

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

ERNEST-SIOSI ALIKSA,

Complainant(s),

and

STATE OF HAWAII ORGANIZATION OF
POLICE OFFICERS,

Respondent(s).

CASE NO(S). 22-CU-12-393

ORDER NO. 3919

ORDER DENYING RESPONDENT'S
MOTION TO DISMISS AND DISMISSING
THE CASE, SUA SPONTE, FOR LACK OF
JURISDICTION

**ORDER DENYING RESPONDENT'S MOTION TO DISMISS AND
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1. Introduction and Statement of the Case

This case arises out of Complainant ERNEST-SIOSI ALIKSA's (Complainant or Mr. Aliksa) concerns related to the finances of Respondent STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS (Respondent, SHOPO, or Union). Mr. Aliksa filed a prohibited practice complaint (Complaint) with the Hawai'i Labor Relations Board (Board) alleging, among other things, that SHOPO committed prohibited practices under Hawai'i Revised Statutes (HRS) §§ 89-13(b)(1) and (4) and violated HRS § 89-15.

SHOPO filed a Motion to Dismiss (MTD), arguing that Mr. Aliksa already received the information due to him under HRS § 89-15 and that Mr. Aliksa's other allegations fail because he did not identify any interference with or restraint on his HRS Chapter 89 rights. Mr. Aliksa opposed the MTD.

The Board held a pretrial conference where, among other things, it heard oral argument on the MTD. After considering the entire record, including the arguments made at the pretrial conference, the Board orally denied the MTD and dismissed the case on its own accord or "*sua sponte*" because Mr. Aliksa's HRS § 89-13(b)(4) claim was not yet ripe and because the Board does not have jurisdiction over SHOPO's bylaws or campaign promises, which form the basis for Mr. Aliksa's other allegations.

The Board reduces its oral ruling to writing in this order.

Any conclusions of law mistakenly identified as findings of fact are conclusions of law; any findings of fact mistakenly identified as conclusions of law are findings of fact.

2. Findings of Fact and Other Allegations Accepted as True

When considering motions to dismiss and whether to dismiss cases for lack of jurisdiction, the Board accepts the allegations of the Complaint as true and construes them in the light most favorable to the complainant, Mr. Aliksa. *See, e.g., Haw. Gov't Emp. Ass'n, AFSCME, Local 152, AFL-CIO v. Governing Bd. of Kanuikapono Charter Sch.*, Board Case No. 19-CE-03-928, Decision No. 513, at *12 (October 19, 2022) (Kanuikapono) (<https://labor.hawaii.gov/hlrp/files/2022/10/Decision-No.-513.pdf>).

Mr. Aliksa is a public employee¹ and a member of bargaining unit 12² (BU 12). SHOPO is the exclusive representative³ for BU 12. SHOPO's fiscal year ends on December 31 of each year.

According to the Complaint:

[The SHOPO] board gave themselves 400-500% raises and said that are [sic] spending went way up. I asked for our financial information that backed up what they claimed and they have not given me what I asked for. I sent a letter to the board treasurer requesting financial information and Kimo Smith who is the manager emailed me that he would send me something later. I emailed on [September] 14[,] 2022 in response to Kimo and asked for an [estimated] time that I can expect a response[.] He [nor] anyone else from SHOPO has not responded since...

3. Analysis and Conclusions of Law

The Board has original jurisdiction over prohibited practice complaints and, thus, over this case. *Stucky v. Okabe*, Board Case No. CU-05-303, Decision No. 508, at *6 (June 30, 2021) (Stucky) (<https://labor.hawaii.gov/hlrp/files/2021/06/Decision-No.-508.pdf>) *citing to* *Haw. Gov't Emp. Ass'n v. Casupang*, 116 Hawai'i 73, 97, 170 P.3d 324, 348 (2007).

However, the Board cannot do more than the law authorizes it to do. *See Panganiban v. The Judiciary*, Board Case No. 21-CE-03-957, Decision No. 501, at *2 (February 3, 2021) (<https://labor.hawaii.gov/hlrp/files/2021/03/Decision-No.-501.pdf>). Therefore, even if the parties do not raise the issue of a jurisdictional requirement, the Board, *sua sponte*, will do so. *Id.*⁴ If the Board does not have jurisdiction over a prohibited practice complaint, the Board cannot issue a

judgment on the issue. Tamashiro v. Dep't of Hum. Serv., 112 Hawai'i 388, 398, 146 P.3d 103, 113 (2006).

