

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

|                                      |   |                               |
|--------------------------------------|---|-------------------------------|
| In the Matter of                     | ) | CASE NOS.: DR-01-87a          |
|                                      | ) | DR-10-87b                     |
| CITY AND COUNTY OF HONOLULU,         | ) |                               |
|                                      | ) |                               |
| Petitioner,                          | ) | DECISION NO. 434              |
|                                      | ) |                               |
| and                                  | ) | FINDINGS OF FACT, CONCLUSIONS |
|                                      | ) | OF LAW, AND DECLARATORY       |
| UNITED PUBLIC WORKERS, AFSCME,       | ) | ORDER                         |
| LOCAL 646, AFL-CIO; STATE OF HAWAII; | ) |                               |
| AND COUNTY OF MAUI,                  | ) |                               |
|                                      | ) |                               |
| Intervenors.                         | ) |                               |
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY ORDER

A Petition for Declaratory Order was filed on November 26, 2001 by the CITY AND COUNTY OF HONOLULU (City) with the Hawaii Labor Relations Board (Board) pursuant to Hawaii Administrative Rules (HAR) § 12-42-9. The City's petition seeks a declaratory ruling regarding the applicability of Hawaii Revised Statutes (HRS) §§ 89-9(d) and (e)<sup>1</sup> to a deferred compensation plan sponsored by the UNITED PUBLIC WORKERS,

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<sup>1</sup>HRS §§ 89-9(d) and (e) state in relevant part:

(d) Excluded from the subjects of negotiations are matters of classification and reclassification, benefits of but not contributions to the Hawaii public employees health fund, retirement benefits except as provided in section 88-8(h), and the salary ranges now provided by law; . . . .

(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 . . . ; provided that section 89-11 for the resolution of disputes by way of fact-finding 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.

AFSCME, LOCAL 646, AFL-CIO (UPW) as provided in the collective bargaining agreements for Bargaining Units 01 (BU 01) and 10 (BU 10).

On December 14, 2001, by Board Order No. 2049, the UPW, the STATE OF HAWAII (State), and the COUNTY OF MAUI (Maui County) intervened as parties to the City's petition.

On February 21, 2002, by Order No. 2065, the Board denied UPW's Motion to Dismiss the City's petition, and set as the deadline for submission of position statements with points and authorities and supporting affidavits as the close of business on March 18, 2002. As directed, the parties timely filed their position statements and supporting declarations.<sup>2</sup>

Based upon a review of the entire record including the transcripts, declarations, arguments and briefs submitted by the parties in the prohibited practice complaint,<sup>3</sup> the Board makes the following findings of fact, conclusions of law, and declaratory order.

#### FINDINGS OF FACT

1. The City is a public employer within the meaning of HRS § 89-2 and HAR § 12-42-9(a).
2. The State is a public employer within the meaning of HRS § 89-2 and HAR § 12-42-9(a).
3. Maui County is a public employer within the meaning of HRS § 89-2 and HAR § 12-42-9(a).

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<sup>2</sup>On April 12, 2002, the City filed Petitioner's Request to Take Notice of two web sites maintained by the State of Hawaii Department of Human Resources Development and the State of Hawaii Deferred Compensation Plan that refer to the State's Deferred Compensation Plan under HRS Chapter 88E as a "retirement savings plan." The UPW opposed the City's request on April 15, 2002. The Board provided ample time for the parties to submit all documentation and arguments before the close of the record on March 18, 2001, and therefore denies Petitioner's Request to Take Notice.

<sup>3</sup>On May 18, 2001, the City first challenged the negotiations for employer contributions into a UPW-sponsored Deferred Compensation Plan by filing prohibited practice complaints against the State and UPW in Case Nos. CE-01-471, CE-10-472, CU-01-181 and CU-10-182.



