

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: RA-01-92a
)	RA-02-92b
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	DECISION NO. 291
)	
Petitioner,)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER
and)	
)	
JAMES H. TAKUSHI, Director,)	
Department of Personnel)	
Services, State of Hawaii,)	
)	
Intervenor.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On December 26, 1985, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO [hereinafter referred to as UPW or Petitioner] filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board [hereinafter referred to as Board].

The UPW petition asserts that the positions of School Custodian IV and School Custodian V, presently included in bargaining unit 2 should be more properly included in bargaining unit 1 because these positions perform essentially the same duties as the School Custodian III which is currently included in bargaining unit 1.

On January 10, 1986, JAMES H. TAKUSHI, Director, Department of Personnel Services, State of Hawaii [hereinafter referred to as Intervenor], filed a Petition for Intervention in

the instant case with the Board. By Order No. 576, dated January 20, 1986, the Board granted the Petition for Intervention since the Intervenor, as the legal representative of the public employer, alleged a sufficient interest for his participation in the proceedings.

A prehearing conference was held on January 14, 1986. Hearings were held on January 30, February 20, April 1, and April 4, 1986.

On February 12, 1986, the Intervenor filed a Motion to Dismiss. This motion was denied by the Board. Transcript [hereinafter referred to as Tr.] II*, p. 22.

Post hearing briefs were submitted by UPW and Intervenor on May 13, 1986.

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

FINDINGS OF FACT

The UPW is and was, for all times relevant, the exclusive representative as defined in Section 89-2, Hawaii Revised Statutes [hereinafter referred to as HRS], of employees in bargaining unit 1.

Intervenor is and was, for all times relevant, the representative of the public employer as defined in Section 89-2,

* As used herein, "I" refers to the transcript of the hearing dated January 30, 1986, "II" refers to the transcript of the hearing held on February 20, 1986, "III" refers to the transcript of the hearing held on April 1, 1986, and "IV" refers to the transcript of the hearing held on April 4, 1986.

HRS, of employees of the State of Hawaii, which includes employees in bargaining units 1 and 2.

The subject class positions in question, are entitled School Custodian IV and School Custodian V, and are located within the State Department of Education. The positions are currently included in bargaining unit 2 (Supervisory employees in blue collar positions).

School Custodian IV and V positions are represented for collective bargaining purposes by the Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO. School Custodian III positions are in bargaining unit 1 (Nonsupervisory employees in blue collar positions) and represented for collective bargaining purposes by UPW.

Presently, the Department of Personnel Services [hereinafter referred to as DPS] and Department of Education [hereinafter referred to as DOE] are using numerical criteria to determine the appropriate classes for School Custodian III, IV, and V. Three supervisory levels are recognized for the School Custodian series. The levels in each series are distinguished from each other on the basis of significant differences in duties and responsibilities as reflected by the size of school facilities maintained, scope of operations, and the nature of supervision exercised. Petitioner Exhibit 1.

Therefore, in accordance with the grade standards, the positions are allocated to appropriate classes under the following criteria:

Grade Standards:

School Custodian III: This class is characterized by responsibility for a school where both of the following situations exist: (1) the enrollment is 900 students or less, and (2) supervision is exercised over 1 or more but less than 4 Full-Time Equivalent (FTE) subordinates.

School Custodian IV: This class is characterized by responsibility for a school where both of the following situations exist: (1) the enrollment is from 901 to 1500 students, and (2) supervision is exercised over 4 to 7 (FTE) subordinates.

School Custodian V: This class is characterized by responsibility for a school where both of the following situations exist: (1) the enrollment is more than 1500 students, and (2) supervision is exercised over more than 7 (FTE) subordinates.

