

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CU-03-153
LEWIS W. POE,	)	ORDER NO. 1951
	)	ORDER DISMISSING PROHIBITED
Complainant,	)	PRACTICE COMPLAINT
	)	
and	)	
	)	
HAWAII GOVERNMENT EMPLOYEES	)	
ASSOCIATION, AFSCME, LOCAL 152,	)	
AFL-CIO,	)	
	)	
Respondent.	)	

---

ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

On January 28, 1999, Complainant LEWIS W. POE (POE) filed this prohibited practice complaint charging violations under Hawaii Revised Statutes (HRS) §§ 89-13(b)(4) and 89-10 by Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) for failing to ratify Article 55 - Alternative Work Schedules in the Unit 03 Collective Bargaining Agreement (Unit 03 CBA) that took effect February 14, 1997 upon the execution of a Memorandum of Agreement (1997 MOA) with the multi-employer group.

On February 5, 1999, Respondent HGEA, by and through its counsel, filed a motion to dismiss the prohibited practice complaint as time-barred by the applicable 90-day statute of limitations set out in HRS § 377-9. HGEA contended the complaint was barred by the applicable statute of limitations and by the doctrine of res judicata. A hearing on HGEA's motion was held before the Hawaii Labor Relations Board (Board) on May 10, 1999.

On September 11, 2000, the Board issued Proposed Findings of Fact, Conclusions of Law and Order Dismissing Prohibited Practice Complaint. Thereafter on September 28, 2000, Complainant filed POE's Taking of Exceptions. The Board conducted a hearing on Complainant's exceptions on October 18, 2000. After considering the arguments presented, the Board finds Complainant's exceptions to be without merit and hereby makes the following findings of fact, conclusion of law, and order.

## FINDINGS OF FACT

1. On August 14, 1997, prior to filing the instant complaint, Complainant petitioned the Board for a declaratory ruling pursuant to Hawaii Administrative Rules (HAR) § 12-42-9 in Case No. DR-03-67. In that case, Complainant questioned the validity of the 1997 MOA amending the 1993-1997 Unit 03 CBA by including a new Article 55 on Alternative Work Schedules that is at issue here. Complainant contended that the 1997 MOA was a collective bargaining agreement and as such was subject to ratification under HRS § 89-10(a).
2. In the instant complaint, Complainant alleges that HGEA committed a prohibited practice in violation of HRS § 89-13(b)(4) by making Article 55 an "integral" and "valid" part of the Unit 03 CBA "in effect from July 1, 1993 to June 30, 1997 on Feb. 14, 1997 in the absence of ratification by the BU 03 employees concerned" and assuming the provisions of HRS § 89-10(a) did not apply.
3. On August 30, 2000, the Board issued a Final Order in Order No. 1910 denying as moot Complainant's petition in Case No. DR-03-67, because the 1997 MOA and the 1993-1997 Unit 03 CBA, which included Article 55, have expired and are no longer in effect.

## CONCLUSION OF LAW


In light of the Board's ruling in Order No. 1910, the Board finds no live case or controversy for which relief could be granted in this case. The case is therefore subject to dismissal for mootness.

## ORDER

The Board hereby orders the complaint in the above-captioned matter be dismissed.

DATED: Honolulu, Hawaii, November 6, 2000.

HAWAII LABOR RELATIONS BOARD

  
\_\_\_\_\_  
BRIAN K. NAKAMURA, Chair

LEWIS W. POE and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,  
LOCAL 152, AFL-CIO  
CASE NO. CU-03-153  
ORDER NO. 1951  
ORDER DISMISSING PROHIBITED PRACTICE COMPLAINT

  
\_\_\_\_\_  
CHESTER C. KUNITAKE, Member

  
\_\_\_\_\_  
KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

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