STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of GEORGE R. ARIYOSHI, Governor of the State of Hawaii; FRANK F. FASI, Mayor of the City and County of Honolulu; HERBERT MATAYOSHI, Mayor of the County of Hawaii; ELMER F. CRAVALHO, Mayor of the County of Maui; EDUARDO E. MALAPIT, Mayor of the County of Kauai, Petitioners, and HAWAII FIRE FIGHTERS ASSOCIATION, LOCAL 1463, IAFF, AFL-CIO, Intervenor.	Case No. DR-11-33 Decision No. 102

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECLARATORY RULINGS

On February 2, 1979, the above-named petitioners (hereafter referred to as Employer) filed with this Board a petition for a declaratory ruling. The petition requested the Board to make a determination as to whether the Hawaii Fire Fighters Association's proposals on "company manning" and "special qualifications differential" are negotiable subjects of collective bargaining.

A petition to intervene in the subject case was filed by the Hawaii Fire Fighters Association (hereafter HFFA) on February 8, 1979. Said petition to intervene was granted by Board Order No. 227 on February 9, 1979.

The Employer takes the position that both proposals are non-negotiable because of the provisions of Subsection 89-9(d), Hawaii Revised Statutes (hereafter HRS). The HFFA contends that both proposals are negotiable.

A hearing on the petition was held by this Board on February 13, 1979. Post hearing briefs were filed by the parties on February 16, 1979.

Upon a full review of the record in this case, the Board makes the following findings of fact, conclusions of law and declaratory rulings.

FINDINGS OF FACT

Petitioners George R. Ariyoshi, Governor of the State of Hawaii, Frank F. Fasi, Mayor of the City and County of Honolulu, Herbert Matayoshi, Mayor of the County of Hawaii, Elmer F. Cravalho, Mayor of the County of Maui, and Eduardo E. Malapit, Mayor of the County of Kauai, are the public employers of the employees in Unit 11 (firefighters).

Intervenor HFFA is an employee organization as defined in Subsection 89-2(8), HRS, and is the exclusive representative of Unit 11 employees.

At the time the petition for a declaratory ruling was filed, the Employer and HFFA were at an impasse in contract negotiations and were in mediation. The petitioners were of the opinion that in the event mediation was unsuccessful, the question of the negotiability of HFFA's proposals on "company manning" and "special qualifications differential" would need to be resolved before the arbitration process provided in Section 89-11, HRS, began.

The parties intially exchanged proposals, including "company manning" and "special qualifications differential" on August 4, 1978. These issues were first discussed at negotiation sessions on October 12, 1978, and again on November 9, 1978. Limited discussions were also held during mediation.

The HFFA proposal on "company manning" would require that the parties adopt minimum staffing standards for each fire station. These minimum standards would be as set forth in this Board's Decision 80 as essential to remove danger to public health and safety in the event of a firefighter strike. The proposal would also require the Employer to pay a premium whenever the minimum standards were not met. The HFFA "company manning" proposal is as follows:

> The parties hereto agree that Hawaii Public Employment Relations Board (HPERB) Decision No. 80 in Case No. S-11-6 of August 26, 1977 represents a clear minimum standard of the number of trained personnel presently necessary to adequately perform fire fighting services in order to avoid danger to public health and safety in Hawaii.
>
> The parties hereto therefore adopt the minimum staffing requirements (MSR) contained in the Orders of HPERB Decision No. 80 and incorporate them herein by reference.
>
> When the MSR of any unit is one (1) employee less than the appropriate minimum number for such unit, each member of the remaining complement of on-duty employees assigned to that unit shall be compensated at one and one-half (1 1/2) times his regular rate of pay for all hours worked with one (1) employee less than the MSR for such unit.
>
> Whenever the MSR of any unit is two (2) or more employees less than the appropriate minimum number for such unit, each member of the remaining complement of on-duty employees assigned to that unit shall be compensated at his regular rate of pay multiplied by the number of employees which would be required to restore that unit to its appropriate MSR. Such compensation shall be paid for all hours worked with two (2) or more employees less than the appropriate MSR for that unit.
>
> MSR of units shall not be reduced as the result of assignments or responses by portions of on-duty employees. In order to preserve their minimum effectiveness and the safety of assigned personnel, all units shall function as units at all response times. (Board Exhibit 1, Ex. A)

The staffing standards in Decision 80 were established in 1977 to avoid danger to public health and safety. The requirements in Decision 80 are slightly higher than existing staffing levels in many instances because CETA employees were included in the Decision 80 minimums.[1]

If the HFFA proposal is approved, the Decision 80 minimum staffing standards would be integrated into the collective bargaining agreement.

The standards set in Decision 80 are station by station, shift by shift. If the required number of persons was not on duty at a firefighting installation (unit) in the State at any given time, the remainder of the personnel in that installation would have to be paid premium pay.