4. The UPW is an employee organization and the exclusive representative, within the meaning of HRS § 89-2 and HAR § 12-42-9(a), of employees included in BU 01 and BU 10. On October 21, 1971, the UPW was certified as the exclusive representative for blue collar non-supervisory employees in BU 01. On February 11, 1972, the UPW was certified as the exclusive representative of institutional, health, and correctional workers in BU 10.
5. There are a total of 9,317 blue collar non-supervisory employees in BU 01; and 2,687 institutional, health, and correctional workers in BU 10. In its employing jurisdictions, the State has 5,607 employees in BU 01 and 1,666 in BU 10; the City has 1,939 employees in BU 01 and 166 in BU 10; and Maui County has 484 employees in BU 01 and no employees in BU 10.<sup>4</sup>
6. Pursuant to HAR § 12-42-8(g)(8)(F), the Board takes administrative notice of the pleadings, affidavits, and Board order in the City's prohibited practice complaint, City and County of Honolulu, et al., Case Nos.: CE-01-471, CE-10-472, CU-01-181 and CU-10-182, filed on May 18, 2001, involving the same facts and questions presented in the City's petition. The Board dismissed the complaints as time-barred in Board Order No. 2018. On appeal, the Circuit Court of the First Circuit affirmed Order No. 2018 in Civil No. 01-1-2293-08 SSM on November 13, 2001.
7. In accordance with HRS § 89-9,<sup>5</sup> negotiations for the BU 01 and BU 10 collective bargaining agreements (Contracts) for the period July 1, 1999 to June 30, 2003 were conducted between UPW's negotiating committee and an

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<sup>4</sup>Source: HLRB Informational Bulletin No. 39. This is the 28<sup>th</sup> annual information bulletin issued by the Board on March 2, 2001. The figures reported are correct as of December 31, 2000.

<sup>5</sup>HRS § 89-9 states in relevant part:

(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, the number of incremental and longevity steps and movement between steps within the salary range, the amounts of contributions by the State and respective counties to the Hawaii public employees health fund to the extent allowed in subsection (e), 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; . . . .

employer group of representatives designated by the governor and mayors in accordance with HRS § 89-6(b).<sup>6</sup>

8. The UPW and the public employer group which includes the State, City, Maui County, the County of Hawaii and the County of Kauai, are all parties to the BUs 01 and 10 Contracts covering the period from July 1, 1999 to June 30, 2003.
9. On October 10, 2000, the UPW concluded a strike authorization vote, at which BU 01 employees voted to strike for a wage increase of not less than nine percent--the percentage increase awarded to their supervisors in BU 02 represented by the Hawaii Government Employees Association. Also discussed with the BU 01 employees at the meetings to obtain a strike authorization were: 1) possible reductions in sick leave and vacation benefits for new hires because of Governor Cayetano's proposed civil service reforms; 2) a deferred wage and compensation plan to replace the legal plan; and (3) having the unpaid monies which public employers did not transmit under the prior 1995 - 1999 collective bargaining contract for the adult dental and prescription drug plans paid into a deferred wage and compensation plan.
10. In the course of negotiations, the UPW and the employer group reached an impasse primarily over wages. The Board takes administrative notice of Order No. 1930 issued on September 19, 2000 in Case No. I-01-86, and Order No. 1926 issued on September 13, 2000 in Case No. I-10-87, where the Board declared an impasse in contract negotiations for employees in BU 01 and BU 10, respectively.
11. Negotiations over a wage increase between the UPW and employer group eventually resulted in a compensation package that provided a 12 percent increase--three percent above the nine percent benchmark--in exchange for reducing vacation leave from 21 days to a range of 12 to 24 days and reducing sick leave from 21 days to a range of 15 to 21 days for new employees hired on and after July 2, 2001. Because the State did not want to pay more than 11 percent of the 12 percent wage package in salary increase, a majority of the employer group agreed to pay the one percent wage difference in the form of

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<sup>6</sup>HRS § 89-6(b) states in relevant part:

... in the case of [BU 01 and BU 10], the governor shall be entitled to four votes and the mayor of each county shall each have one vote, which may be assigned to their designated representatives. Any decision to be reached by the applicable employer group shall be on the basis of simple majority.



employer contributions to a UPW-sponsored deferred compensation plan. The parties agreed that the deferred compensation plan would be drafted to comply with Internal Revenue Service (IRS) requirements so that employees in BU 01 and BU 10 would receive beneficial tax treatment on the deferred wages and compensation.

