

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: CE-03-170a
)	CE-04-170b
HAWAII GOVERNMENT EMPLOYEES)	CE-13-170c
ASSOCIATION, AFSCME LOCAL 152,)	
AFL-CIO,)	
)	DECISION NO. 370
Complainant,)	
)	FINDINGS OF FACT, CONCLUSIONS
and)	OF LAW AND ORDER
)	
DEPARTMENT OF EDUCATION,)	
State of Hawaii,)	
)	
Respondent.)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On August 10, 1992, Complainant HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152, AFL-CIO (HGEA or Union), by and through its attorneys, filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) against Respondent DEPARTMENT OF EDUCATION, State of Hawaii (DOE or Employer). The HGEA alleged, inter alia, that the DOE committed prohibited practices in violation of Sections 89-13(a)(5) and (8), Hawaii Revised Statutes (HRS), by announcing its intention to unilaterally implement a seven-day public service schedule for the Hawaii State Public Library System (State Library), effective September 8, 1992.

On October 12 and 15, 1992, the Board conducted a hearing on the subject complaint. All parties were represented by counsel and allowed to present evidence, examine and cross-examine witnesses, and make argument. At the October 12, 1992 hearing, State Librarian Bartholomew Kane (Kane) indicated that he intended

to implement the proposed seven-day public service schedule on November 1, 1992. See Transcript of proceedings on October 12, 1992 (Tr. I), pp. 107-08.

At the close of the October 15, 1992 hearing, the HGEA requested that the Board issue an interlocutory order enjoining the DOE from implementing its proposed seven-day public service schedule on November 1, 1992. See Transcript of proceedings on October 15, 1992 (Tr. II), pp. 17-19. The parties submitted written memoranda to the Board on October 22, 1992. By Order No. 912, dated October 29, 1992, the Board issued a stay of the Employer's seven-day public service schedule pending the issuance of a final Board decision.

On November 18, 1992, the parties submitted post-hearing briefs.

Based upon the entire record before the Board, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Complainant HGEA is the exclusive representative, as defined in Section 89-2, HRS, of public employees in bargaining units 03, 04, and 13.

Respondent DOE is the public employer, as defined in Section 89-2, HRS, of employees of the State of Hawaii and the State Library, including employees in bargaining units 03, 04, and 13.

The HGEA and the Employer were, at all relevant times, parties to two collective bargaining agreements, effective July 1, 1991 to June 30, 1993, covering public employees in bargaining

unit 03 (nonsupervisory employees in white collar positions) and public employees in bargaining unit 04 (supervisory employees in white collar positions), respectively. See Joint (J) Exhibits (Ex.) 1 and 2.

The parties herein were also at all relevant times parties to a collective bargaining agreement, effective July 1, 1989 to June 30, 1993, covering public employees in bargaining unit 13 (professional and scientific employees, other than registered professional nurses). See J Ex. 3.

The applicable Units 03 and 13 collective bargaining agreements contained a provision pertaining to personnel policy changes, which stated in relevant part:

ARTICLE 4 - PERSONNEL POLICY CHANGES

* * *

B. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

See J Ex. 1 and 3.

The applicable Unit 04 collective bargaining agreement contained a similar provision pertaining to personnel policy changes, which stated in relevant part:

ARTICLE 4 - PERSONNEL POLICY CHANGES

* * *

B. No changes in wages, hours or other conditions of work contained herein may be made except by mutual agreement.

See J Ex. 2.

The applicable Units 03, 04, and 13 collective bargaining agreements contained identical provisions relating to rights of the employer, which stated:

ARTICLE 5 - RIGHTS OF THE EMPLOYER

The Employer reserves and retains, solely and exclusively, all management rights, powers, and authority, including the right of management to manage, control, and direct its work forces and operations except those as may be modified under this Agreement.

See J Exs. 1, 2, and 3.

Prior to 1973, the library system was open seven days a week. In 1973, because of unfavorable economic conditions, the library system began to lose positions and libraries were closed on Sundays, as well as on other days. Economic recovery beginning in 1975 led to employees being added back to the system and the expansion of library hours. Since 1976, the hours of operation of main libraries has been 54 hours a week spread over six days. Tr. I, pp. 40-41.

