

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS. : CE-11-389
)	CU-11-141
RAYMONDO DOMINGO,)	
)	ORDER NO. 1664
Complainant,)	
)	ORDER GRANTING STATE RES-
and)	PONDENTS' MOTION TO DIS-
)	MISS AND/OR FOR SUMMARY
KAZU HAYASHIDA, Director,)	JUDGMENT
Department of Transportation,)	
State of Hawaii; JERRY MATSUDA,)	
Airports Administrator, Airports)	
Division, Department of Trans-)	
portation, State of Hawaii;)	
STAN SEKIMOTO, Administrator,)	
Lihue Airport, Department of)	
Transportation, State of Hawaii;)	
and HAWAII FIRE FIGHTERS)	
ASSOCIATION, LOCAL 1463, IAFF,)	
AFL-CIO,)	
)	
Respondents.)	

ORDER GRANTING STATE RESPONDENTS'
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

On March 9, 1998, RAYMONDO DOMINGO filed a prohibited practice complaint against Respondents KAZU HAYASHIDA, Director, Department of Transportation, State of Hawaii; JERRY MATSUDA, Airports Administrator, Airports Division, Department of Transportation, State of Hawaii; STAN SEKIMOTO, Administrator, Lihue Airport, Department of Transportation (collectively State Respondents or Employer) and the HAWAII FIRE FIGHTERS ASSOCIATION, LOCAL 1463, IAFF, AFL-CIO (Union) with the Hawaii Labor Relations Board (Board). DOMINGO alleges that the State Respondents committed a prohibited practice when they changed the annual physical examination to require a bicycle test for the Cardio

Pulmonary Stress Test (CPST) rather than a treadmill test. The Employer placed DOMINGO and others who failed the CPST on indefinite sick leave allegedly without directions as to what had to be done to pass the CPST. DOMINGO later learned that fire fighters in Maui County were tested on the treadmill, while other fire fighters in the State were tested on the bicycle. DOMINGO complained to the Union but learned that the Union had agreed with the State to change to the bicycle test and that no grievance could be filed because there was no violation of the collective bargaining agreement. DOMINGO also contends that the State violated Airport Procedure, 8.2 ARFF, Annual Physical Examination, by failing to implement a physical fitness program. DOMINGO contends that the affected employees lost their accrued sick leave benefits and other monies and therefore seeks redress before the Board.

On March 23, 1998, the State Respondents, by and through their counsel, filed a motion to dismiss and/or for summary judgment with the Board. The State Respondents contend that the Board lacks jurisdiction over the instant complaint because it fails to state a claim upon which relief can be granted, the complaint is untimely, and Complainant failed to exhaust his contractual remedies. Alternatively, the State Respondents contend that there are no genuine issues of material fact in dispute and that they are entitled to judgment as a matter of law.

The State Respondents allege that by letter dated December 21, 1995, DOMINGO was placed on sick leave effective December 25, 1995, as a result of his physical examination taken on December 18, 1995. Complainant was notified that in order to be

reinstated, he must demonstrate an acceptable level of cardiopulmonary performance.

On January 8, 1996, the Union filed a Step 1 grievance on DOMINGO's behalf citing a violation of section 2 of the Unit 11 contract regarding Discrimination. The grievance was denied on January 26, 1996, and Complainant did not submit a Step 2 appeal. On January 26, 1996, however, Complainant wrote to the Deputy Director of the Airports Division complaining of matters raised in his grievance and the lack of a mandatory physical fitness program.

Thereafter, on February 2, 1998, Complainant filed a grievance at Step 2, complaining that there was no physical fitness program established prior to administering the bicycle test. DOMINGO complained that employees who failed the CPST expended a great deal of money for a Physical Therapy program and sick leave credits were exhausted. DOMINGO sought the reimbursement of monies expended and reinstatement of sick leave benefits. The grievance was denied on February 10, 1998, for failing to allege a contractual violation. Complainant did not file a further grievance.

The Board conducted a hearing on the instant motion on April 16, 1998, by conference call. All parties had full opportunity to submit evidence and argument to the Board. Based upon a review of the record in this case and the presentation of arguments, the Board hereby grants the State Respondents' motion to dismiss complaint.


DOMINGO's complaint arises from being placed on indefinite sick leave in December 1995 as a result of his failing the CPST portion of his annual physical examination. The evidence

in the record indicates that a grievance was filed at the first step in January 1996 but DOMINGO did not pursue the matter further through the contractual grievance procedure. Thereafter, in February 1998, DOMINGO filed another grievance and sought reimbursement of sick leave and other monies previously expended to complete the Physical Therapy program.

Section 377-9(1), Hawaii Revised Statutes (HRS), made applicable to these proceedings by § 89-14, HRS, provides that a complaint must be filed with the Board within 90 days from the occurrence of a prohibited practice. In this case, DOMINGO complains that the State Respondents placed him on indefinite sick leave in December of 1995 because he failed the annual physical examination. DOMINGO filed this complaint with the Board well after the 90-day period had run. Although DOMINGO filed a second grievance in February 1998, it is clear that the grievance arises from events arising from the failed CPST test in 1995. Thus, even if the Board had subject matter jurisdiction to review DOMINGO's complaint, the instant complaint was filed too late. Accordingly, the Board hereby grants the State Respondents' motion to dismiss the instant complaint because the Board lacks jurisdiction over the complaint. Ledward v. Fasi, 2 HPERB 539, 546-47; Fitzgerald v. Ariyoshi, 3 HPERB 186, 197-99 (1983); Kimura v. Waihee, 4 HLRB 543, 550-51 (1988).

DATED: Honolulu, Hawaii, September 8, 1998.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson

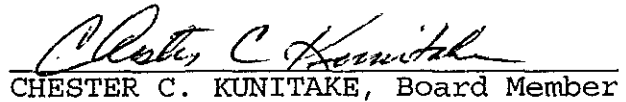
RAYMONDO DOMINGO and KAZU HAYASHIDA, Director, Department of
Transportation, State of Hawaii; et al.; CASE NOS.: CE-11-389
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SUMMARY JUDGMENT



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

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