

STATE OF HAWAI‘I  
HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

KEVIN D. SANTANA, SR.,

Complainant,

and

UNITED PUBLIC WORKERS,

Respondent.

CASE NO(S). 20-CU-01-385

DECISION NO. 499

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, DECISION AND ORDER

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

**1. Introduction and Statement of the Case**

After Respondent UNITED PUBLIC WORKERS (UPW or Union) refused to take two grievances to arbitration, Complainant KEVIN D. SANTANA, SR. (Complainant or Mr. Santana) filed this case with the Hawai‘i Labor Relations Board (Board). Mr. Santana’s prohibited practice complaint (Complaint) argues that UPW committed prohibited practices when it refused to take the grievances to arbitration.

The Board’s ability to hear complaints, as defined the law, has procedural limitations. Even if cases have merits based on the facts, if the case does not meet the procedural requirements, the Board cannot hear the case.

In this case, Mr. Santana filed the Complaint outside of the ninety-day period required by law. Accordingly, the Board does not have jurisdiction over this Complaint and dismisses the case.

Any conclusion of law that is improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact that is improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

## **2. Relevant Background and Findings of Fact**

Mr. Santana, a public employee<sup>i</sup>, works for the County of Hawai‘i’s Solid Waste Division (Employer<sup>ii</sup>) and, based on his position, is a member of bargaining unit 1<sup>iii</sup> (BU 1), a bargaining unit that UPW represents as its exclusive representative<sup>iv</sup>, and is covered by a collective bargaining agreement (CBA) between UPW and the relevant employer group, of which the Employer is a part.

In June 2019, an incident occurred at the Hilo landfill, which led to the Employer suspending Mr. Santana for one week. Mr. Santana contested this suspension through Grievance No. JS-19-16, which UPW agent Jonathan Sloan (Mr. Sloan) processed.

In July 2019, another incident occurred, which led to the Employer suspending Mr. Santana for one week. Mr. Santana contested this suspension through Grievance No. JS-19-15, which Mr. Sloan also processed.

In May 2020, Mr. Santana sent emails to Liz Ho (Ms. Ho), the Administrator for UPW. In those emails, among other things, Mr. Santana requested that his grievances be sent to arbitration.

By letter dated May 20, 2020, UPW informed Mr. Santana that it considered Grievance No. JS-19-16 resolved, and by letter dated June 1, 2020, UPW informed Mr. Santana that it decided not to pursue Grievance No. JS-19-15. Mr. Santana understood that those letters informed him that UPW would not be taking his grievances to arbitration.

Mr. Santana continued his dialogue with UPW after receipt of these letters, including an email in June 2020 acknowledging receipt of the letters. The dialogue between Mr. Santana and UPW led to a meeting with the Employer in early August 2020. While discussing the lack of response from the Employer, on September 21, 2020, UPW reminded Mr. Santana that, although the Union was trying to reopen his cases with the Employer, the cases were closed. In October 2020, UPW further reminded Mr. Santana that UPW could not compel the Employer to overturn a closed grievance and that the decision not to proceed to arbitration is at UPW’s discretion.

## **3. Analysis and Conclusions of Law**

The Board may only hear cases over which it has jurisdiction. The Hawai‘i Revised Statutes (HRS) and the courts have defined the Board’s procedural jurisdiction, in part, based on HRS § 377-9. *See*, HRS § 89-14; Aio v. Hamada, 66 Haw. 401, 404 n.3, 664 P.2d 727, 729 n.3 (1983) (Aio).

HRS § 377-9 requires that the Board can only hear complaints that a complainant files within ninety days of the action that gives rise to the alleged prohibited practice. HRS § 377-9(1); Aio, 66 Haw. At 505 n. 3, 664 P.2d at 729 n.3. The administrative rules that govern the

Board proceedings further include this limitation on the Board's jurisdiction. Hawai'i Administrative Rules (HAR) § 12-42-42(a).

