

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)
)
GEORGE R. ARIYOSHI, Governor)
of the State of Hawaii,)
)
Petitioner,)
)
and)
)
HAWAII GOVERNMENT EMPLOYEES)
ASSOCIATION, AFSCME LOCAL 152,)
AFL-CIO,)
)
Intervenor.)
)

CASE NO. RA-13-106
DECISION NO. 253
FINDINGS OF FACT, CONCLU-
SIONS OF LAW AND ORDER

In the Matter of)
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GEORGE R. ARIYOSHI, Governor)
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HAWAII GOVERNMENT EMPLOYEES)
ASSOCIATION, AFSCME LOCAL 152,)
AFL-CIO,)
)
Intervenor.)
)

CASE NO. RA-13-110

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On June 10, 1986, GEORGE R. ARIYOSHI, Governor of the State of Hawaii [hereinafter referred to as Petitioner or State], filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board [hereinafter referred to as Board]. The petition requested the exclusion of District Tax Collectors (Position Nos. 1582, 1622 and 1598) from bargaining unit 13.

On July 15, 1986, Petitioner filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Board requesting the exclusion of District Tax Assessors (Position Nos. 1601, 1619 and 11428) from bargaining unit 13.

The HAWAII GOVERNMENT EMPLOYEES ASSOCIATION [hereinafter referred to as HGEA] filed Petitions for Intervention in Case Nos. RA-13-106 and RA-13-110 on July 9, 1986 and August 14, 1986, respectively. Said petitions were granted by the Board in orders dated July 25, 1986 and August 19, 1986, respectively.

Case Nos. RA-13-106 and RA-13-110 were consolidated for disposition in Order No. 606, dated August 20, 1986.

The subject case arose out of the reorganization of the Department of Taxation, State of Hawaii, which resulted in the abolishment of the excluded District Tax Administrator position located on each neighbor island and the resulting change in roles of the subject positions. The State alleges that the subject positions have assumed higher level managerial roles as a result of the reorganization. This is reflected in the revised position descriptions and the new class specifications developed for the positions, which indicate that the positions' duties involve participation in establishing policies and procedures, the uniform implementation of policies and procedures and the representation of the department to the staffs and the general public for their programs.

The HGEA maintains the position that exclusion from collective bargaining on the basis of being managerial employees

under the terms of Section 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS], is not warranted.

Hearings were held on the subject petitions on September 4 and 5, 1986.

Based on the arguments of the parties, briefs and testimony at the hearing, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioner is and was, for all times relevant, the public employer as defined in Section 89-2, HRS, of employees of the State of Hawaii, which includes employees in bargaining unit 13.

The HGEA is and was, for all times relevant, the exclusive representative as defined in Section 89-2, HRS, of employees in bargaining unit 13.

The subject positions are currently included in bargaining unit 13 (Professional and scientific employees, other than registered professional nurses), as defined in Section 89-6(a)(13), HRS.

The subject positions are currently designated as members of bargaining unit 13 and are placed in the Compliance Division, Department of Taxation.

Position Nos. 1582, 1622 and 1598 are District Tax Collectors, SR-26, and head the enforcement branches on Maui, Kauai and Hawaii, respectively. The incumbents are Mr. Stanley R. Ching, Ms. Helen K. Teraoka and Mr. Wendell D. Serrao, respectively.

Position Nos. 11428, 1619 and 1601 are District Tax Assessors, SR-26, and head the audit branches on Maui, Kauai and Hawaii, respectively. The incumbents are Ms. Janice Shinyama, Mr. Ernest Balderas and Mr. Ronald T. Yabe, respectively.

The Director and Deputy Director are at the head of the Department of Taxation. There are four staff offices, i.e., administrative services, tax research and planning, systems and procedures, and income technical. Transcript [hereinafter referred to as Tr.], Vol. 1, pp. 17-18. There are two divisions within the department, Taxpayer Services and Processing Division, and the Tax Compliance Division. The Taxpayer Services and Processing Division handles taxpayer requests and data processing. The Tax Compliance Division, in which the subject positions are located, is involved in managing the total operations on the neighbor islands and assessment and delinquent collections operations on Oahu. Tr., Vol. 1, pp. 18-19.

