

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: CE-11-389
)	CU-11-141
RAYMONDO DOMINGO,)	
)	ORDER NO. 1733
Complainant,)	
)	ORDER GRANTING RESPONDENT'S
and)	MOTION TO DISMISS COMPLAINT
)	
KAZU HAYASHIDA, Director,)	
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 RESPONDENT'S MOTION TO DISMISS COMPLAINT

On March 9, 1998, RAYMONDO DOMINGO (DOMINGO) filed a prohibited practice complaint against Respondents KAZU HAYASHIDA, Director, Department of Transportation (DOT), State of Hawaii; JERRY MATSUDA, Airports Administrator, Airports Division, DOT, State of Hawaii; STAN SEKIMOTO, Administrator, Lihue Airport, DOT (collectively State or Employer) and the HAWAII FIRE FIGHTERS ASSOCIATION, LOCAL 1463, IAFF, AFL-CIO (HFFA or Union) with the Hawaii Labor Relations Board (Board). DOMINGO alleged that the State committed a prohibited practice when they changed the annual physical examination for State fire fighters 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 Maui County fire fighters 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 Employer to change to the bicycle test and that no grievance could be filed because there was no violation of the collective bargaining agreement. DOMINGO alleges that the HFFA breached its duty to fairly represent him with respect to the grievance and its agreement with the Employer to the use of the bicycle for the physical fitness test. DOMINGO also contended that the State violated Airport Procedure, 8.2 ARFF, Annual Physical Examination, by failing to implement a physical fitness program. DOMINGO contended 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 contended that the Board lacked jurisdiction over the instant complaint because it failed to state a claim upon which relief can be granted, the complaint was untimely, and Complainant failed to exhaust his contractual remedies. Alternatively, the State Respondents contended that there were no genuine issues of material fact in dispute and that they were entitled to judgment as a matter of law.

After hearing, the Board granted the State's motion to dismiss and/or for summary judgment in Order No. 1664, dated

September 8, 1998, because DOMINGO's claims were time-barred. Section 377-9(1), Hawaii Revised Statutes (HRS), made applicable by § 89-14, HRS, provides that a complaint must be filed with the Board within 90 days from the occurrence of a prohibited practice. 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). The Board found that DOMINGO's complaint against the State arose from being placed on indefinite sick leave in December 1995 as a result of the failed physical fitness test. Thus, the Board found that the complaint was time-barred and the Board lacked jurisdiction over the complaint.

Similarly, on May 28, 1999, Respondent HFFA, by and through its counsel, filed a motion to dismiss and/or for summary judgment with the Board. The HFFA contends that the instant complaint should be dismissed because the Board lacks jurisdiction over the subject matter; the complaint fails to state a claim upon which relief can be granted; Complainant failed to exhaust his contractual remedies; and alternatively, there are no genuine issues of material facts in dispute, and Respondent is entitled to judgment as a matter of law. In its memorandum filed in support of its motion, however, the HFFA argues only that the complaint is untimely filed.

The HFFA alleges that DOMINGO took an annual physical examination on December 18, 1995. On December 21, 1995, the Airports Division of DOT notified him that he would be placed on indefinite sick leave effective December 25, 1995 until he demonstrated an acceptable level of cardiopulmonary performance. The HFFA filed a Step 1 grievance on DOMINGO's behalf on

January 8, 1996. The grievance was denied and the HFFA or DOMINGO did not appeal the denial of the grievance to Step 2.

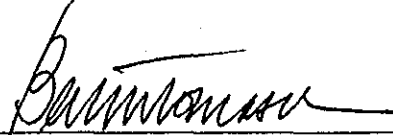
The HFFA contends that DOMINGO failed to file his complaint within 90 days of any alleged violation. The HFFA contends that a prohibited practice complaint against the Union alleging a breach of duty of fair representation should have been filed in early 1996. Thus, the Union argues that the instant complaint is time-barred and must be dismissed.

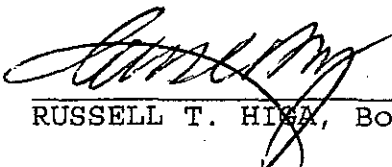
Complainant did not file a response to the HFFA's motion to dismiss and/or for summary judgment.

With respect to DOMINGO's case against the HFFA, any breach of duty to fairly represent the Complainant by the Union arose in 1996, more than 90 days prior to the filing of the instant complaint. Accordingly, the Board dismisses the instant complaint against the Union because it is time-barred and the Board lacks jurisdiction over this complaint.

DATED: Honolulu, Hawaii, June 17, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

RAYMONDO DOMINGO and KAZU HAYASHIDA, Director, Department of Transportation, State of Hawaii; et al.
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