

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

HENRY H. YANG, M.D.,

Complainant,

and

BRUCE ANDERSON, Ph.D., Director,
Department of Health, State of Hawai'i,

Respondent.

CASE NO. CE-13-788

ORDER NO. 3534

FINAL ORDER ADOPTING
PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS PROHIBITED PRACTICE
COMPLAINT, FILED NOVEMBER 25,
2011

**FINAL ORDER ADOPTING PROPOSED ORDER
GRANTING RESPONDENT'S MOTION TO
DISMISS PROHIBITED PRACTICE COMPLAINT, FILED NOVEMBER 25, 2011**

On May 8, 2019, the Hawai'i Labor Relations Board (Board) issued Proposed Order Granting Respondent's Motion to Dismiss Prohibited Practice Complaint, Filed November 25, 2011 (Proposed Order). The Proposed Order granted the Respondent's Motion to Dismiss Prohibited Practice Complaint, Filed November 25, 2011 (Motion to Dismiss) and dismissed the case. The Proposed Order included Proposed Findings of Fact and Conclusions of Law and further provided in pertinent part:

FILING OF EXCEPTIONS

Any person adversely affected by the above Proposed Order Granting Respondent's Motion to Dismiss may file exceptions with the Board, as laid out in HRS § 91-11¹, within ten days after service of a certified copy of this document. The exceptions shall specify which findings or conclusions are being excepted to with citations to the factual and legal authorities for such exceptions. A hearing for the presentation of oral arguments will be scheduled upon the filing of such exceptions, and the parties will be notified of such hearing.

On May 20, 2019, Complainant HENRY H. YANG, M.D. (Complainant) filed Complainant's Exceptions to Proposed Order Granting Respondent's Motion to Dismiss Prohibited Practice Complaint, Filed November 23, 2011, Filed on May 8, 2019 (Complainant's Exceptions).

On May 23, 2019, the Board issued a Notice of Hearing on Complainant's Exceptions to Proposed Order Granting Respondent's Motion to Dismiss Prohibited Practice Complaint, Filed November 25, 2011, Filed on May 8, 2019, which scheduled a hearing for June 27, 2019.

On June 27, 2019, the Board held the hearing on Complainant's Exceptions at which Complainant was given the opportunity to present further oral argument in support of his Exceptions and Respondent BRUCE ANDERSON, Ph.D. (Respondent) was given the opportunity to present oral argument in response.

Based on a full review of the record in this case, including a careful review of Complainant's Exceptions and Respondent's response, the Board finds such exceptions to be without merit and are overruled.

The Board hereby adopts the Proposed Order Granting Respondent's Motion to Dismiss Prohibited Practice Complaint, Filed November 25, 2011, including the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, filed on May 8, 2019 and attached to this document, as final and dismisses the Complaint. This case is closed.

DATED: Honolulu, Hawai'i, July 2, 2019.

HAWAI'I LABOR RELATIONS BOARD



MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J.N. MUSTO, Member

Copies sent to:
Ted Hong, Esq.
Richard Thomason, Deputy Attorney General

ⁱ HRS § 91-11 states:

Examination of evidence by agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or portions thereof as may be cited by the parties.

YANG v. ANDERSON

CASE NO. CE-13-788

FINAL ORDER ADOPTING PROPOSED ORDER GRANTING RESPONDENT'S MOTION
TO DISMISS PROHIBITED PRACTICE COMPLAINT, FILED NOVEMBER 25, 2011

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**EFiled: May 08 2019 01:19PM HAST
Transaction ID 63246923
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STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

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HENRY H. YANG, M.D.,

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BRUCE ANDERSON, Ph.D.,ⁱ Director,
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CASE NO. CE-13-788

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RESPONDENT'S MOTION TO
DISMISS PROHIBITED PRACTICE
COMPLAINT, FILED NOVEMBER 23,
2011

**PROPOSED ORDER GRANTING RESPONDENT'S MOTION TO
DISMISS PROHIBITED PRACTICE COMPLAINT, FILED NOVEMBER 25, 2011**

On January 19, 2012, the Hawai'i Labor Relations Board (Board) held a prehearing conference, at which time, the Board heard oral arguments on Respondent's Motion to Dismiss Prohibited Practice Complaint Filed November 25, 2011 (Motion to Dismiss).

