

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of )  
 )  
HAWAII GOVERNMENT EMPLOYEES' )  
ASSOCIATION, AFSCME, LOCAL 152, )  
AFL-CIO, )  
 )  
Petitioner, )  
 )  
and )  
 )  
UNITED PUBLIC WORKERS, LOCAL 646, )  
AMERICAN FEDERATION OF STATE, )  
COUNTY AND MUNICIPAL EMPLOYEES, )  
AFL-CIO, )  
 )  
and )  
 )  
GEORGE R. ARIYOSHI, Governor of )  
the State of Hawaii, )  
 )  
and )  
 )  
FRANK F. FASI, Mayor of the City )  
and County of Honolulu, )  
 )  
Intervenors. )  
 )

Case Nos. DR-02-28a  
DR-03-28b  
DR-04-28c  
DR-06-28d  
DR-08-28e  
DR-13-28f

Decision No. 84

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
DECLARATORY RULING

The Petitioner filed the subject petition for a declaratory ruling with this Board on March 9, 1977.

The United Public Workers and public employers, George R. Ariyoshi, Governor of the State of Hawaii, and Frank F. Fasi, Mayor of the City and County of Honolulu, intervened in the case.

A hearing was held on the matter on April 19, 1977. The memoranda of legal authorities from the parties were filed by July 6, 1977.

The issue presented by the petition is whether the subject of State and City and County employee parking in State and City and County facilities, including the amount of parking

fees to be charged for parking in such facilities, is negotiable under Subsection 89-9(a), Hawaii Revised Statutes (hereafter HRS), or whether the employers may, without bargaining, unilaterally establish rules governing said subjects.

Based upon the pleadings, evidence adduced at the hearings, the memoranda and arguments of the parties, the Board makes the following findings of fact, conclusions of law, and declaratory ruling.

#### FINDINGS OF FACT

The Petitioner Hawaii Government Employees' Association, AFSCME, Local 152, AFL-CIO (hereafter HGEA), is an employee organization as defined by Subsection 89-2(8), HRS, and is the exclusive representative for employees in collective bargaining Units 2, 3, 4, 6, 8, and 13.

Intervenor United Public Workers (hereafter UPW) is an employee organization and the exclusive representative for Units 1 and 10.

Intervenor George R. Ariyoshi is a public employer as defined in Subsection 89-2(9), and is party to collective bargaining agreements covering employees represented by the HGEA and the UPW.

Intervenor Frank F. Fasi is a public employer as defined in Subsection 89-2(9), HRS, and is party to collective bargaining agreements covering employees represented by the HGEA and UPW.

The State, through the Department of Accounting and General Services (hereafter DAGS), owns and controls 3,061

parking spaces which are located throughout the State as follows:

|              |       |
|--------------|-------|
| Oahu         | 2,398 |
| Maui         | 197   |
| Hilo, Hawaii | 322   |
| Kauai        | 144   |

Parking stalls on Oahu are located primarily in the Honolulu civic center.

Other state departments, such as the Department of Transportation and the Department of Education, State of Hawaii, have employee parking facilities which are not under the control of DAGS, and for which no fee is charged.

Of the 3,061 DAGS-controlled spaces, 413 are metered for public use. There are 1,600 spaces for employees' use. The remaining stalls are specially marked stalls for judges, directors, and others. Parking space is assigned first on the basis of operational needs, then to handicapped employees. Remaining spaces are assigned to other employees on a space available basis.

There are approximately 1,000 State employees on a waiting list for space on Oahu.

There are about 35 State employees waiting for parking on Kauai.

There are 13 or 14 State employees on Maui on a waiting list for space.

There are about 10 State employees in Hilo waiting for parking in a covered space.

