

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)

JAMES TAKUSHI, Chief)
Negotiator, Office of)
Collective Bargaining,)
State of Hawaii,)

Petitioner,)

and)

HAWAII FIRE FIGHTERS)
ASSOCIATION, LOCAL 1463,)
IAFF, AFL-CIO,)

and)

CITY AND COUNTY OF HONOLULU,)

Intervenors.)

Case No. DR-11-16

Decision No. 65

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RULING

This petition for declaratory ruling was brought before the Hawaii Public Employment Relations Board (hereafter Board) by the petitioner (also referred to as employer) on October 21, 1975. In his request, the petitioner asked the Board to determine whether three proposals made in current reopener negotiations by the Hawaii Fire Fighters Association (hereafter HFFA or union) were non-negotiable under Section 89-9(d), Hawaii Revised Statutes. Subsequently, the HFFA and the City and County of Honolulu (hereafter references to "employer" will include both the City and County and the petitioner) filed petitions to intervene which were granted.

On November 7, 1975, the Board conducted a hearing after due notice. All parties were afforded the right to present oral and documentary evidence, to call and cross-examine witnesses, and to present argument and file memoranda of law.

This Board, having reviewed the entire record in this case including the transcript, exhibits, arguments, and briefs submitted by the parties, hereby makes the following findings of fact, conclusions of law and ruling.

FINDINGS OF FACT

1. Petitioner is a public employer as defined in Section 89-2(9), HRS.

2. The HFFA is and was at all relevant times the exclusive representative of employees of unit 11.

3. The City and County of Honolulu is a public employer as defined by Section 89-2(9), HRS.

4. There is in effect a collective bargaining agreement between the HFFA and the public employers. Pursuant to Section 42, Duration, of said agreement either the public employers or the union may give written notice during the period of July 1, 1975, through July 31, 1975, of their desire to modify, amend or terminate the agreement. Such written notice must be accompanied by specific proposals with the sections the proposals seek to affect.

5. On July 25, 1975, the HFFA sent the employer written notice of its desire to amend or modify the contract and submitted the following proposals:

The union's proposal on payroll deduction, one part of which related to the retirement system and the other to the health fund, provided:

"A. The Employer shall reimburse each employee all amounts of his compensation deducted for payment into the annuity savings fund of the Employees Retirement System of the State of Hawaii. Such reimbursement shall be made each and every pay period in the amount of said deduction for such payroll period.

"B. The Employer shall reimburse each employee all amounts of his compensation deducted for transmittal by the Employer to the Hawaii Public Employees Health Fund. Such reimbursement shall be made each and every pay period in the amount of said deduction for such payroll period."

The union's proposal on dental insurance provided that:

"The Employer shall provide a comprehensive dental care program for each employee and each employee's spouse at no cost to the employee."

6. The parties agree that: (A) the Hawaii Public Retirement System (hereafter retirement system) is that which is established in Chapter 88, HRS, as amended; (B) the Hawaii Public Health Fund (hereafter health fund) referred to is the health fund as provided for in Chapter 87, HRS, as amended; (C) the only dental benefit plan authorized in Chapter 87, HRS, is that which ". . . offer[s] dental benefits to those children of employee-beneficiaries who have not attained the age of nineteen. . . ." Section 87-22(4), HRS.

7. The employer asserted that the union's proposals were non-negotiable under the terms of Section 89^b(d), HRS, as amended, which provides in relevant part:

"Excluded from the subject of negotiations are matters of classification and reclassification, the Hawaii public health fund, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law," (Emphasis added.)

8. The employer's position is that negotiating a reimbursement of employee contributions to the retirement system would, in effect, constitute negotiations on retirement benefits. Similarly, he contends that to negotiate on reimbursements to employees for their contributions to the health fund would constitute negotiating on the health fund, a subject excluded from negotiations by Section 89-9(d), HRS.

9. The union denies that it is seeking to change any "retirement benefits" as provided for in Chapter 88, HRS. With respect to the retirement system, the union asserts that benefits and contributions are two separate entities and that Section 89-9(d), HRS, speaks only of benefits. The union also denies that it is seeking to change any provisions in Chapter 87, HRS, regarding the health fund since neither the amount nor the method of contribution would be altered.

10. The employer introduced committee reports as evidence of legislative intent to exclude the entire retirement system and the health fund from negotiations. House Standing Committee Report No. 752-70, page 3 (which was part of the legislative history of Chapter 89, HRS) provides:

"Your Committee has also excluded the retirement and post-retirement systems from the scope of negotiations. The establishment and administration of these systems are such that the costs of the 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 the 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." (Emphasis added.)

The other pertinent committee report introduced was House standing Committee Report No. 699 on SB 228, HD 1, 1975.

Said committee report pertains to the health fund and was part of the legislative history of Act 31, SLH 1975, which amended Section 89-9(d), HRS. The report states:

"The purpose of this Bill is to make the Hawaii Public Health Fund subject to be excluded from the scope of negotiations."

