

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

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| In the Matter of |) | CASE NO. RA-01-206 |
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| UNITED PUBLIC WORKERS, AFSCME, |) | ORDER NO. 1466 |
| LOCAL 646, AFL-CIO, |) | |
| |) | ORDER GRANTING INTERVENOR'S |
| Petitioner, |) | MOTION TO DISMISS FIRST |
| |) | AMENDED PETITION FOR CLARI- |
| and |) | FICATION OR AMENDMENT OF |
| |) | APPROPRIATE BARGAINING UNIT |
| DEPARTMENT OF PARKS AND |) | |
| RECREATION, County of Hawaii, |) | |
| |) | |
| Intervenor. |) | |

ORDER GRANTING INTERVENOR'S MOTION TO DISMISS
FIRST AMENDED PETITION FOR CLARIFICATION
OR AMENDMENT OF APPROPRIATE BARGAINING UNIT

On February 17, 1995, Petitioner UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (UPW or Union) filed a petition for clarification or amendment of appropriate bargaining unit with the Hawaii Labor Relations Board (Board). The UPW challenges the County of Hawaii's implementation of a reorganization of the Hoolulu Complex that resulted in splitting a full-time Unit 01 position into a 3/5th time Unit 01 position and a 2/5th time non-Unit 01 position.

On March 20, 1995, Petitioner filed a motion to file an amended petition for clarification or amendment of appropriate bargaining unit with the Board to correct the format of the petition. On March 24, 1995, the Board issued Order No. 1172 granting UPW's motion. Thereafter, on March 29, 1995, the UPW filed its first amended petition for clarification or amendment of appropriate bargaining unit with the Board.

On April 4, 1995, the Board issued a notice of the receipt of the amended petition and set a deadline for interested persons to intervene in the proceedings. On April 13, 1995, the DEPARTMENT OF PARKS & RECREATION, County of Hawaii (Employer) filed a petition for intervention with the Board. The Employer alleged that its actions in restructuring the instant position were being challenged by the Union. The Employer maintained that it had the right to restructure vacant positions for optimal service and economy and further contended that it consulted on the matter with the Union on the matter. The Employer also contended that in filing the instant petition, the Union attempted to circumvent the statute of limitations for filing prohibited practice complaints. The Employer therefore contended that it had an interest in ensuring that the Board procedures were not misused. The Board granted the Employer's petition for intervention on April 19, 1995.

On June 29, 1995, the Employer filed a motion to dismiss the instant petition. Intervenor asserts that the petition filed by the UPW is in the nature of a grievance and/or a prohibited practice complaint and is untimely.

On July 3, 1995, Petitioner filed a memorandum in opposition to Intervenor's motion to dismiss the first amended petition. Petitioner states, inter alia, that Intervenor as the moving party, has the burden to prove that the petition should be dismissed and it failed to meet that burden with its mischaracterizations and innuendos.

On July 6, 1995, the Board held a hearing on Intervenor's motion to dismiss the first amended petition. After a thorough

review of the record in this case the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioner UPW is the exclusive representative, within the meaning of § 89-2, Hawaii Revised Statutes (HRS), of employees of the County of Hawaii in bargaining unit 01.

Intervenor DEPARTMENT OF PARKS AND RECREATION, County of Hawaii, is the public employer, within the meaning of § 89-2, HRS, for employees in bargaining unit 01 positions within the Department.

By letter dated September 6, 1994, Juliette Tulang (Tulang), Department Deputy Director, notified the UPW of its intent to reorganize the Hoolulu Complex and as a result, abolish the full-time Facility Maintenance Service Worker I position and create two part-time positions; one position would be a 3/5 time position and the other would be a 2/5 time position. Tulang requested the completion of the consultation process by October 7, 1994 with the submission of comments by September 23, 1994.

By letter dated November 3, 1994, the UPW responded to Tulang's letter stating that it did not agree to the proposed reorganization. The UPW further stated that the abolishment of the vacant full-time Unit 01 position with the creation of two part-time positions would greatly affect the promotional opportunities for bargaining unit 01 employees.

By letter dated November 17, 1994, the Employer responded to UPW as follows:

For the record, although you did not agree with our proposal, we implemented the split of the full-time position to one bargaining unit 3/5 time position and one non-bargaining unit 2/5 time position effective 11/1/94 since we did not hear from you by our requested response date.

DISCUSSION

In its motion to dismiss, Intervenor contends that the gist of the UPW's petition is that the implementation of the reorganization occurred unilaterally, without proper consultation or consent under § 1.05 of the Unit 01 collective bargaining agreement. The UPW does not seek clarification of the bargaining unit. Therefore, the petition is more akin to a grievance or a prohibited practice charge than a petition for clarification or amendment of an appropriate bargaining unit. As the petition was filed more than 90 days after the November 1, 1994 or the November 17, 1994 notification of the reorganization, the petition is untimely.

Petitioner argues that Intervenor, in moving to dismiss the complaint, bears the burden of proof and has failed to carry its burden. Therefore, Petitioner urges the Board to deny the motion as a matter of law. Petitioner further contends that Intervenor's implementation of a plan of reorganization eliminated a full-time unit 01 position from bargaining unit 01. UPW's petition requests the Board to review the elimination of said position under § 89-6(d), HRS.

Section 89-6(d), HRS, sets forth the appropriate bargaining units and provides as follows:

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.

Pursuant to the foregoing statute, the Board has the authority to determine controversies arising from the designation of bargaining units to specific positions and employees. The scope of proceedings under § 89-6(d), HRS, however, is limited to determining the appropriateness of the bargaining unit designation of a specific position based upon the duties and responsibilities and full-time equivalency of the position. Thus, in reviewing such a petition, the Board is precluded from going beyond the limited scope of inquiry and reviewing the appropriateness of the Employer's action to abolish a vacant full-time position and create two part-time positions. In this case, Petitioner requests that the Board review the right and basis of the Employer's implementation of the reorganization. It is clear that the UPW challenges the Employer's decision to implement the reorganization by abolishing the full-time Unit 01 position rather than challenging the appropriateness of the affected bargaining unit designations. Hence, the Board finds that the instant petition appears to be more in the nature of a prohibited practice complaint.

Based upon a review of the record and the arguments on the instant motion, the Board grants the motion to dismiss the first amended petition for clarification or amendment of appropriate bargaining unit.

CONCLUSIONS OF LAW

The instant bargaining unit clarification petition exceeds the scope of the Board's authority to investigate the appropriateness of the bargaining unit designation of the petition under § 89-6, HRS. Accordingly, the petition is dismissed.

ORDER

Intervenor's motion to dismiss the first amended petition for clarification or amendment of appropriate bargaining unit filed by the UPW is hereby granted.

DATED: Honolulu, Hawaii, May 22, 1997.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member



CHESTER C. KUNITAKE, Board Member

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