

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. DR-03-67
LEWIS W. POE,	)	ORDER NO. 1910
	)	
Petitioner,	)	FINAL ORDER DENYING PETI-
	)	TIONER'S REQUEST FOR AN
and	)	IMMEDIATE HEARING, PETI-
	)	TIONER'S APPLICATION FOR
HAWAII GOVERNMENT EMPLOYEES	)	PERMISSION TO PROCEED WITH
ASSOCIATION, AFSCME, LOCAL 152,	)	DISCOVERY UNDER HRCP 33,
AFL-CIO,	)	"INTERROGATORIES TO PAR-
	)	TIES," AND PETITIONER'S
Intervenor.	)	MOTION FOR ORDER REQUIRING
	)	CLARIFICATION OF INTER-
	)	VENOR'S STATEMENT; AND
	)	FINDINGS OF FACT AND CON-
	)	CLUSIONS OF LAW AND FINAL
	)	ORDER DENYING PETITION FOR
	)	DECLARATORY RULING

FINAL ORDER DENYING PETITIONER'S REQUEST FOR AN IMMEDIATE HEARING, PETITIONER'S APPLICATION FOR PERMISSION TO PROCEED WITH DISCOVERY UNDER HRCP 33, "INTERROGATORIES TO PARTIES," AND PETITIONER'S MOTION FOR ORDER REQUIRING CLARIFICATION OF INTERVENOR'S STATEMENT; AND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL ORDER DENYING PETITION FOR DECLARATORY RULING

PROCEDURAL STATEMENT OF THE CASE

1. On August 14, 1997, Petitioner LEWIS W. POE (POE) filed a Petition for Declaratory Ruling in the above-captioned matter under Hawaii Administrative Rules (HAR) § 12-42-9.

2. On August 28, 1997, POE filed a Clarification Petition in reply to an Order Requiring Clarification of Petition issued August 20, 1997 by the Hawaii Labor Relations Board (HLRB or Board) because after having carefully reviewed POE's petition "the Board is unable to discern the exact issue presented for resolution."

3. POE's clarified petition asks for a declaratory ruling that Hawaii Revised Statutes (HRS) § 89-10 and HAR § 12-42-128, applies to a Memorandum of Agreement (MOA) executed February 14, 1997 between the Public Employers of the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui and the County of Kauai and the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA).

4. On September 3, 1997, the HLRB issued a Notice of Receipt of Petition for Declaratory Ruling; Notice of Deadline for Filing of Petitions for Intervention.

5. On September 5, 1997, the HGEA filed a Petition for Intervention, granted by order of the HLRB on September 8, 1998.

6. On September 30, 1998, the HGEA filed a Memorandum in Response to Petition for Declaratory Order stating that:

In actuality, the MOA and the resultant Article 55 were both the product of an interest arbitration that was conducted pursuant to HRS, § 89-11, with the language of said MOA and resultant Article 55 being language that was crafted by the arbitration panel.

The HGEA did not submit affidavits in support of the memorandum.

7. On October 14, 1998, POE filed a Motion for Order Requiring Clarification of Intervenor's Statement, asking for clarification of HGEA's statement of fact quoted in paragraph 6, hereinabove.

8. On October 21, 1998, the HGEA filed a Memorandum in Opposition to Petitioner's Motion for Order Requiring Clarification of Intervenor's Statement, stating that HLRB's rules of practice and procedure neither require, nor allow a party to move for

clarification of a legal memorandum except HAR § 12-42-45(b) relating to prohibited practices complaints.

9. On October 23, 1998, POE filed a Reply to HGEA's Memorandum in Opposition to POE's Motion for Order Requiring Clarification of Intervenor's Statement, stating that he is asking for a clarification of a "factual representation" for purposes of assisting "in the development of a sound and complete record herein" and relying on HLRB's rules of practice and procedure under HAR § 12-42-8, relating to hearings before the Board.

