STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of HAWAII FIREFIGHTERS ASSOCIATION, LOCAL 1463, IAFF, AFL-CIO, Complainant, and STATE OF HAWAII, Respondent.	Case No. CE-11-26
In the Matter of HAWAII FIREFIGHTERS ASSOCIATION, LOCAL 1463, IAFF, AFL-CIO, Complainant, and COUNTY OF MAUI, Respondent, and COUNTY OF KAUAI, Intervenor.	Case No. CE-11-27 Decision No. 74

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On June 18, 1976, complainant Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO (hereafter HFFA) filed with this Board the above-captioned prohibited practice charges against respondents State of Hawaii and County of Maui. The substance of the charges was that each respondent had failed to consult with or bargain collectively with the Union over the creation of new firefighter classes, and the establishment of accompanying job requirements, duties, descriptions and salary ranges.

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On July 15, 1976, the County of Kauai's petition for intervention in Case No. CE-11-27 was granted (Board Order No. 63). Kauai County did not thereafter participate in any way in this case.

All parties were afforded full opportunity to participate in the hearing held before the Board on October 6, 1976. Briefs were received by December 16, 1976.

Upon review of the testimony, exhibits, stipulations and briefs submitted by the parties, the Board hereby makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Most of the facts pertinent to the subject cases were stipulated to by the parties and are hereby adopted by the Board.

On October 11, 1974, the following new classes of firefighters for the Airports Division, Department of Transportation, State of Hawaii, were established and incorporated into the Compensation Plan for the State of Hawaii:

Class Title	SR/WB
Airport Firefighter I	SR-16
Airport Firefighter II	SR-18
Airport Fire Equipment Operator	SR-20

Prior to that time, the State had, on September 17, 1974, advised the HFFA of the bargaining unit designation and salary classification for each of these classes.

On March 24, 1975, the State solicited repricing requests for firefighter positions from the HFFA. These requests were made in preparation for repricing meetings to be held by the Conference of Personnel Directors.

In a letter dated April 21, 1975, and addressed to the Director of Civil Service, City and County of Honolulu (hereafter City), the HFFA requested repricing of the City's Fire Fighter class from SR-16 to SR-18. The requested repricing was based on the similarity of job specifications between the City's Fire Fighter class, and the State's Airport Firefighter II class, both of which represented the fully competent level of work.

The HFFA testified in support of its repricing request during the July, 1975 repricing meetings held by the Conference of Personnel Directors. At the conclusion of the meetings, the Conference recommended repricing the State's Airport Firefighter I and Airport Firefighter II classes at SR-14 and SR-16 respectively, rather than repricing County Fire Fighter classes at SR-18.

On October 1, 1975, the State notified the HFFA of the scheduled newspaper publication date for the Tentative Compensasation Plan for White and Blue Collar classes. It further stated that appeals from the Plan could be filed with the Public Employees Compensation Appeals Board (hereafter PECAB) within twenty days of October 8, 1975, the Plan's publication date.

In the published Tentative Compensation Plan, the Airport Firefighter I class was priced at SR-14, and the Airport Firefighter II class was priced at SR-16.

On October 22, 1975, the HFFA filed an appeal on the pricing of the State's Airport Firefighter I and II classes with PECAB. A hearing on the appeal was held on December 5, 1975.

On December 31, 1975, PECAB denied the HFFA's repricing appeal, setting forth the following conclusions in its Report of Findings on Adjustments to the Compensation Plan:

> [The] Board concurs in rationale of Conference of Personnel Director[s] that differences between County Classes of Firefighter SR 16[,] and State Classes for Airport Firefighter II SR 18 are unwarranted

> and that they should be priced equally at the SR 16 level for journeyman. . . [I]t fully endorses the establishment of an entry level at SR 14 in all jurisdictions.

On June 1, 1976, the County of Maui (hereafter County) solicited comments from the State and the other county jurisdictions regarding its proposal to create a new Fire Fighter Trainee class priced at SR-14. At that time, the County's firefighting series consisted solely of the Fire Fighter Class, priced at SR-16, which encompassed both new and experienced firefighters.

On June 10, 1976, the Fire Fighter Trainee class was created for the purpose of establishing an entry level class in the firefighting series. The County received concurrence on this action from each of the other jurisdictions.

