

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. CU-01-115
MICHAEL L. LAST,)	ORDER NO. 1317
)	
Complainant,)	ORDER GRANTING UPW'S
)	MOTION TO DISMISS COM-
and)	PLAINT
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Respondent.)	

ORDER GRANTING UPW'S MOTION TO DISMISS COMPLAINT

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 or Union) with the Hawaii Labor Relations Board (Board). Complainant alleges that since September 30, 1993, the UPW has caused the remittance of funds for activities of a political and ideological nature unrelated to the terms and conditions of his employment. LAST alleges that UPW's remittance of such funds upon request is not allowed by law and the use of remitted funds for political or ideological nature was unauthorized by members of the UPW. Further, LAST contends that he was not reimbursed additional monies equal to the amount of interest which Complainant could have received on the monies. LAST contends that the UPW thereby violated §§ 89-13(b)(4) and (5), Hawaii Revised Statutes (HRS).

On November 22, 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 issues were previously litigated in Case No. CU-01-98; LAST fails to state a claim for relief under the applicable statute; the complaint is time-barred by the applicable statute of limitations and Complainant lacks standing to assert the rights of Union members since he is not a member of the Union.

On December 5, 1995, LAST filed a memorandum in opposition to UPW's motion to dismiss complaint. The Board conducted a hearing on Respondent's motion to dismiss on December 12, 1995. All parties were afforded a full opportunity to present evidence and oral argument. After considering the evidence and arguments presented, the Board makes the following findings and conclusions.

FINDINGS OF FACT

Complainant LAST is an employee as defined in § 89-2, HRS, included in bargaining unit 01, but is not a member of the UPW.

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

At all relevant times herein the UPW maintained a procedure for determining the amount of refund to any employee who demands the return of any part of a fair share agency fee amount which represents the employee's pro rata share of expenditures for activities of a political and ideological nature which is unrelated to the terms and conditions of employment.

On or about March 1, 1994, the UPW sent an agency fee fair share notice to LAST at his last known address affording him

an opportunity to request a refund for expenditures of a political and ideological nature unrelated to terms and conditions of employment.

LAST did not seek a refund for expenditures of a political and ideological nature unrelated to employment for calendar year 1994.

In calendar year 1995 the UPW sent an agency fee fair share notice to LAST at his last known address affording him an opportunity to request a refund for expenditures of a political and ideological nature unrelated to terms and conditions of employment for calendar year 1995.

Although LAST did not seek a refund within 30 days of receipt of the fair share notice in 1995, the UPW refunded to LAST his pro rata share of expenditures of a political and ideological nature unrelated to terms and conditions of employment during calendar year 1995.

On November 2, 1995, Complainant LAST filed a prohibited practice complaint against the UPW alleging improper remittance of funds to the UPW since September 30, 1993. LAST filed the instant complaint with the Board more than two years and one month from the date of the alleged prohibited practice by the UPW.

DISCUSSION

In this case, LAST filed a complaint more than two years from the date he alleges the UPW violated the provisions of § 89-4(a), HRS. He contends that since September 30, 1993, the UPW has improperly received remittance of funds from him, failed to

make the proper refund and used such monies without proper authorization.

Pursuant to Administrative Rules § 12-42-42, this Board lacks jurisdiction over complaints filed more than ninety (90) days from the date of the alleged violations. 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). Clearly, the instant complaint is time-barred by the applicable statute of limitations. Although LAST claims in his memorandum of opposition that the allegations occurred most recently during November 1995, LAST failed to introduce any evidence to support this claim. Thus, the Board dismisses the claims which are outside of the applicable limitations period.

Assuming arguendo, that the Board has jurisdiction over this complaint, LAST alleges that since September 30, 1993 Respondent has had the use of service fee monies which was not authorized by him. In addition, Complainant alleges that there is no provision for the return of any interest which Complainant could have received. Complainant thus alleges that the UPW violated §§ 89-13(a)(4) and (5), HRS.

The UPW contends that LAST seeks to invalidate § 89-4, HRS, which requires that the Union have a Hudson fair share procedure which permits the refund of nonchargeable expenses to nonmembers. The UPW contends that the UPW's refund procedure complies with applicable U.S. Supreme Court decisions and that LAST fails to state a claim for relief with regard to the refund procedure.

