

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-03-270
LEWIS W. POE,)	ORDER NO. 1472
Complainant,)	ORDER GRANTING RESPONDENT'S
and)	MOTION TO DISMISS PROHIBITED
BENJAMIN J. CAYETANO, Governor,)	PRACTICE COMPLAINT
State of Hawaii,)	
Respondent.)	

ORDER GRANTING RESPONDENT'S MOTION
TO DISMISS PROHIBITED PRACTICE COMPLAINT

On September 27, 1995, Complainant LEWIS W. POE (POE) filed a prohibited practice complaint against BENJAMIN J. CAYETANO, Governor, State of Hawaii (Employer) with the Hawaii Labor Relations Board (Board). Complainant alleges that on September 8, 1995, POE filed a Step 2 grievance with the Director of the Department of Transportation, State of Hawaii. Thereafter on September 21, 1995, POE contends that the Director or his designee and POE agreed to extend the time limit to discuss the grievance. POE contends that this extension violated Article 11B of the Unit 03 collective bargaining agreement (contract). Thus, POE contends that the Employer violated § 89-13(a)(8), Hawaii Revised Statutes (HRS).

POE also contends that the Employer violated § 89-13(a)(7), HRS, by recognizing a memorandum of agreement (MOA), dated August 2, 1995, which provides that individual grievants may extend the time deadlines contained in the contractual grievance

procedure. POE contends that the MOA must be ratified to be effective and argues that the Employer failed to comply with § 89-10(a), HRS.

On November 3, 1995, the Employer filed a motion to dismiss the instant prohibited practice complaint with the Board. The Employer admitted that Complainant filed a Step 2 grievance with the Director of Transportation on September 8, 1995. The Employer also admitted that on September 21, 1995, Complainant agreed to extend the time deadline to meet with the department head or designee at Step 2 as set forth under Article 11 of the contract. On August 2, 1995, the contract was amended by the MOA entered into between the public employers and the exclusive representative, the Hawaii Government Employees Association (HGEA or Union). The Employer contends that the HGEA, which is not a party to the instant proceedings, is responsible for ratification of the agreement. Thus, the Employer argues that POE filed the instant complaint against the wrong party and accordingly the instant complaint should be dismissed. The Employer also contends that the MOA need not be ratified to be effective and further, that Complainant has suffered no harm by the operation of the MOA. Moreover, the Employer also argues that POE waived his objections to the validity of the MOA by agreeing to the extension.

On November 8, 1995, Complainant filed a memorandum in opposition to the motion to dismiss complaint with the Board. POE contends that the facts indicate that the deadline to meet on the grievance had expired prior to the agreement to extend the deadline. In addition, POE argues that the MOA was never ratified

and therefore not effective on August 2, 1995. POE further argues that he cannot waive the right to a timely grievance meeting since he is not entitled to do so. POE submits that the essence of his complaint is that the Employer violated the terms of the contract by not conducting a timely meeting on the grievance and also the Employer failed to comply with § 89-10(a), HRS, by prematurely asserting the enforceability of the MOA which had not been properly ratified.

The Board previously scheduled a hearing on the Employer's motion to dismiss the complaint in this matter. However, the Board continued the hearing on the Employer's motion until further moved on because of the Board's oral ruling in related cases. See, Order No. 1267, November 22, 1995.

In those related cases before the Board, POE contended that the grievance procedure provisions of Unit 03 contract violated the rights of individual employees to grieve without the intervention of the union. In Case No. DR-05-55, POE contended that the contract required the Employer and the union to meet at Step 2 and further contended that time limits at Step 3 could only be extended by mutual consent of the union and the Employer. In Case No. DR-03-56, POE contended that the contract provided that a Step 1 meeting was to be held between the grievant, the union and the Employer and further, that the contract only allowed the union and the employer to extend the time limits. The Board consolidated the petitions for disposition.

During the pendency of the matter, the HGEA and the public employers negotiated changes to the grievance procedures to

address the concerns raised by POE and entered into the MOA, dated August 2, 1995, which clarified that an employee grieving alone may agree to extend the time limits and removed the language mandating that the employee and a union representative meet with the division head at Step 1. The amendments also clarified that the grievance meeting would be held between the parties to the grievance and that the employer would respond to the employee and the union.

In Decision No. 371, dated January 4, 1996, Lewis W. Poe, 5 HLRB 546 (1996), the Board held that during the pendency of the declaratory ruling petitions, the HGEA and the public employers negotiated changes to the grievance procedure in the contract. The Board further held that the MOA addressed and resolved the issues raised in POE's petitions. The Board further concluded that the MOA did not have to be ratified and that the MOA was valid. The Board stated, at page 553:

The Board recognizes some merit in POE's position in that a memorandum of agreement becomes part of a collective bargaining agreement and it could be argued that an agreement could be drastically altered to affect employee rights and benefits without employee participation in the decision-making process envisioned by Section 89-10(a), HRS. However, the Board notes that Section 89-10 requires "collective bargaining agreements" to be ratified and does not specifically mention amendments to such agreements. In the absence of a clear statutory mandate requiring ratification, the Board concludes that reasonableness and sound labor relations policy favors a finding that a memorandum of agreement of the nature involved here need not be ratified. A contrary finding would mean that every memorandum of agreement modifying an existing agreement would require ratification. The Board recognizes that labor-management relations is a dynamic process and that during the term of an agreement clarifications or corrections to an

agreement may be necessary. Further, unanticipated circumstances may require the parties to negotiate and reach agreement on certain terms and conditions of employment. Requiring employee ratification of all memorandums of agreement would hinder and delay resolution of potential disputes. Additionally, the costs of contract administration would be unnecessarily increased as meetings or mail ballots would be needed to obtain ratification of even minor changes.

The amendments involved in the instant petitions are basically clarifications of the grievance policy and employee rights are not adversely affected. Indeed, the amendments are intended to ensure that the right of employees to grieve alone is protected. This holding of the Board is limited to the memorandum of agreement in this case and should not be construed as a ruling affecting all amendments to collective bargaining agreements.

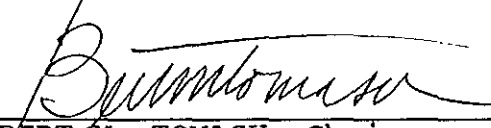
The Board therefore dismissed POE's petitions for declaratory ruling because the question presented did not involve existing facts which could reasonably be expected to exist in the future. In essence, the Board dismissed the petitions because there was no live controversy and POE was not adversely affected by the MOA.

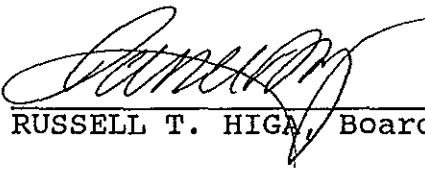
Similarly, as the same MOA is before the Board in this case, based upon its previous ruling in Decision No. 371 which is dispositive of the issues presented, the Board agrees with the Employer that the MOA in this case need not be ratified in order to be valid and further, that POE was not prejudiced by agreeing to the extension of the grievance procedure deadlines. Therefore, the Board hereby grants the Employer's motion to dismiss the instant prohibited practice complaint because POE lacks the requisite standing to maintain this action.

LEWIS W. POE and BENJAMIN J. CAYETANO, Governor, State of Hawaii;
CASE NO. CE-03-270
ORDER NO. 1472
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COMPLAINT

DATED: Honolulu, Hawaii, May 29, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

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