12. The UPW and the State agreed to replace the legal plan with the UPW-sponsored deferred compensation plan and to transmit funds, previously negotiated under the 1995-1999 collective bargaining agreements for the adult dental and prescription drug plans, to the UPW-sponsored deferred compensation plan.
13. In a memorandum by the State's Chief Negotiator Davis K. Yogi, dated August 11, 2000, the public employers were directed to pay the Hawaii Public Employees Health Fund as provided in the BU 01 and BU 10 Contracts in effect on July 1995 to June 30, 1999, "for employees who were enrolled in the adult dental [\$2.00 per month] and prescription drug plans [\$5.00 per month] effective July 1, 1998 to June 30, 1999." The total costs per employer were determined by the Health Fund as follows:

|                           |               |
|---------------------------|---------------|
| State of Hawaii           | \$ 548,172.50 |
| City & County of Honolulu | \$ 146,503.00 |
| County of Hawaii          | \$ 32,572.00  |
| County of Maui            | \$ 35,113.00  |
| County of Kauai           | \$ 24,302.50  |

On September 29, 2000, the City issued a voucher for its apportioned share to the State of Hawaii Public Employees Health Fund.

14. On December 26, 2000, the UPW and a majority of the public employer group reached a tentative agreement that in effect ended the impasse over wages, as well as aborted a decision by this Board in its investigation into essential positions<sup>7</sup> in anticipation of a BU 01 strike. The tentative agreement amended Section 61 of the BU 01 Contract to include provisions for employer contributions to a UPW-sponsored Deferred Compensation Plan.
15. The Contract for the period July 1, 1999 to June 30, 2003, ratified and currently in effect, amends Section 61 entitled "Benefit Plans" of the BU 01 Contract as follows:

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<sup>7</sup>HRS § 89-2 defines "essential position"

Section 61. BENEFIT PLANS

61.01 chapter 87, HRS. Add title.

61.01a. EFFECTIVE DATE. Add title.

61.01 a. and 61.01 b. Add titles to 1.-6.

1. MEDICAL PLAN.
2. ADULT DENTAL PLAN.
3. PRESCRIPTION DRUG PLAN.
4. VISION CARE PLAN.
5. CHILDREN DENTAL PLAN
6. GROUP LIFE INSURANCE PLAN.

61.01b. EFFECTIVE DATE.

Effective July 1, 1998:

2. Sixty percent (60%) plus two dollars (\$2.00) of the monthly premium of the adult dental plan sponsored by the Hawaii Public Employees Health Fund or the Union for each Employee or for each Employee with a spouse enrolled in the adult dental plan. The retroactive amount for each Employee shall be based on two dollars (\$2.00) for each month of work of the Employee from July 1, 1998 to June 30, 1999 and shall be transmitted to a DEFERRED COMPENSATION PLAN sponsored by the Union and credited to each Employee.

3. Sixty percent (60%) plus five dollars (\$5.00) of the monthly premium for the prescription drug plan sponsored by the Hawaii Public Employees Health Fund or the Union for each Employee or for each Employee with a dependent enrolled in the prescription drug plan. The retroactive amount for each Employee shall be based on five dollars (\$5.00) for each month of work of the Employee from July 1, 1998 to June 30, 1999 shall be transmitted to a DEFERRED COMPENSATION PLAN sponsored by the Union and credited to each Employee.

\* \* \*

61.03. LEGAL PLAN DEFERRED COMPENSATION PLAN.



61.03 a.      Effective July 1, 1998 January 1, 2001 to June 30, 2001, the Employer shall pay seven dollars (\$7.00) of the monthly premium for each Employee of the Legal Plan sponsored by the Union to the DEFERRED COMPENSATION PLAN sponsored by the Union. Thereafter the Employer shall pay as provided in Section 61.03 b.

61.03 b.      Effective July 1, 2001 the Employer shall pay eighty four dollars (\$84.00) annually for each Employee to the DEFERRED COMPENSATION PLAN sponsored by the Union. (\$7.00 per month x 12 months + \$84.00).

61.03. c.      Effective July 2, 2001 the Employer shall pay one hundred thirty two dollars (\$132.00) for the period July 2, 2001 to June 30, 2002 for each Employee to the DEFERRED COMPENSATION PLAN sponsored by the Union. (\$11.00 per month x 12 months + \$132.00).

61.03.d.      Effective July 1, 2002 the Employer shall pay one hundred fifty six (\$156.00) for each Employee to the DEFERRED COMPENSATION PLAN sponsored by the Union. (\$13 per month x 12 months + \$156.00).

Notation:      1.      The DEFERRED COMPENSATION PLAN shall conform with the IRS requirements.

