

Decision  
for

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

|                                   |   |                          |
|-----------------------------------|---|--------------------------|
| In the Matter of                  | ) |                          |
| STATE OF HAWAII,                  | ) | Case No. <u>DR-01-18</u> |
|                                   | ) |                          |
| Petitioner,                       | ) | Decision No. <u>70</u>   |
|                                   | ) |                          |
| and                               | ) |                          |
|                                   | ) |                          |
| HAWAII GOVERNMENT EMPLOYEES'      | ) |                          |
| ASSOCIATION, LOCAL 152, AFSCME,   | ) |                          |
| AFL-CIO,                          | ) |                          |
|                                   | ) |                          |
| and                               | ) |                          |
|                                   | ) |                          |
| UNITED PUBLIC WORKERS, LOCAL 646, | ) |                          |
| AMERICAN FEDERATION OF STATE,     | ) |                          |
| COUNTY AND MUNICIPAL EMPLOYEES,   | ) |                          |
| AFL-CIO,                          | ) |                          |
|                                   | ) |                          |
| and                               | ) |                          |
|                                   | ) |                          |
| COUNTY OF MAUI,                   | ) |                          |
|                                   | ) |                          |
| Intervenors.                      | ) |                          |
|                                   | ) |                          |

FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING

This case came before this Board upon the filing, on July 2, 1976, of a Petition for Declaratory Ruling by Donald Botelho, Director of Personnel Services, State of Hawaii. Intervening in the case, by leave of the Board, were the County of Maui, and the Hawaii Government Employees' Association, Local 152, AFSCME, AFL-CIO (hereafter HGEA), and the United Public Workers, Local 646, American Federal of State, County and Municipal Employees, AFL-CIO (hereafter UPW).

A hearing was held on July 28, 1976. Representatives of all parties were present and were afforded a full opportunity to participate in the proceedings. Briefs were received from all parties on August 4, 1976, and the transcript of the July 28 proceeding was delivered to the Board on September 13, 1976.

## FINDINGS OF FACT

Most of the facts pertinent to this case were stipulated to by the parties and are adopted by this Board.

There were stipulations, at the outset, that the State of Hawaii (on whose behalf Mr. Botelho filed the petition) and the County of Maui were "public employers" as that term is defined in Chapter 89, Hawaii Revised Statutes (hereafter HRS), and that the UPW and the HGEA were "employee organizations" as that term is defined in said Chapter.

Additionally, the following stipulated facts were read into the record by Deputy Attorney General Lawrence Kumabe (at pages 6-7 of the transcript):

"MR. KUMABE: Mr. Chairman, the parties have arrived at a few factual stipulations for the purposes of this hearing.

First of all, the parties have stipulated that on October 28, 1975 the public employers as defined under Chapter 89 HRS, including the State of Hawaii, City and County of Honolulu, County of Hawaii, County of Kauai and County of Maui began negotiations for a new contract with Bargaining Unit 1 for fiscal year 1976-'77 with the United Public Workers, Local 646 AFSCME, AFL-CIO.

Number two on April 14th of 1976 a joint Notice of Impasse was filed by the UPW and the Public Employers with the Hawaii Public Employment Relations Board.

On April 19, 1976, the Hawaii Public Employment Relations Board issued a Finding of Impasse and Notification of Mediation in Case No. I-01-24.

Number four, after the mediation process was completed, seven issues remained at impasse between the parties.

Number five, a fact finding panel was appointed by this Board and the fact finding report was issued on May 25, 1976.

Number six, the fact finding report was made public on or about June 1, 1976.

Number seven, the UPW Contract was extended for two weeks from June 30, 1976 to July 14, 1976.



Number eight, the Contract was extended by the parties again for another week from July 14th of 1976 to July 21st of 1976.

Number nine, the Contract was further extended for another week from July 21st of '76 until the end of the month. July 31, 1976.

Number eight, negotiations have been scheduled between the UPW and the Public Employers during the week of July 25th to August 1st, 1976.

