

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-07-172
UNIVERSITY OF HAWAII PROFES-)	ORDER NO. 941
SIONAL ASSEMBLY,)	ORDER DISMISSING PROHIBITED
Complainant,)	PRACTICE COMPLAINT
and)	
BOARD OF REGENTS, University)	
of Hawaii,)	
Respondent.)	

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

On August 19, 1992, Complainant UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA) filed a prohibited practice complaint against the BOARD OF REGENTS, University of Hawaii (BOR) with the Hawaii Labor Relations Board (Board). UHPA alleges that despite repeated requests, the BOR failed and refused to bargain over the details of the implementation of the University of Hawaii (UH) Family Leave Guidelines (Guidelines). UHPA alleges that the BOR offered to consult rather than bargain over the implementation of the policy. UHPA contends that the BOR thereby violated Subsection 89-13(a)(5), Hawaii Revised Statutes (HRS).

By a Stipulation of Parties filed with the Board on October 9, 1992, the parties agreed to submit the case to the Board on stipulated facts and joint exhibits, without an evidentiary hearing. The parties filed closing briefs with the Board on November 6, 1992.

Complainant UHPA is the exclusive bargaining representative for employees who are included in bargaining unit 7, faculty of the UH and community college system.

Respondent BOR is the public employer as defined in Section 89-2, HRS, of employees of the UH who are included in bargaining unit 7.

Complainant UHPA and Respondent BOR are parties to a collective bargaining agreement for the period July 1, 1989 to June 30, 1993. Joint Ex. 9.

The Family Leave Act is codified in Chapter 398, HRS. Joint Ex. 2. The Act requires, inter alia, the employers to allow employees up to four weeks of family leave per calendar year. The Act became effective for public employees on January 1, 1992.

By letter dated April 2, 1992, UH Director of Personnel James H. Takushi informed Dr. J. N. Musto, UHPA's Executive Director, of the BOR's desire to consult with Complainant over the implementation of the Act. A copy of the Guidelines was attached to the letter and Takushi requested a response from UHPA by April 10, 1992. Joint Ex. 5. By letter dated April 9, 1992, Musto informed Takushi that consultation was unacceptable and Complainant demanded bargaining over nine specific matters and one general matter concerning the Guidelines. Joint Ex. 6.

The BOR placed the Guidelines into effect on May 8, 1992. Joint Ex. 7. By letter dated May 22, 1993, Musto renewed UHPA's demand for bargaining over the items contained in its previous letter with Takushi. Joint Ex. 8.

The BOR contends that the instant complaint was filed more than ninety (90) days after any alleged violation and that the Board lacks jurisdiction over this matter. The BOR submits that the effective date of the Family Leave Act, Respondent's offer to consult and the operative date of the guidelines are beyond the ninety-day limit provided by the law. The Board agrees with the BOR that it lacks jurisdiction over the complaint.

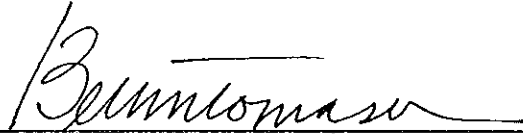
Section 377-9(1), HRS, which is applicable to the Board by Section 89-14, HRS, provides that no unfair labor practice complaint shall be considered unless filed within ninety days of its occurrence. Previously, the Board held that statutes of limitation are to be strictly construed and therefore dismissed a prohibited practice complaint which was filed one day beyond the limitations period. Alvis W. Fitzgerald, 3 HPERB 186 (1983); Michael K. Iwai, 5 HLRB ___ (1993).

In this case, Takushi notified Musto, by letter dated April 2, 1992, of the BOR's intent to consult with UHPA on the matter of implementation. Musto responded to the BOR by demanding bargaining on at least nine items. The BOR did not respond to UHPA and implemented the Guidelines on May 8, 1992. At that time, it should have been clear to UHPA that the BOR was refusing to negotiate implementation of the Guidelines. The Board finds that UHPA's cause of action accrued when the Guidelines were implemented on May 8, 1992. The instant complaint was filed on August 19, 1992, more than ninety (90) days after May 8, 1992 and therefore is outside the applicable limitations period.

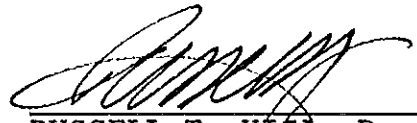
Based upon the foregoing, the Board concludes that it lacks jurisdiction over the matter and hereby dismisses UHPA's prohibited practice complaint.

DATED: Honolulu, Hawaii, April, 28, 1993.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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