As the complainant, Mr. Aliksa must establish that the Board has jurisdiction—the right to hear and rule on—this case. Kanuikaponu, Decision No. 513, at *13. The Board may review evidence including affidavits and testimony to resolve disputes about the existence of jurisdiction. Id. (*citing* Casumpang v. ILWU, Local 142, 94 Hawai'i 330, 337, 13 P.3d 1235, 1242 (2000)).

3.1. Legal Standards for Motions to Dismiss

In its MTD, SHOPO erroneously presents legal standards under the Hawai'i Rules of Civil Procedure (HRCP) Rule 12(b) and incorrectly states that the HRCP applies to prohibited practice proceedings due to HRCP Rule 81(b)(12). The extension of the HRCP to proceedings before the Board under HRCP Rule 81(b)(12) has been explicitly rejected by the Hawai'i Intermediate Court of Appeals. *See* Los Banos v. Haw. Lab. Rels. Bd., No. CAAP-17-0000476, at *33 (App. Nov. 22, 2019) (mem.) (Los Banos).

The Board's administrative rules, Hawai'i Administrative Rules (HAR) § 12-42-8(g)(3)⁵ lays out the Board's procedures for motions. In considering motions akin to a motion to dismiss under Rule 12(b), the Board considers the arguments raised in the MTD based on the Complaint, and the Board must accept the factual allegations in the Complaint as true and must view those allegations in the light most favorable to Mr. Aliksa. *See* Kapesi v. Dep't of Pub. Safety, Board Case Nos. 17-CE-10-908, 17-CU-10-359, Decision No. 510, at *8 (March 2, 2022) (Kapesi) (<https://labor.hawaii.gov/hlrb/files/2022/03/Decision-No.-510.pdf>). The law does not require the Board to accept legal conclusions contained in the Complaint. Id.

3.2. Mr. Aliksa's HRS § 89-15 Claim is Not Moot

SHOPO argues that Mr. Aliksa's HRS § 89-15 claim is moot because it provided him with the 2021 annual financial report. The Board disagrees.

A claim becomes moot when events happen that affect the relations between the parties so that the two requirements for the Board to rule on the claim are compromised. Jones v. Matayoshi, Case No. 17-CE-06-895, Decision No. 490, at *4 n.4 (May 30, 2017) (<https://labor.hawaii.gov/hlrb/files/2018/12/Decision-No-490.pdf>) *citing to* Lathrop v. Sakatani, 111 Hawai'i 307, 312-13, 141 P.3d 380, 385-86 (2006). Those two requirements are “adverse interest” and “effective remedy.” Id.

To put it another way, a claim becomes moot if there is no remedy that would satisfy the Complainant's request and the parties are no longer in conflict over the issue.

Mr. Aliksa is pursuing the remedy of obtaining financial information related to 2022—not 2021. Therefore, the fact that SHOPO provided Mr. Aliksa with the 2021 annual financial report is irrelevant.

The remedy Mr. Aliksa is seeking is still “effective” because Mr. Aliksa could still obtain financial information related to 2022. SHOPO has not provided any 2022 financial information to Mr. Aliksa; therefore, the parties are still in conflict. This means that the two requirements for the Board to rule on the claim have been met, and the issue is not moot.

Therefore, the Board denies the MTD on the issue of mootness.

3.3. Mr. Aliksa’s HRS § 89-15 Claim is Not Yet Ripe

However, to the extent that Mr. Aliksa’s claim related to the 2022 financial information is not moot, it is not yet “ripe.”

The issue of ripeness is a question of timing. Campos v. Univ. of Haw. Prof’l Assembly, Board Case No. 18-CU-07-368, at *5, Order No. 3453 (February 1, 2019) (<https://labor.hawaii.gov/hlrp/files/2021/05/HLRB-Order-No.-3453.pdf>) *citing to* Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp., 117 Hawai‘i 174, 207, 177 P.3d 884, 917 (2008) (overruled on other grounds, 556 U.S. 163 (2009)). Effectively, the questions that the Board considers are whether the issue would be better addressed later and whether the issue is not yet appropriate for the Board to decide. Id.

For a claim to be “ripe,” the Board must find that the claim “need[s] no further factual development[.]” Id. The Board cannot find so here.