Current rates for employee parking in DAGS controlled spaces on Oahu are:



|                       |                   |
|-----------------------|-------------------|
| Covered parking       | \$12.50 per month |
| Open reserved parking | 7.50 per month    |
| Theater parking       | 5.00 per month    |

Current rates for neighbor island spaces are:

|                       |                   |
|-----------------------|-------------------|
| Covered parking       | \$ 7.50 per month |
| Open reserved parking | 5.00 per month    |
| (No theater parking)  |                   |

Current rates were established on Oahu in 1963, on Maui in 1968 and on Hawaii and Kauai in 1969.

Before 1963, there were no assessments, and parking was on a first come, first serve basis.

DAGS is now proposing to raise rates for parking in State lots under its control as follows:

On Oahu:

|                       |                   |
|-----------------------|-------------------|
| Covered parking       | \$30.00 per month |
| Open reserved parking | 18.50 per month   |
| Theater parking       | 9.00 per month    |

On Neighbor Islands:

|                       |                   |
|-----------------------|-------------------|
| Covered parking       | \$15.00 per month |
| Open reserved parking | 12.50 per month   |

DAGS is considering other changes in parking policy, including implementation of a departmental quota system for parking, regulations covering the cancellation of parking privileges, priority assignment for car pools and preferential reassignment of parking.

Some, but not all, State employees are required to use their own cars in the performance of their duties. Such employees have preference in receiving parking spaces, but pay the regular fee.

Employees from a number of bargaining units use State parking facilities.

State employees are not required to park in State parking facilities. Privately owned commercial parking spaces in the downtown Honolulu area are available. Generally, the parking fees in these structures are higher than those charged to park in the State facilities.

Parking rates are lower on neighbor islands, in part, because neighbor island employees can usually find street parking; the demand for employer provided parking is less acute.

A number of changes have been made in the parking program since 1972 without negotiating such changes with an employee organization.

Section 107-11, HRS, authorizes the State Comptroller to promulgate rules and regulations to control parking in certain State facilities.

Some parking facilities, in the past, have been financed by the State through the issuance of revenue bonds. In these instances, the State Comptroller was, as part of the agreement with bond purchasers, required to retain the duties imposed by Section 107-11, HRS.

The reason the State is proposing a new higher parking fee is that construction of a 500 stall parking building is planned. It is intended that the structure will be financed with general obligation bonds reimbursable out of the higher parking fees. The Comptroller considers it necessary to increase the parking fees, as described above, to meet the anticipated cost of construction and operation of the new facility. Approximately 80 per cent of the new structure will be used for State employee parking.

State plans also call for additional construction of parking structures over the next five to seven years which will result in an increase of 3,800 parking stalls in the Honolulu civic center complex. The proposed new fees are designed to defray the capital and operating costs of these structures also.

The City and County of Honolulu (hereafter City) provides a number of parking lot facilities for use by its employees.

Section 15-16.5 of the Traffic Code of the City and County of Honolulu vests control of parking facilities in the City's Building Department. This section also specifies the location of the lots under the Building Department's jurisdiction, and the amount, if any, of the parking fee to be charged at these lots.

City parking at the Neal Blaisdell Center is operated by a parking concession. The rate for this lot is dependent on the amount charged by the concession.

The City proposes to standardize rates for parking in all areas as follows:

|  |                  |
|--|------------------|
| Preferred parking                          | \$7.50 per month |
| Theater parking                            | 2.50 per month   |
| At the Blaisdell Center<br>with bus passes | 3.34 per month   |

Mr. Howard Shima, Deputy Director of the Building Department of the City and County of Honolulu, testified that 29% of the 3,200 City employees who work in the civic center and Pawaa Annex now use City parking space.

City civic center and Pawaa Annex parking spaces are reserved for employees who need their cars in their work.



City employees in outlying districts or where there is no vehicular congestion, park free of charge.

Firefighters, water department, and parks department employees park on City property at no charge.

The City has adopted a policy which will require parking fees of employees where:

- a. Parking is limited;
- b. Parking problems would create disorder if not controlled; and
- c. The cost of upkeep of parking facilities would be excessive.

