STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Complainant, and CLIFFORD LUM, Manager and Chief Engineer, Board of Water Supply, City and County of Honolulu; RANDALL Y.S. CHUNG, Chairman, Board of Water Supply, City and County of Honolulu; HERBERT S.K. KAOPUA, Sr., Board Member, Board of Water Supply, City and County of Honolulu; SAMUEL T. HATA, Board Member, Board of Water Supply, City and County of Honolulu; ALLY J. PARK, Board Member, Board of Water Supply, City and County of Honolulu; RODNEY K. HARAGA, Board Member, Board of Water Supply, City and County of Honolulu; LAVERNE HIGA, Board Member, Board of Water Supply, City and County of Honolulu; BOARD OF WATER SUPPLY, City and County of Honolulu; and MUFI HANNEMANN, Mayor, City and County of Honolulu, Respondents.	CASE NO. CE-01-634 DECISION NO. 471 DECISION

DECISION

The practical question underlying this case is: Must Board of Water Supply ("BWS") Lead Pipefitters who were required by their employer to utilize the Department's new Computerized Maintenance Management System ("CMMS") be retroactively and prospectively be paid an additional 68 cents per hour for training in and implementing the system? In litigation, this seemingly pennies per hour question has exploded into an array of legal esoteria which touches upon the fundament of the rights of public worker collective bargaining. In its instant motion, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO ("UPW" or "Union") requests interlocutory relief pending a final order by the Board.

The CMMS is a multi-million dollar computer-based performance, time, and inventory data collection system designed to replace a 20-year-old paper-based

system used by the BWS. In June 2006, its implementation was mandated in three BWS field services baseyards. The baseyards serve as the home for three to five-man crews who do the actual work of maintaining and repairing the distributional infrastructure of Honolulu's potable water. Their duties include main, hydrant, service line, and meter maintenance, repair and replacement. The crews are led by lead pipefitters whose duties include the direction and supervision of crew members, some scheduling, the satisfactory completion of assigned jobs, and insuring workplace safety. In addition to operational responsibilities, the lead pipefitter is responsible for his crew's paperwork and timekeeping.

Under the old paper system this involved the collection and completion of work orders, the requisitioning of necessary parts and the return of unused parts, and the completion of crew timesheets. The one- to two-page work orders required the checking of appropriate boxes or identification of codes for work performed and parts used. In addition handwritten notes would provide any supplementary information. Crew and vehicle time for each job was also required. Requisitions required the leader to identify parts which would probably be necessary for the day's jobs. These parts would be ordered from the shopkeeper, loaded on the crew's truck and, if unused, returned at the end of the day. Timesheets would identify man hours per man per job. At the end of each workday, in the hour set aside for cleanup and paperwork, lead pipefitters, relying on notes, memory and experience, would fill out the necessary forms and turn them in to the supervisors. After inspection, the supervisor would then forward the forms to appropriate data entry personnel or timekeepers for entry into the BWS' central databases.

In CMMS essentially the same information is required to be recorded by the lead pipefitter directly into a laptop computer. Entry involves the filling out of multiple forms, the selection of particular items from pull-down menus, the addition of narrative notes, and the entry of work and vehicle times. Upon conclusion the data is sent for direct incorporation into management's databases and with no availability for retrieval or correction. Data is thereafter retrievable by management, in individual or aggregate forms for evaluation.

The CMMS program was initiated by the BWS in 2000 as a tool to increase efficiency, productivity and inventory and infrastructure management. After expenditures of several hundred thousand dollars to a consultant for its development, the program was incorporated, in mid-2004, into BWS's union negotiated Multi-Skilled Workers Pilot ("MSW"). The MSW pilot was an experimental project in which crews were cross trained, crew size and scheduling were flexible and task oriented, daily hours lengthened (4 x 10) and bonuses were made available for meeting performance metrics. In addition to the usual duties, lead pipefitters, designated MSW leads, were required to train in and utilize CMMS. The pilot was developed jointly by the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO ("UPW" or "Union") and BWS management and was

implemented pursuant to a negotiated agreement. As part of this agreement, voluntary participation in the pilot was incentivized by a one step increase in hourly pay. Leads thus received a bump in pay of approximately $ .68 (BC 09 to BC 10) for their participation including training and utilization of CMMS.

The pilot results were nothing short of spectacular, with measured performance exceeding target metrics by between twenty to fifty percent. CMMS was an integral part of this evaluation in that it allowed management, for the first time, to aggregate and evaluate on a timely basis, crew performance and production. Management and Union thus entered into negotiations to make the project permanent. Negotiations broke off however on the evening of September 30, 2005 with the parties unable to reach agreement. On that date pilot implementation, including the use of CMMS came to an end for want of an applicable negotiated agreement.

Notwithstanding the absence of an agreement, the BWS in June 2006, in order to keep better track of work orders, directed that CMMS be implemented at its Manana, Wahiawa and Waianae baseyards. As part of this implementation, BU 01 personnel were required to undergo approximately 10 hours of CMMS training after which lead pipefitters were required to utilize the system. No additional compensation was associated with the training or implementation.