Further, the Class Specifications for School Custodian III, IV, and V include the following examples of duties, knowledge and abilities:

Example of Duties:

Directs work of subordinates in providing custodial services for a school; assigns, lays out, inspects and supervises the work of subordinates to insure that buildings and grounds areas are kept in a clean and orderly condition; personally performs the more difficult maintenance work to plumbing and electrical fixtures and to woodwork not requiring journey worker level trade skills; supervises custodial staff in preparing for special school functions; has charge of cleaning and operational maintenance of special school equipment such as swimming pools, auditoriums and loud speaker systems; supervises or participates in the propagation and cultivation of flowers, plants and lawns; requisitions, receives, stores and is responsible for janitorial supplies and equipment for the school assigned and takes periodic inventories of such supplies and equipment; maintains records of supplies dispensed and of equipment issues;

makes reports on work accomplished and of unusual happenings or accidents; keeps daily time sheets; has security responsibility for the school; turns "night lights" on and off at proper hours; may supervise student help when assigned; may operate power equipment such as power lawn mowers; may perform the typical duties of lower level custodians if necessary.

Knowledge and Abilities Required:

Knowledge of: Cleaning methods, materials and equipment; types of cleaners for various materials and surfaces; common trade practices and tools; equipment and tools used in grounds maintenance; general practices in the cultivation and care of flowers, plants, shrubs, trees and lawns; principles and practices of supervision.

Ability to: Issue and follow oral and written instructions; plan work and supervise others; makes minor maintenance repairs to the building and equipment therein; operate heavy industrial type cleaning equipment; keep records and make simple reports; meet and deal tactfully with other employees, school age children or youth, and the public. Petitioner Exhibit 3.

The UPW also presented this Board with numerous position classification forms for individual positions within the School Custodian class. These forms indicated the major duties and responsibilities including the percentages of time spent on supervision, minor repairs and maintenance, custodial work, etc. The form also stated that for School Custodian IV and V positions, the employee must have one year of supervisory experience. Petitioner Exhibits 10-68 and 71.

In its petition, UPW contended that, "School Custodians IV and V have been and are continuing to perform BU-01 work duties on a permanent basis." It further contended that, "Although the percentage of time spent on their job duties may

vary between schools, all three classes perform essentially the same duties, which are a combination of BU-01 and BU-02 work. The only difference between the three classes are the number of subordinates and the school enrollment at the assigned school." Board Exhibit 1.

The Intervenor, on the other hand, admitted that all of the subject positions perform some worker-level school custodian work. However, it contended that each class has clearly defined boundaries. Although the positions are similar in that each serves as Head Custodian for a school, the Intervenor avers that there are definite distinctions which reflect bona fide differences in the type of work performed under the different class positions. Intervenor Exhibits 8, 9 and 10; Tr. III, pp. 53-54, 67, 71 and 72.

Mr. Gerald Sada, Personnel Specialist with the DOE, testified that positions in the class School Custodian III spend a great majority of their time in the performance of worker level work, and a smaller percentage of their time in supervisory work, consistent with their fewer subordinates. Sada also testified that by comparison, positions in the School Custodian IV and V classes spend more time in supervision and related work, and decreasing amounts of time in the performance of custodial work, which is consistent with their larger number of subordinates. Intervenor Exhibit 8; Tr. III, pp. 71-73 and 92-93.

In his opening statement before the Board, Mr. Clifford Uwaine, Assistant to the State Director of UPW, stated that the

numerical criteria which the DPS and DOE use in their determination of a bargaining unit, is not appropriate. Instead, Uwaine urged that the determination of supervisory employees should be based on the definition provided in Section 89-2, HRS.

Mr. Clement Kamalu, Chief of the Division of Classification and Compensation Review of DPS, testified extensively on the numerical criteria issue. Kamalu basically urged that the Board is not the proper forum to decide the issues of classification--since this is not a collective bargaining question. However, he justified the numerical criteria contained in the specifications which he thought was historically sound--having been in satisfactory use since 1967 without dispute. Kamalu further believed that this numerical criteria based on the size of the school, the number of student enrollment, and number of subordinates under a supervisor, is a correct reflection of current work differences in supervisory span of control and the amount of time required of the positions to carry out their supervisory functions. Intervenor Exhibit 8; Tr. III, pp. 75-76 and 104-105.