2.      Section 61.03. a and Section 61.03.b shall not be a cost item subject to approval by the legislative bodies because no change was made to the seven dollars (\$7.00) previously designated for the Legal Plan that was approved by the legislative bodies in 1999 for the July 1, 1995 to June 30, 1999 Unit 1 Agreement. Section 61.03a. and Section 61.03 b. changes the designation from the Legal Plan to the DEFERRED COMPENSATION PLAN.

The identical terms appear in Sections 61.01.b.2 and 3 of the Contract for BU 10 covering the period from July 1, 1999 - June 30, 2003, reached as a result of interest arbitration.

16.      The State Employees Retirement System (ERS), governed by HRS Chapter 88, exemplifies a defined benefit plan as defined under section 401(a) of the Internal Revenue Code. A defined benefit plan provides systematically for the

payment of definitely determinable benefits to employees over a period of years, usually life, after retirement. Defined benefit plans start with the promised benefit, based on a definite formula, i.e., one percent of compensation for each year of service; 30% of annual compensation; or \$200 per month, then works backward to determine the cost. The employer's contributions necessary to provide such benefits are determined on an actuarial basis. Employees in such a plan can anticipate a fixed or determinable pension upon retirement.

17. The legislative history of HRS § 89-9(d) shows the Legislature's concern over the State ERS as a defined benefit plan, when it "[e]xcluded the retirement and post-retirement systems from the scope of negotiations."<sup>8</sup>
18. In contrast to a defined benefit plan, a defined contribution retirement savings plan, as defined under sections 401(k), 403(b) and 457 of the Internal Revenue Code, does not guarantee an employee a fixed level of benefits based on a definite formula when the employee separates from service. Benefits are determined or defined by contributions and investment results. Employees participating in such a plan do not know in advance what the amount of assets in his or her account will be upon separation from service.
19. A review of the express terms contained in the January 8, 2002 drafts of the UPW Deferred Compensation Plan and the Trust Agreement Establishing the UPW Deferred Compensation Trust Fund (Trust), describe characteristics consistent with a defined-contribution plan, not a defined benefit plan like the ERS.

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<sup>8</sup>The House Standing Committee Report No. 752-70, states:

Your Committee has excluded the retirement and post-retirement systems from the scope of negotiations. The establishment and administration of these systems are such that the cost of increased benefits granted in a fiscal year are not recognized until one or two years later. This delay is unavoidable due to the time needed to determine the added retirement costs and their pro-ration between the State and the counties. This delay in the realization of added costs will make the legislative ratification of any agreement involving retirement benefits extremely difficult, since the financial impact of the change in benefits could only be assessed in terms of the State's ability to pay two years hence.



## DISCUSSION

The City's petition challenges the negotiability of employer contributions to a UPW-sponsored Deferred Compensation Plan as provided under Sections 61.01 and 61.03 of the BU 01 and BU 10 Contracts. The City asserts that employer contributions to a UPW-sponsored Deferred Compensation Plan confer "retirement benefits" under the plain language of HRS § 89-9(d) and as such are excluded from negotiations. In addition, the City contends that the transfer of funds originally negotiated for the adult dental plan and a prescription drug plan under Section 61.01, "concern matters that relate to health benefits (other than contributions)" and as such are not negotiable under HRS §§ 89-9(d) and (e). Maui County joins the City in challenging the negotiability of the employer contributions to the UPW-sponsored Deferred Compensation Fund.

The questions presented by the City's petition are:

1. Whether the proposal for public employer contributions to a union-sponsored deferred compensation plan is negotiable under HRS § 89-9(d)?
2. Whether the transfer of funds set aside by previous collective bargaining agreements for the purpose of providing an adult dental plan are excluded from the subject of negotiations by HRS §§ 89-9(d) and (e), as matters that relate to health benefits (other than contributions)?

### Wages are Mandatory Subjects of Negotiations Under HRS § 89-9(a)

At the heart of the City's petition is the negotiability of a UPW-sponsored Deferred Compensation Plan. We begin our analysis by reviewing the negotiations that resulted in the two contract provisions—Sections 61.01 and 61.03 in the BU 01 and BU 10 Contracts.

Prior to reaching a tentative agreement on December 26, 2000, the UPW and employer group had reached an impasse in the negotiations over the BU 01 and BU 10 Contracts. Negotiations over a wage increase eventually resulted in a compensation package that provided a 12 percent increase--three percent above the nine percent benchmark--in exchange for reducing vacation leave from 21 days to a range of 12 to 24 days and reducing sick leave from 21 days to a range of 15 to 21 days for new employees hired on and after July 2, 2001.

