

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)
)
COUNTY OF HAWAII,)
)
Petitioner,) Case No. RA-13-6
)
and) RA-13-7
)
HAWAII GOVERNMENT EMPLOYEES')
ASSOCIATION, LOCAL 152,) Decision No. 39
HGEA/AFSCME,)
)
Respondent.)
_____)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER

Cases RA-13-6 and RA-13-7 were filed by the County of Hawaii (hereafter Petitioner) seeking the exclusion of three employees of the County of Hawaii from Unit 13. Said employees presently are in the unit.

The Hawaii Government Employees' Association, Local 152, HGEA/AFSCME (hereafter HGEA) is the respondent herein.

Pursuant to Chapter 89, Hawaii Revised Statutes (hereafter HRS), the Hawaii Public Employment Relations Board (hereafter Board) held a hearing on said cases on September 11 and 12, 1973, in Honolulu. The Board has completed a review of the record, exhibits, and briefs submitted by both parties and makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

The Petitioner is a public employer within the meaning of Chapter 89, HRS.

The HGEA is the exclusive bargaining representative of Unit 13 (professional and scientific employees other than registered professional nurses).

The three employees of the Petitioner sought to be excluded from Unit 13 are: Myron O. Isherwood, Sr., Civil Defense Administrator, SR-26, and Gladys E. Bowell, County Executive on Aging, SR-24, in Case RA-13-6, and Harry Kim, County Director, Law Enforcement Assistant Administration in Case RA-13-7.

1. Myron O. Isherwood, Sr.

Mr. Isherwood is the administrator of the Hawaii County Civil Defense Agency. He has held this position since March of 1961.

Section 128-12, HRS, requires that each political subdivision establish local civil defense organizations in accordance with state civil defense plans and programs. This section further requires that a deputy director for each political subdivision be directly responsible for the function of the organization. Additionally, Section 128-13, HRS, authorizes the provision of an assistant for the deputy director.

Pursuant to Section 128-12 and 13, HRS, Hawaii County adopted an ordinance establishing the County Civil Defense Agency (Cty. Ex. 9). This 1967 ordinance provided that the deputy director would be the head of the agency and that a full-time civil defense administrator would be his chief administrative assistant. The deputy director for Hawaii County is Mayor Shunichi Kimura. The civil defense administrator is Mr. Isherwood.

This Board finds that as the administrator of the Hawaii County Civil Defense Agency, Mr. Isherwood's responsibilities are supervisory in nature. (Tr. II: 160-162).

Plans are prepared by numerous federal, state, county and community organizations which might be participating in any civil defense action. As administrator, Mr. Isherwood does not direct the various organizations with regard to their individual civil defense plans but rather works with them and assists them in the preparation of their plans and in meeting deadlines. Upon obtaining all of the plans from the various organizations, he reviews, edits, and conforms them to a proper format. The plans are then coordinated by Isherwood. (Tr. II: 143-147). Upon completion of this plan gathering and coordinating duty, the administrator submits the plans to the State Civil Defense Agency for review and a determination as to whether they are in consonance with other state and national plans. (Tr. II: 153).

In the event of a disaster, Mr. Isherwood is under a duty to immediately inform the State Civil Defense Office. His office must also monitor the activities of the involved organizations. However, he has no authority to direct the various organizations though he may make suggestions and make progress reports to the State. (Tr. II: 153-155).

Additionally, Mr. Isherwood attends statewide civil defense conferences several times annually. However, these conferences are for information purposes only; policies are not formulated. (Tr. II: 158-159).

2. Gladys E. Bowell

According to the testimony given at the hearing, Miss Bowell's official title is County Executive on Aging. (Tr. I: 77).

As the head of a staff of nine full-time and eleven part-time employees, she functions basically as the executive secretary to the County Committee on Aging which is headed by a separate chairman. (Tr. I: 137).

Miss Bowell's primary duty is to collect information for the State Committee on Aging. (Tr. I: 126). Additionally, she advises the Mayor and the Council, and works with a planning team in drafting a comprehensive plan for older people in the county. (Tr. I: 102). Miss Bowell does not, however, have the authority to reject or exercise any control over any proposal made by any agency.

3. Harry Kim

As County Director of the Law Enforcement Assistance Administration (LEAA), Harry Kim directs a staff of six employees. Approximately one-third of Mr. Kim's duties involve the LEAA. As Planner-Coordinator his primary goal is to formulate the annual Hawaii County Comprehensive Plans which are submitted to the State Law Enforcement Planning Agency (SLEPA.) (Tr. I: 151).

The remaining two-thirds of his duties are devoted to actual administration of the LEAA programs and to special duties assigned to him by the Mayor. (Tr. I: 152).

These assignments involve him as the administrative assistant to the Committee on Youth, the Committee on the Status of Women, the Board of Ethics, and the Hawaii County Economic Opportunity Council Board (ACEOC). (Tr. I: 152). Additionally, and significantly for the purposes of this case, Mr. Kim is in charge of the many-faceted Multi-Purpose Center Program which includes the Community College Early Admissions

Program, the Interim-Work Program, the Psychological Examiner and the Foster Home Program. (Tr. I: 158). (Tr. II: 4-5).

