

LAST alleges that said release of information was in violation of § 89-13(a)(8), Hawaii Revised Statutes (HRS), in that said release was in violation of §§ 1.07 and 1.08 of the Unit 01 collective bargaining agreement (CBA). LAST also alleges that the release of his social security number was in violation Section 7(b) of the federal Privacy Act of 1974.

The County filed a Motion to Dismiss Complaint or for Summary Judgment (Motion to Dismiss) on December 15, 1995. A prehearing teleconference was held on December 19, 1995. The Motion to Dismiss was heard by telephone conference on December 27, 1995. In its Motion to Dismiss, the County argues that: (1) LAST's claims are barred by the statute of limitations pursuant to Administrative Rules § 12-42-42; (2) the complaint fails to state a claim under § 89-13(a)(8), HRS; (3) the Complainant failed to exhaust his CBA remedies; and (4) the Board has no jurisdiction to enforce federal law.

Based on the affidavit of County of Hawaii Director of Personnel Michael R. Ben, and having reviewed the pleadings, records and files herein, and having considered the arguments of the parties, the Board hereby makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

LAST is an employee, as defined in § 89-2, HRS, of the DEPARTMENT OF PUBLIC WORKS, County of Hawaii. LAST is not a UPW member, but his position is included in bargaining unit 01, which is represented by the UPW.

The DEPARTMENT OF PUBLIC WORKS, County of Hawaii, is LAST's employer within the meaning of § 89-2, HRS.

On or about January 1, March 1 and May 1, 1994, the UPW sent its official publication, Malama Pono, to LAST at his mailing address. LAST alleges that he never gave the UPW his address for this purpose, and that such mailing evidences the County's release of his mailing address to UPW.

LAST alleges that at a Board hearing on March 8, 1994, the UPW introduced evidence of his mailing address, telephone number, and social security number. LAST alleges that this evidences the County's release of this information to the UPW, and that he never authorized such release. For purposes of the Motion to Dismiss, the Board will assume the foregoing allegations to be true.

According to LAST's complaint, any improper release of information occurred sometime before January-March 1994, and that LAST was on notice of said release at that time.

LAST filed the instant complaint on November 2, 1995 in excess of ninety (90) days following the alleged prohibited practice violation.

LAST alleges that the release of information is a prohibited practice under § 89-13(a)(8), HRS, because it violated §§ 1.07 and 1.08 of the Unit 01 CBA of 1989-1993. This CBA was superseded by the July 1, 1993 to June 30, 1995 CBA. The latter does not contain § 1.08 having deleted the old § 1.07 and renumbered § 1.08 as § 1.06.

Section 1.06 of the 1993-1995 CBA provides:

1.06 The Employer will make available to the Union, upon request, relevant personnel information needed to chart accurately an individual employee's personnel transactions.

Section 1.07 of the 1989-1993 CBA provided:

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.

LAST also alleges that the release of his social security number by the County to UPW was in violation of § 7(b) of the Privacy Act of 1974 (5 U.S.C. 522a).

DISCUSSION

Administrative Rules § 12-42-42 requires that a prohibited practice complaint be filed within ninety (90) days of the alleged violation. Here, LAST's complaint was filed over a year after the allegedly wrongful disclosures occurred. The complaint is untimely filed and the Board has no jurisdiction over the complaint as it is barred by the statute of limitations.

Assuming arguendo, that the Board has jurisdiction over this complaint, § 89-13(a)(8), HRS, provides that a public employer commits a prohibited practice by violating any term of a collective bargaining agreement. Here, LAST alleges that the disclosure of certain information about him to the UPW was in violation of §§ 1.07 and 1.08 of the 1989-1993 Unit 01 CBA. However, these sections and their analogues, if any, in the 1993-1995 CBA do not prohibit the release of such information to the UPW. In fact,

these sections of the contract appear to mandate such release of information to the UPW.

As the record reveals that no section of any applicable CBA might have been violated under the alleged facts, even when construing those facts most favorable to LAST, the Board finds that the complaint fails to state a claim under § 89-13(a)(8), HRS.

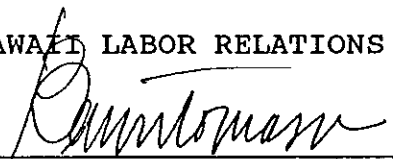
In addition, the Board draws its subject matter jurisdiction from Chapter 89, HRS. There is no provision in Chapter 89, HRS, which confers upon the Board subject matter jurisdiction to construe or enforce federal statutes. Thus, the Board lacks jurisdiction to enforce the federal Privacy Act of 1974 at 5 U.S.C. § 522a, pursuant to this prohibited practice complaint.

ORDER

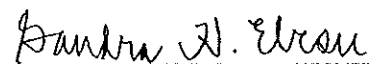
Based upon the foregoing, the Board hereby grants Respondents' motion to dismiss the instant prohibited practice complaint.

DATED: Honolulu, Hawaii, April 22, 1996.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

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