

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-95
)	
DANTE CARPENTER, Mayor, County)	DECISION NO. 228
of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On March 11, 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 Nos. 2045 and 2169, each entitled Civil Engineer VI, be excluded from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses) as they are top-level managerial or administrative positions 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 Nos. 2045 and 2169, dated March 6, 1986;
2. Letter, dated February 3, 1986, 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. 2045 (Exhibit A);

3. Letter, dated October 2, 1985, from Harry Boranian to Russell Okata, requesting the HGEA's concurrence with the proposed exclusion of Position No. 2169 (Exhibit A-1);

4. Position description for the Civil Engineer VI, Engineering and Surveys Division, Department of Public Works (Exhibit B);

5. Position description for the Civil Engineer VI, Building Division, Department of Public Works (Exhibit B-1);

6. Class specifications for the Civil Engineer VI, County of Hawaii (Exhibit C);

7. Table of Organization, Engineering and Surveys Division, Department of Public Works, County of Hawaii (Exhibit D); and

8. Table of Organization, Building Division, Department of Public Works, County of Hawaii (Exhibit D-1).

On October 23, 1986, Petitioner supplemented its petition and submitted a revised position description for the Civil Engineer VI (Exhibit B).

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 Petitioner's proposed exclusion of Position Nos. 2045 and 2169 from bargaining unit 13 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibits A and A-1.

Position No. 2045 is located in the Engineering and Surveys Division, Department of Public Works, County of Hawaii, and serves as principal assistant to the division head in directing the activities of a major engineering division. The position is responsible for, and performs the following duties in the approximate percentage of work time:

1. Preparing and reviewing environmental impact statements (4%);
2. Attending conferences and representing the department in meetings with commissions and community groups (2%);
3. Assisting in the development of work programs, and preparing budget and cost estimate requests (2%);
4. Preparing and supervising the preparation of work progress and cost reports (5%);

5. Determining work procedures, making work assignments, and directing the preparation and maintenance of maps and records (5%);

6. Supervising the design and construction of public works structures and facilities, which includes supervising the preparation of designs, plans, specifications, estimates and reports (40%);

7. Assisting in planning and directing the maintenance and operation of public work projects (2%);

8. Developing policies, procedures and training programs relative to construction inspections, plan review, permit issuance, and other details (5%);

9. Reviewing and responding to various Planning Department development applications concerning infrastructural requirements (20%);

10. Assuming the duties and responsibilities of the Division Chief during his absence (3%); and

11. Other related duties (12%). Petitioner's Exhibits B and C.

Based on these duties and responsibilities, Position No. 2045 is proposed for exclusion from bargaining unit 13.

Position No. 2169 is located in the Building Division, Department of Public Works, County of Hawaii, and serves as principal assistant to the division head in directing the activities of a major engineering division. The position is responsible for, and performs the following duties in the approximate percentages of work time:

1. Supervising and coordinating the overall code enforcement program relating to building construction to insure uniformity in the code enforcement program of the County (40%);

2. Developing policies, procedures and training programs relative to inspections, plan review, permit issuance, and other details to insure uniformity in the interpretation and enforcement of codes and ordinances of the County (20%);

3. Reviewing plans and specifications of buildings for code conformance (20%);

4. Submitting recommendations for amendments and adoption of codes, making field investigations when necessary, assisting in annual budget preparation, and assuming the duties of the division chief in his absence (10%); and

5. Other related duties (10%). Petitioner's Exhibits B-1 and C.

Based on these duties and responsibilities, Position No. 2169 is proposed for exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position Nos. 2045 and 2169 from bargaining unit 13 as each position is a top-level managerial or administrative 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 position . . . 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 appropriate 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 instant Civil Engineer VI positions, the Board concludes that in assisting the division head to direct the work of a major engineering division, each position is at or near the top of an on-going complex agency and assists in formulating and determining policy 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 the agency policy. Accordingly, the Board concludes that each position is a top-level managerial and administrative position. Thus, each position should be, under the provisions of Subsection 89-6, HRS, and previous Board decisions, excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

ORDER


Position Nos. 2045 and 2169, each entitled Civil Engineer VI, are excluded from bargaining unit 13.

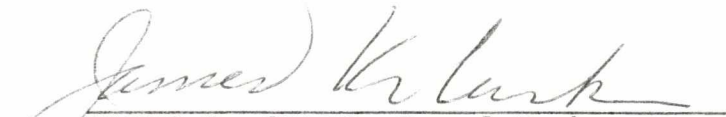
The effective date of the transfer shall not be earlier than the date of this decision.

In the Matter of DANTE CARPENTER, Petitioner
CASE NO. RA-13-95
DECISION NO. 228
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATED: Honolulu, Hawaii, November 7, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

Copies sent to:

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