

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CU-03-163
)	
LEWIS W. POE,)	ORDER NO. 1890
)	
Complainant,)	ORDER DENYING RESPONDENT
)	HGEA'S MOTION TO DISMISS;
and)	NOTICE OF PREHEARING CON-
)	FERENCE AND HEARING ON PRO-
HAWAII GOVERNMENT EMPLOYEES)	HIBITED PRACTICE COMPLAINT
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	
)	
Respondent.)	
)	

ORDER DENYING RESPONDENT HGEA'S MOTION
TO DISMISS; NOTICE OF PREHEARING CONFERENCE
AND HEARING ON PROHIBITED PRACTICE COMPLAINT

On March 23, 2000, 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 1997-99 Unit 03 collective bargaining agreement was not ratified and on May 3, 1999, the HGEA falsely represented to the Employer that the Unit 03 employees had ratified the collective bargaining agreement which included Article 45, Alternative Work Schedules. POE contends that the HGEA failed to comply with § 89-10, Hawaii Revised Statutes (HRS), thereby violating § 89-13(b)(4), HRS.

On April 14, 2000, the HGEA filed a motion to dismiss the instant complaint because it is barred by the applicable statute of limitations and the doctrine of res judicata.

On April 20, 2000, Complainant filed an answering affidavit with the Board.

On May 8, 2000, the Board conducted a hearing on the motion to dismiss. All parties had full opportunity to present evidence and argument to the Board.

The HGEA contends that the complaint is time-barred because POE complains of actions taken by the HGEA which occurred more than 90 days prior to the filing of the instant complaint. In addition, POE contends that the instant Memorandum of Understanding was adopted in violation of Chapter 89, HRS, and the Board previously addressed the ratification requirements of Memorandums of Agreement in Decision No. 371, Lewis W. Poe, V HLRB 546 (1996) and Decision No. 387, Lewis W. Poe, V HLRB 712 (1997). The HGEA contends that POE is therefore collaterally estopped from relitigating the matter of whether a memorandum of understanding which amends a collective bargaining agreement must be ratified under the requirements set forth in § 89-10, HRS.

POE states in his answering affidavit that he received a copy of the 1997-99 contract on January 27, 2000 and a copy of the Unit 03 Memorandum of Agreement which was apparently executed on May 3, 1999 on March 16, 2000, respectively. Thus, POE contends that his complaint is timely since he filed the instant complaint within 90 days of discovering the HGEA's alleged violation of § 89-10, HRS. POE further contends that he is not collaterally estopped from bringing the instant complaint because the Board's Decision No. 371 was limited to the Memorandum of Agreement specifically referenced in that case.

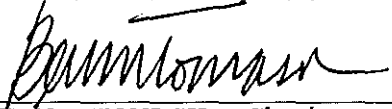
Based on a review of the record and considering the foregoing arguments, the Board agrees with POE that his complaint is timely because he filed the complaint within 90 days of first learning of alleged violation of Chapter 89, HRS. POE states that he first learned about Article 45 on January 27, 2000. There are no facts in the record to dispute this. Further, POE correctly cites Decision No. 371 where the Board specifically limited its holding to the Memorandum of Agreement presented in that case. Accordingly, the Board hereby denies the HGEA's motion to dismiss the complaint.

YOU ARE HEREBY NOTIFIED that the Board will conduct a prehearing conference on the instant complaint on July 12, 2000, at 9:00 a.m. in the Board's hearings room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

YOU ARE ALSO NOTIFIED that the Board will conduct a hearing in this matter on July 26, 2000 at 9:00 a.m. in the Board's hearings room. Appropriate provisions of the notice issued on April 11, 2000 remain applicable.

DATED: Honolulu, Hawaii, June 27, 2000.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

LEWIS W. POE and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,
LOCAL 152, AFL-CIO
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