

In the Matter of)
)
GEORGE R. ARIYOSHI, Governor)
of the State of Hawaii,)
)
Petitioner,)
)
and)
)
HAWAII GOVERNMENT EMPLOYEES')
ASSOCIATION, LOCAL 152,)
AFSCME, AFL-CIO,)
)
Intervenor.)

Case No. DR-03-38

Decision No. 147

On February 11, 1980, George R. Ariyoshi, Governor of the State of Hawaii (hereafter Petitioner or Employer or State), filed with this Board a petition for a declaratory ruling. The petition requested that the Board make a determination as to whether the implementation of repricing pay adjustments is a negotiable subject of collective bargaining.

After due notice, a prehearing conference was held by this Board on April 17, 1980. At said conference, the parties waived a hearing on the merits of this case and agreed to submit a stipulation as to the facts in this case and posthearing briefs. The stipulation and posthearing briefs were filed by the parties on June 27, 1980. On September 12, 1980, by Order No. 352, the Board directed the parties to submit supplementary posthearing briefs with respect to certain issues in the case. Said supplementary briefs were submitted on October 20, 1980.

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

FINDINGS OF FACT

1. The Petitioner Governor George R. Ariyoshi, is a public employer as defined by Subsection 89-2(9), Hawaii Revised Statutes (hereafter HRS), of collective bargaining Unit 3 (nonsupervisory employees in white collar positions).

2. The Intervenor HGEA, is an employee organization, as defined in Subsection 89-9(8), HRS, and is the exclusive representative of Unit 3 employees.

3. Under the collective bargaining agreement for Unit 3, in effect for the period July 1, 1977 to June 30, 1979 (hereafter 1977 agreement), all employees within the unit were to receive incremental pay increases on July 1, 1977 and on July 1, 1978.¹

4. In 1978, the Employer repriced certain Unit 3 positions, namely Secretary I and III, from salary range 12 to

¹The applicable contract provision for the July 1, 1978 wage increase which is at issue in this case states:

B. Subject to the approval of the respective legislative bodies, effective July 1, 1978, the salary of every employee shall be increased as follows:

1. Any employee compensated on June 30, 1978 at any step in the salary schedule shown on Exhibit A-1 [attached to this stipulation as Exhibit A] shall be assigned to the next higher step of the employee's salary range in the salary schedule. Any employee whose salary on June 30, 1978 falls between two steps of the salary schedule shall have the employee's rate of compensation increased by an amount equal to the percentage difference in the rates between such steps.

2. Any employee whose salary on June 30, 1978 exceeds or is at the maximum step of the salary schedule shown on Exhibit A-1 shall have the employee's rate of compensation increased by an amount equal to the percentage difference in the rates of the maximum step and next preceding step of the applicable salary range.

salary range 13. This repricing action became effective on July 1, 1978.

5. Accordingly, on July 1, 1978, the Employer implemented two personnel actions with respect to the Secretary I and III positions, the repricing and the negotiated wage increases. The Employer executed these two personnel actions by first applying the negotiated wage increase and then repricing the positions.

6. In their stipulation of facts, the parties stated that the implementation of the negotiated wage increase before the repricing action had the following results:

a. Affected employees below L-4 received a wage increase when they moved to the next higher step in the salary range to reflect the negotiated wage increase. They received another increase when their positions were then assigned to the next higher salary range to reflect the repricing action. These employees thus received two wage adjustments².

b. Employees at Step L-4, the maximum step of the salary schedule, received a 4.6% to 4.7% increase in salary on effectuation of the negotiated wage increase. The subsequent implementation of the repricing action, reflected by the assignment of the employees' positions to the next higher salary range, resulted in a \$1.00 per month additional sum for those in the Secretary I class and in no adjustment at all for those in the Secretary III class. This resulted because on effecting the negotiated wage increase, these employees were pushed off the salary schedule. They received wages in excess of the maximum amount prescribed for their salary range. The new wages equaled or were a \$1.00 per month less than the maximum amount prescribed for the next higher salary range to which their positions were subsequently assigned. Under these conditions, by the operations of Section 77-14,

