STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO, Complainant, and LINDA LINGLE, Governor, State of Hawaii; RICHARD T. BISSEN, JR., Interim Director, Department of Public Safety, State of Hawaii; FREDERICK "CAPPY" CAMINOS, Department of Public Safety, Sheriffs Division, State of Hawaii; and DEPARTMENT OF PUBLIC SAFETY, State of Hawaii, Respondents.	CASE NO. CE-03-598 ORDER NO. 2340 ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

On April 15, 2005, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union) filed a prohibited practice complaint against LINDA LINGLE, Governor, State of Hawaii; RICHARD T. BISSEN, JR., Acting Director, Department of Public Safety, State of Hawaii; FREDERICK CAMINOS, Department of Public Safety, Sheriffs Division, State of Hawaii; DEPARTMENT OF PUBLIC SAFETY, State of Hawaii (Respondents or Employers) regarding the unilateral implementation of a scheduled rotation for all airport deputy sheriffs. The Union alleged that the implementation of the rotation without negotiations or consultation violated Hawaii Revised Statutes (HRS) §§ 89-13(a)(5), (7), and (8).

On April 27, 2005, Repondents filed a motion to dismiss the complaint and on June 6, 2005 the Hawaii Labor Relations Board (Board) held a hearing on Respondents' motion. The parties were provided a full and fair opportunity to argue their positions and after full consideration of the filings of the parties, the Board hereby issues the following findings of fact, conclusions of law, and order granting Respondents' motion.

FINDINGS OF FACT

1. At all relevant times the HGEA was an employee organization within the meaning of HRS § 89-2.

2. At all relevant times Respondents were employers within the meaning of HRS § 89-2.

3. The Board has exclusive original jurisdiction of prohibited practices under HRS § 89-14.

4. The HGEA is the certified exclusive representative of white collar non-supervisory employees in Bargaining Unit (BU) 03 and since July 1972 has negotiated multi-employer bargaining agreements pursuant to HRS § 89-6.

5. Article 4 of the BU 03 agreement requires the employer to obtain the Union's mutual consent for changes to the terms and conditions of the agreement.

6. On or about January 4, 2005, the HGEA filed a class grievance on behalf of the deputy sheriffs (airport division) with the Department of Public Safety regarding the implementation of a new policy over the objection of the Union.

7. On or about January 6, 2005, Respondents, by and through Lt. Patrick Lee, issued an inter-office memorandum setting forth the next scheduled rotation effective February 6, 2005.

8. In response to the grievance on or about February 23, 2005 and March 9, 2005, Respondents sent letters to the Union agreeing to consultation.

9. In light of Respondents' admitted obligation to consult, Respondents deferred implementation of the scheduled rotation until June 2005.

DISCUSSION

In the instant Motion, Respondents argue that the complaint must be dismissed for timeliness, the failure to state a claim upon which relief can be granted, and for failure to exhaust administrative remedies.

Statute of Limitations

Hawaii Administrative Rules (HAR) § 12-42-42(a) identifies the limitations period applicable to the filing of prohibited practices complaints under HRS § 89-13. It provides as follows:

> (a) 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 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) (emphasis added).

In the instant complaint, Respondents argue that the complained of event occurred on January 6, 2005 when Respondents advised the Union of the adoption of the new rotation. The prohibited practice complaint filed more than four months later would appear to clearly fall outside of the prescribed 90-day limitations period. Complainant, however, argues that the complaint is not time-barred because the advised date of implementation (February 6, 2005) falls within the limitations period.

The gravamen of the complaint is an alleged failure to consult as required by HRS § 89-9(c). The law provides:

> (c) Except as otherwise provided in this chapter, all matters affecting employee relations, including those that are, or may be, the subject of a rule adopted by the employer or any director, shall be subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations.

The limitations period therefore began running when the Union knew or should have known that the employer had failed "to consult with exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations." The plain language of the statute imposes the duty prior to effecting changes and thus a violation impliedly when a change requiring consultation is effected. "Effect" is defined by the

American Heritage Dictionary of the English Language (1970) to include "the condition of being in full force or execution." And applying this definition to the language at issue, an offending policy "effecting changes" would occur when it is in full force or executed. Applying this understanding to the date of the alleged violation from which the limitations period begins to run, the Board must conclude that the limitations period for the alleged violation of the duty to consult began running on January 6, 2005 when the Union was advised of the adoption of the new rotation and did not have to await the promised implementation. The implementation date was merely a part of the allegedly offending policy which was uncontestedly in full force on the date of receipt.

Having concluded that the limitations period began to run on January 6, 2005, the filing of the instant complaint on April 15, 2005 falls outside of the 90-day limitations period and the complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Board lacks jurisdiction over complaints filed more than 90 days after the cause of action accrues.

2. The Board lacks jurisdiction over Complainant's allegations of a failure to consult over the rotation policy because the cause of action accrued on January 6, 2005 when the Union was advised of the adoption of the new rotation and the instant complaint is time-barred.

ORDER

The Board hereby dismisses the instant complaint because it is time-barred.

DATED: Honolulu, Hawaii, June 30, 2005.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

CHESTER C. KUNITAKE, Member

KATHLEEN RACUYA-MARKRICH, Member

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO and LINDA LINGLE, Governor, State of Hawaii, et al.
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