The current Board Chair Marcus R. Oshiro and Board Member J N. Musto did not participate in the original hearing on the Motion to Dismiss. However, they have thoroughly reviewed the record in this matter, including the files, transcripts, and exhibits. Pursuant to Hawai'i Revised Statutes (HRS) § 91-11,ⁱⁱ and, after thorough review, the Board issues the following Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

Any conclusion of law improperly designated as a finding of fact shall be deemed or construed as a conclusion of law, and any finding of fact improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

I. PROPOSED PROCEDURAL HISTORY AND FINDINGS OF FACT

Until the end of his employment on May 31, 2011, Complainant HENRY H. YANG, M.D. (Complainant or Dr. Yang) was an “employee” or “public employee”, as defined in HRS § 89-2ⁱⁱⁱ of the Department of Health, State of Hawai‘i (DOH) and a member of Bargaining Unit 13 (Unit 13), as provided in HRS § 89-6(a)(13). During his employment, Dr. Yang worked as a psychiatrist at the Hilo Medical Center, where he was responsible for inpatient treatment.

At all relevant times in the instant case, Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA), was, and is, an employee organization,^{iv} as defined in HRS § 89-2, and was the exclusive representative^v and collective bargaining agent for Unit 13, defined in HRS § 89-6(a)(13) as “Professional and scientific employees, who cannot be included in any of the other bargaining units.”

Loretta Fuddy (Fuddy) was the Director of the DOH at the time the Complaint was filed and at all relevant times to the actions alleged in the Complaint. Respondent BRUCE ANDERSON, Ph.D. (Respondent or Anderson) is the current Director of the DOH and successor to Fuddy. In that capacity, Fuddy was and Anderson is individual[s] who are an “employer” or “public employer” under HRS § 89-2^{vi}.

HGEA and Respondent are, and have been, for all relevant times, parties to a collective bargaining unit for Unit 13 (CBA). Such CBA is required by HRS § 89-10.8(a) to contain a grievance procedure that culminates in a final and binding decision.

On November 25, 2011, Dr. Yang filed a Prohibited Practice Complaint (Complaint) against Fuddy with the Board. The Complaint involves Respondent’s termination of Complainant and the privatization of Complainant’s former position. Complainant alleges that Respondent committed a prohibited practice under HRS § 89-9(c), and HRS §§ 89-13(a)(1), (3), (7), and (8).

The Complaint alleges that Respondent committed a prohibited practice under HRS § 89-13(a)(7) by violating HRS Section 89-9(c) due to a failure to consult with HGEA regarding the transfer of his duties and responsibilities, the privatization of his position, changes to the terms, conditions, duties, and responsibilities of his work prior to his termination. The Complaint further alleges that Respondent committed prohibited practices under HRS § 89-13(a)(1), (3), and (7) by “deliberately, intentionally and fraudulently” planning and executing the privatization of Complainant’s position and that such actions were taken to discourage Complainant from membership in protected activities. Further, the Complaint alleges that Respondent’s failure to follow an accepted “past practice” without consulting with HGEA or Complainant constitutes a violation of HRS § 89-13(a)(8).

More specifically, Complainant alleges the following six causes of action:

1. At all times relevant herein, the Respondent failed to consult with the HGEA concerning the transfer of his duties and responsibilities to the Hilo Medical Center and abolition of the Petitioner's position in violation of Section 89-9(c), Hawaii Revised Statutes (hereinafter referred to as "HRS").
2. At all times relevant, the Respondent failed to consult with the HGEA concerning the changes to the terms and conditions of work, to wit, the work schedule and taking away any and all private insurance patients and/or patients not covered by or eligible under the Respondent's programs in violation of Section 89-9(c), HRS.
3. At all times relevant, the Respondent deliberately, intentionally and fraudulently planned and executed the unauthorized privatization of the Petitioner's position through the wholesale transfer of the Petitioner's functions to the Hilo Medical Center in violation of Sec. 89-13(a)(1), (3) and (7), HRS.
4. At all times relevant, the Respondent deliberately, intentionally and fraudulently planned and executed the unauthorized privatization of the Petitioner's position through the wholesale transfer of the Petitioner's functions to the Hilo Medical Center in order to discourage the Petitioner from membership in and participating in collective bargaining activities in violation of Sec. 89-13(a)(1), (3) and (7), HRS.
5. At all times relevant, the Respondent violated Sec. 89-13(a)(7), HRS because it failed to consult with the change in the conditions of work and the change in the scope of the duties and responsibilities of the Petitioner's position under Sec. 89-13(8), HRS.
6. At all times relevant, the Respondent violated Sec. 89-13(a)(8), HRS, because it failed to follow an accepted "past practice" without the required consultation with the HGEA and/or Petitioner.

