



STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

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Transaction ID 60739653
Case No. 16-CU-01-343, 16-CE-01-
884**

In the Matter of

JED PAREL,

Complainant,

and

JONATHAN SLOAN, UNITED PUBLIC
WORKERS, AFSCME, LOCAL 646,
AFL-CIO; and JERRY WATANABE,
Hawaii District Engineer, Department of
Accounting and General Services, State of
Hawaii,

Respondents.

CASE NOS.: CU-01-343, CE-01-884

ORDER NO. 3267

ORDER DISMISSING COMPLAINT

ORDER DISMISSING COMPLAINT

On August 10, 2016, Complainant JED PAREL (Complainant) filed a PROHIBITED PRACTICE COMPLAINT (Complaint) with the Hawaii Labor Relations Board (Board), alleging, *inter alia*, that Respondents JONATHAN SLOAN, UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) and JERRY WATANABE, Hawaii District Engineer, Department of Accounting and General Services, State of Hawaii (Watanabe or Employer), collectively "Respondents," must effectuate his assignment to a vacant position in the Department of Accounting and General Services (DAGS) pursuant to a posting to which he had applied.

Specifically, the Complaint alleges, *inter alia*,

On October 19, 2015, an internal vacancy position for Carpenter 1, position # 21134 for the Department of Accounting and General Services (DAGS) was posted, in which I applied for in the time frame given.

October 19, 2015-November 2, 2015, I was then notified by DAGS personnel office on November 12, 2015 that my application has been accepted and met the minimum requirements.

The employing office offered me the position, where I accepted the Carpenter 1 position # 21134. On December 8, 2015 I received formal notification that I have been selected to fill the Carpenter 1 position, effective January 4, 2016.

December 31, 2015, I was notified informally via my personal e-mail from Terrin Gloor, Engineer V that due to a pending grievance related to the Carpenter 1 #21134 position, that another worker has filed, because he missed the application date, that my start date has been delayed and I continue to work in my current position.

On January 4, 2016 I went to UPW Hawaii division to speak to Jonathan Sloan to file a grievance, regarding the situation and that my start date shouldn't have been affected and I am to be working in the #21134 position regardless the pending grievance and asked for his assistance. I also went to John Sloan's supervisor, Loyna Kamakeeaina where I was also denied any opportunity in attempt to file any type of grievance or complaint. I explained to them that I feel that you are not helping me and that you are supporting a chief union steward and that I am being treated unfair.

I received a letter from UPW regarding the grievance case # JS-15-04 and that I have been held in hostage for the past 8 months with no information on the position #21134. I have contacted the office of ombudsman and they have contacted UPW to confirm if the situation is under the bargain unit and told me it may very well be.

On August 12, 2016, the Board issued a NOTICE TO THE RESPONDENTS OF THE PROHIBITED PRACTICE COMPLAINT (Notice of Complaint), pursuant to Hawaii Revised Statutes (HRS) § 377-9(b) and Hawaii Administrative Rules (HAR) §12-42-42. The Notice of Complaint also set a Prehearing Conference, pursuant to HRS § 89-5(i)(4) and (i)(5), and HAR §12-42-47, to be held on August 26, 2016.

On August 24, 2016, the UPW filed with the Board a MOTION TO DISMISS; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF DAYTON M. NAKANELUA, EXHIBITS 1 THROUGH 18; CERTIFICATE OF SERVICE (Motion to Dismiss) in the above referenced cases. The Motion to Dismiss asserted that the Complaint should be dismissed because of lack of jurisdiction due to untimely filing under HRS § 377-9(1); failure to exhaust contractual remedies; and failure to state a claim for relief in connection with a "hybrid" claim.

On August 26, 2016, the Board held a Prehearing Conference, which commenced at 9:00 a.m., in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii,

where representatives of all the parties participated in the proceedings, with Complainant participating via telephone. After reviewing all the pleadings and files in this matter, including the prehearing statements and attachments submitted by the parties, and listening to the oral presentations made by the parties, the Board found that the events giving rise to the Complaint in this case took place between December, 2015 and January, 2016.

