

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-133
)	
DANTE CARPENTER, Mayor of the)	DECISION NO. 251
County of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On April 7, 1987, DANTE CARPENTER, Mayor of the County of Hawaii [hereinafter referred to as Petitioner or Employer] by and through the Department of Personnel Services of the County of Hawaii, 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 Employer requested the exclusion of Personnel Management Specialist I, Position No. 3275, from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses) as it is a position concerned with confidential matters as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS].

The Petitioner submitted the following documents with the petition:

1. Affidavit of Harry Boranian, Director of Personnel, County of Hawaii, regarding Position No. 3275, dated April 2, 1987;

2. Letter, dated January 29, 1987, from Harry Boranian, Director of Personnel, County of Hawaii, to Russell Okata, Executive Director, Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed bargaining unit amendment (Exhibit A);

3. Position description for the Personnel Management Specialist I (Exhibit B);

4. Class specifications for the Personnel Management Specialist (Exhibit C); and

5. Position organization chart (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

The Petitioner is the public employer, as defined in Section 89-2, Hawaii Revised Statutes [hereinafter referred to as 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 Section 89-2, HRS, of the employees in bargaining unit 13.

The HGEA is in concurrence with the Petitioner's proposed exclusion of the subject position from bargaining unit 13, and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit A.

Position No. 3275, is located in the Department of Civil Service, which is responsible for the professional personnel support in the areas of labor relations and training. More specifically, this position performs the following duties in the approximate percentages of work time:

1. Reviews position descriptions to determine whether changes in classification are warranted; recommends position reallocations as appropriate; conducts desk audits; prepares audit reports; develops new class specifications; determines pay range assignments; replies and recommends to inquiries on new position classification assignments to the director; and prepares resolutions to amend salary ordinances for reallocations and new positions (50%);

2. Interprets contract provisions as requested; assists in reviewing union proposals and evaluates their impact with respect to cost, employee morale etc.; prepares scattergrams and other data that may be required for collective bargaining negotiations; assists in the development of counterproposals and alternatives which meet management's needs; researches grievances, arbitration decisions and other sources of material to determine appropriate courses of action in labor relations decisions pertaining to promotions, disciplinary actions, changes in working conditions, etc.; provides support services to county representatives, if needed, at grievance hearings, negotiation sessions, arbitration and board hearings; and prepares requests for amendments to bargaining unit designations (30%); and

3. Performs assignments as required, in other areas of personnel management such as recruitment, examination, training and labor relations; and conducts special research projects as required (20%).

The pertinent minimum qualification requirements for the Personnel Management Specialist I position from the positions' class specifications are as follows:

1. A combination of education and experience substantially equivalent to graduation from an accredited college or university with specialization in public administration, business administration, political science, psychology or a related field;

2. Two years of technical personnel experience;

3. Knowledge of public personnel administration principles and practices, including examination and position classification; pay administration techniques; merit system philosophy; laws; rules and regulations; occupational information; research and statistical method techniques; interviewing principles and techniques; governmental organization/functions; and ability to interpret and apply laws; rules and regulations; locate source material and conduct research studies; and draft examination questions and class specifications.

Based on these duties and responsibilities, and minimum qualification requirements, the position has been proposed for exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

The County of Hawaii has requested the exclusion of a new position, Position No. 3275, Personnel Management Specialist I, from bargaining unit 13, as the position deals 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:

* * *

(13) Professional and scientific employees, other than registered professional nurses.

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

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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 effect 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. 3275, the Board concludes that the position clearly regularly works with matters pertaining to position classifications and labor relations, which are not intended for the eyes and ears of the rank-and-file and the unions. These confidential duties include recommending salary reallocations, drafting studies for collective bargaining purposes, conducting research in grievance and arbitration decisions, recommending appropriate actions regarding promotions, disciplinary measures, changes in working conditions, etc., and providing staff support if needed, at grievance hearings, negotiations sessions, arbitration and board hearings. Thus, we conclude that the subject position should be, under provisions of Subsection 89-6(c), HRS, excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

ORDER

Position No. 3275, entitled Personnel Management Specialist I, is excluded from bargaining unit 13.

DANTE CARPENTER, Mayor of the County of Hawaii, Petitioner; CASE
NO. RA-13-133
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DATED: Honolulu, Hawaii, August 31, 1987.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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