

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)
)
UNITED PUBLIC WORKERS, LOCAL 646,)
UPW/AFSCME,)
)
Petitioner,) Case No. R-10-6
)
and) Decision No. 9
)
STATE OF HAWAII,)
CITY AND COUNTY OF HONOLULU,)
COUNTY OF HAWAII,)
COUNTY OF MAUI and)
COUNTY OF KAUAI,)
)
Employers.)
_____)

CERTIFICATION OF EXCLUSIVE BARGAINING REPRESENTATIVE AND ORDER
TO NEGOTIATE

A representation proceeding having been conducted pursuant to a Direction of Election in the above entitled matter by the Public Employment Relations Board in accordance with the Hawaii Public Employment Relations Act and the Rules of Procedure of the Board, and it appearing that an exclusive bargaining representative has been selected; pursuant to the authority vested in the Board by the Hawaii Public Employment Relations Act, IT IS HEREBY CERTIFIED that the UNITED PUBLIC WORKERS, LOCAL 646, UPW/AFSCME has been designated and selected by a majority of the Non-professional Hospital and Institutional Workers, supervisory and non-supervisory, of the above-named public employers, in the optional appropriate bargaining unit described herein, as their exclusive bargaining representative for the purpose of bargaining collectively on questions of wages, hours, and other terms and conditions of employment.

UNIT:

Included: All SUPERVISORY Hospital and Institutional Workers, jail and prison guards of rank Sergeant through Captain, ambulance driver II, all paramedical assistant V and above except positions #3884, 14513 and 2142.

All NON-SUPERVISORY Hospital and Institutional Workers employed as jail and prison guards, house-parents, juvenile detention officers, ambulance drivers and para-medical assistants including positions #3884, 14513, and 2142.

Excluded: All others.

Further, IT IS ORDERED that the above-named public employers shall bargain collectively with the United Public Workers, Local 646, UPW/AFSCME and enter into a written agreement with such employee organization with respect to wages, hours, and other terms and conditions of employment which are subject to negotiations under the Act.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

By Mack H. Hamada
Mack H. Hamada, Chairman

Carl J. Guntert
Carl J. Guntert, Board Member

John E. Milligan
John E. Milligan, Board Member

Dated: February 11, 1972

Honolulu, Hawaii

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of)
)
 UNITED PUBLIC WORKERS, LOCAL 646,)
 UPW/AFSCME,)
)
 Involving Certain Employees of)
)
 STATE OF HAWAII)
 CITY AND COUNTY OF HONOLULU)
 COUNTY OF HAWAII)
 COUNTY OF MAUI)
 COUNTY OF KAUAI)
 _____)

Case No. R-10-6

Date Issued: 2/4/72

TALLY OF BALLOTS

The undersigned Board member certifies that the results of the tabulations of ballots cast in the determination of an optional appropriate bargaining unit for Non-professional Hospital and Institutional Workers, Unit 10, and representation elections which were conducted on February 1, 2, and 3, 1972, were as follows:

1. Number of eligible voters	<u>1431</u>
2. "Yes" votes cast that Non-professional Hospital and Institutional workers constitute an optional appropriate bargaining unit.	<u>673</u>
3. "No" votes cast that Non-professional Hospital and Institutional workers constitute an optional appropriate bargaining unit.	<u>51</u>
4. "Yes" votes cast by supervisory employees to be included with non-supervisory employees within the Non-professional Hospital and Institutional unit.	<u>17</u>
5. "No" votes cast by supervisory employees to be included with non-supervisory employees within the Non-professional Hospital and Institutional unit.	<u>9</u>
6. "Yes" votes cast by non-supervisory employees to be included with supervisory employees within the Non-professional Hospital and Institutional unit.	<u>592</u>
7. "No" votes cast by non-supervisory employees to be included with supervisory employees within the Non-professional Hospital and Institutional unit.	<u>98</u>
8. Votes cast for UNITED PUBLIC WORKERS, LOCAL 646,.	<u>693</u>
9. Votes cast for "No Representation".	<u>33</u>
10. Valid votes counted (sum of 8 and 9).	<u>726</u>
11. Challenged ballots.	<u>9</u>
12. Valid votes counted plus challenged ballots (sum of 10 and 11).	<u>735</u>

13. Challenges are not sufficient in number to affect the results of the election. Are not
14. A majority of the valid votes counted plus challenged ballots Item 2, " 4, &
Item 11 has been cast for UPW

Date: 2/4/72

By Frank H. Hamada
Public Employment Relations Board

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained and that the results were as indicated above.

