

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: CE-03-200a
)	CE-13-200b
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	ORDER NO. 1095
AFL-CIO,)	
)	ORDER DENYING COMPLAINANT'S
Complainant,)	MOTION FOR INTERLOCUTORY
)	ORDER
and)	
)	
JOHN D. WAIHEE, III, Governor,)	
State of Hawaii and BOARD OF)	
EDUCATION, State of Hawaii,)	
)	
Respondents.)	

ORDER DENYING COMPLAINANT'S MOTION FOR INTERLOCUTORY ORDER

The HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union) filed a prohibited practice complaint against GOVERNOR JOHN D. WAIHEE, III, Governor, State of Hawaii and the BOARD OF EDUCATION, State of Hawaii (collectively BOE or Employer) regarding the implementation of the fall public library schedule. The HGEA contends that the BOE or the Hawaii State Public Library System (HSPLS) unilaterally changed the hours and days of work for library employees without bargaining in violation of § 89-13(a)(5), Hawaii Revised Statutes (HRS).

The HGEA filed a motion for interlocutory order requesting a stay of the BOE's implementation of its fall library public service schedule which went into effect on September 7, 1993. This motion came on for hearing before the Hawaii Labor Relations Board (Board) on March 1, 1994. After a thorough review

of the record and consideration of the arguments of counsel, the Board hereby denies Complainant's motion for the following reasons.

The Board relies on the analysis for interlocutory relief stated by the Hawaii Intermediate Appellate Court in Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. 272 (1981). The three requirements for the granting of interlocutory injunctive relief are: 1) Is the party seeking the relief likely to prevail on the merits? 2) Does the balance of irreparable damage favor issuance of injunctive relief? 3) Does the public interest support the granting of injunctive relief? The Court also noted that:

The more the balance of irreparable damage favors the issuance of the injunction, the less the party seeking the injunction has to show the likelihood of success on the merits. [Citations omitted.] Likewise, the greater the probability the party seeking the injunction is likely to prevail on the merits, the less he has to show that the balance of irreparable harm favors the issuance of the injunction.

Id. at 276.

Based upon the record herein, the Board majority finds that the HGEA failed to prove that it is likely to succeed on the merits of its case. The evidence indicates that traditionally, the public library schedule is divided into two seasons: the summer schedule which runs from Kamehameha Day through Labor Day in September; and the fall/school schedule which runs from Labor Day through Kamehameha Day. Bartholomew Kane, State Librarian, or his staff had discussions with the HGEA during the summer of 1993 regarding the proposed fall schedule utilizing the HSPLS' staffing matrix under the consult and confer provisions of the collective bargaining agreement. The parties were able to agree upon the

schedule at 47 of 49 libraries. The Union, however, was concerned with the issue of premium pay for weekend work and indicated that they would pursue the matter with the State Office of Collective Bargaining (OCB) in the formal collective bargaining negotiations.

On August 16, 1993, Kane informed Russell Okata, Executive Director of HGEA, about the time frames for implementation of the fall public service hours and that the BOE was scheduled to consider the implementation of the fall schedule at its meeting on August 25, 1993. Randolph Perreira, Field Services Officer of HGEA, indicated that the HGEA would not hold up the implementation of the fall hours for 47 libraries because of the complaints the Union received from the Wailuku and Kahului libraries. Perreira indicated that he would provide the HGEA's position no later than August 25, 1993. The Union failed to respond to Kane and the BOE adopted the fall public service hours as recommended by HSPLS for the period September 7, 1993 through June 11, 1994.

By letter dated August 30, 1993, Kane informed Okata that the BOE approved the fall public service hours and requested to meet on any outstanding issues prior to September 7, 1993. On September 2, 1993, Kane met with Okata and Perreira. Okata indicated that the HGEA would permit implementation of the fall public service hours and process individual grievances if they arose. The HGEA filed the instant prohibited practice complaint on September 17, 1993.

The HGEA had previously filed grievances upon the implementation of the 1993 summer public service schedule on behalf

of employees at Kahului Library based upon the HSPLS' failure to properly consult and confer on the matter. On or about September 23, 1993, the grievances were upheld at Step 3 and the HSPLS was reminded of its duty to consult on the implementation of the summer schedule.

The HGEA filed the instant Motion for Interlocutory Order Staying Action of Respondents on September 24, 1993 requesting a cease and desist order. The affidavit of counsel attached to the motion indicates that the HGEA protested the implementation of the fall hours and insisted that the BOE must bargain with the HGEA to reach agreement on the changes in the days and hours of work.

The HGEA states that the new fall schedule indicates that some libraries would be open from Monday through Saturday. HGEA contends that the BOE's unilateral change in the days and hours of work has a great negative impact on the employees because many employees accept jobs in the public library system with the understanding that the work week will consist of five continuous days with their weekends as their days off.