About the time of this unilateral implementation of CMMS, the UPW filed a prohibited practice complaint in Case No. CE-02-622 alleging that the BWS failed its duty to bargain in good faith by not implementing or honoring an MSW contract allegedly born of the UPW's acceptance in March 2006 of BWS' final offer of September 30, 2005. That case was settled in January 2007 by the negotiation and execution by the parties of a final and binding MSW agreement which would put the terms of BWS' offer of September 2005, including enhanced compensation for participating BU 01 members, into effect July 1, 2007. During the implementation of CMMS in 2006, lead pipefitters required to participate did not receive additional compensation despite the undisputed fact that they would have received the additional $ .68 per hour for its use before September 30, 2005 and after July 1, 2007.

Having ostensibly learned of the CMMS implementation in the course of evidentiary hearings a few weeks before, on January 4, 2007, the UPW filed the instant complaint, alleging that the unilateral implementation of CMMS without negotiations, consultation or commensurate compensation violated HRS §§ 89-13(a)(1), (5), (7) and (8).

In the course of six full days of evidentiary hearings and two days of argument, a number of operational ambiguities were identified which the evidence requires be answered in the affirmative. These include:

1. Whether the required use of CMMS changes the job of lead pipefitters to include computer literacy, CMMS training and use and data entry?

2. Whether CMMS duties could reasonably be accomplished, in addition to other duties, within the lead pipefitters' ordinary workday or it its utilization necessarily or predictably extends the workday?

3. If so, should lead pipefitters receive overtime for additional time after or before work required for its completion and is the claiming of such overtime properly forbidden?

4. Is it a requirement or expectation that lead pipefitters take their CMMS computer on the road during the workday?

5. Is it a requirement or expectation that lead pipefitters make their required data entries in "real time" while or immediately after the work is done?

6. Do the CMMS requirements expose lead pipefitters to disciplinary action for nonuse or inadequate performance?

7. Do the distractions and demands of in-field entry create potentially dangerous situations as the attention of the crew leader is not on the performance and safety of crew members?

8. Was CMMS such an integral part of the MSW pilot that its unilateral separation and implementation was a violation of those contractual and negotiation obligations associated with the pilot?

9. Did the requirement of CMMS used by lead pipefitters unilaterally alter the requirements for temporary assignment to the position?

10. Did the requirement of CMMS implementation on June 2006 constitute a premature implementation and therefore a violation of the MSW contract scheduled to go into effect July 2007?

11. Could the implementation of CMMS provide BWS management with a tool to surveil, evaluate and discipline their employees?

In its amended complaint the UPW alleges three distinct statutory and contractual violations in BWS unilateral implementation of CMMS: 1) the failure to negotiate the change in wages, hours and terms of conditions of employment which are

necessarily implicated in implementation, 2) the failure to consult with the union in matters "effecting employee relations" imposed by CMMS and (3) the failure to honor a contractual commitment to pay an addional forty eight cents per hour to lead pipefitters for the utlization of CMMS. Additionally, the union alleges that the position taken by the BWS in this proceeding is an unconstitutional violation of public workers' right to collectively bargain.

The BWS' principal defense is that the obligations of negotiation and consultation do not apply because the implementation of CMMS is an exercise of mangement's right to: "Maintain efficiency and 7) Determine methods, means, and personnel by which the employer's operations are to be conducted." Hawaii Revised Statutes ("HRS") § 89-9(d). Additionally, they argue that the management rights supersede any bargaining or consultative duty pursuant to the Hawaii Supreme Court's decision in UPW v. Hannemann 106 Hawai`i 236 (2005).

In the instant motion, UPW argues that interlocutory relief could not be granted because it did not satisfy the applicable criteria of likelihood of prevailing, likelihood of irreparable harm and supportive social policy.

With regard to negotiation and constitutionality, the elements of the test preclude awarding of interlocutory relief. As relief for the alleged failure to negotiate, the UPW seeks the above mentioned $ .68 per hour both retrospectively and prospectively for CMMS work performed. Thus the harm is not irreparable. With regard to constitutionality, as an administrative agency the Board is without jurisdiction to address such questions. DOH Corporation v. Motor Vehicles Industry Licensing Board , 69 Hawaii 135 (1987).

But as the findings to the relevant factual inquiries indicate, the BWS both negotiated and contractually committed to the payment of the additional compensation for the implementation of CMMS and therefore committed prohibited practices by not negotiating its implementation in the interim between effective contracts and not paying the increments.

Any claim by the BWS that these actions are sanctioned by its management rights is inapplicable because having negotiated the additional compensation, requiring payment does nothing to interfere with the exercise of any such claimed right.

The Board therefore concludes that it has jurisdiction over this complaint pursuant to HRS §§ 89-5 and 89-14. The Board further concludes based on the foregoing that the BWS violated HRS §§ 89-13(a)(5) and (8) and orders that affected employees be made whole through the retroactive compensation of lead pipefitters for the implementation of CMMS at the rate of pay negotiated.

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DATED: Honolulu, Hawaii, June 29, 2007.

HAWAII LABOR RELATIONS BOARD

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