We also acknowledge service of this tally.

For UPW AFSCME Local 646 For _____

By W. B. Gutter By _____

For _____ For _____

By _____ By _____

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)
)
UNITED PUBLIC WORKERS, LOCAL 646,)
UPW/AFSCME,)
)
Petitioner,)
)
and)
)
HAWAII GOVERNMENT EMPLOYEES')
ASSOCIATION, LOCAL 152,)
HGEA/AFSCME,)
)
Petitioner,)
)
and)
)
STATE OF HAWAII,)
CITY AND COUNTY OF HONOLULU,)
COUNTY OF HAWAII,)
COUNTY OF MAUI and)
COUNTY OF KAUAI,)
)
Employers.)
_____)

Case No. R-10-6

Decision No. 9

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

For the Employers:

Sonia Faust, Deputy Attorney General,
State of Hawaii

Ruth P. Hood, Deputy Corporation Counsel,
City and County of Honolulu

Stephen K. Yamashiro, Deputy Corporation,
Counsel, County of Hawaii

Arthur T. Ueoka, Assistant County
Attorney, County of Maui

Gerald S. Matsunaga, Deputy County
Attorney, County of Kauai

For Petitioners:

Henry B. Epstein, United Public Workers,
Local 646, UPW/AFSCME

Alvin T. Shim, Hawaii Government
Employees' Association, Local 152,
HGEA/AFSCME

For Intervenors:

Wallace S. Fujiyama, State of Hawaii
Organization of Police Officers (SHOPO)

Jeffery N. Watanabe, International
Brotherhood of Police Officers, Local
156 (IBPO)

Pursuant to Chapter 89, Hawaii Revised Statutes, a hearing in the above-entitled matter was held before the Hawaii Public Employment Relations Board sitting en banc, hereinafter referred to as the Board, at Honolulu, and the Board having considered the exhibits in evidence and briefs of the above-named parties, hereby makes the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

The United Public Workers, Local 646, UPW/AFSCME, and the Hawaii Government Employees' Association, Local 152, HGEA/AFSCME, hereinafter referred to as Petitioners, are employee organizations within the meaning of Chapter 89, Hawaii Revised Statutes.

The State of Hawaii Organization of Police Officers (SHOPO) and the International Brotherhood of Police Officers, Local 156 (IBPO), hereinafter referred to as Intervenors, are employee organizations within the meaning of Chapter 89, supra.

The State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui and the County of Kauai are Public Employers within the meaning of Chapter 89, supra.

The United Public Workers and the Hawaii Government Employees' Association, respectively, petitioned the Board on January 4 and January 5, 1971, for an optional appropriate bargaining unit of all non-professional hospital and institutional workers of the Public Employers throughout the State, hereinafter referred to as Unit 10.

The United Public Workers requested in its original petition an optional appropriate bargaining unit of all employees employed in hospitals and institutions working seven days a week and twenty-four hours a day, including: Para-Medical Assistants, Ambulance employees, Prison Guards, Jail Guards, employees of Juvenile Detention Home, employees of the youth correctional facilities and employees of the

State Prison System. Subsequently the United Public Workers amended its position to exclude the Jail Guard Series¹ from Unit 10.

The Hawaii Government Employees' Association did not provide a description of its claimed appropriate bargaining unit beyond the statutory designation of non-professional hospital and institutional workers in its petition. In its brief in support of its position, the Hawaii Government Employees' Association alleges that the Jail Guard Series should be included in the optional appropriate bargaining unit for Policemen, hereinafter referred to as Unit 12, and not in Unit 10 or some other unit.

