

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)
)
FRANK F. FASI, Mayor,)
CITY AND COUNTY OF HONOLULU,)
)
Petitioner,)
)
and)
)
HAWAII GOVERNMENT EMPLOYEES')
ASSOCIATION, Local 152,)
HGEA/AFSCME, AFL-CIO,)
)
and)
)
UNITED PUBLIC WORKERS,)
Local 646, AFL-CIO)
)
and)
)
HAWAII STATE TEACHERS)
ASSOCIATION (HEA-NEA),)
)
and)
)
STATE OF HAWAII,)
)
and)
)
COUNTY OF HAWAII,)
)
and)
)
COUNTY OF KAUAI,)
)
Intervenors.)
)

Case No. DR-01-10

Decision No. 58

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

A petition for a declaratory ruling was brought before the Hawaii Public Employment Relations Board (hereafter Board) by Frank F. Fasi, Mayor, City and County of Honolulu (hereafter petitioner) on October 10, 1974. In his request, the petitioner has asked that this Board

determine whether or not §16.09(d) of the Unit 1 collective bargaining agreement is in violation of §89-9(d), Hawaii Revised Statutes (hereafter HRS). Subsequently the Hawaii Government Employees' Association, or HGEA, Local 152, HGEA/AFSCME, AFL-CIO, the United Public Workers, or UPW, Local 646, AFL-CIO, and the Hawaii State Teachers Association, or HSTA, HEA-NEA (also referred to herein collectively as Union-intervenors); along with the State of Hawaii, County of Hawaii, and County of Kauai (also referred to herein collectively as Employer-intervenors), filed petitions to intervene. All of said petitions to intervene were granted.

On October 29, 1974, a pre-hearing was conducted. At said pre-hearing, the Union-intervenors questioned the Board's jurisdiction to entertain the declaratory ruling petition. Responding to the contentions of the Union-intervenors the Board bifurcated the proceedings, directed the parties to submit memoranda of law and scheduled arguments restricted to the question of jurisdiction. Accordingly, the parties submitted memoranda and arguments were heard on December 4, 1974.

Having reviewed the entire record, the Board hereby makes the following findings of fact, conclusions of law, and ruling on the issue of jurisdiction.

FINDINGS OF FACT

1. The petitioner is a public employer as defined by §89-2(9), HRS, and is a party to the Unit 1 collective bargaining agreement.

2. The HGEA is the exclusive bargaining representative for Units 2, 3, 4, 6, 8 and 13.

3. The UPW is the exclusive bargaining representative for Units 1 and 10 and is a party to the Unit 1 collective bargaining agreement.

4. The HSTA is the exclusive bargaining representative of Unit 5.

5. The State of Hawaii is a public employer as defined by §89-2(9), HRS, and is a party to the Unit 1 collective bargaining agreement.

6. The County of Hawaii is a public employer as defined by §89-2(9), HRS, and is a party to the Unit 1 collective bargaining agreement.

7. The County of Kauai is a public employer as defined by §89-2(9), HRS, and is a party to the Unit 1 collective bargaining agreement.

8. The County of Maui, although a public employer as defined by §89-2(9), HRS, and a party to the Unit 1 collective bargaining agreement did not petition to intervene.

9. On July 1, 1972, the petitioner, the three employer-intervenors, the County of Maui and the UPW executed a collective bargaining agreement for Unit one. §16.09(d) of that agreement, dealing with the promotion of employees, stated "other factors being relatively equal, seniority shall prevail." On March 20, 1974, at the conclusion of reopening of negotiations over the terms of said agreement, §16.09(d) was renumbered and reworded as follows:

"16.6c. Whenever the qualifications between the qualified applicants are relatively equal the employee with the greatest length of Baseyard, Workplace or Institution Workplace seniority shall receive the promotion."

10. Prior to July 30, 1973, the petitioner promoted Cosme Rosete, Jr., to the position of Incinerator Plant Furnace Operator in lieu of Arthur Aiu. The UPW subsequently filed a grievance on behalf of Aiu charging that the Rosete promotion

violated §16.09(d) of the contract. The grievance process was stalled after the third step and the petitioner then filed a request for a declaratory ruling on the legality of the contract provision in question.