The provision calling for employer contributions to a UPW-sponsored Deferred Compensation Plan arose because the State did not want to pay more than 11 percent of the 12 percent wage package in a salary increase. A majority of the employer group, that did not include the City, agreed to pay the one percent wage difference in the form of employer contributions to a UPW-sponsored Deferred Compensation Plan. The parties agreed that the

deferred compensation plan would be drafted to comply with IRS requirements so that employees in BU 01 and BU 10 would receive beneficial tax treatment on the deferred wages and compensation.

As a result, the UPW and employer group reached a tentative agreement on December 26, 2000 that included language reflecting the provisions for employer contributions to a UPW-sponsored Deferred Compensation Plan to replace the legal plan and transfer retroactive amounts previously negotiated under the 1995-1999 Contracts as employer contributions to the public health fund to cover the adult dental and prescription drug plans.

Under these circumstances, the provision calling for payments to a UPW-sponsored Deferred Compensation Plan was negotiated as wages in accordance with HRS § 89-9(a), as a mandatory subject of negotiations.

#### Retirement Benefits Under HRS § 89-9(d)

The City's petition seeks a determination as to whether it must honor the payment of wages in the form of contributions to an as yet to be established deferred compensation plan sponsored and controlled by the UPW.<sup>9</sup> The City argues that paying wages in the form of contributions to a union sponsored deferred compensation plan confers on the employees retirement benefits which is a subject barred from negotiations under HRS § 89-9(d). We do not agree.

In 1975, the Board first examined the legislative intent to exclude the entire ERS from the scope of negotiations within the meaning of "retirement benefits" under HRS § 89-9(d). In James Takushi, 1 HPERB 586 (1975), Case No. DR-11-16, Decision No. 65, the Board concluded at p. 594:

. . . when the Legislature enacted Section 89-9(d), HRS, to remove retirement benefits and the health fund from the scope of negotiations, it intended to keep full control over these subjects and did not intend to have any part of them open to negotiations. Thus, the Legislature has preempted these subjects and excluded them from the scope of collective bargaining. Any other conclusion would seriously erode legislative control over the retirement system and the health fund.

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<sup>9</sup>We make no determination whether the UPW-sponsored DCP passes the scrutiny of the IRS in meeting the requirements of section 457 of the Internal Revenue Code of 1954, as amended. This is a determination that is not within the Board's jurisdiction.



At issue in Takushi, were two union proposals made in the course of negotiations for reimbursement of employee contributions by the employer in the form of a payroll deduction. The first proposal called for payments “into the annuity savings fund of the Employees Retirement System (ERS) of the State of Hawaii.” The second proposal called for reimbursements “transmitted by the Employer to the Hawaii Public Employees Health Fund.” Id., at 588.

The Board in Takushi, found that, “[t]he pertinent committee reports demonstrate that it was the entire retirement system, not just benefits paid out, which was to be excluded from negotiations.” Id., at 592.

In 1977, the Board in University of Hawaii Professional Assembly, 1 HPERB 753 (1977) applied Takushi to hold that a mandatory retirement age of 70 unilaterally set by the University of Hawaii Board of Regents (BOR), “was not established by the Legislature, . . . is not part of the retirement system or the benefits thereunder upon which negotiations are forbidden. Were it , . . . a part of the legislatively created and controlled retirement system, we would hold that it was nonnegotiable.” Id., at 760. Although the Board held that the BOR’s administrative action setting a mandatory retirement age was not a subject barred from negotiations under HRS § 89-9(d), it concluded that the mandatory retirement age was a term and condition of employment under HRS § 89-9(a), and subject to negotiations. In doing so, the Board held as follows:

To hold, as we do, that the BOR must, if it attempts to establish or change a mandatory retirement age pursuant to Section 304-11, HRS, negotiate on said establishment or change does no violence to the proscription in Subsection 89-9(d), HRS, against negotiating on retirement benefits. This Board has viewed that proscription as being designed to prevent erosion of a legislatively established and controlled retirement system.

Based on our review of the Contract provisions at issue and the draft terms of the UPW’s Deferred Compensation Plan and Trust Agreement, we cannot find that the union sponsored deferred compensation plan erodes the control of the legislature over the State ERS. The employer contributions are separate and distinct from, and at no time affect the retirement benefits or employer contributions, within the exclusive control of the State ERS governed by HRS Chapter 88.