No showing was made by the HFFA that the minimum manning requirements bore a direct relationship to workload or worker safety. The HFFA's position was that minimum manning per se, regardless of the reasons justifying the union's interest in it, was negotiable.

Some of the employers would very likely have to hire additional employees to meet the Decision 80 manning levels or pay the premium called for by the HFFA proposal.

The Employer believes erroneously it would have to obtain Board approval whenever a change in staffing requirements was necessary.[2]

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[1]During the hearings which led to Decision 80, the Employers asked for a large number of firefighters to be ordered to remain on duty in the event of a strike and the HFFA stipulated that all of them were essential to avoid danger to public health and safety.

[2]The Board does not read the HFFA proposal as requiring its participation in changing the staffing levels set therein. However, in view of the disposition we make of this matter, this employer assumption, however erroneous, is irrelevant.

The HFFA proposal on "special qualifications differential" requires the payment of a wage differential for those employees who perform duties outside of their class specifications. The proposal reads as follows:

> When an employee is required to be specially trained and/or certified for the purpose of providing services or performing duties not presently included in specifications for his class (such as ambulance and emergency medical services), he shall be paid, in addition to his regular salary, a wage differential of from 10 to 25 per cent of his regular salary.
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> The specific amount of such differential in each case shall be the subject of negotiations between the Union and the Employer-jurisdiction concerned and shall be commensurate with the level of training and/or certification required.
>
> It is understood that class specifications for employees covered by this Agreement shall not be changed to avoid these provisions. Differentials provided pursuant to this Section shall terminate when the need for such special training and/or certification is eliminated or when certification terminates and is not renewed by the employee. (Board Exhibit 1, Ex. B)

The County of Hawaii, since 1975, has involved its Fire Department personnel in an experimental emergency medical service program. To implement this pilot program, the County asked firefighting personnel to volunteer to undergo a special eight-month training program for certification as mobile intensive care technicians (sometimes referred to as paramedics). Presently, there are 15 firefighters who have been certified and are now performing advanced emergency medical services. These employees are trained to operate out of intensive care ambulances which contain advance life support equipment.

The 15 firefighters come from four different classifications within the Fire Department (battalion chief, captain, fire apparatus operator and firefighter). Class specifications and job descriptions for the four firefighter

classes do not provide for the rendering of advanced emergency medical services. Firefighters are only required to perform "first responder" medical services which include basic first aid treatment for shock and to stop bleeding.

The 15 certified paramedics have not been reclassified to reflect their additional training and specialized duties although the program has been in operation since 1975. The County's explanation for its failure to reclassify the paramedic-firefighters is that the program is an experimental, temporary one being conducted without statutory authorization.

Act 148, Session Laws of Hawaii 1978, established a comprehensive statewide emergency medical service system to be implemented by the State's Department of Health, effective July 1, 1979. The County of Hawaii's position is that if its emergency medical program is formalized pursuant to Act 148, and with Health Department support, then a hybrid classification will be established for firefighters performing advanced emergency medical services.

There is no dispute that presently the 15 Hawaii County paramedic-firefighters are performing the paramedic duties and that they are being worked out of class. No other firefighters similarly classified are performing advanced emergency medical services.

CONCLUSIONS OF LAW

This case requires the Board to evaluate the HFFA's proposals in light of the language of Subsection 89-9(d), HRS, which in pertinent part, provides:

> Excluded from the subjects of negotiations are matters of classification and reclassification, the Hawaii public employees health fund, retirement benefits and the salary ranges and the number of

> incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable.
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> * * *
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> The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31, and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies.

The HFFA proposal relating to manning is clearly intended to require the Employer, if it agrees to it, to maintain minimum manning in the various State and county firefighting installations throughout the State. There is no showing by the HFFA that it intends the proposal to have any effect other than to establish, through the collective bargaining agreement, what minimum manning shall be at such installations.

Subsection 89-9(d), HRS, forbids agreement between the public employer and the exclusive representative on any proposal which would "interfere with the rights of a public employer to . . . (2) determine . . . standards for work . . . transfer, assign . . . employees; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine . . . personnel by which the employer's operations are to be conducted; . . ."

A minimum manning proposal clearly is one to which, under said statutory language, it would be unlawful for the employer to agree. See, Decision 26 of this Board. To be sure, perhaps a literal reading of Subsection 89-9(d), as urged by counsel for the HFFA, does mean that negotiations can be had upon the subject of minimum manning although no agreement can be made upon the subject. While the distinction may be a semantically precise one, it carries no weight in terms of contradicting the legal conclusion that the subject of minimum manning is non-negotiable because it is one upon which the parties are forbidden to agree.