Number nine, the County of Maui paid increments to Maui County employees and Bargaining Unit 1 on the service anniversary dates of these employees effective July 1, 1976.

Number ten, the Employers have made wage proposals in these Unit 1 negotiations, which have not been accepted by the UPW.

Number eleven, no ten day strike notice has been filed to date by the UPW.

Additionally, the following stipulation appears on page 7 of the transcript:

"CHAIRMAN HAMADA: What about the Union: Have they made any wage proposals?

MR. KUMABE: I think the UPW will stipulate that the Union has made --

MR. KING: The Union has made wage demands as well as demands in other areas.

MR. KUMABE: Yes, that is so stipulated."

Also, the Board finds, based upon representations of the attorneys during the hearing, that the current fiscal year for both Maui County and the State began on July 1, 1976, and will end on June 30, 1977. Consistent with the position it has taken in this case, Maui County paid increments and longevity increases to eligible employees in Unit 1 on the July 15, 1976, pay day.

#### CONCLUSIONS OF LAW

This case calls for an interpretation of a portion of Subsection 89-9(d)(7), HRS (which was part of Act 164, Session Laws of Hawaii 1975), and of Section 77-12, HRS.

Subsection 89-9(d)(7), HRS, states, in relevant part:

"(7) Services prior to June 30, 1975 in which salary increases were granted in lieu of increment or longevity increases under a collective bargaining agreement shall not count as service creditable for increment or longevity purposes when applying paragraphs (1), (2), (3), and (4) above. Effective July 1, 1976, an employee shall not be entitled to his normal annual increment or longevity increase, as the case may be, in any fiscal year that an increase in the applicable salary or wage board schedule is effected, whether by statute or agreement, and no part of such a fiscal year shall be counted as service creditable for any future increment or longevity pay increase; provided that any collective bargaining agreement, the expiration date of which is beyond June 30, 1976, which provides for a general wage adjustment together with incremental and longevity increases shall be observed in accordance with the terms of the agreement in effect on June 30, 1975 for an employee covered by such agreement." (Emphasis added)

Subsection 77-12, HRS, in relevant part, says:

"§77-12 Increments, service anniversary dates, longevity increases. Upon certification of the appointing authority, any employee in the civil service shall, except as otherwise provided by section 76-41, upon his rendering a year's satisfactory service, be entitled to an increase in compensation from that received during such year to that provided for by the next higher step in the salary range for the class to which his position has been assigned. For the purpose of this section, it shall not be necessary that the year's service shall have been in the same position or class. The date on which the employee would, except for the application of section 76-41 have been entitled to such step increase, shall be known as his 'service anniversary date.'

Any employee who is paid under the salary schedule contained in section 77-13 and who has served satisfactorily for three years at the maximum step or in steps L-1, L-2, or L-3 of the salary range for the class to which his position is assigned shall receive longevity step increases.

Any employee, who has served satisfactorily for five years at a step in a salary range higher than the maximum step of the salary range to which his appropriate class has been assigned, shall receive longevity increases as herein provided under the same terms and conditions



as if he were receiving compensation at the maximum step for his appropriate grade; provided, that until such time as the increased compensation would exceed the compensation received by the employee without reference to the longevity increase, he shall be entitled to no increase in compensation.

For the purposes of this section, the period of a leave of absence without pay to pursue a course of instruction or engage in research, thereby improving his ability and increasing his fitness for public employment shall be deemed service by the employee and credited towards his increment or longevity increase upon showing to the satisfaction of the appointing authority that he has fulfilled the purpose of his leave.

Any other law to the contrary notwithstanding, this section shall apply to all employees in positions covered in the compensation plan as set forth in this chapter."