HRS § 89-15 states in relevant part:

Every employee organization shall keep an adequate record of its financial transactions. It shall make available to all employees who pay the employee organization dues or its equivalent an annual financial report in the form of a balance sheet and an operating statement, certified as to its accuracy by a certified public accountant, within one hundred twenty days after the end of its fiscal year...

Effectively, this section requires SHOPO to do two things: one, keep an adequate record of its financial transactions; and two, make an annual financial report available to all employees who pay it dues or the equivalent within one hundred twenty days after the end of its fiscal year.

SHOPO has asserted, and Mr. Aliksa has not contested, that its fiscal year ends on December 31. One hundred twenty days after the close of the 2022 fiscal year, therefore, is April 30, 2023. Because April 30, 2023 is a Sunday, under the Board’s administrative rules, **SHOPO**

must make the 2022 annual financial report available on or by May 1, 2023. HAR § 12-42-8(c).

If SHOPO fails to make the 2022 annual financial report available by that date, this claim may become ripe. However, until that time, the Board cannot rule on the claim. Therefore, the Board must, at this time, dismiss Mr. Aliksa’s HRS § 89-13(b)(4) claim and its corresponding HRS § 89-15 allegation, *sua sponte*, as the claim is not yet ripe.

3.4. Employee HRS Chapter 89 Rights are Not Limited to HRS § 89-3 Rights

SHOPO further argues in its MTD that “employees’ rights are governed by HRS § 89-3. The Board finds this argument shows a fundamental misunderstanding of HRS Chapter 89.

HRS Chapter 89 provides employees with a variety of rights. Some are enumerated in HRS § 89-3, but other sections of HRS Chapter 89 provide employees with other rights. For example, employees who are not members of an employee organization have the right to “demand the return of any part of the [payroll] deduction that represents the employee’s pro rata share of expenditures made by the exclusive representative for activities of a political and ideological nature unrelated to the terms and conditions of employment.” HRS § 89-4.

As another example⁶, if an employee is a bargaining unit member but is not a member of the exclusive representative’s organization, that employee still has the right to have their interests represented “without discrimination and without regard to employee organization membership.” HRS § 89-8(a). Further, employees have the right to present grievances to their employer “without the intervention of an employee organization[,]” if the employee so chooses and the exclusive representatives rights are not infringed on. HRS § 89-8(b).

Accordingly, the Board denies the MTD on this claim.

3.5. The Board Does Not Have Jurisdiction Over SHOPO’s Bylaws or Campaign Promises

However, Mr. Aliksa’s arguments regarding interference with his rights primarily stem from SHOPO’s bylaws and promises made by the SHOPO officials during the campaign. The Board does not have jurisdiction, or the right to hear, such claims.

The Board’s jurisdiction, as defined by law in both HRS § 89-5 and by the courts, does not include the right to hear cases regarding issues with internal union policies, bylaws, or other governing materials. *See, e.g., Stucky*, Decision No. 508, at *5.

The fact that the Board does not have jurisdiction over these matters does not prevent Mr. Aliksa from seeking relief from a body who does have jurisdiction over such matters, such as a

court. However, the Board is required to dismiss Mr. Aliksa’s HRS § 89-13(a)(1) claim for lack of jurisdiction, *sua sponte*.

4. Order

Based on the foregoing, the Board dismisses this case, *sua sponte*. This case is closed.

DATED: Honolulu, Hawai‘i, November 16, 2022.

HAWAI‘I LABOR RELATIONS BOARD
(dlr.laborboard@hawaii.gov)

MARCUS R. OSHIRO, Chair

SESNITA A.D. MOEONO, Member

J N. MUSTO, Member

Copies sent to:

Ernest-Siosi Aliksa, Self-Represented Litigant
Claire Wong Black, Esq.

¹ 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)].

² HRS § 89-6(a)(12) defines BU 12 as “Police officers.”

³ 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.

⁴ “Id.” is a legal citation that means that the reference for that citation is the same as the prior citation.

⁵ On October 21, 2022, the Board adopted new administrative rules, HAR Chapter 12-43, and repealed the prior administrative rules, HAR Chapter 12-42. However, because this case was initiated under the prior administrative rules, the Board utilizes them for this case.

⁶ The Board has provided examples of some but not all of the rights guaranteed to employees under HRS Chapter 89.