

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. DR-07-51
)	
UNIVERSITY OF HAWAII)	DECISION NO. 304
PROFESSIONAL ASSEMBLY,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner,)	SIONS OF LAW AND DECLARA-
)	TORY ORDER
and)	
)	
HAWAII STATE TEACHERS)	
ASSOCIATION; HAWAII GOVERN-)	
MENT EMPLOYEES ASSOCIATION,)	
AFSCME, LOCAL 152, AFL-CIO;)	
and JOHN WAIHEE, Governor,)	
State of Hawaii,)	
)	
Intervenors.)	
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECLARATORY ORDER

On June 8, 1989, the UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA), Petitioner, filed a Petition for Declaratory Ruling with the Hawaii Labor Relations Board (Board). In its petition, the UHPA seeks a ruling as to whether the employees in Unit 7 may conduct an economic strike after an impasse has been declared where the public employer and the UHPA fail to reach agreement over amounts of contributions to the Hawaii Public Employees Health Fund (Health Fund).

Subsection 89-9, Hawaii Revised Statutes (HRS), was amended by Act 254 of the 1984 Legislative Session, to permit negotiations regarding "the amounts of contributions by the

State and respective counties to the Hawaii Public Employees Health Fund to the extent allowed in Subsection (e)."

Section 89-9(e), HRS, as amended, provides that these contributions shall be bargainable:

(e) Negotiations relating to contributions to the Hawaii public employees health fund shall be for the purpose of agreeing upon the amounts which the State and counties shall contribute under section 87-4, toward the payment of the costs for a health benefits plan, as defined in section 87-1(8), and group life insurance benefits, and the parties shall not be bound by the amounts contributed under prior agreements; provided that section 89-11 for the resolution of disputes by way of fact finding [sic] or arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the Hawaii public employees health fund.

The UHPA seeks a ruling as to whether a strike is permissible in light of this provision.

All potentially interested parties were afforded the opportunity to intervene in this matter through a Board notice dated June 16, 1989. Petitions for Intervention were filed by the HAWAII STATE TEACHERS ASSOCIATION (HSTA) and the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION (HGEA) on June 28, 1989. JOHN WAIHEE, Governor of the State of Hawaii (STATE), filed a Petition for Intervention on June 30, 1989. By Order dated July 7, 1989, the HSTA, HGEA and the STATE were granted the status of Intervenors in the instant matter.

Petitioner's counsel put forth no request for a hearing on the instant petition but rested on the statement filed

with the petition. The STATE filed a position statement on July 17, 1989. UHPA filed a Reply Brief on July 28, 1989. HSTA filed a response to the position statement of the STATE on July 28, 1989.

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

FINDINGS OF FACT

Petitioner UHPA is the exclusive representative, as that term is defined in Section 89-2, HRS, of employees in bargaining unit 7 (Faculty of the University of Hawaii and the community college system).

Intervenor HSTA is the exclusive representative of employees in bargaining unit 5 (Teachers and other personnel of the department of education under the same salary schedule, including part-time employees working less than 20 hours a week who are equal to one-half a full-time equivalent).

Intervenor HGEA is the exclusive representative of employees in bargaining units 2, 3, 4, 6, 8, 9 and 13.

Intervenor JOHN WAIHEE is the Governor of the State of Hawaii and is a public employer as the term is defined in Section 89-2, HRS.

The UHPA submits that the significance of Section 89-9(e), HRS, is that the amounts of contributions to the Health Fund are as bargainable as any other cost item which is a mandatory topic of bargaining such as wages.

Impasse, UHPA argues, can be declared where a failure to agree on contributions divides the parties under the same rules and standards and with the same effect as in any other impasse case where a failure to agree on contributions did not exist, except that fact-finding and arbitration are not available to deciding the proper amount of contributions. Issues left unresolved after the declaration of impasse would be for the parties to resolve, and either party would be "free to take whatever lawful action it deems necessary to end the dispute" pursuant to Section 89-11(c), HRS.

As to Section 89-9(e), HRS, UHPA argues that the language providing that certain procedures "shall not be available to resolve impasses or disputes relating [to contributions]" indicates that the Legislature meant to provide that impasse may be reached over contributions to the Health Fund. UHPA argues that since the proviso in Subsection 89-9(e), HRS, states that neither fact-finding nor arbitration shall be available to resolve this dispute over contributions, it stands to reason that the other methods of dispute resolution provided in Chapter 89, HRS, are available as they would be for any other bargainable topic. The UHPA then cites Section 89-11(c), HRS, which in relevant part provides:

If the parties have not mutually agreed to submit the dispute to final and binding arbitration, either party shall be free to take whatever lawful action it deems necessary to end the dispute; provided that no action shall involve the disruption or interruption of public services within sixty days after the

fact-finding board has made public its findings of fact and any recommendations for the resolution of the dispute.