Neighbor island operations came under the Tax Compliance Division as a result of a departmental reorganization. Employer's Exhibit 2A; Tr., Vol. 1, pp. 17-19. The first of three reorganizations affecting the neighbor islands involved the island of Maui in December 1981. The other two islands were similarly reorganized in 1983 and 1986. Each neighbor island district was previously headed by a District Tax Administrator. Each Administrator reported to the Director. Under the reorganization, the neighbor island districts were placed within the Compliance Division and the positions of District Tax Administrator were abolished. The District Tax Assessors and Collectors

were made the new administrative heads of their respective programs in the neighbor island districts. They now report directly to the Compliance Division Chief on Oahu, instead of to a District Administrator. Employer's Exhibits 2A, 3, 4; Tr., Vol. 1, p. 59.

A reorganization proposal, dated April 6, 1981 and approved May 13, 1981, created the Compliance Division and redefined two existing positions as Taxation Compliance Administrator, Position No. 1543, and Tax Compliance Coordinator, Position No. 29071. Petitioner's Exhibit 3.

A reorganization proposal, dated November 23, 1981 and approved December 12, 1981, proposed the realignment of neighbor island district offices' reporting relationship to conform to the "Statewide divisional concept." Reasons cited for the abolishment of the District Tax Administrator I position was that the coordinative responsibility of the District Administrator's position in each district would be reduced in view of the lesser scope of responsibility as a result of the transfer of real property functions to the counties, effective July 1, 1981. Employer's Exhibits 2A through 2D. The Tax Compliance Administrator, Position No. 1543, was the former District Tax Administrator II, SR-30, which headed the Oahu District office and reported to the Director of Taxation. The Tax Compliance Coordinator, Position No. 29071, was the former Tax Collection Program Officer, SR-28, which headed the Collections Program office and reported to the Director of Taxation. Intervenor's Exhibit 3.

The Tax Compliance Coordinator serves as the Compliance Division Chief's principal staff assistant. The position's major functions are to coordinate and monitor audit and enforcement activities within the division and district offices; provide assistance by developing manuals of procedures; training and rendering guidelines and recommendations; formulate departmental policies on enforcement matters; and assist in establishing and evaluating goals and objectives. Intervenor's Exhibit 3. The position serves as a resource person for all districts, including Oahu. It assists them in interpreting the tax law, revenue rulings and court cases. It gives consultation and advice and also coordinates problem resolution involving more than one district office. The present incumbent, Richard Chiogioji, stated in testimony that he has no line authority over neighbor island operations. That authority is reserved to the Tax Compliance Administrator. Tr., Vol. 1, pp. 28-29.

The District Tax Administrator was previously responsible for three major programs. These were the audit, enforcement, and real property programs. However, in July 1981, the real property program was transferred to the several counties. As a result, in the reorganization that followed, the District Tax Assessors assumed responsibility for each district's audit program. Similarly, the District Tax Collectors assumed the responsibility for each district's enforcement program. Tr., Vol. 1, pp. 60-61. The District Tax Administrator's positions were then abolished. Tr., Vol. 1, p. 60.

The compensation plans for the State of Hawaii, dated July 1, 1981, indicate a bargaining unit designation for the subject positions of 23 which describes a Unit 13, professional and scientific, supervisory position. Employer's Exhibits 6, 7 and 8. As a result of the reorganization and changes in duties and responsibilities, reallocation to new classes was sought by the employer from the Department of Personnel Services [hereinafter referred to as DPS]. Tr., Vol. 1, pp. 61-62, 70-71. DPS concluded that two new classes should be created. As a result, the District Tax Collector and District Tax Assessor classes were developed in place of Tax Collector, SR-24, and Tax Assessor, SR-24, classes. Tr., Vol. 1, p. 71.

