

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of
LEWIS W. POE,

Petitioner.

CASE NO. DR-03-81

ORDER NO. 1948

ORDER DENYING MOTION FOR
RECONSIDERATION OF ORDER
NO. 1913

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER NO. 1913

On September 11, 2000, Petitioner LEWIS W. POE (POE) filed a motion for reconsideration of Order No. 1913 with the Hawaii Labor Relations Board (Board). Petitioner moved for reconsideration of the Order on the grounds that the Board lacked good cause to deny his Petition for Declaratory Ruling in violation of Hawaii Administrative Rules (HAR) § 12-42-9(f)¹ and/or Hawaii Revised Statutes (HRS) § 91-8.² After reviewing

¹HAR § 12-42-9(f) provides:

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 reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.
- (3) The issuance of the 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.

²HRS § 91-8 refers to declaratory rulings by agencies and provides:

Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Others disposing of petitions in such cases shall have the same status as other agency orders.

the motion and the record and files in this case, the Board makes the following findings of fact and conclusion of law and hereby denies Petitioner's Motion for Reconsideration.

FINDINGS OF FACT

1. POE is a public employee in Bargaining Unit 03 and a Complainant in Case Nos. CU-03-148 and CE-03-377. POE filed a Petition for Declaratory Ruling with the Board upon the rejection of his Application for Issuance of Subpoena (Application) in Case No. CU-03-148 which is governed by HAR Chapter 42.
2. In Order No. 1913, dated August 31, 2000, the Board denied the instant petition for declaratory ruling, inter alia, because Petitioner's legal arguments lacked substantial merit in view of the Board's rules which require a certificate of service on papers filed with the Board.
3. Petitioner filed the instant motion without a certificate of service. The Board did not reject the instant motion as there are no other parties to this proceeding who require service. By contrast, the Hawaii Government Employees Association is the Respondent in Case No. CU-03-148.
4. Petitioner cites HAR § 12-41-15 as authority for the filing of an Application orally or ex parte. The foregoing rule provides:

A party may make written application for subpoenas requiring the attendance and testimony of witnesses and production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. An application for a subpoena requiring the production of evidence shall not be granted unless the evidence is described with sufficient particularity to enable it to be identified by the producer. An application for a subpoena whether ad testificandum or duces tecum prior to a hearing shall be made to the board. An application during a hearing shall be made orally to the person conducting the hearing. Application for the subpoenas may be made ex parte. Upon application, the board or the person to whom the application is made shall forthwith issue the subpoena.

5. The foregoing rule applies to proceedings arising under HRS Chapter 377³ and is not applicable to Case No. CU-03-148 because it arises under HRS Chapter 89.
6. The Board's Application form which Petitioner selectively cites in his motion provides, "Pursuant to Administrative Rules §§ 12-41-15 and 12-42-8(g)(7),⁴ the undersigned respectfully requests the Hawaii Labor Relations Board to issue the subpoena in the form(s) attached hereto as Exhibit(s) ____."
7. As the Petitioner's Application was governed by the HAR Chapter 42, the appropriate rule is HAR § 12-42-8(g)(7).
8. The Board had good cause to refuse to issue a declaratory ruling on the instant petition. The Board considered Petitioner's remaining arguments and finds them to be without merit.

CONCLUSION OF LAW

Petitioner failed to establish that the Board violated HAR § 12-42-9(f) and/or HRS § 91-8 in rendering Order No. 1913.

³HAR § 12-41-1 refers to the scope and construction of rules and provides:

This chapter is adopted to aid the Hawaii employment relations board (hereinafter called the board) and interested persons in proceedings under the Hawaii employment relations act, chapter 377, Hawaii Revised Statutes, as amended. This chapter shall be construed liberally to effectuate the purposes and provisions of chapter 377, HRS. Proceedings authorized under chapter 377 may be combined.

⁴HAR § 12-42-8(g)(7) refers to subpoenas and provides, in part:

- (A) The board may issue subpoenas to require the attendance of witnesses in this State and the production of books and papers at a hearing held under the provisions of this chapter.
- (B) Any party may file a written application for subpoenas with the board before the hearing.

"This chapter" as used in (A) above refers to HAR Chapter 42, Rules of Practice and Procedure, Hawaii Public Employment Relations Board which governs procedures under HRS Chapter 89.

ORDER

The Board hereby denies the instant motion for reconsideration.

DATED: Honolulu, Hawaii, October 26, 2000.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chairperson


CHESTER C. KUNITAKE, Board Member


KATHLEEN RACUYA-MARKRICH, Board Member

Copies sent to:

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