Petitioners and Public Employers stipulated that the following non-professional hospital and institutional workers are supervisory employees within the meaning of Chapter 89, supra:

- Supervising Houseparent
- Prison Guard Sergeant
- Prison Guard Lieutenant
- Prison Guard Captain I, II
- Para-Medical Assistant V², VI
- Ambulance Driver II
- Assistant Ambulance Service Supervisor
- Ambulance Service Supervisor

The parties further stipulated that the following non-professional hospital and institutional workers are non-supervisory employees within the meaning of Chapter 89, supra:

- Institution Sewing Instructor
- Houseparents for the Deaf and Blind I, II, III, IV
- School Dormitory Attendant³

¹The Jail Guard Series include Jail Matron, Jail Guard, Utility Jail Guard, Senior Jail Guard, Supervising Jail Guard, Chief Jail Guard and Jailer.

²Exceptions to Para-Medical Assistant V are position numbers 2142, 3884 and 14513, which the parties stipulated are non-supervisory positions.

³Change in title.

Houseparent I, II
Juvenile Detention Officer⁴
Juvenile Detention Worker I, II, III, IV
Prison Matron
Prison Guard I, II
Para-Medical Assistant I, II, III, IV
Morgue Attendant
Ambulance Driver I
Ambulance Service Specialist I, II, III
Prosecutor Assistant

The position of the Public Employers throughout the State is that the Jail Guard Series in their respective jurisdictions are non-professional hospital and institutional workers and, therefore, should be included in Unit 10:

City and County of Honolulu: Jail Matron, Jail Guard, Utility Jail Guard, Senior Jail Guard, Supervising Jail Guard and Chief Jail Guard

County of Hawaii: Jail Matron, Jail Guard and Senior Jail Guard

County of Maui: Jail Guard and Senior Jail Guard

County of Kauai: Jail Guard, Senior Jail Guard and Jailer.

The Public Employers further agreed that Supervising Jail Guard and Chief Jail Guard are supervisory positions.

The Intervenor submit that the Jail Guard Series should be included in Unit 10 along with other non-professional hospital and institutional workers and not in Unit 12, the optional appropriate bargaining unit for Policemen.

It was mutually agreed among all parties that Prison Guards, Houseparents and Juvenile Detention Workers are non-professional hospital and institutional workers. Thus, it follows that it is also mutually

⁴Class to be deleted.

agreed among all parties that the Hawaii State Prison, the Hawaii Youth Correctional Facility and the Honor Camps, at which such non-professional hospital and institutional workers are employed, are institutions.

CONCLUSIONS OF LAW

The issues in the instant case will be decided in seriatim. The first issue is whether jails are institutions. Petitioners contend that employees in the Jail Guard Series are not institutional workers. Since Petitioners agree that Prison Guards, Houseparents and Juvenile Detention Workers are institutional workers and that the Hawaii State Prison, the Youth Correctional Facility and the Honor Camps are institutions, we construe that Petitioners question whether jails are institutions.

In determining whether jails are institutions, we look to our statutes for direction. In the construction of our statutes, Section 1-14, Hawaii Revised Statutes, contains the following directive:

"The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning."

Thus, the Legislature suggests that we interpret words "in their most known and usual signification" and "as to their general and popular use or meaning."

The American Heritage Dictionary of the English Language (1969) defines an institution as "a place of confinement, as a mental asylum." A perusal of the word "institution" in other dictionaries shows that it is similarly defined as a place of confinement.

The following statutory citations reveal that the scope of the word "institution" encompasses jails in its general use and application.

Section 355-1, Article 2 (e), Hawaii Revised Statutes, defines an institution as:

"...any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined."

Section 70-78, supra, provides:

"The city council may build, rebuild, equip, maintain, and regulate jails and houses of detention, punishment, confinement, and reformation and give aid to hospitals. The council may assist financially such organized secular institutions, societies, and associations as are engaged in charitable relief work or efforts for the suppression of undue severity or cruelty toward children or animals. It may also provide for the maintenance and repair of all existing police stations and jails, other than the Hawaii state prison, and fire department buildings."