Section 89-4, HRS, states in relevant portions:

Section 89-4. Payroll deductions. (a) Upon receiving from an exclusive representative a written statement specifying the amount of regular dues required of its members in the appropriate bargaining unit, the employer shall deduct this amount from the payroll of every member employee in the appropriate bargaining unit and remit the amount to the exclusive representative. Additionally, the employer shall deduct an amount equivalent to the regular dues from the payroll of every nonmember employee in the appropriate bargaining unit, and shall remit the amount to the exclusive representative; provided that the deduction from the payroll of every nonmember employee shall be made only for an exclusive representative which provide for a procedure for determining the amount of a refund to any employee who demands the return of any part of the deduction which represents the employee's pro rata share of expenditures made by the exclusive representatives for activities of a political and ideological nature unrelated to terms and conditions of employment. If a nonmember employee objects to the amount to be refunded, the nonmember employee may petition the board for review thereof within fifteen days after notice of the refund has been received. If an employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction from the payroll of members and nonmembers shall terminate.

It has long been recognized by the U.S. Supreme Court that employees who choose not to be members of a union, but share in the benefits of collective bargaining are required to pay their fair share through "agency fees." NLRB v. General Motors, 373 U.S. 734 (1963); Hawaii Government Employee's Association v. Armbruster, 5 Haw. App. 158 (1984). To avoid "free riders," all employees in bargaining units are required to pay their exclusive representatives "reasonable service fees necessary to defray the costs of its services rendered in negotiating and administering an

agreement." Id., Act 171, Section 4, 1971 Sess. Laws of Hawaii. Thus under Hawaii law, payroll deductions of amounts equivalent to regular dues payable by union members have been authorized since 1971 from all nonmember employees in various bargaining units in the public sector. Id.

To be consistent with the requirements of the First Amendment to the U.S. Constitution, nonmember employees are also afforded the right to a refund of a pro rata portion of the payroll deduction for expenditures made by the "exclusive representative for activities of a political and ideological nature unrelated to the terms and conditions of employment." Section 89-4(a), HRS; See, Aboud v. Detroit Board of Education, 431 U.S. 209 (1977). Section 89-4(a), HRS, requires the exclusive representative to establish a procedure for determining the amount of the refund of that portion of agency fees which represents an objecting employee's pro rata share of expenditures made by the union for activities of a political and ideological nature.

Here, the UPW has a fair share agency fee procedure for the deduction of amounts equivalent to regular dues from nonmembers and which provides for the refund of monies for activities of a political and ideological nature unrelated to the terms and conditions of employment. The procedure established by the UPW complies with the requirements of § 89-4(a), HRS. Based upon the evidence presented, LAST has been afforded an opportunity to seek refunds of his pro rata portion of agency fees for expenditures of a political and ideological nature unrelated to terms and conditions of employment for calendar years 1994 and 1995. LAST

chose not to seek a refund for calendar year 1994 and has received his refund for 1993 and 1995.

LAST's allegation that the remittance of agency fees to the UPW was improper under § 89-4, HRS, fails to state a claim for relief since the statute clearly provides for the payroll deductions of amounts equivalent to regular dues from nonmembers and the refund of monies for activities of a political and ideological nature unrelated to the terms and conditions of employment. It "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)).

Further, Complainant's claim for interest on the amounts refunded to him by the UPW also fails to state a claim for relief under § 89-4(a), HRS. There is no provision for the return of interest earned under the statute as part of the refund to nonmember employees.

LAST also contends that the UPW has expended the funds remitted to it without the proper authorization of its members. A party seeking relief from this Board must have standing to bring a complaint on which basis he seek appropriate relief. Life of the Land v. Land Use Commission of State of Hawaii, 63 Haw. 166, 623 P.2d 431 (1981). To establish standing a party must establish a "logical nexus" between the interest asserted and the claim sought to be adjudicated. A party should not be permitted to assume a role and responsibility of another without a "personal interest"

that would be measurable affected by the outcome of the case. Reliable Collection Agency, Ltd. v. Cole, 59 Haw. 503, 511, 584 P.2d 104 (1973). As a nonmember of the UPW, LAST lacks the requisite "interest" to assert the rights of members of the Union. Lepere v. United Public Workers, AFSCME, Local 646, AFL-CIO, Order No. 1160 (1995). Thus, the Board concludes that Complainant lacks standing to assert the rights of Union members.

CONCLUSIONS OF LAW

Complainant failed to state a claim for relief because § 89-4, HRS, does not provide for the return of any interest earned on refunded amounts.

The instant complaint is time-barred insofar as the alleged violations occurred more than ninety days prior to the filing of the complaint.


Complainant lacks standing to assert the rights of Union members because he is not a member of the Union.

ORDER

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

DATED: Honolulu, Hawaii, April 11, 1996.

HAWAII LABOR RELATIONS BOARD

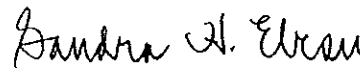


BERT M. TOMASU, Chairperson

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RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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