

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-03-66
)	
LEWIS W. POE;)	ORDER NO. 1601
)	
Petitioner,)	ORDER DISMISSING PETITION
)	FOR DECLARATORY RULING
and)	
)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO and BENJAMIN J.)	
CAYETANO, Governor, State of)	
Hawaii,)	
)	
Intervenors.)	
)	

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On July 17, 1997, LEWIS W. POE (POE) filed a Petition for Declaratory Ruling with the Hawaii Labor Relations Board (Board). POE, a member of Unit 03, alleged that he had filed several grievances with his employer. POE seeks a ruling as to the applicability of §§ 89-8 and 89-10, Hawaii Revised Statutes (HRS), and Decision No. 371 in determining whether he would retain his rights as a grievant in the grievance process if he were no longer an employee. POE contends that the Memorandum of Agreement which was the subject of Decision No. 371 changed the word "grievant" to "employee" which could bar his further pursuit of grievances already filed if he were no longer an employee.

Thereafter, on August 21, 1997, the Board granted petitions for intervention filed by the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) and

BENJAMIN J. CAYETANO, Governor, State of Hawaii (Employer or State)
by Order No. 1515.

On October 3, 1997, the HGEA, by and through its attorney, filed a motion to dismiss the petition with the Board. The HGEA contended that the question before the Board was speculative or hypothetical and did not involve existing facts which could reasonably be expected to exist in the near future. In addition, the HGEA argued that the matter was outside the jurisdiction of the Board since the grievances were in the contractual grievance process.

Also on October 3, 1997, the Employer, by and through its attorney, filed a motion to dismiss the petition with the Board on the grounds that the question was speculative and hypothetical. The Employer contended that POE failed to allege any facts in his petition upon which the Board could determine whether POE had the right to process a grievance. The Employer acknowledged that there may be occasions where POE could continue to process a grievance after he has terminated his employment and situations where he would no longer have standing to proceed. The Employer thus contended that the Board should exercise its discretion and decline to issue a declaratory ruling in this case.

On October 10, 1997, POE filed a motion to strike the HGEA's motion to dismiss the instant petition because the HGEA violated § 12-42-8(g)(3)(C)(ii) by failing to properly serve the Employer. Also on that date, POE filed a memorandum in opposition to the Employer's motion to dismiss contending that he merely sought to finish the grievances already filed rather than process new grievances. In addition, POE filed an answering affidavit

identifying three grievances, one involving rest periods, another referring to Case No. CE-03-367, and the last, dated "7-16-97."

On October 13, 1997, the HGEA, by and through its counsel, filed an amended certificate of service with the Board. Thereafter, on October 16, 1997, POE filed a motion to strike the HGEA's amended certificate of service because he contends that it was actually a document certifying the untimely service of the HGEA's motion to dismiss on the Employer.

With regard to POE's motions to strike the HGEA's papers, the Board finds that POE is technically correct in contending that the HGEA failed to properly serve all parties with its moving papers. However, the Employer did not object to the late receipt of the HGEA's motion to dismiss the petition and was not required to file a response thereto. Further, POE was not prejudiced by the HGEA's failure to properly serve the Employer since POE was apparently timely served. Accordingly, the Board denies POE's motions to strike the HGEA's motion and amended certificate of service.

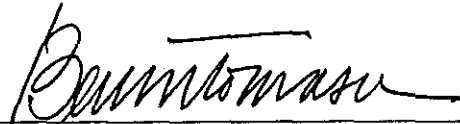
With respect to the merits of POE's petition based on the record, the Board is unable to ascertain the exact nature of POE's grievances to determine whether POE could continue to process his three grievances if he were no longer an employee. As the Employer correctly states, POE's standing to pursue his grievances would depend upon the contractual rights he seeks to enforce. After reviewing the record, the Board is unable to determine the scope of the grievances filed by POE. Thus, the question is speculative because of the nature of the record before us. Moreover, the Board believes that it would be inappropriate to issue an advisory

opinion on the issue of POE's standing to process his grievances at some future time since the grievances may be modified or resolved during the grievance process and may also be processed to arbitration where an arbitrator would ultimately decide whether POE had standing to pursue his grievances and whether the grievances were arbitrable.

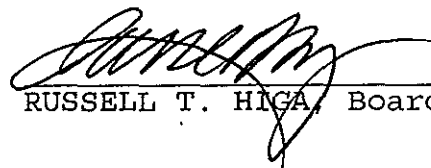
Based on the foregoing, the Board in exercising its discretionary authority, declines to issue a declaratory order in this case and hereby dismisses the instant petition pursuant to Administrative Rules § 12-42-9(f)(1).

DATED: Honolulu, Hawaii, March 10, 1998.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

Copies sent to:

Lewis W. Poe
Charles K.Y. Khim, Esq.
James E. Halvorson, Deputy Attorney General
Joyce Najita, IRC