

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of  
LEWIS W. POE,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO,

Respondent.

CASE NO. CU-03-186

ORDER NO. 2069

ORDER DENYING COMPLAINANT'S  
MOTION FOR RECONSIDERATION  
OF ORDER NO. 2050

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On January 22, 2002, Complainant LEWIS W. POE (Complainant or POE) filed a motion for reconsideration of Order No. 2050 dated January 7, 2002 dismissing the above-captioned prohibited practice complaint against Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (Respondent, Union, or HGEA).

On January 25, 2002, Respondent HGEA filed its opposition to Complainant's motion on the grounds that the Rules of Practice and Procedure before the Hawaii Labor Relations Board (Board), Hawaii Administrative Rules (HAR) § 12-42-8(g)(3)(C) provides no basis for Complainant's motion. Consequently, HGEA argues that Complainant lacks standing and the Board lacks jurisdiction over the instant motion.

Complainant raises three grounds to support his contention that the Board erred in dismissing the prohibited practice complaint as follows: 1) the Board abused its discretion or acted arbitrarily; 2) the Board erred in concluding that the Union's delay of 19 days before responding was immaterial to a charge brought under Hawaii Revised Statutes (HRS) § 89-13(b)(1), and thus leads to an absurd result; and 3) the Board erred in concluding the complaint was moot because there exists a live controversy and the matter is capable of repetition.

Complainant contends the Board erred in applying the doctrine of mootness to the facts presented to support an alleged violation under HRS § 89-13(b)(1) because a live

controversy still exists as to the timeliness of HGEA's response to POE.<sup>1</sup> We do not agree with Complainant that the Union is under an obligation to respond to his request for information within a set time frame.<sup>2</sup> Consequently, there is no live controversy because

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<sup>1</sup>Complainant's supporting memorandum best articulates his argument as follows:

...The big question is "when" does Poe have such a right [to inspect the collective bargaining documents as requested] ----- 18 or 19 days after Poe's initial request? 65 or 66 days after Poe's initial request? 180 days? 365 days?

The HLRB found that "Complainant is not satisfied that HGEA responded in a timely manner." Again, the "timeliness" issue surfaces as a live controversy, and Poe's Prohibited Practice Complaint cannot be moot, because the delay in responding (in this case, a failure to respond to Poe's August 19th request) is critical in determining whether the HGEA interfered and/or restrained Poe in his exercising a right guaranteed under Chapter 89 (See **HRS § 89-3, Rights of employees**).

<sup>2</sup>In United Public Workers, AFSCME, Local 646, AFL-CIO, 3 HPERB 507 (1984), the Board held that the employer's deliberate refusal to submit certain grievances to arbitration interfered with the respective employees' right to engage in the lawful protected activity of pursuing their grievance thus violating a right implicitly guaranteed by HRS Chapter 89. The Board there recognized that the right to pursue and correct a grievance constituted lawful protected activity under HRS § 89-3. HRS § 89-3 provides:

Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of amounts equivalent to regular dues to an exclusive representative as provided in section 89-4.

In this case, POE sought a ruling from the Board that the Union committed a prohibited practice by interfering with or restraining his protected rights under HRS § 89-3, i.e., his right to file a grievance. However, there is nothing in the foregoing section requiring the Union to immediately produce information upon the employee's demand and/or within a specific time period. Moreover, there was no evidence in the record to support a finding that POE's rights to file a grievance were interfered with or restrained by any alleged failure by the Union to immediately respond/or respond within a specified time to POE's request for information.

HRS §§ 89-13(b)(1) or 89-3 do not impose a duty on the Union to respond to Complainant's request for documents within a set time frame.


While the Board rejected Complainant's assertion that the delay in responding to a request for documents—whether it was 18 or 19 days, or 65 or 66 days after the initial request—constitutes a violation of HRS § 89-13(b)(1) in Order No. 2050, it was not necessary to conclude as such, because based on the record, the complaint was moot. (Footnote 3 of Order No. 2050 addresses the delay issue.)

Similarly, the Board considered whether the failure of the Union to respond to Complainant's request to access certain bargaining documents was capable of repetition. In Finding of Fact No. 9 of Order No. 2050, the Board found that Complainant inspected the documents he asked to inspect, and was satisfied that it met his request. Moreover, the "Union provided an effective remedy to Complainant not only by scheduling an actual date and time to inspect the documents requested, but also by doing so in a timely manner after the instant complaint was filed."

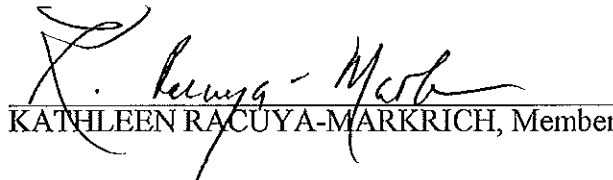
Based on the record, and the Board's reasons as to why no live controversy exists, the Board is not persuaded by POE's arguments to grant his motion for reconsideration. The Board hereby reaffirms the findings of fact, conclusion of law and analysis in Order No. 2050, and denies Complainant's Motion for Reconsideration.

DATED: Honolulu, Hawaii, March 14, 2002.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
CHESTER C. KUNITAKE, Member

  
KATHLEEN RACUYA-MARKRICH, Member

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