The interference a minimum manning requirement in the contract would have upon management's rights to determine personnel by which its operations are to be carried out, assign and transfer its personnel, relieve employees because of lack of work and maintain efficient operations is so direct as to preclude negotiations upon the subject. This ruling is made with full appreciation that manning levels obviously have an impact on working conditions. However, in striking a balance between the mandate in Subsection 89-9(a), HRS, that working conditions be negotiated and the prohibitions on agreements on certain subjects contained in Subsection 89-9(d), HRS, it is clear that the scales tip heavily against negotiability in this case because of the magnitude of interference with management's rights the HFFA minimum manning proposal would present and the absence of a showing by the HFFA of sufficient justification for such interference as would warrant a different conclusion.

That there is a partial escape hatch for the employer in the proposal because it permits the employer to avoid maintaining the minimum manning requirements by paying premium

pay does not save the proposal. The two parts of the proposal are not severable. In order to get to the situation in which it has the option of paying the penalty the Employer still must agree to that part of the proposal which requires it to maintain minimum manning. We already have ruled that it would be violative of the statute for it to agree to this. The linkage of the premium pay penalty to a non-negotiable subject renders the entire proposal non-negotiable. The premium pay penalty would only come into play if the Employer violated an illegal contract provision.

The issue of the paramedic-firefighters on the Big Island has been characterized as a classification matter by the Employer. Under Section 89-9(d), HRS, negotiations on the subject of classification and reclassification clearly are forbidden. And, this Board has ruled that the pricing of a class is part of classification, so that subject too is non-negotiable. Decision 74.

A majority of this Board is of the opinion that the first two paragraphs of the proposal are not "matters of classification and reclassification." The first two paragraphs simply address the problem of compensating people for working for a long period of time out of class. It does not seek to determine their classification or price that classification. It's a question of wages for extra work and, therefore, it is negotiable.

However, the final paragraph of the proposal, which the Board determines to be severable from the remainder of the proposal, is non-negotiable as it would preclude the reclassification of these positions to reflect the extra duties performed.

DECLARATORY RULINGS

The HFFA "company manning" proposal is non-negotiable.

The matters contained in the first two paragraphs of the "special qualifications differential" are negotiable but the final paragraph of said proposal is non-negotiable.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

Mack H. Hamada

Mack H. Hamada, Chairman

Dated: February 21, 1979

Honolulu, Hawaii

OPINION OF MEMBER MILLIGAN CONCURRING IN PART, DISSENTING IN PART

I adopt the Findings of Fact set forth above.

I concur with the conclusions and ruling of Chairman Hamada that the HFFA's "company manning" proposal is non-negotiable.

I dissent, however, from the conclusion and ruling that any part[3] of the "special qualifications differential" proposal is negotiable.

In my view the 15 paramedics may well be working out of class. The solution to this discrepency is to classify them properly. This the County of Hawaii should certainly do, but it must, because of Subsection 89-9(d), HRS, do it unilaterally without negotiations with the HFFA. This proposal is tantamount to negotiating the price of the class the men now are working in and this Board has ruled that pricing classes is not negotiable.

Another technical problem with this proposal is that facially it is not concerned with compensating people for the performance of work not included in their class specifications; it merely speaks of compensating them for being required to receive training. I do not, however, rest my ruling on this defect in the language of the proposal as I understand the affected men are working as paramedics.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

John E. Milligan, Board Member

Dated: February 21, 1979

Honolulu, Hawaii

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[3]I agree that the final paragraph of the proposal is non-negotiable.

OPINION OF MEMBER CLARK
CONCURRING IN PART, DISSENTING IN PART

I agree with the Findings of Fact made in this case.

Also, I concur with the conclusions and ruling of Chairman Hamada on the negotiability of the first two paragraphs of the paramedic proposal and the non-negotiability of the last paragraph of that proposal.

However, I must dissent from the conclusions and rulings my colleagues make on the company manning proposal. I agree that standing by itself the part of the proposal which calls for minimum manning is non-negotiable. But its linkage to the premium pay penalty provision saves it, in my judgment.

Under that portion of Subsection 89-9(d), HRS, cited by Chairman Hamada and Member Milligan as precluding agreement on minimum manning, this Board traditionally uses a balancing test to see how much a proposal or contract provision interferes with management's rights. The majority says the HFFA company manning proposal tips the scales too much against negotiability because of the extent of interference with management's rights. I disagree. The penalty provision tips the scale the other way. The employers do not have to provide the minimum manning. They are free to hire only as many people as they want to, lay off people, and transfer and assign them as they need to. Nothing in the HFFA proposal prevents this. It would not be a grievable contractual violation for the employers to maintain less than the staffing requirements set forth in Decision 80. All that would happen is that the people at work would be paid more whenever staffing fell below Decision 80 levels.

I think the payment penalty is tied directly to workload and to work safety. I would have appreciated it if the HFFA had put on evidence which I am certain it could have developed on these points. Had it done so, perhaps I would not be in the minority on this issue.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

James K. Clark, Board Member

Dated: February 21, 1979

Honolulu, Hawaii