The HGEA submitted affidavits of its library employees from Wailuku and Kahului libraries which stated that the new schedule would pose personal hardships. In one case the employee has only one car and that he chose the library job over others because he wanted to work on the same days as his wife. In another case, the new schedule interferes with the employee's family life because she will have different days off from her husband. Another employee was concerned because the new schedule would interfere with the employee's second job. Another employee complained that

the cost of child care would be prohibitive and an employee was also concerned that she may have to work on Saturdays to cover employees who call in sick. Thus HGEA argues that the curtailment or limitation on family life and secondary employment constitute irreparable damage.

Based upon the record, the Board majority finds that there was considerable dialogue between the parties regarding the fall public service schedule. The BOE has a longstanding practice of changing its public service schedules for the summer and fall to accommodate the demands of the public. The HSPLS staff contacted the HGEA and UPW about the new fall schedule. The parties were able to reach consensus on 47 of 49 libraries with the exception of Wailuku and Kahului libraries. The BOE adopted the fall schedule after Kane attempted to solicit the Union's input.

Of critical importance is the fact that Okata indicated at the last meeting on September 2, 1993 that the Union would permit the implementation of the schedule and grieve if necessary. The evidence thus indicates that there was agreement between the parties that the schedule could be implemented. Subsequently, the Union elected not to grieve but to file the instant prohibited practice charge. Given the prior agreement of the Union to implementation of the schedule, the Board majority concludes that the Union has not presented sufficient evidence that the Employer violated its duty to bargain to warrant issuance of an interlocutory order.

With regard to the earlier summer schedule, the HGEA filed a grievance under the consult and confer provisions of the

contract. The matter was resolved at the third step with the Department of Personnel Services concurring with the Union that proper consultation had not occurred.

With respect to whether irreparable injury will result if the stay is not granted, it appears that the employees may be inconvenienced by the Saturday work hours. Here, only the employees of two libraries in the statewide system object to the schedule so the magnitude of any injury is relatively slight. In addition, the Union was concerned with the issue of premium pay for the weekend work which it would pursue with the OCB. Clearly, if compensation is the outstanding issue, then any injury to the librarians is compensable and is not of the nature which the law considers irreparable.

Finally, with respect to the public interest, the Board majority finds that the public interest favors the denial of the instant motion. The schedule at issue has been in effect from September; the hearing date for the motion was in March. Given the considerable passage of time due in part to the parties' efforts to settle this matter, it would be more disruptive to the public if the stay was issued. The effect of staying the implementation action of the fall public service schedule would be to impose the summer schedule for the school year. Moreover, because the HGEA's motion is to stay the entire fall schedule, those libraries at which the parties found consensus would also revert to the summer schedule. This certainly would not be in the public's interest.

For the foregoing reasons, the Board majority hereby denies the instant motion for interlocutory order.

DATED: Honolulu, Hawaii, August 16, 1994

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson

CONCURRING OPINION

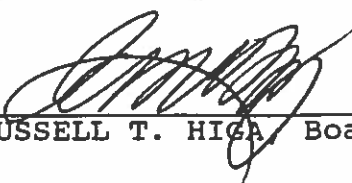
I concur in the decision to deny the subject motion for interlocutory order. In my opinion, the Union has failed to prove the elements for interlocutory relief in this case.

The change in work hours for library employees has a significant impact on the working conditions of employees. However, the subject matter is a hybrid issue since it also impacts upon management's rights to determine policy for the effective operation of the public library system. While the instant work schedule affects the individual employees because it may change their days of work, requiring negotiation over the schedule would in greater measure interfere with the Employer's responsibility to establish policy for the efficient operation of the library system which cannot be relinquished if the BOE is to fulfill its mission to provide library services which are responsive to the needs of the public. On balance, negotiation of the subject matter is not compelling.

The record before us supports a finding that the parties engaged in considerable and meaningful dialogue prior to the implementation of the new schedule, such that agreement was reached

in all but two libraries. Therefore, the BOE satisfied its duty to consult with the Union and an impasse was reached in the bargaining process with respect to the two libraries.

With respect to the issue of irreparable harm, it appears that granting the Union's motion would be more harmful and disruptive to the vast majority of library employees who consented to the new schedule and also to the public who have been operating under the schedule for some time.

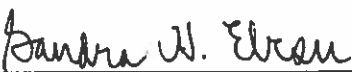


RUSSELL T. HIGA, Board Member

DISSENTING OPINION

I dissent from the foregoing order. I find the case to be indistinguishable from the previous public libraries seven-day work schedule case. I find that the HGEA is likely to prevail on the merits because the subject matter is clearly negotiable. According to the Union, the Employer denies that the matter is negotiable and is only subject to meet and confer requirements.

With respect to irreparable injury, I would find that the hardship and intrusion to the employees' lives are sufficient to support the issuance of the stay order. On balance, the Employer would not suffer any cognizable harm.



SANDRA H. EBESU, Board Member

Copies sent to:

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