Mr. Melvin Higa of the HGEA testified that the HGEA has, in the past, attempted to negotiate parking privileges but has been unsuccessful.

Mr. Ted Lii of the UPW testified that in 1976 a proposal to terminate free parking for Board of Water Supply employees was defeated by the union through discussions with the Employer.

Both the State and the City have consulted with the employee representatives concerning changes in parking policies and rates.

The collective bargaining agreements for Units 1 and 10 contain identical sections which read as follows:

"Discussions shall be initiated and continued to attempt to improve the severe problems caused by lack of parking spaces for government employees."

Employees who do not drive a car to work receive no cash benefit in lieu of parking privileges.

## CONCLUSIONS OF LAW

Petitioner HGEA and Intervenor UPW contend that under Subsection 89-9(a), HRS, the Employers may not unilaterally establish rules concerning the subject of employee parking on employer facilities, including the amount of parking fees to be paid.

HRS 89-9(a) reads:

§89-9 Scope of negotiations. (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, 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.

It is the HGEA and UPW's position that the subject of parking is negotiable under Subsection 89-9(a) because the furnishing of State-owned parking at low rent is an emolument of value which may accrue to employees from their employment relationship and is therefore "wages," and further, that employee parking falls within the statutory language "other terms and conditions of employment" because of its direct, material, and significant impact on the terms and conditions of employment.

Both the HGEA and the UPW cite numerous cases decided with respect to private sector collective bargaining in support of their position. In these cases, in determining whether an item is a mandatory subject of bargaining, the facts in the record are considered, together with such matters as: (1) the extent to which the benefits or privileges are exclusive to employees, (2) the number of employees



utilizing or affected by these benefits or privileges, (3) the length of time these privileges or benefits have been in effect, (4) the cost of these benefits, if in the form of rentals, prices, or fees, as compared to those charged elsewhere, and (5) the availability to the employee, of reasonable alternatives to the employer-furnished benefit. The importance of these factors is not substantially disputed by the State or the City.

Thus, in Westinghouse Electric Corp. v. NLRB, 387 F. 2d 542 (1967), and McCall Corp. v. NLRB, 432 F. 2d 187 (1970), the Fourth Circuit Court of Appeals ruled that food prices were not mandatory subjects of bargaining after finding that there were alternatives to utilizing the company cafeterias, because the employer's plants were not so isolated that employees were dependent on food served there.

In NLRB v. Package Machinery Company, 457 F. 2d 936 (1st Cir. 1972), the court denied the enforcement of an NLRB order which would have required the company to bargain with the union over food prices, more specifically the extent to which a company would pay for increased food prices in the form of a subsidy to a cafeteria and food vending machine concessionaire. In ruling that the company was not required to bargain under the National Labor Relations Act (hereafter NLRA), the court relied on two facts from the record, one, that although almost all employees used the vending machines on occasion, only 50% of the employees patronized the cafeteria, and two, that there were several restaurants or cafeterias within a five minute drive.

The record before this Board indicates that there are alternatives to using employer parking facilities. In

the civic center, commercial parking facilities are available. For areas where there is no commercial facility, such as is the case on most of the neighbor islands, the record indicates that there is free street parking.

Mr. Alexander Hirota, DAGS Automotive Services Manager, whose official responsibilities include the State parking facilities, testified that the proposed rates were lower on the neighbor islands because if these were raised to the rates proposed for Honolulu, the State employees would seek free or cheaper parking elsewhere.

Employees are also free to use other means of getting to work, such as walking, taking the bus or bicycling.

The record does not show that the number of employees utilizing the parking facilities is sufficient to create a material and significant effect on the terms and conditions of employment.

Mr. Howard Shima, Deputy Director of the Building Department of the City and County of Honolulu, testified that, based on the number of permits issued, only about 29% of City employees utilize the parking privilege.