DPS also performed a pricing analysis of the new classes. Based on this analysis, it was decided that these classes belonged in the Excluded Managerial Compensation Plan. However, because of statutory limitations, they could not be placed in this plan until exclusion was granted by this Board. They were temporarily placed at SR-26 pending the outcome of the instant petition. Tr., Vol. 1, p. 71.

Representative position descriptions submitted with the instant petition are as follows:

Income Tax Assessor I (Maui)

DESCRIPTION OF DUTIES AND RESPONSIBILITIES

I. INTRODUCTION

This position is the head of the Audit Branch, Maui District Office, Compliance Division, Department of Taxation.

This Audit Branch administers the State of Hawaii Income, Withholding, General Excise, Use, Public Service Company,

Franchise, Fuel, Liquor, and Tobacco taxes; conducts office examination of tax returns; and conducts field audits of tax returns and taxpayers' records.

As head of the Audit Branch, this position supervises the operation of the Field Audit, Income and General Excise and Miscellaneous taxes sections in Maui District Office.

II. MAJOR DUTIES AND RESPONSIBILITIES

1. Plans, directs and coordinates the activities in the administration of the Audit Branch, Maui District Office and the enforcement of all income and miscellaneous tax laws; participates in establishing policies and procedures; responsible for instituting uniform auditing methods and procedures for office and field audit operations in Maui District (60%).
2. Administers and enforces the income, withholding, general excise, use, public service company, franchise, fuel, liquor, and tobacco tax laws (20%).
3. Hold conferences with taxpayers, their attorneys and their representatives and advises them in matters pertaining to laws, rules, regulations, court decisions and other pertinent matters. Appears as witness in cases under litigation, issues subpoenas, administers and questions taxpayers under oath on tax matters. Presents and argues appeal cases before the Board of Review. Reminds subordinates to strive constantly for good public relations. Reviews and decides on approval or disapproval of requests for remission of penalty and interest charges (10%).
4. Instructs tax auditors in the Field Audit Section regarding interpretation of laws, matters of policy and procedures; consults with subordinates regarding planning and progress of work assignments and distribution of duties; interviews applicants for employment and recommends appointments, promotions, demotions, and dismissals. Responsible for initiating staffing, preparation of branch budget, purchasing and other functions necessary for the efficient operation of the Audit Branch. Handles correspondence; recommends approval or disapproval of warrant vouchers for claims for refund of tax overpayments (5%).
5. Decides matters of policy and devises ways and means of attaining greater production, efficiency and economy. Supervises the compilation of detailed statistical information necessary for the preparation of the Management by Objectives Report, the annual report and other reports; keeps abreast of present and past decisions of State and federal courts on tax matters;

keeps abreast of changes in the Internal Revenue Code and State tax laws; researches various tax services, Attorney General's opinions, memorandums, policies, rules and regulations whenever difficult problems arise (5%).

6. Performs other duties as necessary.

III. CONTROLS OVER THE POSITION

Is under the general direction of the Compliance Division Chief, Position No. 1543, which is in Honolulu. Complex questions and problems are discussed with the Compliance Division Chief. However, established and on-going operations of the Audit Branch are the responsibility of this position. Guidance by the Compliance Division Chief is provided from time to time to assure that the Audit Branch is proceeding in a direction which is consistent with division and departmental philosophy and policies and consistent with the statutes.

IV. QUALIFICATION AND REQUIREMENTS OF THE POSITION

Knowledge of:

State tax laws; Internal Revenue Code; rules and regulations relating to federal and State income and related taxes; procedures and methods of enforcing tax laws; principles and practices of accounting and auditing; local taxation problems; principles and practices of administration; public relations.