The Complaint further alleges, among other things, the following facts that will be deemed as true for the purposes of addressing the instant motion to dismiss:

7. In January of 20[1]1^{vii}, the Petitioner and his colleague, consulted and in the best interest of patient treatment, began a work schedule where each person worked twenty (20) hours every week. The Respondent, by and through its authorized agents were aware of the practice and did not object.
8. On or about February 7, 2011, Respondent, through its agent, Wayne Law, instructed the Petitioner and his colleague that the Respondent would take over the

billing for any and all patients they saw, whether the patient was eligible and qualified under the various State programs or ineligible, such as through private insurance. The Respondent's agent also demanded that the [Petitioner] go back to the full time, forty (40) hour work schedule for every other week.

9. On or about February 24, 2011, the Petitioner sent the Respondent a letter reminding them of the terms and conditions of the work, that was limited to treating and billing for patients that qualified under various State programs and not patients covered by private insurance. The Respondent failed to respond.

10. On or about May 2, 2011, the Respondent's agent threatened the Petitioner with termination if he did not change back to the forty (40) hour, every other week schedule.

11. On or about May 31, 2011, the Respondent terminated the Petitioner.

12. On or about July 1, 2011, the Respondent, with the Petitioner present, held a meeting with representatives of the Hilo Medical Center and stated that the Respondent was terminating their legal and medical responsibility for any and all patients that were receiving treatment and transferring them to the Hilo Medical Center. The Respondent terminated its program for treatment and care for its patients.

13. In that meeting, Respondent's agent, Tracy Wise specifically stated that she met and consulted with a representative of HGEA BU 13, Ms. Moana Kelii before the Petitioner's termination.

14. That on May 31, 2011, the Petitioner met with Ms. Moana Kelii, business agent for the HGEA assigned to BU 13, and she stated that she had not heard about the Petitioner's situation or circumstances before.

15. On or about August 12, 2011, the Petitioner received a letter from the Hilo Medical Center concerning the Respondent's divestment of its responsibility for treatment of its former patients.

16. That since August 12, 2011, to the present, the Respondent has transferred the Petitioner's former duties and responsibilities to the Hilo Medical Center medical staff and abolished the position formerly held by the Petitioner.

17. On or about September 12, 2011, the Hilo Medical Center confirmed that the duties historically and customarily performed by civil servants by the State of Hawaii, had been transferred to the Hilo Medical Center and the Medical Center would begin [to] define its duties.

On November 29, 2011, the Board notified Respondent of the Complaint on November 29, 2011 and set certain deadlines and hearings.

On December 5, 2011, Respondent filed Respondent's Motion to Dismiss Prohibited Practice Complaint Filed November 25, 2011 (Motion to Dismiss), arguing, among other things, that the Complaint was untimely.

In response to the Motion to Dismiss, on December 13, 2011, Complainant filed Complainant's Memorandum in Opposition to Respondent's Motion to Dismiss Prohibited Practice Complaint Filed on November 25, 2011, Filed on December 5, 2011 (Opposition to the Motion to Dismiss). Complainant argues, among others, that his termination on or about May 31, 2011 was a pretext or fraud to privatize his former position which he was only made aware on September 12, 2011 and that limitation periods are tolled where the offending party uses fraud and deception to conceal its wrongful act.

Respondent filed Respondent's Reply to Complainant's Opposition to Motion to Dismiss Prohibited Practice Complaint on January 6, 2012 (Reply to Opposition to the Motion to Dismiss) and argued further that because all the events claimed by the Complainant occurred on or before July 1, 2011, "...if for purposes of this motion we treat all of the above allegations and admissions as true (and construe all reasonable inferences in his favor) it is clear that Complainant was required to file the instant complaint no later than 90 days from July 1, 2011. Complainant did not comply with this requirement and his complaint is plainly untimely."

