

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NOS.: S-03-24a
)	S-04-24b
BOARD OF EDUCATION, State of)	S-06-24c
Hawaii,)	
)	
Petitioners,)	DECISION NO. 192
)	
and)	
)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	
)	
Exclusive)	
Representatives.)	
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDERS

On February 2, 1984, the Board of Education, State of Hawaii, [hereinafter referred to as Petitioner or Employer], petitioned this Board to conduct an investigation, pursuant to the authority conferred upon it by Section 89-12 of the Hawaii Revised Statutes [hereinafter referred to as HRS], to determine whether a strike by employees in Unit 3 (nonsupervisory employees in white collar positions), Unit 4 (supervisory employees in white collar positions), and Unit 6 (educational officers and other personnel of the Department of Education under the same salary schedule), would present an imminent or present danger to the health or safety of the public and to set requirements that must be complied with to avoid or remove any such danger.

The issues before this Board presented by this petition are whether the positions alleged by the Petitioner to be essential positions will result in an imminent or present danger to the public health and safety, if not filled, and whether those positions are necessary to be filled to avoid or remove any such danger.

The positions sought to be determined as essential are the principals of each school, the school administrative services assistant [hereinafter referred to as SASA] and auditing and payroll clerks of the Department of Education.

There is no precise definition of "public health and safety." This Board does not believe that any particular and specific definition was intended by the Legislature, and believes that the Legislature intended that a common sense approach should be taken by this Board to determine whether certain positions are essential to prevent an imminent or present danger to the public health and safety or to avoid or remove any such danger to the public health and safety.

Hearings on the petition were held on February 19, 1984. All parties were represented and participated in the investigation.

Based upon the entire record and credible evidence developed during said investigation, the Board makes the following:

FINDINGS OF FACT

The Petitioner is a public employer within the meaning of Subsection 89-12(9), HRS.

Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO, (hereinafter referred to as HGEA), is the exclusive representative within the meaning of Subsection 89-2(12), HRS, of the employees here involved in collective bargaining Units 3, 4 and 6, composed of nonsupervisory employees in white collar positions, supervisory employees in white collar positions, and educational officers and other personnel of the Department of Education under the same salary schedule, respectively.

Negotiations for a new contract for employees in bargaining units 3, 4 and 6 commenced on September 22, 1982. On April 8, 1983, HGEA filed a Notice of Impasse and Request for Board Assistance with this Board for the bargaining units here involved. On May 25, 1983, this Board ruled that an impasse existed in said negotiations and appointed a mediator to assist the parties. Mediation failed to resolve the dispute and a fact finding panel was appointed by the Board pursuant to Subsection 89-11(b)(2), HRS. The fact finding report was issued on June 27, 1983, and the recommendations contained therein were rejected by both Employer and Respondent. Both parties chose not to refer the impasse to final and binding arbitration. Subsequently, the report was made public in accordance with Subsection 89-11(b)(2), HRS. On September 15, 1983, the sixty-day "cooling off" period mandated by Section 89-11(c), HRS, elapsed.

On February 9, 1984, Respondents filed with this Board its notice of intent to strike on or after February 22, 1984. The notice provides that the Respondent, pursuant to Section 89-12(b), HRS, affirms that:

1. the requirements of Section 89-11, HRS, relating to the resolution of disputes have been complied with in good faith;
2. there are no proceedings for the prevention of any prohibited practices; and
3. 60 days have elapsed since the fact-finding board made public its findings and recommendations;

and therefore gave notice to the Board and the Employer of the intent to strike if a satisfactory agreement is not negotiated before that date.

This notice of Respondent's intention to strike has not been rescinded or revoked.

The Petitioner, through the Department of Education, operates 233 public, elementary and secondary schools in the State and serving approximately 162,000 students in grades K through 12 as well as a limited number of pre-schoolers. Included among the 233 schools are elementary, intermediate, high schools, special schools for the handicapped, and a boarding school in Lahaina, Maui. The Department of Education is a centralized system and maintains a central State office and seven (7) district offices to manage and coordinate the functioning of these schools.

Specific findings follow:

PRINCIPALS AND SCHOOL ADMINISTRATIVE SERVICES ASSISTANTS

There are no excluded management employees at the public schools. However, the evidence presented showed that the Petitioner intends to keep the schools open on the first day of the strike, not for instructional services, but for administrative purposes. At that time the situation would be assessed to determine if any schools should remain open during a strike by public employees.