In late 1983, the Board of Education transmitted a report entitled, "Hawaii's Public Libraries in the 1980's: Plans for Service", to the Legislature. The report was submitted to comply with House Resolution No. 33, adopted during the 1983 legislative session, which requested that the Board of Education conduct a review of library services staffing and submit a report to the Legislature prior to the convening of the 1984 regular session. Complainant's (C's) Ex. 1.

One of the goals contained in the report was to provide public library service seven days a week except on State holidays on Kauai, Oahu, Maui and Hawaii by 1986. As part of the rationale

for this goal, a public survey conducted in 1977 is cited. The survey found that the public mentioned Saturday and Sunday as the "most convenient" time for them to go to the public library by 32% and 23%, respectively. C's Ex. 1, p. 7.

In 1989, the Employer received a \$500,000 appropriation from the Legislature to open five libraries on Sundays as a pilot program. Tr. I, pp. 45, 77.

By letter dated August 3, 1990, Kane offered to consult with the HGEA regarding the Employer's proposal to "effect changes in the hours of work and work schedules of selected libraries on Oahu" and open five libraries "on Sundays and on certain holidays designated by the State Librarian," effective September 4, 1990. See Ex. 1 attached to Respondent's (R's) Answer to Prohibited Practice Complaint, filed on August 24, 1992 (Answer).

By letter dated August 15, 1990, HGEA Field Services Officer Randy Perreira (Perreira) informed Kane that "the Union is not willing to negotiate any changes to the hours of work and work schedules for the libraries identified in the proposal." See Ex. 2 attached to R's Answer.

By letter dated September 6, 1990, Kane offered, inter alia, to staff the Sunday openings with temporary hires, and in the event of staff shortages, permanent employee volunteers. See Ex. 3 attached to R's Answer. The HGEA agreed to this proposal, and the Sunday pilot program was implemented on November 4, 1990. Tr. I, pp. 28-29, 77-78.

Subsequently, the Employer decided to expand Sunday openings to include more libraries on Oahu and the neighbor

islands. Tr. I, pp. 82-88. The Employer developed a "Draft Library Cluster/7-Day Workweek" (Draft Proposal), dated December 2, 1991, which proposed to develop geographical clusters of libraries and rotate State Library employees into those libraries that would open on Sundays. See Ex. 4 attached to R's Answer; see also Tr. I, pp. 86, 89-91.

On or about January 3, 1992, the Employer presented the Draft Proposal to Perreira. See Ex. 5 attached to R's Answer; see also Tr. I, p. 27. By memorandum dated January 7, 1991 (sic), Perreira informed HGEA Division Chiefs and Union Agents that the State Library "has decided to initiate discussions with the HGEA to negotiate changes to the work hours, work schedules and holiday schedules of the libraries." Id. Thereafter, a committee of HGEA and State Library representatives met to discuss the Draft Proposal. Id.

By letter dated January 22, 1992, Perreira informed Kane that the "near unanimous position" of State library employees surveyed "was for the Union to oppose the concept of a seven day schedule/library clusters." See Ex. 6 attached to R's Answer. Perreira therefore informed Kane that "HGEA/AFSCME will not negotiate any changes to the hours of work and other working conditions of the [State Library] employees." Id.

By letter dated June 24, 1992, Okata informed the Board of Education that the HGEA considers the State Library's proposed seven-day public service schedule to be negotiable since the weekly schedules and hours of work of the current staff must be changed in order to accommodate the schedule. See Ex. B attached to C's

Prohibited Practice Complaint filed on August 10, 1992 (Complaint); see also Ex. 7 attached to R's Answer.

By letter dated July 24, 1992, Kane informed Okata that he intended to implement a seven-day public service schedule using incumbent regular employees for a nine-month trial period beginning September 8, 1992 and ending on May 31, 1993. See Ex. A attached to C's Complaint; see also Exs. 8 and 9 attached to R's Answer.

By State Library News Release issued on July 24, 1992, Kane emphasized three key elements of the seven-day public service schedule: (1) instead of temporary employees, regular state employees would work on Saturdays and Sundays without premium pay; (2) current evening closing hours would be extended from 8:00 p.m. to 9:00 p.m.; and (3) the number of public libraries open on Sundays would increase from five to 11, including the Hawaii State Library.¹ See Ex. C attached to C's Complaint.

On August 10, 1992, the HGEA filed the instant prohibited practice complaint. See Board (Bd.) Ex. 1.

