

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. CE-03-379
)	
LEWIS W. POE,)	ORDER NO. 1896
)	
Complainant,)	ORDER DENYING COMPLAINANT'S
)	MOTION FOR RECONSIDERATION
and)	AND CLARIFICATION OF HLRB
)	ORDER NO. 1882
JAMES H. TAKUSHI, Director,)	
Department of Human Resources)	
Development, State of Hawaii,)	
)	
Respondent.)	
_____)	

ORDER DENYING COMPLAINANT'S MOTION FOR
RECONSIDERATION AND CLARIFICATION OF HLRB ORDER NO. 1882

On June 23, 2000, Complainant LEWIS W. POE (POE) filed a motion for reconsideration and clarification of HLRB Order No. 1882, dated June 14, 2000 with the Hawaii Labor Relations Board (Board). POE contends that the Board's conclusions of law are erroneous and the presentation of facts are contrary to the facts of record.

After considering the points raised in POE's supporting memorandum, the Board hereby denies POE's motion for reconsideration and clarification. POE contends that he has standing to file a prohibited practice complaint against his employer to correct grievances flowing from violations of the contract. While POE is an employee within the meaning of § 89-2, HRS, and is entitled to file prohibited practice complaints against his public employer, under the facts of this case, POE contends that the Employer violated the contract by overpaying him \$2.20 in

night differential for four hours at \$.55 per hour. The Board maintains that under the facts of the instant case, POE has not suffered any injury by the Employer's interpretation of the applicable contract.

POE disagrees with the Board's interpretation of the requirement to exhaust his contractual remedies and further contends that the Employer has to establish by affirmative proof that POE has not exhausted his contractual remedies. In the instant case, the Board found that there was no evidence that POE requested the union to arbitrate his grievance or that the union refused to arbitrate his grievance. The Board also found that POE had not filed a complaint against the union for refusing to arbitrate the grievance. POE does not dispute the underlying fact that he has not asked the union to represent him, that he has not been refused by the union, or that he has not filed a breach of duty case against the union. The Board believes that it is unreasonable for POE to assume that the Board is not aware that he failed to file a complaint against the Union. This fact is clear from the face of the complaint. The Board finds POE's claims to be without merit.

The Board also disagrees with POE's contention that it has altered the terms of the contract. Again, the Board finds that POE disagrees with the Board's interpretation or construction of the contractual provision in light of the applicable law.

With respect to the facts which POE contends are not reasonably clear and are false or immaterial, the Board maintains that its findings are based upon the record in this case. The record supports a finding that POE earned night differential at

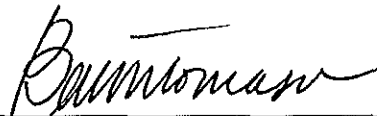
time-and-a-half for working between 6:00 p.m. and 6:00 a.m. In addition, the record indicates that Director Kazu Hayashida responded to POE's Step 2 grievance. The Board admits that its finding that POE was properly "paid" in accordance with the contract provisions may have been more clear if the Board stated that POE was properly "compensated" pursuant to the contract provisions. The Board however, does not believe that such clarification would change its analysis of the legal issues in the case, i.e., the Board lacks jurisdiction over this case. The Board maintains that it can properly find that there is no evidence in the record that POE requested his union to take his grievance to arbitration or that the union refused to arbitrate the grievance.

POE also contends that the Employer cannot be trusted to comply with the collective bargaining agreement and that its representative allegedly made false statements to the court. The Board has no basis to find that the Employer is making false representations to the Board or the courts. Accordingly, the Board finds POE's contentions in this regard to be without merit.

POE also contends that the Board's dismissal of his complaint on the basis of the exhaustion of contractual remedies is erroneous. The Board reaffirms its analysis of the exhaustion of contractual remedies in Order No. 1882 and the Board maintains that its order is not clearly erroneous.

DATED: Honolulu, Hawaii, June 30, 2000 .

HAWAII LABOR RELATIONS BOARD



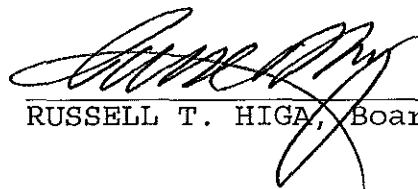
BERT M. TOMASU, Chairperson

LEWIS W. POE and JAMES H. TAKUSHI

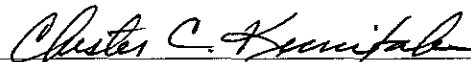
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RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

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