Ability to:

Make decision and take administrative action; direct the work of others; review and pass upon reports and proposed assessments; establish good public relations; consult with and advise staff members on collection, assessments, auditing and tax methods; inquire, discern and research problems and reach logical conclusions; effectively discuss tax cases and points of law with taxpayers and their representatives.

Experience and Training:

Two years of professional accounting or auditing experience or two years experience in teaching accounting; specialized experience - two years of responsible accounting or auditing experience; graduation from a recognized university or college with specialization in business administration, economics, public administration or a related field; and supervisory aptitude; or any equivalent combination of experience and training.

Personal qualities:

Initiative; resourcefulness; reliability; integrity, leadership; patience; and good judgment.

Petitioner's Exhibit 10.

Tax Collector I (Maui)

I. INTRODUCTION

This position is located in the Enforcement Branch, Compliance Division, Department of Taxation, Wailuku, Maui.

The Enforcement Branch is responsible for collecting and depositing all tax payments received, maintaining accounting records, enforcing statutory requirements for the filing of tax returns and the collection of all delinquent taxes, providing taxpayer services, and performing the administrative/housekeeping functions for the Department of Taxation.

II. MAJOR DUTIES AND RESPONSIBILITIES

a. Administrative Duties (25%)

Coordinates the administrative and housekeeping functions for the Second Taxation District with the main office in Honolulu.

Approves all leaves of absence and requests for vacation time for Branch employees. Ensures adherence to established office hours, rules and regulations for all employees in the Branch. Orally reprimands any employee as necessary; issues written reprimands and warnings; initiates any suspension or discharge action necessary in the Branch after consultation with the Division Chief. Meets with respective employees and their representatives to discuss and resolve initial grievances involving job duties, salary ratings, etc.

Interviews applicants for job vacancies in the Branch and recommends approval of applicants for initial appointments in accordance with the Equal Opportunity Act.

Prepares position descriptions for all positions in the Branch; initiates, prepares and submits requests and recommendations for personnel action involving transfers, promotions, recruitments, etc.

Determines staffing and physical resources required to process anticipated workloads, prepares plan of action, and requests overtime or temporary hires, as necessary.

Directs the efficient utilization of space, equipment and supplies and resolves space and equipment problems through appropriate channels.

Prepares fiscal year budgetary estimates to accomplish Branch functions; controls expenditures in accordance with quarterly allotments; approves weekly billings for payments.

Recommends disposal of non-operable equipment; conducts physical inventory and accounts for all equipment in the Second District.

Reviews and approves upon signature all refunds for overpayment of taxes.

Directs the activities of the Molokai office and establishes controls to insure that planned objectives are realized and that all program activities there are performed in accordance with governing laws, regulations, directives and procedures.

Directs the timely preparation of reports for submittal to the Honolulu office; brings significant policy matters to the attention of the Division Chief through correspondence and periodic conferences.

Listens to taxpayers' complaints and arguments and attempts to resolve misunderstandings and give assurances of fair and equal treatment to the taxpayers. Discusses with employee any complaint received from the public, conducts fact-finding, and replies directly or drafts reply, as appropriate.

b. Enforcement and Compliance (50%)

Establishes and directs an enforcement program for compliance with licensing requirements, the filing of tax returns, and the collection of delinquent taxes. Approves the filing of tax liens and directs collection proceedings in accordance with state laws. Directs the seizure of assets, conducts public sales of these items, and accounts for all proceeds of sales.

Discusses with the Division Chief and implements departmental policies and objectives for the Enforcement Branch in the Second District. Evaluates the effectiveness of program objectives and recommends changes to improve operations.

Establishes goals for each collector within the framework of departmental objectives to measure work performance; maintains monthly performance reports as a means of gauging progress.

Explains the applicable state tax laws to taxpayers or their legal representatives and interprets the application of departmental policies regarding the enforcement of these laws. Consults with the Deputy Attorney General regarding points of law and testifies in court on behalf of the Department in civil cases involving tax liabilities.

