NO. 24600

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

LEWIS W. POE, Complainant/Appellant-Appellant

vs.

HAWAIʻI LABOR RELATIONS BOARD,
State of Hawaiʻi, Appellee-Appellee

and

HAWAIʻI GOVERNMENT EMPLOYEES ASSOCIATION,
AFSCME, LOCAL 152, AFL-CIO, Respondent/Appellee-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-3725)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

Complainant/Appellant-Appellant Lewis W. Poe appeals from the judgment entered on September 4, 2001 by the first circuit court[1] (the court), affirming the decision of Appellee-Appellee Hawaiʻi Labor Relations Board (HLRB), which found that the issue of whether Respondent/Appellee-Appellee Hawaiʻi Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA) committed a prohibited practice pursuant to Hawaiʻi Revised Statutes (HRS) § 89-10(a) (1993) for failing to ratify a certain memorandum of agreement and/or article in the collective bargaining agreement was moot.

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[1] The Honorable Eden Elizabeth Hifo presided over this matter.

Poe's January 28, 1999 complaint filed with the HLRB (Case No. CU-03-153) alleged that HGEA committed a prohibited practice (HRS § 89-13(b)(4)[2]) because it failed to ratify (HRS § 89-10(a)[3]) a memorandum of agreement (MOA) effective February 14, 1997 concerning Article 55, Alternate Work Schedules, which in effect was incorporated into the Unit 03 collective bargaining agreement (CBA). The Unit 03 CBA was in effect from July 1, 1993 to June 30, 1997.

On November 6, 2000, HLRB issued Order 1951 dismissing Poe's complaint as moot.

On September 4, 2001, the court entered an order affirming Board Order 1951.

The 1997 MOA and the 1993-1997 CBA expired on June 30, 1997.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, duly considering and analyzing the law relevant to the arguments and issues raised by the parties, and

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[2] HRS § 89-13(b)(4) states that "[i]t shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to[] [r]efuse or fail to comply with any provision of this chapter[.]"

[3] HRS § 89-10(a) states as follows:

> Any collective bargaining agreement reached between the employer and the exclusive representative shall be subject to ratification by the employees concerned. The agreement shall be reduced to writing and executed by both parties. The agreement may contain a grievance procedure and an impasse procedure culminating in final and binding arbitration, and shall be valid and enforceable when entered into in accordance with provisions of this chapter.

(Emphasis added.)

having heard oral argument, we conclude that (1) inasmuch as the 1997 MOA containing Article 55 and the 1993-1997 underlying CBA expired on June 30, 1997,[4] Poe's January 28, 1999 complaint contending that the 1997 MOA was invalid because not ratified by Unit 03 employees was rendered moot, cf. Wong v. Board of Regents of the Univ. of Hawaii, 62 Haw. 391, 394-955, 616 P.2d 201, 204 (1980) ("[T]he duty of [the] court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions.");[5] Ariyoshi v. Hawaii Pub. Employment Relations Bd., 5 Haw. App. 533, 542, 704 P.2d 917, 925 (1985) (ordering a re-ratification election for a collective bargaining agreement which was set to expire in four months exceeded the bounds of reason and, thus, was an abuse of the circuit court's discretion); and (2) the issue raised, i.e., whether memoranda of agreement will be subject to ratification during the effective term of the collective bargaining agreement involved, is not one likely capable of repetition yet evading review.[6] Therefore,

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[4] Poe maintains that the 1993-1997 Unit 03 CBA had been extended to May 2, 1999. However, assuming this to be true, as of May 2, 1999, the matter became moot.

[5] The question of whether a declaratory judgment should be entered is not presented in this case.

[6] We take judicial notice, as HLRB requests, that, effective July 1, 2002, HRS § 89-10 was amended to eliminate the need to ratify memoranda of agreement:

> (a) Any collective bargaining agreement reached between the employer and the exclusive representative shall

(continued...)

IT IS HEREBY ORDERED that the court's September 4, 2001 judgment is affirmed.

DATED: Honolulu, Hawai'i, November 15, 2002.

Lewis W. Poe, claimant/
claimant-appellant,
pro se.

Valri L. Kunimoto, Deputy
Attorney General, for
appellee-appellee Hawai'i Labor
Relations Board.

Charles A. Price (Koshiba
Agena & Kubota) for respondent/
appellee-appellee Hawai'i
Government Employees
Association.

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[6](...continued)
be subject to ratification by the employees concerned, except for an agreement reached pursuant to an arbitration decision. Ratification is not required for other agreements effective during the term of the collective bargaining agreement, whether a supplemental agreement, an agreement on reopened items, or a memorandum of agreement, and any agreement to extend the term of the collective bargaining agreement.

2000 Haw. Sess. L. Act 253, § 99, at 896 (emphases added).