

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)
UNIVERSITY OF HAWAII)
PROFESSIONAL ASSEMBLY,)
Complainant,)
and)
BOARD OF REGENTS, University)
of Hawaii,)
Respondent.)

CASE NO. CE-07-187
ORDER NO. 1093
ORDER CONSOLIDATING CASES
FOR DISPOSITION AND GRANTING
IN PART, AND DENYING IN PART,
RESPONDENT'S MOTIONS TO
DISMISS

In the Matter of)
UNIVERSITY OF HAWAII)
PROFESSIONAL ASSEMBLY,)
Complainant,)
and)
BOARD OF REGENTS, University)
of Hawaii,)
Respondent.)

CASE NO. CE-07-194

ORDER CONSOLIDATING CASES FOR DISPOSITION
AND GRANTING IN PART, AND DENYING IN PART,
RESPONDENT'S MOTIONS TO DISMISS

On May 18, 1993, Complainant UNIVERSITY OF HAWAII PROFESSIONAL ASSEMBLY (UHPA) filed a prohibited practice complaint with the Hawaii Labor Relations Board (Board) in Case No. CE-07-187 (the Manoa case). In the Manoa case, UHPA alleged that Respondent BOARD OF REGENTS, University of Hawaii (BOR) failed to bargain with UHPA prior to voting to increase parking fees for faculty members at the University of Hawaii at Manoa (UHM) and implementing parking

regulations which determined the number of stalls available to the UHM faculty. UHPA further alleged that the BOR's failure to bargain with UHPA over these matters violated § 89-13(a)(5), Hawaii Revised Statutes (HRS).

Thereafter, on July 15, 1993, the BOR filed a motion to dismiss the Manoa case on the basis that the matters raised by UHPA were non-negotiable. Specifically, the BOR argued that (1) the subject of employee parking on State facilities, including parking rates, was non-negotiable; (2) the issues raised by UHPA were premature and not ripe because there was no final resolution or decision by contract negotiators regarding the topic of employee parking; and (3) the complaint failed to state a claim against the BOR for which relief can be granted because under the contract then in effect there is no collective bargaining requirement regarding employee parking.

At a hearing held on July 19, 1993, the Board took the BOR's motion to dismiss under advisement in order to allow UHPA five days to respond to the motion as provided by the Board's administrative rules. Transcript of hearing on 11/19/93 (Tr.), pp. 15-16. The Board then proceeded to receive evidence and arguments on the merits of the case.

Subsequent to the hearing on the Manoa case on July 30, 1994, UHPA filed a second complaint with the Board against the BOR in Case No. CE-07-194 (the Hilo case). In the Hilo case, UHPA alleged that the University of Hawaii at Hilo (UHH) announced new parking fees and procedures for allocating and distributing parking permits to faculty, staff, and students despite the fact that UHPA

and the BOR were negotiating over the subject matter. UHPA alleged that the parking proposal was subject to negotiation between the parties and that the unilateral action by the BOR in changing the terms and conditions of parking for faculty violated § 89-13(a)(5), HRS.

On August 23, 1993, UHPA filed its post-hearing brief in the Manoa case. On that same day, the BOR also filed its post-hearing brief.

On August 27, 1993, UHPA filed a motion to consolidate the Manoa and Hilo cases. Counsel for UHPA indicated that while the facts concerning the parking facilities and history of vehicular use by faculty members in the Manoa and Hilo cases may differ, the legal arguments in both cases were the same. Thereafter, on September 30, 1993 during a status conference call regarding the Hilo case, both UHPA and the BOR requested the Board to consolidate the Manoa and Hilo cases. At that time, the Board indicated it would grant UHPA's motion to consolidate the two cases.

On October 12, 1993, UHPA and the BOR filed a Stipulation of Parties in the Hilo case in which the parties agreed to submit written briefs on the matter and to forego an evidentiary hearing. On that same day, UHPA and the BOR filed Joint Exhibits in the Hilo case. On October 18, 1993, UHPA and the BOR filed a Correction to Fact Stipulation No. 3. Thereafter, on October 19, 1994, UHPA filed an affidavit of Nina F. Buchanan, and the BOR filed affidavits of Edgar Torigoe and Kolin K. Kettleson.

On November 2, 1993, both UHPA and the BOR filed their closing briefs in the Hilo case. In addition, the BOR filed a motion to dismiss the Hilo case on the basis that the matters raised by UHPA are non-negotiable. Essentially, the BOR set forth the same arguments in its motion to dismiss as in the Manoa case. On November 3, 1993, UHPA filed a memorandum in opposition to the BOR's motion to dismiss.

At the outset, the Board finds that the Manoa case and the Hilo case involve substantially the same parties and issues. The Board further finds that consolidation of the proceedings would be conducive to the proper dispatch of business and will not unduly delay the proceedings. Therefore, the Board hereby grants UHPA's motion to consolidate Case Nos. CE-01-187 and CE-07-194 and hereby consolidates the complaints and proceedings in the Manoa and Hilo cases for disposition.