Discusses with taxpayers all requests for waiving penalty and interest charges before deciding on final approval. Reviews all offer for compromise of tax liabilities and decides on approval before submittal to the Compliance Branch Chief for review.

Confers with taxpayers or their authorized agents in difficult or unusually complex collection and enforcement issues, if the problem cannot be resolved at the lower level.

Determines uncollectibility of taxes and recommends write-off after all collection efforts have failed.

Participates in analyzing current State legislation, its impact upon Branch operations, and suggests changes to improve operational effectiveness. Keeps abreast of changes in the tax laws, bankruptcy act, and collection proceedings and implements changes as necessary.

c. Cashiering and Accounting (25%)

Establish procedures and set up controls for the accountability of all tax collections in the Second Circuit.

Maintains control accounts of tax receivable, appeals in escrow, and collection register.

Reviews daily cash report and approves any corrections or cancellation of receipts.

Maintains controls for the security of all cash on hand. Conducts investigation to determine possible causes for cash shortages or overages and implements corrective measures as necessary.

Ensures the confidentiality of returns and information.

Establish procedures to enable the prompt processing of returns and daily deposit of cash and checks in accordance with Departmental objectives.

Directs the compilation of workload data, preparation of delinquent tax rolls, debit adjustments, mailing of tax bills, and issuance of tax clearances.

III. CONTROLS OVER THE POSITION

The position works under the general supervision of the Chief, Compliance Division, Position Number 1543, which provides the general guidance and direction needed to achieve the Branch's goals and objectives. This supervisory position provides advice and assistance on severely difficult and unprecedented problems.

Pertinent tax laws, rules and regulations, policies and procedures, statutes concerning uniform commercial code, liens, levies, bankruptcy, priority claims and other related activities for enforcement of tax collection are necessary guides for the performance of this job.

IV. QUALIFICATION REQUIREMENTS OF THE WORK

Knowledge of: Appropriate State tax laws, departmental rules and regulations, policies and procedures relating to tax collection and compliance, enforcement of tax returns filing; generally accepted accounting principles and practices, and general principles of management, supervision and public relations.

Ability to: Supervise the work of others; prepare reports, evaluate operations to encompass recommending, improving and installing methods and procedures; evaluate financial statements and assets of business entities to determine solvency; determine and implement managerial decisions and initiate administrative actions; and deal effectively with taxpayers and their representatives.

V. MINIMUM QUALIFICATION REQUIREMENTS

Graduation from an accredited college or university with a major in accounting; or in business administration or a related major with at least 12 semester credits in accounting.

Five years of progressively responsible office or field review experience which included analysis and interpretation of fiscal statements, books, records and/or other

documents to determine methods and means for liquidating delinquent tax liability or to determine tax liabilities.

Petitioner's Exhibit 6.

For purposes of discussion, the Compliance Division Chief and Compliance Coordinator position descriptions are presented as follows:

Compliance Division Chief (Honolulu)

I. INTRODUCTION

This position is located in the Division Administration of the Compliance Division.

The function of the Compliance Division is the administration of a comprehensive and uniform statewide compliance program to encourage the self-assessment concept and includes the collection of delinquent taxes; auditing of income and miscellaneous taxes, rendering operating divisions within policy guidelines of the Director's office and being responsible for attendant activities.

This position assumes responsibility for leadership and direction of the comprehensive and uniform statewide compliance program as Chief of the Compliance Division.

II. MAJOR DUTIES AND RESPONSIBILITIES

1. Directs the development of long and short range plans, program and policies for the Compliance Division allowing for further development/modification in line with changing requirements, and priorities.

Under guidelines from Director/ASO, oversees the preparation of the Division's budget and participates in justifying and defending same in the legislature; responsible for expenditure control.

Reassess and initiate for approval, changes in organizational structures, functions and staffing patterns to meet reorganizational requirements of the Division.

Approves/recommends for approval various personnel actions, such as appointments, training attendance, disciplinary action, etc.; participates in grievance handling and deals with Unions (40%).

