

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-05-487
PETER BEEKLEY,)	ORDER NO. 2060
Complainant,)	ORDER GRANTING RESPONDENTS'
and)	MOTION TO DISMISS PROHIBITED
PATRICIA HAMAMOTO, Acting Superinten-)	PRACTICE COMPLAINT
dent, Department of Education, State of Hawaii)	
and DEPARTMENT OF EDUCATION, State)	
of Hawaii,)	
Respondents.)	

ORDER GRANTING RESPONDENTS'
MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT

On November 23, 2001, Complainant PETER BEEKLEY (BEEKLEY) filed a prohibited practice complaint against Respondents PATRICIA HAMAMOTO, Acting Superintendent,¹ Department of Education, State of Hawaii and DEPARTMENT OF EDUCATION, State of Hawaii (DOE) (collectively State) with the Hawaii Labor Relations Board (Board). BEEKLEY alleged that he was discriminated against in regards to hiring when he requested a transfer from Keaau High School. BEEKLEY also alleged that he was discriminated against by the DOE when it completed his "Separation from Service" form without his signature and without attempting to contact him. BEEKLEY further alleged that he felt discriminated against because he wrote letters of concern to the Superintendent. Thus, BEEKLEY contends that the Respondents violated Hawaii Revised Statutes (HRS) §§ 89-13(a)(3) and (4).

On January 8, 2002, Respondents filed a motion to dismiss the instant prohibited practice complaint alleging that Complainant failed to state a claim upon which relief can be granted, or in the alternative, for lack of jurisdiction.

The Board conducted a hearing on the instant motion on January 17, 2002 and Complainant appeared pro se by conference call. Deputy Attorney General Jennifer R.

¹The Board takes notice that Respondent PATRICIA HAMAMOTO was appointed as Superintendent of Education subsequent to the filing of the instant complaint.

Salvador appeared on behalf of Respondents. The parties had full opportunity to present argument to the Board.

Based upon a review of the record and the arguments presented, the Board makes the following findings and conclusions and grants Respondents' motion to dismiss.

FINDINGS OF FACT

1. BEEKLEY was for all times relevant a special education teacher and a former employee, as defined in HRS § 89-2, of the DOE.
2. PATRICIA HAMAMOTO was for all times relevant, the Superintendent of Education representing the public employer, as defined in HRS § 89-2, of employees of the DOE in Unit 05.
3. The DOE was for all times relevant representative of the public employer, as defined in HRS § 89-2, of public school teachers included in Unit 05.
4. BEEKLEY separated from service from the DOE on July 30, 2001. Principal/Immediate Supervisor Margaret A. O'Brien signed BEEKLEY's Separation from Service document on or about June 13, 2001.
5. BEEKLEY fails to allege any discrimination is based upon membership in an employee organization or for filing a complaint or giving testimony under HRS Chapter 89.
6. BEEKLEY requested the Board to grant him unemployment benefits.

CONCLUSIONS OF LAW

1. HRS § 89-13(a)(3) and (4) provide as follows:

It shall be a prohibited practice for a public employer or its designated representative wilfully to:

* * *

- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit,

petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;

2. The Complaint fails to state a claim for relief because BEEKLEY fails to allege any facts which would support a finding that he was discriminated against because of his membership in an employee organization or for filing complaints or giving testimony under this chapter.
3. HRS § 377-9(l), made applicable to the Board in prohibited practice proceedings by HRS § 89-14, provides:

No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence.
4. Similarly, Hawaii Administrative Rules (HAR) § 12-42-42(a) provides in part:

A complaint that any public employer...has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed by a public employee...within ninety days of the alleged violation.
5. Complainant's allegations regarding his Separation from Service are beyond the Board's jurisdiction because the events occurred more than ninety days before the filing of the instant complaint.
6. The Board has no statutory authority to award Complainant unemployment benefits.

ORDER

Based on the foregoing, the Board hereby grants Respondents' motion to dismiss the complaint.

DATED: Honolulu, Hawaii, February 11, 2002.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair

PETER BEEKLEY v. PATRICIA HAMAMOTO, et al.
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COMPLAINT



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

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