

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CU-03-163
	)	
LEWIS W. POE,	)	ORDER NO. 1905
	)	
Complainant,	)	ORDER DISMISSING PROHIBITED
	)	PRACTICE COMPLAINT
and	)	
	)	
HAWAII GOVERNMENT EMPLOYEES	)	
ASSOCIATION, AFSCME, LOCAL 152,	)	
AFL-CIO,	)	
	)	
Respondent.	)	
	)	

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

1. On July 26, 2000, Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA), by and through its counsel, moved to dismiss the instant prohibited practice complaint at the hearing scheduled before the Hawaii Labor Relations Board (Board) based on Complainant LEWIS W. POE's (POE) deliberate failure to appear and refusal to proceed.

2. Previously at the prehearing conference held on July 24, 2000, POE represented that he would be his only witness and the HGEA indicated that it would present one witness. POE then stipulated to reschedule the hearing in this matter from 9:00 a.m. to 1:30 p.m. on July 26, 2000 to accommodate the HGEA's witness who was unable to appear at the scheduled hearing time. Thereafter, POE objected to the manner in which the Board intended to proceed to conduct a hearing on the merits of his complaint, including consideration of any argument which the HGEA could raise that POE lacked standing to maintain the instant action. For purposes of

efficiency and to avoid any further delay, the Board rejected POE's request to resolve the issue of standing by separate briefing and hearing, prior to proceeding to the merits of his complaint.

3. On July 25, 2000, POE filed a statement of objections and informed the Board and HGEA that he "will not be a willing participant in nor will he partake in the hearing which is scheduled for Wednesday, July 26, 2000."

4. Also on July 25, 2000, POE was notified by telephone by the Board's Executive Officer that the Board would proceed to conduct a hearing on July 26, 2000 as scheduled, and encouraged him to appear and present his case.


5. A hearing was held on July 26, 2000 at 1:30 p.m., at which time the Board waited until 1:45 p.m. for POE to appear.

6. The burden of proof, including the burden of producing evidence and the burden of persuasion, is upon POE as the party initiating this proceeding before the Board. Hawaii Revised Statutes (HRS) § 91-10(5).

7. Having failed to appear for the hearing on the merits and to present his case in chief pursuant to the Board's notice, the Board concludes that POE failed to carry his burden of proof and the burden of persuasion and hereby dismisses the instant complaint.

DATED: Honolulu, Hawaii, August 2, 2000.

HAWAII LABOR RELATIONS BOARD

  
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BRIAN K. NAKAMURA, Chairperson

LEWIS W. POE and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,  
LOCAL 152, AFL-CIO  
CASE NO. CU-03-163  
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CHESTER C. KUNITAKE, Board Member

  
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KATHLEEN RACUYA-MARKRICH, Board Member

Copies sent to:

Lewis W. Poe  
Charles K.Y. Khim, Esq.  
Joyce Najita, IRC