

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NO. DR-01-46
)	
EILEEN R. ANDERSON, Mayor,)	DECISION NO. 198
City and County of Honolulu,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On July 12, 1984, EILEEN R. ANDERSON, Mayor of the City and County of Honolulu [hereinafter referred to as ANDERSON, Petitioner, or Employer], filed a Petition for Declaratory Ruling with the Hawaii Public Employment Relations Board [hereinafter referred to as HPERB or Board]. In her petition, ANDERSON requests that the Board declare that the interpretation of a contract provision asserted by the United Public Workers [hereinafter referred to as UPW] in a class grievance usurps Petitioner's management rights as provided in Subsection 89-9(d), Hawaii Revised Statutes [hereinafter referred to as HRS].

The grievance arose from UPW's challenge to Petitioner's work rule requiring Wastewater Management employees to notify the Employer of sick leave prior to the employees' scheduled starting time. UPW contends that the Unit 1 Agreement precludes such a notification requirement. The Petitioner contends that UPW's position usurps management's right to direct her employees, maintain the efficiency of governmental operations, and determine the methods, means and personnel by which the

Employer's operations are to be conducted, in contravention of Subsection 89-9(d), HRS.

The issue presented by the instant petition is:

Does the Union's contention that Section 37.05 of the Contract preclude (sic) the Petitioner from issuing work rules which require Wastewater Management employees to notify their supervisors of their absence from work due to illness prior to their scheduled work time, contravene Section 89-9(d), HRS, because it significantly interferes with Petitioner's management right and obligation to maintain the efficiency of governmental operations?

Memorandum, page 3.

All potential interested parties were afforded the opportunity to intervene in this matter through a Board notice, dated July 24, 1984. No petitions for intervention were filed with the Board.

Petitioner's counsel put forth no request for a hearing in her petition but rested on the statement of her position and the supporting memorandum filed with the petition. The Board in its discretion did not order a hearing on its own motion in the matter. Administrative Rules, Subsections 12-42-9(h)(1) and (2).

Upon a full review of the issues and arguments presented, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioner ANDERSON is the Employer, as defined in Subsection 89-2(9), HRS, of Bargaining Unit 1 members of the City

and County of Honolulu, including Wastewater Management employees.

UPW is the exclusive representative, as defined in Subsection 89-2(12), HRS, of Bargaining Unit 1 members of the City and County of Honolulu, including Wastewater Management employees.

The work rule giving rise to the instant petition was issued on March 31, 1979, as part of a larger set of work rules for Public Works employees, and reads, in pertinent part, as follows:

If unable to report due to an unavoidable emergency or illness, an employee shall notify his/her immediate supervisor before his/her scheduled starting time and report reason for absence.

Exhibit B, attached to the Petition.

UPW filed a Step I class grievance, dated May 17, 1983, regarding the work rules, charging that the work rules were not prepared in consultation with the union, and that the notification-of-sick-leave requirement was in violation of, or contradictory to, Section 37.05 of the Unit 1 contract. Exhibit A, attached to Petition.

Section 37.05 reads:

37.05 Notification of Sickness.

Notification of absence on account of sickness shall be given as soon as possible on the first day of absence or if impracticable as soon thereafter as circumstances permit. If such notification has not been given in accordance with this section, such absence may, in the discretion of the department head, be charged to vacation allowance or leave without pay.

The grievance was denied at Step II, on the basis that (1) consultation requirements were in fact met, (2) the grievance was untimely as it was filed more than four years after issuance of the work rules, (3) the rules were essential to maintain operating efficiency and service to the public, and (4) Section 37.05 is general in scope and does not preclude the establishment of specific procedures to meet operational requirements. Letter from Michael Chun, Director and Chief Engineer, City and County, to John Witeck, Business Agent, UPW, dated October 7, 1983, Exhibit C, attached to Petition.

The petition does not indicate further procedures in the grievance process invoked short of arbitration.

The grievance, as of the date of this decision, is before Arbitrator Joyce Najita. Memorandum, page 2.

CONCLUSIONS OF LAW

The Board's jurisdiction to entertain the instant Petition for Declaratory Ruling is based on enabling law contained in Section 91-8, HRS, which states:

Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

Administrative Rules Subsection 12-42-9(f) provides:

The board may, for good cause, refuse to issue a declaratory order.

Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief.
- (3) The issuance of the declaratory order may adversely affect the interests of the board or any of its officers or employees in a litigation which is pending or may reasonably be expected to arise.
- (4) The matter is not within the jurisdiction of the board.

Petitioner asserts that UPW's position regarding the cited contract language usurps management's rights delineated in Subsection 89-9(d), HRS. That subsection reads, in pertinent part:

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, which would be inconsistent with section 77-13.5, relating to the conversion to appropriate salary ranges, 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. [Emphasis added.]

Petitioner contends that the Union construes Section 37.05 of the contract to preclude the issuance of a work rule requiring affected employees to notify their supervisors prior to their scheduled work time if they are unable to work due to illness. Petitioner argues that such interpretation exceeds the permissible scope of negotiations resulting in a substantial and significant interference with Petitioner's obligation to maintain efficiency of governmental operations, to direct her employees, and determine the methods, means and personnel to carry out operations. Hence, Petitioner seeks a Board ruling declaring the Union's construction of the contract to be in contravention of Subsection 89-9(d), HRS, and therefore invalid.

Given the stance of this case, the Board must decide the threshold question of whether to render a ruling, as requested by Petitioner or whether to refrain from so ruling in the exercise of its discretion.

Petitioner asserts that the issue is a "purely legal question," in that no consideration of the factual circumstances regarding the underlying class grievance is necessary. Thus, as a question of legal interpretation regarding a provision of Chapter 89, it is clearly within the Board's jurisdiction. However, we believe the issue posed for declaratory ruling, is by equal measure a question of contract interpretation within the

clear jurisdiction of the arbitrator. While Petitioner seeks a ruling declaring UPW's interpretation violative of Subsection 89-9(d), HRS, and invalid, our ruling will also reflect upon and may determine the construction of Section 37.05 of the contract which is already before the arbitrator.

The Board thus finds good cause to defer to the arbitration process and declines to issue a declaratory ruling on the instant Petition. In deciding to refrain from rendering a decision, the Board cites several factors. First, Board intervention in this case does not seem advisable where both competing parties are already in arbitration before a competent third party arbitrator. Given that the arbitrator has the authority to entertain questions involving contract interpretations and relevant law, the Board is not impelled to infringe on that authority on the basis that it constitutes a more appropriate forum. Secondly, we believe it would be procedurally inappropriate for the Board to inject itself into the controversy at this stage of the case. For the Board to now entertain the Petition would be to disrupt the contractual grievance process. Moreover, there is no indication that the grievance process entered into by the parties generating the proposed issue is not moving smoothly to a fair resolution or that the arbitrator lacks the authority to render a definitive ruling on the grievance. Cf., Fasi and HGEA, et al., 1 HPERB 534 (1974).

ORDER

The Petition for Declaratory Ruling is hereby dismissed.

DATED: Honolulu, Hawaii, September 19, 1984.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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