In its Answer to Prohibited Practice Complaint filed on August 24, 1992, the DOE stated:

It is the Respondent's position that under section 89-9(d), Hawaii Revised Statutes, the Union cannot interfere with the Employer's right to maintain efficiency of government operations or to determine methods, means, and personnel by which the employer's operations are to be conducted, including the right to determine (1) the days that the libraries shall be open to the public; (2) the hours during which the libraries shall be open to

¹The number of libraries to open on Sunday was subsequently reduced to ten, because in the aftermath of Hurricane Iniki, all libraries on Kauai were placed on modified daytime schedules. See Tr. I, p. 87.

the public; and, (3) the number of people needed to staff the libraries during its hours of operation. . . .

What is negotiable under section 89-9(a), Hawaii Revised Statutes, is how employees are to be selected to staff the hours of operation and other terms and conditions of employment which are subject to negotiations under chapter 89 and which are embodied in a written agreement.

See Bd. Ex. 4 at 6-7.

At a prehearing conference held on August 27, 1992, the Employer again conceded that the method by which employees are selected to staff the proposed schedule is negotiable. See Order No. 912, Order Granting a Stay Pending the Issuance of Final Board Decision, dated October 29, 1992 at 3. The Board therefore rescheduled the hearing scheduled for September 3, 1992 to allow the parties an opportunity to negotiate and resolve the matter. Id.

The parties exchanged proposals and counter-proposals. See, e.g., R's Exs. 1, 2, 3, and 4; see also Tr. I, pp. 17-18, 98-104. The HGEA's proposals contained financial incentives for employees to work on Sundays; however, the Employer rejected the proposals based on the cost implications. See, e.g., R's Exs. 1, 2, 3, and 4; see also Tr. I, pp. 12-20, 98-104. It is undisputed that negotiations between the parties did not result in an agreement. See Tr. I, pp. 14, 18, 26-27, 126.

At the October 12, 1992 hearing, the Employer contended that the HGEA's proposals for financial incentives interfere with management rights and therefore render implementation of the

seven-day public service schedule wholly non-negotiable.
See Tr. I, p. 7.

DISCUSSION

The issue before the Board is whether the Employer can unilaterally implement its proposed seven-day public service schedule. The HGEA contends that the DOE cannot modify the working conditions of State Library employees without negotiation. The DOE, on the other hand, contends that it is management's prerogative to determine the days and hours of operation and staffing needs for the State Library.

In its complaint, the HGEA alleged that the Employer violated Sections 89-1, 89-8, 89-9, 89-10, 89-13, and 89-19, HRS, and provisions of the Units 03, 04, and 13 collective bargaining agreements by refusing to negotiate with the HGEA over implementation of the Employer's proposed seven-day public service schedule. In its prehearing statement, however, the HGEA cited solely Sections 89-9(a), 89-13(a)(5), and 89-13(a)(8), HRS, and provisions of the applicable collective bargaining agreements as issues of contention in this case. While the HGEA subsequently addressed the alleged Section 89-1, HRS, violation in its post-hearing brief, the Board finds that the HGEA failed to address alleged violations of Sections 89-8, 89-10, and 89-19, HRS, subsequent to the filing of its complaint, and therefore, the Board, at the outset, dismisses these claims. With regard to the alleged violation of Section 89-1, HRS, the Board finds that the section is a statement of legislative findings and policy and while

helpful in determining the intent of substantive sections setting forth the rights and duties of the parties, it is not properly the basis of a prohibited practice. Therefore, the Board dismisses this claim.

Section 89-13(a), HRS, sets forth prohibited practices of a public employer or its designated representative and provides in relevant part:

Section 89-13. Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

* * *

- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

* * *

- (8) Violate the terms of a collective bargaining agreement;

Section 89-9, HRS, sets forth the scope of negotiations and provides in relevant part:

Section 89-9. Scope of negotiations. (a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, . . . and other terms and conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.

* * *

(c) Except as otherwise provided herein, all matters affecting employee relations,

including those that are, or may be, the subject of a regulation promulgated by the employer or any personnel director, are subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with the exclusive representatives prior to effecting changes in any major policy affecting employee relations.

