

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CU-10-91
JOHN BAKER,	)	ORDER NO. 979
	)	
Complainant,	)	ORDER DENYING, IN PART, RES-
	)	PONDENT UPW'S MOTION TO DIS-
and	)	MISS AND GRANTING EMPLOYER'S
	)	MOTION TO DISMISS; NOTICE
UNITED PUBLIC WORKERS, LOCAL	)	OF HEARING
646, AFSCME, AFL-CIO; JOHN	)	
WAIHEE, Governor, State of	)	
Hawaii and DEPARTMENT OF PUBLIC	)	
SAFETY, State of Hawaii,	)	
	)	
Respondents.	)	

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ORDER DENYING, IN PART, RESPONDENT UPW'S MOTION TO DISMISS  
AND GRANTING EMPLOYER'S MOTION TO DISMISS; NOTICE OF HEARING

On February 25, 1993, Complainant JOHN BAKER (BAKER) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) in Case No. CU-10-91. BAKER alleged that on December 1, 1992, he was returned to the rank of Adult Corrections Officer (ACO) III pursuant to a settlement agreement between the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) and the DEPARTMENT OF PUBLIC SAFETY (Employer). BAKER alleged that on December 15, 1992, he went to the UPW and spoke with UPW business agent Mel Rodrigues. BAKER requested assistance from the UPW and was told that the Union would not represent him. Thus, BAKER alleges that Rodrigues and the Union violated Section 89-13, Hawaii Revised Statutes (HRS).

Thereafter, on March 8, 1993, the UPW, by and through its counsel, filed a motion to dismiss for lack of jurisdiction because

the complaint was untimely and also, because the complaint failed to state a claim upon which relief can be granted. UPW contends that Complainant seeks to set aside a settlement agreement entered into on November 23, 1992 between the State of Hawaii and UPW. However, UPW contends that the ninety-day statute of limitations ran on February 21, 1993 and the Board lacks jurisdiction over the subject complaint. UPW further contends that the complaint should be dismissed because the conduct of the Union and the State falls within the wide range of reasonableness contemplated by the Legislature under Chapter 89, HRS.

The Union alleges that in 1991, the Halawa Correctional Center filled twenty-six vacancies in ACO IV positions. Nine employees filed grievances on the selection. The State settled the grievance by re-doing the selection in 1992. The 1992 selection was again challenged by the filing of a class action grievance by the UPW. The selection was challenged because the Union determined that the State had improperly used sick leave and attendance records and overlooked past experience and relevant seniority. Two arbitration awards were rendered during the same time period overturning promotions based upon sick leave records. The arbitrators in those cases awarded the promotions to the senior employees within the bargaining unit. Thereafter, the grievance was settled on November 23, 1992 after a review of the applicants, their qualifications and relevant contractual provisions. According to the terms of the settlement, twenty-five employees who were qualified on the basis of temporary assignments and seniority at Halawa were placed into the positions.

On March 17, 1993, Complainant filed a Motion to Amend Complaint to add the Employer as an additional respondent. The motion was opposed by UPW and the Employer. After hearing arguments on the motion, the Board granted the motion to amend complaint by Order No. 940, dated April 19, 1993.

On April 20, 1993, the UPW filed a motion to dismiss proceedings without responding briefs or hearings. Counsel for UPW stated that the Complainant failed to comply with the Board's deadline to file its brief.

With respect to the foregoing motion, the Board hereby denies UPW's motion. At the hearing on the motion to amend complaint held on April 14, 1993, the Board set the deadline for Complainant's brief as "next Friday" which was April 23, 1993. Hence, the Board finds that Complainant was timely in filing his response to UPW's motion to dismiss on April 22, 1993. The Board therefore hereby denies UPW's motion to dismiss.

On April 22, 1993, the Employer filed a Motion to Dismiss. The Employer contends that the Complainant failed to state a claim upon which relief can be granted. The Employer argues that the complaint fails to state any violation of § 89-13, HRS, by the State. Moreover, the Employer contends that the settlement was entered into in accordance with the policies underlying Chapter 89, HRS. Further, the Employer contends that the amended complaint is barred by the statute of limitations and should be dismissed.

A hearing was held on Respondents' motions to dismiss on May 18, 1993. Based upon a thorough review of the record, the Board makes the following findings.

UPW argues that the instant complaint was filed outside of the applicable limitations period. UPW contends that the Complainant seeks to overturn the settlement agreement executed on November 23, 1992. Thus, UPW argues that Complainant's cause of action accrued on that date.

Section 377-9(1), HRS, which is applicable to the Board by § 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, BAKER complains that he was denied representation by the UPW. The Board considers significant when BAKER was notified that the UPW refused to assist him. According to BAKER's representations, he contacted Mel Rodrigues on December 15, 1992 and was told that the Union would not assist him. Thus, using the December 15, 1992 date as the operative date that Complainant's cause of action accrued, the Board concludes that the complaint was timely as to the UPW.

With regard to UPW's motion to dismiss the complaint for failure to state a claim, the Board finds that there is insufficient evidence in the record to determine whether the Union's

actions fall within the wide range of reasonableness espoused in Air Line Pilots Ass'n v. O'Neill, 111 S.Ct. 1129 (1991).

Therefore, the Board hereby reserves ruling on the motion at this time and will conduct a further evidentiary hearing limited to the issues of why the decision was made to award the promotions to certain employees, rather than redo the selection and how the employees were selected for the positions.

With respect to the Employer's motion to dismiss for failure to comply with the applicable limitations period, the Employer contends that the applicable ninety-day limitations period starts to run from the date of the settlement agreement on November 23, 1992. Hence, Employer argues the Amended Complaint, as it relates back to the original filing of the Complaint, is deemed to have been filed on February 25, 1993, well past the applicable time period.

The record in this case indicates that the settlement agreement was entered into on November 23, 1992. Further, the Employer notified BAKER that he would be returned to his former rank because of the settlement agreement by memorandum dated November 24, 1992. Using the date of November 24, 1992 for purposes of computation of the applicable limitations period since the Complainant was notified of the settlement and the adverse action on that date, the instant complaint had to be filed by February 24, 1993. In this case, the complaint was filed on February 25, 1993, one day beyond the limitations period. Thus, the Board hereby grants the motion to dismiss the Amended Complaint

as to the Employer on the basis that it was filed beyond the applicable limitations period.

YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing on the foregoing issues pursuant to § 89-5, HRS, on November 18, 1993 at 10:30 a.m. in the Board's hearings room, Room 203, 550 Halekauwila Street, Honolulu, Hawaii 96813.

DATED: Honolulu, Hawaii, October 21, 1993.

HAWAII LABOR RELATIONS BOARD

  
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BERT M. TOMASU, Chairperson

  
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RUSSELL T. HIGA, Board Member

  
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SANDRA H. EBESU, Board Member

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