

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

COUNTY OF HAWAII,

Petitioner.

CASE NO. RA-13-230

DECISION NO. 474

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

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On September 2, 2008, the COUNTY OF HAWAII (County or Employer) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). In its petition, the County alleges that the duties and responsibilities of new Position No. WS-04792, Waterworks Information Systems Manager, EM-03, warrants exclusion from bargaining unit 13 as a top-level managerial position. The position is the head of the Department of Water Supply, Information Systems Branch, and will direct the administration, planning, development, maintenance, and security of the department's overall information technology systems, which includes network applications, geographic information systems, data base management, and end user support services. The position will formulate and implement program policies, guidelines, goals, and objectives; and oversee the fiscal and personnel requirements for the branch. Michael R. Ben, County Director of Human Resources and Petitioner's representative, states in an affidavit attached to the petition, that the Hawaii Government Employees Association (HGEA or Union) was consulted on the transfer of the position from included to excluded status.

By letter dated September 5, 2008, the Board informed Randy Perreira (Perreira), Executive Director, HGEA, of the filing of the instant petition and requested the HGEA's position on the exclusion of the Waterworks Information Systems Manager. On September 10, 2008, the HGEA, by Deputy Executive Director Nora A. Nomura, indicated its concurrence with the exclusion of the position.

Based upon a review of the petition, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The COUNTY OF HAWAII is the public employer, as defined in Hawaii Revised Statutes (HRS) § 89-2, of the employees of the County of Hawaii.

2. The HGEA is the exclusive representative, as defined in HRS § 89-2, of employees in bargaining unit 13.
3. According to the position description for Position No. WS-04792, Waterworks Information Systems Manager, EM-03, the position will serve as the head of the Department of Water Supply, Information Systems Branch and will direct the administration, planning, development, maintenance, and security of the department's main computer systems, geographic information system data and networks; develop and implement program policies, guidelines and goals; analyze and resolve complex problems requiring comprehensive technical knowledge of department owned computer systems and major software application areas. The position reports to the Deputy Manager of the Department of Water Supply.

The position performs the following duties in the approximate percentages of time:

- a. Plans, organizes, implements and maintains the department's overall information technology systems that includes but is not limited to network application, geographic information system (GIS), data base management, and end user support services. Oversees the review of existing and new major applications and recommends and implements changes as needed. Performs general and detailed systems analysis and planning of major application areas. Develops and establishes departmental standards to determine requirements, feasibility and practicality of developing or purchasing new software and/or equipment. Keeps current with technological advancements in the information technology field, determines the potential effect on current procedures and operation and implements changes as necessary. 25%.
- b. Serves as technical resource and provides advice, assistance, and support in problem resolution to department employees for computer related matters, requiring substantial overall knowledge of computer systems and major software application areas; develops and implements operations guidelines and policies for the department; and develops, plans and oversees the department's centralized operations, support and training program. 35%
- c. Provides technical support, direction and coordination of software design and development work. Oversees and implements the integration of such work into finished products. Updates and reviews documentation and recommends and implements necessary changes based on findings. 10%

- d. Assists districts, divisions, sections or units in planning, designing and implementing unique systems as required; recommends the contracting of projects; oversees the maintenance of records; prepares various reports and correspondence; and performs other related duties, as required. 5%.

Attachment B.

4. By letter dated July 28, 2008, Ronald K. Takahashi, Deputy Director of Human Resources, County of Hawaii, informed Perreira, inter alia, that he would be submitting a petition to the Board to exclude the instant position as there had been no response to previous correspondence requesting concurrence with the exclusion. Attachment A-3.
5. On September 2, 2008, the County filed the instant Petition requesting exclusion of the Waterworks Information Systems Manager.
6. By letter dated September 5, 2008, the Board Chair informed Perreira, that the County filed the instant petition and requested acknowledgment of HGEA's concurrence with the position's exclusion. Thereafter on September 10, 2008, the Board received the letter with HGEA's concurrence signed by Nora A. Nomura for Perreira. The Board includes the foregoing letter in the record of these proceedings.
7. According to the class specifications, the Waterworks Information Systems Manager, EM-03, plans, directs, and administers the Department of Water Supply's overall information technology system, oversees the development, analysis, implementation and maintenance of various systems, programs, and activities relative to the needs of the various division and functions of the department. The class is distinguished by its responsibility to plan, direct, and administer the Department of Water Supply's overall information technology system.

