

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.:	CE-12-216
	)		CU-12-101
RODNEY W. LEDWARD,	)		
	)	ORDER NO.	1124
Complainant,	)		
	)	ORDER DENYING RESPONDENTS'	
and	)	MOTIONS TO DISMISS; NOTICE	
	)	OF RESCHEDULED HEARING ON	
HONOLULU POLICE DEPARTMENT,	)	PROHIBITED PRACTICE COMPLAINT	
City and County of Honolulu and	)		
STATE OF HAWAII ORGANIZATION OF	)		
POLICE OFFICERS,	)		
	)		
Respondents.	)		

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ORDER DENYING RESPONDENTS' MOTIONS TO DISMISS;  
NOTICE OF RESCHEDULED HEARING ON PROHIBITED PRACTICE COMPLAINT

On October 21, 1994, Respondent HONOLULU POLICE DEPARTMENT, City and County of Honolulu (HPD), by and through its attorney, filed a motion to dismiss the instant prohibited practice complaint with the Hawaii Labor Relations Board (Board). HPD contends that Complainant RODNEY W. LEDWARD (LEDWARD) failed to state a claim upon which relief can be granted, and further that LEDWARD's complaint is barred by the statute of limitations.

Also on October 21, 1994, Respondent STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (SHOPO), by and through its attorney, filed a motion to dismiss the instant complaint on the grounds that LEDWARD's complaint is barred by the statute of limitations under § 377-9(1), Hawaii Revised Statutes (HRS) and Administrative Rules § 12-42-42(a). SHOPO filed a supplemental memorandum in support of its motion to dismiss on October 24, 1994.

On October 27, 1994, LEDWARD filed a memorandum in opposition to HPD and SHOPO's motions to dismiss.

Thereafter, on November 10, 1994, the Board held a hearing on HPD and SHOPO's motions to dismiss. At the hearing, HPD and SHOPO argued that LEDWARD's prohibited practice complaint is barred by the applicable statute of limitations.

HPD contends that LEDWARD's cause of action accrued on June 4, 1993, when LEDWARD allegedly met with HPD personnel, was informed that he had been medically disqualified by Dr. Hall, signed disqualification papers under protest, and was offered placement in a vocational rehabilitation program.

SHOPO contends that LEDWARD's only viable allegations against SHOPO occurred on May 3, 1993, when Mike Kaneshiro (Kaneshiro) of SHOPO allegedly suggested that LEDWARD file a complaint with the Office of Federal Contract Compliance Programs; June 14, 1993, when SHOPO allegedly discriminated against LEDWARD because he did not have more years of service with HPD; and July 18, 1993, when Kaneshiro allegedly informed LEDWARD that there was nothing that SHOPO could do to help him because there had been no administrative action taken to suspend or terminate him.

To the contrary, LEDWARD argues that his cause of action accrued on or about February 21, 1994, when he was allegedly forced to resign from HPD. With respect to this contention, LEDWARD claims that he contacted Kaneshiro of SHOPO for assistance after he was "terminated" by HPD.

Section 377-9(1), HRS, which is applicable to the instant case pursuant to § 89-14, HRS, provides that "[n]o complaints of

any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence."

In addition, Administrative Rules § 12-42-42(a), provides in relevant part:

A complaint that any public employer . . . or employee organization has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed by a public employee . . . or any party in interest or their representative within ninety days of the alleged violation.

The Board has consistently held that the ninety-day limitations period relating to prohibited practice complaints is to be strictly construed. See, e.g., Decision No. 330, Iwai and HGEA, 5 HLRB 132 (1993); Decision No. 336, Petramala and HGEA, 5 HLRB 172 (1993).

LEDWARD filed his prohibited practice complaint with the Board on April 18, 1994. Therefore, LEDWARD's cause of action must have accrued on or after January 19, 1994 in order to be considered by the Board.

Here, the record is unclear as to the actual date on which LEDWARD's cause of action accrued. Each of the parties attests to different dates and events which precipitated or should have precipitated the filing of the instant complaint. However, each of the parties failed to submit sufficient evidence to the Board in support of their individual claims.


Due to the insufficiency of evidence in the record, the Board is unable to properly determine whether LEDWARD's claims against HPD and SHOPO are time-barred. Accordingly, the Board hereby denies HPD and SHOPO's motions to dismiss.

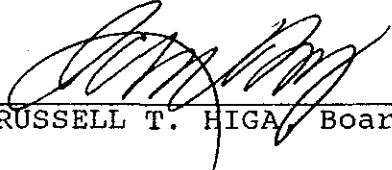
In view of the foregoing ruling, the Board will continue the hearing currently scheduled on November 22, 1994 at 9:00 a.m. in order to allow the parties adequate time to prepare their cases.

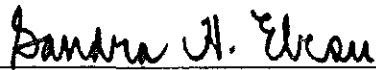
YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing on the instant prohibited practice complaint on December 15, 1994 at 9:00 a.m. in the Board's hearings room, Room 203, 550 Halekauwila Street, Honolulu, Hawaii. Appropriate provisions of the notice issued on May 25, 1994 remain applicable.

DATED: Honolulu, Hawaii, November 17, 1994.

HAWAII LABOR RELATIONS BOARD

  
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BERT M. TOMASU, Chairperson

  
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RUSSELL T. HIGA, Board Member

  
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SANDRA H. EBESU, Board Member

Copies sent to:

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