

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of )  
 )  
ROBERT SOMERA, )  
 )  
 )  
Complainant, )  
 )  
 )  
and )  
 )  
HALAWA CORRECTIONAL FACILITY, )  
Department of Public Safety, )  
State of Hawaii, )  
 )  
Respondent. )

CASE NO. CE-01-372  
ORDER NO. 1579  
ORDER GRANTING RESPOND-  
ENT UPW'S MOTION TO  
DISMISS COMPLAINT

---

In the Matter of )  
 )  
ROBERT SOMERA, )  
 )  
 )  
Complainant, )  
 )  
 )  
and )  
 )  
DEPARTMENT OF PUBLIC SAFETY, )  
State of Hawaii and NATHALIE )  
KODAMA, Fiscal Services Office, )  
Department of Public Safety, )  
State of Hawaii, )  
 )  
Respondents. )

CASE NO. CE-01-373

---

In the Matter of )  
 )  
ROBERT SOMERA, )  
 )  
 )  
Complainant, )  
 )  
 )  
and )  
 )  
UNITED PUBLIC WORKERS, AFSCME, )  
LOCAL 646, AFL-CIO, )  
 )  
Respondent. )

CASE NO. CU-01-136

ORDER GRANTING RESPONDENT UPW'S MOTION TO DISMISS COMPLAINT

On November 4, 1997, Complainant ROBERT SOMERA (SOMERA) 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 SOMERA alleged that the UPW failed to file a grievance against certain Adult Corrections Officers (ACOs) for lying and against HALAWA CORRECTIONAL FACILITY, Department of Public Safety, State of Hawaii (HALAWA), for not following the Standards of Conduct. SOMERA also alleged that according to the Union contract probable cause is needed for suspensions but that there was no probable cause to support his suspensions.

On November 10, 1997, Respondent UPW, by and through its counsel, filed a motion to dismiss the prohibited practice complaint against the UPW with the Board. The UPW contends that the complaint fails to state a claim for relief, the complaint is untimely, and Complainant lacks standing to bring a complaint directed at other members of the bargaining unit.

The UPW argued that by letter dated November 22, 1996, Complainant SOMERA was suspended for ten days from December 1, 1996 to December 12, 1996 for violating the Standards of Conduct and the UPW filed a grievance on his behalf on December 9, 1996. On January 3, 1997, the Employer reduced the ten-day suspension to an oral reprimand. Mel Rodrigues (Rodrigues), Union Business Agent, stated in an affidavit filed in support of the motion that SOMERA wanted to pursue allegations against his co-workers in Unit 10. Rodrigues stated that on January 3, 1997, the UPW advised SOMERA that the Union would not and could not seek adverse actions against

other employees who the Union is obligated to represent. Further, Rodrigues advised SOMERA that it was untimely to pursue any action against the ACOs since the incident which lead to SOMERA's suspension occurred in August 1995.

The UPW contends that the instant complaint was filed more than 90 days after the UPW advised him that the Union would not pursue the claims against his co-workers. Thus, the Union argues that the instant complaint is time-barred. The UPW also contends that SOMERA's allegations do not refer to any arbitrary, discriminatory or bad faith actions against him and the UPW cannot pursue discipline against other ACOs in the bargaining unit.

SOMERA filed a response to UPW's motion to dismiss complaint on November 18, 1997. SOMERA alleges that there is a conflict of interest because the UPW represents the interests of Units 01 and 10. SOMERA also alleges that he was placed on leave without pay from March 19, 1997 to April 17, 1997 and further complains that the employer's notice did not indicate the reasons for placing him on leave. SOMERA also alleges that no grievance was filed against the employer contesting why he was placed on leave for 30 days. SOMERA also questions why it took so long for the suspension to be imposed in December of 1996.

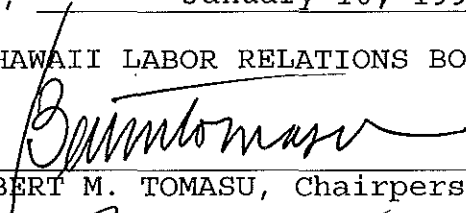
The Board held a hearing on the UPW's motion to dismiss complaint on December 4, 1997. Based upon a review of the record and the arguments submitted, the Board hereby grants the UPW's motion to dismiss the instant complaint.

In reviewing SOMERA's complaint against the UPW, SOMERA alleges that the UPW failed to file a grievance against the ACOs for lying and against HALAWA for not following the Standards of

Conduct regarding his suspension. Based upon the record before the Board, Rodrigues advised SOMERA that the Union would not pursue a grievance on his behalf against the ACOs on or about January 3, 1997. Pursuant to § 377-9(1), Hawaii Revised Statutes (HRS), SOMERA had 90 days from the date of the alleged prohibited practice in which to file his complaint with the Board. SOMERA filed the instant complaint with the Board on November 4, 1997 well after the statute of limitations has elapsed. Although SOMERA raises allegations of a second suspension in April 7, 1997, those allegations are not part of his prohibited practice complaint against the Union and are also outside the applicable statute of limitations. Accordingly, the Board hereby grants the UPW's motion to dismiss the instant complaint because the Board lacks jurisdiction over the complaint. Ledward v. Fasi, 2 HPERB 539, 546-47 (1980); Fitzgerald v. Ariyoshi, 3 HPERB 186, 197-99 (1983); Kimura v. Waihee, 4 HLRB 543, 550-51 (1988).

DATED: Honolulu, Hawaii, January 16, 1998 .

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
CHESTER C. KUNITAKE, Board Member

Copies sent to:  
Robert Somera  
Kris N. Nakagawa, Deputy Attorney General  
Herbert R. Takahashi, Esq.  
Joyce Najita, IRC