At the Prehearing Conference, Complainant reiterated that he felt unsupported by the union in his efforts to be transferred to the position of Carpenter 1; acknowledged that a grievance was filed on behalf of another employee by the UPW challenging the procedure DAGS had utilized in posting the position; and acknowledged that Watanabe had responded to his complaint over not being placed in the new position on January 4, 2016, although he did not know if it was a “grievance” since it was not filed by his union on his behalf. There was no dispute between the Complainant and the Respondents with respect to time and dates of correspondences and meetings, as set forth in the Complaint or the Respondents’ pleadings, which included the filing of a grievance, the response of the employer, the meetings with the union, or the dates when the Complainant last sought to resolve his complaint. Complainant did not dispute that DAGS informed him that his transfer was still pending the resolution of another grievance filed by the UPW, and that Complainant was still the employer’s choice for the position of Carpenter 1. Complainant stated to the Board that he had no further conversations with either the employer or the union after the end of January, 2016. The Complaint itself was filed on August 10, 2016, more than ninety (90) days from the occurrence of any discernable alleged prohibited practice. Therefore, the Board, *sua sponte*, made an oral ruling that the Board did not have jurisdiction over the Complaint pursuant to HRS §377-9(1), and dismissed the complaint as untimely.

On April 25, 2017, the UPW filed a MOTION FOR WRITTEN BOARD DECISION AND ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT (Motion for Written Decision and Order). On June 13, 2017, the UPW filed its SUPPLEMENTAL SUBMISSIONS IN SUPPORT OF MOTION FOR WRITTEN BOARD DECISION AND ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT FILED APRIL 25, 2017 (Supplemental Submissions).

The Board’s jurisdiction is governed by HRS Chapters 89 and 377. HRS § 377-9(1) states, “No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence” (emphasis added). This provision is made applicable to prohibited practice complaints by HRS § 89-14. The failure to file a complaint within ninety days of its occurrence divests the Board of jurisdiction to hear the complaint. This limitation is jurisdictional and provided by statute, and may not be waived by either the Board or the parties (*see Thomas v. Commonwealth of Pennsylvania Labor Relations Board*, 483 A.2d 1016 (Pa. 1984) (failure to comply with the statute of limitations for unfair labor practices goes to the subject matter jurisdiction of the labor relations board); *HOH Corp. v. Motor Vehicle Indus. Licensing Bd., Dept. of Commerce and Consumer Affairs*, 69 Haw. 135, 141, 736 P.2d 1271, 1275 (1987) (agencies

may not nullify statutes)). *See also*, Hikalea v. Department of Environmental Services, City and County of Honolulu, Case No. CE-01-808, Order No. 3023 at *5-6 (October 3, 2014) (*citing* Thomas v. Commonwealth of Pennsylvania Lab. Rels. Bd.).

In construing and applying this statutory time limit, the Board's approach has been to adhere to the principle that statutes of limitations are to be strictly construed, and because time limits are jurisdictional, the defect of missing the deadline even by one day is may not be waived. Valeho-Novikoff v. Okabe, Board Case No. CU-05-302, Order No. 3024, at *10 (2014) (*citing* Fitzgerald v. Ariyoshi, 3 HPERB 186, 198-99 (1983); Cantan v. Dep't. of Env. Waste Mgmt., Board Case No. CE-01-698, Order No. 2599, at *8-9 (3/24/2009); Kang v. Hawaii State Teachers Ass'n., Board Case No. CE-05-440, Order No. 1825, at *4 (12/13/99)).

Finally, the Board is guided by the principle that if a court lacks jurisdiction over the subject matter of a proceeding, any judgment rendered in that proceeding is invalid; therefore, such a question is appropriate at any stage of the case. *See* Bush v. Hawaiian Homes Comm'n, 76 Hawai'i 128, 133, 870 P.2d 1272, 1277 (1994). A tribunal is obliged to first insure that it has jurisdiction. Id.; *see also*, Hawaii Rules of Civil Procedure (HRCP) Rule 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action"); Tamashiro v. Dep't of Human Serv's., 112 Hawai'i 388, 398-99, 146 P.3d 103, 113-14 (2006).

Because the Board hereby dismisses the Complaint for lack of jurisdiction, the UPW's Motion for Written Decision and Order is hereby denied as moot; the UPW's Motion to Dismiss is also hereby denied as moot¹.

¹ A case is moot when events have so affected the relations between the parties that the two conditions for justiciability – adverse interest and effective remedy – have been compromised. Hac v. University of Hawaii, 102 Hawaii 92, 99, 73 P.3d 46, 53 (2003) (*citing* Okada Trucking Co. v. Board of Water Supply, 99 Hawaii 191, 195-95, 53 P.3d 799, 803-04 (200)).

ORDER

For the reasons discussed above, the Complaint is hereby dismissed as untimely and the case closed. The UPW's Motion to Dismiss and Motion for Written Decision and Order are denied as moot.

DATED: Honolulu, Hawaii, June 15, 2017.

HAWAII LABOR RELATIONS BOARD

Sesnita A. D. Moepono



SESNITA A.D. MOEPONO, Member

J. N. Musto

J N. MUSTO, Member

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