

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CU-03-203
LEWIS W. POE,	)	ORDER NO. 2165
Complainant,	)	ORDER DENYING COMPLAINANT'S
and	)	MOTION TO ENFORCE THE ORDER
HAWAII GOVERNMENT EMPLOYEES	)	OF DECISION NO. 438; GRANTING
ASSOCIATION, AFSCME, LOCAL 152,	)	COMPLAINANT'S MOTION TO PENALIZE
AFL-CIO,	)	THE HGEA FOR ITS NONCOMPLIANCE
Respondent.	)	WITH THE 1-25-2003 ORAL
	)	ORDER OF THE BOARD; AND
	)	GRANTING SECOND MOTION FOR
	)	ORDER TO REQUIRE HGEA TO PAY
	)	POE A SUM OF \$6.50 FOR HIS COSTS

ORDER DENYING COMPLAINANT'S MOTION TO ENFORCE THE ORDER OF DECISION NO. 438; GRANTING COMPLAINANT'S MOTION TO PENALIZE THE HGEA FOR ITS NONCOMPLIANCE WITH THE 1-25-2003 ORAL ORDER OF THE BOARD; AND GRANTING SECOND MOTION FOR ORDER TO REQUIRE HGEA TO PAY POE A SUM OF \$6.50 FOR HIS COSTS

On December 13, 2002, Complainant LEWIS W. POE (Complainant or POE), proceeding *pro se*, filed a Motion to Enforce the Order of Decision No. 438 issued October 24, 2002 in the above-captioned matter with the Hawaii Labor Relations Board (Board). POE moved the Board to enforce the posting provisions of Decision No. 438 and require the HGEA to reimburse POE \$6.50 for his costs incurred in uncovering the alleged noncompliance.

On January 15, 2003, the Board conducted a hearing to consider Complainant's motion and oral arguments presented by the parties. Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) did not file an opposition to the motion, but appeared to oppose said motion at the hearing. After hearing argument, the Board ordered the HGEA to file an affidavit within two weeks proving substantial compliance.

On February 6, 2003, POE filed a Motion to Penalize the HGEA for its Noncompliance with the 1-15-2003 Oral Order of the Board, and Second Motion for Order to Require HGEA to Pay Poe a Sum of \$6.50 for His Costs. POE stated in a declaration attached to the motion that he had not seen any proof by affidavit which HGEA was supposed to have filed within the two-week period. POE also stated that he believed he was entitled to \$6.50 in view of the present circumstances.

On February 6, 2003, Sanford Chun, Field Services Officer, submitted a letter confirming the HGEA's efforts to comply with the Board's posting requirements.

Based on the Complainant's motion, the oral arguments and the entire record, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. On October 24, 2002, the Board issued Decision No. 438 (Board's Order) in the above-captioned case sustaining the prohibited practice complaint filed by Complainant and ordering Respondent, as follows:
 1. The HGEA shall cease and desist from failing to provide fair representation to POE in the processing of any future grievances.
 2. The HGEA shall inform Complainant as to the status of his grievances within 30 days from the date of this decision.
 3. The HGEA shall within 30 days of the receipt of this decision, post copies of this decision on its website and in conspicuous places on bulletin boards located in every office statewide where employees of bargaining unit 03 assemble and leave such copies posted for a period of 60 days from the initial date of posting.
 4. The HGEA shall notify the Board within 30 days of the receipt of this decision of the steps taken to comply herewith.
2. On November 25, 2002, the HGEA filed Respondent's Notification to Board of Steps Taken to Comply with Decision No. 438, including two letters dated November 22, 2002 from HGEA Deputy Executive Director Randy Perreira. The first letter to Peter Trask, HGEA's attorney of record, affirms that HGEA posted Decision 438 "on the HGEA website. . . on bulletin boards statewide. . . [and] [r]esponded to complainant's request as to the status of his grievances." The second letter to Complainant, details the status of several grievances and the HGEA's decision not to arbitrate.
3. Complainant declared that on December 12, 2002, he drove to downtown Honolulu and toured three buildings where members of BU 03 work. Complainant states:

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(a) In the first building, Decision No. 438 was posted on the 2nd and 4th Floors. However, on the 4th Floor, POE had to ask the HGEA steward to remove a cover page which was concealing the first page of Decision No. 438 (and also every other page therein.)

(b) In the second building, Decision No. 438 was not posted on the 1st and 3rd Floors, nor was it posted in the employees' "lunch rooms" on said 1st and 3rd Floors. During Poe's checking, Poe was escorted by the Employer's representative ("Steve") so as not to upset the employees who were in their lunch rooms on the 1st and third Floors.

(c) In the third building, Decision No. 438 was not posted in 3 different locations on the 2nd Floor, including an employees' lunch room. In fact, the BU 03 steward (herein called "X"; Poe knows X's name) admitted to Poe that X had not posted Decision No. 438 on the bulletin board. Poe had TO WAIT 15 minutes for X to return from lunch.

(4) In 2 out of 3 buildings visited by Poe on Dec. 12, 2002, copies of Decision No. 438 were not posted on said bulletin boards.

