

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. DR-03-81
	)	
LEWIS W. POE,	)	ORDER NO. 1913
	)	
Petitioner.	)	ORDER DENYING PETITION FOR
	)	DECLARATORY ORDER

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ORDER DENYING PETITION FOR DECLARATORY ORDER

1. On August 15, 2000, LEWIS W. POE (POE) filed a petition for declaratory ruling with the Hawaii Labor Relations Board (Board).

2. POE alleges that he is an employee in Unit 03 and the Complainant in Case Nos. CU-03-148 and CE-03-377.

3. POE alleges that he previously attempted to file his Application for Issuance of Subpoena (Application) addressed to Royden Kotake with the Board in Case No. CU-03-148 without attaching a certificate of service and on August 14, 2000, an agent of the Board informed POE that the application was rejected by the Board.

4. POE contends that this petition is "urgently" submitted since a hearing in CU-03-148 is scheduled for August 29, 2000.<sup>1</sup>

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<sup>1</sup>At the prehearing conference held in Case No. CU-03-148 on August 21, 2000, the hearing originally scheduled on August 29, 2000 was postponed and the hearing on motion to dismiss and/or for summary judgment which the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO intends to file was scheduled on October 5, 2000 at 9:30 a.m.

5. In his petition, POE contends that the Board has "routinely" issued subpoenas without requiring the service of the Application upon the adverse party. POE contends that there is no requirement to serve the written application, only to serve the actual subpoena. POE further states that he does not believe that he should give a pre-warning to a person that a subpoena may be served on him or her. In addition, POE may decide not to make service of the actual subpoena.

6. POE designated Hawaii Administrative Rules (HAR) § 12-42-8(g)(7)<sup>2</sup> regarding subpoenas and § 12-42-2<sup>3</sup> regarding construction of rules as the subject of the instant petition.

7. Contrary to POE's contention that the Board routinely issued subpoenas in the past without requiring a certificate of service, the Board in practice has consistently required a certificate of service on Applications for the past three years.

8. HAR § 12-42-8(a) which refers to the filing of documents in proceedings before the Board states:

(6) Unless otherwise specifically provided by a particular rule, regulation, or order of the board, the original and five copies of the papers, with certificate of service on all parties, shall be filed.

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<sup>2</sup>Section 12-12-42-8(g)(7)(B) states:

Any party may file a written application for subpoenas with the board before the hearing.

<sup>3</sup>Section 12-42-2 states:

This chapter shall be liberally construed to effectuate the purpose of chapter 89, HRS, and to secure the just and speedy determination of every proceeding.

9. HAR § 12-42-8(g)(7) does not specifically provide that the written Application need not be accompanied by a certificate of service or otherwise except the Application from the operation of the certificate of service requirement of § 12-42-8(a)(6).

10. In addition, under HAR § 12-42-8(g)(7)(C)(i) a motion to revoke the subpoena may be filed with the Board no later than five days from the service of the subpoena. In the interests of justice and fairness, if the parties are not served with the Application, they would not be on notice that the Board has issued subpoenas in the case and the time for filing a motion to revoke will start to run.

11. Thus, the Board, in this case properly rejected POE's Application because it did not conform to the HAR.<sup>4</sup>

12. HAR § 12-42-9(f) provides that:

The board may, for good cause, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the board may so refuse where:

(1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can be reasonably be expected to exist in the near future.

(2) The petitioner's interest is not of a type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.

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<sup>4</sup>While POE alleged that both Case Nos. CU-03-148 and CE-03-377 are impacted by his petition, the Board notes that POE only alleges that he attempted to file his Application in Case No. CU-03-148. That case was previously scheduled for a hearing on the merits on August 29, 2000 and is distinct from the posture of Case No. CE-03-377 which was scheduled for a hearing on exceptions to the Board's proposed order on August 25, 2000. The evidentiary record in Case No. CE-03-377 is closed and not subject to reopening for the receipt of further testimony. Therefore, an Application in that case would be inappropriate.

(3) The issuance of a declaratory order may adversely affect the interests of the board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.


(4) The matter is not within the jurisdiction of the board.


13. In the Board's view, POE's petition and his legal arguments lack substantial merit and in view of the Board's clear authority set forth in its administrative rules to require a certificate of service on an Application, the Board hereby declines to issue a declaratory order in this case. Moreover, POE's concerns on the Board's procedures arise in the context of pending cases before the Board. These matters should be raised and addressed in the pending cases and not in the context of an ancillary declaratory ruling petition.

14. Accordingly, the Board hereby denies POE's petition for a declaratory order in this case.

DATED: Honolulu, Hawaii, August 31, 2000.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chairperson

  
CHESTER C. KUNITAKE, Board Member

  
KATHLEEN RACUYA-MARKRICH, Board Member

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