

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-03-77
)	
LEWIS W. POE,)	ORDER NO. 1895
)	
Petitioner.)	ORDER DENYING PETITIONER'S
)	MOTION FOR RECONSIDERATION
)	OF DISMISSAL OF PETITION
)	FOR DECLARATORY RULING
)	

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION
OF DISMISSAL OF PETITION FOR DECLARATORY RULING

On August 18, 1999, Petitioner LEWIS W. POE (POE) filed a Motion for Reconsideration of Dismissal of Petition for Declaratory Ruling with the Hawaii Labor Relations Board (Board). POE filed the motion on the grounds that the Board erroneously assumed, in a light most unfavorable to POE that he seeks an order from the Board finding violations of the cited statutes. POE contends that he seeks clarification of § 89-9(a), Hawaii Revised Statutes (HRS), regarding representation and § 89-1, HRS, regarding public policy.

In an affidavit attached to the motion, POE states that he sincerely believes that the Board wishes or deliberately seeks to interpret POE's August 4, 1999 petition in a light most unfavorable to POE in order to dismiss it because he has filed numerous cases with the Board. POE contends that he did not allege any violation of Chapter 89, HRS, by either the Employer or the HGEA and that he filed a declaratory ruling petition because he did not know the scope and meaning of the representation provision.

After reviewing the motion and the record herein, the Board maintains that a fair reading of the instant petition indicates that POE seeks an order implicating the HGEA in the commission of statutory violations of Chapter 89, HRS. The petition provides with respect to POE's contentions, in part:

The HGEA, in its role as exclusive representative, does not have the automatic right to represent a BU 03 employee in a particular office, program, or work unit without his/her consent or approval (with respect to "salary overpayments", etc.). Such an automatic right would undermine the particular employee's inherent rights to due process, etc.

In the 1998 MOA, the HGEA ("Union"), in its capacity as exclusive representative, has "slipped in" and usurped the employee's interests without his/her consent. This is contrary to the statutory language of HRS, § 89-8(a), which requires that the exclusive representative "shall be responsible for representing the interests of all such employees without discrimination..." The Union has no statutory right to substitute itself in the place of a particular employee WITHOUT HIS/HER CONSENT OR APPROVAL. Hence, portions of said 1998 MOA which usurp an employee's interests and/or preempt an employee's interests (without consent) are invalid. Also, the 1998 MOA was not ratified by the membership.

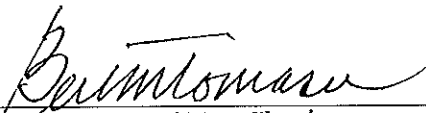
Finally, Poe has been overpaid by the Employer, and the Union has absolutely no right to mess into or intervene in Poe's affairs relative to said overpayment WITHOUT POE'S CONSENT OR APPROVAL. Poe has a right to due process without the intervention of the HGEA.

The Board maintains that POE's petition clearly seeks an order implicating the HGEA in a violation of statutory provision or invalidating portions of the negotiated MOA. In its Order No. 1748, dated August 16, 1999, the Board found that POE's petition was an inappropriate vehicle to allege violations of

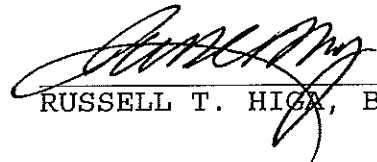
Chapter 89, HRS, and that a union has a right to defend any such charges. The Board thereupon dismissed POE's petition. POE's instant motion does not raise any new arguments but merely contends that the Board was wrong in its initial decision. Accordingly, the Board therefore, denies POE's motion for reconsideration.

DATED: Honolulu, Hawaii, June 28, 2000.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

Copies sent to:

Lewis W. Poe
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