

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-10-66
)	
THOMAS LEPERE,)	ORDER NO. 841
)	
Complainant,)	ORDER GRANTING MOTIONS TO
)	DISMISS
and)	
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Respondent.)	

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In the Matter of)	CASE NO. CE-10-133
)	
THOMAS LEPERE,)	
)	
Complainant,)	
)	
and)	
)	
JOHN WAIHEE, Governor, State)	
of Hawaii and DEPARTMENT OF)	
CORRECTIONS, State of Hawaii,)	
)	
Respondents.)	

ORDER GRANTING MOTIONS TO DISMISS

On February 6, 1990, Complainant THOMAS LEPERE filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board).

The Complainant alleges, inter alia, that Respondent UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) violated Subsections 89-13(b)(2), (3), (4), and (5),

Hawaii Revised Statutes (HRS) by violating the terms of the collective bargaining agreement relating to the UPW's alleged failure to take steps to process Complainant's suspension grievance to arbitration. Further, Complainant alleges that UPW failed to initiate grievances regarding violations of Section 18 of the Unit 10 Collective Bargaining Agreement (Unit 10 Agreement). In addition, Complainant contends that UPW failed to grieve other violations of the contract.

Similarly, on February 6, 1990, Complainant filed a prohibited practice complaint against JOHN WAIHEE, Governor, State of Hawaii and DEPARTMENT OF CORRECTIONS, State of Hawaii (collectively referred to as Employer or DOC), alleging violations of Subsections 89-13(a)(6), (7), and (8), HRS, by violating the terms of the Unit 10 Agreement relating to the failure to provide Community Workline Supervisors "duty free" meal and rest periods which ultimately resulted in the Complainant's suspension, allegedly without just cause. Alleged contract violations involve Sections 1, 11, 18 and 56 of the Unit 10 Agreement.

As these complaints involved substantially the same parties and issues, the Board pursuant to Administrative Rules § 12-42-8(g)(13), consolidated these complaints for disposition on March 7, 1990.

On March 5, 1990, UPW, by and through its counsel, Herbert R. Takahashi, Esq., filed with the Board a Motion to

Dismiss in Case No. CU-10-66, including a memorandum in support of Motion to Dismiss, affidavit of counsel and exhibits.

Likewise, on March 9, 1990, Respondent DOC, by and through its counsel, Colette H. Gomoto, Deputy Attorney General, filed a Motion to Dismiss the subject complaints, accompanied by a memorandum in support of Respondents' Motion to Dismiss. Pro se Complainant did not file a memorandum in opposition to UPW's and DOC's motions, but appeared and was granted leave to articulate his opposition to these motions orally. A hearing on the motions was held by the Board on March 15, 1990.

Complainant is and was, for all times relevant, an Adult Corrections Officer (ACO) at the Oahu Community Correctional Center (OCCC), and a member of bargaining unit 10 as it is defined in Subsection 89-6(a), HRS.

Respondent UPW is the exclusive representative as defined in Section 89-2, HRS, of bargaining unit 10.

Respondent DOC is the public employer as defined in Section 89-2, HRS, of members of bargaining unit 10.

Counsel for UPW and DOC move to dismiss the prohibited practice charges filed by Complainant for lack of jurisdiction because the complaints were untimely. Both motions are based on Administrative Rules § 12-42-42, and Sections 89-14 and 377-9, HRS, which establishes a 90-day statute of limitations.

The Board having reviewed the motions and the memoranda in support thereof, having heard oral arguments of

counsel and Complainant, and being fully advised as to the premises herein, grants Respondents UPW's and DOC's motions to dismiss--specifically on the question as to whether the Union failed to take steps to process Complainant's grievance relating to Complainant's suspension, to arbitration.

At the hearing on the subject motion, counsel for Respondent Union essentially argued that the instant complaint is time-barred for failure to meet the 90-day statute of limitations based upon the following benchmark events:

Complainant was suspended on July 26, 1988 for allegedly sleeping while on duty. The Union filed a grievance on or about August 1, 1988. After a full investigation by the Union on the subject suspension, the Union decided not to arbitrate the grievance on May 16, 1989.

On October 16, 1989, Complainant filed a complaint with the District Court of the First Circuit, Honolulu Division alleging the Union and its officials breached its fiduciary responsibilities relating to his 10-day suspension.

On November 27, 1989, the District Court granted a motion filed by the Union to dismiss the complaint for lack of subject matter jurisdiction.

On February 6, 1990, Complainant filed a prohibited practice complaint with the Board.

Respondent UPW joined by Respondent Employer argued at the hearing on the Motions to Dismiss that the 90-day

statute of limitations began to run on or about May 16, 1989 when the Union decided not to proceed to arbitration on Complainant's grievance. UPW's counsel also argued that Complainant should have been aware of this action at least by October 16, 1989 when he filed an action in the District Court. This is a date which is 113 days prior to the filing of the instant complaints.

The Board holds that the 90-day statute of limitations for the filing of complaints before the Board did in fact expire before Complainant filed his action herein. The Board's holding is restricted to the specific allegation against the Union for failing to represent Complainant fairly or adequately regarding his suspension, and the allegation against the Employer for unjustly suspending him for allegedly sleeping while on duty. All other issues arising from these consolidated cases will be decided by the Board in a separate decision.

Accordingly, the Union and Employer's Motions to Dismiss are hereby granted for failure to comply with the applicable statute of limitations.

DATED: Honolulu, Hawaii, July 11, 1991.

HAWAII LABOR RELATIONS BOARD



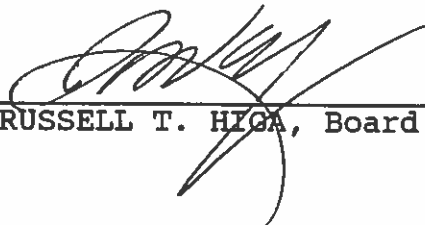
BERT M. TOMASU, Chairperson

THOMAS LEPERE v. UNITED PUBLIC WORKERS, AFSCME, LOCAL 646,
AFL-CIO, CASE NO. CU-10-66 and THOMAS LEPERE v. JOHN WAIHEE,
Governor, State of Hawaii and DEPARTMENT OF CORRECTIONS,
State of Hawaii, CASE NO. CE-10-133

ORDER NO. 841

ORDER GRANTING MOTIONS TO DISMISS


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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