As a result of the creation of the Fire Fighter Trainee class, job requirements for the County's Fire Fighter class were amended to include a requirement of one year's firefighting experience.

The Fire Fighter Trainee Class, and its job requirements, duties and salary range, were established without official consultation or negotiation with the HFFA. At the December 5, 1975 PECAB hearing, the County informally indicated to the Union that the creation of a trainee class was being contemplated (Tr. 9, 11). However, it was not the County's practice to consult with the HFFA on the subject of new classes (Tr. 13).

The County's action on the Fire Fighter Trainee class was not appealed to PECAB (Tr. 33).

There are presently no employees within the Fire Fighter Trainee class (Tr. 14).

CONCLUSIONS OF LAW

Two procedural issues must be resolved at the outset. The first is whether the prohibited practice charge against the State, Case No. CE-11-26, is barred by the limitation period of §302, HPERB Rules and Regulations (reflecting the requirement of Subsection 377-9(1), Hawaii Revised Statutes), which states:

> "3.02 Complaint. (a) WHO MAY FILE; TIME LIMITATION. A complaint that any public employer, public employee or employee organization has engaged in any prohibited act may be filed by a public employee, employee organization, public employer, or any party in interest or their representatives within ninety days of the alleged violation."

Since all of the events stipulated to by the State and the HFFA occurred in 1974 and 1975, it is obvious that the June 18, 1976 filing of the prohibited practice charge occurred long after the expiration of the ninety day period following these events. For this reason, the Board herein dismisses the prohibited practice charge against the State in Case No. CE-11-26.

The other preliminary issue, in Case No. CE-11-27, is whether the HFFA has standing to challenge the creation of a new class which does not include present County employees or HFFA members. The County of Maui has argued that because the new classification applies only to prospective employees and does not affect incumbents in the bargaining unit, the union lacks standing to file this prohibited practice charge. However, this argument erroneously assumes that HFFA has no interest in employment matters applicable to future firefighting employees. On the contrary, the Union properly has an interest in such matters, as was pointed out in Laney and Duke Storage Warehouse Co., 151 NLRB 28, 58 LRRM 1389 (1965), enf'd. sub nom., NLRB v. Laney and Duke Co., 369 F.2d 859, 63 LRRM 2551 (5th Cir. 1966):

> "It is true that in the letter of February 7, 1964, to which reference has already been made, counsel for the respondent also declared that: 'None of the employment conditions would apply to the present employees even if the company insisted that the application be signed.' This declaration could not cure, however, the violation involved in the unilateral action. In the first place, quite apart from the specific conditions which were newly imposed, the applications themselves represented a change in the hiring practices of the respondents about which the union was entitled to be consulted. In the second place, this hiring practice, once established would apply to future applicants for employment, and the union also had an interest in this matter." 58 LRRM at 1390.

Accordingly, this Board finds that the HFFA does have standing to maintain the prohibited practice charge against the County in Case No. CE-11-27.

The Board now turns to the merits of this charge to determine whether the County of Maui's admitted failure to consult with or bargain collectively with the HFFA over the creation of the Fire Fighter trainee class, and its accompanying job requirements, duties, descriptions and salary ranges, is violative of Chapter 89, Hawaii Revised Statutes (hereafter HRS). We hold that the County's failure to consult with the union on this matter does violate Chapter 89 for the reasons which follow.

Overall responsibilities of public employers and public employee unions in the collective bargaining process are defined by the subsections of §89-9, HRS; these subsections must be read in conjunction with one another in order to determine the scope of the parties' obligations on a particular subject. Thus, the duty of negotiation established in §89-9(a), HRS, must be interpreted in light of §89-9(d), HRS, which provides that certain subject areas shall not be subject to the duty:

> "(d) Excluded from the subjects of negotiations are matters of classification and reclassification, the Hawaii public employees health fund, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable..." (Emphasis added).

The subject of "classification," one of the exclusions of §89-9(d), HRS, is generally characterized in §76-11(7), HRS, as:

> "...the logical or reasonable grouping of duties and responsibilities and their identification with respect to
> (A) Kind or subject matter of work,
> (B) Level of difficulty and responsibility, and
> (C) Qualification requirements of the work so that positions which conform substantially to the same class would receive like treatment in the matter of title, and such personnel processes as salary assignment..."