Attachment C.

8. According to the Position Organization Chart for the County of Hawaii, Department of Water Supply, Administration Division, the position is at the head of the Information Services Branch.

Attachment D.

9. The Board finds that Position No. WS-04792, Waterworks Information Systems Manager, EM-03, will exercise considerable discretion in directing

the work of the Information Systems Branch, which includes the Geographic Information Systems Services and Information Technology Support Sections. The position will plan, direct, and administer the development over the overall information technology system; implement the division's programs; formulate short and long range plans and goals; and oversee the administrative functions of the division, including fiscal and coincident personnel matters for the branch.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject petition pursuant to HRS § 89-6.
2. HRS § 89-6(f) provides, in part, as follows:

The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

* * *

- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
3. In interpreting the exclusionary language of HRS § 89-6, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In determining whether an individual occupies a top-level managerial or administrative position, the Board, in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated, in pertinent part:

This board believes that the proper test of whether an individual occupies a top-level managerial and administrative position includes measuring the duties of the position against the following criteria:

1. The level at and extent to which the individual exercises authority and judgment to direct employees, determine methods, means and personnel, by which the employer's operations are to be carried out; or

2. The extent to which the individual determines, formulates, and effectuates his employer's policies.

Id., at 666 [footnotes omitted].

4. In Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), the Board supplemented this criteria by stating:

In order to be determined to be a top-level management or administrative position, a position must:

(1) be at or near the top of an on-going complex agency or program; or

(2) direct the work of a major program or an agency or a major subdivision thereof with considerable discretion to determine the means, methods, and personnel by which the agency or program policy is to be carried out; or

(3) operate in a management capacity in a geographically separated location, such as a Neighbor Island, and be responsible for representing management in dealing with a significant number of employees.

Id., at 143.

Because policy formulation is an important factor in the determination of managerial status, the meaning to be given to the term *policy* is important and warrants discussion.

The New York PERB, in a leading case of that Board, has defined the term *policy* which this Board adopts. The New York PERB stated in State of New York, 5 PERB 3001 (1972) at p. 3005:

We will first discuss the "policy" criterion and later the other three criteria. It would appear desirable to first consider the term "policy." Policy is defined in a general sense as "a definite course or method of action selected from among alternatives and in the light of given conditions to guide and determine present and future decisions." In government, policy would thus be the development of the particular objectives of a government

or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.

The term “formulation” as used in the frame of reference of “managerial” would appear to include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. It would not appear to include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal. [Footnotes omitted.]

* * *

It is assumed that all persons in State government, except for elected officials, judges and certain other officers not here relevant, have supervision and that their decisions technically take the form of recommendations subject to approval by higher authority. It is the function of a position, not its place on the organizational chart upon which top-level manager or administrator is based. “It is not whether a person definitely establishes policy but rather the individual’s regular participation in the policy-making process which determines managerial status. Absolute discretion or authority to act is not a prerequisite to finding that an individual formulates policy. What matters is the fact of participation at a fundamental level in the decision making process, not the participant’s batting average in having his views prevail.” State of New York, supra.

Id., at 144-45.

5. Based upon a review of the duties and responsibilities of Position No. WS-04792, Waterworks Information Systems Manager, EM-03, the Board concludes that the position is at or near the top of an ongoing complex agency and will manage the Department of Water Supply’s Information Systems Branch. The position will exercise considerable discretion in directing and

coordinating the activities of the branch and will formulate and implement program policies, guidelines, procedures, and objectives relating to the department's overall information technology system. As such, the position will have significant authority and latitude for individual initiative and independent judgment in the overall administration of the branch. Based on the position's respective duties and responsibilities, the Board concludes that the position is a top-level managerial position and should be excluded from bargaining unit 13 and the coverage of HRS Chapter 89.

ORDER

Position No. WS-04792, Waterworks Information Systems Manager, EM-03, is hereby excluded from collective bargaining unit 13, and the coverage of HRS Chapter 89 as a top-level managerial employee.

DATED: Honolulu, Hawaii, _____ October 6, 2008 _____.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

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