

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. CE-03-367
	)	
LEWIS W. POE,	)	ORDER NO. 1604
	)	
Complainant,	)	ORDER GRANTING RESPONDENTS'
	)	MOTION FOR SUMMARY JUDGMENT
and	)	
	)	
JAMES H. TAKUSHI, Director,	)	
Department of Human Resources	)	
Development, State of Hawaii;	)	
KAZU HAYASHIDA, Department of	)	
Transportation, State of Hawaii;	)	
and THOMAS T. FUJIKAWA, Harbors	)	
Administrator, Department of	)	
of Transportation, State of	)	
Hawaii,	)	
	)	
Respondents:	)	
	)	

ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

On October 2, 1997, LEWIS W. POE (POE) filed a prohibited practice complaint against JAMES H. TAKUSHI, Director, Department of Human Resources Development (DHRD), State of Hawaii (TAKUSHI), KAZU HAYASHIDA, Director, Department of Transportation (DOT), State of Hawaii, and THOMAS T. FUJIKAWA, Harbors Administrator, DOT, State of Hawaii (collectively Employer or State) with the Hawaii Labor Relations Board (Board). POE alleges that his supervisor changed his position description to include computer tasks to access law enforcement agency data bases for information requested by Harbor Enforcement Officers. POE alleges that he filed a grievance contesting the addition of computer tasks without a corresponding adjustment in compensation which was denied at each step of the grievance procedure by the respective Respondent. POE

further alleges that he has exhausted his contractual remedies and contends that Respondents violated the terms of the Unit 03 collective bargaining agreement and § 89-13(a)(8), Hawaii Revised Statutes (HRS).

On October 24, 1997, Respondents, by and through their counsel, filed a motion for summary judgment with the Board. Respondents contend that there is no genuine issue of material fact in dispute in this case and Respondents are entitled to judgment as a matter of law. Respondents further contend that the Board lacks jurisdiction over the instant complaint. Thereafter, on October 27, 1997, Respondents filed a supplement to their motion for summary judgment with the Board.

On October 30, 1997, POE submitted an answering affidavit and on November 3, 1997, POE filed a supplement to his answering affidavit with the Board.

On November 10, 1997, POE filed a motion with the Board for an order to remove a document attached to his Answering Affidavit filed on October 30, 1997 and to replace it with a sanitized version of the exhibit. POE contends that the purpose of his motion is to safeguard the privacy rights of the individual who was the subject of the report.

On December 4, 1997, the Board conducted a hearing on Respondents' motion for summary judgment. Complainant appeared pro se and Respondents were represented by counsel. All parties had full opportunity to present evidence and argument to the Board. Based upon a thorough review of the record in this case the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

LEWIS W. POE is a Harbor Traffic Controller I employed by the DOT, State of Hawaii and is an employee within the meaning of § 89-2, HRS.

JAMES H. TAKUSHI is the Director, DHRD, State of Hawaii and is a representative of the public employer within the meaning of § 89-2, HRS.

KAZU HAYASHIDA is the Director, DOT, State of Hawaii and is a representative of the public employer within the meaning of § 89-2, HRS.

THOMAS T. FUJIKAWA is the Harbors Administrator, DOT, State of Hawaii and is a representative of the public employer within the meaning of § 89-2, HRS.

Prior to 1993, Tower Operators provided a dispatcher support function for harbor police officers who requested information about vehicle registration, wants, and warrants. Upon request, the Tower Operators telephoned the Honolulu Police Department to obtain information on registration and outstanding wants and warrants and relayed the information back to the harbor police by radio. When the harbor police were transferred to the Department of Public Safety (PSD), State of Hawaii, the PSD dispatchers used computers to obtain information requested by the harbor police from the data bases of the Honolulu Police Department and the Criminal Justice Data Center of the Department of the Attorney General. In 1996, the harbor police were transferred back to the DOT and the Tower Operators resumed the dispatcher support function and were trained to use the computer terminal to access

the appropriate law enforcement data bases and retrieve the requested information.

