

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

MARYELLEN ERNST,

Complainant(s),

and

HAWAII HEALTH SYSTEMS
CORPORATION; and KONA
COMMUNITY HOSPITAL,

Respondent(s).

CASE NO(S). 21-CE-13-956

ORDER NO. 3830

ORDER GRANTING EMPLOYER'S
REQUEST FOR DISMISSAL AND
CLOSING THE CASE

**ORDER GRANTING EMPLOYER'S
REQUEST FOR DISMISSAL AND CLOSING THE CASE**

1. Introduction and Statement of the Case

Complainant MARYELLEN ERNST (Ms. Ernst) filed a prohibited practice complaint (Complaint) with the Hawai'i Labor Relations Board (Board) alleging, among other things, that Respondents HAWAII HEALTH SYSTEMS CORPORATION (HHSC); and KONA COMMUNITY HOSPITAL (KCH and collectively with HHSC, Respondents or Employers) violated the terms of the bargaining unit 13 (BU 13) collective bargaining agreement (CBA) when the Respondents terminated her and through Respondents' subsequent actions during appeal processes, including the internal complaint process.

After multiple status conferences, the parties informed the Board that Ms. Ernst completed both the internal complaint process and proceedings before the Merit Appeals Board (MAB). Accordingly, Respondents requested that the Board dismiss the case, based on their position that "this Board lacks subject matter jurisdiction because the Complaint relates only to HHSC's internal complaint procedure and not a violation of a collective bargaining agreement," further arguing that Ms. Ernst has the right to appeal MAB's final decision, but any such appeal would need to be taken through a judicial process outside of the Board's jurisdiction.

The Board accepted the Respondents' request as a motion to dismiss and gave Ms. Ernst five days to respond to the request in writing. Ms. Ernst did not file a response within that period.

After a full and complete review of the record, the Board issues this Order finding that the Board lacks jurisdiction over the Complaint and dismissing the case. Any conclusion of law improperly designated as a finding of fact is deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law is deemed or construed as a finding of fact.

2. Background and Findings of Fact

During the relevant period, Ms. Ernst worked as an employeeⁱ of HHSC stationed at KCHⁱⁱ. In that position, Ms. Ernst was a non-exempt member of BU 13ⁱⁱⁱ. BU 13's exclusive representative^{iv} and the relevant employer group are parties to a CBA for BU 13.

While in her initial probation period^v, Ms. Ernst received a negative performance review and was subsequently terminated. Ms. Ernst challenged her termination in a formal complaint.

BU 13's CBA includes Article 11A, "Grievances Related to Adverse Action for Failure to Meet Performance Requirements," which defines "employee" as:

1. A civil service Employee, as defined by §76-11, HRS, is an employee who has met all requirements for membership in civil service under §76-27 which provides that an Employee must successfully complete an initial probationary period as a part of the examination process to determine the Employee's fitness and ability for the position; or
2. An exempt Employee in the State of Hawaii or an exempt Employee in the City and County of Honolulu in bargaining unit 13 who is subject to Article 8 – Discipline.

3. Analysis and Conclusions of Law

The contents of the complaint serve as the basis for motions to dismiss for lack of subject matter jurisdiction, and, accordingly, when considering a motion to dismiss, the Board must accept the allegations of the complaint as true and view those allegations in the light most favorable to the complainant. *See Caspillo v. Dep't of Transp. and United Pub. Workers, AFSCME, Local 646, AFL-CIO*, Board Case Nos. 17-CE-01-899; 17-CU-01-355, Decision No. 509, at *6 (November 22, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/11/Decision-No.-509.pdf>) (Caspillo).

The Board does not have to accept conclusory allegations on the legal effect of the events alleged in the complaint. Tupola v. Univ. of Hawaii Prof'l Assembly, Board Case No. CU-07-330, Order No. 3054, at *17 (February 25, 2015). However, the Board may dismiss a claim if it appears beyond a doubt that the complainant can prove no set of facts that would support the claim and entitle the complainant to relief. Haw. State Tcers Ass'n v. Abercrombie, 126 Hawai'i 13, 19, 265 P.3d 482, 488 (App. 2011).

The party seeking to invoke the Board's jurisdiction has the burden of establishing that jurisdiction exists. Caspillo, Decision No. 509, at *7. The Board may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction while considering a motion to dismiss for lack of subject matter jurisdiction. Casumpang v. ILWU, Local 142, 94 Hawai'i 330, 337, 13 P.3d 1235, 1242 (2000); Rt. to Know Comm. v. City Council, City and Cnty. of Honolulu, 117 Hawai'i 1, 7, 175 P.3d 111, 117 (App. 2007).

Standing is a preliminary, threshold issue that must be established before the Board can consider a case. When looking at the issue of standing, the Board must determine whether the parties have the right to bring suit. Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 67, 881 P.2d 1210, 1213 (1994). In this case, the Board must consider whether Ms. Ernst has alleged enough of a personal stake in the outcome of this case to justify the Board using its remedial powers on her behalf. Tax Foundation of Hawaii vs. State, 144 Hawai'i 175, 188, 439 P.3d 140, 144 (2019) (Tax Foundation).

Standing requirements may be set out by legislative declarations of policy. Tax Foundation, Id. at 188, 439 P.3d at 140. As an "employee" under HRS Chapter 89 by virtue of her position, Ms. Ernst is entitled to file prohibited practice complaints with the Board. However, the specific issue Ms. Ernst alleges in the Complaint is that Respondents violated the BU 13 CBA when it terminated her.

Because Ms. Ernst was still in her initial probationary period when she was terminated, Ms. Ernst was not an "employee" able to file a grievance under Article 11A. Therefore, the formal complaint Ms. Ernst filed cannot be considered a grievance under Article 11A, and Ms. Ernst does not have standing to challenge her termination under the BU 13 CBA.

Given that Ms. Ernst does not have standing to challenge her termination under the BU 13 CBA, the Board does not have jurisdiction over her Complaint.

4. Order

For the reasons given above, the Board grants the request for dismissal. This case is closed.

DATED: Honolulu, Hawai'i, _____ March 14, 2022 _____.

HAWAI'I LABOR RELATIONS BOARD
dlir.laborboard@hawaii.gov

MARCUS R. OSHIRO, Chairperson

SESNITA A.D. MOEPONO, Member

J N. MUSTO, Member

Copies sent to:

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ⁱ HRS § 89-2 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 In this capacity, both Respondents are employers within the meaning of HRS § 89-2, which defines “employer” or “public employer” as:

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

ⁱⁱⁱ HRS § 89-6(a)(13) defines BU 13 as “Professional and scientific employees, who cannot be included in any of the other bargaining units.”

^{iv} HRS § 89-2 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.

^v HRS § 76-27, Probationary service and other requirements for membership in the civil service, provides in relevant part:

(a) All employees appointed to civil service positions shall constitute the membership of the civil service, but no employee shall be entitled to membership in civil service until the employee has:

(1) Successfully completed the initial probation period required as part of the examination process to determine the employee's fitness and ability for the position...