(d) . . . The employer and the exclusive representative shall not agree to any proposal 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;

The Board has recognized that there are certain hybrid issues that involve policy making and have a direct impact on working conditions. See Decision No. 22, Hawaii State Teachers Association, 1 HPERB 253, 267 (1972) (the HSTA case). In the HSTA case, the Board held that the average class size ratio is negotiable to the extent that it is a significant condition of employment; however, the Board held that the manner of implementing the reduction in average class size ratio involves a decision of inherent managerial policy and is not a proper subject of negotiation. Id. at 268.

In explaining the interrelationship of Sections 89-9(a) and (d), the Board stated:

As joint-decision making is the expressed policy of the Legislature, it is our opinion

that all matters affecting wages, hours and conditions of employment, even those which may overlap with employer rights as enumerated in Section 89-9(d), are now shared rights up to the point where mutual determinations respecting such matter interfere with employer rights which of necessity, cannot be relinquished because they are matters of policy "which are fundamental to the existence, direction and operation of the enterprise". West Hartford Educ. Assn. v. DeCourcy, 80 LRRM 2422, 2429 (Conn. Sup. Ct. 1972).

Id. at 266.

In Decision No. 84, Hawaii Government Employees' Association, AFSCME, Local 152, AFL-CIO, 1 HPERB 763, 770 (1977) (the HGEA case), the Board determined that there must be a conclusive showing of the impact of an issue on the employment relationship to compel negotiation under Section 89-9(a), HRS. There, the Board adopted the National Labor Relations Board's interpretation of a similar provision of the National Labor Relations Act, which provides that "[a] mere remote, indirect or incidental impact is not sufficient. In order for a matter to be subject to mandatory collective bargaining it must materially or significantly affect the terms or conditions of employment." Id. at 770-71.

In the HGEA case, the Board applied the balancing test evolved under Section 89-9, HRS, in concluding that Section 89-9(d), HRS, rendered the subject of employee parking non-negotiable. Id. at 771. The Board discussed Decision No. 26, Department of Education, 1 HPERB 311 (1973), in which the Board found that while the issue of teacher workload had a significant

impact on working conditions, agreement on the issue would interfere substantially with the DOE's right to determine the methods, means, and personnel by which it conducted its operations and would interfere with its responsibility to the public to maintain efficient operations. In addition, the Board cited the HSTA case, supra:

While we held that Section 89-9(d) should not be narrowly construed so as to negate the purposes of bargaining, we concomitantly expressed the view that said section should not be too liberally construed so as to divest the employer of its managerial rights and prevent it from fulfilling its duty to determine policy for the effective operation of the public school system.

Id. at 771.

In applying the balancing test, I initially find that the work schedule and hours of work of employees are a significant condition of employment. Section 89-9(a), HRS, specifically makes "hours" of employment a mandatory subject of bargaining.

The question then becomes whether or not Section 89-9(d), HRS, the so-called "management rights" provision in Chapter 89, HRS, overrides the initial determination of negotiability and makes the subject non-negotiable. The Employer argues that the proposed seven-day public service schedule and resultant change in hours for employees falls within the Employer's statutory right to "maintain efficiency of government operations" and to "determine methods, means, and personnel by which the employer's operations are to be conducted."

In support of its contention that the seven-day public service schedule was necessary to "maintain efficiency of

government operations" the Employer elicited testimony from Kane and introduced documentary evidence which indicates that keeping libraries open on Sundays will lead to more convenience and, therefore, greater utilization of the library system. For the purpose of this decision, I accept the Employer's contention that opening Sundays may lead to greater use of the public libraries and that the Employer in good faith desires to maximize efficiency of its operations.

However, under the facts of this case, I cannot agree that upon balancing the impact on working conditions versus the Employer's management rights, the scale tips in favor of management's rights.

The facts surrounding the controversy are important because the Board has previously recognized that in deciding cases which involve a clash between management's rights and the obligation to bargain regarding terms and conditions of employment, each case must be judged on its peculiar and unique factual pattern. Decision No. 62, Hawaii Government Employees Association, 1 HPERB 559 (1975).

In Decision No. 62 the Board stated:

These cases lend guidance insofar as the rationale employed. While it would be ideal if a clear-cut demarcation could be drawn between the employer's rights and the employees' rights, the ideal cannot be transformed into reality since such rights are not mutually exclusive, but overlap. We must here again, as in prior cases involving the scope of bargaining, turn to the facts of the instant controversy and examine them in light of what the Legislature intended when it accorded public employees collective bargaining rights, while at the same time

imposing certain limitations on the scope of bargaining under Sec. 89-9(d), HRS.