"Your Committee finds that Chapter 87, Hawaii Revised Statutes, provides the authority which created the Health Fund and the Board of Trustees with its powers and duties. Chapter 89, Hawaii Revised Statutes, permits the negotiations over the Hawaii Public Health Fund by the exclusive representatives of the 13 bargaining units.

"Your Committee further finds that a joint bargaining effort has not been successful and as a result an increase in individual union activity to modify the health fund. As the pressures of negotiations increase, there exist a definite possibility of fragmenting the existing Health Fund into 14 different Medical, Dental and Group Life Insurance Plans. This fragmentation will only result in increased cost because it is more expensive to purchase a given level of benefits if the risk is spread over a smaller group and the requirement for additional staff to administer the many different plans. There is no direct benefit to the employees associated with a cost increase of this nature. Further, this authority and responsibility of the Board of Trustees is clarified when the Health Fund is made non-negotiable." (Emphasis added.)

11. Mr. Kim Tet Lee, Executive Secretary of the Hawaii Public Retirement System, testified that the retirement system is a participatory one, and is based on joint contributions by employer and employee.

Section 88-45, HRS, provides for employee contributions to the retirement system and states in pertinent part that:

" . . . all firemen and policemen shall contribute ten and four-tenths per cent of their compensation. . . .

"In addition to the foregoing, all members including firemen, policemen and correction officers, shall contribute one and eight-tenths per cent of compensation to the post retirement fund."

Section 88-123, HRS, provides for annual contributions by the State and counties (the employers):

"The contribution payable in each year to the pension accumulation fund by the State and by each county, respectively, shall be determined by allocating the sum of the normal cost and the accrued liability contribution in the same proportion as the aggregate annual amount of compensation of State and county members as of March 31 of the year preceding the appropriation of said contribution."

12. Mr. Lee further testified that benefits received upon retirement depend upon credited membership service which in turn depends upon the contributions made by an employee. Section 88-51, HRS, provides in pertinent part that:

"Membership service shall only be credited for any period for which the member makes the required contributions to the system."

Furthermore, the amount of contributions directly affects the employee's retirement allowance. Section 88-87, HRS, provides:

"Upon retirement, the maximum retirement allowance of any member whose accumulated contributions are deficient shall be reduced by an amount which is the actuarial equivalent of the amount of the deficiency"

13. The employer contends that the exclusion of the health fund from negotiations also excludes negotiations on dental plans. The employer points out that Chapter 87, HRS, was amended by Act 235, SLH 1965, to specifically include dental services and hence dental services are part of the health fund. The purpose of the health fund is set forth in Section 87-3, HRS, which provides in pertinent part:

"The fund shall be used for the purpose of providing employee-beneficiaries and dependent-beneficiaries with a health benefits plan, provided that the fund may be used for other expenses necessary to effectuate the purpose and provided further that any rate credit or reimbursement from any carrier or any earning or interest derived therefrom shall be used in addition to such purposes to (1) finance the State's contribution for the dental benefits plan for children under the age of nineteen,"

As defined in Section 87-1(8), HRS.

"'Health benefits plan' means (A) a group insurance contract or medical, hospital, or dental service agreement in which a carrier agrees to provide, pay for, arrange for or reimburse the cost of health or dental services as determined by the board or (B) a similar schedule of benefits established by the board and provided through the fund on a noninsured basis;"

14. In the case of the dental plan proposal, the union maintains that only provisions under Chapter 87, HRS, as amended, pertaining to the health fund, are excluded from negotiations. The only dental plan authorized by and under Chapter 87, HRS, as amended, is that which covers children under 19 and as such is the only dental plan excluded from negotiations. However, the union's proposal of a dental

plan for each employee and each employee's spouse is not within the authority of the health fund, as provided. Therefore, the union argues the dental plan proposal is not excluded from negotiations.

15. In further support of its proposals, the union argues that Section 89-9(d); HRS, is unambiguous and as such precludes interpretation.

CONCLUSIONS OF LAW

With respect to the proposals which would require the employer to reimburse the subject employees for their contributions to the annuity savings fund of the retirement system and the health fund, this Board is of the opinion that, in effect, the union is attempting to have the employer make both the employer's contribution as provided by law and the employees' contributions. The reimbursement device, although an ingenious one, results in a fiction which this Board cannot accept. Behind the fiction lies the fact that the employer will be making the employees' contributions.

The word "reimbursement" means and embodies the notion of refunding, repaying, paying back, giving back. Webster's Seventh New Collegiate Dictionary (1972). Thus, it is difficult to accept the union's position that paper contributions deducted but simultaneously repaid are, in fact, contributions at all.

Moreover, this Board is of the opinion that the wording in the statute restricting negotiations on retirement benefits was not intended to be read as narrowly as proposed by the union. The pertinent committee reports

demonstrate that it was the entire retirement system, not just benefits paid out, which was to be excluded from negotiations.

House Standing Committee Report No. 752-70, page 3, provides in pertinent part: "Your Committee has also excluded the retirement and post-retirement systems from negotiations. . . ."

