

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

NARCIS D. SALERA,

Complainant(s),

and

WESLEY T. YOKOYAMA, Director,
Department of Environmental Services, City
and County of Honolulu,

Respondent(s).

CASE NO(S). 20-CE-01-952

ORDER NO. 3754

ORDER DISMISSING COUNTS VI AND
VII OF THE FIRST AMENDED
COMPLAINT FOR LACK OF
JURISDICTION

**ORDER DISMISSING COUNTS VI AND VII OF THE
FIRST AMENDED COMPLAINT FOR LACK OF JURISDICTION**

Complainant NARCIS D. SALERA (Salera) filed his First Amended Prohibited Practice Complaint on DATE, with the Hawai'i Labor Relations Board (Board), which, among other things, alleged that Respondent WESLEY T. YOKOYAMA, Director, Department of Environmental Services, City and County of Honolulu (Director) committed certain prohibited practices, violated the Hawai'i Whistleblower Protection Act (HWPA), and violated Article XIII, Section 2 of the Hawai'i State Constitution (Constitution). Salera listed the alleged violation of the HWPA as Count VI in his First Amended Prohibited Practice Complaint and the alleged violation of the Constitution as Count VII in the same.

The Board held a prehearing conference where, *sua sponte*, the Board dismissed the allegations of violations of the HWPA and the Constitution for lack of jurisdiction, as more thoroughly explained in this order.

For the Board to issue a valid judgment, it must have jurisdiction, Tamashiro v. Dep't of Human Servs., 112 Hawai'i 388, 398, 146 P.3d 103, 113 (2006) (citing Chun v. Employees' Ret. Sys., 73 Haw. 9, 14, 828 P.2d 260, 263 (1992) (Chun), and 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, 73 Hawai'i at 13, 828 P.2d at 263; In re Rice, 68 Haw. 334, 335, 713 P.2d 426 (1986).

According to the Supreme Court of Hawai‘i (Court), the Board can only use powers that statute expressly or implicitly grants. Hawaii Government Employees Association v. Casupang, 116 Hawai‘i 73, 97, 170 P.3d 324, 348 (2007) (Casupang). The Board has original jurisdiction over controversies involving prohibited practices, so the Board has both the “express” power over such controversies and the “implied” powers that are “reasonably necessary” to make that express power effective. Id. at 97, 170 P.3d at 348. The Board may apply sections outside of HRS Chapter 89 to prohibited practice complaints if it is “necessary and proper” to do so to determine whether a prohibited practice has been committed. Id. at 98, 170 P.3d at 349.

To decide prohibited practice complaints, the Board must determine whether respondents act “wilfully”; that is, with the “conscious, knowing, and deliberate intent to violate the provisions of” HRS Chapter 89. Casupang, 116 Hawai‘i at 98, 170 P.3d at 350. This “wilfulness” inquiry may require the Board to apply other sections of the HRS to decide whether a prohibited practice occurred; however, this does not give the Board the ability to interpret those sections. Id. at 101, 170 P.3d at 352.

Similarly, the Board has no jurisdiction to render a decision on constitutional issues. *See, e.g., Hawaii Gov’t Emp. Ass’n, AFSCME Local 152 v. Lingle*, 124 Hawai‘i 197, 207, 239 P.3d 1, 11 (2010) (Lingle). Constitutional analyses are unnecessary for the Board to decide the statutory issues presented by prohibited practice complaints. Id. at 207, 239 P.3d at 11.

No one disputes that the HWPB is not contained within HRS Chapter 89 and that it is not contained within any chapter of the HRS that the Board has jurisdiction over.

Accordingly, as the Board lacks jurisdiction over Counts VI and VII of the First Amended Prohibited Practice Complaint, the Board will dismiss these Counts, *sua sponte*.

The Board will proceed in this case on all remaining counts.

DATED: Honolulu, Hawai‘i, June 1, 2021.

HAWAI‘I LABOR RELATIONS BOARD

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

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