CONCLUSIONS OF LAW

The Petitioner contends that all three employees clearly qualify for exclusion under Section 89-6(c), HRS, as amended by Act 36, SLH 1973. That section states, in relevant part:

"No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, . . . shall be included in any appropriate bargaining unit or entitled to coverage under this chapter."

The issue in the instant case is whether or not any of the above-mentioned Hawaii County employees fall within the relevant exclusionary language of Section 89-6(c), HRS. This Board must therefore determine whether the evidence in the record sufficiently warrants the exclusion of any of the above-mentioned public employees from Unit 13.

The Petitioner contends that all three of the public employees are agency chiefs coming within the language, "administrative officers, director or chief of a . . . county department or chief of a . . . county department or agency or any major division thereof;" in Section 89-6(c), HRS, and, therefore, should be excluded. The HGEA, on the other hand, contends that the critical issue is whether or not the employees in question are excludable as top-level managerial and administrative personnel.

In view of this conflict in the interpretation of Section 89-6(c), HRS, a review of that section is essential.

A close reading of Section 89-6(c) reveals a legislative intent to exclude only those officers or employees who are in fact top-level managerial and administrative personnel. The words in Section 89-6(c) "any other top-level . . ." modify and clarify the meaning of administrative officer, director or chief. Though the statute uses terms such as administrative officer, director, and chief, a person possessing such a title is not automatically to be excluded from an appropriate bargaining unit. Along with the title, he must possess top-level managerial or administrative responsibilities. In Hawaii Government Employees' Association, et al, HPERB Decision No. 18, this Board held that the exclusionary language of Section 89-6(c) must be narrowly construed to effect the purposes of Chapter 89. Only when an employee has managerial and administrative responsibilities substantially greater than supervisory responsibilities may he be excluded. The Board further held that an excludable managerial or administrative employee's duties must involve the formulation, determination and effectuation of management policies.

In reviewing the duties of Myron O. Isherwood, Sr., Civil Defense Administrator of the Hawaii County, it does not appear to this Board that the exclusion requirements of Section 89-6(c), HRS, have been satisfied.

His duties do not entail any formulation and determination of management policy. Rather it appears that his position involves basically the coordination and monitoring of various civil defense organizations and their related activities. Even in his own opinion, his duties are merely supervisory. (Tr. II: 162).

Similarly, in the case of Gladys E. Bowell, County Executive on Aging, exclusion from Unit 13 does not appear to be warranted.

and administrative nature. His role, which is similar to his other roles in special assignments from the Mayor, involves the actual policy making of this Committee. When asked by this Board whether any restrictions were placed on his policy drafts, he stated that the state guidelines are very broad. Each county has the discretion to decide its own approach. (Tr. II: 9).

Moreover, when asked what independent authority, judgment, or discretion he had in formulating policies, Kim stated that unless the Mayor gives specific directions, he took it upon himself to interpret county policies. (Tr. II: 10).

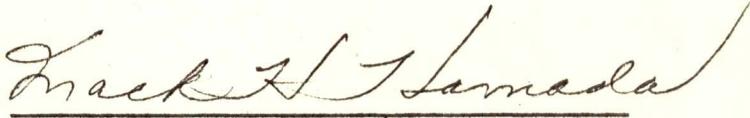
An overview of the position held by Mr. Kim indicates to this Board that, for purposes of applying Section 89-6(c), he heads a de facto department. The degree of authority and the responsibilities given to Mr. Kim make him, in the opinion of this Board, a top-level management and administration officer and as such excludable from the unit by virtue of the provisions of Section 89-6(c), HRS.

ORDER

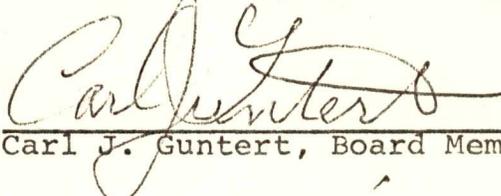
Based upon the above, this Board finds that the evidence presented in these consolidated cases does not support the exclusion of Myron O. Isherwood, Sr., and Gladys E. Bowell from Unit 13. This Board, therefore, orders the dismissal of the petition submitted in their behalf in Case RA-13-6.

However, the Board does find that the unique situation present in the case of Harry Kim does warrant exclusion. The Board therefore orders his exclusion from Unit 13.

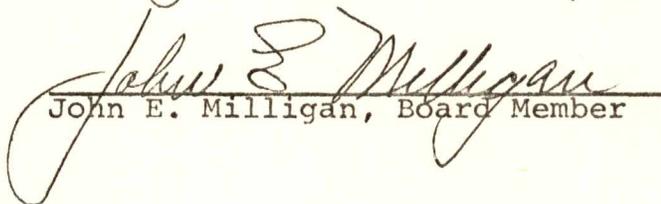
HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD



Mack H. Hamada, Chairman



Carl J. Guntert, Board Member



John E. Milligan, Board Member

Dated: December 5, 1973

Honolulu, Hawaii