

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-03-112
)	
LEWIS W. POE,)	ORDER NO. 1876
)	
Complainant,)	ORDER DISMISSING PROHIBITED
)	PRACTICE COMPLAINT
and)	
)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	
)	
Respondent.)	

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

On October 1, 1997, Complainant LEWIS W. POE (POE) filed a prohibited practice complaint against the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union) with the Hawaii Labor Relations Board (Board). POE alleges that the HGEA permits individual grievants to stipulate to extend the time limits in the grievance procedure contrary to the terms of the Unit 03 collective bargaining agreement (contract). Complainant contends therefore that the HGEA failed to follow Article 11 of the contract and thereby violated § 89-13(b)(5), Hawaii Revised Statutes (HRS). In addition, POE contends that the HGEA violated § 89-10(a), HRS, by declaring the validity of a Memorandum of Agreement (MOA) which was not ratified by the employees concerned. Thus, POE contends that the Union also violated § 89-13(b)(4), HRS.

The Board scheduled a hearing on the merits of the instant complaint. However, at the prehearing conference held on

November 13, 1995, the parties agreed to take the hearing off of the calendar pending the Board's decision in related cases, Case Nos. DR-03-55 and DR-03-56.

In those related cases before the Board, POE contended that the grievance procedure provisions of the Unit 03 contract violated the rights of individual employees to grieve without intervention of the Union. In Case No. DR-03-55, POE contended that the contract required the employer and the Union to meet at Step 2 and further that time limits at step 3 could only be extended by mutual consent of the Union and the employer. In Case No. DR-03-56, POE contended that the contract provided that a Step 1 meeting was to be held between the grievant, the union, and the employer to extend the applicable time limits. The Board consolidated the petitions for disposition. During the pendency of the matter, the HGEA and the public employers negotiated changes to the grievance procedures to address the concerns raised by POE and entered into a MOA which clarified that an employee grieving along may agree to extend the time limits and removed language mandating that the employee and a union representative meet with the division head at Step 1. The amendments also clarified that the grievance meeting would be held between the parties to the grievance and that the employer would respond to the employee and the union.

In Decision No. 371, dated January 4, 1996, Lewis W. Poe, 5 HLRB 546 (1996),¹ the Board found that during the pendency of the

¹Upon POE's appeal, Decision No. 371 was affirmed by the First Circuit Court in Civil No. 96-0481-02, judgment entered on March 13, 1996 and thereafter by the Supreme Court in S.C. No. 20615, judgment entered on July 22, 1998.

declaratory ruling petitions, the HGEA negotiated changes to the grievance procedure in the contract. The Board further found that the MOA addressed and resolved the issues raised in POE's petitions. The Board further concluded that the MOA did not have to be ratified and that the MOA was valid. The Board stated:

The Board recognizes some merit in POE's position in that a memorandum of agreement becomes part of a collective bargaining agreement and it could be argued that an agreement could be drastically altered to affect employee rights and benefits without employee participation in the decision-making process envisioned by Section 89-10(a), HRS. However, the Board notes that Section 89-10 requires "collective bargaining agreements" to be ratified and does not specifically mention amendments to such agreements. In the absence of a clear statutory mandate requiring ratification, the Board concludes that reasonableness and sound labor relations policy favors a finding that a memorandum of agreement of the nature involved here need not be ratified. A contrary finding would mean that every memorandum of agreement modifying an existing agreement would require ratification. The Board recognizes that labor-management relations is a dynamic process and that during the term of an agreement clarifications or corrections may require the parties to negotiate and reach agreement on certain terms and conditions of employment. Requiring employee ratification of all memorandums of agreement would hinder and delay resolution of potential disputes. Additionally, the costs of contract administration would be unnecessarily increased as meetings or mail ballots would be needed to obtain ratification of even minor changes.

The amendments involved in the instant petitions are basically clarifications of the grievance policy and employee rights are not adversely affected. Indeed, the amendments are intended to ensure that the right of employees to grieve alone is protected. This holding of the Board is limited to the memorandum of agreement in this case and should not be construed as a ruling affecting

all amendments to collective bargaining agreements.

Id., at p. 553.

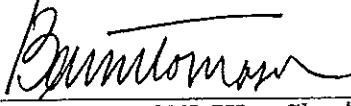
The Board therefore dismissed POE's petitions for declaratory ruling because the question presented did not involve existing facts which could reasonably be expected to exist in the future. The Board finds that Decision No. 371 is dispositive of the issues in this case. The Board there held that the instant MOA need not be ratified in order to be valid and further that POE was not prejudiced by amendments to the contract contained in the MOA. The Board therefore found that POE lacked standing to maintain the action.

In addition, in Case No. CE-03-270, Lewis W. Poe, POE alleged that the employer violated Article 11 of the Unit 03 contract by agreeing to extend the time limits in the grievance procedure. Further, POE contended that the employer violated § 89-10(a), HRS, by recognizing an MOA which had not been ratified. The Board in that case dismissed the complaint for lack of a controversy and lack of standing. Order No. 1472, Order Granting Respondent's Motion to Dismiss Prohibited Practice Complaint, dated May 29, 1997.


Hence, based upon the Board's previous rulings in similar cases which are dispositive of the issues here, the Board hereby dismisses the instant prohibited practice complaint.

DATED: Honolulu, Hawaii, June 1, 2000.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson

LEWIS W. POE and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,
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RUSSELL T. HIGA, Board Member

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