

- Work Copy -

Hawaii Fire Fighters



Finally!

Contract Dispute Settled by Final & Binding Arbitration Decision

After almost two years of negotiations, mediation, arbitration, a public relations nightmare, court battles and a struggle for justice at the legislative levels of government, a new collective bargaining agreement appears to be at hand.

The two-year deal, which is retroactive to July 1, 1995 and will expire on June 30, 1997, provides for wage adjustments in both years and ends differences between island jurisdictions relating to hours of work and overtime. A 2.5% across-the-board wage increase effective July 1, 1995 is followed by a range of salary schedule adjustments on July 1, 1996 or lump-sum wage supplements on December 1, 1996.

The cost of the wage package has been a matter of debate and conflict between HFFA and the Employers ever since the Union's final offer was made back in November, 1995. The Employer claims it is 7.2%, while the Union contends the correct figure is 4.95%. Once the media picked up and published the Employers' numbers, there was little opportunity (and no point, really) for the Union to argue the matter any further. The most important numbers are "zero and zero," which is what the Employers wanted to impose on our members, even though they had the ability to do better.

As a result of the previous contract, bargaining unit members in Maui and Kauai Counties were still subject to the old "black shift" provisions governing the work schedule, while members of the other jurisdictions were receiving "scheduled overtime." Ending these differences was a top priority for HFFA negotiators even before the talks began.

From the outset, the Employers maintained an intransigent position, refusing to budge on any but the most insignificant issues. Early on, the resistance to discussion of cost items was expected in light of continuing horror stories about the demise of the local economy and all the talk of im-

pending layoffs and furloughs. HFFA negotiators initially decided to be patient and wait on those items. But, even months later there was no movement; on anything.

On June 20 of last year, with the contract about to expire at the end of the month, Union negotiators proposed an extension of the existing agreement until a new one was in place. The response to that offer was that the mayors and the governor would have to consult on the matter and they would reply later. When it came, the reply was less than encouraging. Instead of agreeing to an extension as long as necessary, their offer was to extend only until January 31, 1996. Nevertheless the offer was accepted and an extension to the end of January was signed on June 29th.

After an unproductive session in July and after tentative August meetings were cancelled, the HFFA Executive Board decided the waiting game was over. It was estimated that if an impasse was declared by the end of September, and if undue delays could be avoided, it was possible an arbitration decision could be issued by mid- to late-February. As always, the hope was to have an agreement or arbitration award in hand in sufficient time to obtain appropriations for any cost items by the State Legislature which normally adjourns in late April.

At a final session on September 13 where again the Employer had nothing to offer, the Union announced it would seek an impasse declaration with the Hawaii Labor Relations Board. The Employers agreed not to object to an impasse declaration and, surprisingly, also agreed to participate in a form of final offer arbitration... "issue-by-issue final offer" arbitration.

In general, arbitration on the terms of a new collective bargaining agreement can be handled in one of three ways. "Conventional" arbitration
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HotLine

June
1996

Thinking Out Loud

by Francis Kennedy, Jr.

Don't get mad, get ready!

It had been almost 13 years since we last went all the way through an arbitration proceeding to a final and binding decision. Back in 1983 we lost big time! We wound up with a pay package of zero the first year and 2.88% the next.

Have you noticed when we lose, as we did then, there is no question that the decision is final and binding?

Any way back to the subject. We know now that a lot has changed in 13 years. Arbitration was downright cheap in those good old days, compared to now. The arbitrator's fee illustrates that fact. The arbitrator in 1983 charged \$400 per day; this time the fee is \$1,000 per day. And that's for every day, not just for the five days of hearings. You pay for the guy to think, and the clock runs while he writes the decision; as long as it takes.

This is not a rap on arbitrators. The good ones don't come cheap. We probably wouldn't be too anxious to use a guy who was running a close-out special, or who was offering discounts for fire fighter cases or something like that.

No, the point is we almost got caught with our pants down, so to speak. I'm talking financially now. When the Executive Board met to work on the budget last January, we were just starting to get the bills for the work that went into the arbitration hearings that were held in December. Five thousand for this, twenty-two thousand for that, another eighteen grand for something else. Oh boy!

Those of you who attended the January membership meetings where the budget was approved may remember the Board's recommended solution. Cash reserves would be used to cover arbitration costs over the 30 grand budgeted.

Should be no problem.

And it might have been no problem were it not for the fact that our Employers apparently decided the arbitrator was bluffing when he told them almost point blank that their zero and zero final wage offer would not stand. Worse yet when they called his bluff, and he did what he told them would happen if they didn't change their attitude, they cry foul.