10. On October 23, 1998, POE filed an Application for Permission to Proceed with Discovery Under Hawaii Rules of Civil Procedure 33, "Interrogatories to Parties" and Supporting Memorandum for permission to serve not more than 60 written interrogatories to HGEA.

11. On October 30, 1998, the HGEA opposed POE's request for discovery stating "there is no provision in the above entitled Board's rules of practice and procedure that allow Petitioner to propound written interrogatories upon an opposing party."

12. On November 2, 1998, POE replied to HGEA's Memorandum in Opposition to Petitioner's Application for Permission to Proceed with Discovery Under HRCP 33, "Interrogatories to Parties," stating that HAR § 12-42-8(g)(6), entitled "Discovery, depositions, and interrogatories" is not limited to "depositional Discovery" but allows for answering interrogatories submitted to a party to be answered under oath.

13. On December 9, 1998, POE filed a Request for an Immediate Hearing Pursuant to HAR § 12-42-9(h), to be held on or

about January 6, 1999, to give POE sufficient time to subpoena witnesses nearly 16 months after filing the original Petition for Declaratory Ruling and Clarification of Petition, stating that the record before HLRB needs to be made complete and supplemented with direct, oral testimony from witnesses, such as the Executive Director of the HGEA and/or other signatories to the February 14, 1997 MOA.

14. As of June 30, 2000, HLRB had taken no action on POE's Request for an Immediate Hearing, on POE's Application for Permission to Proceed with Discovery Under HRCP 33, "Interrogatories to Parties," and on POE's Motion for Order Requiring Clarification of Intervenor's Statement.

15. On July 26, 2000, the HLRB issued a Proposed Order Denying Petitioner's Request for an Immediate Hearing, Petitioner's Application for Permission to Proceed with Discovery under HRCP 33, "Interrogatories to Parties," and Petitioner's Motion for Order Requiring Clarification of Intervenor's Statement; and Proposed Findings of Fact and Conclusions of Law and Order Denying Petition for Declaratory Ruling (Proposed Order).

16. On August 11, 2000, POE filed a Statement of Objection to Improper Procedure under HRS, §91-11, contending, inter alia, that the Board improperly used the provisions of HRS § 91-11 in issuing the Proposed Order and further declined to file objections to the Board's Proposed Order. POE also objected to the Board's list of issues raised in the instant petition.

ISSUES:

1. Whether the MOA constitutes a collective bargaining agreement within the meaning of HRS § 89-10(a) subject to ratification by the employees concerned?
2. Does HAR § 12-42-128 apply to the MOA thereby requiring the public employer to file a copy of the agreement with the Board within 30 days after execution and issuance?

Pursuant to HRS § 91-11, and after full consideration of the whole record, the Board now makes these findings of fact, conclusions of law, and order as follows:

FINDINGS OF FACT

1. POE is an employee of the State of Hawaii and member of Bargaining Unit 03 and the HGEA.
2. The HGEA is the exclusive representative of the employees included in Unit 03 and is a party to the MOA and Unit 03 Collective Bargaining Agreement (CBA).
3. The MOA "constitutes the basis of settlement on certain reopened articles of the Unit 03 collective bargaining agreement in effect from July 1, 1993, through June 30, 1997" modifying Article 18 - Uniforms and Equipment (C, Weapons Maintenance Allowance); Article 25 - Meals; Article 30 - Night Differential; Article 51 Salaries; and, adding a new article entitled "Alternative Work Schedules," referred to by POE as "Article X" and by HGEA as "Article 55."
4. On June 4, 1999, a copy of the MOA including Articles 18, 25, 30, 51 and the "new" Alternative Work Schedules, were filed with HLRB.

5. A copy of the Unit 03, CBA, executed on April 29, 1994 and in effect from July 1, 1993 to June 30, 1997, is on file with HLRB (1993-1997 Unit 03 CBA).

