

STATE OF HAWAI‘I

HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS  
ASSOCIATION,

Complainant(s),

and

KEITH Y. HAYASHI, Superintendent,  
Department of Education, State of Hawai‘i;  
BOARD OF EDUCATION, State of Hawai‘i;  
DAVID Y. IGE, Governor, State of Hawai‘i;  
and RYKER WADA, Director, Department of  
Human Resources Development, State of  
Hawai‘i,

Respondent(s).

CASE NO(S). CE-05-661

ORDER NO. 3855

FINAL ORDER GRANTING, IN PART,  
RESPONDENTS’ MOTION TO DISMISS  
AND CLOSING THE CASE

**FINAL ORDER GRANTING, IN PART,  
RESPONDENTS’ MOTION TO DISMISS AND CLOSING THE CASE**

The Hawai‘i Labor Relations Board (Board) issued a Proposed Order Granting, in Part, Respondents’ Motion to Dismiss and Closing the Case (Proposed Order) in this case on May 26, 2022. The Proposed Order, among other things, found that Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA) failed to timely file the prohibited practice complaint (Complaint). The Proposed Order further provided, in relevant part:

**5. Filing of Exceptions and Motion to Set Aside**

Any person adversely affected by the above Proposed Order may file exceptions with the Board, as laid out in HRS §91-11, within ten days after service of a certified copy of this document. The exceptions must 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 if such exceptions are filed, and the parties will be notified of such hearing.

No party filed Exceptions to the Proposed Order within the provided ten-day period.

Accordingly, the Board hereby adopts the Proposed Order, filed on May 26, 2022 and attached to this Order as the Final Order in this case, and dismisses HSTA's complaint. This case is closed.

DATED: Honolulu, Hawai'i, June 7, 2022.

HAWAI'I LABOR RELATIONS BOARD

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MARCUS R. OSHIRO, Chair

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SESNITA A.D. MOEPONO, Member

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J N. MUSTO, Member

Copies sent to:

Keani Alapa, Esq.  
James Halvorson, Deputy Attorney General

STATE OF HAWAI'I

HAWAI'I LABOR RELATIONS BOARD

In the Matter of

HAWAII STATE TEACHERS  
ASSOCIATION,

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KEITH Y. HAYASHI, Superintendent,  
Department of Education, State of Hawai'i;  
BOARD OF EDUCATION, State of Hawai'i;  
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and RYKER WADA, Director, Department of  
Human Resources Development, State of  
Hawai'i,<sup>1</sup>

Respondent(s).

CASE NO(S). CE-05-661

PROPOSED ORDER GRANTING, IN  
PART, RESPONDENTS' MOTION TO  
DISMISS AND CLOSING THE CASE

**PROPOSED ORDER GRANTING, IN PART,  
RESPONDENTS' MOTION TO DISMISS AND CLOSING THE CASE**

**1. Introduction**

Complainant HAWAII STATE TEACHERS ASSOCIATION (HSTA) filed a prohibited practice complaint (Complaint) with the Hawai'i Labor Relations Board (Board) alleging, among other things, that Respondents PATRICIA HAMAMOTO, Superintendent, Department of Education, State of Hawai'i (Hamamoto); BOARD OF EDUCATION, State of Hawai'i (BOE); LINDA LINGLE, Governor, State of Hawai'i (Lingle); and MARIE LADERTA, Director, Department of Human Resources Development, State of Hawai'i (Laderta, and collectively with Hamamoto, BOE, and Lingle, Respondents or Employer)<sup>2</sup> committed prohibited practices under Hawai'i Revised Statutes (HRS) § 89-13(a)(1), (3), (5), (7), and (8).

The Board issued a Minute Order in this case which, among other things, granted Respondents' Motion to Dismiss and/or for Summary Judgment (MTD) and required Respondents to submit proposed findings of fact and conclusions of law. Respondents submitted the proposed findings of fact and conclusions of law, and HSTA objected to them.

Having considered the proposed findings of fact and conclusions of law, and upon further review of the record, the Board issues this final order. This final order amends the prior minute order. The Board grants, in part, Respondents' MTD filed on August 11, 2008, and finds that the complaint is untimely.

Any finding of fact or conclusion of law submitted by Respondents but not specifically adopted in this decision is rejected. 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. Proposed Background and Findings of Fact**

HSTA is an employee organization<sup>3</sup> and the duly certified exclusive representative<sup>4</sup> for bargaining unit 5 (BU 5)<sup>5</sup>.

During the relevant period, Hamamoto was the Superintendent in the Department of Education, State of Hawai'i; Lingle was the Governor of the State of Hawai'i; and Laderta was the Director of Human Resources Development, State of Hawai'i. Respondents are public employers<sup>6</sup> who make up the employer group<sup>7</sup> for BU 5.

