

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)
SUSAN SUGARMAN FREE,)
Complainant,)
and)
KEVIN MULLIGAN, Union Agent, Hawaii)
Government Employees Association,)
AFSCME, Local 152 and HAWAII GOVERN-)
MENT EMPLOYEES ASSOCIATION,)
AFSCME, LOCAL 152, AFL-CIO,)
Respondents.)

CASE NO. CU-13-202
ORDER NO. 2150
ORDER GRANTING RESPONDENTS'
MOTION TO DISMISS COMPLAINT,
WITH PREJUDICE

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Respondents KEVIN MULLIGAN (MULLIGAN), Union Agent, Hawaii Government Employees Association, AFSCME, Local 152 (HGEA) and the HGEA (collectively Union) move to dismiss the prohibited practice complaint filed July 8, 2002 by Complainant SUSAN SUGARMAN FREE (Complainant or FREE), proceeding pro se, with the Hawaii Labor Relations Board (Board). FREE alleges that her employer, Glenn Sakumoto (Sakumoto) at Leahi Hospital and the Hawaii Health Systems Corporation (HHSC) are blocking the grievance process over her termination. FREE alleges she is a member of the HGEA and her goal is to move the grievance process to Step 3.

The Union filed a Prehearing Conference Statement and Respondents' Motion to Dismiss on July 17, 2002. FREE failed to file a Prehearing Conference Statement and filed no written opposition to Respondents' Motion to Dismiss. On July 24, 2002, the parties appeared at a prehearing conference before the Board.

On July 31, 2002, the Board heard oral arguments on Respondents' Motion to Dismiss the instant complaint, at which time Complainant was given a full and fair opportunity to present testimony under oath in opposition to Respondents' Motion to Dismiss.

Second, assuming arguendo, FREE's complaint properly articulated colorable action by MULLIGAN and the HGEA over the handling of her termination grievance which resulted in a Settlement Agreement negotiated and executed by the Union and FREE³ on October 4, 2001, said complaint would be barred by the 90-day statute of limitations as set forth in HRS § 377-9(1) which is made applicable by HRS § 89-14 and incorporated in the Board's rule, HAR § 12-42-42.⁴

The Board finds that after returning to work under the terms of the Settlement Agreement, FREE last worked on October 18, 2001. She was placed on administrative leave with full pay until December 5, 2001. These events occurred well outside the 90-day limitations period from the date FREE filed the instant complaint on July 8, 2002. Therefore, the Board would lack jurisdiction over any properly alleged violation by the Union or employer for engaging in any prohibited practice in the handling of FREE's termination grievance and Settlement Agreement.

CONCLUSIONS OF LAW

1. The instant complaint fails to state a claim upon which relief can be granted because Complainant failed to assert a claim against Respondents MULLIGAN and HGEA.
2. HAR § 12-42-42(f) provides that only one complaint shall issue against a party with respect to a single controversy. Based on the Board's finding that the instant complaint is substantially identical to four prior complaints filed by FREE in 2002, the instant complaint violates the Board's procedural rule, HAR § 12-42-42(f).
3. Assuming arguendo, a claim was stated against Respondents, the Board would lack jurisdiction over this complaint because it was filed more than 90 days after the actions complained of.

³While FREE admitted to having signed the Settlement Agreement, and returning to work she now claims that signing the agreement was a mistake, but that she was told she had no choice but to sign it.

⁴HAR § 12-42-42 states:

(a) A complaint that any public employer, public employee, or employee organization has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed by a public employee, employee organization, public employer, or any party in interest or their representatives with ninety days of the alleged violation.

ORDER

The Board hereby dismisses the instant complaint and orders FREE not file another complaint that is substantially identical to the instant complaint.

DATED: Honolulu, Hawaii, January 22, 2003.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

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