In April 1997, POE's supervisor updated POE's position description to include, inter alia, the use of a computer to access law enforcement agency data bases for information requested by Harbors Enforcement Officers. The position description was reviewed by a classifier in the departmental personnel office who determined that the additional duties and responsibilities were within the scope of the Tower Operator I<sup>1</sup> class and further classification action, such as placing the position in a new class or assignment to a different salary range, was not justified since the essential functions of the position were not altered. The classifier considered the computer usage as basic data base access which did not require extensive computer skills.

POE initially refused to perform the computer work and by letter dated May 12, 1997, requested information from Respondent TAKUSHI in order to process a grievance. On May 30, 1997, POE filed a grievance at Step 1 indicating that he had not received any adjustment in compensation for his new level of performance as a Tower Operator I. By letter dated June 6, 1997, Respondent FUJIKAWA denied the grievance at Step 1 indicating that POE's grievance concerned classification and pricing and was not properly subject to the contractual grievance procedure.

By letter dated June 10, 1997, Respondent TAKUSHI responded to POE's request for information. POE then filed a Step 2 appeal with Respondent HAYASHIDA who also denied the

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<sup>1</sup>On July 31, 1997, the title of the Tower Operator I class was changed to Harbor Traffic Controller I.

grievance by letter dated July 29, 1997. By letter dated August 6, 1997, POE filed a Step 3 appeal with Respondent TAKUSHI who also denied POE's grievance. In a letter dated September 10, 1997, TAKUSHI acknowledged that the Employer violated Article 11A of the contract by its late response to his request for information and noted that the June 10, 1997 letter included an explicit apology for the delay. TAKUSHI further stated that with respect to the merits of the grievance, he agreed with DOT's position at Step 2 and that POE's position description was properly updated. TAKUSHI found that Articles 14P and 4 were not applicable to the situation and found no violation of the contract since POE's basic function of obtaining and providing information to the Harbor Enforcement Officers had not changed. TAKUSHI noted that previously the information was obtained indirectly through the Honolulu Police Department and access to the information was now expedited by the use of an on-line computer system.

According to Diana Kaapu, Chief of the Classification and Compensation Review Division, DHRD, State of Hawaii, the Director of DHRD maintains a position classification plan and is responsible to allocate and reallocate positions to appropriate classes to recognize material changes in duties and responsibilities. Each position in the classification system is assigned to a class based upon the duties and responsibilities assigned to the position by the appointing authority. Each class is then assigned to an appropriate salary range. In addition, the DHRD Director is responsible to assign classes to a salary range and to maintain the compensation plan.

According to files in her division, Kaapu states that the appointing authority certified the accuracy of the redescription of POE's position which included additional tasks, including the use of a computer to access information. A classification review was conducted and since the primary duties of the position, controlling and coordinating the movement of vessel arrivals and departures from the harbor and dispatching services via radio remained the same, the position retained its classification as a Tower Operator I.

According to Kaapu, a change in duties can result in a change in pay rate when a position is reallocated to a different class and salary range or when the class is assigned to a different salary range. The classification processes are established under Chapter 76, HRS, Civil Service Law and appeals from classification actions are taken to the State Civil Service Commission pursuant to § 76-48, HRS. Employees challenging the salary range assignment of the class may appeal to the Public Employees Compensation Appeals Board (PECAB), pursuant to § 77-4, HRS, which has jurisdiction over pricing appeals. Kaapu further states that POE has an appeal pending with PECAB requesting that the Harbor Traffic Controller I class be assigned to a higher salary range.

#### DISCUSSION

Addressing first POE's motion filed on November 10, 1997 to substitute a document attached to his October 30, 1997 Answering Affidavit with a sanitized version to safeguard the privacy interests of the individual involved, the Board notes that the document, POE's memorandum to P.J. Oda, dated September 29, 1997,

involves procedures to verify outstanding warrants for juveniles and identifies the name of the juvenile. Respondents did not object to the substitution of the sanitized exhibit. Thus, as the identification of the juvenile is not material to this case, the Board hereby grants POE's motion to replace the exhibit with the sanitized version which does not identify the juvenile involved.

