

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NO. RA-12-78
)	
MEGUMI KON, Mayor, County)	DECISION NO. 205
of Hawaii,)	
)	FINDINGS OF FACT,
Petitioner.)	CONCLUSIONS OF LAW AND ORDER
)	

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 that Position No. 918, entitled Police Captain, Hawaii County Police Department, be excluded from bargaining unit 12 (Police Officers) as it is a position concerned with confidential matters affecting employee-employer relations as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS].

Petitioner submitted along with the petition the following documents:

1. Affidavit of Harry Boranian, Director of Personnel, County of Hawaii, regarding Position No. 918, dated September 21, 1984;
2. Letter, dated January 25, 1983, from Harry Boranian to Nelson K. Moku, Jr., State of Hawaii Organization of Police

Officers [hereinafter referred to as SHOPO], requesting the SHOPO's concurrence with the proposed exclusion of Position No. 918 (Exhibit A);

3. Position description for the Police Captain position, Police Department, County of Hawaii (Exhibit B);

4. Class specifications for the Police Captain position from the Department of Personnel Services, County of Hawaii (Exhibit C); and

5. Organization and Personnel Charts for the Hawaii County Police Department (Exhibit D).

On December 24, 1984, Petitioner filed an Amended Affidavit of Harry Boranian providing additional information to the Affidavit filed on September 27, 1984.

Based on the amended 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), HRS, of employees of the County of Hawaii, which includes employees in bargaining unit 12.

The SHOPO is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of employees in bargaining unit 12.

The SHOPO concurs with Petitioner's proposed exclusion of Position No. 918 from bargaining unit 12 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit A.

Position No. 918 is presently classified as a Police Captain and located in the Records and Identification Division, Administrative Bureau, of the Hawaii County Police Department. The position's duties and responsibilities include:

1. Commanding the records function;
2. Assisting in the direction and coordination of activities relating to police identification records and reports, firearm registration, and custody of physical evidence;
3. Maintaining confidentiality of records and reports, as required; and
4. Analyzing existing records procedures, and formulating and effectuating management policy.

The position's personnel-related duties include:

1. Performing or providing assistance in internal personnel investigations, and other administrative, budgetary and personnel management duties;
2. Evaluating the performance of subordinates and maintaining internal discipline; and
3. Advising subordinate supervisors on their problems and disposition. Petitioner's Exhibit B.

Based on these duties and responsibilities, the position was classified within the County of Hawaii's Police Captain series and is proposed for exclusion from bargaining unit 12. Petitioner's Exhibit C.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position No. 918 from bargaining unit 12 as the position is concerned with confidential matters affecting employee-employer relations.

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:

* * *

(12) Police officers;. . .

The Board noted in Decision Nos. 18A and 18B, Hawaii Government Employees' Association, 1 HPERB 158 (1972), that the following County of Hawaii employees are to be included in bargaining unit 12:

Included: Non-Supervisory All Police Officers I and II, all Police Service Officers and all Detectives.

Supervisory All Sergeants except Sgt. Benevedas, all Lieutenants except the Personnel and Training Officer, all Captains except the Captain in charge of Research and Development, and the Captain in charge of C.I.D., including employees who did not work during the designated payroll period because they were temporarily laid off, ill or on vacation, maternity leave or other authorized leave, and also including employees serving in the military service of the United States or on leave for

service in National Guard units
and who appear in person at the
polls.

Id. at 160.

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. . . individual concerned with confidential matters affecting employee-employer relations. . . 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 its interpretation of the legislative intent of the above cited section, the Board, in Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), stated:

Giving the subject statutory phrase its plain and ordinary meaning, the Board believes that the Legislature intended to exclude from coverage of Chapter 89, HRS, those individuals who, in the regular course of their employment, are concerned with matters "not intended for the eyes or ears of the rank and file or their negotiating representative" affecting employee-employer relations. We are of the opinion that the confidential matters must directly produce an effect upon or influence or alter employee-employer relations.

Id. at 146.

In defining what constituted confidential matters affecting employee-employer relations, the Board noted:

As to the question of the secretness of the data, it should be noted that under our law supervisors may be included in units. Hence, confidential employees must know

matters pertaining to employee-employer relations which are not made known to included supervisors. Included supervisors may have authority to exercise independent judgment respecting hiring, transfers, suspensions, layoffs, recalls, promotions, discharges, assignments, rewards, discipline, grievance adjustments and still be includable. Thus, the material with which employees must be concerned in order to be considered confidential employees under Chapter 89, HRS, must be different than that which is known by supervisors concerning such aforementioned personnel matters. . . .

The Board is of the opinion that the term employee-employer relations includes collective bargaining (contract negotiations, application and administration) and all matters affecting employee-employer relations which are made non-negotiable by Subsection 89-9(d), HRS, but upon which the employer is required by Subsection 89-9(c), HRS, to consult with the unions.

Id. at 147.

As summarized in Decision No. 95, supra, the following criteria must be met to designate an employee as confidential for exclusion pursuant to Subsection 89-6(c), HRS:

1. Working in the regular course of one's employment with matters
2. which are not intended for the eyes and ears of the rank and file and the unions
3. and which matters are capable of producing an affect or influence upon or change in employee-employer relations
4. such work normally being performed as a subordinate to an individual who is a managerial employee who formulates and effectuates management policy in the field of employment relations.

Id. at 147.

After a complete review of the duties and responsibilities of the Police Captain, Position No. 918, the Board concludes that the position performs internal personnel investigations for the department. Thus, the position works in the regular course of employment with matters capable of resulting in serious adverse personnel actions for the officers involved. This duty encompasses matters not intended for the rank-and-file and is performed, we believe, for the police chief, as the appointing authority. Thus, we conclude the position is concerned with confidential matters affecting employee-employer relations and should be, under the provisions of Subsection 89-6(c), HRS, and Decision No. 95, excluded from bargaining unit 12 and coverage under Chapter 89, HRS.

ORDER

Position No. 918, Police Captain, is excluded from bargaining unit 12.

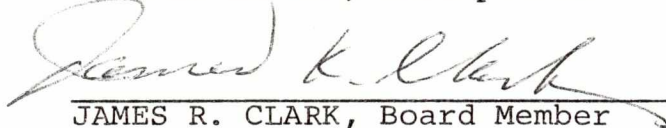
The effective date of the transfer shall not be earlier than the date of this decision.

DATED: Honolulu, Hawaii, January 22, 1985.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD



MACK H. HAMADA, Chairperson



JAMES R. CLARK, Board Member



JAMES R. CARRAS, Board Member

MEGUMI KON, Mayor, County of Hawaii; CASE NO. RA-12-78
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
DECISION NO. 205

Copies sent to:

Harry Boranian
Joyce Najita, IRC
Robert Hasegawa, CLEAR
State Archives
University of Hawaii
Publication Distribution Center
Library of Congress