

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. DR-03-60
LEWIS W. POE,	)	ORDER NO. 1746
Petitioner.	)	ORDER DISMISSING PETITION
	)	FOR DECLARATORY RULING
_____	)	

ORDER DISMISSING PETITION FOR DECLARATORY RULING

On October 9, 1995, Petitioner LEWIS W. POE (POE) filed a petition for declaratory ruling with the Hawaii Labor Relations Board (Board). POE contends that he filed a prohibited practice complaint with the Board on September 9, 1995 in Case No. CE-03-270. On October 6, 1995, Governor Benjamin J. Cayetano, the respondent in Case No. CE-03-270, denied that the employer had any responsibility with regard to the ratification of a collective bargaining agreement. POE thus requests an interpretation of § 89-10(a), Hawaii Revised Statutes (HRS), to determine: 1) who is directly/indirectly responsible for insuring that any agreement is reduced to writing and, 2) who is directly/indirectly responsible for insuring that an agreement reached between the employer and the union shall be subject to ratification by the employees concerned?

POE contends that both the employer and the union are responsible for ensuring that an agreement has been reduced to writing; and both are responsible to ensure that an agreement has been ratified. Thus, if the employer declares the validity of an agreement knowing that the agreement has not been ratified, the

employer effectively has refused or failed to comply with § 89-10, HRS.

The Board issued a notice of the receipt of the instant petition for declaratory ruling and noticed a deadline for filing petitions for intervention in this matter but no petitions to intervene were filed in these proceedings.

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 (MOA) 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.

In Order No. 1472, dated May 29, 1997, the Board dismissed the prohibited practice complaint upon a finding that POE lacked the 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 MOA in question was valid and did not require ratification. 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 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 before the Board, 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 actual and live controversy. POE's petition requests a declaration that the Employer failed to comply with § 89-10(a), HRS, because it recognized the 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).

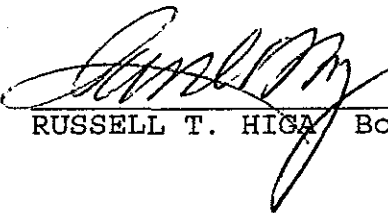
ORDER

The Board hereby dismisses the instant petition for declaratory ruling.

DATED: Honolulu, Hawaii, August 12, 1999.

HAWAII LABOR RELATIONS BOARD

  
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BERT M. TOMASU, Chairperson

  
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RUSSELL T. HIGA Board Member

Copies sent to:

Lewis W. Poe  
Joyce Najita, IRC