witness Coordinator for the County of Kauai and a member of bargaining unit 13.

The HGEA was for all times relevant the exclusive bargaining representative of employees in bargaining unit 13.

IWAI was terminated effective October 18, 1990 by Prosecutor Ryan Jimenez for disobeying directives and insubordination. Respondent HGEA's (R's) Exhibit (Ex.) 1. The Union filed a grievance with the employer on October 13, 1990 alleging that IWAI's termination violated various contractual provisions and recommended that the grievance proceed directly to

Step III. IWAI's suspension and termination were sustained by the Mayor on March 7, 1991.

On March 25, 1991, HGEA Kauai Division Chief Ray Emura notified IWAI that he would recommend to the Union not to proceed to arbitration. Emura also informed IWAI that the recommendation could be appealed to Chester Kunitake, HGEA Executive Assistant within ten calendar days. R's Ex. 2. Upon the appeal, Kunitake overruled Emura's recommendation and decided to take the case to arbitration.

Arbitrator Ted Tsukiyama heard the case on August 22, 1991 and issued his decision on December 17, 1991. The Arbitrator found that the Employer had just cause to dismiss IWAI. The Arbitrator considered the propriety of the penalty and upheld the termination decision. R's Ex. 1. IWAI received the arbitration award on December 19, 1991. See Prohibited Practice Complaint.

Many of the acts which IWAI complains of occurred during and prior to the arbitration hearing. Based upon the facts in the record, the Board finds that IWAI's cause of action accrued on December 19, 1991. The Board further finds that December 19, 1991 is more than ninety days prior to March 19, 1992, the date on which IWAI filed this complaint.

DISCUSSION

IWAI alleges, inter alia, that the HGEA breached its duty of fair representation in the handling of his arbitration case. In its motion to dismiss, HGEA argued that this complaint is barred by

the statute of limitations. The arbitration award was rendered on December 17, 1991. IWAI represented that he received the award on December 19, 1991. His complaint was filed with the Board on March 19, 1992, more than ninety days from December 17, 1991.

Section 377-9(1), HRS, made applicable to the Board by Section 89-14, HRS, provides that no unfair labor practice complaints shall be considered unless filed within ninety days of its occurrence. The Board has previously 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. Fitzgerald, 3 HPERB 186 (1983). Similar to the Fitzgerald case, this case was filed one day after the limitations period ran. There were no facts elicited in the testimony at the hearing or in the materials submitted to the Board which would give rise to a cause of action against the HGEA accruing within the applicable time period.

CONCLUSIONS OF LAW

Section 377-9(1), HRS, provides that unfair labor practice complaints must be filed with the Board within ninety days of its occurrence. Section 377-9, HRS, is applicable to the Board pursuant to Section 89-14, HRS.

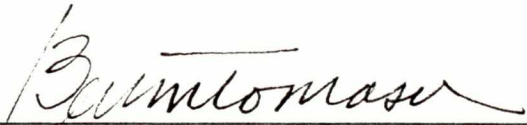
The subject complaint was filed outside of the ninety-day limitations period and is therefor time-barred.

ORDER

The prohibited practice charges contained in Case No. CU-10-13-81 are dismissed.

DATED: Honolulu, Hawaii, February 24, 1993.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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