

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RM-02
)	
HAWAII GOVERNMENT EMPLOYEES)	DECISION NO. 212
ASSOCIATION, AFSCME LOCAL 152,)	
AFL-CIO,)	DECISION AND ORDER
)	
Petitioner.)	
_____)	

DECISION

On February 22, 1985, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO [hereinafter referred to as Petitioner or HGEA], filed with this Board a Petition for Adoption, Amendment or Repeal of Rules pursuant to Chapter 89 and Section 91-6, Hawaii Revised Statutes [hereinafter referred to as HRS], and Administrative Rules Section 12-42-10. Petitioner, an employee organization, seeks comprehensive amendments to Subchapter 5 of the Board's Administrative Rules setting forth Procedures Relating to Strikes, Rights and Prohibitions pursuant to Section 89-12, HRS. After meeting with representatives of the Petitioner, it was determined that comments from the public employers would assist the Board in reaching a decision. Written comments were received from the public employers critical of the proposed amendments. The public employers uniformly requested that the proposed amendments not be adopted by this Board.

Petitioner first seeks extensive revision to Administrative Rules Section 12-42-82, contending that much more specific information should be required by the Board in the

petition initiating essential worker investigations. In order to make an informed decision on essential worker staffing, the Petitioner suggests the Board require identification of all positions requested to be declared essential in a manner sub-categorized by department and facility, copies of approved organizational charts and functional statements for each facility, position number and position description for each position requested to be declared essential, all work schedules, position vacancies, a listing of fee-for-service contractors, a listing of emergency hire and temporary employees and disclosure of any private contractor or subcontractor performing work at the employer's facilities. The rationale for these changes is to provide the Board and the employee organization with sufficient information to identify the actual work force at each facility and to determine current staffing levels under normal operating conditions and adequate staffing levels in a strike situation.

Petitioner also seeks revisions to Section 12-42-86 regarding preliminary investigations. Petitioner suggests the Board apply the specified criteria in establishing health and safety requirements. The union contends that health and safety requirements should relate only to prevent bodily harm or injury to human beings, inconvenience or economic harm to the employer or the public should be disregarded, and employees in reactive positions should be determined to be on a stand-by status only rather than being scheduled for work. Petitioner also contends that preliminary investigations should not be conducted ex parte unless for extraordinary circumstances. Moreover, Petitioner

suggests that investigations be conducted in conformance with Administrative Rules § 12-42-87. As to procedural requirements, Petitioner suggests that the issue of whether a strike is about to occur or is in progress should be investigated and determined prior to any other issue and also, that the Board's rules permit each and every collective bargaining unit to be represented by separate counsel.

With respect to the order establishing specific requirements, Petitioner suggests that the rules be amended to disallow various union officials from being designated as essential, to establish worksite committees and to designate a specific and uniform notice format for essential workers. Petitioner also suggests that the rules be amended to conform investigations and hearings notices to relevant procedures relating to prohibited practices and the Board's rules of general applicability. Lastly, Petitioner suggests that any prior decision of the Board setting forth essential positions not be binding on any subsequent proceedings.

Upon examination of Petitioner's proposed rules and the justifications set forth in the subject petition, it is fairly evident that Petitioner's representatives exercised a great deal of care and thought in the development of their petition in attempting to address their concerns as to the perceived difficulties in past essential worker investigations. The Board is of the opinion, however, that adoption of the proposed rules will unduly constrain the Board's function during the conduct of the essential worker investigations and may delay or hinder the

expeditious rendering of a decision which is intended to protect the public's health and safety. The Board maintains that the Legislature intended the Board to have the discretion to expeditiously determine on a case-by-case basis the governmental functions which are considered essential to maintain the health and safety of the public during a public worker strike. Adoption of the proposed rules, we believe, would upset the delicate balance between the employees' right to strike and the public's health and safety and could operate to leave the public vulnerable during a work stoppage, something we believe the Legislature did not intend.

In addition, the Board has previously recognized that union stewards, negotiating team members, and members of the union board of directors are not to be designated as essential unless they are the only employees who can perform the essential function. The Board notes that the establishment of worksite committees to handle crises or emergencies during the conduct of a strike is a meritorious proposal which was previously included in a past essential worker decision. Failing to adopt this concept in the form of a rule, however, does not preclude it from being inserted in future decisions. With respect to the notice format, the Board is of the opinion that the statutes place the responsibility of notifying employees on the employer. Hence, management representatives are responsible for justifying the adequacy of notice to the Circuit Court for enforcement of back-to-work orders. The Board thus believes that since the employer is ultimately responsible for the adequacy of the

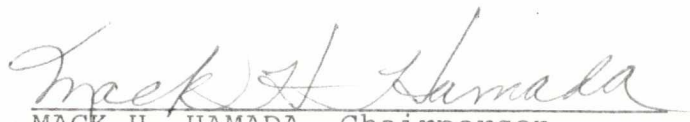
notice, the employer should therefore develop the notice format. Finally, the Board is especially attentive to the concerns raised regarding amendments to the petition form. However, the Board believes these matters should be addressed during the conduct of the proceedings and should not affect the sufficiency of the initiating petition. Moreover, the comprehensive information sought by union representatives indicates to this Board that the scope of prior investigatory proceedings should be enlarged to accurately depict the essential functions of government. Since time is a critical factor in the issuance of the decisions, the Board is of the opinion that there is a need for preliminary fact-gathering during the period of industrial peace. The Board, therefore, intends to conduct fact-gathering pursuant to its investigatory powers in Section 89-5, HRS, in order to form the foundation of future essential worker decisions.

ORDER

For the foregoing reasons, we deny the subject petition.

DATED: Honolulu, Hawaii, February 21, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152,
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JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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