Then they decide to call the arbitration award a "recommendation," and want the legislature and the councils to kill the deal so they can take us back to the table for a more "reasonable" settlement!

Now they were going to be reasonable... promise to God! Yeah, right!

So then we were forced to commit to do battle at the legislature and at every one of the councils, just to get what we won fair and square. Since the Employers had a head start and did such a good job of publicly screwing over the facts, the biggest problem was one of communicating the truth to each legislator and council member, and the public.

The next thing you know, we're being served with court papers. The Employers want to try the whole thing over again in court! Among their accusations: the arbitrators didn't follow the law; they didn't give weight to this, didn't explain that, engaged in misconduct, were partial to union, on and on. It's all bull but we were forced to respond.

If you ever want to spend money fast, go to court! Don't get me wrong here either. It was ultimately worth every last nickel to watch them get their asses kicked, especially since they deserved it so very, very much.

It's all a damned shame, you know. This whole thing should

never have happened this way. If our Employers had a mind to be reasonable, especially when they were clearly given an opportunity to do so by the arbitrators, everything would be different now; everything. Even they would have to admit now that the chairman's suggested 1% and 1.5% wage deal was pretty reasonable. Now! Too late!

You would think they learned their lesson; that things will be different next time. Don't bet on it.

Don't just get mad about it either, get ready! The question is, did we learn our lesson? Or will we really get caught with our pants down the next time? There will be a next time. Guaranteed! We managed to have the resources for this trip down the road. But we thought those resources would take us a lot farther. Now that we know they won't, we'd better get ready.

By the way, this new contract expires next year. That means negotiations for the next one will have to get started pretty soon; September to be exact.

Will we be prepared to go to arbitration again if need be? Like I said, we better be.

—Continued from page 1

is the most common and, unless the parties agree to use one of the other two methods, it is the one required by the Hawaii collective bargaining law. In a conventional arbitration, each party presents and argues its final position on all issues before the arbitrator (or a panel of arbitrators). After all evidence and testimony are presented, the arbitrator is free to assemble or fashion an award that he or she believes is best supported by the evidence.

In the two types of "final offer" arbitration, the presentations and arguments are generally made in the same manner as with conventional arbitration. The main difference is that the arbitrator is not free to assemble or fashion the award. Instead he or she must select either the final offer position of the Employer or that of the Union. If the procedure is "whole-package, final offer," the arbitrator must choose one party's position on all of the issues as a whole, without modification.

In an "issue-by-issue, final offer" proceeding, the arbitrator must separately select one party's position on each individual issue without modification. Some practitioners believe this method provides the benefits of final offer arbitration while still leaving the arbitrator some room to fashion an award he believes is best supported by the evidence.

Regardless of the type of arbitration used, the process always requires a series of procedural steps that lead eventually to a decision or award. The parties need to define the issues and establish their respective positions on the issues; and they need to select the arbitrator or arbitrators. There is also the need to work out a schedule for hearings that accommodates the parties, their representatives, witnesses and lawyers, as well as the arbitrators. And all concerned hope that sufficient time is allowed to complete the hearings and remain on schedule throughout.

In one of the early procedural steps, former State Chief Negotiator Larry Ishimi, was named the Employer's panel member. Dan Terry, President of the California Professional Fire Fighters, was appointed to the panel by HFFA.

See the Negotiations Chronology for other details.

The process worked more or less as scheduled and anticipated. The surprise came immediately after the hearings ended and all the evidence was in.

The Chairman of the arbitration panel outlined an informal settlement package which he related to the Employer and Union panel members. He instructed Ishimi and Terry to discuss his informal proposal with their respective parties; and to report back to him as to whether that proposal might form the basis of an agreement or a possible arbitration award.

Essentially, the informal proposal consisted of a "what if" scenario where the Union's final offer would be selected on five issues: Hours of Work, Overtime, Safety Equipment, Hawaii County EMS, and Hazardous Duty. Employer final offers would be selected on four issues: Temporary Assignments, Meals, Uniforms, and New Licenses and Certifications. On the critical issue of Wages, the arbitrator recommended a 1% across the board increase effective January 1, 1996 and a 1.5% across the board increase effective July 1, 1996.

Eventually, both parties indicated their willingness to accept a decision incorporating the arbitrator's informal proposal on the nine issues other than wages. Both sides rejected the wage recommendation. The Union, however, offered to amend its final offer on wages by reducing it some 1.5 percent over the two year period.