II. STANDARD OF REVIEW

The Board follows the legal standards set forth by the Hawai'i appellate courts for motions to dismiss under the Hawai'i Rules of Civil Procedure (HRCP) Rule 12(b).

A motion to dismiss for lack of subject matter jurisdiction pursuant to HRCP Rule 12(b)(1) is based on the contents of the complaint. The factual allegations of the complaint must be accepted as true and construed in the light most favorable to the plaintiff. Casumpang v. ILWU, Local 142, 94 Hawai'i 330, 337, 13 P.3d 1235, 1242 (2000) (Casumpang); Right to Know Committee v. City Council, City and County of Honolulu, 117 Hawai'i 1, 7, 175 P.3d 111, 117 (App. 2007) (Right to Know). However, "[t]he tenet that a court must accept as true all of allegations contained in a complaint is inapplicable to legal conclusions." Johnson v. Fed. Home Loan Mortg. Corp., 793 F.3d 1005, 1008 (9th Cir. 2015) (*citing* Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009))^{viii}.

Dismissal is improper unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." In considering a motion to dismiss for lack of subject matter jurisdiction, the Board is not restricted to the face of the pleadings but may review any evidence, such as affidavits and testimony to resolve factual disputes concerning

the existence of jurisdiction. Casumpang, 94 Hawai‘i at 337, 13 P.3d at 1242; Right to Know, 117 Hawai‘i at 7, 175 P.3d at 117.

III. PROPOSED CONCLUSIONS OF LAW

As a preliminary issue, the Board must address whether it has jurisdiction over the instant case. “[I]t is well established...that lack of subject matter jurisdiction can never be waived by any party at any time.” Koga Eng’g & Constr., Inc. v. State, 122 Hawai‘i 60, 84, 222 P.3d 979, 1003 (2010) (*citing* Chun v. Employees’ Ret. Sys., 73 Haw. 9, 13, 828 P.2d 260, 263 (1992) (Chun); In re Rice, 68 Haw. 334, 335, 713 P.2d 426 (1986)). If the parties do not raise the issue, the Board, *sua sponte*, will, as the Board requires jurisdiction to render a valid judgment. Tamashiro v. Dep’t of Human Servs., 112 Hawai‘i 388, 398, 146 P.3d 103, 113 (2006) (Tamashiro) (*citing* Chun, 73 Haw. at 14, 898 P.2d at 263).

HRS § 377-9(1) states, “No complaints of any specific unfair labor practice shall be considered unless filed within ninety days of its occurrence” (emphasis added). This ninety-day requirement is made applicable to prohibited practice complaints by HRS § 89-14, which states in relevant part, “Any controversy concerning prohibited practices may be submitted to the board in the same manner and with the same effect as provided in section 377-9...” Additionally, the Hawai‘i Supreme Court has stated that, “The procedural aspects of controversies related to prohibited practices are governed by HRS § 377-9.” Aio v. Hamada, 66 Haw. 401, 404 n. 3, 664 P.2d 727, 729 n. 3 (1983). Hawai‘i Administrative Rules (HAR) § 12-42-42(a) further provides in relevant part:

- (a) A complaint that any public employer, public employee, or employee organization has engaged in any prohibited practice, pursuant to section 89-13, HRS, may be filed by a public employee, employee organization, public employer, or any party in interest or their representatives within ninety days of the alleged violation.

When a complainant fails to file a complaint within ninety days of the occurrence of the alleged violation, the Board does not have jurisdiction to hear the complaint. Given that this limitation is jurisdictional and provided by statute, it may not be waived by either the Board or the parties. HOH Corp. v. Motor Vehicle Indus. Licensing Bd., Dept. of Commerce and Consumer Affairs, 69 Haw. 135, 141, 736 P.2d 1271, 1275 (1987) (agencies may not nullify statutes); Hikalea v. Department of Envntl. Services, City and County of Honolulu, Case No. CE-01-808, Order No. 3023 at *5-6 (October 3, 2014) (*citing* Thomas v. Commw. of Pa. Labor Relations Board, 483 A.2d 1016 (Pa. 1984) (failure to comply with the statute of limitations for unfair labor practice goes to the subject matter jurisdiction of the labor relations board)).