Because these limits are jurisdictional and provided by statute, neither the Board nor the parties may waive this ninety-day requirement. Hikalea v. Department of Environmental Services, City and County of Honolulu, Case No. CE-01-808, Order No. 3023 at \*6 (October 3, 2014). The Board cannot do more than the law authorizes it to do. Scruton v. Department of Public Safety, State of Hawaii, Case No. CE-13-862, Order No. 3131 at \*6 (December 17, 2015). Accordingly, even if the parties do not raise the issue of a jurisdictional requirement, the Board, *sua sponte*, or on its own, will raise the issue because if the Board does not have jurisdiction over a complaint, the Board cannot issue a judgment on the issue. Tamashiro v. Department of Human Services, 112 Hawai'i 388, 398, 146 P.3d 103, 113 (2006).

The Board's approach to the ninety-day timeline has been to follow the principles that require the Board to strictly follow the timelines and that, even if the complainant misses the deadline by a single day, the Board cannot waive that ninety-day requirement. Fitzgerald v. Ariyoshi, 3 HPERB 186, 198-199 (1983). The Board has further followed the principle that this ninety-day period begins when the complainant knew or should have known that his rights were being violated. United Public Workers, AFSCME, Local 646 v. Okimoto, Board Case No. CE-01-515, Decision No. 443, 6 HLRB 319, 330 (2003).

Here, the Board finds, *sua sponte*, that Mr. Santana's Complaint is untimely. Accordingly, the Board lacks jurisdiction to hear this case. Mr. Santana filed his Complaint on November 16, 2020. The earliest date in the ninety-day period, therefore, is August 18, 2020.

Mr. Santana admits that the May 20, 2020 letter and the June 1, 2020 letter informed him that UPW would not take his grievances to arbitration. Both dates of the letters are well before the ninety-day period.

Although discussions between Mr. Santana and UPW regarding the grievances continued into the ninety-day period, the question is when Mr. Santana knew or should have known of the action by UPW that he argues is a prohibited practice. Mr. Santana acknowledges that he understood those letters to mean that UPW was not going to take his grievances to arbitration. Accordingly, the date of his receipt of those letters is when Mr. Santana knew or should have known of UPW's refusal to take the grievances to arbitration.

Even reviewing the Complaint, pleadings, and oral arguments in the light most favorable to Mr. Santana, the Board must hold that Mr. Santana filed his Complaint outside of the Board's ninety-day filing period. Accordingly, the Board dismisses the Complaint for untimeliness.

**4. Order**

For the reasons discussed above, the Board finds that the Complaint was untimely filed. Accordingly, the Board lacks jurisdiction over this case and dismisses it. This case is closed.

DATED: Honolulu, Hawai‘i, \_\_\_\_\_ December 31, 2020 \_\_\_\_\_.

HAWAI‘I LABOR RELATIONS BOARD



*Marcus R. Oshiro*

MARCUS R. OSHIRO, Chair

*Sesnita A. D. Moepono*

SESNITA A.D. MOEPONO, Member

*J. N. Musto*

J. N. MUSTO, Member

Copies sent to:

Kevin D. Santana, Sr.  
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Vladimir Devens, Esq.

<sup>i</sup> HRS § 89-2 Definitions defines “employee” or “public employee” as:

“Employee” or “public employee” means any person employed by a public employer, except elected and appointed officials and other employees who are excluded from coverage in section [89-6(f)].

<sup>ii</sup> HRS § 89-2 Definitions defines “employer” or “public employer” as:

“Employer” or “public employer” means...the respective mayors in the case of the counties...and any individual who represents one of these employers or acts in their interest in dealing with public employees...

<sup>iii</sup> HRS § 89-6 Appropriate bargaining units defines BU 1 as “Nonsupervisory employees in blue collar positions...”

<sup>iv</sup> HRS § 89-2 Definitions defines “Exclusive representative” as:

“Exclusive representative” means the employee organization certified by the board under section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.