Under the procedure governing the arbitration process, the Employer would have to agree to allow the Union to make such an amendment to its final offer position. This the Employer refused to do.

Hence, on January 25, 1996, Ishimi and Terry reported back to the Chairman that they were in agreement with his proposal on the nine issues other than wages, but that the wage issue would require a final offer decision.

After a series of further communications (see the Chronology) in which Chairman McKay attempted unsuccessfully to convince the Employers to allow the arbitration panel to decide the wage issue in a conventional arbitration context, he issued his award in favor of the Union's final offer on wages.

The Employers, who were obviously not pleased with the decision, responded publicly as though they were shocked and surprised by it. Their "How dare he!" attitude was comical at first, but their subsequent disinformation campaign was not funny at all.

After deliberately blocking the arbitrator's efforts to come up with a modified wage decision (i.e., less than the Union final offer but more than the Employer final offer), the Governor and Mayors then refused to accept responsibility for their tactics. Instead they passed the buck to the Legislature and the City and County Councils, publicly urging them to reject the decision.

Their shameless calls for rejection would have had the legislators take the blame for the Employers' disgraceful bad faith and contempt for the collective bargaining process.

Their tactics seemed to be working at first. Many usually supportive legislators, at the state as well as the city and county levels, began to express concern and doubt. We discovered that many of them, along with the news

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Negotiations Chronology 1994-1996

June, 1994. The Union submits initial proposals for a new 2 year agreement effective July 1, 1995. The Employer submits its proposals.

Sep 29, 1995. After sporadic negotiations over 15 months with no significant progress, Union files Notice of Impasse with Hawaii Labor Relations Board.

Oct 3, 1995. Board confirms impasse, orders mediation.

Oct 5, 1995. Parties reach Mutually Agreed Upon Arbitration Procedure. The procedure provides for issue by issue arbitration, and further provides that final offers, once made, cannot be changed except by mutual agreement.

Oct 17, 1995. Union submits its list of issues for arbitration.

Oct 24, 1995. Employer submits its list of issues for arbitration.

Oct 26, 1995. The American Arbitration Association (AAA) provides a list of five arbitrators. In addition, AAA furnishes a "backup list" containing the names of two more arbitrators. The parties are required to mutually agree to one of the arbitrators from the list of five or to alternately strike names from the list of five with the remaining one becoming the chairperson of the arbitration panel.

As the process began, the Employer asked the Union to consider one of the names from the "backup list," Gerald McKay. Subsequently the Union agrees and McKay is mutually agreed upon as the Chairman of the arbitration panel.

The parties had earlier selected their respective panel members: Lawrence Ishimi by the Employers, Daniel Terry by the Union.

Oct 31, 1995. Union submits its final offers on each issue.

Nov 7, 1995. Employer submits its final offer on each issue.

Dec 15, 1995. Formal arbitration hearing begins with ten issues to be arbitrated.

Dec 19, 1995. Formal arbitration hearing ends. The record consists of 1,100 pages of transcribed testimony plus well over 100 exhibits filling two bankers' boxes.

The Chairman of the panel directs the Employer and Union panel members to communicate to their respective parties his informal "settlement package" wherein he suggests resolution of nine issues based on the final offers of the parties. The Chairman thus also informs the parties of his suggested wage package: 1% wage increase January 1, 1996 and 1.5% wage increase July 1, 1996.

Jan 25, 1996. In a written communication, the Employer and Union panel members report back to the Chairman. The Employer and Union panel members are in agreement with the Chairman's informal "settlement package" with respect to the nine issues other than wages. They were unable to agree on the wage issue.

They report also that the Union offered to amend (lower) its final offer on wages but the Employer does not agree to permit the Union's amendment.

Feb 13, 1996. Chairman writes to both parties declaring that it "is not possible" to make a selection of either final offer "fairly and equitably." Chairman requests the parties to extend to the arbitration panel the authority to deal with the wage issue in a "conventional arbitration context" (i.e., not confined to selecting one of the final offers, but free to come up with its own wage settlement provisions). "In the absence of this authority," the Chairman writes, "the result will not be fair no matter which offer is selected by the panel."

Feb 16, 1996. By letter from the President Black Perry, the Union concurs with the Chairman's request.

Feb 20, 1996. By letter from the Chief Negotiator, the Employer denies the Chairman's request.

Feb 21, 1996. Chairman writes to the Employer: "...the majority of the panel do not believe the Employers have provided sufficient evidence to establish an inability to pay which is a prerequisite to a zero wage offer. The Employers' position in refusing to grant the panel flexibility leaves the panel little option in light of the evidence on the record."

