

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of )  
SIALELE EUTA LIGHTSY, )  
Complainant, )  
and )  
UNITED PUBLIC WORKERS, AFSCME, )  
LOCAL 646, AFL-CIO; DEPARTMENT )  
OF PUBLIC SAFETY, State of Hawaii; )  
Major J. MANUMALEUNA, Oahu Community )  
Correctional Center, Department of Public )  
Safety, State of Hawaii; and Captain MAY )  
ANDRADE, Oahu Community Correctional )  
Center, Department of Public Safety, State of )  
Hawaii, )  
Respondents. )

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CASE NOS.: CU-10-238  
CE-10-593  
ORDER NO. 2339  
ORDER GRANTING RESPONDENTS'  
MOTIONS TO DISMISS

ORDER GRANTING RESPONDENTS' MOTIONS TO DISMISS

On March 22, 2005, Complainant SIALELE EUTA LIGHTSY (LIGHTSY) filed a prohibited practice complaint against Respondents UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union); the DEPARTMENT OF PUBLIC SAFETY (PSD), State of Hawaii; MAJOR J. MANUMALEUNA, Oahu Community Correctional Center, PSD, State of Hawaii; and CAPTAIN MAY ANDRADE, Oahu Community Correctional Center, PSD, State of Hawaii (collectively State or Employer), with the Hawaii Labor Relations Board (Board). LIGHTSY contends, *inter alia*, that she was improperly terminated because of an injury by the State, and the Union failed to grieve her termination.

On March 31, 2005, the Union answered the Complaint. On April 4, 2005, Respondents filed a Motion to Dismiss the Complaint filed on March 22, 2005.

On April 13, 2005, Respondent Employer filed its Prehearing Statement. On April 14, 2005, Respondent UPW filed its Prehearing Statement and UPW's Motion to Dismiss and/or for Summary Judgment.

On April 15, 2005, the Board held a prehearing conference, and scheduled a hearing on Respondents' motions to dismiss on April 29, 2005. Complainant was given time to file a responsive affidavit opposing Respondents' motions. On April 25, 2005, Complainant filed a Prehearing Statement urging the Board to deny Respondents' motions to dismiss.

On April 29, 2005, the Board conducted a hearing and allowed oral argument on Respondents' motions to dismiss.

### FINDINGS OF FACT

1. Complainant, at all times relevant, was a PSD Adult Corrections Officer, and as such a public employee within the meaning of Hawaii Revised Statutes (HRS) § 89-2, and a member of Bargaining Unit (BU) 10.
2. Respondent UPW is the exclusive representative within the meaning of HRS § 89-2 of institutional, health and correctional workers in BU 10, including Complainant.
3. Respondent State is the public employer or a representative of the public employer within the meaning of HRS § 89-2.
4. By letter dated June 7, 2004, the Employer concluded an investigation of Complainant's absence from work since October 7, 2002 due to illness. The Employer placed Complainant on leave without pay from October 7, 2002 to October 6, 2003, and on unauthorized leave without pay from October 7, 2003 through June 21, 2004. The Employer informed Complainant that she would be discharged effective June 21, 2004, because there was no authority to continue her leave without pay beyond one year. The Employer scheduled a pre-discharge hearing for June 15, 2004.<sup>1</sup>
5. On June 15, 2004, Complainant met with UPW's union agent Mel Rodrigues to ask the Union to challenge the Employer's discharge action.<sup>2</sup>
6. By letter dated June 23, 2004, Complainant was notified that her discharge was effective on June 21, 2004.<sup>3</sup>

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<sup>1</sup>See Bd. Exhibits (Ex.) 13 and 8, Respondent UPW's Motion to Dismiss and/or for Summary Judgment, and Ex. 4.

<sup>2</sup>See Bd. Ex. 12, p. 3, Complainant's Prehearing Statement, and Bd. Ex. 1, Complaint filed March 22, 2005.

<sup>3</sup>See Bd. Ex. 8, Respondent UPW's Motion to Dismiss and/or for Summary Judgment, Ex. 4-3, which states in part:

A meeting was conducted on June 15, 2004, in Room 404, Ala Moana Boulevard, Department of Public Safety, to give you an opportunity to respond to specific reasons for your discharge that was

7. On March 22, 2005, Complainant filed the instant prohibited practice complaint against the State claiming that she was terminated because of an injury and without just cause in violation of the BU 10 collective bargaining agreement. Complainant filed the instant complaint against the Union for breach of the duty of fair representation claiming the Union did not file an individual grievance over her termination.<sup>4</sup>

### DISCUSSION

In the instant motions, Respondents move to dismiss the complaint for lack of jurisdiction because the issues relating to Complainant's termination are outside the applicable statute of limitations. Complainant contends that the statute of limitations period should not apply because she was attempting to exhaust her contractual remedies but the Union was not doing anything to help her.<sup>5</sup>

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scheduled for June 21, 2004. The reason for the discharge was specifically in accordance with Section 38.08 Additional Leaves of Absence Without Pay of the Unit 10 Agreement.

