

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

COUNTY OF HAWAII,

Petitioner.

CASE NO. RA-13-229

DECISION NO. 473

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On April 17, 2007, 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. OO-04724, Vehicle Registration and Licensing Manager, EM-03, warrants exclusion from collective bargaining as a top-level managerial position. The position is the head of the new Vehicle Registration and Licensing Division, Department of Finance, County of Hawaii and will be responsible for planning, implementing, and administering policies, procedures, guidelines, and objectives for the County's driver licensing, bicycle and dog licensing programs. The position will oversee the division's administrative functions, including fiscal and personnel matters. 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) concurs with the transfer of the position from included to excluded status.

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. OO-04724, Vehicle Registration and Licensing Manager, EM-03, the position plans, directs and coordinates the activities of the Motor Vehicle and Licensing Division, which

includes the driver licensing, financial responsibility, periodic motor vehicle control inspection, motor vehicle registration, business licenses, and bicycle and dog licensing programs; develops and implements policies, procedures, and regulations for the various programs, and performs other duties as assigned. The position reports directly to the Finance Director.

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

- a. Plans, organizes, and directs through subordinate supervisors, various program activities including the collection of fees, issuance of permits, accounting, and management of programs related to the motor vehicle program, driver license program, motor vehicle inspection program, and other public license programs such as, but not limited to, bicycle, dog and business licenses, and the taxi permit program. Plans and develops program policies, directives, operational procedures, and goals and objectives for the division, and monitors the activities to ensure efficient delivery of services. 25%.
- b.
 - 1) Supervises and coordinates the operations and staff performance to ensure the efficient, accurate, and timely issuance, collection, deposits, and payments of the various sections' income; ensures the division staff provides excellent customer satisfaction and communication between sections. May conduct periodic site visits and/or audits to ensure the accuracy and timely deposits of fees collected, and program guidelines are accurately followed. Determines organization and staffing needs for the division. Conducts staff meetings and maintains effective communication with staff to promote an effective team. Tracks and analyzes performance measures.
 - 2) Directs the personnel function for the division; recommends personnel actions such as hiring, promotions, transfers, disciplinary actions, and terminations; prepares and meets with employees to discuss performance appraisals; counsels or coordinates training; investigates employee misconduct complaints and disciplines as necessary; oversees a safety program to ensure a health and safe environment. 25%
- c. Oversees the division's fiscal, equipment, and inventory functions; prepares, justifies, and monitors the division's annual budget; plans and develops division's long range plans; researches and applies for grants; monitors grant funding and prepares all required reports. Develops and recommends, and implements revenue accounting controls to ensure

proper fiscal management; reviews all accounting and statistical records for completeness, accuracy, and timeliness of deposits; monitors adherence to accounting and program controls. Directs the preparation and maintenance of all operational reports and records; plans and coordinates updates of the computerized functions and activities affecting the various programs. 20%

- d. Keeps abreast of all laws, regulations, and rulings on matters related to the various programs; determines the impact on the County's programs; drafts changes to ordinance, policies and procedures as necessary. Serves as the principal resource regarding the motor vehicle and licensing programs and provides technical advice to County officials and employees. Represents the department in meetings with government officials and other personnel related to the programs of the division. Represents the division at Council meetings, public hearings, or community organization meetings, and maintains effective public relations. 20%
- e. Plans and develops an educational and informational program for the public; prepares informational brochures and other media such as a website with program information and forms for the public to access. 5%
- f. Performs other related duties as assigned. 5%.

Exhibit B.

- 4. By letter dated February 8, 2008, Sharon T. Morris (Morris), Hawaii Division Chief, HGEA, acknowledged the receipt of the County's request for concurrence with the proposed exclusion of the instant position and concurred with the exclusion (based on the personnel responsibilities of the position). Exhibit A. Morris indicated that the Union's concurrence would be faxed by the Oahu office. Id. Morris also requested the further review of the classification and pricing of the position. Id.
- 5. By letter dated April 22, 2008, the Board Chair informed Randy Perreira, Executive Director, HGEA, that the County filed the instant petition and requesting an acknowledgment of HGEA's concurrence with the position's exclusion. Thereafter on April 25, 2008, the Board received the letter with HGEA's concurrence signed by Nora A. Nomura for Randy Perreira. The Board includes the foregoing letter in the record of these proceedings.

6. According to the class specifications, the Vehicle Registration and Licensing Manager, EM-03, class plans, directs, and coordinates the activities of the Vehicle Registration and Licensing Division, which includes the driver licensing, financial responsibility, periodic motor vehicle control inspection, motor vehicle registration, business licenses, and bicycle and dog licensing programs; develops and implements policies, procedures, and regulations for the various programs. The class is distinguished by its responsibility to administer the activities relating to the driver licensing, financial responsibility, periodic, motor vehicle control inspection, motor vehicle registration, business licenses, and bicycle and dog licensing programs for the County of Hawaii.

Exhibit C.

6. According to the Position Organization Charts for the Vehicle Registration & Licensing Division, Department of Finance, the position is at the head of the organization.

Exhibit D.

7. The Board finds that Position No. OO-04724, Vehicle Registration and Licensing Manager, EM-03, will exercise considerable discretion in directing the work of the Vehicle Registration and Licensing Division, which includes the County's driver licensing, bicycle and dog licensing programs. The position will also develop and 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.

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. OO-04724, Vehicle Registration and Licensing Manager, EM-03, the Board concludes that the position is at or near the top of an ongoing complex agency and will manage Vehicle Registration and Licensing Division of the County. Thus, the position will exercise considerable discretion in directing and coordinating the activities of the Motor Vehicle and Licensing Division, which includes the driver licensing, financial responsibility, periodic motor vehicle control inspection, motor vehicle registration, business licenses, and bicycle and dog licensing programs. In addition, the position oversees the administrative functions of the Division, including fiscal and personnel matters. As such, the position will have significant authority and latitude for individual initiative and independent judgment in the overall administration and operations management of the Bureau. Based on the position's respective duties and responsibilities, the Board concludes that each position is a top-level managerial position and should be excluded from bargaining unit 13 and coverage under HRS Chapter 89.

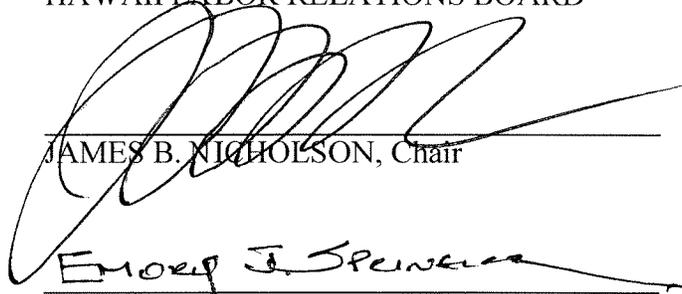
ORDER

Position No. OO-04724, Vehicle Registration and Licensing Manager, EM-03, is hereby excluded from collective bargaining unit 13, and the coverage of HRS Chapter 89 as a top-level managerial employee.

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DATED: Honolulu, Hawaii, May 20, 2008

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

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