

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-03-64
LEWIS W. POE,)	ORDER NO. 1503
)	
Petitioner,)	ORDER GRANTING PETITIONS
)	FOR INTERVENTION AND NOTICE
and)	OF BOARD CONFERENCE ON PETI-
)	TION FOR DECLARATORY RULING
UNIVERSITY OF HAWAII PROFES-)	
SIONAL ASSEMBLY; BENJAMIN J.)	
CAYETANO, Governor, State of)	
Hawaii; and HAWAII GOVERNMENT)	
EMPLOYEES ASSOCIATION, AFSCME,)	
LOCAL 152, AFL-CIO,)	
)	
Intervenors.)	

ORDER GRANTING PETITIONS FOR INTERVENTION AND
NOTICE OF BOARD CONFERENCE ON PETITION FOR DECLARATORY RULING

On June 5, 1997, LEWIS W. POE (POE) filed a Petition for Declaratory Ruling with the Hawaii Labor Relations Board (Board). In his petition, POE seeks, inter alia, a ruling from the Board that pursuant to §§ 89-8(b) and 89-3, Hawaii Revised Statutes (HRS), an employee has a statutory right to present a grievance alone to the Employer, including beyond Step 3. On June 9, 1997, the Board issued a Notice of Receipt of Petition for Declaratory Ruling and Deadline for Filing Petitions for Intervention to the public employers and public employee unions, setting June 20, 1997 as the deadline for filing any petitions for intervention.

On June 18, 1997, the UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA), by and through its attorneys, filed a Petition for Intervention with the Board. UHPA is the exclusive representative for Unit 07 and indicates that the Unit 07 collective bargaining

agreement (contract) has a grievance procedure similar to that for Unit 03 which permits a unit member to file and prosecute a grievance, up to but not including, arbitration. Under the Unit 07 contract, only UHPA may initiate the arbitration process. Thus, UHPA states that a declaration in this proceeding with respect to a Unit 03 employee may affect UHPA's contract.

Thereafter, on June 19, 1997, BENJAMIN J. CAYETANO, Governor, State of Hawaii (CAYETANO), by and through his attorneys, filed a Petition for Intervention in this case. CAYETANO states that the State of Hawaii is a party to the Unit 03 contract and has an interest in preserving the grievance procedure set forth in the contract. CAYETANO contends that both Chapter 89, HRS, and the Unit 03 contract may be affected by a Board decision which would directly impact on his rights as a public employer.

On June 24, 1997, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA), by and through its attorney, filed a Petition for Intervention with the Board. The HGEA contends that it is a party to the Unit 03 contract and that HGEA has a right to ensure that the contract is correctly applied.

On July 3, 1997, POE filed an opposition to the HGEA's petition for intervention. POE contends, inter alia, that the HGEA's petition is untimely as it was filed four days after the deadline set by the Board.

Thereafter on July 8, 1997, the HGEA filed a memorandum in reply to POE's opposition with the Board. The HGEA contends that it was never served with a copy of the petition for declaratory ruling. Counsel for HGEA states in an affidavit

submitted in support of its memorandum that he obtained a copy of the petition from the Board on June 13, 1997 and filed the petition for intervention on June 24, 1997. Counsel also states that at no time did he or the HGEA receive from the Board a notice inviting parties to intervene or setting a time limit for intervening into this matter. The HGEA contends that the Board should strike POE's opposition as being untimely under Administrative Rules § 12-42-8(g)(3)(iii), as POE filed his opposition seven working days after the HGEA filed its motion for intervention rather than five working days as provided in the Board's rules. In addition, the HGEA argues that POE is estopped from opposing the HGEA's petition because he filed his opposition in an untimely manner. The HGEA further argues that there are no time limits placed on the filing of petitions for intervention in the Board's rules and that the HGEA should be permitted to intervene in this case in the interests of justice.

On July 11, 1997, POE filed a Statement of Objection and/or Clarification with the Board. POE objected to the caption used by the HGEA in its memorandum and certain representations made by HGEA's counsel and clarified his position with respect to his opposition to HGEA's petition.

After a review of the record in this case, the Board finds that CAYETANO, a party to the Unit 03 contract, has a significant interest in participating in these proceedings as POE here seeks a ruling which may affect the validity or interpretation of the Unit 03 grievance procedure language. In addition, the Board finds that UHPA, while not a party to the Unit 03 contract,

also has a significant interest in these proceedings since a Board declaration on the validity or interpretation of the Unit 03 contract provision may be applicable to the Unit 07 contract. Hence, having no objections to CAYETANO's and UHPA's petitions for intervention filed in this case, the Board finds that CAYETANO and UHPA, respectively, have alleged sufficient interests for their participation in these proceedings and the Board hereby grants their petitions for intervention.

With respect to the HGEA's petition for intervention, the record is clear that the petition is untimely. Here, POE filed the instant declaratory ruling petition with the Board on June 5, 1997. On June 9, 1997, the Board issued its notice setting June 20, 1997 as the deadline for filing petitions for intervention. The Board sent the notice to all public employers and unions, including Russell Okata, HGEA's Executive Director (Okata). According to the Board's files and in apparent contradiction to HGEA's counsel's representations, Lea Moi signed the return receipt of the Board's notice addressed to Okata on June 10, 1997. Thereafter, HGEA's counsel received a copy of the petition from the Board on June 13, 1997 but states that he was never informed of the deadline for filing the petition for intervention. HGEA's counsel filed his petition on June 24, 1997, four days after the deadline set by the Board.

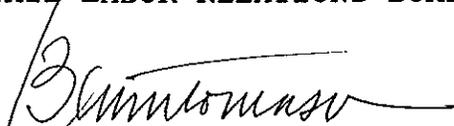
After reviewing the HGEA's arguments against POE's opposition, the Board declines to strike POE's opposition to the petition as being untimely since the HGEA's petition for intervention was also untimely filed. However, while POE opposes

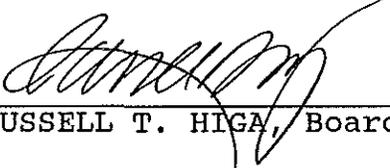
the HGEA's petition because it was untimely, he does not dispute the HGEA's interest in participating in this proceeding. The Board further finds that the parties are not prejudiced by HGEA's late filing of its petition for intervention. Thus, in considering that HGEA has a significant interest in preserving its grievance procedure language in the Unit 03 contract, the Board hereby grants the HGEA's petition for intervention in the interests of justice and in order to create a sound record in this case.

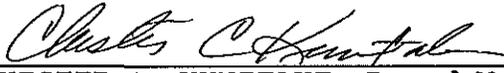
YOU ARE HEREBY NOTIFIED that the Board will conduct a conference in this matter on August 14, 1997 at 9:00 a.m., in the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

DATED: Honolulu, Hawaii, July 25, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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