

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NOS.: RA-04-81
)	RA-13-81
MEGUMI KON, Mayor of the)	
County of Hawaii,)	
)	
Petitioner.)	
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In the Matter of)	CASE NO. RA-13-80
)	
MEGUMI KON, Mayor of the)	DECISION NO. 204
County of Hawaii,)	
)	
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 two Petitions for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Public Employment Relations Board [hereinafter referred to as Board].

In its first petition, Case Nos. RA-04-81 and RA-13-81, Employer requested the transfer of Position No. 2397, presently a Special Investigator II, and included in bargaining unit 4 (Supervisory 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. 2397, dated September 21, 1984;

2. Letter, dated September 28, 1983, 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 Special Investigator II position, Office of the Prosecuting Attorney, County of Hawaii (Exhibit B);

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

5. Table of Organization for the Office of the Prosecuting Attorney, County of Hawaii (Exhibit D).

In its second petition, Case No. RA-13-80, Employer requested that Position No. 2397, Special Investigator II, be excluded from bargaining unit 13 as the position is a top-level managerial position as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS].

Petitioner submitted the following documents with the petition:

1. Affidavit of Harry Boranian, Director of Personnel, County of Hawaii, regarding Position No. 2397, dated September 21, 1984;

2. Letter, dated October 14, 1983, from Harry Boranian to Russell Okata, HGEA, requesting the HGEA's concurrence with the proposed exclusion of Position No. 2397 from bargaining unit 13 (Exhibit A);

3. Position description for the Special Investigator II position, Office of the Prosecuting Attorney, County of Hawaii, identical to Exhibit B in Case Nos. RA-04-81 and RA-13-81 (Exhibit B);

4. Class specifications for the Special Investigator II position from the Department of Civil Service, County of Hawaii, identical to Exhibit C in Case Nos. RA-04-81 and RA-13-81 (Exhibit C); and

5. Table of Organization for the Office of the Prosecuting Attorney, County of Hawaii, identical to Exhibit D in Case Nos. RA-04-81 and RA-13-81 (Exhibit D).

As the petitions involve the duties and responsibilities of the same position and consolidation of the petitions is conducive to their disposition, the Board hereby consolidates the subject petitions pursuant to Administrative Rules Subsection 12-42-8(g) (13).

Based on the affidavits of Harry Boranian and all documents submitted in support of the petitions, 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), HRS, of employees of the County of Hawaii, which includes employees in bargaining units 4 and 13.

The HGEA is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of employees in bargaining units 4 and 13.

The HGEA concurs with Petitioner's proposed transfer of Position No. 2397 from inclusion in bargaining unit 4 to bargaining unit 13 and also, with the position's subsequent exclusion, and is deemed to have waived the right to a hearing thereon. Petitioner's two Exhibits A.

Position No. 2397 is presently classified as a Special Investigator II and located in the Office of the Prosecuting Attorney, County of Hawaii. As chief investigator, the position oversees the operations of the Investigative and Victims Assistance Units. Further, the position independently investigates highly confidential and controversial cases at the request of the Prosecuting Attorney. 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. 2397 is proposed for transfer from inclusion in bargaining unit 4 to exclusion from bargaining unit 13. Petitioner's Exhibits B and C.

Position No. 2397 exercises discretion and judgment in performing the following duties and responsibilities in the approximate percentages of time:

1. Supervisory and Administrative, 90% of the time.

- (a) Supervising the investigators by determining the direction, areas, methods and targets of investigations;

(b) Assigning and scheduling work within the division;

(c) Evaluating, developing and providing staff training and orientation;

(d) Assisting the Deputy Prosecuting Attorneys in preparation and presentation of cases in judicial proceedings through evaluation and recommendations of areas to pursue and actions to be taken;

(e) Developing and initiating programs to improve services by the investigators and victim/witness counselors;

(f) Evaluating programs initiated by the Prosecutor;

(g) Projecting and recommending budgetary requirements for the division;

(h) Acting as liaison between all law enforcement, corrections and judicial agencies;

(i) Assisting the Deputy Prosecuting Attorneys in the preparation of legal instruments relative to investigative functions;

(j) Coordinating the victim/witness program with other jurisdictions; and

(k) Consulting with public and non-profit private agencies on matters of assistance to victims of crimes.

2. Investigative, 8% of the time.

(a) Initiating and conducting special investigations of the most complex, confidential or controversial nature.

3. Other duties as required, 2% of the time. Petitioner's Exhibit B.

The pertinent minimum qualification requirements for the Special Investigator II from the position's class specifications are as follows:

1. Education and experience substantially equivalent to graduation from an accredited college or equivalent with major work in social work, sociology, psychology, public administration or a related field, and five years of investigational or law enforcement experience, or supplemented by supervisory experience in security, intelligence or criminal investigations;

2. Knowledge of supervision principles, investigation and interview techniques, court procedures and legal instruments, rules of legal evidence, jurisdiction and functions of law enforcement agencies, organization and operation of investigation activities, human relations and behavior, and community resources servicing criminal justice system programs; and

3. Ability to deal effectively with people, plan and organize the work of others, interpret and apply laws, rules and regulations, analyze and evaluate facts, and instruct others in all phases of investigation. 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 4 to exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

Petitioner has first requested the transfer of Position No. 2397 from inclusion in bargaining unit 4 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:

* * *

(4) Supervisory 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 of Position No. 2397, and amended class specifications, the Board concludes that the position oversees the operations of the Investigative and Victims Assistance Units, and independently investigates highly confidential and controversial cases at the request of the Prosecuting Attorney. Further, the position is engaged in predominantly intellectual work which is 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. Accordingly, the Board concludes that the duties and responsibilities, and amended class specifications of Position No. 2397 reflect those of a "professional employee." Thus, since the position requires specialized training and study, it would appropriately be placed in bargaining unit 13 if included in collective bargaining.

However, Subsection 89-6(c), HRS, specifies which employees are to be excluded from any appropriate bargaining unit and coverage under Chapter 89 and provides in part:

No . . . top-level managerial and administrative personnel . . . shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

In interpreting the exclusionary language of Subsection 89-6(c), HRS, 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].

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 ongoing complex agency or major program and formulate or determine policy for that 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.

After a complete review of the duties and responsibilities of the Special Investigator II, the Board concludes that the position is at the top of two major subdivisions within the Office of the Prosecuting Attorney and, as such, directs the work of the Investigative and Victims Assistance Units. Accordingly, the position exercises considerable discretion and judgment in determining the methods, means and personnel to carry out the program's policies. Thus, the Board concludes that the position is a top-level managerial position which should be, under the provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

ORDER


The bargaining unit designation of Special Investigator II, Position No. 2397, is amended from inclusion in bargaining unit 4 to exclusion from bargaining unit 13.


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

MEGUMI KON, Mayor of the County of Hawaii, CASE NOS.: RA-04-81,
RA-13-81; MEGUMI KON, Mayor of the County of Hawaii, CASE NO.
RA-13-80
DECISION NO. 204

DATED: Honolulu, Hawaii, January 16, 1985.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


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