We also take notice of the fact that, as of December 31, 1976, the number of State employees, excluding those employed by the Board of Education and the University of Hawaii, was 16,664. HPERB Information Bulletin No. 12 (February 18, 1977). There are 1,600 DAGS-controlled employee spaces, so a comparable percentage of employees utilizing the parking privilege for State employees would be 10%.

This Board believes that a more conclusive showing, than that which was made in the instant case, of the



impact of an issue on the employment relationship is necessary to compel negotiation under Subsection 89-9(a), and adopts an interpretation of that section much like the one the NLRB has adopted with regard to a comparable section under the NLRA.

"Only as to those matters enumerated in Section 8(d) of the Act is there a mandatory obligation to bargain under Section 8(a)(5). *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 210, 85 S.Ct. 398, 13 L. Ed. 2d 233 (1964); *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349, 78 S.Ct. 718, 2 L. Ed. 2d 823 (1958). And, as to those matters specified in Section 8(d), the phrase "terms and conditions of employment" is to be interpreted in a limited sense which does not include every issue that might be of interest to unions or employers. *Fibreboard Paper Products Corp. v. NLRB*, supra, 379 U.S. at 220, S.Ct. 398 (Stewart, J., concurring); *Westinghouse Electric Corp. v. NLRB*, 387 F. 2d 542, 545 (4th Cir. 1967) (en banc). A mere remote, indirect or incidental impact is not sufficient. In order for a matter to be subject to mandatory collective bargaining it must materially or significantly affect the terms or conditions of employment. *American Smelting & Refining Co. v. NLRB*, 406 F. 2d 552, 554 (9th Cir.), cert. denied, 395 U.S. 935, 89 S.Ct. 1998, 23 L. 2d 450 (1969); *Westinghouse Electric Corp. v. NLRB*, supra, 387 F. 2d at 547; *NLRB v. Lehigh Portland Cement Co.*, 205 F. 2d 821 (4th Cir. 1953)." (Emphasis and footnote omitted) *Seattle First National Bank v. NLRB*, 444 F. 2d 30, 32-33 (9th Cir. 1971); *NLRB v. Ladish Co.*, 538 F. 2d 1267, 1269-70 (7th Cir. 1976).

In addition to concluding that, under the facts of this case, parking on employer premises is not a term of employment under Subsection 89-9(a), we also are of the opinion that Subsection 89-9(d), HRS, renders the subject non-negotiable. This follows from applying the balancing test HPERB has evolved under this Subsection. HPERB Decision 26.



In Decision 26, this Board found non-negotiable a work load proposal which would have, in effect, rigidly fixed the maximum number of students for which a teacher, team of teachers, or specialist would be responsible. There, we cited HPERB Decision No. 22:

In the case, we held that "wages, hours and other terms and conditions of employment" which are negotiable, and the rights of the employer reserved in Section 89-9(d) were not mutually exclusive categories. We found that class size was a hybrid issue; it involved both policy making and had a significant impact on working conditions.

We determined therein that the provision calling for a reduction in the average class size ratio throughout the statewide educational system by approximately one student was negotiable. In reaching our decision, this Board balanced the employer's broad right to establish educational policy, unfettered by a collective bargaining agreement on the one hand, against the direct impact the average class size ratio had on the teachers' working conditions. Notwithstanding its admitted relation to educational policy, we found in that instance that the element of impact on teachers' working conditions was great, while the imposition of an average, statewide class size ratio had minimum impact on the DOE's right to establish educational policy.

While we held that Section 89-9(d) should not be narrowly construed so as to negate the purposes of bargaining, we concomittantly expressed the view that said section should not be too liberally construed so as to divest the employer of its managerial rights and prevent it from fulfilling its duty to determine policy for the effective operation of the public school system. Therefore, we further found that other issues raised in that case, which dictated the number of teachers the employer was to hire in order to implement the reduction and which dictated the assignment of teachers to specific roles, were in violation of Section 89-9(d). HPERB Decision 26 at pages 13-14.