2. Responsible for the development of standards in assessing and collecting of all State taxes, and the

establishment of an effective and uniform taxpayer compliance program.

Directs the development of operational policies and procedures to ensure uniformity in tax administration by all District Offices; allows deviation in procedures as needed to take into consideration uniqueness of district offices.

Directs the implementation of improvements in tax simplification and divisional tax processing systems.

Controls and coordinates the work of the division and district offices in auditing and enforcement activities by the use of the Compliance Coordinator. Coordinates inter-district office operations to ensure uniform and maximum efficiency in administration.

Develops means of achieving greater control over fulfillment of Department objectives and assists in putting accepted changes in effect, manually or through mechanization.

Directs or conducts annual management reviews of all district offices operations and reports findings and recommendations.

Coordinates staff assistance to the various district offices and insures that district offices are equipped and able to carry out programs and changes developed in headquarters.

In consultation with District Administrators/Branch Chiefs, establishes priorities for work improvement in district offices and schedules Division (headquarters) staff to work with the districts based upon such priorities.

Develops or directs the preparation of operating manuals, and ensures that such methods prescribed are used and are effective.

Establishes measures for program evaluations, and evaluates program and the need for improvements as an ongoing basis.

Coordinates or directs the coordination of work on inter-district operations for field auditing, delinquent enforcement, and other operating matters which concern more than one district (50%).

3. Maintain effective working relationships with other related public and private programs throughout the state to insure coordination and cooperation; presents

testimony before the State Legislature on proposed legislation, program operations, etc., as may be directed.

Reviews Branch and District Office reports; writes Divisional and special reports.
Prepares appropriate correspondence and other material, and keeps abreast of developments in tax administration (10%).

III. CONTROLS OVER THE POSITIONS

Position works under the general policy guidance of the Director or his Deputy.

IV. QUALIFICATION REQUIREMENTS OF THE WORK

Knowledge of: Laws, rules, and regulations relating to State taxes and related taxes and the procedures and methods of their enforcement; local taxation problems; principles and practices of administration; principles and practices of accounting and auditing; public relations.

Ability to: Make sound administrative and policy decisions; plan and organize work and direct the work of others; maintain effective working relationships; consult with and advise staff members on technical tax matters and problems; determine and initiate policies and methods; inquire, discern and reach conclusions; prepare clear and concise reports; discuss tax cases, and points of law with taxpayers, and their representatives effectively; represent the Director of Taxation in dealing with the legislature, public officials, governmental agencies.

MINIMUM QUALIFICATION REQUIREMENTS

Experience and Training: (1) Eight years of progressively responsible business or public administration operational experience involving management of fiscal and business operations, of which five years shall have been in the administration of tax laws, and graduation from a college or university of recognized standing with a major in business administration, economics, public administration or a related social science; or (2) any equivalent combination of experience and training.

Excess experience as described above or any other progressively responsible administrative, professional or other analytical work experience comparable to college level may be substituted for education on a year to year basis.

Intervenor Exhibit 1.

Compliance Coordinator (Honolulu)

INTRODUCTION

This position is located in the Division Administration of the Compliance Division.

The function of the Compliance Division is the administration of a comprehensive and uniform statewide compliance program to encourage the self assessment concept and includes the collection of delinquent taxes; auditing of income and miscellaneous taxes, rendering operating decisions within policy guidelines of the Director's Office and being responsible for attendant activities.

This position serves as a resource official for development of policies, coordination of activities, and evaluation of operations in the Compliance Division.

MAJOR DUTIES AND RESPONSIBILITIES

Acts as a resource official in planning, developing, coordinating and evaluating tax auditing and enforcement activities on a statewide basis. Provides functional supervision of these activities which fall under the jurisdiction of the Compliance Division.