HSTA and the Respondents are parties to a collective bargaining agreement (CBA) covering BU 5.

On April 14, 2007, HSTA and Respondents reached a tentative agreement for a new CBA covering BU 5 for 2007-2009. This tentative agreement included a one-step movement and certain salary increases. This agreement did not include annual incremental step movements as provided under Article XVII, Section K or annual increments and longevity step increases under HRS § 302A-626<sup>8</sup>.

Based on the tentative agreement, HSTA prepared a cost analysis which did not include annual incremental step movements or annual increments and longevity step increases. The Employer prepared a substantially similar cost analysis, which also did not include annual incremental step movements or annual increments and longevity step increases.

On April 19, 2007, Lingle submitted a funding request to the Legislature based on the cost analyses prepared by the parties.

On June 5, 2007, 2007 Haw. Sess. Laws, Act 132 (Act 132) approved all cost items negotiated between HSTA and Respondents based on the 2007-2009 CBA for BU 5, with the appropriation taking effect on July 1, 2007. Act 132 appropriated funds necessary "to fund for fiscal biennium 2007-2009 all collective bargaining cost items in the agreement negotiated with the exclusive representative of collective bargaining unit (5)."

The BU 5 CBA became effective on July 1, 2007.

### **3. Proposed Conclusions of Law**

#### **3.1. Legal Standards: Motions to Dismiss**

The contents of the complaint serve as the basis for motions to dismiss for lack of subject matter jurisdiction, and 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 Jones v. Lee*, Board Case No. 21-CE-06-960, Order No. 3781, at \*2 (July 16, 2021) (<https://labor.hawaii.gov/hlr/files/2021/07/Order-No-3781.pdf>) (Jones). The Board is not required to accept conclusory allegations on the legal effect of the events alleged in the complaint. *Tupola v. Univ. of Haw. Prof'l Assembly*, Board Case Nos. CU-07-330; CE-07-847, Order No. 3054, at \*17 (February 25, 2015) (<https://labor.hawaii.gov/hlr/files/2019/01/HLRB-Order-3054.pdf>) (Tupola). 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 Teachers 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 must establish that jurisdiction exists. *Jones*, Order No. 3781, at \*2. The Board may review any evidence, such as affidavits and testimony, to resolve factual disputes about 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); *Right to Know Comm. v. City Council, City and County of Honolulu*, 117 Hawai'i 1, 7, 175 P.3d 111, 117 (App. 2007).

#### **3.2. Timeliness**

HRS § 377-9 sets forth a requirement that the Board can only hear complaints filed within ninety days of the action that the alleged prohibited practice is based on. HRS § 377-9(l); *Aio v. Hamada*, 66 Haw. 401, 404 n. 3, 664 P.2d 727, 729 n. 3 (1983) (Aio). The administrative rules governing the Board further include this ninety-day limitation. Hawai'i Administrative Rules (HAR) § 12-42-42(a).

The Board has construed the limitations period strictly and will not waive a defect of even a single day. *Fitzgerald v. Ariyoshi*, Board Case Nos. CE-10-175; CU-10-43, Decision No. 175, at \*21-22 (July 29, 1983) (Ariyoshi) (<https://labor.hawaii.gov/hlr/files/2018/12/Decision-No-175.pdf>). The ninety-day limit is jurisdictional and provided by statute; therefore, neither the Board nor the parties may waive this requirement. *Hikalea v. Dep't of Env't Servs., City and Cnty. of Honolulu*, Case No. CE-01-808, Order No. 3023 at \*6 (October 3, 2014) (<https://labor.hawaii.gov/hlr/files/2019/01/HLRB-Order-3023.pdf>). Further, the ninety-day period begins when the complainant knew or should have known that their rights were being

violated. United Pub. Workers, AFSCME, Local 646 v. Okimoto, Board Case No. CE-01-515, Decision No. 443A, at \*4 (June 30, 2006) (<https://labor.hawaii.gov/hlrp/files/2018/12/Decision-No-443.pdf>).

HSTA filed its prohibited practice complaint on March 12, 2008. Ninety days before March 12, 2008 was December 13, 2007, the period in which the Complainant knew or should have known a prohibited practice may have occurred. Any alleged violation occurring before December 13, 2007 would be untimely.

The Legislature approved Act 132 in June 2007, and Act 132 became effective on July 1, 2007. Both are prior to December 13, 2007.

Although HSTA argues that HRS § 661-5 permits a two year statutory limitation period, HRS § 661-5 is not controlling in HRS Chapter 89 cases.