Section 353-2, supra, states:

"The comptroller, with the approval of the governor, may erect such suitable prisons, jails, station houses, and houses of correction as may be necessary for the safe-keeping, correcting, governing, and employing of all persons duly committed thereto."

Section 353-95, supra, inter alia, states:

"Prisoners who are serving sentence in any county jail shall not be employed outside of the premises of the institution in any labor except for the State or a political or other subdivision thereof; provided, that charitable institutions may have the use and employment of the prisoners as the chief of police of the counties shall deem it advisable to so allow." (Underscore added.)

It is of further significance to note that the words "prisoners" and "inmates" include persons confined to jails in its general meaning. Webster's Third New International Dictionary defines a prisoner as "a person deprived of his liberty and kept under involuntary restraint, confinement or custody; esp. one on trial or in prison." Therein, an inmate is defined as "a person confined in a prison, asylum or a poor house."

Statutory sections cited below show that the general use and application of the words "prisoners" and "inmates" include persons confined to jails.

Section 355-1, Article 2 (d), Hawaii Revised Statutes, defines an inmate as:

"...a male or female offender who is under sentence to or confined in a prison or other correctional institution."

Section 353-12, supra, in referring to prisoners other than felons, provides:

"No person committed or held for trial or to secure his attendance as a witness or upon civil process or for contempt or upon conviction of a misdemeanor or otherwise by authority of law, except upon conviction of felony, shall be imprisoned in Hawaii state prison or subjected to any infamous punishment."

Section 353-91, supra, concerning the responsibility of jailors, states:

"Except as may be otherwise provided by law, the respective chiefs of police of the counties shall appoint all jailors in their respective counties. Such officers of each county shall be responsible for the safekeeping of all prisoners and persons who may be confined in or committed to any county jail within their county, or who may be charged with the commission of a criminal offense pending trial or preliminary hearing."

Such general and popular use of the words "prisoners" and "inmates" in referring to persons confined to jails reveal that jails are also penal institutions. It is generally known in the State of Hawaii that a jail is a place of detention, confinement and reformation of all persons convicted of committing a misdemeanor; also, the confinement of all persons accused of committing a felony pending posting of a bond or bail, or awaiting trial, including at times juveniles and convicted felons.

The courts have similarly regarded jails as penal institutions. In State v. Rasmussen, 118 N.W. 2d 433, 264 Minn. 295 (1962) the court was of the opinion that prisons and jails are penal institutions. In State v. Provencher, 270 A. 2d 147, Vt. (1970) the court took judicial notice that the Rutland County Jail was a penal institution under the laws of Vermont.

In re Wolfson, 180 P. 2d 326, 30 C. 2d 20 (1947) the court interpreted that "penal institution" in Section 666 of the California Penal Code includes a county jail. The court also noted that "'penal institution' as used by the Legislature in other sections of the Penal Code which deal with repeated offenders, refers to a county jail as well as a state prison or federal penitentiary."

In Denham v. Commonwealth, 84 S.W. 538, 539 Ky. 508 (1905) the court defined a jail as "a prison appertaining to a county or municipality, in which are confined for punishment persons convicted of a misdemeanor committed in the county or municipality." The court interpreted the word "penitentiary" as "an institution provided by the State in which offenders against its criminal laws are confined for punishment or correction."

In view of the aforementioned sections of our statutes, we find no justification for disregarding the generally accepted meaning of the word "institution." The general use of the words "prisoners" and "inmates" to refer to persons confined to jails, as well as prisons, and the interpretations of the courts, also lead us to conclude that jails are penal institutions. Therefore, it is our opinion that jails are institutions and that jails, like the Hawaii State Prison, are penal institutions.

The second issue is whether or not the past practice of mutual representation among certain groups of employees should continue and prevail in the determination of an appropriate bargaining unit. Prior to collective bargaining, an employee organization consulted and conferred with the Public Employers about the wages, hours and working conditions of both Jail Guards and Policemen at the jails. If such practice were to continue, Jail Guards would be placed in Unit 12, the optional appropriate bargaining unit for Policemen, rather than Unit 10, the optional appropriate bargaining unit for non-professional hospital and institutional workers.