The union has urged that the term "retirement benefits" in Section 89-9(d), HRS, is clear and unambiguous and hence there is no need to look to extrinsic aids to ascertain the intent of the Legislature when it enacted said phrase. However, when Chapter 89, HRS, was enacted, the retirement system law was in existence and we do not believe that given the wide range of subjects and complex provisions found in Chapter 88, HRS, that the true intent of the Legislature clearly appears in a narrow construction of the words "retirement benefits" in 89-9(d), HRS. Hence, we feel justified in considering the above committee reports in this case.

As to the health fund, we believe that the proposal of the union would modify the existing health fund arrangement presently established by law. This Board finds that the fund as defined in Section 87-1(7), HRS, "means the trust fund is described in Section 87-2" which provides in relevant part:

"§87-2 Establishment of the fund.
There shall be a health trust fund to be known as the 'Hawaii Public Employees Health Fund.'

"The fund shall consist of contributions, interest, income, dividends, refunds, rate credits, and other returns."
(Emphasis added.)

This Board also finds that express provisions were made for a joint contribution to the fund by both the State of Hawaii and the City and County of Honolulu, the counties of Hawaii, Kauai and Maui (the employers) and the employees. Section 87-4, HRS, provides for State and counties contributions and states in relevant part:

"§87-4 State and county contributions to the fund. The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of \$5 for each of their respective employee-beneficiaries and \$15 for each respective employee-beneficiary with a dependent-beneficiary, such contributions to be used towards the payment of costs of hospital, medical, and surgical benefits of a health benefits plan, provided, that the monthly contribution shall not exceed the actual cost of a health benefits plan. If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county shall be \$15 for both of them."

Section 87-6, HRS, as amended, provides for employee-beneficiary contributions and states in relevant part:

"87-6 Contributions by an employee-beneficiary. Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the State's and county's contributions to the fund."

This Board is of the opinion that it was clearly the intent of the Legislature when it amended Section 89-9(d), HRS, to exclude the entire health fund from the scope of negotiations that the above statutory arrangement requiring both employer and employee contributions not be altered in any way by collective bargaining.

4. This Board is also of the opinion that any dental plan for public employees is encompassed within the

health fund, as provided for in Chapter 88, HRS, and is thereby excluded from negotiations.

Section 89-9(d), HRS, clearly excludes the health fund en toto from the scope of negotiations. Upon reviewing Chapter 87, HRS, this Board finds that the purpose of the fund is to "provide employee-beneficiaries with a health benefits plan." (Section 87-3, HRS). Such plan is defined in Section 87-1(8) in pertinent part as:

"(A) a group insurance contract or medical, hospital, or dental service agreement in which a carrier agrees to provide, pay for, arrange for or reimburse the cost of health or dental services as determined by the board;" (Emphasis added.)

Legislative history of Chapter 87, HRS, has only served to reinforce this Board's belief that any dental plan would be excluded along with other provisions of the health fund from negotiations.

House Standing Committee Report No. 890 on HB 1155, 1965, pertaining to dental benefits was part of the legislative history of Act 235, SLH 1965, which amended Chapter 87, HRS. Said committee report provides in relevant part:

"The bill as originally referred to your Committee extended dental coverage to all employees and their dependents, provided for state contributions for dental benefits for all employee beneficiaries and employee beneficiaries with dependents, provided free medical and dental services to retired employees and their dependents, and provided for the implementation of the dental plan by July 1, 1965.

"Your Committee, after careful consideration of the bill, amended the bill in the following respects:

* * *

"(2) By providing for dental benefits only to children of employee beneficiaries who have not attained the age of 19 and by authorizing a state monthly contribution of

\$1.40 per child. Your committee has limited the scope of the coverage of this bill only to these members of the employee beneficiary's family since it believes that children need and have the most to gain from dental benefits. Your Committee further feels that only those with the greatest need should be covered at the inception of any benefit program." (Emphasis added.)

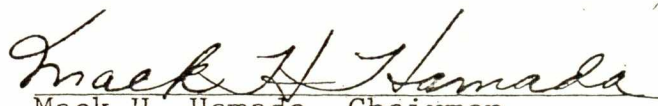
Thus, the legislature did not rule out the possibility of extending dental coverage to all employees and their dependents. It merely chose to limit the coverage of dental benefits to a select group at the inception of the program.

This Board assumes that the Legislature was aware that fringe benefits such as health, dental and retirement plans are mandatory subjects of negotiations in the private sector. It is this Board's conclusion that 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 negotiation. 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.

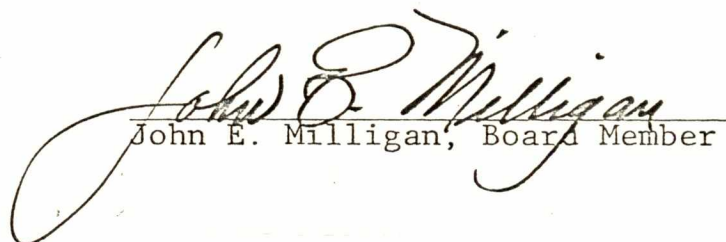
RULING

This Board therefore rules that the union's proposals on payroll deduction reimbursements and dental insurance are non-negotiable under Section 89-9(d), HRS.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: December 16, 1975

Honolulu, Hawaii