The administrative functions for the principals are to act in behalf of management, anticipate health and safety hazards and be accountable for conducting any school activities safely, assign work, provide a safe environment for those personnel who choose not to strike, coordinate school activities with parents, students, vendors and the public, safeguard school grounds, provide for the proper conduct of picket line, ingress and egress of workers, report emergencies and gather data for Petitioner. The principals are also expected to inspect the campus and be responsible to communicate with the picket line captains.

The School Administrative Service Assistant (SASA) acts as an assistant to the principal, and according to the testimony, would be responsible for the office when the principal leaves the office to perform the duties discussed above. The testimony indicated that the SASA was not a necessary employee if the principal were present, although it was indicated that it would be helpful to have the office open.

The Petitioner indicated that it intended to contract with private security services to safeguard the facilities.

The evidence also revealed that during the last teachers' job action, a statewide average of 11% of the teachers chose not to strike, and a statewide average of 10% of the students reported to school. However, Petitioner had no estimates of the number of teachers who would choose not to strike during this strike, and had no estimates of the number of students who would report to school. Notwithstanding the lack of estimates, the Petitioner wants this Board to declare 238 principals and 238 SASA's as essential employees to prevent an imminent or present danger to the public health and safety.

Since, however, it has not been determined that the schools will remain open it would be premature to designate the principals and SASA's essential at this time. On the record before us, we are unable to conclude that these employees are essential.

The Board therefore finds that there is no imminent or present danger to the public health and safety from the failure to grant the petition with respect to the principals and SASA's, and accordingly denies the same.

EMERGENCY ADMINISTRATIVE SUPPORT SERVICES

The Petitioner and Respondent stipulated that the positions of Pre-Audit Clerk I and II, Clerk III, Pre-Audit Clerk IV and Accounting Operations Specialist III are essential employees. The employees provide administrative support services in personnel, payroll and vendor payment activities.

Based therefore upon such stipulation, this Board deems the Pre-Audit Clerk I and II, Clerk III, Pre-Audit Clerk IV and Accounting Operations Specialist III essential employees.

Based upon the foregoing findings of fact the Board makes its:

CONCLUSIONS OF LAW

The Board has jurisdiction of the subject Petition pursuant to Subsection 89-12(c)(1), HRS, which provides:

If a strike, which may endanger the health or safety of the public, is about to occur or is in progress, the public employer concerned may petition the Board to make an investigation. If the Board finds that there is imminent or present danger to the health or safety of the public, the Board shall establish specific requirements that must be complied with and which shall include, but not be limited to:

- (A) Designation of essential positions; and
- (B) Any other requirement it deems necessary in order to avoid or remove any imminent or present danger to the health or safety of the public.

Such assertion of jurisdiction is proper and necessary.

As stated in previous Board decisions,

This Board is not required to sit passively by and wait for a strike to occur before it can reasonably conclude that a . . . strike poses the kind of danger Subsection 89-12(c) was designed to remove or avoid.

Ariyoshi, et al. v. United Public Workers,
2 HPERB 337 (1979); Ariyoshi, et al. v.
United Public Workers, et al., Decision 188
(issued February 18, 1984), 3 HPERB ____ (1984).

The Board concludes that a strike by Units 3, 4 and 6 employees is about to occur. The Board also concludes that the positions of principal and school administrative services assistant are not essential positions which must be staffed to prevent or remove an imminent or present danger to the public health and safety.

The Board additionally concludes that the withholding during a strike of the Units 3, 4 and 6 positions of Pre-Audit Clerk I and II, Clerk III, Pre-Audit Clerk IV and Accounting Operations Specialist III will create an imminent or present danger to the health and safety of the public and therefore deems such positions essential.

In the Staffing Orders which follow, the Board has set forth the maximum number of positions which the Employer may fill as essential positions to perform the tasks which the Board finds to be necessary to avoid or remove danger to public health or safety during a Units 3, 4 and 6 strike. If, however, the Employer discovers that they need more positions than they asked for and were given, then they are expected to report that fact immediately to this Board. The mandate of Subsection 89-12(c), HRS, is to protect the public health and safety from danger in the event of strikes. It is impossible to predict, with certainty, exactly what number of people may be required to work during a strike to cover events which may occur in the future.

ORDERS

Based therefore upon the foregoing findings of fact and conclusions of law, the Hawaii Public Employment Relations Board hereby orders that the following positions be filled in the event of any strike or job action by Units 3, 4 and 6 employees.