"If the Employers maintain their position on the question of flexibility for the panel, the Employers must be prepared to accept full responsibility for the consequences of their decision."

The Chairman requests a reply by March 1.

Mar 1, 1996. The Employers inform the Chairman of their decision to deny the request.

The Chairman, on behalf of the majority of the panel (i.e., the Union panel member concurring), issues the panel's final and binding decision in favor of the Union's final offer on wages. Other items are decided by the Employer and Union panel members in their January 25, 1996 letter, which is made a part of the decision and award by reference.

Mar 6, 1996. By letter from the Chief Negotiator, the Employer informs the Chairman that the copy of the decision they received on March 4, 1996 did not have the signatures of all of the panel members. "Therefore," their letter says, "for the record, proper receipt of the decision to effectuate the final and binding agreement, pursuant to Chapter 89-11(d), Hawaii Revised Statutes, will not be acknowledged until such time as all appropriate signatures to the decision are submitted."

Mar 7, 1996. The Chairman writes to the Chief Negotiator that he mailed signed copies of the signature page to the Union panel member for his signature and he, in turn, was to forward them to the Employer panel member for signature and completion of the process.

Mar 11, 1996. The Employer receives its copy of the signature page with all signatures.

Mar 13, 1996. The County of Hawaii files a *Motion to Modify or Correct or in the Alternative, to Vacate Arbitration Award* in the Third Circuit Court. Hearing scheduled for April 4, 1996 before Judge Greg Nakamura. The County serves copies of its motion on the Union's arbitration attorney, Alan Davis, in San Francisco.

Mar 18, 1996. The Union files a *Motion to Confirm Arbitration Award* in the First Circuit Court. Hearing scheduled for April 16, 1996 before Judge Daniel Heely.

Mar 22, 1996. County of Kauai files a *Motion to Vacate Arbitrator's Award* in the Fifth Circuit Court. Hearing scheduled for April 29, 1996 before Judge George Masuoka.

Apr 3, 1996. The parties agree to and stipulate to a consolidated hearing of all motions in the First Circuit Court on April 16, 1996.

Apr 10, 1996. The County of Maui makes an appearance and submits a *Substantive Joinder in County of Kauai's Motion to Vacate Arbitrator's Award*.

Apr 12, 1996. Near the close of business less than two working days before the hearing, the State of Hawaii files a *Memorandum in Opposition to Hawaii Fire Fighters Association, Local 1463's Motion to Confirm Arbitration Award*.

Apr 16, 1996. Judge Heely hears oral argument on the motions and memoranda, and sets April 23, 1996 for a decision.

Apr 23, 1996. Judge Heely issues an oral decision granting the Union's *Motion to Confirm Arbitration Award*, and denies the Employers' motions. A written decision and order from Judge Heely is forthcoming.

—Continued from page 3

media, had been swayed by the Employers' public barrage of erroneous statements regarding the arbitration process and the law.

But the biggest surprise was their effort to convince the courts to dump the arbitration award. Though such a move is not unheard of, it is usually seen in situations where there are serious allegations of illegal behavior on the part of participants or the arbitrator.

The County of Hawaii, and later the County of Kauai, filed legal motions asking the court to toss out or invalidate the arbitration award. They were eventually joined in court in some manner by the County of Maui and the State Attorney General. Only the City and County of Honolulu stayed clear.

The Employer motions could not be taken lightly and HFFA was forced to take immediate action. Attorneys Dennis Chang and Glenn Choy were selected to meet the legal challenge. Having not been involved at any time during the long, convoluted arbitration process, they started at a significant disadvantage. They needed to be brought up to date on all of the issues and prepare legal arguments in support of our position. HFFA's arbitration attorney for many years, Alan Davis of San Francisco, would provide invaluable assistance and the support of his staff but could not participate directly in the Hawaii courts.

Thus, HFFA countered by filing its own motion asking the court to confirm the award.

The motions were heard on April 16, 1996, in the First Circuit Court in Honolulu. A week later, Judge Daniel Heely issued his incisive decision granting the Union's motion to confirm the arbitration award, and denying the Employer motions.

Even that significant loss did not deter the Employers from their goal of overturning the arbitration award. There was still the business of required appropriations to fund the cost items in the arbitration award by the legislature and councils. It became clear that the first and most important battleground was to be the State Legislature. If the session ended on schedule on April 29, without an appropriation for the State Airport Fire Fighters, the Employer could claim legislative rejection of the award; and the County and City Councils could be told that any further action on their part would be moot.

