

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: RA-01-205a
)	RA-13-205b
JEREMY S. HARRIS, Mayor of the)	
City and County of Honolulu,)	DECISION NO. 367
)	
Petitioner,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND ORDER
and)	
)	
UNITED PUBLIC WORKERS, AFSCME,)	
LOCAL 646, AFL-CIO,)	
)	
Intervenor.)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On February 6, 1995, Petitioner JEREMY S. HARRIS, Mayor of the City and County of Honolulu (HARRIS or Employer) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). The Employer redescribed the duties and responsibilities of Position No. WD-574, Heavy Truck Driver II, BC-8, which is included in bargaining unit 01 (Non-supervisory employees in blue collar positions) and reallocated the position to a Civil Engineer IV, SR-24, which is included in bargaining unit 13 (Professional and scientific employees, other than registered professional nurses). Thus, the Employer proposes to transfer the position from Unit 01 to Unit 13.

On February 16, 1995, the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a petition for intervention with the Board. The UPW, exclusive representative of Unit 01, did not concur with the change in bargaining unit designation requested by HARRIS because the Employer essentially eliminated an existing

Heavy Truck Driver II position and reclassified the position to a Civil Engineer IV. The UPW contends that such action was unreasonable and improper. The Board granted UPW's petition for intervention on March 1, 1995.

The Board conducted a hearing on the merits of this petition on April 5, 1995. The parties were afforded a full opportunity to present evidence and arguments to the Board. Thereafter, the parties submitted post-hearing briefs to the Board. Based upon the record in this case, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioner HARRIS is the Mayor of the City and County of Honolulu and the public employer, within the meaning of Section 89-2, Hawaii Revised Statutes (HRS), of employees of the City and County of Honolulu.

Intervenor UPW is the exclusive representative, within the meaning of Section 89-2, HRS, of employees of the City and County of Honolulu who are included in bargaining unit 01.

By letter dated September 6, 1994, Kenneth E. Sprague (Sprague), Director and Chief Engineer of the Department of Public Works (Department) notified Gary Rodrigues, UPW State Director, of the plan to reallocate position WD-574, Heavy Truck Driver II, BC-8, BU-01 to a Civil Engineer IV, SR-24, BU-13. Sprague indicated that the Department decided to reallocate the Heavy Truck Driver II position because the number of available drivers was greater than the number of trucks needed for operations due to down time. Therefore, the Department decided that the Heavy Truck

Driver II position was not needed whereas a Civil Engineer IV position was needed to assist with overseeing new programs mandated by the Federal Clean Water Act. Thus, Sprague indicated that the purpose of the letter was to consult on the Department's plans to reallocate the position. Petitioner's (P's) Exhibit (Ex.) 3.

By memorandum dated September 26, 1994, Sprague requested the Budget Department and the Department of Personnel to assist in expediting approval of the reallocation action. P's Ex. 7.

By letter dated October 11, 1994, the Budget Department authorized the Department of Public Works' request for reallocation of Position WD-574 and the filling of the position.

The Department of Personnel reallocated Position WD-574 from a Heavy Truck Driver II, BC-8, BU-01 to a Civil Engineer IV, SR-24, BU-13. On October 17, 1994, the Department of Personnel sent written notification of the change in bargaining units to the exclusive representatives for Units 01 and 13, the UPW and the Hawaii Government Employees Association (HGEA), respectively. P's Exs. 8 and 9.

On or about October 20, 1994, the HGEA indicated that it concurred with the proposed bargaining unit change. P's Ex. 9.

On or about November 16, 1994, the UPW informed the Department of Personnel that it did not concur with the proposed bargaining unit change. P's Ex. 8.

By letter dated December 5, 1994 to Gary Rodrigues, Sprague requested the UPW to reconsider its non-concurrence of the proposed bargaining unit change. Sprague indicated that a newly created Civil Engineer IV position was needed in the Road Division

administration to assist Division management with new requirements related to the National Pollutant Discharge Elimination Program (NPDES). The Road Division reviewed existing Heavy Truck Driver II positions and the daily use of the dump truck inventory and found that two less positions were needed to operate the dump trucks. Since one of the vacant positions, Position WD-755, was in the process of being filled, once filled, there would be nine positions to operate the nine trucks which were operational. P's Ex. 10.

By letter dated December 28, 1994, the UPW informed Sprague that it did not agree with the Department's justification and did not intend to change its decision of non-concurrence. P's Ex. 11.

The Employer filed the subject petition on February 6, 1995.