Since the passage of Act 171, Session Laws of Hawaii 1970, which is now Chapter 89, Hawaii Revised Statutes, public employees no longer have only meet and confer rights, but the right to bargain collectively.

Section 89-3, Hawaii Revised Statutes, inter alia, provides:

"Employees shall have the right of self-organization and the right to form, join or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and

other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion."

Also, since the passage of the collective bargaining law, public employees are to bargain collectively according to appropriate bargaining units designated by the Legislature.

Section 89-6, supra, inter alia, states:

"(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

...

(10) Nonprofessional hospital and institutional workers;

...

(12) Policemen;

...

(d) Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific positions and employees."

The thrust of the position of the Hawaii Government Employees' Association, Local 152, HGEA/AFSCME, hereinafter referred to as HGEA, is that the Hawaii Public Employment Relations Board should follow the guidelines of the National Labor Relations Board in its interpretation of the National Labor Relations Act to determine the appropriate bargaining unit for Jail Guards. The HGEA cited the following guidelines:

(1) mutuality of interest in wages, hours and working conditions and past practice, citing Continental Baking Company, 99 NLRB 123, 30 LRRM 1119 (1952); (2) common interest of Jail Guards and Policemen, citing Waterman S.S. Corp., 78 NLRB 5, 22 LRRM 1170 (1948); (3) the desires of Jail Guards; (4) the extent of integration between Jail Guards and Policemen at the jails; and (6) the geographical location of Jail Guards and Policemen at the jails. The aforementioned guidelines suggested by HGEA are factors within the broad category of community of interest as used by the National Labor Relations Board.

The National Labor Relations Board in resolving the issue of an appropriate bargaining unit determines whether the employees share a community of interest. In determining community of interest, the National Labor Relations Board considers the following factors which affect the appropriateness of a bargaining unit: technology, integration of functions, physical location, the history of collective bargaining from the standpoint of both industry as a whole and the relationships between the employer in question and employees of that employer, and the desires of the employees themselves. Community of interest is the fundamental factor in cases involving an election in which employees who are included with other employees in a larger unit are granted the option to elect their own representatives.

We move now to the question whether such community of interest factors, used by the National Labor Relations Board and as suggested by Petitioners, should prevail in our determination of the optional appropriate bargaining unit for Jail Guards.

The Board is cognizant that the Hawaii Public Employment Relations Act is, in some respects, nearly identical with the National Labor Relations Act. We are of the opinion that the National Labor Relations Board decisions and interpretations of the National Labor Relations Act ought to be persuasive when sections of our Law are similar to the National Labor Relations Act and when our Legislature has not spoken on the subject matter. In such instances, we would be in accord with the Connecticut Supreme Court interpretation of the Connecticut Labor Relations Act, which states:

"The judicial interpretation frequently accorded the National Labor Relations Act is of great assistance and persuasive force in interpretation of the Connecticut Labor Relations Act closely patterned thereafter." Town of Windsor v. Windsor Police Department Employees Association, 227 A. 2d 65, 154 Conn. 517 (1967).

However, when sections of our Law are not similar to the National Labor Relations Act or our Legislature has spoken on the subject matter, we

are of the opinion that decisions and interpretations regarding the National Labor Relations Act when relevant are informative, but not controlling in the interpretation of our Law.

The Legislative history of Chapter 89, Hawaii Revised Statutes, reveals that it is the result of Senate Bill No. 1696-70, S.D. 1, H.D. 3, C.D. 1 which was enacted as Act 171, Session Laws of Hawaii 1970. In the original version of the bill, Section 6, inter alia, states:

"(e) The Board shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, salaries, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees...."

The aforementioned provision was subsequently deleted from Senate Bill 1696-70 in its S.D. 1 version and was replaced by the mandate that employees were to bargain collectively through the following designated appropriate bargaining units.

