

The Board finds, adjudges, orders and decrees as follows:

FINDINGS OF FACT

1. On May 30, 2008, Complainant was discharged by Employer as an adult corrections officer at the Halawa Correctional Facility of the Department of Public Safety for unauthorized leave of absence on and after March 21, 2008.
2. Complainant was made aware of the discharge action on or about April 6, 2009 by Employer when he contacted the PSD personnel officer regarding his employment status.
3. On May 28, 2010, Complainant filed a civil action against the Union and Employer in Civil No. 10-1-1182-05 RAT in the Circuit Court of the First Circuit, the Honorable Rom A. Trader presiding.
4. On or about October 12, 2010, the circuit court dismissed the action against the Union in Civil No. 10-1-1182-05 RAT for lack of subject matter jurisdiction. During the court proceeding Complainant stated he was aware of the ninety day statute of limitations to file a complaint with the Board.
5. On November 1, 2010, Complainant filed a Complaint against the Union and Employer with the Board.

CONCLUSIONS OF LAW

1. HRS § 89-14, provides that any controversy concerning prohibited practices may be submitted to the Board in the same manner and with the same effect as provided in HRS § 377-9, and the Board shall have exclusive original jurisdiction over such a controversy.
2. HRS § 377-9(1) states that no complaint "shall be considered unless filed within ninety days of its occurrence." Hawaii Administrative Rule § 12-42-42 provides that a complaint for prohibited practices may be filed by a public employee "within ninety days of the alleged violation."
3. The ninety-day statute of limitations is a jurisdictional requirement which the Board has no authority to waive. TriCounty Tel. Ass'n., Inc. v. Wyoming Public Service Comm'n., 910 P.2d 1359, 1361 (Wyo. 1996) (holding that, "As a creature of the legislature, an administrative agency has limited powers and can do no more than it is statutorily authorized to do"); see generally, HOH Corp. v. Motor Vehicle Industry Licensing Bd., Dept. of

Commerce and Consumer Affairs, 69 Haw. 135, 141, 736 P.2d 1271, 1275 (1987) (“The law has long been clear that agencies may not nullify statutes”).

4. The failure to file a complaint within ninety days of its occurrence divests the Board of jurisdiction to hear the complaint. The Board has construed the 90-day limitations period strictly and will not waive a defect of even a single day. Alvis W. Fitzgerald, 3 HPERB 186, 199 (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).
5. Having reviewed the allegations of the complaint in the light most favorable to the Complainant, the Board finds that the claims presented are untimely since they were not filed within ninety days of the date Complainant knew or should have known of the alleged prohibited practices by Union and the Employer. According to Complainant, he learned of his discharge on or about April 6, 2009. On May 28, 2010, Complainant filed a civil action against the Employer challenging his discharge and against the Union for the failure to represent him. The Board finds that at the latest, Complainant knew or should have known of any alleged prohibited practices when he filed his civil action in the circuit court.
6. Accordingly, the prohibited practice complaint filed on November 1, 2010 is untimely and is hereby dismissed.

Dated: Honolulu, Hawaii, April 14, 2011

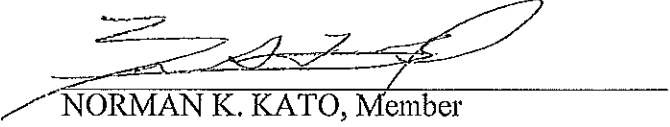
HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO, Member

ROY REYES v. UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO and
DEPARTMENT OF PUBLIC SAFETY, State of Hawaii
CASE NOS.: CE-10-771, CU-10-299
ORDER NO. 2787
ORDER GRANTING MOTIONS TO DISMISS COMPLAINT

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