According to the Position Description for the Civil Engineer IV, the position works under the direct supervision of the Division Chief and the Assistant Chief to provide administrative support including overseeing the enforcement of ordinances and regulations relating to stream and storm drain maintenance, participating in formulating policies and making recommendations and performs the following duties in the approximate percentages of time:

1. Assists with planning and coordinating various activities relating to the maintenance, repair and construction of streams, drainage facilities and their appurtenant structures (10%);
2. Coordinates the handling of complaints and requests and prepares replies related to activities, particularly in rural areas (10%);

3. Recommends, implements and coordinates Capital Improvement Projects and other improvement/repair projects in areas related to maintenance responsibilities as well as for rural baseyard improvements (5%);
4. Develops and oversees implementation of Division's stream and storm drain maintenance programs, including regulations relating to the City's Stream Cleaning Ordinance and the stormwater discharge programs. Addresses environmental concerns, including preparation of Negative Impact Statements; processes and obtains necessary permits to implement projects (35%);
5. Reviews plans, conducts periodic inspections, makes recommendations for improvements and follows up on deficiencies for flood control and other stream improvement projects and programs (5%);
6. Reviews engineering construction plans related to maintenance and recommends additions and/or revisions (3%);
7. Prepares contracts for various maintenance activities. Participates in negotiations, establishes billing and work schedules, reviews and monitors activities and processes monthly billing (10%);
8. Prepares special reports and makes studies as directed (5%);
9. Assists with developing hazardous material disposal and management programs (10%);
10. Develops procedures, rules and regulations to implement Division policies and increase job efficiency (5%); and
11. Performs other related duties (2%). P's Ex. 4.

According to the Class Specifications, the Civil Engineer IV does difficult professional engineering work in the design, construction, maintenance and operation of civil engineering projects, and prepares designs, plans, specifications, estimates and reports. P's Ex. 5.

Prior to the instant reclassification, Position No. WD-574 was classified as a Heavy Truck Driver II included in Unit 01. It was one of sixteen Heavy Truck Driver II positions, in the Equipment Pool, Honolulu Maintenance and Major Pool Services, Road Maintenance Division, Department of Public Works. Transcript of the hearing held on April 5, 1995 (Tr.) p. 85. Position WD-574 was vacant since November 16, 1993. Tr. p. 84.

Evelyn Young, Executive Assistant of the Department, testified that the Department initially reallocated a Rural Maintenance Superintendent to a Civil Engineer IV to perform the NPDES compliance work. Tr. p. 68. The Civil Engineer position was vacant since April 1994. Tr. p. 53. Thereafter, in May 1994 the City Council deleted the vacant Civil Engineer IV position. Tr. p. 69. Thus, the Division investigated other means to create a Civil Engineer IV position to carry out the federally mandated requirements of the NPDES program. The Division reviewed each vacant position with the Road Maintenance Division beginning with vacant white collar positions and any other positions which were already assigned to bargaining units of HGEA. Tr. pp. 53-54. The examination of vacant positions indicated that there were two vacant white collar positions in the Road Maintenance Division at the time of the review and management determined that both of the positions were necessary for operations. Tr. p. 83.

Yukio Uehara, Chief of the Road Maintenance Division, testified that one vacant white collar position was a District Road Maintenance Superintendent position, Position WD-722. Tr. p. 128. The position was considered to be nonexpendable because it was in

charge of one of the Division's rural baseyards. Tr. p. 83. In addition, the position was in the process of being filled at the time of the hearing. Tr. pp. 107, 129.

The other vacant white collar position was a Road Labor Supervisor position, Position WD-932. However, since the position was in charge of a field crew that performed maintenance work in one of the Division's yards, the position was not considered expendable. The Road Labor Supervisor supervised a crew of five laborers in stream and roadside cleaning and was considered one of the critical positions to be staffed. Tr. p. 129.

After reviewing the vacant blue collar position assigned to Unit 01, management determined that Position WD-574 was not needed because the number of available truck drivers either exceeded or equalled the number of available heavy trucks on an average day. P's Exs. 3 and 10. Thus, the Employer redescribed Position WD-574 to function as a Civil Engineer IV. P's Exs. 4 and 5.

Uehara also testified that he needed Heavy Truck Driver II, WD-755 to be filled. Uehara admitted that if he did not have Position WD-755, he would probably not reallocate Position WD-574. Tr. p. 122. He further agreed that without Position WD-755 filled, Position WD-574 was indispensable. Tr. p. 133. In addition, Uehara admitted that qualified employees are temporarily assigned into the truck driver positions "almost daily". Tr. pp. 144-45.

