

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CU-01-113
MICHAEL L. LAST,	)	ORDER NO. 1298
Complainant,	)	ORDER GRANTING RESPONDENT'S
and	)	MOTION TO DISMISS
UNITED PUBLIC WORKERS, AFSCME,	)	
LOCAL 646, AFL-CIO,	)	
Respondent.	)	

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ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On November 2, 1995, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint against the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW) with the Hawaii Labor Relations Board (Board). LAST alleges that Respondent UPW entered certain exhibits into the record during a hearing before the Board on March 8, 1994 in Case No. CU-01-98. LAST alleges that these documents, consisting of a certification form and two payroll certifications, pertain to Complainant, are of a sensitive nature and their release caused great harm to his health and well-being. LAST also contends that he has evidence that the UPW obtained the documents by fraudulent means. LAST contends that the UPW violated § 89-13(b)(5), Hawaii Revised Statutes (HRS), and §§ 1.07 and 1.08 of the applicable collective bargaining agreement.

On November 28, 1995, Respondent UPW filed a motion to dismiss the instant complaint with the Board. The UPW contends that the complaint should be dismissed because the Board lacks

jurisdiction over the complaint because it is untimely and Complainant fails to state a claim for relief.

On December 7, 1995, LAST filed Complainant's Motion to Dismiss Respondent's Motion to Dismiss Complaint with the Board.

The Board conducted a hearing on Respondent's motion to dismiss on December 20, 1995. All parties were afforded a full opportunity to present evidence and argument. After considering the evidence and argument presented, the Board dismisses the instant prohibited practice complaint.

#### FINDINGS OF FACT

Complainant LAST is an employee as defined in § 89-2, HRS, in bargaining unit 01.

The UPW is the exclusive representative, as defined in § 89-2, HRS, of bargaining unit 01.

The Board takes notice that on or about March 8, 1994, the Board held a hearing in Case No. CU-01-98 during which the UPW introduced into evidence, without objection, exhibits relating to LAST, consisting of LAST's certification form and two Payroll Certifications.

On November 2, 1995, Complainant LAST filed a prohibited practice complaint against the UPW for disclosure of "sensitive" personnel information during said hearing of March 8, 1994.

The complaint filed by LAST was filed with the Board more than one year and eight months from the date of the alleged prohibited practice by the UPW.

The Unit 01 collective bargaining agreement states in relevant portions as follows:

1.07 The Employer further agrees to provide the Union, upon request, but not more than twice a year, a list showing the names of the employees, their most recent dates of continuous hire, classification titles, and departments.

1.08 The Employer further agrees to provide the Union upon request, relevant personnel information needed to chart accurately an individual employee's personnel transactions.

#### CONCLUSIONS OF LAW

Administrative Rules § 12-42-42(a) requires prohibited practice complaints to be filed within ninety days from the date of the alleged violation. That section provides:

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

In this case Complainant LAST filed the complaint more than one year and eight months after the alleged March 8, 1994 violation committed by the UPW. While LAST alleges that the UPW's disregard for Complainant's privacy occurred most recently on November 22, 1995, Complainant failed to present any evidence before the Board to support this claim.

This Board lacks jurisdiction to entertain a complaint which is filed more than ninety days from the date of the alleged occurrence. Ledward v. Fasi, 2 HPERB 539, 546-547 (1980); Fitzgerald v. Ariyoshi, 3 HPERB 186, 197-199 (1983); Kimura v. Waihee, 4 HLRB 543, 550-551 (1988). As the instant complaint was

filed more than ninety days after the alleged violation, the Board concludes that it lacks jurisdiction over this matter.

Assuming arguendo, that the Board has jurisdiction over this complaint, the Board nevertheless concludes that Complainant fails to state a claim for relief.


In his complaint, LAST alleges that the UPW violated §§ 1.07 and 1.08 of the Unit 01 collective bargaining agreement. The clear and unambiguous terms of the contract set forth above impose certain obligations upon a "public employer", but none upon the exclusive representative. It thus, "appears beyond doubt that [complainant] can prove no set of facts in support of his claim which would entitle him to relief" against the UPW. Bishop Est. Trust v. Castle & Cooke, 45 Haw. 409, 414 (1962), (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Hence, the Board concludes that LAST failed to state a claim that the UPW violated §§ 1.07 and 1.08 of the contract by submitting the documents to the Board.

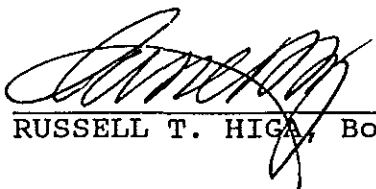
ORDER

In accordance with the foregoing findings of fact and conclusions of law, the instant prohibited practice complaint filed on November 2, 1995 is hereby dismissed.

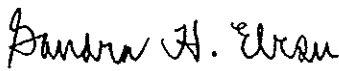
DATED: Honolulu, Hawaii, March 6, 1996.

HAWAII LABOR RELATIONS BOARD

  
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BERT M. TOMASU, Chairperson

  
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RUSSELL T. HIGA, Board Member

MICHAEL L. LAST v. UNITED PUBLIC WORKERS, AFSCME, LOCAL 646,  
AFL-CIO; CASE NO. CU-01-113  
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SANDRA H. EBESU, Board Member

Copies sent to:

Michael L. Last  
Herbert R. Takahashi, Esq.  
Joyce Najita, IRC