

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-01-278
MICHAEL L. LAST,)	ORDER NO. 1315
Complainant,)	ORDER GRANTING RESPONDENT'S
and)	MOTION TO DISMISS COMPLAINT
DEPARTMENT OF PUBLIC WORKS,)	
County of Hawaii,)	
Respondent.)	
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ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS COMPLAINT

On November 2, 1995, Complainant MICHAEL L. LAST (LAST) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against the DEPARTMENT OF PUBLIC WORKS, County of Hawaii (County or Employer). LAST alleges that the County violated § 89-13(a)(8), Hawaii Revised Statutes (HRS), but did not specify the section of the applicable collective bargaining agreement which was allegedly violated. Complainant further alleges that he was notified after his termination date that he was not, in fact, terminated. Complainant contends that he reported to his normal place of employment but the Employer was unable or unwilling to furnish him with written notification of continued employment. Thereafter, the Employer furnished written documentation of continued employment to the Complainant with a date prior to the termination date indicated thereon. Complainant contends that the Employer wilfully refused Complainant's request for credit for time not worked because of Respondent's actions.

Complainant contends that Respondent refused to grant Complainant leave of absence with pay in violation of § 89-13(a)(8), Hawaii Revised Statutes (HRS).

The gravamen of LAST's complaint involves the County's failure to present LAST with written confirmation of his continued employment after the expiration of a limited term appointment and the failure to credit him for paid leave of absence for the days that he refused to work without written confirmation of his continued employment.

A prehearing teleconference was held on December 1, 1995. On December 5, 1995, the County filed a motion to dismiss the complaint, which was heard by teleconference (by agreement of the parties) on December 12, 1995. In its motion to dismiss, the County argues that: (1) the complaint is barred by the statute of limitations because it was filed more than ninety days after the alleged violation and (2) the complaint fails to state a claim for relief under § 89-13(a)(8), HRS, because no specific contract provision is alleged to have been violated.

Based on the Affidavit of Herbert F. Yamashita, Business Manager of Respondent, the pleadings and other parts of the record herein, and having considered the arguments of the parties upon the motion to dismiss, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

LAST is a member of bargaining unit 01 and is employed on a limited term appointment basis by the County.

The record reflects that LAST's limited term appointment to County employment initially ended on June 30, 1995. His appointment was extended effective July 1, 1995. When LAST reported to work on July 1, 1995, he requested written confirmation of the extension of his appointment. He received oral confirmation, but written confirmation was not immediately available.

Because written confirmation was not immediately provided to him, LAST refused to work as scheduled on July 1, 2 and 4, 1995. After the County provided written confirmation of his extension of employment, LAST returned to work. LAST made no request for leave of absence with pay in advance of his absences on July 1, 2 and 4, 1995.

LAST's July 15, 1995 paycheck was reduced in amount, reflecting his failure to work or make timely request for absence with pay on July 1, 2 and 4, 1995. The failure to credit LAST with paid work time for those dates was apparent upon LAST's receipt of the July 15, 1995 paycheck.

Whether the date of the alleged violation is considered to be the failure to provide written verification of continued employment on July 1, 1995 or the failure to credit LAST with paid leave of absence as manifested in the July 15, 1995 paycheck, the filing of the complaint on November 2, 1995 was more than ninety days after either alleged violation. Although LAST alleges in his opposition papers that he requested a leave of absence on September 7, 1995, and that such request was denied by Donna Fay K. Kiyosaki, he has produced no evidence to support his claim. Thus,

the record contains no competent evidence of any other alleged violation.

DISCUSSION

Administrative Rules § 12-42-42 provides that a prohibited practice complaint must be filed within ninety days of the alleged violation. LAST complains of the COUNTY's actions which occurred in July 1995. Here, because the filing of the instant complaint on November 2, 1995 was more than ninety days from the date of the alleged violation, the complaint is barred by the applicable statute of limitations. The Board thus concludes that it does not have jurisdiction over the complaint.

Assuming arguendo, that the Board has jurisdiction over the complaint, the Board finds that LAST fails to state a claim for relief. The complaint charges that the County violated § 89-13(a)(8), HRS. That statutory section makes an employer's violation of the terms of a collective bargaining agreement a prohibited practice. However, neither the complaint nor any other part of the record identifies any specific section of the applicable collective bargaining agreement LAST alleges might have been violated.

Without the applicable contract provision identified or properly before the Board, the Board is unable to consider the merits of LAST's arguments. Ryan and SHOPO, 3 HLRB 81, 98 (1982). Neither in the pleadings nor in the arguments on the motion to dismiss did LAST refer to any specific section of the applicable collective bargaining agreement which was violated.

Based upon the record, the Board concludes that the complaint fails to state a claim for relief under § 89-13(a)(8), HRS, because no specific contract provision is alleged to have been violated.

CONCLUSIONS OF LAW

A complaint filed more than ninety days after the alleged violation is barred by the statute of limitations. The Complainant failed to establish that his complaint was filed within the applicable limitations period.

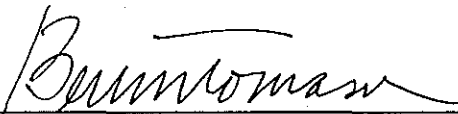
Complainant failed to state a claim for relief under § 89-13(a)(8), HRS, since he failed to identify the specific contract provision he alleges was violated.

ORDER

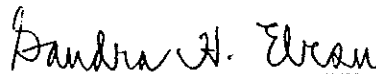
For the reasons set forth above, the instant prohibited practice complaint is hereby dismissed.

DATED: Honolulu, Hawaii, April 10, 1996.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

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