Id. at 568.

Initially, it is undisputed that since 1973, libraries have not been open on Sundays. Even under the pilot program to open five libraries on Sundays started in late 1990, in the face of opposition from employees expressed through the Union, staffing was implemented by using temporary hires and permanent employee volunteers. Further, the Employer had a long standing desire and plan to have libraries open seven days a week. The evidence adduced by the Employer shows that at least since 1983, the employer desired to implement a seven-day schedule.

Given the long history of Sunday closure, I find that employees of the library system had a reasonable expectation that having Sundays off was a condition of employment. The strong opposition of employees to the pilot program indicates the importance of Sundays off as a condition of employment and the resolution of that dispute by using temporary hires and volunteers further reinforced the expectation that employees would not be compelled to work on Sundays without Union consent. Further, the fact that libraries had been closed on Sundays for approximately twenty years tends to refute a contention that opening on Sundays is a matter which is "fundamental to the existence, direction and operation" of the library system.

Therefore, I find that the impact of the seven-day public service schedule on terms and conditions of employment outweighs the Employer's management rights under Section 89-9(d), HRS. My conclusion is buttressed by the fact that the seven-day public

service schedule was a long term goal dating back to 1983 and the Employer had ample time to negotiate with the Union regarding a change in the work schedule. Such negotiations could have taken place not only mid-term but during negotiations for successor contracts. Instead, the Employer chose to enter into negotiations during mid-term of the 1991-1993 collective bargaining agreements and failing to reach agreement on the matter, attempted to unilaterally alter the work schedules.

Based on the foregoing, I find that the matter of staffing the proposed seven-day public service schedule is a mandatory subject of bargaining and together with Board Member Ebesu's opinion, a Board majority finds that the Employer's attempt to unilaterally change work schedules constitutes a prohibited practice in violation of Section 89-13(a)(5), HRS.

Conversely, I find the determination of days and hours of library operation to be inherent management rights and non-negotiable. In reaching this conclusion, I find determinative the fact that the HGEA conceded that the Employer has the authority to change library hours, although the Union maintains that the Employer must negotiate over the impact of the change in hours on working conditions. See, e.g., Tr. I, p. 22.

Based upon the foregoing and upon Board Member Higa's opinion below, a Board majority finds that the Employer may properly determine its days and hours of library operation without negotiation with the Union. However, the Board majority finds that the Employer must consult and confer with the Union concerning these matters pursuant to Section 89-9(c), HRS.

With regard to an alleged violation of Section 89-13(a)(8), HRS, the Union argues that Article 4 B of the applicable contracts was violated because the Employer attempted to change the work schedule without mutual consent. That provision prohibits changes of "conditions of work contained herein . . . except by mutual consent". (Emphasis added) However, the Union has failed to identify any provision of the contracts which specifically prohibit Sunday work or changes in work schedules. Therefore, I find that the Union has failed to prove a violation of the contracts and together with Board Member Higa's opinion, a Board majority dismisses this claim.

CONCLUSIONS OF LAW

The Board has jurisdiction over this matter pursuant to Sections 89-5 and 89-13, HRS.

An employer's unilateral change in the terms and conditions of employment involving a mandatory subject of bargaining constitutes a prohibited practice under Chapter 89, HRS.

Under the facts of this case, a Board majority concludes that the days and hours of library operation are non-negotiable matters. A Board majority also concludes that staffing of the DOE's proposed seven-day public service schedule is a mandatory subject of bargaining.

A Board majority concludes that the Employer's wilful failure to negotiate over staffing of the Employer's proposed seven-day public service schedule constitutes a prohibited practice in violation of Section 89-13(a)(5), HRS.

ORDER


The Board hereby orders the Employer to cease and desist from refusing to negotiate with the HGEA over staffing of the DOE's proposed seven-day public service schedule.

The Employer shall immediately post copies of this order in conspicuous places on the bulletin boards where State Library employees in bargaining units 03, 04, and 13 assemble, and leave such copies posted for a period of sixty (60) consecutive days from the initial date of posting.

The parties shall notify the Board within thirty (30) days of receipt of this Decision of the steps taken by the Employer to comply with the Board's Order.

DATED: Honolulu, Hawaii, October 10, 1995.

