

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-03-61
)	
LEWIS W. POE,)	ORDER NO. 1474
)	
Petitioner.)	ORDER DISMISSING PETITION
)	FOR DECLARATORY RULING
_____)	

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On October 16, 1995, Petitioner LEWIS W. POE (POE) filed a petition for declaratory ruling with the Hawaii Labor Relations Board (Board). POE contends that he filed declaratory ruling petitions in Case Nos. DR-03-55 and DR-03-56 where the Hawaii Government Employees Association (HGEA) took the position that a Memorandum of Agreement, dated August 2, 1995 (MOA), was valid and enforceable even though the HGEA failed to have the employees ratify the agreement in violation of § 89-10(a), Hawaii Revised Statutes (HRS).

POE contends that both the HGEA and the employer are responsible for ensuring that (1) an agreement has been reduced to writing and (2) said agreement has been ratified by the employees concerned before such an agreement can be recognized as valid and enforceable. POE contends that if the HGEA declares the validity of an agreement knowing the agreement has not been ratified, then the HGEA has effectively refused or failed to comply with § 89-10(a), HRS. POE thus requests an interpretation of § 89-10(a), Hawaii Revised Statutes (HRS).

The Board takes notice that in Case No. CE-03-270, POE filed a prohibited practice complaint against Benjamin J. Cayetano (Employer) alleging that the Employer violated Article 11B of the Unit 03 collective bargaining agreement by agreeing to extend the deadlines in the grievance procedure. POE contended that a memorandum of agreement entered into between the HGEA and the public employers which permitted such extensions was invalid because it had not been ratified by the affected employees.

The Board in that case dismissed the prohibited practice complaint filed against the Employer finding that POE lacked requisite standing to challenge the extension of the time deadline since he was not prejudiced by the extension. In addition, the Board relied upon its previous holding in Decision No. 371, Case Nos. DR-03-55 and DR-03-56, Lewis W. Poe, 5 HLRB 546 (1996), where the Board found that the instant MOA was valid and did not have to be ratified. In that case POE requested a ruling that the provisions of the Unit 03 contract grievance procedure were violative of Chapter 89, HRS, because the provisions did not address grievances filed by the individual grievants. During the pendency of those proceedings, the HGEA and the public employers negotiated the MOA which the Board held to have addressed and resolved POE's concerns. Accordingly, the Board dismissed the petitions for declaratory ruling for lack of a case and controversy and for lack of standing pursuant to Administrative Rules §§ 12-42-9(f)(1) and (2).

Administrative Rules § 12-42-9(f) provides, as follows:

(f) The board may, for good cause, refuse to issue a declaratory order. Without limiting

the generality of the foregoing, the board may so refuse where:

(1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can be reasonably be expected to exist in the near future.

(2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.

In applying the foregoing rule to the instant petition, given the Board's finding and conclusion in Decision No. 371 that the MOA is valid, the Board concludes that POE's factual premises do not present an active controversy. POE's petition requests a declaration that the Employer failed to comply with § 89-10(a), HRS, because if recognized an MOA which was not ratified. As the Board's decision in Decision No. 371 is dispositive of this issue, POE's question posed is purely hypothetical and the Board hereby declines to issue a declaratory ruling pursuant to Administrative Rules § 12-42-9(f)(1).

In addition, the Board finds that POE was not prejudiced by the application of the memorandum of agreement in the extension of the grievance deadlines. Accordingly, the Board hereby declines to issue a declaratory ruling on the subject petition for lack of standing pursuant to Administrative Rules § 12-42-9(f)(2).

ORDER

The Board hereby dismisses the instant petition for declaratory ruling.

LEWIS W. POE; CASE NO. DR-03-61
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DATED: Honolulu, Hawaii, May 30, 1997.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

Copies sent to:

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