²The stipulation of facts included the following footnote:

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For example, an employee at Step L-3 on salary range 10 who was receiving a salary of \$987 per month on June 30, 1978, received on effectuation of the negotiated wage increase a 4.6% or \$45 a month increase for a new salary of \$1,032 per month. Then, on effectuation of the repricing action, the employee received another 4.7% or \$48 per month increase for a new, adjusted salary of \$1,080 per month. The total wage adjustment for the employee amounted to an increase of \$93 per month.

Hawaii Revised Statutes, no wage adjustment larger than a \$1.00 per month could be had on effecting the repricing action.

c. Employees above the maximum Step L-4 received a 4.6% to 4.7% wage increase on effectuation of the negotiated wage increase. They received no wage adjustment on the subsequent implementation of the repricing action. This was because on effecting the negotiated wage increase, these employees were pushed further off the salary schedule. They received wages in excess of the maximum amount prescribed for their salary range and also in excess of the maximum amount prescribed for the salary range to which their positions were later assigned on effecting the repricing action. By the operations of Section 77-14, Hawaii Revised Statutes, no wage adjustment could be had on repricing under these circumstances.

7. The parties also stipulated to the fact that if the repricing action had been implemented before the negotiated wage increase, all affected employees at Step L-4 would have received more than the \$1.00 increase for the repricing action in addition to the 4.6 - 4.7% negotiated increase which they received.³

footnote: ³The stipulation of facts contained the following

The following compares the results for employees at Step L-4 of (a) implementing the negotiated wage increase before the repricing action and (b) implementing the repricing action before the negotiated wage increase. A comparison is made for a Secretary I and also for a Secretary III.

(A) A Secretary I who on June 30, 1978, was at Step L-4 in the salary range 10 and earning \$1032 per month received a total wage increase of \$48 per month when the negotiated wage increase was effected before the repricing action. The employee received a 4.6% or \$47 per month wage increase for a new salary of \$1079 per month on the implementation of the negotiated wage increase. On the subsequent implementation of the repricing action and the assignment of the employee's position to the next higher salary range -- salary range 11 -- the employee received a \$1.00 per month adjustment for an adjusted wage of \$1080, the maximum amount prescribed for salary range 11.

(Footnote continued on next page)

8. Pursuant to the grievance arbitration procedure provided in the Unit 3 collective bargaining agreement, the Union submitted a grievance on behalf of those affected Unit 3 employees who were at step L-4.

9. At arbitration, the Union contended that the repricing adjustment should have been implemented prior to the negotiated wage increase and that the Employer's failure to do so violated the collective bargaining agreement. The Union bases its contention upon the fact that at the time the 1977 Unit 3 agreement was executed, Section 8.109b(2) of the State civil service rules and regulations was in effect.

(Footnote continued)

If the repricing action had been implemented before the negotiated wage increase, the employee would have received a total wage increase of \$99 per month. The employee would have received a 4.7% or \$48 per month increase for a new salary of \$1080 per month on the implementation of the repricing action and the assignment of the employee's position to salary range 11. The employee would then have received a 4.7% or \$51 per month additional wage increase for a new, adjusted salary of \$1131 per month on the subsequent implementation of the negotiated wage increase.

(B) A Secretary III who on June 30, 1978 was at Step L-4 in salary range 12 and earning \$1131 per month received a total wage increase of \$53 per month when the negotiated wage increase was implemented before the repricing action. The employee received the \$53 per month (4.7%) increase on effectuation of the negotiated wage increase. The employee received no increase on the subsequent implementation of the repricing action since the \$1184 per month salary resulting from the negotiated wage increase was more than the maximum prescribed for salary range 13.

