

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

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| In the Matter of |) | CASE NO. DR-03-72 |
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| LEWIS W. POE, |) | DECISION NO. 418 |
| |) | |
| Petitioner. |) | FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY ORDER |
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY ORDER

A Petition for Declaratory Ruling was filed on December 29, 1998 by LEWIS W. POE (POE) pursuant to Hawaii Administrative Rules (HAR) § 12-42-9, after "Poe asked the HLRB staff if he could review" a January 31, 1997 Arbitration Panel Decision and Award (Arbitration Award) chaired by Bonnie G. Bogue. Upon learning the Arbitration Award was not on file with the Hawaii Labor Relations Board (Board), POE filed this petition.

FINDINGS OF FACT

1. POE is a public employee and a member of Unit 03 Collective Bargaining Agreement between the Public Employer/State of Hawaii and the Hawaii Government Employees Association, AFSCME Local 152 AFL-CIO (HGEA).
2. POE's petition asks for an interpretation of the Board's rules – HAR §12-42-128 relating to collective bargaining agreements, HAR §12-42-132 relating to public records, and HAR §12-42-73 relating to Findings and Decisions of Arbitration Panel and their applicability to interest arbitration awards issued by an arbitration panel as provided in Hawaii Revised Statutes (HRS) §89-11.
3. HAR §12-42-128 states: "The public employer entering into a written collective bargaining agreement pursuant to chapter 89, HRS, shall file a copy of the agreement with the board within thirty days after execution and issuance." POE's petition asks the Board to clarify or define the meaning of issuance, "so that the Public will understand its meaning and its legal ramifications." The Board finds issuance to mean after the document is printed and distributed by the parties to the agreement.
4. HAR §12-42-132 states: "All materials and documents submitted to the Board under this subchapter shall be considered to be public records."
5. HAR §12-42-73 states:

(a) If the dispute remains unresolved fifty days after the date of impasse, the arbitration panel shall file with the board the original and five copies of its findings and final and binding

decision, with proof of service upon all parties. (b) The parties shall enter into an agreement to take whatever action is necessary to carry out and effectuate the decision of the arbitration panel. (Emphasis added.)

6. The Board finds the language of HAR §12-42-73 goes beyond HRS § 89-11(b)(3), which provides that the arbitration panel's findings and its final and binding decision on the dispute shall be transmitted "to both parties," and not to the Board as set forth in the rule. The Board also finds the general practice of arbitration panels has been to follow the statute, rather than the rule.¹
7. The Board disagrees with Poe's contention that the Board's rules should apply to the Arbitration Award to require the Public Employer to file a copy with the Board under HAR §§ 12-42-128 and 12-42-73, and become part of the public record under HAR §12-42-132.

CONCLUSIONS OF LAW

1. HAR §12-42-128 requires the public employer as defined in HRS Chapter 89 to file copies of collective bargaining agreements entered into, by and between the public employers and the public unions. The rule does not apply to the Arbitration Award at issue here, nor any other decision and award issued by an arbitration panel as provided in HRS § 89-11(b).
2. HAR §12-42-73 exceeds the authority provided under HRS §89-11(b)(3). Under HRS § 89-11(b)(3), arbitration panels are required to transmit copies of its findings, decision and award to the parties, and not the Board.
3. Under HRS § 89-11(b)(3), the parties, i.e. the public employers and public union, upon receiving the arbitration panel's decision and award, are required to "enter into an agreement and take whatever action is necessary to effectuate the decision of the arbitration panel." HAR §12-42-128 applies to the bargaining contract that results by and between the parties, and not the decision and awards issued by arbitration panels.

ORDER

The Board having considered the petition in the above-captioned matter, hereby orders the petition be granted and declares that HAR §§ 12-42-128 and 12-42-73 are inapplicable to the findings, decision and awards issued by arbitration panels as provided for under HRS § 89-11(b).

¹The Board's Rules of Practice and Procedure, effective since February 6, 1981, are being updated to modernize and make more efficient practicing before the Board.

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DATED: Honolulu, Hawaii, September 15, 2000.

HAWAII LABOR RELATIONS BOARD



BRIAN K. NAKAMURA, Chairperson



CHESTER C. KUNITAKE, Board Member



KATHLEEN RACUYA-MARKRICH, Board Member

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