The Hawai‘i Supreme Court (HSC) has accepted that “specific statutes control over general statutes.” In the Interest of R Children, 145 Hawai‘i 477, 485, 454 P.3d 418, 426 (2019). HRS Chapter 661, Actions by and Against the State, deals with claims brought in circuit court against the State based on statutes or contracts. HRS § 661-1. HRS Chapter 89 deals with specific types of contracts—namely public sector collective bargaining agreements. Therefore, the ninety-day period set forth in HRS § 377-9(1), as applied to HRS Chapter 89 through HRS § 89-14, being the more specific statute, prevails, setting the ninety-day statutory period.

HSTA further argues that there was no “occurrence” that triggered the ninety-day period because no “adverse action” was taken. This argument, based on the premise that the period does not begin until an action is taken against an employee, also fails.

The cases cited by HSTA, Ariyoshi and Santos v. Dep’t of Transp., Board Case Nos. CE-01-24; CU-01-14, Decision No. 76 (April 4, 1977) (Santos) (<https://labor.hawaii.gov/hlrp/files/2018/12/Decision-No-76.pdf>) (*reversed by* Dept. of Trans. v. HPERB & Santos, Civil No. 51437 (1st Cir. Ct. Hawai‘i, Mar. 21, 1979), both deal with situations not analogous to this case. In Ariyoshi, the “trigger date” was the date of the employee’s dismissal. Id., Decision No. 175, at \*20. In Santos, the “primary event” was the notification of a promotion to a vacant position. Santos, Decision No. 76, at \*17.

This complaint does not rest on an action taken against an employee. Rather, this complaint deals with when HSTA knew or should have known that the annual incremental step movements provided under Article XVII, Section K and the annual increments and longevity step increases under HRS § 302A-626 were not going to be funded.

HSTA knew or should have known on June 5, 2007, when Act 132 was approved, that those movements and increases were not going to be funded because Act 132 does not provide

for them. To the extent that any later date could be considered a “trigger date,” the only other possible date is Act 132’s effective date and the date that the 2007-2009 BU 5 CBA became effective: July 1, 2007. Both dates are far outside of the ninety-day period set by law.

Even considering the allegations of the complaint in the light most favorable to HSTA, the Board must conclude that HSTA filed its complaint outside of the relevant period. Accordingly, the Board must find that the complaint was untimely and must dismiss the case.

**4. Proposed Order**

Based on the above, the Board dismisses the complaint in its entirety. This case is closed.

**5. Filing of Exceptions and Motion to Set Aside**

Any person adversely affected by the above Proposed Order may file exceptions with the Board, as laid out in HRS §91-11, within ten days after service of a certified copy of this document. The exceptions must 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 if such exceptions are filed, and the parties will be notified of such hearing.

DATED: Honolulu, Hawai‘i,                     May 26, 2022                    .

HAWAI‘I LABOR RELATIONS BOARD

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MARCUS R. OSHIRO, Chair

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SESNITA A.D. MOEPONO, Member

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J N. MUSTO, Member

Copies sent to:

Keani Alapa, Esq.  
James Halvorson, Deputy Attorney General

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<sup>1</sup> An action does not automatically end if a party to the action who is named in their official capacity dies, resigns, or otherwise ceases to hold office while this action is pending. The officer’s successor is automatically substituted as a party. Proceedings following the substitution will be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties will be disregarded. See, e.g., Salera v. Yokoyama, Board Case No. 20-CE-01-952, Order No. 3732, at \*1-2 (2021) (<https://labor.hawaii.gov/hlrp/files/2021/06/Order-No.-3732.pdf>). Accordingly, the Board substitutes current office holders KEITH Y. HAYASHI (Hayashi), DAVID Y. IGE (Ige), and RYKER WADA (Wada), for Hamamoto, Lingle, and Laderta respectively.

<sup>2</sup> See, endnote 1.

<sup>3</sup> 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.

<sup>4</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.

<sup>5</sup> HRS § 89-6(a)(5) defines bargaining unit 5 as, “Teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent.”

<sup>6</sup> HRS § 89-2 Definitions defines “Employer” or “Public Employer” as:

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

<sup>7</sup> HRS § 89-6(d)(3) defines the relevant employer group as, “the governor shall have three votes, the board of education shall have two votes, and the superintendent of education shall have one vote...”

<sup>8</sup> The Hawai‘i State Legislature (Legislature) repealed HRS § 302A-626 in 2016. 2016 Haw. Sess. Laws Act 87, § 4 at 180. At the relevant time for this case, HRS § 302A-626 was a statutory provision that provided teachers and education officers with annual increments or other longevty step increases. Id., § 1 at 179-80.