If the repricing action had been implemented before the negotiated wage increase, the employee would have received a total wage increase of \$106 per month. The employee would have received a \$52 per month increase for a new salary of \$1183 per month on effecting the repricing action by the assignment of the employee's position to salary range 13. The employee would then have received a \$54 per month wage increase for an adjusted salary of \$1237 per month on the subsequent implementation of the negotiated wage increase.

Said section provides as follows:

When the effective date of several personnel actions coincide, pay adjustments shall be made in the following order: (a) annual increment pay increase, (b) changeover to a new salary schedule, (c) repricing, (d) promotion, (e) re-allocation, and (f) other personnel actions.

Pursuant to Article 3⁴ of the 1977 Unit 3 agreement entitled "Maintenance of Rights and Benefits", the HGEA asserts that the foregoing section of the Civil Service Rules and Regulations were retained as part of the 1977 agreement.

10. At the present time, the above-stated grievance is still pending before the arbitrator. At the request of the Employer, the proceedings have been bifurcated for separate determinations on the issue of the arbitrability of the grievance and on the merits of the grievance.

11. The Employer has filed this petition for a declaratory ruling to determine whether the implementation of the repricing action is a negotiable subject.

CONCLUSIONS OF LAW

The petition requests that this Board make a determination as to whether the implementation of these wage increases is negotiable based upon the provisions of Section 89-9(d), HRS. Said statutory section provides in relevant part:

⁴Article 3 of the 1977-79 agreement states in pertinent part:

Except as modified herein, Employees shall retain all rights and benefits pertaining to their conditions of employment as contained in the departmental and Civil Service rules and regulations and Hawaii Revised Statutes at the time of execution of this Agreement.

Sec. 89-9. Scope of negotiations.
(a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, and other terms and conditions of employment which are subject to negotiations under this Act and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.

* * *

Section 89-9(d). 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.

* * *

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 Employer contends that the subject matter of this declaratory ruling case is nonnegotiable because it concerns the implementation of repricing actions which are within the category of classification and reclassification excluded from the subjects of negotiation under the above-stated section.

In support of this position, the Employer cites this Board's ruling in Decision 74, In Re HFFA, Local 1463 and State of Hawaii, 1 HPERB 650 (1977).

The Union concedes that repricing is a part of classification and reclassification which are excluded from the subjects of negotiation pursuant to Subsection 89-9(d), HRS. The Union takes the position, however, that the negotiability of the repricing action is not the issue before the Board in this declaratory ruling case. The Union maintains that the proper issue in this case arises not from the State's decision to reprice per se, but rather from the State's unilateral action with respect to the timing of the implementation of the repricing and of the negotiated wage increase. In arguing that the implementation of these wage actions is negotiable, the Union asserts that the implementation of repricing is a separate and distinct subject from the initial decision to reprice and that said implementation is negotiable because the timing of the implementation impacts directly on the wages of the affected unit 3 employees.

The Board agrees in this case with the position of the Union that the issue in this declaratory ruling petition is negotiable pursuant to Subsection 89-9(a), HRS, for the following reasons.

In Decision 74, the Board was considering a charge brought by the Hawaii Fire Fighters Association (hereafter HFFA) that the County of Maui had committed a prohibited practice by failing to negotiate with the HFFA before creating new firefighter classes, establishing accompanying job requirements and pricing the class. The Board held that Maui County had no duty to bargain over pricing of a class because such an action was part of the classification process excluded from negotiations by Subsection 89-9(d), HRS. The Board's decision stated in pertinent part:

Maui County's act of creating a Fire Fighter Trainee class, establishing job specifications for that class, and pricing the class at SR-14, is undoubtedly within the ambit of the classification process. As such, the County's action is non-negotiable and no duty of negotiation with the union can arise from it. The Board therefore finds that Maui County's failure to bargain collectively with the HFFA on the matter does not constitute a prohibited practice under Chapter 89, HRS. 1 HPERB 650, 656 (Emphasis added)

Based upon the reasoning established in the foregoing decision, the Board would concur with the Employer that repricing would also be nonnegotiable under Section 89-9(d), HRS, as within the ambit of classification.

