

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)
JAHNE HUPY,)
)
Complainant,)
)
and)
)
GEORGE R. ARIYOSHI,)
Governor, GEORGE A. L. YUEN,)
Director of the Department)
of Health, and DONALD BOTELHO,)
Director of the Department)
of Personnel Services,)
)
Respondents.)

Case No. CE-09-19

Order No. 34

ORDER GRANTING CONTINUANCE
AND DEFERRAL TO ARBITRATION

On October 14, 1975, the Hawaii Nurses Association (hereafter HNA), on behalf of Jahne Hupy, filed the above-entitled and numbered prohibited practice case with this Board.

In the statement of charges, it was alleged that the public employer had violated Subsections 89-13(a)(1), (3), and (8), Hawaii Revised Statutes (hereafter HRS). Said subsections provide:

"Sec. 89-13. Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

* * *

(3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization.

* * *

(8) Violate the terms of a collective bargaining agreement."

The employer actions which are alleged to constitute said violations stemmed from a failure to offer the Director of Nursing position at Sam Mahelona Hospital, Kauai, to Petitioner, and protests by Petitioner and the HNA of the reclassification of said position. Petitioner contends this constituted a violation of the collective bargaining agreement and "various sections of State law."

The contract provisions allegedly violated by the employer's action are Articles I, II and VII of the collective bargaining agreement for Unit 9 between the HNA and the appropriate public employers. Said Articles state:

"ARTICLE I

"PURPOSE

"The purpose of this Agreement is to promote and expand harmonious Employer-Employee relationship in working out solutions to problems, maintaining the principles of the merit system and equal pay for equal work and with the aim toward providing the best possible patient care.

"ARTICLE II

"RECOGNITION AND COVERAGE

"The Employer recognizes the Association as the exclusive bargaining representative for those public Employees employed as Registered Professional Nurses pursuant to certification of the Hawaii Public Employment Relations Board case No. R-09-7.

"The Employer and the Association recognize the rights and obligations of the parties to negotiate wages, hours and other terms and conditions of employment and to administer this Agreement on behalf of covered Employees, and that such

administration shall apply equally to all Employees in the bargaining unit without regard to membership or non-membership in the Association.

"The Employer and the Association agree that they will not interfere with the right of any Employee to join or refrain from joining the Association. The Employer will make known to all new Employees that they will secure no advantage or more favorable consideration or any form of privilege from the Employer because of membership or non-membership in the Association.

"The Employer agrees to furnish all Employees hired after the signing of Contract and other personnel not within the bargaining unit but charged with the administration of the Agreement with a copy of the Agreement.

"ARTICLE VII

"DISCRIMINATION

"The Employer and the Association agree that neither party will discriminate against any Employee because of membership or non-membership or lawful activity in the Association or on the basis of race, national origin, color, creed, age or sex."

The statutes allegedly violated by this action apart from the aforesaid alleged violation of parts of Section 89-13(a), HRS, are Sections 76-23 and 76-101, HRS, which are part of the HRS chapter on civil service.

On November 26, 1975, Respondents filed with this Board a Motion for Continuance in this case. The grounds for said motion included an assertion that the HNA, on behalf of Jahne Hupy, had filed, pursuant to the grievance procedure of the Unit 9 contract a grievance. A copy of the grievance was attached to said motion. In the grievance, it is alleged that the employer violated the aforesaid Articles I, II and VII of the Unit 9 collective

bargaining agreement by reclassifying the subject position and failing to select Jahne Hupy for said position. The grievance also alleges that by its actions the employer violated the aforesaid Sections 76-23 and 76-101, HRS, and alleges that said sections are incorporated by reference in Article XXIII of the Unit 9 contract. Said Article provides:

"ARTICLE XXIII

"PRIOR RIGHTS, BENEFITS
AND PERQUISITES

"Nothing in this Agreement shall be construed as abridging, amending or waiving any rights, benefits or perquisites presently covered by statutes or rules and regulations that Employees have enjoyed heretofore, except as expressly superseded by the terms of this Agreement.

"It is agreed, however, that the Employer retains the right to modify or terminate the furnishing of perquisites. The Employer further agrees to consult with the Association prior to modifying or terminating such perquisites. When the Employer takes such action and the Employee or the Association believes that the reason or reasons for the change is or are unjust he or it shall have the right to process such grievance through the GRIEVANCE PROCEDURE set forth in ARTICLE XXII, herein."

A hearing was held by this Board on December 2, 1975, to hear oral arguments on the Respondent's motion. At said hearing, the attorney for Petitioner assured this Board that Petitioner intended to proceed with the grievance and process it through final and binding arbitration as provided for in the Unit 9 collective bargaining agreement.

In view of the foregoing, this Board is of the opinion that it would not serve the purposes of Chapter 89, HRS, for it to proceed to hear the subject prohibited practice

charge while an arbitration proceeding which conceivably may resolve the entire dispute between the parties is in progress.

This Board therefore will retain jurisdiction of this case, but will grant the requested continuance to allow the arbitration to proceed.

Without limiting the foregoing retention of jurisdiction, the Board expressly will retain jurisdiction for the purpose of determining whether the arbitrator's award is within the scope of his powers, the proceedings were expeditious, lawful and fair, and the award is consistent with Chapter 89, HRS.

The granting of this Continuance is subject to the condition that the arbitration must commence no later than 30 days from the date of this Order.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


John E. Milligan, Board Member


James K. Clark, Board Member

Dated: December 4, 1975

Honolulu, Hawaii