See also §§6-13(8), 77-1, 77-4, HRS. Under these statutory provisions, classification is the overall process by which State and County job categories, with their appropriate requirements, duties, descriptions and salary ranges, are established. Maui County's act of creating a Fire Fighter Trainee class, establishing job specifications for that class, and pricing the class at SR-14, is undoubtedly within the ambit of the classification process. As such, the County's action is non-negotiable and no duty of negotiation with the union can arise from it. The Board therefore finds that Maui County's failure to bargain collectively with the HFFA on the matter does not constitute a prohibited practice under Chapter 89, HRS.

In coming to the above conclusion, the Board is mindful of the HFFA's argument that the creation of entry level classes at increasingly lower salary ranges could, if carried to its logical end, eventually result in the downward placement of the bargaining

unit on the salary classification schedule, and thereby negate negotiated amounts of entry level pay. While this consequence is indeed conceivable under the present language of §89-9(d), HRS, such a concern is one that should more appropriately be addressed within the legislative process.

Of course, even if Maui County has no duty to negotiate with the HFFA over the creation of a new firefighter class, this does not mean that the County lacks any additional obligations to the Union pursuant to §89-9, HRS. Section 89-9(c), HRS, sets forth the following duty of consultation:

> 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." (Emphasis added).

Whether the County should have consulted with the Union over the subject classification matter requires a determination that the subject falls within the prescriptions of §89-9(c), HRS, since consultation is not required for each and every employer action. Consultation is, however, required for major or "substantial and critical" matters affecting employee relations, as pointed out by this Board in HPERB Case No. CE-07-6, Decision 37 (October 9, 1973), and HPERB Case No. CE-07-8, Decision 54 (September 3, 1974). The creation of a Fire Fighter Trainee class herein does not appear to be a major policy change affecting employee relations insofar as present employees in the County's Fire Fighter class are not directly affected. It is nevertheless a substantial matter affecting employee relations because it introduces a separate entry-level class into the County's firefighting series, and modifies existing job

requirements for the Fire Fighter class. The County's action is therefore one to which the duty of consultation attaches.

While the County concedes that there was no official consultation with the Union on this matter, it has urged, as grounds for dismissing the charge, the Union's failure to file an appeal with PECAB pursuant to §77-4(e), HRS. With this contention the Board cannot agree.

In the first place, the County's argument presumes that an appeal of its pricing for the new class is the sole remedy available to the HFFA; it further implies that there is no overlap between the provisions of Chapter 77, HRS, and Chapter 89, HRS. However, the Board does not believe that the Legislature intended to wholly exclude compensation, as an adjunct of the classification process, from the scope of the collective bargaining law. The Legislature used precise language to exclude the subject of classification from the scope of negotiation, but there is no correspondingly explicit language that removes this subject from the scope of consultation as well. In fact, nowhere in Chapter 89, or in its legislative history, is there any indication that classification, or any of the other subjects excluded from the scope of negotiation, would not be subject to the duty of consultation. It is therefore reasonable to conclude that the language of §89-9(c), HRS, is applicable to all major, substantial and critical matters other than those requiring negotiation, which affect employee relations. To conclude otherwise, and find that such subjects as classification are subject neither to the duty of consultation nor to the duty of negotiation, would be to defeat Chapter 89's central purpose of permitting public employees to share in the decision-making process affecting their employment.

Moreover, the Board is of the opinion that the filing of an appeal from the County's pricing action does not satisfac-

torily fulfill the employer's obligation of consultation.

