



EFiled: May 30 2017 10:45AM HAST
Transaction ID 60659548
Case No. 17-CE-06-895

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

CASE NO. 17-CE-06-895

ANTHONY JONES,

DECISION NO. 490

Complainant,

FINDINGS OF FACT, CONCLUSIONS OF
LAW, DECISION AND FINAL ORDER

and

KATHRYN MATAYOSHI, Superintendent,
Department of Education, State of Hawai'i,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND FINAL ORDER

PART I: FINDINGS OF FACT

On April 11, 2017, ANTHONY JONES (Complainant) filed a Prohibited Practice Complaint (Complaint) with the HAWAII LABOR RELATIONS BOARD (Board) in Case No. 17-CE-06-895.

On April 12, 2017, the Board issued NOTICE TO RESPONDENT OF PROHIBITED PRACTICE COMPLAINT; NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING ON THE MERITS OF THE PROHIBITED PRACTICE COMPLAINT to KATHRYN MATAYOSHI, Superintendent, Department of Education, State of Hawai'i (Respondent.)

Pursuant to the Board's April 12, 2017 NOTICE, a Prehearing Conference was held on in the Board's Hearing Room on May 1, 2017 at 10:00 a.m.

On May 2, 2017, the Board issued NOTICE OF MOTION HEARING; WAIVER OF §377-9(b), HAWAII REVISED STATUTES AND § 12-42-46(b), SUBCHAPTER 3, CHAPTER 42, TITLE 12, HAWAII ADMINISTRATIVE RULES; NOTICE OF HEARING AND DEADLINES stating that the parties had agreed at the prehearing conference to waive the forty-day deadline from the time of the filing of prohibited practice

complaint for commencing the hearing on the merits. The NOTICE further provided that the Board would conduct a hearing on dispositive motions filed on or before the deadline of 4:30 p.m. on May 8, 2017. Such hearing to take place on May 18, 2017 at 9:00 a.m.

On May 8, 2017, the Respondent filed with the Board RESPONDENT KATHRYN MATAYOSHI'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO EXHAUST CONTRACTUAL REMEDIES; MEMORANDUM IN SUPPORT OF MOTION; CERTIFICATE OF SERVICE.

On May 15, 2017 counsel for the Complainant filed with the Board Complainant ANTHONY JONES'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO EXHAUST CONTRACTUAL REMEDIES.

On May 18, 2017 at 9 a.m. the Board held a hearing on RESPONDENT KATHRYN MATAYOSHI'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO EXHAUST CONTRACTUAL REMEDIES; MEMORANDUM IN SUPPORT OF MOTION; CERTIFICATE OF SERVICE and COMPLAINANT ANTHONY JONE'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO EXHAUST CONTRACTUAL REMEDIES to receive oral arguments.

After listening to the oral arguments, Board Member Moepono proffered questions with respect to the arguments made by the parties' respective counsels:

(40:38¹) **Moepono:** Having said that I, and this goes to you Mr. Brower², you have not specifically stated which sections under 89-13 that Mr. Jones feels that his rights have been violated. And under 89-13 you, this has nothing to with the collective bargaining agreement in a sense, this you can bring a violation of 89-13 without having exhausted your contractual remedies. For instance, if Mr. Jones filed, believed that he was discriminated because of his activities regarding his membership in the union then that would be brought 89-13(a)3 and that's not something he would not have had to go through under the collective bargaining agreement grievance procedure. Having said, that I realize Mr. Brower says in his opposition to the motion that his complaint is not being brought under 89-13(a)3. So, I ask you, Mr. Brower, what specifically under 89-13 are you claiming that Mr. Jones was violated in his rights under 89-13 by the employer?

(42:20) **Brower:** I could not find anything under 89-13 that fits the framework of his claim.

¹ The time notation indicates the starting minute and second of the audio recording of the oral argument hearing (e.g., Minute:Second).

² Brower appeared as counsel for Complainant.

(42:30) **Moepono:** So, as a matter of law, then we don't have jurisdiction over this case. Is that correct Mr. Brower?

(42:38) **Brower:** Regretfully, I would agree with that.

(42:41) **Moepono:** OK. So, this isn't an untimeliness, this is a failure to state a claim for relief, OK. Having said that, I don't believe this Board has jurisdiction as a matter of law because there is no claim that Mr. Jones is citing under 89-13 that he can get relief from. Correct Mr. Brower? (emphasis added).