With respect to the BOR's motions to dismiss, the Board makes the following findings.

Complainant UHPA is the exclusive representative, as defined in § 89-2, HRS, of employees included in bargaining unit 07 (Faculty of the University of Hawaii and the community college system).

Respondent BOR is the public employer, as defined in § 89-2, HRS, of employees of the University of Hawaii, including employees in bargaining unit 07.

UHPA and the BOR were at all relevant times parties to a collective bargaining agreement entitled 1989-1993 Agreement

between the University of Hawaii Professional Assembly and the Board of Regents of the University of Hawaii.

The aforementioned collective bargaining agreement contains a provision which provides for mileage reimbursement to faculty members when they are required to use their private vehicles in carrying out their duties. In 1992, 263 UHM faculty members and 41 UHH faculty members received reimbursements under this provision.

In October 1992, UHPA presented the BOR with its proposals for the 1993-1995 collective bargaining agreement, which included revisions regarding the allocation of assigned and unassigned parking spaces, the location of parking zones, and limitations of rates charged to UHM and UHH faculty members. The BOR did not negotiate with UHPA over the parking proposals but instead adopted amendments to the UHM and UHH parking regulations on February 18, 1993 and May 21, 1993, respectively, after holding public hearings on the matter.

The BOR adopted amendments to UHM parking regulations which updated parking rules and regulations and established parking fees for mopeds and increased rates and fines. The BOR indicated that the increased parking rates at UHM are necessary to generate sufficient revenues to meet increased operating costs and new revenue bond debt service requirements.

The BOR implemented amendments to UHH parking regulations due to an increase in student enrollment and the need for added safety due to an increase in vehicular traffic. In addition, the BOR increased parking rates at UHH because additional revenues were

needed to meet personnel requirements and to provide for the proper maintenance of UHH parking areas.

There are 3,748 motor vehicle parking stalls and approximately 1,400 motorcycle and moped stalls at the UHM campus. In 1992-1993, 1,513 of approximately 1,830 UHM faculty members purchased parking permits. Every UHM faculty member who has applied for a parking permit has received a permit. In addition, there are over 200 fleet vehicles available on Oahu for UHM faculty use.

The evidence indicates that five to seven employees who work in the extension program of the UHM College of Tropical Agriculture are required to have personal vehicles as a condition of their employment. The parties are not in agreement as to the number of faculty members required to use their personal vehicles in their work.

The UHH Auxiliary Services Office administers parking facilities at UHH and Hawaii Community College (HCC). UHH and HCC have approximately 650 employees, including administrators, staff and faculty, of which approximately 415 are faculty members.

There are 1,964 motor vehicle parking stalls at UHH. The UHH Auxiliary Services Office estimates that of the 462 UHH and HCC employees who have purchased parking permits, 259 faculty members have applied for and received parking permits. Every UHH employee who has applied and paid for a parking permit has received a permit.

The UHH permit system of parking operations was established on September 8, 1969, and was implemented as a part of

campus operations in 1983. There are no commercial parking facilities within one mile of the UHH campus. The UHH Auxiliary Services Office does not maintain fleet cars for daily use by the departments or faculty.

UHH parking fees are deposited in the University of Hawaii (UH) Parking Revolving Fund and used for the administration of parking operations at UHH.

With respect to the BOR's motions to dismiss, the BOR argues that the subject of faculty parking at UHM and UHH is non-negotiable. UHPA contends to the contrary that the subject of faculty parking is a term and condition of employment and therefore a negotiable item.

Section 89-9, HRS, provides in relevant part the following:

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 . . . 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.

* * *

(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.

(d) The employer and the exclusive representative shall not agree to any proposal which would . . . interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; (Emphasis added.)

In Decision No. 84, Hawaii Government Employees' Association, AFSCME, Local 152, AFL-CIO, 1 HPERB 763 (1977), the Board considered whether the subject of employee parking in State and City facilities, including the amount of parking fees charged, is negotiable under § 89-9(a), HRS, or whether public employers may, without bargaining, unilaterally establish rules governing the matter.

In that case, the Board ruled that "[t]he 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." Id. at 773.

The Board concluded that changes in the status of parking areas and rates are modifications of a substantial and critical nature which affect employee relations so that a duty to consult attaches pursuant to § 89-9(c), HRS. Id. at 772. The Board indicated that in order to compel negotiation, there must be a conclusive showing of the impact of an issue on the employment

relationship. Id. at 770. "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." Id. at 770-71.

The Board also concluded that § 89-9(d), HRS, rendered the subject of employee parking non-negotiable and applied the balancing test evolved under § 89-9, HRS. Id. at 771. The Board stated that:

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.

Id. at 772.