The respective positions of the parties in the instant case were as follows:

Maui County considered itself bound as of July 1, 1976, to pay the annual increments and longevity increases called for by Section 77-12, HRS, to all eligible employees notwithstanding the fact that negotiations for a Unit 1 contract had not been concluded by June 30, 1976, and in fact were in progress through and after July 15, 1976, the date upon which Maui County first paid increments to eligible employees in Unit 1 for the 1976-1977 fiscal year. Maui County also took the position that it would continue to negotiate in good faith on the subject of wage increases for Unit 1, but that it would not pay Unit 1 employees any wage increases which might result from said negotiations but would instead place the sum of any negotiated wage increase in escrow.

The State's position was similar to Maui's in that the State appeared to be of the opinion that Section 77-12, HRS, required payments to the subject employees. However,

the State was of the opinion that Subsection 89-9(d)(7), HRS, permitted it to hold up the payments of increments and longevity increases so long as meaningful negotiations on wages were in progress.

The UPW's position was that the payment of the subject increments in view of current, ongoing negotiations between the UPW and the public employers for a wage increase for Unit 1 employees was illegal.

The HGEA's position was that increment or longevity pay increases to which an employee might otherwise be entitled in a fiscal year may and should be postponed while good faith negotiations on the wages to be paid to the employee during the fiscal year are continuing.

It will be assumed for the purpose of this decision, because such was the assumption by all of the parties and the Board throughout the subject hearing, that the wage increase being negotiated was to be effected during fiscal year 1976-1977.

Upon a review of the statutes in question and the entire record in this case including the oral and written arguments made on behalf of all parties, this Board is of the opinion that normal incremental and longevity pay increases for employees in Unit 1 made pursuant to Section 77-12, HRS, for fiscal year 1976-1977 should not have been made while negotiations for wage increases for these employees to be effected during said fiscal year were in progress.

Subsection 89-9(d)(7), HRS, prohibits the payment of normal incremental or longevity increases in any fiscal year in which a negotiated increase "is effected." So long as the Unit 1 negotiations were in progress, there was a possibility that a negotiated wage increase might "be effected" at



sometime during the 1976-1977 fiscal year and thus no increment or longevity pay increase should have been paid during the pendency of said negotiations.

Under the circumstances of this case, this Board is of the opinion that public employers should not pay normal incremental or longevity pay increases in any fiscal year unless there is certainty that a wage increase will not be effected through negotiations in said fiscal year. The clearest form of such certainty would be, for example, present in a situation in which a unit's exclusive representative had negotiated a waiver of a contractual wage increase for the fiscal year.

Senate Standing Committee Report No. 253 (1975) and House Standing Committee Report 781 (1975) regarding Senate Bill 846 which embodied the language which ultimately became Subsection 89-9(d)(7), HRS, make it clear that the purpose of the subsection was to render Section 77-12, HRS, compatible with collective bargaining so that no employee got both a normal incremental or longevity increase and a negotiated increase in the same fiscal year. The device to be used to achieve this result was, in the words of the committee reports, that of deferring the increments and longevity increases. Nowhere do the committee reports speak of or suggest that increment payments could be used as a device to "defer" negotiated increases.

It would have been desirable if the legislature had made it unquestionably clear that the service anniversary dates referred to in Section 77-12, HRS,\* did not come into

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\*Said service anniversary dates, it is noted, can vary from employee to employee leading to considerable uncertainty in using such dates as a cutoff under Subsection 89-9(d)(7), HRS.


play whenever negotiations ran past June 30 of any year. However, even in the absence of this clarification, this Board is of the opinion that the language of Subsection 89-9(d)(7), HRS, the intent of said subsection, and the practical realities of the collective bargaining process support, warrant and require the ruling made immediately below. To rule otherwise would only undermine the collective bargaining process and allow Subsection 89-9(d)(7), HRS, to be used as a shield against meaningful negotiations. This Board does not believe these results were intended to follow from the enactment of Subsection 89-9(d)(7), HRS.

RULING

Incremental and longeveti increases called for by Section 77-12, HRS, should not be given in any fiscal year to employees in a collective bargaining unit so long as there remains the possibility that the public employers and exclusive representative of said unit may negotiate a wage increase to be effected at sometime during said fiscal year.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: September 15, 1976

Honolulu, Hawaii