STAFFING ORDERS

<u>BU & CLASS TITLE</u>	<u>NO. REQUIRED</u>	<u>WHEN REQUIRED</u>
<u>DEPARTMENT OF EDUCATION</u>		
<u>Central Payroll and Vouchering</u>		
06 Accounting Operations Specialist	1	100% FTE
04 Pre-Audit Clerk IV	2	100% FTE
03 Clerk III	1	100% FTE
03 Pre-Audit Clerks	2	100% FTE

GENERAL ORDERS

The Board further orders the following in the event of a strike by Units 3, 4 and 6 employees:

1. The class or position titles identified in the foregoing portion of the order are designated as essential positions. Any or all incumbents in the essential positions may be designated by the respective Employers as essential employees.

2. The Employer shall designate employees to fill essential positions. Each Employer shall give notice to an

essential employee in accordance with Subsection 89-12(c)(2), HRS. It is the duty and responsibility of the essential employee to contact the Employer for his or her work assignment. This duty continues throughout the duration of any strike.

3. An essential employee shall report to work as directed by each Employer, unless the absence is excused due to illness or other bona fide reasons. In order to determine the validity of such reasons, the essential employee shall submit a written statement of reasons to the Employer. In the event an absence is based upon a medical disability, a statement from a physician shall be submitted to the Employer. The absence of an essential employee from assigned work without a bona fide reason shall be deemed a violation of this order and deemed to constitute unlawful participation in a strike under Subsection 89-12(a), HRS.

4. If an essential employee does not report to work as directed and there are additional incumbents to fill an essential position, the Employer may designate another incumbent to perform such work. The Employer may notify such employee by whatever means practicable, including by telephone contact, to ensure the delivery of essential services.

If the Employer is unable to fill the essential position with an incumbent, the Employer may assign other employees within the same job classification who are capable of satisfactorily performing the functions, duties and responsibilities of the essential position, and shall notify the Board accordingly. If the employee is not an incumbent of the position, the employee

shall have the right to refuse the temporary assignment to the designated essential position.

5. In the assignment of incumbents or other employees to essential positions, the Employer shall refrain from assigning persons designated as picket line captains, stewards, negotiation team members and Union Board of Directors members unless there are no other employees capable of satisfactorily performing the functions, duties and responsibilities of the essential positions.

Respondents shall furnish the respective Employers with the names of picket line captains, stewards, negotiation team members and Board of Directors members forthwith.

6. The Union shall be responsible for taking all necessary steps to ensure that essential services required by this order are performed without interruption, slowdown, sick-out or other forms of interference.

7. To minimize confusion in communications between the parties, each Employer and each Union shall designate one overall coordinator to be contacted. In addition, each Employer and each Union shall designate a coordinator for each county. These coordinators shall be responsible for maintaining essential services within their respective jurisdictions and implementing any order issued by the Board at the close of this proceeding or during a strike. Each party shall notify the other and this Board, in writing, of their coordinators with their respective current address and business and residence telephone numbers forthwith.

8. Employer may designate one entrance to every work-site having multiple entrances specifically to permit uninhibited ingress and egress by employees in positions designated as essential by the Board, excluded employees, and private employees only. The Employer shall notify the Union that these designated entrances shall be free of any pickets. Should the Employer fail to monitor the designated entrances and access is permitted to other than essential, excluded, and private employees, the Union shall notify this Board and the Board will determine whether the entrance may be lawfully picketed. Further, any monitor representing the Union and present at this entrance shall not impede or harass any essential, excluded or private employees from ingress or egress to the worksite.

Worksites, buildings or facilities which have only one entrance may be picketed, but persons on the picket lines shall permit anyone to cross the picket lines.

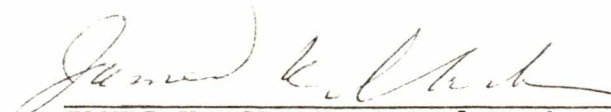
9. To ensure the health or safety of the public, all picket lines of Units 3, 4 and 6 shall be supervised by an on-site picket line captain designated by the Union. The Union shall provide the Employer with a list of picket line captains at all picket lines forthwith. The picket line captain and ultimately, the Union, shall share the responsibility to ensure that picketing is conducted in a lawful manner. Pickets must permit ingress and egress to all persons. Responsibility for insuring uninhibited ingress and egress to all worksites rests with the Union.

These orders may be amended by the Board. Any questions of interpretation of these orders shall be brought to the immediate attention of this Board.

DATED: Honolulu, Hawaii, February 21, 1984.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

Copies sent to:

Mario Ramil, Deputy Attorney General
Melvin Higa, Hawaii Government Employees Association
Joyce Najita, IRC
Publications Distribution Center
State Archives
University of Hawaii
Robert Hasegawa, CLEAR