

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-01-428
)	
KINGSLEY E. SIMEONA,)	ORDER NO. 1739
)	
Complainant,)	ORDER GRANTING RESPOND-
)	ENT'S MOTION TO DISMISS
and)	COMPLAINT
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Respondent.)	
)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT

On May 24, 1999, KINGSLEY E. SIMEONA (SIMEONA) 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). SIMEONA alleged that the Union failed to represent him in challenging his discharge from the Department of Water, County of Kauai.

On June 1, 1999, the UPW filed a motion to dismiss the instant complaint with the Board. The UPW contends that the Board lacks jurisdiction over the instant complaint because it is barred by the statute of limitations.

On June 21, 1999, the Board issued a Notice of Hearing on UPW's Motion to Dismiss Complaint. The Board notified the parties that the Board would conduct a hearing on the UPW's motion on July 8, 1999 at 9:00 a.m. in Board's hearings room in Honolulu, Hawaii. The notice provided that if Complainant wished to be

contacted by telephone, he should inform the Board in writing of a telephone number where he could be contacted two days prior to the scheduled hearing date. By letter dated June 30, 1999, SIMEONA notified the Board that he could not attend the hearing on July 8, 1999. SIMEONA also provided a telephone number and indicated, inter alia, that he could be contacted by telephone.

On July 8, 1999, SIMEONA failed to appear in the Board's hearings room and could not be reached by telephone. The Board subsequently conducted the hearing on the UPW's motion to dismiss complaint. Based upon a complete review of the record and the arguments presented in this case, the Board hereby makes the following findings of fact and conclusions of law and grants the UPW's motion to dismiss the instant complaint.

FINDINGS OF FACT

KINGSLEY E. SIMEONA was an employee of the Department of Water, County of Kauai and a member of bargaining unit 01.

The UPW is the exclusive representative, as defined in § 89-2, Hawaii Revised Statutes (HRS), of bargaining unit 01.

In early 1995, SIMEONA encountered problems with his leave of absence without pay status and requested assistance from UPW Business Agent Joseph Brun. In July 1995, the UPW assisted SIMEONA in obtaining an extension of his leave of absence to October 16, 1995. On August 14, 1995, UPW Union Agent Gilbert Nobrega (Nobrega) spoke to SIMEONA who indicated that he received a letter stating that he was terminated on July 15, 1995. SIMEONA also told Nobrega that the Union was no longer representing him and that SIMEONA would retain his own lawyer. Based upon the

conversation, Nobrega believed that SIMEONA did not wish further Union assistance.

By letter dated October 20, 1995, Murl T. Nielsen (Nielsen), Manager and Chief Engineer, Department of Water, County of Kauai, notified SIMEONA that unless he otherwise requested, he would be separated from service effective October 31, 1995 because he failed to report to work on October 16, 1995.

SIMEONA retained Dean Choy (Choy), Esq., to represent him and by letter dated February 26, 1996, Choy wrote to Nielsen contesting SIMEONA's termination.

By letter dated November 5, 1996, SIMEONA wrote to UPW State Director Gary Rodrigues (Rodrigues) complaining about his termination from employment. Rodrigues requested Nobrega to investigate the complaint and Nobrega contacted Lee Yoshioka of the Department of Water who provided a summary of events pertaining to SIMEONA. The summary indicated that the employer made numerous unsuccessful attempts to contact SIMEONA by mail and telephone to verify his employment and leave status. The summary further indicated that the time limits to file a grievance had long passed¹

¹The grievance procedure of the Unit 01 collective bargaining agreement effective July 1, 1993 - June 30, 1995, which was extended by Memorandums of Agreement through June 30, 1999 and which is applicable here provides as follows:

15.11 The grievance shall be presented to the division head or his designee in writing within fourteen (14) working days after the occurrence of the alleged violation, or if it concerns an alleged continuing violation, then it must be filed within fourteen (14) working days after the alleged violation first became known or should have become known to the employee involved; except that in the case of an alleged payroll computational error, such allegation shall be presented to the division

and there was nothing the UPW could do to assist SIMEONA. Additionally, the summary indicated that SIMEONA had declined Union representation and retained the services of a private attorney.

DISCUSSION

In its motion, the UPW contends, inter alia, that the Board lacks jurisdiction over the complaint because it was filed three years too late. The UPW argues that although SIMEONA alleges that the UPW never looked at his case, Brun assisted SIMEONA to extend his leave of absence to October 15, 1995. SIMEONA then informed the Union that he would obtain an attorney to represent him and he, in fact, retained Choy to represent him in challenging his separation from service. By the time that SIMEONA wrote to Rodrigues, the time limits to file a grievance had passed and the UPW was unable to assist him.

Section 377-9(1), 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 the prohibited practice. In this case, SIMEONA complains that the UPW failed to represent him in challenging his termination from employment with the Department of Water effective October 31, 1995. Nobrega states that SIMEONA sought the services of a private attorney and therefore declined Union representation in August 1995. However, there is nothing in the record to indicate that SIMEONA sought Union representation to grieve his termination within the time limits provided by the contract. Rather, SIMEONA

head or his designee in writing within fourteen (14) working days after the alleged error is discovered by the employee.

retained Choy to challenge SIMEONA's separation in February 1996. SIMEONA thereafter complained to the UPW in November 1996 but upon investigation, the UPW determined that the applicable time limits had expired and nothing could be done. SIMEONA then filed this complaint against the UPW with the Board on May 24, 1999 well beyond the 90 days permitted by the applicable statute. Accordingly, the Board hereby grants the UPW's motion to dismiss the instant complaint because the Board lacks jurisdiction over the complaint. Carl H. Ledward, 2 HPERB 539, 546-47 (1980); Alvis W. Fitzgerald, 3 HPERB 186, 197-99 (1983); Buddy H. Kimura, 4 HLRB 543, 550-51 (1988).

CONCLUSIONS OF LAW


The Board lacks jurisdiction over complaints filed more than 90 days after the alleged occurrence of a prohibited practice. Here, any cause of action against the UPW for breaching its duty to fairly represent SIMEONA arguably accrued in 1996 and this complaint, filed on May 24, 1999, was filed beyond the Board's applicable statute of limitations. The Board, thus, lacks jurisdiction over this complaint.

ORDER

The Board hereby dismisses the instant complaint.

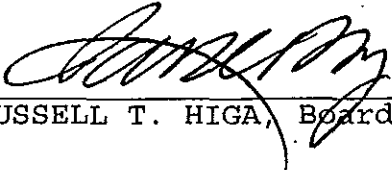
DATED: Honolulu, Hawaii, July 19, 1999.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson

KINGSLEY E. SIMEONA and UNITED PUBLIC WORKERS, AFSCME, LOCAL 646,
AFL-CIO
CASE NO. CE-01-428
ORDER NO. 1739
ORDER GRANTING RESPONDENT'S MOTION TO DISMISS COMPLAINT



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

Copies sent to:

Kingsley E. Simeona
Herbert R. Takahashi, Esq.
Joyce Najita, IRC