

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
HERBERT T. MATAYOSHI, Mayor)	Case No. <u>S-11-14</u>
of the County of Hawaii,)	
)	
Petitioner,)	Decision No. <u>121</u>
)	
and)	
)	
HAWAII FIRE FIGHTERS)	
ASSOCIATION, IAFF, LOCAL)	
1463, AFL-CIO,)	
)	
Exclusive)	
Representative.))	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On December 24, 1979, Herbert T. Matayoshi, Mayor of the County of Hawaii, petitioned this Board to conduct an investigation to determine whether the withholding by certain employees of the Hawaii County Fire Department of paramedic services would constitute an illegal strike within the meaning of Chapter 89, Hawaii Revised Statutes (hereafter HRS). The Mayor additionally alleged that the withholding of such services would constitute a strike which presented an imminent or present danger to the public health and safety. The Board, after due notice, conducted an investigation on said petition on Thursday, December 27, 1979. At the hearing, both parties were represented by counsel and were afforded the opportunity to present witnesses and argument.

Based upon the full record, the Board makes the following:

FINDINGS OF FACT

Mayor Herbert T. Matayoshi is a public employer as defined in Subsection 89-2(9), HRS, of employees in bargaining Unit 11.

Bargaining Unit 11 consists of firefighters. The Unit is represented for collective bargaining purposes by the Hawaii Fire Fighters Association. Commencing in 1972, Hawaii County began a program under which Unit 11 employees in its Fire Department could take, at county expense, training which qualified them to be certified as emergency medical technicians (hereafter EMT's) and mobile intensive care technicians (hereafter MICT's). The certifications thus acquired permitted the employees to perform sophisticated paramedical work.

Although this Board, in Decision 118, regarded this paramedical work as compatible with the employees' work as firefighters, the Board previously, in Decision 102, ruled that these same employees had been working out of class for a long period of time.

It was undisputed in the instant case that the present class specifications and job descriptions for all paramedical employees in the Hawaii County Fire Department do not include paramedical work as part of the duties of the positions occupied by said employees.

Repeatedly, during the course of the investigation, it was stressed by both parties that the paramedical work being done by the Hawaii County firefighters was being done on a voluntary basis and was not part of any official duty assignment to them.

The Hawaii Fire Fighters Association gave notice to Hawaii County that effective January 1, 1980, the firefighters in the Hawaii County Fire Department who presently perform

paramedical work for the Fire Department will cease to perform their paramedical duties. They will, however, report for work and perform all duties which are set forth in their respective position descriptions and class specifications. In short, the subject employees intend to withhold paramedical services but to continue to function as firefighters.

The County of Hawaii failed to produce any evidence that the withholding of such services would create a present or imminent danger to public health and safety. The only witness it produced on the health-safety question indicated that the State's Department of Health would be able to provide the subject emergency medical services should the Unit 11 employees withhold them. Given this kind of evidence, it was impossible for the Board to make a determination as to whether the withholding of services by the Unit 11 employees would present a danger to public health and safety. However, in view of the disposition we make of the primary question herein; that is, that the withholding of paramedical services by the Unit 11 employees on the Big Island does not constitute a strike, it is unnecessary for this Board to deal with the health and safety issue.

CONCLUSIONS OF LAW

The resolution of this case turns upon an interpretation of Subsection 89-2(17), which states:

§89-2 Definitions. As used in this chapter:

(17) "Strike" means a public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; provided, that nothing herein shall limit or impair the


right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.

The evidence shows that the employees in question intend to report for work and to perform all of the duties encompassed by their current position descriptions and class specifications. The only work they will refuse to perform is paramedical work which is characterized by their employer as voluntary in nature. These employees cannot be regarded as abstaining from the "full, faithful, and proper performance of the duties of employment" because the paramedical work they perform is not included in the duties of their positions and, additionally, is regarded by their employer as voluntary work. Voluntary service is not required work and cannot be considered as part of the duties of employment within the statutory definition of the term "strike." Accordingly, the withholding of paramedical services by the Hawaii County firefighters cannot be regarded as the abstinence in whole or in part from the full, faithful and proper performance of their duties of employment as firefighters and does not constitute a strike under Chapter 89, HRS.

ORDER

This case is dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: January 8, 1980

Honolulu, Hawaii