CONCLUSIONS OF LAW

DOES THE BOARD HAVE JURISDICTION TO ENTERTAIN THE DECLARATORY RULING PETITION PRESENTED BY THE PETITIONER?

The answer is clearly yes.

The Board's authority to entertain declaratory ruling petitions is clear from the language of §91-8, HRS. That section of the Hawaii Administrative Procedure Act states that:

"Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders."

§91-8, HRS, is specifically applicable to the Board under §91-1(1), HRS, which defines agency as ". . . each state . . . board . . . authorized by law to make rules or to adjudicate contested cases . . ." This Board is such a board. §89-5, HRS.

There is little doubt that the above statutory provision grants jurisdiction to the Board to entertain requests for and render or refuse to render declaratory rulings.

The Board finds no merit in the arguments of the Union-intervenors that an absence of specific statutory language in Chapter 89, HRS, prohibits Board action on a request for a declaratory ruling. To the contrary, §89-1(4), HRS,

states that the Board was established to administer the provisions of Chapter 89, HRS. §89-10(d), HRS, states that any provision of a contract shall prevail except when it is in conflict with §89-9(d), HRS.

Thus the Board has statutory authority under the Administrative Procedure Act and Section 89-1, HRS, to determine if and when a contract provision is in conflict with §89-9(d), HRS. The utilization of a declaratory ruling is a proper process in which such a dispute may be resolved. Moreover the conclusion that utilization of a declaratory ruling to resolve such a question is within the authority of the Board is strengthened by the fact that §89-5(b)(5), HRS, grants the Board the power to "hold such hearing and make such inquiries as it deems necessary, to carry out properly its functions and powers"

Based upon §§91-8, 91-1(5), 89-1(4), 89-5(b)(5), and 89-10(d), HRS, the Board has jurisdiction over a petition for a declaratory ruling involving a contract provision allegedly inconsistent with §89-9(d), HRS.

The Union- intervenors have also urged that the matter before the Board is a grievance and inappropriate for a declaratory ruling and therefore should be deferred back to the contractual grievance procedure.

This contention by the Union-intervenors is without merit. §89-11(a), HRS, states that the contractual grievance procedure is ". . . to be invoked in the event of any dispute concerning the interpretation or application of a written agreement." (emphasis added) In the case at hand the

"petitioner is not asking this Board to interpret or apply the contractual provisions to the facts concerning the grievance of Mr. Arthur Aiu."
(Bd. Ex. 14 at 3)

"Petitioner seeks a ruling on the narrow issue, not a part of the grievance, as to whether the contractual provisions, Sec. 16.09d, is in violation of HRS Sec. 89-9(d) and therefore invalid. Accordingly, the contention of (the Union) Intervenor as to the jurisdiction of the Board over the grievance are [sic] not an issue in this case." (Bd. Ex. 14 at 6)

Thus it is clear that the petitioner has asked that the Board rule on a purely legal question, i.e.: Does the contract provision violate §89-9(d), HRS? The factual grievance involving Mr. Aiu is of no concern to the Board. That factual dispute is and should be left to the contract grievance process as a matter of interpretation or application of the contract. However, the legal issue, as to whether or not the contract provision, in and of itself, is inconsistent with §89-9(d), HRS, raises a legal issue which may be determined by this Board.

Based upon the above, the Board is of the opinion that it has proper jurisdiction over the matter brought before it by the petitioner and accordingly is empowered to issue or refuse to issue for good cause,* a declaratory ruling.

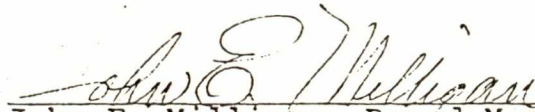
*Rule 1.09(f) of this Board, in relevant part, states: "(f) REFUSAL TO ISSUE DECLARATORY ORDER. The Board may, for good cause, refuse to issue a declaratory order."

ORDER

The Board hereby rules that it has jurisdiction to entertain a declaratory ruling petition on a question of law regarding the applicability of a section of Chapter 89, HRS.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


John E. Milligan, Board Member


James K. Clark, Board Member

Dated: December 27, 1974

Honolulu, Hawaii