The Board has adhered to the principle that statutes of limitations are to be strictly construed and that, because time limits are jurisdictional, the defect of missing the deadline by

even one day is unable to be waived. Valeho-Novikoff v. Okabe, Board Case No. CU-05-302, Order No. 3024 at *10 (October 7, 2014) (*citing* Fitzgerald v. Ariyoshi, 3 HPERB 186, 198-99 (1983); Cantan v. Department of Env'tl. Waste Mgmt., Board Case No. CE-01-698, Order No. 2599 at *8-9 (March 24, 2009); Kang v. Hawaii State Teachers Ass'n., Board Case No. CE-05-440, Order No. 1825 at *4 (December 13, 1999)). Further, the limitations period begins to run when “an aggrieved party knew or should have known that his statutory rights were violated.” United Public Workers, AFSCME, Local 646 v. Okimoto, Board Case No. CE-01-515, Decision No. 443, 6 HLRB 319, 330 (2003) (Okimoto) (*citing* Metromedia, Inc. KMBC TV v. N.L.R.B., 586 F.2d 1182, 1189 (8th Cir. 1978)).

Finally, the Board is guided by the principle that if a court lacks jurisdiction over the subject matter of a proceeding, any judgment rendered in that proceeding is invalid; therefore, such a question is appropriate at any stage of the case. *See* Bush v. Hawaiian Homes Comm'n, 76 Hawai'i 128, 133, 870 P.2d 1272, 1277 (1994). A tribunal is obliged to first ensure that it has jurisdiction. *Id.*; *see also*, HRCP Rule 12(h)(3) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action”); Tamashiro, 112 Hawai'i at 398-99, 146 P.3d at 113-14.

The Board notes that Dr. Yang filed the Complaint on November 25, 2011; therefore, the applicable ninety-day period began on August 27, 2011.

Respondent argues in its Motion to Dismiss that “Complainant asserts that he was terminated on or about May 31, 2011 and that on July 1, 2011 Respondent announced at a meeting he attended: 1) that Respondent was terminating its program for treatment and care of its patients and transferring same to a private entity by the name of Hilo Medical Center, and 2) that Respondent claimed to have previously consulted with Moana Kelii about his termination before he was actually terminated.” Based on these two dates, the complaint is time-barred or untimely because these two dates are outside of the ninety (90) days from the date the complaint was filed.

Complainant argues, among others, in his Opposition to Dismiss that his termination was a pretext or fraud to privatize his former position which he was only made aware on September 12, 2011 and that limitation periods are tolled where the offending party uses fraud and deception to conceal its wrongful act to terminate and privatize the Complainant's position.

The question before the Board, then, is whether this event was the point at which Dr. Yang knew or should have known of the alleged prohibited practices. The Board finds that it was not, and that Complainant knew or should have known of the alleged prohibited practice prior to the ninety-day period.

Complainant “has the burden of proving jurisdiction in order to survive” the instant Motion to Dismiss. Kingman Reef Atoll Invs., LLC v. United States, 541 F.3d 1189, 1197 (9th Cir. 2008). However, even when deeming all of the factual allegations in the Complaint as true, the Board

finds that Complainant knew of Respondent's alleged failure to consult with HGEA regarding the "changes to the terms and conditions of work" and the "transfer of his duties and responsibilities...and abolition of [his] position" on or about May 31, 2011, when he met with the "business agent for the HGEA assigned to BU 13, and she stated that she had not heard about the Petitioner's situation or circumstances before" and that Dr. Yang knew of the privatization of his position on or about July 1, 2011, when Complainant attended a meeting where Respondent stated "that the Respondent was terminating their legal and medical responsibility for any and all patients that were receiving treatment and transferring them to the Hilo Medical Center."

Both May 31, 2011 and July 1, 2011 are prior to the key date of August 27, 2011. Further, the September 12, 2011 notification from Hilo Medical Center did not provide new information but "confirmed" what Complainant already knew from the meeting on July 1, 2011, namely that his position had been privatized and would not be handled by civil servants.

