

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	CASE NOS.: RA-03-77
	)	RA-13-77
MEGUMI KON, Mayor of the	)	
County of Hawaii,	)	DECISION NO. 201
	)	
Petitioner.	)	FINDINGS OF FACT, CONCLU-
	)	SIONS OF LAW AND ORDER

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FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On September 27, 1984, MEGUMI KON, Mayor of the County of Hawaii [hereinafter referred to as Petitioner or Employer] filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Public Employment Relations Board [hereinafter referred to as Board]. In its petition, Employer requested the transfer of Position No. 2708, presently a Claims Investigator-Adjustor and included in bargaining unit 3 (nonsupervisory employees in white collar positions), to bargaining unit 13 (professional and scientific employees, other than registered professional nurses). The transfer is premised upon the amendment of the position's class specifications, requiring knowledge normally acquired through study in an institution of higher learning.

Petitioner submitted the following documents with the petition:

1. Affidavit of Harry Boranian, Director of Personnel, County of Hawaii, regarding Position No. 2708, dated September 21, 1984;

2. Letter, dated July 31, 1984, from Harry Boranian to Russell Okata, Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed bargaining unit transfer (Exhibit A);

3. Position description for the Claims Investigator-Adjustor position, Corporation Counsel, County of Hawaii (Exhibit B);

4. Class specifications for the Claims Investigator-Adjustor position from the Department of Civil Service, County of Hawaii (Exhibit C); and

5. Table of Organization for the Office of the Corporation Counsel, County of Hawaii (Exhibit D).

Based on the affidavit of Harry Boranian and all documents submitted in support of the petition, the Board makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

Petitioner is the public employer, as defined in Subsection 89-2(9), Hawaii Revised Statutes [hereinafter referred to as HRS], of employees of the County of Hawaii, which includes employees in bargaining units 3 and 13.

The HGEA is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of employees in bargaining units 3 and 13.

The HGEA concurs with Petitioner's proposed transfer of the subject position from bargaining unit 3 to bargaining unit

13 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit A.

Position No. 2708 is presently classified as a Claims Investigator-Adjustor and located in the Office of the Corporation Counsel, County of Hawaii. As a result of reviewing the position's amended class specifications, requiring knowledge of an advanced type customarily acquired through study in an institution of higher learning, and its duties and responsibilities, Position No. 2708 is proposed for transfer from inclusion in bargaining unit 3 to bargaining unit 13. Petitioner's Exhibits B and C.

The Claims Investigator-Adjustor position is primarily responsible for investigating, adjusting and negotiating the settlement of claims of real and personal property damage for the County of Hawaii [hereinafter referred to as County], and handling personal injury cases not covered by insurance. Petitioner's Exhibit C.

More specifically, Position No. 2708 exercises considerable initiative and independent judgment in performing the following duties:

1. Interviewing witnesses and evaluating physical evidence to ascertain the extent of claims by and against the County and recommending acceptance or rejection of liability to County attorneys;
2. Gathering facts to enable County attorneys to determine whether requests for legal aid should be furnished to County officers and employees;



3. Checking with the appropriate agencies to locate assets which may be subject to claims by the County and reporting, with recommendations, the ability of persons to pay;

4. Assisting in court trials, and obtaining and classifying evidence in condemnation cases, paternity cases, injunction suits and reciprocal support cases;

5. Following up on persons delinquent in payment of support monies and claim settlements, and making recommendations to attorneys;

6. Investigating, ascertaining facts, and making recommendations to attorneys in workers' compensation cases and condemnation proceedings;

7. Conducting special administrative investigations involving personnel matters within the County; and

8. Preparing and submitting reports on all investigations and adjustments. Petitioner's Exhibit B.

The pertinent minimum qualification requirements for the Claims Investigator-Adjustor from the position's class specifications are as follows:

1. Education and experience from an accredited college or equivalent with major work in social work, sociology, psychology, public administration or a related field, and three years of investigational or law enforcement work, one of which involved investigation and adjustment of claims;

2. Knowledge of investigation, interview and interrogation methods and techniques, rules of evidence, elementary laws

of real property and torts, court procedures, and human relations and behavior; and

3. Ability to interpret and apply laws, rules and regulations; gather, analyze and evaluate facts; make sound observations and mature judgments; deal tactfully and effectively with people; and write accurate, clear and concise reports. Petitioner's Exhibit C.

Based on these duties and responsibilities, and minimum qualification requirements, the position has been proposed for transfer from inclusion in bargaining unit 3 to bargaining unit 13.

#### CONCLUSIONS OF LAW

Petitioner has requested the transfer of Position No. 2708 from inclusion in bargaining unit 3 to bargaining unit 13, as the position's class specifications have been amended, requiring additional minimum qualifications.

Subsection 89-6(a), HRS, establishes 13 public employee bargaining units and provides, in part:

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit.

\* \* \*

(3) Nonsupervisory employees in white collar positions;

\* \* \*

(13) Professional and scientific employees, other than registered professional nurses; . . .

The Board noted in Decision No. 14, Hawaii Government Employees' Association, 1 HPERB 103 (1972), that the following employees are to be included in bargaining unit 13:

All professional and scientific employees employed by the State of Hawaii, City and County of Honolulu, and the Counties of Hawaii, Maui, and Kauai, except those determined not to be eligible to vote.

Id. at 104.

Subsection 89-2(17), HRS, sets forth the definition of "professional employee" and reads as follows:

"Professional employee" includes (A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; . . .

After a complete review of the duties and responsibilities, and amended class specifications of Position No. 2708, the Board concludes that the position is responsible for performing claims investigation, claims examination and adjusting, and other investigative work. As such, the Board concludes the position is engaged in work predominantly intellectual and varied in character, requiring the consistent exercise of discretion and judgment. The Board is also convinced that the output of the



position's duties and responsibilities cannot be standardized in relation to a given period of time, and requires knowledge of an advanced type customarily acquired through study in an institution of higher learning as indicated by the revised minimum qualification requirements. Accordingly, the Board concludes that the duties and responsibilities, and amended class specifications of Position No. 2708 reflect those of a "professional employee." Thus, as the County has proposed the transfer of the subject position to a unit which requires specialized training and study, the position would appropriately be placed in bargaining unit 13.

ORDER

Position No. 2708 is transferred from inclusion in bargaining unit 3 to bargaining unit 13.

The effective date of the transfer shall not be earlier than the date of this decision.

DATED: Honolulu, Hawaii, December 26, 1984.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES R. CARRAS, Board Member

MEGUMI KON, Mayor of the County of Hawaii  
CASE NOS.: RA-03-77, RA-13-77  
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