

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-03-120
)	
DANTE CARPENTER, Mayor,)	DECISION NO. 236
County of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On October 7, 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. 2371, Senior Clerk-Stenographer, be excluded from bargaining unit 3 (Nonsupervisory employees in white collar positions) as it is a position 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 Harry Boranian, Director of Personnel, County of Hawaii, regarding Position No. 2371, dated October 2, 1986;

2. Letter, dated July 21, 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. 2371 (Exhibit A);

3. Position description for the Senior Clerk-Stenographer, SR-11 (Exhibit B);

4. Class specifications for the Senior Clerk-Stenographer (Exhibit C); and

5. Table of Organization, Hawaii County Police Department Headquarters (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 3.

The HGEA is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of the employees in bargaining unit 3.

The HGEA concurs with Petitioner's proposed exclusion of Position No. 2371 from bargaining unit 3 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit A.

Position No. 2371, previously a Clerk-Typist, is now classified as a Senior Clerk-Stenographer and located in the Police Department Headquarters where it is privileged to confidential information and correspondence for the Chief of Police and Deputy Chief of Police, including items pertaining to

labor relations and collective bargaining. More specifically, the position performs the following duties and responsibilities in the approximate percentages of work time:

1. Maintains daily log of correspondence and reports received by the Chief's office; refers the same to unit chiefs, districts, and division commanders for appropriate action; and makes follow-ups to secure completion dates (30%);

2. Receives and distributes incoming correspondence, reports and mail to appropriate bureaus, districts and divisions (25%);

3. Takes and transcribes dictation, and composes and edits correspondence, memoranda and departmental directives from the Chief of Police and Deputy Chief of Police (23%);

4. Receives inquiries via telephone or in person, and provides information and/or refers calls to proper bureaus, districts or divisions (8%);

5. Receives and schedules the Chief's appointments, and directs callers and visitors to the proper person or office (7%);

6. Files and purges confidential information files (5%); and

7. Assumes the duties and responsibilities of the secretary to the Chief of Police and the Deputy Chief of Police during her absence, and other related duties (2%). Petitioner's Exhibits B and C.

Based on these duties and responsibilities, the subject position has been proposed for exclusion from bargaining unit 3.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position No. 2371 from bargaining unit 3 as the position is concerned with confidential matters affecting employee-employer relations.

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.

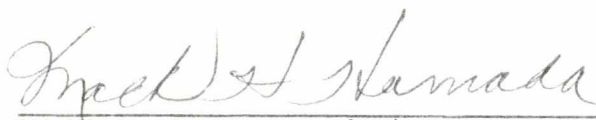
After a complete review of the duties and responsibilities of Position No. 2371, the Board concludes that the position works in the regular course of employment with confidential information and correspondence for the Chief of Police and Deputy Chief of Police, including items pertaining to labor relations and collective bargaining. Such information encompasses matters not intended for the rank-and-file and impact upon employee-employer relations. Thus, 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 3 and coverage under Chapter 89, HRS.

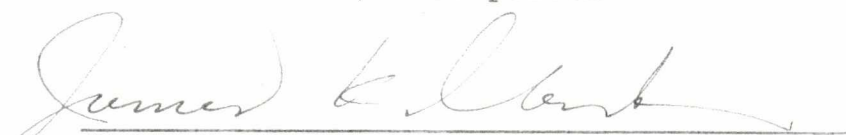
ORDER

Position No. 2371, Senior Clerk-Stenographer, is excluded from bargaining unit 3.

DATED: Honolulu, Hawaii, December 31, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member

DANTE CARPENTER, Mayor, County of Maui, Petitioner
CASE NO. RA-03-120
DECISION NO. 236
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A handwritten signature in dark ink, reading "James R. Carras", is written over a horizontal line.

JAMES R. CARRAS, Board Member

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