In the instant motion for summary judgment, Respondents contend that this Board lacks jurisdiction over the instant complaint because POE essentially claims that Respondents committed a prohibited practice by failing to compensate him for additional duties assigned to him and reflected in changes in his position description. Respondents claim that POE's complaint is a classification or pricing matter which is outside of the Board's jurisdiction. Thus, while POE cites violations of Articles 4, 11A and 14P of the Unit 03 collective bargaining agreement, the Employer contends that the contract does not apply to classification matters since they are excluded from negotiations pursuant to § 89-9(d), HRS.

In response, POE contends that Respondents violated Articles 11A, 4, and/or 14P of the 1993-97 Unit 03 contract. POE contends that Respondent TAKUSHI already admitted violating Article 11A by his late response to POE's request for information, dated May 12, 1997. POE moreover disputes TAKUSHI's conclusion that Articles 4 and 14P are not applicable to the present case. In addition POE contends that there is a genuine issue of material fact in dispute, i.e., whether POE was appropriately compensated under the terms of the agreement?

Articles 4 and 14P of the contract provide as follows:

Article 4 - Personnel Policy Changes

A. All matters affecting Employee relations, including those that are, or may be, the subject of a regulation promulgated by the Employer or any Personnel Director, are subject to consultation with the Union. The Employer shall consult with the Union prior to effecting changes in any major policy affecting Employee relations.

B. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

Article 14 - Compensation Adjustment

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P. Other Compensation Adjustments

Compensation adjustments not expressly provided for by this Agreement but necessitated by authorized personnel movements or situations shall be made by the director of personnel services, director of civil service, or the administrative director of the courts, as applicable, provided that consultation shall take place with the Union prior to effecting any adjustments under this paragraph.

Based on a review of the record, there is no dispute that the Employer required POE to perform additional tasks which were reflected in his position description, including the use of a computer to access data. There is also no dispute that a classification review resulted in no change to POE's classification or pay range because the duties were within the scope of the Tower Operator I class. There is further no dispute that POE seeks an upward pay adjustment for using the computer. While POE contends that the issue presented in this case is whether he was properly compensated under the contract, the Board finds no basis in the contractual provisions cited which provides for additional

compensation for the performance of additional tasks assigned by the appointing authority. Rather it appears that POE seeks the reallocation of his position to a higher class or the repricing of his class to a higher pay range because of the additional job duties. These are matters involving classification or repricing and are outside of the Board's jurisdiction.

Based upon the foregoing, the Board finds that there is no genuine issue of material fact presented in this case and Respondents are entitled to judgment as a matter of law.

CONCLUSIONS OF LAW

The Board lacks jurisdiction over complaints which allege the improper classification or pricing of positions. As the gravamen of POE's allegations is that he is not being properly compensated for additional duties assigned to him by his appointing authority, the Board concludes that it lacks jurisdiction over the instant complaint.

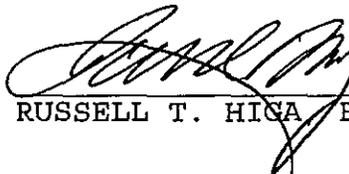
ORDER

The Board hereby dismisses the instant complaint for lack of jurisdiction.

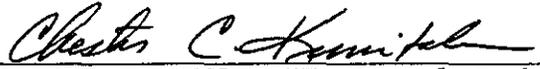
DATED: Honolulu, Hawaii, March 19, 1998.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

LEWIS W. POE v. JAMES TAKUSHI, Director, Department of Human  
Resources Development, State of Hawaii; CASE NO. CE-03-367  
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CHESTER C. KUNITAKE, Board Member

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