

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-10-99
)	
GEORGE R. ARIYOSHI, Governor,)	DECISION NO. 215
State of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On April 28, 1986, GEORGE R. ARIYOSHI, Governor, State 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 Nos. 2545, 2564, 2577, 2599, 5649, 25469, 25470, 25471, 25472, 25474, 25988, 28215, 28484, 29258, 36343 and 37106, each entitled Adult Corrections Officer VI, be excluded from bargaining unit 10 (Nonprofessional hospital and institutional workers) as they are top-level managerial positions and also, positions concerned with confidential matters, 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 James H. Takushi, Director of the Department of Personnel Services, State of Hawaii, regarding Position Nos. 2545, 2564, 2577, 2599, 5649, 25469, 25470, 25471,

25472, 25474, 25988, 28215, 28484, 29258, 36343 and 37106, dated April 25, 1986 (Employer's Exhibit 1);

2. Position Classification Form for Position No. 2545, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 2);

3. Position Classification Form for Position No. 2564, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 3);

4. Position Classification Form for Position No. 2577, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 4);

5. Position Classification Form for Position No. 2599, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 5);

6. Position Classification Form for Position No. 5649, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 6);

7. Position Classification Form for Position No. 25469, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 7);

8. Position Classification Form for Position No. 25470, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 8);

9. Position Classification Form for Position No. 25471, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 9);

10. Position Classification Form for Position No. 25472, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 10);

11. Position Classification Form for Position No. 25474, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 11);

12. Position Classification Form for Position No. 25988, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 12);

13. Position Classification Form for Position No. 28215, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 13);

14. Position Classification Form for Position No. 28484, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 14);

15. Position Classification Form for Position No. 29258, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 15);

16. Position Classification Form for Position No. 36343, and Position Description for the Adult Corrections Officer VI (Employer's Exhibit 16);

17. Position Classification Form for Position No. 37106, and Position Description for the Social Worker V (Employer's Exhibit 17); and

18. Memorandum to Gary Rodrigues, State Director, United Public Workers [hereinafter referred to as UPW], from James H. Takushi, requesting the UPW's concurrence with the

proposed exclusion of Position Nos. 2545, 2564, 2577, 2599, 5649, 25469, 25470, 25471, 25472, 25474, 25988, 28215, 28484, 29258, 36343 and 37106 (Employer's Exhibit 18).

Based on the affidavit of James H. Takushi 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 State of Hawaii, which includes employees in bargaining unit 10.

The UPW is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of employees in bargaining unit 10.

The UPW concurs with Petitioner's proposed exclusion of Position Nos. 2545, 2564, 2577, 2599, 5649, 25469, 25470, 25471, 25472, 25474, 25988, 28215, 28484, 29258, 36343 and 37106 from bargaining unit 10 and is deemed to have waived the right to a hearing thereon. Employer's Exhibit 18.

Position Nos. 2545, 2564, 2577, 2599, 5649, 25469, 25470, 25471, 25472, 25474, 25988, 28215, 28484, 29258, 36343 and 37106 are each classified as an Adult Corrections Officer VI and located in various correctional facilities, Corrections Division, Department of Social Services and Housing, which provide 24 hours/7 days a week custody and control of inmates.

Under the general direction of a Corrections Administrator, each Adult Corrections Officer VI performs the following duties and responsibilities:

1. Is in charge of and administers a major function or area of a close security correctional facility during a regular shift;

2. Administers and supervises the work of subordinate officers in maintaining control, security, care and custody of inmates;

3. Assures the continuing reeducation, training and redirection of inmates;

4. Assesses needs for, recommends, initiates and conducts in-service training of facility personnel;

5. Maintains and establishes procedures for the inspection and surveillance of incoming and outgoing visitors, staff, inmates, vehicles and supplies to detect the presence of contraband and escapes;

6. Assists in developing budgets for correctional care needs; and

7. Investigates complaints and acts upon infractions of rules, regulations, and irregular and suspicious occurrences by taking or recommending further action. Employer's Exhibits 2 through 17.

In addition, as the responsible employee for the organizational unit at assigned times, each position must frequently make on-the-spot decisions, such as taking immediate personnel actions and implementing policy decisions. Employer's Exhibit 18.

Based on these responsibilities, the subject positions are proposed for exclusion from bargaining unit 10.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of the subject positions from bargaining unit 10 as each position is a top-level managerial position and also, a position concerned with confidential matters.

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 on-going 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 review of the administrative/managerial duties and responsibilities of the Adult Corrections Officer VI, the Board concludes that as each position is the responsible employee for the organizational unit or correctional facility at assigned times, each position is near the top of an on-going complex agency. In this capacity, each position formulates and determines policies for that agency. Further, in directing the work of the agency, each position exercises considerable discretion to determine the means, methods and personnel to carry out agency policies. Accordingly, the Board concludes that each position is a top-level managerial position and should be, under the provisions of Subsection 89-6(c), HRS, and previous Board decisions,

excluded from bargaining unit 10 and coverage under Chapter 89, HRS.

Petitioner also seeks to have the subject positions excluded from the coverage of Chapter 89, HRS, alleging that they are individuals concerned with confidential matters affecting employee-employer relations. However, the evidence submitted by Petitioner is insufficient for this Board to determine whether the employees involved are concerned with confidential matters affecting employee-employer relations. Hence, the Board makes no conclusion on that issue.

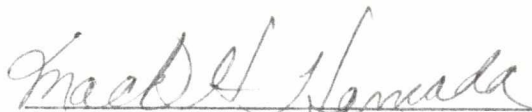
ORDER

Position Nos. 2545, 2564, 2577, 2599, 5649, 25469, 25470, 25471, 25472, 25474, 25988, 28215, 28484, 29258, 36343 and 37106, each entitled Adult Corrections Officer VI, are excluded from bargaining unit 10.

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

DATED: Honolulu, Hawaii, May 22, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson

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JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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