The Board heard extensive testimony from Messrs. Kamalu and Sada concerning the supervisory tasks performed by custodians under Custodian IV and V positions. Intervenor also submitted into evidence several exhibits which indicated the percentage of time spent on supervisory duties. Intervenor Exhibits 8-10.

CONCLUSIONS OF LAW

The instant petition seeks to change the bargaining unit designations of School Custodian IV and School Custodian V

positions from Unit 2 (Supervisory employees in blue collar positions) to Unit 1 (Nonsupervisory employees in blue collar positions).

UPW contends that the determination of whether or not School Custodian IV and V positions should be placed in Unit 1 must be based on Section 89-2, HRS, and not solely on a numerical criteria which is one of the bases by which the DPS and DOE have admitted to have been used since 1967.

In Section 89-2, HRS, the definition of a supervisory employee is provided as follows:

"Supervisory employee" means any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Based on the record before this Board, the Board concludes that the subject positions and the duties meet the test of a supervisor as statutorily defined. The evidence clearly indicates that these positions are responsible for assigning and directing the work of other employees. There was no evidence presented to the Board to cast any doubt on the presence of this task.

Further, the Board received evidence which clearly indicated that most of the positions involved supervisory duties connected with disciplinary action, evaluating the job performance of subordinates, offer recommendation in the hiring of

applicants, training workers, and performing other tasks associated with the management of the work unit.

The Board notes that although custodial work can be routine on a daily basis, the supervisory duties are not routine. The Board also concludes that the subject positions satisfies the "independent judgment" test in Section 89-2, HRS. The Board is convinced, based on the record, that the supervisory positions are involved with the task of making decisions on work activities including determining priorities, training, evaluating job performance of subordinates, and resolving employee work problems, to mention a few duties. Such work was not limited only to routine or clerical functions, but the authority connected with the duties required the use of independent judgment.

The Board also concludes that the nature of work and pertinent work details connected with the positions of School Custodian IV and V support the retention of these positions in the supervisory blue collar bargaining unit. In Subsection 89-6(a), HRS, provides in pertinent part:

. . . In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall also be included. [Emphasis added.]

Based upon the undisputed testimony by both Intervenor's witnesses, the Board concludes that the job content or nature of work is supervisory in nature, and that this is the primary function of the positions. To qualify for this

supervisory position, a minimum of one year of supervisory work experience is required prior to appointment to a position in the classes School Custodian IV or V.

Based on the record, there was no evidence presented which indicated that the positions in question spent any major portion of their time as part of a crew or team with nonsupervisory employees. There was no indication that the subject supervisors performed "straw boss" roles. They performed their work in a true supervisory role.

The Board also concludes that the current practice of requiring some performance of worker-level work by head custodians in the classes School Custodian IV and V is valid because this was a subject which was approved under the terms of the collective bargaining contract between UPW and the State. This worker-level work was found to be very minimal.

The Board will not address the questions relating to the classification system and pricing of the positions. These issues should be brought before the proper statutory authorities.

Thus, the Board concludes that inasmuch as the subject positions of School Custodian IV and School Custodian V (1) possess supervisory authorities as delineated in Section 89-2, HRS, which require the use of independent judgment and (2) a major, greater or large portion of their working time is not spent as part of a crew or team with nonsupervisory employees in a nonsupervisory capacity, the subject class and positions are supervisory under Chapter 89, HRS, and the inclusion of the positions in Unit 1, as requested by Petitioner, is inconsistent

with Section 89-2 and Subsection 89-6(a), HRS. Accordingly, the Petition is denied.

ORDER


The subject positions within the School Custodian IV and School Custodian V class shall remain in Unit 2.

DATED: Honolulu, Hawaii, December 29, 1988.

HAWAII LABOR RELATIONS BOARD



JAMES R. CARRAS, Board Member



GERALD K. MACHIDA, Board Member

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