Section 77-4(e), HRS, outlines the following pertinent appeal procedures:

> (e) "The director shall assign new classes to salary ranges on the basis of the policies and standards referred to hereinabove. The assignments shall be effective immediately if the availability of funds is certified to by the respective fiscal officers, and shall be in effect until adoption of the next compensation plan; provided, that pricing appeals therefor may be held every six months, or at the time of the next biennial review.
>
> All petitions for appeals from affected persons on the pricing of new classes shall be filed with the appeals board within twenty days from the date the notice of such is given by the director. Notice of time and place of such appeal hearing shall be published in the jurisdiction in a newspaper of general circulation at least ten days prior to the hearing. The appeals board shall hear all the appeals as aforementioned.
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> * * *
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> After hearing all appeals, the appeals board shall make adjustments to the appealed classes that are necessary based on the policies and standards referred to hereinabove. Decisions on the pricing appeals shall be made on the basis of majority vote, shall be in writing and accompanied by separate findings, and shall be binding on all jurisdictions." (Emphasis added).
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> * * *

These procedures require "affected persons" to initiate review of the pricing action by filing an appeal with PECAB within a limited amount of time. Yet the procedure is inadequate to satisfy the function of consultation which was expressed in Decision 54, supra:

> ". . . Section 89-9(c), HRS, requires that consultation be initiated by the employer. It is not incumbent upon the exclusive bargaining representative, but upon the employer to seek and request consultation.
>
> . . .[C]onsultation does not require a resolution of differences. All that is required is that the employer inform the exclusive representative of the new or modified policy and that a dialogue as to the merits and disadvantages of the new or proposed policy or policy change take place." (Emphasis added).

In contrast to the PECAB appeal procedure provided in §77-4(e), HRS, one example of an employer-initiated mechanism for Union and employee input can be found in §77-4(a), HRS. That section allows the participation (without voting) of employee representatives and other interested parties in the biennial conferences held to review the State's compensation plan. In seeking participation, the employer normally solicits repricing requests from unions prior to the conferences, and notifies them of meeting dates and locations. Such a procedure would meet the requirements of §89-9(c), HRS, in a manner consistent with earlier holdings of this Board.

In view of the preceding considerations, the proper course of action for the County to have taken would have been to seek input from the HFFA before or at a reasonable time following the creation of the Fire Fighter Trainee class, and the establishment of job requirements, duties, descriptions, and salary ranges for that class. Consequently, the County's failure to consult with the Union on this matter is in derogation of the duty imposed on it by §89-9(c), HRS, and constitutes a prohibited practice pursuant to §89-13(a)(7), HRS.

ORDER

The case against the State of Hawaii, Case No. CE-11-26, is dismissed.

In fashioning an appropriate remedy for the prohibited practice in Case No. CE-11-27, the Board notes that Maui County's establishment of a trainee class has not caused direct harm to complainant HFFA at this time. No employees are presently within the trainee class, and employees in the existing Fire Fighter class do not appear to have been harmed

by the establishment of the new class. In the absence of such harm, no remedial order requiring consultation on this matter appears to be warranted.

The County did, however, commit a prohibited practice; and it is hereby ordered to fulfill its duty of consultation with the Union over this type of classification matter in the future.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

Mack H. Hamada, Chairman

John E. Milligan, Board Member

Dated: January 26, 1977

Honolulu, Hawaii

OPINION CONCURRING IN PART, DISSENTING IN PART

Although I fully concur with my fellow Board members on the two procedural issues and the absence of a duty to negotiate over the establishment of Maui County's trainee class, I must respectfully dissent from their holding that the County's action is one requiring consultation with the HFFA.

This dissent is based on my belief that the Legislature did not intend the type of procedural overlap between Chapters 77 and 89 subscribed to by my colleagues. I do not dispute that, to the extent that Chapter 89 incorporates and reflects the merit principle and the principle of equal pay for equal work in its provisions, there is substantive overlap between the two chapters. But I do not agree that the enactment of Chapter 89 was intended to supersede the existing structure of the compensation law.

In attempting to modify procedures devised for the efficient implementation of the State's compensation plan, my colleagues have failed to appreciate the relationship between those procedures and the classification and compensation scheme they were designed to effectuate. As such, the form of consultation herein required could only result in an unnecessary burden to an already cumbersome system. This is not a result which the Legislature could have possibly intended; what was intended was that the structural integrity of the compensation process be preserved so as to assure efficient maintenance of the merit principle and the principle of equal pay for equal work.

Accordingly, I would hold that the County of Maui had no duty to consult with the HFFA over the creation and

pricing of the Fire Fighter Trainee class; and the subject prohibited practice charge against the County should be dismissed.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

James K. Clark, Board Member

Dated: January 26, 1977

Honolulu, Hawaii