Section 38.08 states: A regular Employee may be granted a leave of absence without pay for not more than twelve (12) months, for any of the following reasons:

38.08a. To recuperate from physical or mental illness provided for a leave of absence without pay of five (5) or more consecutive working days, an Employee shall submit a licensed physician's certificate to substantiate the leave of absence without pay was due entirely to sickness and that the employee is physically and/or mentally able to resume the duties of the Employee's position.

A review of your response did not provide sufficient information to negate the discharge action effective the close of business, Monday, June 21, 2004. . . .

<sup>4</sup>See Bd. Ex. 1; Complainant alleges the Employer committed prohibited practices in wilful violation of HRS §§ 89-13(a)(5), (6), (8), and (10). Complainant alleges the Union committed prohibited practices in wilful violation of HRS §§ 89-13(b)(1), (2), (3), (4), and (5).

<sup>5</sup>See Bd. Ex. 12, Complainant's Prehearing Statement urging the Board not to dismiss the complaint states as follows:

## Statute of Limitations

In order for a complaint before the Board to be timely it must be filed "within ninety days of the alleged violation." HRS § 377-9 made applicable to the Board by HRS § 89-14 provides that no complaints of any specific unfair labor practice shall be considered unless filed within 90 days of its occurrence. Accordingly, HAR § 12-42-42(a) provides that:

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 HPERB 186 (1983). The beginning of the limitations period does not depend upon actual knowledge of a wrongful act. Instead, the limitations period begins to run when "an aggrieved party knew or should have known that his statutory rights were violated." Metromedia, Inc., KMBC TV v. N.L.R.B., 586 F.2d 1182, 1189 (8th Cir. 1978).

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1. My claim was made known to union representative within time limit. June 15, 2004 on a tape recording with Mel Rodridgues (sic) is proof that my complain (sic) was brought to unions (sic) attention within statue (sic) of limitations.
  2. Fact that union handles grievances before I can complain to any agencies therefore employer OCCC should not be using unions negligence as a shield for their prohibited practices.
  3. Respondents both claim that I claimant failed to exhaust all contractual remedies however with the Labor Relations Colleen Miyasato affidavit it states UPW did not file a grievance on my behalf nor granted an extension for a grievance, which is proof that there were no remedies for me to persue. (sic)
  4. Employer should not be granted dismissal for their motion to dismiss my claim merely for statue (sic) of limitation due to the fact that I could not file a complaint until all my remedies on the contract has been exhausted in this case UPW dragged my time limit this far by not doing anything and lead me to believe that something has been done.

On March 22, 2005, Complainant filed the instant prohibited practice complaint against the State claiming that she was terminated because of a workers compensation injury and without just cause in violation of the BU 10 collective bargaining agreement. The complaint against the Union for breach of the duty of fair representation claims the Union did not file a grievance over her termination. By letter dated June 23, 2004, Complainant was notified by the Employer that her discharge took effect on June 21, 2004. Complainant does not dispute that she knew or should have known of the Employer's termination action by letter dated June 23, 2004. The instant complaint filed on March 22, 2005 falls well beyond the 90-day period to be timely. Therefore, the Board lacks jurisdiction to hear the merits of the instant complaint.

### CONCLUSIONS OF LAW

1. The Board lacks jurisdiction over complaints filed more than 90 days after the alleged prohibited practice violation occurred.
2. The Board lacks jurisdiction over Complainant's allegations against the Employer and Union relating to her termination, which she was notified about on or about June 23, 2004, because they are time-barred.

### ORDER


The Board hereby grants Respondents' motions to dismiss the instant prohibited practice complaint.

DATED: Honolulu, Hawaii, June 30, 2005

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
CHESTER C. KUNITAKE, Member

  
KATHLEEN RACUYA-MARKRICH, Member

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Copies sent to:

Sialele Euta Lightsy  
Herbert R. Takahashi, Esq.  
Richard H. Thomason, Deputy Attorney General  
Joyce Najita, IRC