

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. DR-03-59
	)	
LEWIS W. POE,	)	DECISION NO. 388
	)	
Petitioner,	)	FINDINGS OF FACT, CON-
	)	CLUSIONS OF LAW AND
and	)	DECLARATORY RULING
	)	
HAWAII GOVERNMENT EMPLOYEES	)	
ASSOCIATION, AFSCME, LOCAL 152,	)	
AFL-CIO,	)	
	)	
Intervenor.	)	
	)	

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DECLARATORY RULING

On September 1, 1995, LEWIS W. POE (POE), a state employee in bargaining unit 03, filed a Petition for Declaratory Ruling with the Hawaii Labor Relations Board (Board). POE alleges that he has the right to file a class grievance and the provisions of Article 11, Grievance Procedure, of the Unit 03 Collective Bargaining Agreement (Agreement), interfere with this right. POE asserts that his right to file a class grievance is contained in Sections 89-3 and 89-8(b), Hawaii Revised Statutes (HRS), and that amendments to the Agreement made by a Memorandum of Agreement (MOA) are questionable because the MOA does not fully comply with the provisions of Section 89-10(a), HRS.

All interested persons were afforded an opportunity to intervene in this matter through a Board notice dated September 8, 1995. A petition for intervention was filed by the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO

(HGEA). The Board granted the petition for intervention in Board Order No. 1258, dated November 14, 1995.

On January 16, 1996, both parties submitted memorandums in support of their respective positions before the Board.

On January 19, 1996, POE submitted a written response to Intervenor HGEA's memorandum in support of a ruling against Petitioner POE's position herein.

On January 30, 1996, HGEA submitted a memorandum in response to POE's memorandum in support of his contention that the terms of Article 11 of the Agreement are in violation of Chapter 89, HRS.

All parties were given an opportunity to fully argue their positions before the Board. Based on a thorough review of the record in this case the Board issues the following findings of fact, conclusions of law and declaratory ruling.

#### FINDINGS OF FACT

Petitioner POE is an employee, as defined in Section 89-2, HRS, whose position is included in bargaining unit 03.

The HGEA is the exclusive representative, as defined in Section 89-2, HRS, of employees in bargaining unit 03.

The HGEA and the employer are parties to an Agreement covering employees in bargaining unit 03 for the period July 1, 1993 to June 30, 1997. Article 11 of the Agreement sets forth the grievance procedure. Article 11, as amended by the MOA, provides in pertinent part:

- B. An individual Employee may present a grievance without intervention of the Union, up to and including Step 3, provided the Union has been afforded an opportunity to be present at the meeting(s) on the grievance. Any adjustment made shall not be inconsistent with the terms of this Agreement.

\* \* \*

- F. If the Union has a class grievance involving Employees within a department, it may submit the grievance in writing to the department head or designee. Time limits shall be the same as in individual grievances and the procedures for appeal from unsatisfactory answer shall be the same as in Step 3.

If the Union has a class grievance involving Employees from more than one (1) department, it may submit the grievance in writing to the Governor and/or the respective Mayors, or their designees, as the case may be. Time limits shall be the same as in individual grievances and the procedures for appeal from unsatisfactory answers shall be the same as in Step 3. [Emphasis added.]

#### DISCUSSION

In his petition, POE questions the validity of the MOA because Section 89-10(a), HRS, POE contends, requires the ratification of the MOA. This issue was decided by the Board in Decision No. 371, Lewis W. Poe, 5 HLRB 546 (1996), where the Board held that the MOA at issue in the instant case, did not require ratification because it clarified employee rights and had no adverse effect on such rights. Thus, the Board previously found this MOA to be valid and the Board will not revisit the issue.

In his petition, POE also contends that the provisions of Article 11 of the Agreement which limit the filing of a class



grievance to the Union violate Sections 89-1, 89-3 and 89-8(b), HRS.

In reviewing Section 89-1, HRS, the Board finds that this provision sets forth the public policy and interest in the creation of Chapter 89 as it relates to public sector collective bargaining. The facts in the instant case fail to support a finding that the provisions of the Agreement violate the statutory scheme and goals of collective bargaining.

Section 89-3, HRS, deals with the rights of employees and provides for the right of employees to organize themselves for the purposes of bargaining collectively. In addition, employees may refrain from participation provided such employees pay an amount equivalent to dues to the exclusive representative. The facts in the instant case do not indicate that this statutory provision has been violated.

Section 89-8(b), HRS, provides:

An individual employee may present a grievance at any time to the employee's employer and have the grievance heard without intervention of an employee organization; provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative. [Emphasis added.]

POE alleges that Article 11 of the Agreement restricts the filing of a class grievance to the Union and thus violates his rights under Section 89-8(b), HRS. Paragraph B of Article 11 reiterates the rights of an individual employee as provided under Section 89-8(b), HRS. However, Section 89-8(a), HRS, provides in pertinent part:

The employee organization which has been certified by the board as representing the majority of employees in an appropriate bargaining unit shall be the exclusive representative of all employees in the unit. As exclusive representative, it shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. [Emphasis added.]

The Board finds that the provision in the Agreement which reserves the exclusive right to file a class grievance to the exclusive representative does not conflict with the statutory provision which permits the individual employee to pursue a grievance without the intervention of the Union. In the instant case the individuals concerned could have filed individual grievances with the employer. Hence, their right to access the grievance procedure was not hindered nor violated because of their inability to file a class grievance. Moreover, these employees cannot exercise the rights of the exclusive representative, which the majority of bargaining unit 03 employees have selected. Allowing a group of employees to file a class grievance could adversely impact all bargaining unit employees, thus undermining the right of the exclusive representative to represent the interests of the bargaining unit which is a fundamental concept of collective bargaining.

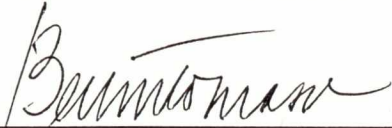
#### CONCLUSIONS OF LAW AND DECLARATORY RULING

The Board has jurisdiction over the instant petition pursuant to Section 91-8, HRS, and Administrative Rules Section 12-42-9.

The provision of the Agreement that reserves the right to file a class grievance to the exclusive representative of the bargaining unit does not conflict with nor is inconsistent with Section 89-8, HRS, which preserves the right of an individual to file a grievance without intervention of the exclusive representative.

DATED: Honolulu, Hawaii, May 28, 1997.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

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