Section 89-6, Hawaii Revised Statutes, inter alia, provides:

"(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in blue collar positions;
- (2) Supervisory employees in blue collar positions;
- (3) Nonsupervisory employees in white collar positions;
- (4) Supervisory employees in white collar positions;
- (5) Teachers and other personnel of the department of education under the same salary schedule;
- (6) Educational officers and other personnel of the department of education under the same salary schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) Nonprofessional hospital and institutional workers;
- (11) Firemen;
- (12) Policemen; and
- (13) Professional and scientific employees, other than registered professional nurses.

Because of the nature of work involved and the essentiality of certain occupations which require specialized training, units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may either vote for separate units or for inclusion in their respective units (1) through (4). If a majority

of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for such supervisory employees shall be (2) or (4), as the case may be."

The intent of the Legislature for specifically rejecting the criteria of community of interest, history of collective bargaining, and the desires of the employees in the determination of appropriate bargaining units is expressly stated in Senate Standing Committee Report No. 745-70. The committee report attached to the S.D. 1 version of Senate Bill No. 1696-70, inter alia, states:

"Your Committee realizes that the determination of appropriate bargaining units by the public employment relations board, according to criteria such as community of interest, history of collective bargaining, etc., is the prevailing practice throughout the states which have enacted collective bargaining laws. A review of the effectiveness of such criteria and the inherent problems and disputes arising out of such determination, shows that the creation of many bargaining units as there are ways to interpret such criteria results and unnecessary fragmentation makes administration efficiency impossible. For the purposes of maintaining the merit principles and the principle of equal pay for equal work, avoiding multiplicity of bargaining units which would be administratively unmanageable, and minimizing jurisdictional disputes, your Committee has, in the public interest, designated those units which shall be appropriate for the purpose of collective bargaining."

It is clear that the Legislature, in the public interest, rejected the criteria of "community of interest" because it would lead to "unnecessary fragmentation" and "multiplicity of bargaining units," and, also, to "minimize jurisdictional disputes"; therefore, the Legislature designated thirteen bargaining units. It is our opinion that the Legislature designated appropriate bargaining units irrespective of appointing authority, physical location and past practices. If the Legislature had intended otherwise, it would have created an optional appropriate bargaining unit for Policemen and institutional workers at the jails. The Legislature was aware of mutual representation of Jail Guards and Policemen, that Jail Guards and Policemen are under the same appointing authority and that Jail Guards and Policemen assigned to the jails work

at the same geographical location at the time Act 171 was passed. Legislative history reveals that such facts were presented to the Legislature when the same retirement plan was provided for Jail Guards and Policemen. Such facts were again brought to their attention when the Legislature considered bills submitted to it requesting the same retirement plan for Prison Guards as Jail Guards since the nature of their work were similar.

We are of the opinion that under Chapter 89, Hawaii Revised Statutes, the Board is mandated to adhere to the same criteria on which the Legislature designated the thirteen appropriate bargaining units in determining the appropriate bargaining unit for Jail Guards. Senate Standing Committee Report No. 745-70, inter alia, states:

"The designated units are occupational categories based on existing compensation plans, the nature of work involved, and the essentiality of services provided to the public. All designated units are applicable statewide to maintain uniformity among the several counties and to discourage 'leapfrogging' tactics among employee organizations which may otherwise be representing employees within the same occupational category in different counties."

We are of the opinion that the test which the Board is compelled to follow in designating a group or class of public employees into any bargaining unit is the nature of work performed by such employees because the basis of the Legislature's determination of thirteen bargaining units is "occupational categories based on existing compensation plans."

In the instant case, the Board must determine whether Jail Guards fall within the occupational category of non-professional hospital and institutional workers designated as Unit 10 by comparing the nature of their work or their duties and responsibilities with those of other non-professional hospital and institutional workers.

We find that Jail Guards have the same nature of work or responsibilities as Prison Guards, Houseparents and Juvenile Detention Workers, which the parties agree are institutional workers. They are all responsible for carrying out the mission or objective of their respective institutions, which are nearly identical. The common goal

of these institutions is to protect society by providing and operating an institution for the care, detention, confinement or custody and supervision of persons committed to the institution and to assist in the rehabilitation of such persons.

