

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-05-580
ALAN FEUERMAN,)	ORDER NO. 2311
)	ORDER GRANTING RESPONDENT'S
Complainant,)	MOTION TO DISMISS
)	
and)	
)	
DEPARTMENT OF EDUCATION, State of)	
Hawaii,)	
)	
Respondent.)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

On November 9, 2004, Complainant ALAN FEUERMAN (FEUERMAN) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board). Complainant alleges that the DEPARTMENT OF EDUCATION (DOE), State of Hawaii, violated the provisions of Hawaii Revised Statutes (HRS) § 89-13(b)(5) when he was forced to resign his position at Waianae High School to complete his student teaching practicum at another school, in violation of the collective bargaining contract.

On November 19, 2004, Respondent filed Respondent's Motion to Dismiss with the Board. Respondent contends that the Board lacks jurisdiction over this complaint because it is untimely filed; the Complaint fails to state a claim upon which relief can be granted, and Complainant has failed to exhaust his contractual remedies.

On November 24, 2004, FEUERMAN filed a statement with the Board indicating that Respondent's counsel agreed to grant FEUERMAN an extension to December 30, 2004 to consult with an attorney and seek representation.

On December 6, 2004, FEUERMAN filed Complainant's Motion to Deny Dismissal and Seek Resolution via Mediation.

On January 4, 2005, the Board scheduled a status conference in this matter on January 21, 2005 at 10:00 a.m. In attempting to contact Complainant, the Board was informed that Complainant is presently in Florida. Complainant also requested to be contacted at 4:00 p.m. HST to accommodate his schedule. Accordingly, the status conference scheduled on January 21, 2005 was taken off the calendar and a hearing on Respondent's motion to dismiss was scheduled on February 1, 2005 at 4:00 p.m..

On February 1, 2005, the Board conducted a hearing on Respondent's Motion to Dismiss by conference call. All parties and their representatives had full opportunity to present their arguments on the pending motion. After reviewing the record and the arguments presented, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. FEUERMAN was for all relevant times, a teacher employed by the DOE, State of Hawaii and an employee within the meaning of HRS § 89-2.
2. The DOE was for all relevant times an employer or the representative of an employer within the meaning of HRS § 89-2.
3. In February of 2002, when his student teaching practicum was to begin, the Principal of the Waianae High School where FEUERMAN was teaching refused to allow him to teach and student teach, concurrently. Thus, FEUERMAN was forced to resign to do his student teaching practicum at another school. The practicum was in an unpaid capacity.

DISCUSSION

Respondent contends that any claim by Complainant that he was forced to resign in February of 2002 is time-barred and the Board lacks jurisdiction over the claim. Complainant argues that he did not bring the charge against the DOE in February 2002 for the following reasons:

This claim is not untimely due to the circumstances. Since the State of Hawaii, Dept. of Education is responsible for the hiring of all teachers for the entire state including neighbor islands for all public schools, Mr. Feuerman knew that by filing this complaint previous to re-employment with the Dept. of Education he would have little to no chance of being re-employed with the Dept. of Education. With the State of Hawaii, DOE's monopoly on the teaching market in Hawaii, Mr. Feuerman felt it necessary to wait until after employment with the Dept. of Education ended so he would still be able to have a job in Hawaii and make a successful career in teaching.

See, Complainant's Motion to Deny Dismissal and Seek Resolution Via Mediation, filed on December 6, 2004.

FEUERMAN restated this reason before the Board on the Motion to Dismiss. However, the reason cited by FEUERMAN does not toll the time limits set forth in our governing statutes and rules.

HRS § 377-9(l), made applicable to the Board by HRS § 89-14, provides:

No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence.

Hawaii Administrative Rules § 12-42-42(a) similarly identifies the limitations period applicable to the filing of prohibited practice complaints under HRS § 89-13, and provides as follows:

Complaints that any public employer, public employee, or employee organization has engaged in any prohibited practice, pursuant to section 89-13, may be filed...within ninety days of the alleged violation.

The Board has construed the limitations period strictly and will not waive a defect of even a single day. Alvis W. Fitzgerald, 3 HLRB 186 (1983).

Based on the record, the Board concludes that FEUERMAN failed to file a timely complaint against Respondent from the time that he was forced to resign his position in February 2002 or thereafter when he knew or should have known that Respondent allegedly breached the contract. FEUERMAN also admitted upon questioning by the Board that he had inquired about a grievance with the exclusive representative of the teachers but did not pursue any grievance when told that he did not have standing in the bargaining unit. Accordingly, any such charge or charges are time-barred.

As the Board has determined that it does not have jurisdiction over the case all other claims or arguments need not be addressed and are therefore dismissed.

CONCLUSIONS OF LAW

1. The Board lacks jurisdiction over prohibited practice complaints filed more than 90 days after the occurrence of the alleged violations.
2. FEUERMAN failed to establish that Respondent's breach of the contract by forcing him to resign in February 2002 arose within 90 days of the filing of the complaint. Thus, the complaint is time-barred and the Board lacks jurisdiction over this complaint.

ORDER

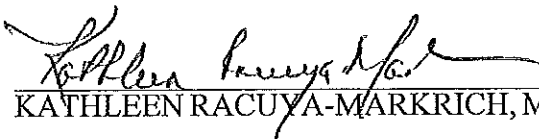
The Board hereby dismisses the instant complaint.

DATED: Honolulu, Hawaii, February 10, 2005

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

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