In its Position Statement, the STATE contends that Health Fund contributions may be a subject of impasse. The STATE further concurs that there is nothing on the face of Section 89-9(e), HRS, or in the legislative history to clearly indicate that Section 89-11(c), HRS, containing the provision granting public employees the right to strike was not intended to be applicable.

The HSTA, in its response to the Position Statement of Intervenor Governor John Waihee, agrees with the conclusion that a failure to agree on the amount of State and county contributions to the Health Fund can result in an impasse on that issue under the procedure set forth in Section 89-11(b), HRS.

CONCLUSIONS OF LAW

The Board concludes that, as stated or conceded in varying language of the parties to the instant matter, impasse may be declared and that the right to strike applies regarding negotiations over the amounts of contributions to the Health Fund.

The right to strike is a basic economic right of employees and should not be lightly curtailed. Article 14, Section 2, Hawaii State Constitution, provides that persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law. See also,

Section 89-1, HRS, recognizing the right of public employees to organize for the purpose of collective bargaining. Moreover, the right to strike is central to collective bargaining activity. Given the Board's recognition of this basic economic right of employees, its curtailment through statutory amendment should only occur through express language rather than through inference or implication.

The Board thus concludes that under Section 89-9(e), HRS, impasse may be declared over issues regarding the amounts of contributions to the Health Fund. After declaration of impasse, fact-finding or arbitration are not available to resolve the impasse but a strike may duly follow.

Committee reports and supporting statutory provisions, while not conclusive, suggest the correctness of this view. See, Section 89-11(d), HRS, providing that "it is strictly understood that no member of a bargaining unit subject to this subsection, i.e., bargaining units 11 and 12, shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii Public Employees Health Fund." This creates the permissive inference that other bargaining units retain the right to strike over the Health Fund contributions question.

Further, the Board notes legislative Committee Reports stating that no strike shall be allowed over disputed contribution amounts for the fire fighters bargaining unit relating to contributions to the Health Fund. Conference Committee

Report No. 89-84; Conference Committee Report No. 91-84. This again creates a permissive inference that strikes over such an issue may occur within other bargaining units.

Petitioner further raises the issue of, presuming that a strike over contributions to the Health Fund can occur, at what time, following impasse, can such a strike begin. Petitioner notes that under Section 89-11(c), HRS, a strike is prevented for sixty days after the publication of the fact-finding report, yet there is to be no fact-finding report regarding Health Fund contributions. Petitioner argues that a strike option exists on the contribution issue sixty days after declaration of impasse. UHPA notes that since the fact-finding and arbitration procedures have been excised from the statutory time line, it is fair to simply count the cooling-off period from the declaration of impasse.

The STATE argues that the question of when employees can strike on the issue of Health Fund contributions cannot and should not be decided presently. The proper time to decide the issue, the STATE contends, would depend on the circumstances of each case and such a determination must be made on a case-by-case basis.

The HSTA, in its response to the Position Statement of the STATE, argues that the timetable set forth in Sections 89-11(b) and (c), HRS, applies to an impasse over the amounts of Health Fund contributions. Such a ruling, HSTA argues, would

give a greater degree of certainty to the negotiating parties. It would be clear that all impasse issues would be subject to the same requirements and neither party could play legal games with the possibility of separating the Health Fund contribution issue from others. HSTA submits that the impasse/strike timetable would remain the same; the only difference being that the Health Fund contributions issue would not be subject to fact-finding or arbitration. HSTA contends that the time line set forth in Sections 89-11(b) and (c), HRS, for the fact-finding process and the subsequent sixty-day cooling-off period would run as provided in the statute in any event.

The Board takes the stance that, under Administrative Rules § 12-42-9(f)(1), a ruling on the question of the applicable timeline is not appropriate at this time. No instant controversy involving the timeline question now exists or could possibly arise until contract expiration in June of 1991. The question thus falls under the language of Administrative Rules § 12-42-9(f)(1), which permits the Board to refuse to issue a declaratory order where 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."


DECLARATORY ORDER

Under Section 89-9(e), HRS, strikes are permissible following a declaration of impasse over issues involving contributions to the Health Fund.

The question of the timetable for such strikes is not ripe for adjudication; the Board thus declines to rule on the question.

DATED: Honolulu, Hawaii, June 25, 1990.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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