Complainant argues that the September 12, 2011 Letter is "evidence of a continuous course of conduct using pretext and/or fraud to terminate and privatize the Complainant's position." However, the applicable standards call on the Board to look at when Complainant first "knew or should have known" of the alleged violation, regardless of whether additional evidence of this alleged violation arose later. Okimoto, Decision No. 443, 6 HLRB at 330. Even accepting all the factual allegations as true and viewing the evidence in the light most favorable to the Complainant, given that the letter "formally confirm[ed] the transfer of [Complainant's former] duties and responsibilities," the Board finds that a formal confirmation of what Complainant already knew does not represent the moment that he "knew or should have known" of Respondent's actions.

Accordingly, the Board grants the Respondent's motion to dismiss all allegations in the Complaint for lack of subject matter jurisdiction due to untimeliness.

PROPOSED ORDER

For the reasons discussed above, the Board grants the Respondent's Motion to Dismiss, as the Complaint as a whole was untimely filed. Further, even if the Complaint was timely, the Board is compelled to *sua sponte* dismiss the HRS § 89-13(a)(7) and (8) claims.

FILING OF EXCEPTIONS

Any person adversely affected by the above Proposed Order Granting Respondent's Motion to Dismiss may file exceptions with the Board, as laid out in HRS § 91-11^{ix}, within ten days after service of a certified copy of this document. The exceptions shall specify which findings or conclusions are being excepted to with citations to the factual and legal authorities for such exceptions. A hearing for the presentation of oral arguments will be scheduled upon the filing of such exceptions, and the parties will be notified of such hearing.

DATED: Honolulu, Hawai'i, _____ May 8, 2019 _____.

HAWAII 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:

Ted Hong, Esq.

Richard Thomason, Deputy Attorney General

ⁱ As laid out in Hawai'i Rules of Civil Procedure (HRCP) Rule 25(d)(1), when a public officer is a party to an action in an official capacity and, while that action is pending, the public officer dies, resigns, or otherwise ceases to hold office, the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties will be disregarded.

ⁱⁱ HRS § 91-11 states:

Examination of evidence by agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or portions thereof as may be cited by the parties.

ⁱⁱⁱ HRS § 89-2 Definitions defines "employee" or "public employee", in relevant part, as follows:

"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)].

^{iv} HRS § 89-2 Definitions defines "employee organization" as:

"Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii

employer-union health benefits trust fund, and other terms and conditions of employment of public employees.

^v 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.

^{vi} HRS § 89-2 Definitions defines “employer” or “public employer”, in relevant part, as follows:

“Employer” or “public employer” means the governor in the case of the State, the respective mayors in the case of the counties, the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of these employers or acts in their interest when dealing with public employees...

^{vii} Although the Complaint states that this allegation took place in 2001, a review of subsequent documents filed by Complainant clarifies that the correct year is 2011. *See*, Complainant’s Memorandum in Opposition to Respondent’s Motion to Dismiss Prohibited Practice Complaint Filed on November 25, 2011, Filed on December 5, 2011. Therefore, the Board will use the corrected date in deciding this case.

^{viii} Where the Board’s own rules do not address procedural matters, the Board has looked to the Hawai‘i Rules of Civil Procedure and the Federal Rules of Civil Procedure for guidance in determining motions. Internat’l Longshore and Warehouse Union, Local 142, AFL-CIO v. Del Monte Fresh Produce (Hawai‘i), Inc., Board Case No. 06-5(CE), Order No. 2443, at *2 (2007). Further, the Board uses parallel federal case law as guidance when interpreting Hawai‘i’s labor laws. United Public Workers, AFSCME, Local 646, AFL-CIO v. Bissen, Board Case No. CE-10-595, Order No. 2458, at *6 (2007) (*citing Hokama v. Univ. of Hawai‘i*, 92 Hawai‘i 268, 272 n. 5, 990 P.2d 1150, 1154 n. 5 (1999)).

^{ix} See endnote ii.

YANG v. ANDERSON

CASE NO. CE-13-788

PROPOSED ORDER GRANTING RESPONDENT’S MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT, FILED NOVEMBER 23, 2011