The Board concluded, at pages 16 and 17:

Therefore, it is our opinion that the specific proposal on work load which is here at issue, while admittedly concerned with a

condition of employment because it may affect the amount of work expected of a teacher, nevertheless, in far greater measure, interferes with the DOE's responsibility to establish policy for the operation of the school system, which cannot be relinquished if the DOE is to fulfill its mission of providing a sound educational system and remaining responsive to the needs of the students while striving to maintain efficient operations. Hence, the DOE and the HSTA may not agree to the subject work load proposal because such agreement would interfere substantially with the DOE's right to determine the methods, means, and personnel by which it conducts its operations and would interfere with its responsibility to the public to maintain efficient operations.

Here, the public employers, the State and the City, are responsible for the efficient utilization of the space under their jurisdiction designated for parking. In doing so, they must set policy to provide parking at optimum levels for the general public and for employer-owned vehicles in addition to spaces for employees.

Testimony in the record shows that the parking operation has become increasingly dependent on parking fees to provide adequate service.

The State requires control over the parking fee schedule to pay for additional expenses. The proposed increase is necessary to cover the cost of building a new parking structure and the increase in the cost of providing maintenance and security for the parking structure.

Similarly, the City's justification for increasing or imposing parking fees is the cost of construction and maintaining and regulating parking facilities.

Accordingly, the scales in this case tip more heavily toward the need for unilateral employer action.

We, therefore, conclude that the subject of employee parking on employer facilities is non-negotiable for those



State lots under DAGS jurisdiction and for City lots under the jurisdiction of the City Building Department. The facts in the record are insufficient to extend this ruling to State or City lots under the jurisdiction of other departments.

Changes in the status of parking areas and parking rates, however, are modifications of rules and regulations of a substantial and critical nature which affect employee relations. The State and City are thus required to meet and confer with employee representatives by Subsection 89-9(c), HRS. HPERB Decision no. 37, HPERB Decision No. 54.

This decision is restricted to those employees who are not required by their employers to use their personal vehicles in their work. As to other employees, whose jobs require the use of personal vehicles, since the use of their personal vehicles is clearly a term and condition of employment, it follows that the subject of parking for these vehicles is also a term and condition of employment. The impact of this action upon management, as set forth in Subsection 89-9(d), is not so great as to render parking for these employees non-negotiable. Compare In Re Queen's University, 56 LA 950 (1971) and In Re Wayne County Labor Relations Board, 64 LA 635 (1975).

#### DECLARATORY RULING

The subject of employee parking on State facilities, including parking rates under the jurisdiction of DAGS and City facilities under the jurisdiction of the City Building Department, is non-negotiable, except for employees required to use personal vehicles in their work.

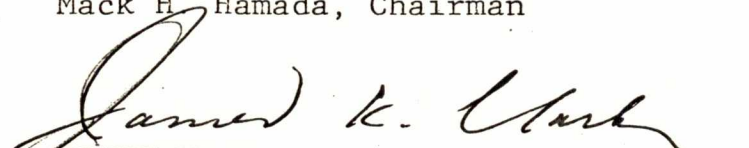
The State and City are, however, required to meet and confer with employee representatives on modifications of

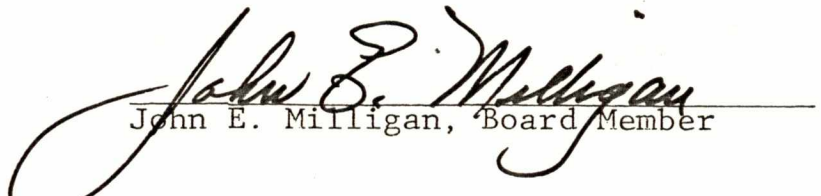


the parking rules, regulation, and rates, pursuant to Sub-section 89-9(c), HRS.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: October 12, 1977

Honolulu, Hawaii