The Board discussed Decision No. 26, Department of Education, 1 HPERB 311 (1973), in which the Board found that while the issue of teacher workload had a significant impact on working conditions, agreement on the matter would interfere substantially with the DOE's right to determine the methods, means, and personnel by which it conducted its operations and would interfere with its responsibility to the public to maintain efficient operations. In addition, the Board cited Decision No. 22, Hawaii State Teachers Association, 1 HPERB 253 (1972):

While we held that Section 89-9(d) should not be narrowly construed so as to negate the purposes of bargaining, we concomitantly 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.

Id. at 771.

Although the facts in the instant case indicate that matters concerning UHM and UHH faculty parking materially and significantly affect the terms and conditions of employment, the Board is mindful of the balancing test under § 89-9, HRS, that must be applied.

The evidence in the record indicates that Chapter 306, HRS, authorizes the BOR to set fees and regulations for its projects, including its parking operations, in order to maintain a self-supporting revenue system.

Under provisions of the University Bond Resolution, the BOR is authorized to revise rents, fees and charges whenever necessary to insure for the mandated self-support status of projects included under the University Bond System. UHM's parking operation was faced with declining revenues due to the loss of parking areas. In addition, operational costs such as salaries and wages, utilities, repairs, and maintenance continued to increase while parking permit rates remained constant since 1976. Additional revenues were needed to meet the self-supporting requirement of the University Bond System to provide for construction of new UHM parking facilities. Therefore, the BOR established higher parking rates to meet the requirements of the revenue bond resolution to allow the bond system to remain self-supporting.

Similarly, the evidence indicates that the BOR increased parking rates at UHH in order to generate additional revenues to meet UHH personnel requirements and to maintain UHH parking areas.

Based upon the foregoing, the Board finds that the BOR's need to maintain UH parking operations as a self-supporting system renders the subject of faculty parking at UHM and UHH non-negotiable. The Board concludes that the BOR must be allowed to unilaterally adopt parking rules and regulations in order "to maintain the efficiency of government operations" as provided in § 89-9(d), HRS. Mandatory bargaining in this area would unduly interfere with the BOR's responsibility to establish policy for the operation and maintenance of UHM and UHH parking facilities. Notwithstanding UHPA's arguments to the contrary, the Board finds that negotiation over the rates and allocation of spaces would substantially interfere with the BOR's right to efficiently manage facilities under its jurisdiction. In this regard, the Board notes that the BOR is responsible for maximizing the efficiency of UHM and UHH parking operations and providing for the safety and welfare of not only UHM and UHH faculty members but the entire university community.

However, the Board finds that the impact on the BOR's management rights under § 89-9(d), HRS, is not so great as to render parking for faculty members who are required to use their personal vehicles in their work non-negotiable. In this regard, the BOR concedes that as to those employees, the subject of parking is negotiable. Therefore, the Board finds the subject of parking is negotiable with respect to UHM and UHH faculty members who are

required to use their personal vehicles in their work. The Board further finds that the BOR wilfully failed to negotiate with UHPA over parking for those faculty members. Accordingly, the Board hereby finds that the BOR, as a natural consequence of its actions, committed a prohibited practice when it failed to negotiate with UHPA regarding parking for those faculty members.

As to the remainder of UHM and UHH faculty members, the Board finds that changes to parking regulations are of a substantial and critical nature which affect employee relations and therefore are a matter for consultation. Accordingly, the Board requires the BOR to meet and confer with UHPA representatives pursuant to § 89-9(c), HRS, regarding modifications of parking rules, regulations, and rates. The Board is of the opinion that public hearings are not sufficient to meet this requirement.

In view of the foregoing ruling, the Board need not consider the BOR's additional arguments in support of its motion to dismiss.

ORDER

The Board hereby orders the BOR to cease and desist from violating § 89-13(b)(5), HRS, by failing to negotiate with UHPA over the terms and conditions of parking for UHM and UHH faculty members who are required to use their personal vehicles in their work.

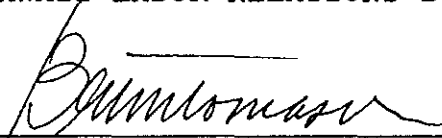
The BOR shall immediately post copies of this order in conspicuous places on the bulletin boards at the worksites where the employees of bargaining unit 07 assemble, and leave such copies

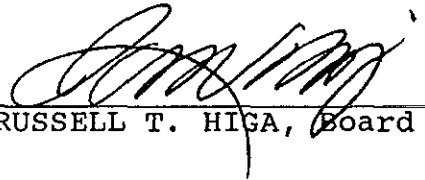
posted for a period of sixty (60) consecutive days from the initial date of posting.

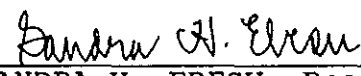
With respect to all other matters not covered by the cease and desist order, the Board hereby dismisses the instant prohibited practice complaints.

DATED: Honolulu, Hawaii, August 16, 1994.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


SANDRA H. EBESU, Board Member

Copies sent to:

Wade C. Zukeran, Esq.
Lester M.H. Goo, Deputy Attorney General
Joyce Najita, IRC