

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 27930

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

THOMAS J. LENCHANKO, Complainant/Appellant/Appellee
and
MORRIS E. APANA, Complainant/Appellant,

v.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO, et al., Respondents/Appellees/Appellees,
and

HAWAII LABOR RELATIONS BOARD, State of Hawaii,
Agency/Appellee/Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 05-1-1700)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Complainant/Appellant/Appellant Thomas J. Lenchanko (Lenchanko) appeals from a Hawai'i Rules of Civil Procedure (HRCP) Rule 72(k) Judgment filed on April 13, 2006 in the Circuit Court of the First Circuit^{1/} (circuit court). Pursuant to the Order Affirming HLRB Order No. 2345, filed on April 13, 2006, the circuit court entered judgment in favor of Respondents/Appellees/Appellees Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA), Dean Makimoto (Makimoto), Kevin Nakata (Nakata), Leiomalama Desha (Desha), and Sanford Chun (Chun), and Agency/Appellee/Appellee Hawaii Labor Relations Board (HLRB) and against Lenchanko and Complainant/Appellant Morris E. Apana (Apana).

Lenchanko and Apana were employees of the City and County of Honolulu (City) Department of Facility Maintenance, Division of Road Maintenance, and members of bargaining units (BU) 04 and 02, respectively. HGEA was the union that

^{1/} The Honorable Sabrina S. McKenna presided.

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represented Lenchanko and Apana's BU 04 and 02 interests. Makimoto, Nakata, Desha, and Chun were agents of HGEA.

In January 2001, Lenchanko and Apana learned that beginning July 1, 2000, the City would be ending their supervisory duties and compensatory overtime pay for refuse operations at the Waianae base yard. Between January and July 27, 2001, Lenchanko and Apana asked Makimoto to file a challenge through the contractual grievance process; Makimoto informed them that the City's plans to reorganize was within management's rights, and he denied their request. Although Lenchanko and Apana had a right to file grievances on their own without HGEA's assistance, they do not do so.

On January 19, 2005, Lenchanko and Apana filed a prohibited practice complaint with the HLRB against HGEA, Makimoto, Nakata, Desha, and Chun (collectively, Respondents) pursuant to Hawaii Revised Statutes (HRS) §§ 89-14 (1993) and § 377-9(a) (1993). Lenchanko and Apana alleged that Respondents had breached their duty to fairly represent Lenchanko and Apana in violation of HRS § 89-13(b) (1993) when Respondents failed to file grievances over the City's decision to end Lenchanko and Apana's supervisory work.

On August 25, 2005, the HLRB entered Order No. 2345, in which the HLRB dismissed Lenchanko and Apana's complaint as time-barred.

On September 23, 2005, Lenchanko and Apana appealed from HLRB's Order No. 2345 to the circuit court pursuant to HRS §§ 377-9(f) (1993) and 91-14 (1993). In their Statement of the Case, they asked the circuit court to vacate Order No. 2345 and remand the case for further evidence and hearing on the merits of their complaint.

Respondents and HLRB filed their answers to Lenchanko's and Apana's Statement of the Case on September 30, 2005 and October 12, 2005, respectively.

Following briefing and oral argument, the circuit court affirmed HLRB's Order No. 2345 and entered its Judgment on April 13, 2006. Lenchanko filed a notice of appeal on May 10, 2006.

On appeal, Lenchanko contends the circuit court erred in concluding that HLRB's dismissal of his and Apana's complaint as time-barred was correct as a matter of law.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we conclude that Lenchanko's appeal is without merit. The HLRB did not err in dismissing Lenchanko and Apana's complaint because the complaint was not timely filed within ninety days of the alleged prohibited practice. HRS §§ 89-13 (1993), 89-14, and 377-9(1) (1993), and Hawai'i Administrative Rules § 12-42-42(a).

Therefore,

The Judgment filed on April 13, 2006 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, August 31, 2007.

On the briefs:

Dana S. Ishibashi
for Complainant/Appellant/Appellant
Thomas J. Lenchanko

James E.T. Koshiba
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Vasconcellos, and Rebecca L. Covert,
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on the briefs)
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Valri Lei Kunimoto
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Relations Board


Presiding Judge


Associate Judge


Associate Judge