4. POE contends that of the three buildings where he checked the bulletin boards on several floors to determine whether Decision No. 438 was actually posted, he found only one of three buildings in total compliance with the Board's order to post Decision No. 438. Upon questioning by the Board during the January 15, 2003 hearing, Complainant refused to provide information about the exact locations of the buildings he toured.
5. Before the Board, Respondent contended that without knowing exactly which buildings Complainant toured it could not reasonably verify, nor dispute, Complainant's contention that Respondent failed to substantially comply with the Board's posting order. Respondent therefore took the position that as provided in Respondent's Notification to Board of Steps Taken to Comply with Decision No. 438 filed November 25, 2002, Respondent was in substantial compliance.
6. At the motion hearing held January 15, 2002, the Board ordered Respondent to submit an affidavit with information about the postings on Oahu to describe its efforts to substantially comply with the Board's posting order contained in Decision No. 438 by January 29, 2002, even though Complainant refused to

divulge the exact locations of the buildings where he found bulletin boards where Decision No. 438 was not posted.

7. The HGEA failed to file any affidavit in this matter by January 29, 2003.¹ The Board finds that the HGEA's failure to comply with its order to submit an affidavit evidencing its compliance with the Board's order violates its oral order and therefore further finds good cause to support an award to Complainant in the amount of \$6.50.
8. The Board finds that Complainant's failure to find a copy of Decision No. 438 on certain bulletin boards on certain floors of two or three unidentified sites, without more specific information, fails to prove that Respondent is not in substantial compliance with Decision No. 438 in view of Respondent's representation that the copies were posted on bulletin boards statewide and on its website.
9. Based on Respondent's Notification to Board of Steps Taken to Comply with Decision No. 438, the Board finds Respondent has substantially complied with the Board's order to, inter alia, post Decision No. 438 on its website and bulletin boards statewide.

¹On February 7, 2003, Sanford Chun (Chun), HGEA Field Services Officer wrote to the Board regarding Decision No. 438 and provided the following information to confirm efforts to comply with the posting requirements of the Board's order:

1. On or about November 22, 2002, HLRB Decision No. 438 was posted on the HGEA website and, as of this date, remains posted on the HGEA website.
2. On or about November 25, 2002, HLRB Decision No. 438 was mailed via regular first-class delivery to approximately 550 unit 03 stewards statewide along with a memo requesting their assistance to post the decision at their respective worksites immediately for a 60-day period.

The Board does not rely upon the information in Chun's letter as it does not conform to the Board's order at the hearing held on January 15, 2003. In addition, Chun failed to provide proof of service of the letter to Complainant.

CONCLUSIONS OF LAW

1. The Board, in its discretion may petition the circuit court, for an enforcement of its order, pursuant to HRS § 377-9(e) made applicable by HRS § 89-14 and the Board's rules of practice and procedure, Hawaii Administrative Rules (HAR) § 12-42-51, which provide:

If any party fails or neglects to obey an order of the board while the same is in effect the board may petition the circuit judge of the judicial circuit wherein such party resides or usually transacts business for the enforcement of the order and for appropriate temporary relief or restraining order, and shall certify the file in the court the record in the proceedings, including all documents and papers on file in the matter, the pleadings and testimony upon which the order was entered, and the decision and order of the board. Upon such filing the board shall cause notice thereof to be served upon the party by mailing a copy to the party's last known post office address, and thereupon the judge shall have jurisdiction in the premises.

2. On motions to enforce Board orders brought pursuant to HRS § 377-9(e) and HAR §12-42-51, the Board applies the substantial compliance test. See, Order No. 1922 in Case Nos. CE-01-362a, CE-10-362b, Order Denying, Without Prejudice, UPW's Motion to Enforce Board Order and for Assessment of Fees and Costs, September 8, 2000, United Public Workers, AFSCME, Local 646, AFL-CIO; Order No. 1934 in Case Nos. CE-01-410a, CE-10-410b, Order Denying UPW's Motion to Enforce Board Order and for Assessment of Fees and Costs, September 26, 2000, United Public Workers, AFSCME, Local 646, AFL-CIO; and Order No. 1947 in Case No. CE-10-267, Order Granting, in Part, Denying, in Part, UPW's Motion to Enforce Board Decision No. 408, October 25, 2000, United Public Workers, AFSCME, Local 646, AFL-CIO.
3. The Board concludes based on the record, that Respondent has substantially complied with the posting requirements of Decision No. 438.
4. The Board concludes that Respondent violated the Board's order to submit an affidavit describing its efforts to comply with the posting requirements of Decision No. 438. The Board concludes there is good cause to grant POE's motion requesting payment of \$6.50.

ORDER

Based on the foregoing, the Board hereby denies POE's Motion to Enforce the Order of Decision No. 438 and grants POE's Motion to Penalize the HGEA for its Noncompliance with the 1-15-2003 Oral Order of the Board and Second Motion for Order to Require HGEA to Pay Poe a Sum of \$6.50 for His Costs.

DATED: Honolulu, Hawaii, February 12, 2003.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

Copies sent to:

Lewis W. Poe
Sanford Chun, HGEA²
Joyce Najita, IRC

²On February 10, 2003, HGEA's counsel withdrew from representing Respondent in this matter and Chun was replaced as its representative.