6. Article 54(B) - Duration of the 1993-1997 Unit 03 CBA, provides for reopening of the collective bargaining agreement and states that: "In any event the parties reach agreement on any reopened article, such amended article shall be effective no earlier than July 1, 1995, and shall remain in effect to and including June 30, 1997."

7. On December 16, 1999, a copy of the Unit 03 CBA, in effect from July 1, 1997 to June 30, 1999 (1997-1999 Unit 03 CBA), was filed with HLRB.

8. Based on a review of the MOA, 1993-1997 Unit 03 CBA, and 1997-1999 Unit 03 CBA, the Board finds the MOA modified and superceded Articles 18, 25, 30, and 51 of the 1993-1997 Unit 03 CBA and added a new article for Alternative Work Schedules.

9. Based on a comparison of the new Alternative Work Schedules in the MOA and Article 45 - Alternative Work Schedules in the 1997-1999 Unit 03 CBA, the Board finds the language is identical to Article X or Article 55 submitted by POE, which is the subject of the instant petition for declaratory ruling.

10. The Board finds that the MOA and the 1993-1997 Unit 03 CBA have expired and are no longer in effect and have been superceded by the 1997-1999 Unit 03 CBA.

#### CONCLUSIONS OF LAW

1. This Board is being asked to find that HRS § 89-10(a) applies to the February 14, 1997 MOA modifying Articles 18, 25, 34,

and 51 and adding a new article 55 for Alternative Work Schedules, thereby requiring a ratification of the MOA. For reasons of mootness, this Board cannot so find.

2. Unfortunately, POE's petition for declaratory ruling has been pending with the Board for nearly three years. Over the last three years, the MOA and 1993-1997 Unit 03 CBA have expired, are no longer in effect, and have been superceded by the 1997-1999 Unit 03 CBA.

3. Based on a review of the MOA, Articles 18, 25, 34 and 51, new article 55 for Alternative Work Schedules, the 1993-1997 Unit 03 CBA and 1997-1999 Unit 03 CBA, it is clear that the amendments made to the MOA have been incorporated, adopted, and made a part of the 1997-1999 Unit 03 CBA.

4. There is no question that "§ 89-10(a), HRS requires 'collective bargaining agreements' to be ratified and does not specifically mention amendments to such agreements." Lewis W. Poe, 5 HLRB 546 (1996), at 553.

5. Accordingly, the 1997-1999 Unit 03 CBA is subject to ratification of the employees as required under HRS § 89-10(a). Whether said ratification occurred is not at issue.

6. This Petition for Declaratory Ruling is moot because the MOA POE seeks to ratify is no longer in effect.

7. Moreover, requiring ratification of the MOA would at this stage exceed the bounds of reason. (See e.g., Ariyoshi v. HPERB, 5 Haw. App. 533 (1985), where the Intermediate Court of Appeals found abuse of discretion by the predecessor board to HLRB,

when it ordered re-ratification of an agreement that would have expired within four months of the Board's order.)

8. The fact the MOA was filed on June 4, 1999 with the Board, also renders moot the issue whether HAR § 12-42-128 applies to the MOA thereby requiring the public employer to file a copy of the agreement.

9. A full and complete review of the record before this Board, the MOA and collective bargaining agreements on file, makes it clear that granting POE his petition for declaratory ruling and ordering a ratification of the MOA at this point in time defies common sense.

ORDER

For the reasons stated hereinabove and for good cause, the Board hereby orders:

1. Petitioner's request for an immediate hearing be denied;

2. Petitioner's application for permission to proceed with discovery under HRCP 33, Interrogatories to Parties, be denied;

3. Petitioner's motion for an order requiring clarification of Intervenor's statement be denied; and

4. The Petition for Declaratory Ruling in Case No. DR-03-67 be denied.

DATED: Honolulu, Hawaii, August 30, 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  
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CHESTER C. KUNITAKE, Board Member

  
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KATHLEEN RACUYA-MARKRICH, Board Member

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