As stated above, however, in the present case the Union is not disputing the negotiability of the repricing action itself. Rather, the Union is seeking negotiations only upon the timing of the implementation of that repricing action and of the negotiated wage increase. The Board finds that the ruling in Decision 74 is not sufficiently broad to include the implementation and timing of these wage actions. Accordingly, a review of other rulings with respect to negotiability of implementation and timing decisions is necessary.

In N.L.R.B. v. United Nuclear Corp., 381 F.2d 972, 66 L.R.R.M. 2101 (10th Cir. 1967) (hereafter United Nuclear), the Tenth Circuit Court ruled that the employer committed an unfair labor practice by unilaterally effectuating a layoff of employees. In so ruling, the court specifically stated that the unfair labor practice was found not in the unilateral decision of the necessity for the layoff but rather in the unilateral decision as to the timing of the implementation of the layoff and as to the number and identity of the affected employees.

In a more recent case involving layoffs, Los Angeles County Civil Service Commission v. Superior Court of Los Angeles County and Los Angeles County Employees Union, Local 434,

23 Cal. 3d 55, 151 Cal. Rptr. 517, 588 P. 2d 249, 100 L.R.R.M. 2855 (1978), the California Supreme Court based upon the United Nuclear case, in applying the meet and confer section of the state public sector collective bargaining law which parallels the language of 89-9(a), HRS, held that while an employer can unilaterally decide that a layoff is necessary, he must bargain with respect to the timing of the layoff.

Moreover, it is a well-established rule that the impact of a nonnegotiable decision may still be subject to negotiation if such impact affects terms and conditions of employment. For example, in City School District of the City of New Rochelle and New Rochelle Federation of Teachers, 4 N.Y. PERB 3704, the New York Public Employment Relations Board stated the general rule that while the employer school district could unilaterally approve budgetary cuts and reallocate funds, the employer was obligated to negotiate on the impact of such decisions on the terms and conditions of employment of the affected employees. Accord: Port Washington Union Free School District v. New York State Public Employment Relations Board and Port Washington Teachers Association, 9 N.Y. PERB 576 (1976); North Babylon Union Free School District and North Babylon Teachers Organization, 7 N.Y. PERB 3040 (1974).

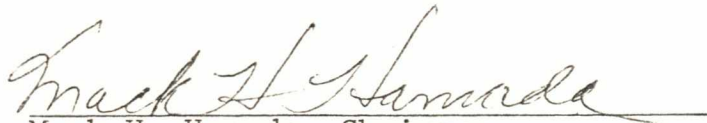
The Board is of the opinion that the instant case falls within the above-stated rules with respect to the negotiability of the impact on terms and conditions of employment of a proper unilateral decision and of the timing of the implementation of a management prerogative. In this case, the Employer has already unilaterally implemented the wage actions. The Union is not directing its grievance to the Employer's right to implement the repricing action. Rather, based upon the facts stipulated into the record of this case, the grievance is aimed at the substantial disparity in the wages of

the affected unit 3 employees which results from the timing or order in which the negotiated wage increase and the repricing increase are effectuated. Accordingly, because the subject of this declaratory ruling proceeding is the timing of the implementation and the impact of that timing on wages, the Board finds that the subject falls within the scope of negotiations within Subsection 89-9(a), HRS.

DECLARATORY RULING

For all of the above-stated reasons, the Board rules that the subject of the timing of the implementation of the repricing action and of the negotiated increase and the impact of said timing on the wages of the affected unit 3 employees is a negotiable subject within the meaning of Subsection 89-9(a), HRS.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: March 25, 1981

Honolulu, Hawaii