HAWAII LABOR RELATIONS BOARD



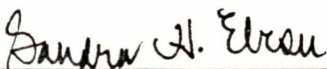
BERT M. TOMASU, Chairperson

OPINION CONCURRING, IN PART, AND DISSENTING, IN PART

While I agree with Chairperson Tomasu that staffing of the proposed seven-day public service schedule is negotiable, I differ on the reasoning behind the decision. In my opinion, any change in the days and hours of operation or in the staffing of the libraries is negotiable, because any of these changes would have a material and significant impact on the terms and conditions of employment. In my view, Chapter 89, HRS, and Article 4B of the applicable collective bargaining agreements clearly require joint decisionmaking and mutual consent on these matters. I would

therefore declare all aspects of the Employer's proposed seven-day public service schedule to be negotiable and find the Employer culpable for attempting to unilaterally implement the seven-day public service schedule.

DATED: Honolulu, Hawaii, December 2, 1993.


SANDRA H. EBESU, Board Member

ORDER CONCURRING, IN PART, AND DISSENTING, IN PART

I concur with Chairperson Tomasu in finding that the days and hours of library operation are non-negotiable. I disagree, however, with the Chairperson's rationale behind this finding.

Chairperson Tomasu relies exclusively on the representations of the parties to determine whether a change in days and hours of work, and staffing are negotiable. The determination of whether an issue is negotiable is not simply a question of fact, grounded solely on the posturing of the parties, but a question of law for this Board to decide.

The HSTA case, supra, gave rise to the so-called hybrid analysis, which recognized that issues having a significant impact on working conditions, and therefore initially determined to be subject to negotiations, could nevertheless be deemed non-negotiable if agreement would interfere substantially with management's rights under Section 89-9(d), HRS.

Here, under the unique circumstances of this case, the Board must apply this hybrid analysis. Clearly, a change in the days and hours of work, as well as staffing, does have a

significant impact on terms and conditions of work. Employees with fixed work schedules have established routines which, if disrupted, could cause major problems. Some employees may have second jobs to supplement their incomes, others may provide dependent care, and still others have regularly scheduled activities on weekends. Necessary adjustments to accommodate the new work schedule may range from inconvenience to difficult hardships.

We must, however, balance these interests and concerns with those of management.

Section 312-1, HRS, provides, in part:

The board of education shall . . . provide ways and means for placing libraries within reach of all residents throughout the State and particularly of all public and private school children;

The mission of the employer, therefore, is to make this rich resource available to the public, particularly school children. To accomplish this mission, management developed, on a trial basis, a program to open selected libraries on Sundays. Management subsequently decided to expand the program by including even more libraries and adjusting the work hours of regular employees to accommodate the new hours without incurring, as much as possible, increased labor costs.

The Union resisted these changes, but was willing to reach agreement on the new schedule if management agreed to pay a premium differential for working weekend hours under the new schedule. In anticipation of impending budgetary cuts, the Employer sought to maximize service to the public while reducing operational costs through the adjustment of working hours. Indeed,

agreement on payment of a premium differential would be wholly incompatible with contemplated budget reductions and efforts to lower operational costs.

The Union also raised concerns over hardship cases involving dependent care and potential conflicts with religious observances. The Employer stated that exceptions would be made to accommodate these employees.

In my view, after applying the balancing test under the hybrid analysis, I would find that requisite agreement with the Union's proposals for financial incentives would so interfere with management's rights under Sections 89-9(d)(4) and (5), HRS, as to render non-negotiable implementation of the seven-day public service schedule as to days and hours of work, and staffing.

I respectfully dissent from the Board majority concerning the requirement of negotiations over staffing. To find, under the unique facts and circumstances of this case, that the scheduling of days and hours of work are non-negotiable, yet staffing is negotiable is absurd at best. Such an inconsistency would effectively render a finding of non-negotiability as to days and hours of work nugatory. All three components (days, hours of work, and staffing) are integrated and should be subject to the hybrid analysis as a whole.

Accordingly, I would find that the Employer satisfied its duty to bargain in good faith under Section 89-9(a), HRS. Furthermore, I would find that the management's rights provisions of Sections 89-9(d)(4) and (5), HRS, relieve the Employer of its

duty to reach a newly negotiated agreement over implementation of the proposed seven-day public service schedule.

DATED: Honolulu, Hawaii, January 6, 1993.



RUSSELL T. HIGA, Board Member

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