(43:14) **Brower:** Yes (emphasis added).

After a recess to consider the responses given by the Complaint's counsel to Board Member Moepono's questions, the Board reconvened the hearing and went back on the record. Board Member Musto asked Mr. Brower, based on the response (see 47:30) he gave to Board Member Moepono's questions about the application of the violation under 89-13 and the failure to state a claim, if the Complainant would voluntarily withdraw the Complaint. After consulting with his client, Mr. Jones, Mr. Brower stated that the Complainant would not voluntarily withdraw the Complaint. Therefore, the Board, *sua sponte*, issued an oral decision that it did not have jurisdiction over the instant Complaint since there was failure to state a claim under §89-13.(See 47:25).

PART II: CONCLUSIONS OF LAW

The Board's Rules of Practice and Procedure at Hawaii Administrative Rules (HAR) §12-42-42 states, inter alia, a complaint against a public employer occurs when the public employer engages in a prohibited practice, pursuant to Hawaii Revised Statutes (HRS) § 89-13. Therefore, if a prohibited practice charge does not identify or describe a violation of a provision contained in § 89-13, then there is no complaint pursuant to HRS 89 nor within the meaning under HRS §377-9. Thus, the Board has no jurisdiction to hear the prohibited practice charge since the complainant failed to state a claim under §89-13.

Additionally, pursuant to HRS § 89-14, the Board "shall have exclusive original jurisdiction over" "[a]ny controversy concerning prohibited practices[.]" HRS § 89-14 further provides that any controversy concerning prohibited practices "may be submitted to the [B]oard in the same manner and with the same effect as provided in section 377-9[.]" In turn, HRS § 377-9(b) provides in relevant part that any party in interest may file with the Board "a written complaint on a form provided by the "[B]oard," charging any person with having engaged in any specific unfair labor practices. The Board's prohibited practice complaint form, Form HLRB-4, the 3/15 version of which was utilized by Complainant, requires in section 5, in relevant part, that the complainant "[s]pecify in detail the particular alleged violation, *including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated . .*" (emphasis added). Here, the Complaint does not allege any subsection or subsections of HRS

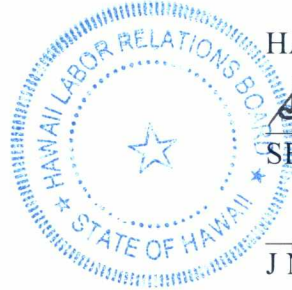
§ 89-13 pursuant to which a prohibited practice occurred.³ In short, there is no alleged prohibited practice that would invoke the Board's jurisdiction.

"The lack of jurisdiction over the subject matter cannot be waived by the parties. If the parties did not raise the issue, [the Board] *sua sponte* will, for unless jurisdiction of the [Board] over the subject matter exists, any judgment rendered is invalid." Tamashiro v. Dep't of Human Servs., 112 Hawaii 388, 398, 146 P.3d 103, 113 (2006) (citing Chun v. Employees' Ret. Sys. Of the State of Hawaii, 73 Haw. 9, 14, 828 P.2d 260, 263 (1992)).

DECISION AND FINAL ORDER

THEREFORE, the Board finds *sua sponte* that it lacks jurisdiction in this matter and dismisses the instant complaint, and the Board dismisses the Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to Exhaust Contractual Remedies on the grounds of being moot.⁴ The case is now closed.

Dated: Honolulu, Hawaii, May 26, 2017.



HAWAII LABOR RELATIONS BOARD

Sesnita A. D. Moepono

SESNITA A. D. MOEPONO, MEMBER

J N. Musto

J N. MUSTO, MEMBER

Copy sent to:

James E. Halvorson, Deputy Attorney General

Bosco Petricevic, Deputy Attorney General

Scot S. Brower, Esq.

³ Complainant has not requested leave to amend the Complaint. Moreover, a proposed amendment to a complaint would be futile where the proposed claim could not withstand a motion to dismiss. See Kealaho v. Machado, 131 Hawaii 62, 80, 315 P.3d 213, 231 (2013).

⁴ Mootness occurs when events have so affected the relations between the parties that the two conditions for justiciability – adverse interest and effective remedy – have been compromised. See, Lathrop v. Sakatani, 111 Hawaii 307, 312-13, 141 P.3d 480, 485-86 (2006).