Indeed, the State contends, and we agree, that the State ERS exemplifies a defined benefit plan, which the Legislature intended to exclude from the scope of negotiations under HRS § 89-9(a). A defined benefit plan under section 401(a) of the Internal Revenue Code provides systematically for the payment of definitely determinable benefits to employees over a period of years, usually life, after retirement. See, Declaration of Michael Moss, attached to State of Hawaii’s Position Statement. Defined benefit plans



start with the promised benefit, based on a definite formula, i.e., one percent of compensation for each year of service; 30% of annual compensation; or \$200 per month, then works backward to determine the cost. Id. The employer's contributions necessary to provide such benefits are determined on an actuarial basis. Employees in such a plan can anticipate a fixed or determinable pension upon retirement. Id.

The State argues convincingly that the legislative history of HRS § 89-9(d) shows the Legislature's reason for excluding from the scope of negotiations the ERS as a defined benefit plan, related to an unavoidable "delay in the realization of added costs [that would] make the legislative ratification of any agreement involving retirement benefits extremely difficult, since the financial impact of the change in benefits could only be assessed in terms of the State's ability to pay two years hence." House Stand. Comm. Rep. No. 752-70, 1970 House Journal, at 1164. As noted in the House Standing Committee Report, "The establishment and administration of these systems are such that the costs of increased benefits granted in a fiscal year are not recognized until one or two years later." Id.

Comparing the ERS defined benefit plan to the UPW-sponsored Deferred Compensation Plan, we find the terms of the UPW plan to have characteristics that are more consistent with a defined contribution retirement savings plan, as defined under Sections 401(k), 403(b) and 457 of the Internal Revenue Code. A defined contribution retirement savings plan does not guarantee an employee a fixed level of benefits based on a definite formula when the employee separates from service. Benefits are determined or defined by contributions and investment results. Employees participating in such a plan do not know in advance what the amount of assets in his or her account will be upon separation from service.

The City's petition relies on the plain language of HRS § 89-9(d) to support its position that "if the Plan and the Trust implementing the 'Deferred Compensation Plan sponsored by the Union' confer 'retirement benefits,' then the contributions to the Plan are not properly the subject of negotiations." Such a position completely ignores the Legislature's intent to exclude the entire State ERS from the scope of negotiations.

The City contends that even if the retirement benefits under HRS § 89-9(d) do not bar negotiations over a deferred compensation plan, the UPW Deferred Compensation Plan "in this case was still unlawfully negotiated because it does not meet the definition of a deferred compensation plan under Chapter 88E." Such argument is without merit for the simple reason that the provision for employer contributions to the union's deferred compensation plan was a by-product of the wage increase negotiated in accordance with HRS § 89-9(a).

In addition, HRS Chapter 88E, enacted in 1981 authorizes the State to establish a "deferred compensation plan in accordance with section 457 of the Internal Revenue Code



of 1954, as amended.” HRS § 88E-2. In negotiating the BU 01 Contract, the parties agreed that the union-sponsored deferred compensation plan would comply with the Internal Revenue Code requirements. We are not persuaded by the City’s comparison of the State’s Deferred Compensation Plan governed under Chapter 88E to the features of the UPW-sponsored Deferred Compensation Plan, as a basis for showing that it fails to meet the definition under HRS Chapter 88E.

Based on the fact that the UPW-sponsored Deferred Compensation Plan does not erode the Legislature’s control over, is separate and distinct from, and does not affect benefits paid out by, or employer contributions to the State’s ERS, we conclude that the wage increase to be paid in the form of employer contributions to a union sponsored deferred compensation plan was negotiated in accordance with HRS § 89-9(a) as a mandatory subject of negotiations, and does not constitute retirement benefits within the meaning of HRS § 89-9(d).

#### Health Benefits under HRS §§ 89-9(d) and (e)

In 1984, the Legislature amended HRS § 89-9(d) proscribing the public employees health fund from the scope of negotiations which the Board in Takushi ruled included not just health benefits, but also employer contributions. 1984 Session Laws of Hawaii, Act 254, 656-66. The purpose for the change was discussed in the House Standing Committee Report as follows:

The purpose of this bill is to amend chapter 89, Hawaii Revised Statutes, relating to Collective Bargaining, by including contributions to the public employees health fund as a negotiable item, provided that negotiations on such contributions shall be made jointly between the employers and all exclusive representatives.

