

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

ROMEO G. PANGANIBAN,

Complainant(s),

and

THE JUDICIARY, State of Hawai'i,

Respondent(s).

CASE NO(S). 21-CE-03-957

DECISION NO. 501

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 THE JUDICIARY, State of Hawai'i (Judiciary) terminated the employment of Complainant ROMEO G. PANGANIBAN (Complainant or Mr. Panganiban), Mr. Panganiban filed this case with the Hawai'i Labor Relations Board (Board). Mr. Panganiban's prohibited practice complaint (Complaint) argues that the Judiciary committed prohibited practices when it terminated him.

The Board's ability to hear complaints, as defined by the law, has procedural limitations, and if the procedural requirements are not met, the Board cannot hear the complaint.

The Board held a prehearing conference on February 1, 2021, where the Board received additional information from Mr. Panganiban and the Judiciary regarding this case. Based on the information received, the Board finds that Mr. Panganiban 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. Panganiban, a public employeeⁱ, worked for the Judiciary, his Employerⁱⁱ, and, based on his position, is a member of bargaining unit 3ⁱⁱⁱ (BU 3). Hawaii Government Employees Association (HGEA) represents BU 3 as its exclusive representative^{iv}, and BU 3 is covered by a collective bargaining agreement (CBA) between HGEA and the relevant employer group, of which the Judiciary is a part.

By letter dated August 20, 2020, the Judiciary notified Mr. Panganiban that he would be dismissed from employment as of the close of business on August 24, 2020.

After his dismissal, Mr. Panganiban and HGEA filed a grievance to contest his dismissal. According to Mr. Panganiban, HGEA mailed the Step 2 Letter to the Judiciary on or about January 29, 2021. This grievance is ongoing.

3. Analysis and Conclusions of Law

The Board may only hear cases that it has jurisdiction over. 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(l); Aio, 66 Haw. At 505 n. 3, 664 P.2d at 729 n.3. The administrative rules that govern the Board 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. Panganiban's Complaint is untimely. Accordingly, the Board lacks jurisdiction to hear this case. Mr. Panganiban's dismissal, the action at the heart of the Complaint, became effective on August 24, 2020. Accordingly, Mr. Panganiban needed to file a complaint with the Board on or by November 22, 2020. Mr. Panganiban filed the Complaint on January 12, 2021, fifty-one days after the end of the ninety-day period.

HGEA and Mr. Panganiban are continuing to work through the grievance process with the Judiciary, which may give rise to a future date when Mr. Panganiban has exhausted the administrative remedies found in the CBA and may be able to timely file a new complaint. However, this fact does not cure the timeliness issue for the Complaint.

Even reviewing the Complaint, pleadings, and oral arguments in the light most favorable to Mr. Panganiban, the Board must hold that Mr. Panganiban 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, _____ February 3, 2021 _____.

HAWAI'I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

En. Musto

EN. MUSTO, Member

Copies sent to:

Romeo G. Panganiban
Quinn Yang, Deputy Attorney General

ROMEO G. PANGANIBAN v. THE JUDICIARY, STATE OF HAWAII
CASE NO. 21-CE-03-957
DECISION NO. 501

ⁱ 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)].

ⁱⁱ 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...

ⁱⁱⁱ HRS § 89-6 Appropriate bargaining units defines BU 3 as “Nonsupervisory employees in white collar positions...”

^{iv} 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.