We also find that the nature of work or duties of Jail Guards are similar to those of Prison Guards, Houseparents and Juvenile Detention Workers. They all perform duties such as: watching over inmates to prevent escapes, injury to one another, and acquisition of prohibited items; escort inmates; maintain discipline and order among inmates; supervise inmates in leisure and recreational activities, housekeeping, and personal hygiene; and enforce rules and regulations of the institution and report any infractions.

The summaries of the nature of work or duties extracted from the class specifications of Jail Guard and Prison Guard illustrate the close similarity of work of Jail Guards to work of other non-professional hospital and institutional workers, especially Prison Guards.

Jail Guards:

"Guards inmates of the City and County Jail [jails]; maintains discipline and order among inmates; observes and reports on the behavior of inmates; and performs other related duties as required."

Prison Guards:

"Guards and supervises the activities of inmates in a penal institution; maintains order and discipline among inmates; applies appropriate security and safety measures to prevent escapes; observes and reports unusual conditions or occurrences to higher authority; and performs other duties as required."

From the above, we construe the nature of work of Jail Guards and Prison Guards to be essentially guards at penal institutions. We also conclude that although they work at different geographical locations and are under different appointing authorities, they are in the same occupational category.

We have found that jails are institutions and that jails, like the Hawaii State Prison, are penal institutions. We have also found that the nature of work or the duties and responsibilities of Jail Guards are

similar to other non-professional hospital and institutional workers to which all parties in interest have agreed for inclusion in Unit 10-- Houseparents, Juvenile Detention Workers and, especially, Prison Guards. Based on such aforementioned findings, we conclude that Jail Guards are within the occupational category of non-professional hospital and institutional workers as intended by the Legislature. Therefore, the appropriate bargaining unit for all public employees in the Jail Guard Series shall be Unit 10.

We hereby conclude that Supervising Jail Guard and Chief Jail Guard are supervisory employees in the appropriate bargaining unit for non-professional hospital and institutional workers, Unit 10. We further conclude that Jail Matron, Jail Guard, Utility Jail Guard, Senior Jail Guard and Jailer are non-supervisory employees in the appropriate bargaining unit for non-professional hospital and institutional workers, Unit 10.

DIRECTION OF ELECTION

IT IS HEREBY ORDERED that an election, by secret ballot, shall be conducted among the supervisory and non-supervisory employees in the above-described employee group.

Eligible to vote are those employees who were employed during the payroll period ending November 30, 1971, including employees who did not work during the designated payroll period because they were temporarily laid off, ill or on vacation, maternity leave or other authorized leave, and also including employees serving in the military service of the United States or on leave for service in National Guard units and who appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election.

IT IS FURTHER ORDERED that the Public Employers shall prepare an eligibility list in alphabetical order, containing eligible voters' names in accordance with the above description and voting places, and submit copies of such list forthwith to the Hawaii Public Employment Relations Board.

IT IS FURTHER ORDERED that the election shall be conducted on the premises of the Public Employer at such time and date as shall be determined by the Board after consultation with the parties.

IT SHALL BE FURTHER ORDERED that at least seven days prior to said election the Public Employers shall cause to be posted at locations in or about the establishment ordinarily used by the Public Employers for written communications to the above mentioned employees, Notices of Election and sample ballots, which shall be furnished by the Board.

IT IS FURTHER ORDERED that the eligible employees shall vote whether or not they desire to have an optional appropriate bargaining unit, whether supervisory and non-supervisory employees shall be included in the same bargaining unit and whether or not they desire to be represented for collective bargaining purposes by the United Public Workers, Local 646, UPW/AFSCME or no representation.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

By Mack H. Hamada
Mack H. Hamada, Chairman

By Carl J. Guntert
Carl J. Guntert, Board Member

By John E. Milligan
John E. Milligan, Board Member

Dated: January 12, 1972

Honolulu, Hawaii