

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-03-64
)	
LEWIS W. POE,)	ORDER NO. 1559
)	
Petitioner,)	ORDER DENYING POE'S MOTION
)	TO STRIKE UHPA'S MEMORANDUM
and)	AND DENYING HGEA'S MOTION
)	TO DISPENSE WITH HEARING
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 DENYING POE'S MOTION TO
STRIKE UHPA'S MEMORANDUM AND DENYING
HGEA'S MOTION TO DISPENSE WITH HEARING

On September 29, 1997, Petitioner LEWIS W. POE (POE) filed a motion to strike Intervenor UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA)'s memorandum in support of Intervenor HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA)'s motion for summary judgment with the Hawaii Labor Relations Board (Board). POE contends that UHPA's memorandum is untimely because it was filed on September 24, 1997, contrary to the Board's directive to Intervenors to file motions by September 4, 1997. POE contends that UHPA does not rely upon the arguments contained in the HGEA's motion for summary judgment since UHPA sets forth its own facts and does not rely on the specific facts or arguments set forth by the HGEA.

On September 30, 1997, Intervenor UHPA filed a memorandum in opposition to POE's motion to strike its memorandum with the Board. UHPA contends that its memorandum raises arguments which were not previously covered in HGEA's memorandum. UHPA submits that the instant proceeding is a request for declaratory ruling and the parties should address the merits of the question posed by the petition rather than squabble over procedures. UHPA further contends that POE is not prejudiced because there was sufficient time for him to respond to its memorandum prior to the previously scheduled hearing date of October 7, 1997.

Based upon a review of the arguments presented, the Board agrees with UHPA that POE has not demonstrated any prejudice by the filing of its memorandum on September 24, 1997. In the interests of developing a complete record in this case, the Board hereby denies POE's motion to strike UHPA's memorandum. However, the Board will allow POE to submit any responses to UHPA's and Intervenor BENJAMIN J. CAYETANO's memorandum filed in support of HGEA's motion for summary judgment on October 3, 1997, within 15 days of the receipt of this order.

On October 28, 1997, HGEA filed a motion to dispense with hearing and a motion to determine the petition on submitted briefs with the Board. HGEA contends that oral argument should be dispensed with in this case because the proceeding is a declaratory ruling petition rather than a prohibited practice complaint. HGEA contends that under the applicable Board rules, no party has requested a hearing on the instant petition and there is no reason

why a review of the record will not permit a fair and expeditious disposition of the petition without a hearing.

Thereafter, on November 3, 1997, POE filed a memorandum in opposition to HGEA's motion to dispense with hearing and motion to determine declaratory ruling petition on submitted briefs with the Board. POE states, inter alia, that the Board previously held a hearing on a motion for summary judgment in another declaratory ruling case and in addition, POE seeks to subpoena Guy Tajiri to testify at the hearing in this matter.

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

(1) Although in the usual course of processing a petition for declaratory ruling no formal hearing shall be granted to the petitioner, the board may, in its discretion, order such proceeding set down for hearing.

(2) Any petitioner who desires a hearing on a petition for declaratory ruling shall set forth in detail in a written request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda or legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts.

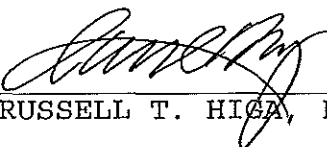
Here, POE states that he seeks to call Guy Tajiri to testify regarding his affidavit submitted in support of HGEA's motion for summary judgment. In view of POE's request for a hearing in this matter, the Board hereby denies HGEA's motion to dispense with the hearing and motion to determine declaratory petition on submitted briefs.

YOU ARE HEREBY NOTIFIED that the Board will conduct a hearing on the HGEA's motion for summary judgment on December 18, 1997 at 9:00 a.m. in the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

DATED: Honolulu, Hawaii, November 25, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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