When that happened, the Employers hoped, the Fire Fighters would be forced to come back to them with their tails between their legs, begging for relief.

That scenario didn't work either. By the end of March, the Union had communicated with each legislator. Every member of the legislature and of the councils was reached in an attempt to bring them the facts. Copies of all the communications between the arbitration

panel and the parties, and the arbitration decision were provided. HFFA representatives offered to answer their questions, either in person or otherwise. Many meetings were held with legislators across the state.

Thanks especially to the outstanding work of Senate President Norman Mizuguchi and the support of the Senate leadership, the legislature did indeed make the necessary appropriations.

The Legislature's positive action clearly became the turning point. Soon after the councils were moving to complete the appropriations process for their respective jurisdictions. With the exception of Mayor Lingle of Maui, the mayors finally recommended approval of funding for the award.

By the time this newsletter is in the hands of the membership, implementation of the terms of a new agreement will hopefully be well under way.

Paid Life Insurance Claims November 1, 1994 to October 31, 1995

Allbert Farias	4,000
Eben Kalaaau	10,000
Faith I. Young-Onekea	4,000
Phillip C. Mirafuentes	4,000
Annie L. Franco	4,000
Orchid L. Ah Loy	4,000
Grace Y. Sakamoto	2,000
Levi M. Perkins, Sr.	10,000
Masato Nagata	2,000
Rachael Kamakana	4,000
Walter A. Love	2,000
Esther J. Bader	4,000
June A. Loyola	12,000
Moses I. Kaina, Sr.	4,000
Abraham A.L. Akuna	4,000
Lloyd R. Ogata	20,000
Lawrence T. Sasaki	10,000
John R. Alfiler	20,000
Carol Ann Okinaka	12,000
Toshio Yamamoto	4,000
Mendal C. Morey, Jr.	20,000
Charles H.K. Auld, Jr.	20,000
Alvin Agawa	40,000
Total	\$220,000

IAFF Delegates Will Meet in Honolulu August 5-9

HFFA is the Host Local for the International Association of Fire Fighters (IAFF) Biennial Convention being held at the Sheraton Waikiki Hotel August 5-9, 1996.

Some 1,500 delegates and alternate delegates, representing IAFF local unions from across the U.S. and Canada, are expected to attend along with their spouses and family members. In all we conservatively expect over 3,000 people to be here for this event.

HELP! We have a number of activities which will be going on during convention week for which help from the membership is needed. If you want to help, we need to have you fill out and return a sign-up form. One form per person is required. Call the HFFA office if you have questions or want to help (949-1566). We'll arrange to get you what you need.

We have a deadline, so be sure to call right away!

Many of the delegates and their guests will be first-time visitors to Hawaii. In addition, most fire fighters we come across at conventions just love to talk shop and compare notes.

They will want to know all kinds of things about our islands and the fire service in Hawaii. Or you may be able to help them find their way around without getting ripped off.

Just having you, the HFFA members, there and available to our guests as information and resource providers is sure to be more important than any of the work assignments.

IAFF Convention Women's Luncheon for HFFA Ladies too!

Look out ladies! A special appearance by the Honolulu Fire Department's own calendar guys, the 1996 *FireFoxes*, are one part of a full entertainment agenda for the women of the IAFF. Additional surprises are in store as well. Oh yes, there's food too. A sumptuous salad and sandwich deli buffet in the elegant Monarch Room at the Royal Hawaiian Hotel. Carol Kai is emcee. Wednesday, August 7, 11:00 am-2:00 pm. \$24.00 per person.

While space is still available, HFFA members' wives who are interested should call the office as soon as possible. (949-1566)

23 Claims Covered by Life Plan Last Year

HFFA was saddened numerous times last year by the loss of several members and dependents. For the November 1, 1994 to October 31, 1995 insurance year, a total of \$220,000 was paid in life insurance benefits for 23 claims. (See page 5)

The result was a net experience deficit of \$696 for the period. Thus there was no refund distribution.

This follows a \$93,513 refund for the previous insurance year.

HFFA's practice of returning experience refunds ordinarily reduces the already low cost of its group life insurance program. Individual refunds are based on the coverage purchased by each participant.

Active members are eligible to participate. Maximum coverage (\$40,000 member, \$24,000 spouse and \$4,000 each dependent child) costs \$24 per month.

Non-participating members who are interested should call the HFFA office (949-1566)(Neighbor Islands 1-800-310-1566).

HotLine

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