

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-06-111
)	
BOARD OF EDUCATION,)	DECISION NO. 226
)	
Petitioner.)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER
_____)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On August 26, 1986, the BOARD OF EDUCATION [hereinafter referred to as BOE] 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, the BOE requested that Position No. 69985, entitled Personnel Specialist III, and Position Nos. 69987 and 60043, each entitled Personnel Specialist II, be excluded from bargaining unit 6 (Educational officers and other personnel of the department of education under the same salary schedule) as they are 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 Albert S. Yoshii, Assistant Superintendent for the Office of Personnel Services, Department of Education [hereinafter referred to as DOE], regarding Position Nos. 69985, 69987, 60043, dated August 25, 1986;

2. Position Description for Position No. 69985, Personnel Specialist III, ESR-7 and Position Organization Chart for the Personnel and Industrial Relations Branch; Position Description for Position No. 69987, Personnel Specialist II, ESR-6 and Position Organization Chart for the Personnel Management Certification and Development Branch; and Position Description for Position No. 60043, Personnel Specialist II, ESR-6 and Position Organization Chart for the Personnel Management Certification and Development Branch (Exhibit A); and

3. Letter, dated September 23, 1985 from Francis M. Hatanaka, Superintendent of the DOE to Russell Okata, Executive Director of the Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed exclusion of Position Nos. 69985, 69987 and 60043 (Exhibit B).

Based on the affidavit of Albert S. Yoshii 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

The BOE is the public employer, as defined in Subsection 89-2(9), HRS, of the employees in the DOE, which includes employees in bargaining unit 6.

The HGEA is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of the employees in bargaining unit 6.

The HGEA concurs with the BOE's proposed exclusion of the three subject positions from bargaining unit 6 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit B.

According to the evidence submitted:

1. Position No. 69985, Personnel Specialist III, is located in the Employee Benefits Section, Personnel and Industrial Relations Branch, Office of Personnel Services and reports to the Branch Director, which is an excluded position. The position's duties and responsibilities that are concerned with confidential matters include:

a. Serving as the Superintendent's Designated Representative in grievance hearings;

b. Participating in the collective bargaining process by researching and supplying information in the personnel employee benefits area for the Department negotiations team, costing out employee organization proposals, and/or serving as the Department's technical expert and consultant in the personnel employee benefits area for the administration of all negotiated contracts and agreements;

c. Administering the Department's Worker Compensation Program Oahu-wide, which includes investigating and verifying industrial injury claims, processing employee industrial injury-related reports and payments, and serving as the Department's representative in controverted cases before the Workers' Compensation Division, Department of Labor; and

d. Assuming the duties and responsibilities of the Director in his absence.

2. Position No. 60043, Personnel Specialist II, is located in the Personnel Certification and Development Section, Personnel Management, Certification and Development Branch, Office of Personnel Services and reports to the Personnel Specialist III, which is an excluded position. The position's duties and responsibilities that are concerned with confidential matters include:

a. Developing, recommending and implementing management policies and procedures relating to the School Administration Training Program, which is a BOE-approved program for the training of Unit 5 members to become school administrators (Unit 6 members) which includes assessing program effectiveness, developing selection criteria and certification requirements, and formulating negotiations strategy;

b. Serving as the Superintendent's Designated Representative in grievance hearings;

c. Developing, implementing and recommending management personnel policies relating to the Educational Officer Evaluation Program which includes developing management alternatives, analyses and proposals for negotiations with the Union;

d. Assisting the Personnel Specialist III by developing and recommending policies and procedures related to personnel management and providing staff and consultative services to top management; and

e. Assuming the duties and responsibilities of the Personnel Specialist III in his absence.

3. Position No. 69987, Personnel Specialist II, is located in the Personnel Certification and Development Section, Personnel Management, Certification and Development Branch, Office of Personnel Services and reports to the Personnel Specialist III, which is an excluded position. The position's duties and responsibilities that are concerned with confidential matters include:

a. Providing technical services in the administration of the educational officer recruitment, selection and appointment program; and being responsible for the interpretation and application of qualification requirements;

b. Serving as the Superintendent's Designated Representative in grievance hearings;

c. Implementing the professional improvement leave programs for teachers, including the Teacher Exchange Program and the Fulbright Program, and the professional sabbatical improvement leave with pay for educational officers;

d. Administering the Department's certification and classification program for teachers, substitute teachers, adult education teachers, temporary teachers, educational officers, and private academic and trade school teachers and principals which includes developing rationale and management positions regarding teacher classification criteria;

e. Administering the State Approval of Teacher Education Program which includes preparing official evaluation reports, and reviewing and updating the department's standards for program approval;

f. Planning, organizing, reviewing and evaluating certification standards and procedures for teachers, in coordination with teacher education institutes; and

g. Assuming the duties and responsibilities of the Personnel Specialist III in his absence. Petitioner's Exhibits A and B.

Based on these duties and responsibilities, the three subject positions are proposed for exclusion from bargaining unit 6.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position Nos. 69985, 69987 and 60043 from bargaining unit 6 as each 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:

* * *

(6) Educational officers and other personnel of the department of education under the same salary schedule;. . .

The Board noted in Decision No. 2, Hawaii State Educational Officers Association, 1 HPERB 3 (1971), that the following employees are to be included in bargaining unit 6:

All full-time educational officers under the same salary schedule pursuant to Section 297-33.1, Hawaii Revised Statutes, as amended.

Id. at 3-4.

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, suspension, 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, by 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 Position Nos. 69985, 69987 and 60043, the Board concludes that the positions clearly work in the regular course of employment with personnel matters pertaining to employee benefits, certification and development, and sensitive personnel information. Such duties include serving as the Superintendent's Designated Representative in grievance hearings, developing and implementing policies and procedures for various programs, determining selection and evaluation criteria, and formulating negotiations strategy. Further, the positions are each under the general supervision of an excluded position. Thus, we conclude that the subject positions are each 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 6 and coverage under Chapter 89, HRS.

ORDER

Position No. 69985, entitled Personnel Specialist III, and Position Nos. 69987 and 60043, each entitled Personnel Specialist II, are excluded from bargaining unit 6.

DATED: HONOLULU, HAWAII, October 24, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson

BOARD OF EDUCATION, Petitioner; CASE NO. RA-06-111
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JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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