DISCUSSION

At the outset, the Employer contends that the Board's review of the instant petition should be confined to the issue of whether the specific position is appropriately included in Unit 13. The Employer submits that this case concerns management's right to reclassify a vacant position to a position that management has determined to be necessary to meet the department's operational needs. The Employer argues that since matters of classification and reclassification are not negotiable under Section 89-9, HRS, the only question before the Board is whether Position WD-574 should be properly included in Unit 13. Thus, the Employer contends that the Board should refrain from determining whether the reallocation action in this case was appropriate.

The UPW does not dispute that the Civil Engineer IV is properly included in Unit 13. The UPW rather, contends that the Employer's action in reallocating the subject position was unreasonable. The UPW contends that the Board should review the justification for the reallocation and determine whether the Employer's decision was proper.

Section 89-6, HRS, sets forth the appropriate bargaining units and provides in (d) as follows:

Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific positions and employees.

According to the foregoing statute, the Board has the authority pursuant to Section 89-6(d), HRS, to determine controversies arising from the designation of bargaining units to

specific positions and employees. A Board majority agrees with the Employer's contentions that the scope of the proceedings under Section 89-6(d), HRS, is limited to determining the appropriateness of the bargaining unit designation of the specific position based upon the duties and responsibilities of the position. Thus, the Board majority refrains from reviewing the appropriateness of the Employer's reallocation action as proposed by the UPW. Where the Employer's actions however, suggest some anti-union animus, such issues should be raised before the Board within the context of a prohibited practice charge under Section 89-13, HRS. Based upon the record, therefore, the Board majority concludes that the subject position, as reallocated and reclassified as a Civil Engineer IV, should be included in Unit 13.

Assuming arguendo, that the Board has jurisdiction to determine the reasonableness of the Employer's decision to reallocate the position, the Board majority finds that the Employer established its operational need for a Civil Engineer IV to assist in overseeing the Employer's Clean Water Act compliance. In addition, the Board majority finds that the Department properly reviewed position vacancies within the Division to determine whether there were any available white collar positions which could be reallocated. Having found no available white collar positions, the Department reviewed the duties and responsibilities of available blue collar positions and determined that on balance, operational needs did not justify the retention of another Heavy Truck Driver II. Therefore, the Board majority finds that the

Department was reasonable in reallocating WD-574 to Civil Engineer IV.

CONCLUSIONS OF LAW

The Board has jurisdiction over the subject petition pursuant to Section 89-6, HRS.


The Employer redescribed the duties and responsibilities of Position WD-574, Heavy Truck Driver II, which was included in Unit 01 and reclassified the position to Civil Engineer IV. As the position is properly included in Unit 13, the position should be transferred from Unit 01 to Unit 13.

ORDER

Position No. WD-574, Civil Engineer IV, is hereby transferred to Unit 13.

DATED: Honolulu, Hawaii, July 31, 1995.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member

DISSENTING OPINION

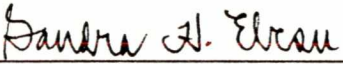
I disagree with the Board majority that the Board does not have the jurisdiction to review the reasonableness of the Employer's reallocation action. Section 89-6(d), HRS, provides that the Board shall determine controversies regarding the

designation of bargaining units to specific positions. If a controversy exists as to the reasonableness of the Employer's classification action, I believe that the Board can consider such matter in aid of its jurisdiction to designate the appropriate bargaining unit to the specific position.

In this case, the Employer did not establish that all vacant white collar positions were considered and rejected prior to reallocating the instant Heavy Truck Driver II position which was included in Unit 01. In addition, Mr. Uehara testified that if he could not fill Position WD-755, Position WD-574 would become indispensable. The testimony also indicates that the Employer has imposed a hiring freeze, which would increase the significance of WD-574 as a Heavy Truck Driver II.

In addition, Mr. Uehara testified that temporary assignments to Heavy Truck Driver II are made on a daily basis providing Heavy Truck Driver I's the opportunity to perform at the higher level. Thus, the Employer's reallocation of the subject position which effectively abolishes the Heavy Truck Driver II position denies promotional opportunities for qualified Unit 01 members.

Based on the foregoing, I would find that the Employer's decision to reallocate the subject position was not reasonable based upon the facts of this case.


SANDRA H. EBESU, Board Member

JEREMY S. HARRIS, Mayor of the City and County of Honolulu and
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO; CASE NOS.:
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