

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-93
)	
DANTE CARPENTER, Mayor,)	DECISION NO. 213
County of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

On February 6, 1986, DANTE CARPENTER, 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 Labor Relations Board [hereinafter referred to as Board]. In its petition, Employer requested that Position No. 3043, Assistant Real Property Tax Administrator, previously a Real Property Appraiser V, be excluded from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses) 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. 3043, dated January 30, 1986;

2. Letter, dated October 21, 1985, from Harry Boranian to Russell Okata, Executive Director, Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed exclusion of Position No. 3043 (Exhibit A);

3. Position description for the Real Property Appraiser V, County of Hawaii (Exhibit B);

4. Class specifications for the Assistant County Real Property Tax Administrator, County of Hawaii (Exhibit C); and

5. Table of Organization, Real Property Tax Division, 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), HRS, of the employees of the County of Hawaii, which includes employees in bargaining unit 13.

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

The HGEA concurs with the Petitioner's proposed exclusion of Position No. 3043 from bargaining unit 13 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit A.

Position No. 3043 is located in the Real Property Tax Division, Department of Finance, County of Hawaii and assists the Division Chief in planning and directing the appraisal and assessment of real property, and the accounting and collection of real property taxes. The position is primarily responsible for the following duties which encompass approximately 60% of the work time:

1. Planning, directing, and supervising daily operations and activities relating to the County's tax assessment and collection program;
2. Evaluating program requirements and recommending changes and improvements to operational practices and procedures;
3. Assisting the division chief in conducting the review and development of major policies and legislation affecting the County's real property tax assessment and collection functions;
4. Providing administrative assistance and serving as technical resource to the division chief and the director on matters relating to real property appraisal and assessments; and
5. Participating in meetings involving the review, evaluation and implementation of laws, ordinances, rules and regulations relating to the assessment program.

The position is also responsible for the following duties:

1. Planning and coordinating the schedule of appellate case hearings for the Board of Taxation Review, submitting and defending assessments of all real property within the County,

advising and resolving disputes or disagreements relating to appraisals or assessments referred by subordinates, taxpayers, and the general public;

2. Assisting appraisers in solving difficult and complex assignments, appraising selected properties, preparing technical and administrative reports for the division chief, and submitting reports on assessment and collection activities; and

3. Directing and developing appraiser training and development programs, coordinating budget and personnel requirements for the division, and representing the division chief at meetings and conferences. Petitioner's Exhibit B and C.

Based on these duties and responsibilities, the position is proposed for exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position No. 3043 from bargaining unit 13 as the position is a top-level managerial position.

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 the 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 Assistant County Real Property Tax Administrator, the Board concludes that as the position assists the division chief in directing the work of the Real Property Tax Division, the position is at or near the top of an on-going complex agency and assists in formulating and determining policies for that agency. Further, in directing the work of the agency, the position exercises considerable discretion to determine the means, methods, and personnel to carry out the agency policy. Accordingly, the Board concludes that the position is a top-level managerial and administrative position. Thus, the position 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 position description for Position No. 3043 should reflect the appropriate class title, Assistant County Real Property Tax Administrator.

Position No. 3043, Assistant County Real Property Tax Administrator, is excluded from bargaining unit 13.

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

DATED: Honolulu, Hawaii, February 28, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson

DANTE CARPENTER, Mayor, County of Hawaii, Petitioner
CASE NO. RA-13-93
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JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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