

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-03-54
)	
LEWIS W. POE,)	ORDER NO. 1706
)	
Petitioner.)	ORDER DENYING POE'S MOTION
)	TO REOPEN CASE NO. DR-03-54
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ORDER DENYING POE'S MOTION TO REOPEN CASE NO. DR-03-54

On January 13, 1999, LEWIS W. POE (POE) filed a motion to reopen Case No. DR-03-54 with the Hawaii Labor Relations Board (Board). POE seeks a declaratory ruling from the Board that he was entitled to standby pay under the provisions of General Order No. 5 because he was an "essential employee" during the public employee strike in April 1994.

In reviewing POE's motion and taking notice of the record in Case No. DR-03-54, the Board previously issued Decision No. 365 in Case No. DR-03-54 on April 11, 1995. POE appealed the Board's decision to the First Circuit Court and the Circuit Court affirmed Decision No. 365. Thereupon, POE appealed the Circuit Court's order to the Supreme Court in S. Ct. No. 19858. The case was consolidated with S. Ct. No. 20899 and on March 31, 1998, the Hawaii Supreme Court, inter alia, vacated Decision No. 365 in the consolidated appeals of Lewis W. Poe v. Hawaii Labor Relations Board, 87 Hawai'i 191, 953 P.2d 569 (1998). With regard to the issue of standby pay, the Court stated in a footnote:

Poe did not raise the issue of standby pay in the points of error section of his brief and did not argue this issue in his

opening brief. Accordingly, the issue of standby pay is not before this court. Hawai'i Rules of Appellate Procedure Rule 28(b)(4)(D).


Id. at p. 192.

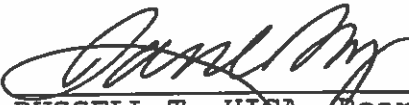
Although POE filed a motion for reconsideration with the Court in S. Ct. No. 20899, no motion for reconsideration was filed with the Court in S. Ct. No. 19858 and after review, the Court denied POE's motion for reconsideration. The Notice and Judgment on Appeal in the consolidated cases was filed on May 12, 1998.

Based upon the foregoing, the Court has found that POE failed to properly raise and argue the issue of standby pay in the appeal of the instant case and therefore the Court disregarded the issue of standby pay pursuant to Rules of Appellate Procedure Rule 28(b)(4)(D). Thus, POE cannot relitigate the same issue before the Board at this time. Moreover, the final judgment has been entered in this matter and the case was not remanded to the Board and therefore, the Board lacks jurisdiction to render a further declaratory order in this case.

DATED: Honolulu, Hawaii, March 9, 1999.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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Copies sent to:

Lewis W. Poe
Joyce Najita, IRC