Your Committee agrees that joint negotiations will simplify the administration of the public employees health fund by allowing the Board of Trustees of Employees Health Fund to continue its fiduciary role in negotiating benefits and insurance premium rates for each authorized employee benefit plan.

House Stand. Comm. Rep. No. 595-84, 1984 House Journal at 1142.

Under HRS § 89-9(d), “benefits of but not contributions to the Hawaii public employees health fund” are excluded from the subject of negotiations. HRS § 89-9(e), outlines the scope and purpose of negotiations relating to employer contributions to the health fund to include agreement between the unions and employers over 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. . . .”

The City contends the Contract provision requiring the transfer of funds previously negotiated for the adult dental plan and prescription drug plan violate HRS §§ 89-9(d) and (e), because they are “matters that relate to health benefits (other than contributions)” and because the transfer of funds to the UPW-sponsored deferred compensation plan eliminates those health benefits and transforms the monies into a retirement benefit. We disagree.

Under Section 61.01, the amount of employer contributions was previously negotiated in the 1995-1999 Contracts for BU 01 and BU 10 as payment for employees enrolled in the adult dental plan and prescription drug plan. We find said negotiations were wholly consistent with HRS §§ 89-9(d) and (e). As such, payments made under the terms of the 1995-1999 Contracts, constitute “contributions to the Hawaii public employees health fund” as a proper subject of negotiations.

Accordingly, we conclude that HRS §§ 89-9(d) and (e) do not preclude renegotiating the terms of these contributions to transfer retroactive amounts into the UPW-sponsored Deferred Compensation Plan.

Consequently, the employer group is obligated to honor the wages to be paid in the form of employer contributions to the UPW-sponsored Deferred Compensation Plan negotiated and reflected in the terms set forth in Sections 61.01 and 61.03 of the BU 01 and BU 10 Contracts.

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over this petition pursuant to HRS §§ 89-5(b)(5) and 91-8 and HAR § 12-42-9.
2. The employer contributions into the UPW-sponsored Deferred Compensation Plan that constitute one percent of the 12 percent wage increase was negotiated in accordance with HRS § 89-9(a). These employer contributions are separate and distinct from, and at no time affect the retirement benefits or employer contributions, within the exclusive control of the ERS governed by HRS Chapter 88. Accordingly, we conclude that employer contributions into the UPW-sponsored Deferred Compensation Plan do not erode a legislatively established and controlled retirement system to confer retirement benefits within the meaning of HRS § 89-9(d).



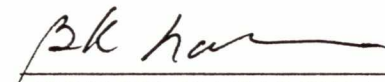
3. Under Section 61.01, the amount of employer contributions were previously negotiated in the 1995-1999 Contracts for BU 01 and BU 10 as payment for employees enrolled in the adult dental plan and prescription drug plan. As such, payments made under the terms of the 1995-1999 Contracts, constitute "contributions to the Hawaii public employees health fund" within the meaning of HRS § 89-9(d). We conclude that HRS §§ 89-9(d) and (e), do not preclude re-negotiating the terms of these payments to transfer retroactive amounts into the UPW-sponsored Deferred Compensation Plan.

#### DECLARATORY ORDER

1. The Contract provision for public employer contributions to a union-sponsored deferred compensation plan is not excluded from the subject of negotiations by HRS § 89-9(d).
2. The Contract provision for the transfer of retroactive amounts to a union-sponsored deferred compensation plan previously negotiated as contributions to the Hawaii public employees health fund for the purpose of providing an adult dental plan and prescription drug plan is not excluded from the subject of negotiations by HRS §§ 89-9(d) and (e).

Dated: Honolulu, Hawaii, May 17, 2002.

#### HAWAII LABOR RELATIONS BOARD

  
\_\_\_\_\_  
BRIAN K. NAKAMURA, Chair

  
\_\_\_\_\_  
CHESTER C. KUNITAKE, Member

  
\_\_\_\_\_  
KATHLEEN RACUYA-MARKRICH, Member

CITY AND COUNTY OF HONOLULU and UNITED PUBLIC WORKERS, AFSCME,  
LOCAL 646, AFL-CIO; STATE OF HAWAII; AND COUNTY OF MAUI  
CASE NOS.: DR-01-87a, DR-10-87b  
DECISION NO. 434  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECLARATORY ORDER

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