

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: CE-05-440
)	CU-05-159
TERRY ANN KANG,)	
)	ORDER NO. 1825
Complainant,)	
)	ORDER GRANTING RESPONDENTS'
and)	MOTIONS TO DISMISS COM-
)	PLAINT
HAWAII STATE TEACHERS ASSOCIA-)	
TION and DEPARTMENT OF EDUCA-)	
TION, State of Hawaii,)	
)	
Respondents.)	

ORDER GRANTING RESPONDENTS' MOTIONS TO DISMISS COMPLAINT

On October 28, 1999, TERRY ANN KANG (KANG) filed a prohibited practice complaint against the HAWAII STATE TEACHERS ASSOCIATION (HSTA) and the DEPARTMENT OF EDUCATION, State of Hawaii (DOE) with the Hawaii Labor Relations Board (Board). Complainant alleged that Respondent DOE unfairly terminated her employment as a teacher on August 11, 1995 and that the HSTA's representative did not request a third hearing for her and failed to properly assist her.

On November 10, 1999, Respondent DOE filed a motion to dismiss the complaint with the Board contending that the complaint is untimely and Complainant failed to exhaust her contractual remedies.

On November 15, 1999, Complainant filed an opposition to the DOE's motion to dismiss the complaint with the Board. KANG alleged that she was emotionally distraught after her termination

and did not file a complaint with the Board. KANG also addressed the substantive reasons for her termination.

Thereafter, on November 29, 1999, Respondent HSTA filed a motion to dismiss with the Board also contending that the instant complaint is time-barred. HSTA's counsel filed an affidavit in support of the motion to dismiss.

Pursuant to notice, the Board conducted a hearing on the DOE's motion to dismiss on December 1, 1999. At the hearing, Complainant agreed to have the Board hear both motions filed by the respective Respondents. All parties had full opportunity to present evidence and argument to the Board. Based upon a thorough 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 Respondents' respective motions to dismiss the instant complaint.

FINDINGS OF FACT

KANG was previously employed by the DOE as an elementary school teacher and was an employee within the meaning of § 89-2, Hawaii Revised Statutes (HRS), and included in Unit 05.

The DOE was, for all times relevant, a public employer, within the meaning of § 89-2, HRS.

The HSTA was, for all times relevant, the exclusive representative, as defined in § 89-2, HRS, of the employees of the DOE who are included in Unit 05.

KANG was terminated effective August 11, 1995.

Thereafter, the HSTA filed a grievance on KANG's behalf which proceeded through five days of hearings at Step II of the grievance procedure.

By letter dated November 28, 1995, the DOE denied the grievance. The HSTA Board of Directors thereafter declined to take KANG's case to arbitration.

By letter dated January 22, 1996, the HSTA informed KANG that the HSTA would not arbitrate KANG's grievance.

By letter dated January 26, 1996, KANG requested an appeal of the HSTA Board of Directors' decision not to arbitrate her grievance. KANG was permitted to attend a Board of Directors' meeting during which she presented her appeal.

By letter dated March 5, 1996, the HSTA notified KANG that the Board of Directors reaffirmed its decision not to take KANG's case to arbitration.

DISCUSSION

In their motions to dismiss the instant complaint, the DOE and the HSTA contend that the Board lacks jurisdiction over this complaint because it was filed well beyond the Board's 90-day statute of limitations. In addition, the DOE contends that Complainant failed to exhaust her contractual remedies.

Section 377-9(1), HRS, made applicable to these proceedings by § 89-14, HRS, provides that a prohibited practice complaint must be filed with the Board within 90 days from the occurrence of the prohibited practice. In this case, KANG claims that she was improperly terminated by the DOE on or about August 11, 1995. KANG also claims that the HSTA failed to properly

represent her interests but was notified of their intention not to arbitrate her case in March 5, 1996.

KANG filed the instant complaint with the Board on October 28, 1999, well beyond the 90 days permitted by the applicable statute. KANG claims that she was told of the Board's time limitations for filing her complaint but that she suffered emotional distress and from low self-esteem and was unable to file her complaint with the Board. KANG also claims that she was caring for her ailing father. The Board, however, cannot waive its jurisdictional time limits and therefore finds that the instant complaint is untimely. 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, KANG was terminated on or about August 11, 1995 and there are no further allegations of wrongdoing by the DOE after that time. In addition, the HSTA notified KANG that it would not arbitrate her grievance on or about March 5, 1996. There are no further allegations of wrongdoing by the HSTA and the Board lacks jurisdiction over this complaint.

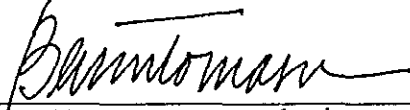
ORDER

The Board hereby dismisses the instant complaint.

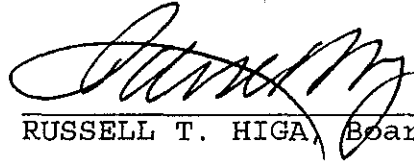
TERRY ANN KANG and HAWAII STATE TEACHERS ASSOCIATION and DEPARTMENT
OF EDUCATION, State of Hawaii
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DATED: Honolulu, Hawaii, December 13, 1999.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

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