Develops uniform enforcement and audit policies and procedures for the Compliance Division; works with line personnel to ensure that policies and procedures adopted are practical and effective, and makes recommendations to the Compliance Division Chief on means of improving the overall effectiveness of operations. Prepares, develops and updates policy and procedure manuals for use by personnel performing auditing and enforcement activities.

Renders technical assistance to the Enforcement and Audit Branches and answers inquiries with respect to problems relating to auditing and enforcement activities and disseminates findings and guidelines resulting therefrom. Participates in conferences with staff and/or taxpayer to resolve complex tax issues. Resolution of complex tax issues involve an analysis and interpretation of tax laws, rules and regulations, legal opinions, court decisions and pertinent documents (45%).

Serves as a member of the Delinquent Evaluation Committee to evaluate taxpayers' proposals to pay delinquent taxes under a payment agreement and to recommend write-off of uncollectible accounts (2%).

Participates in preparing the statewide budget request to account for planned, anticipated, and ongoing activities to

assure sufficient funds are available to carry out the program activities (10%).

Conducts special studies of business, professional and industrial groups by utilizing special accounting ability and understanding of tax laws and business practices for the purpose of identifying areas which indicate the necessity for extensive or intensive audit coverage and makes recommendations for initiating special tax projects on specific types of taxpayers (10%).

Keeps abreast of audit and enforcement practices used by other States and the Internal Revenue Services by reading current tax compilations so as to determine whether practices used elsewhere can be employed effectively in the Department of Taxation.

Keeps abreast of all changes in the Uniform Commercial Code, collection practices, Bankruptcy Laws, State Tax Laws and Federal tax laws, including regulations and court decisions, to effectively coordinate the audit and enforcement activities (6%).

Analyzes monthly field audit reports from all branches and studies the results from audits, the degree of coverage by district, the relationships to delinquency of accounts and other factors in order to develop recommendations on improved practices and staffing requirements (5%).

Conducts planned systematic visitations to neighbor island offices for on-site evaluations, guidance and assistance on audits and enforcement activities (5%).

Conducts review of a representative sample of cases to continually observe the manner in which cases are being audited, the interpretation being placed on new or critical technical issues, the correct application of standard accounting and auditing principles and practices, and the thoroughness with which audits are being carried out (10%).

Reviews related matters concerning Governor's compromise, write-offs, waiver of penalty and interest, and recommends appropriate action to the Division Chief. Review auctioning activities of seized properties to assure adherence to procedures and statutory provisions (2%).

Reviews, analyzes and evaluates delinquent tax collections and operational reports and submits comments and recommendations as necessary to the Compliance Chief (5%).

CONTROLS OVER THE POSITION

Position works under the general supervision of the Compliance Division Chief, Mr. Herbert Dias, position no.

1543. Supervision received is mainly administrative in nature since the substantive aspects in compliance work is the staff responsibility of this position.

QUALIFICATION REQUIREMENTS OF THE WORK

Experience and Training

(1) Seven years of accounting and auditing experience, of which four years shall have been in tax auditing and three years in an administrative or supervisory capacity and graduation from a college or university of recognized standing with a major in accounting or business administration; or (2) any equivalent combination of experience or training.

Knowledge of:

Principles and practices of accounting and auditing, particularly tax accounting and auditing; tax laws administered by the Department of Taxation; financial statements and books of accounts and records of corporations, public utilities partnerships; fiduciaries and proprietorship; Federal and local taxation problems; methods and procedures of collection; principles and practices of administration and supervision.

Ability to:

Plan, coordinate, develop and evaluate procedure and technique for a statewide program activity, review and evaluate reports, advise auditing and enforcement staff on complex tax issues; analyze financial statements; write clear and comprehensive reports and maintain effective working relationships, draft procedures and policies for use in the Audit and Enforcement Branches.

Intervenor Exhibit 2.

Kenneth Murayama, the current Tax Compliance Administrator, testified that the division wants the district tax assessors and collectors to continue to manage their district offices and participate in strike contingency planning. Presently, there is only one excluded employee, a secretary in each district office. Personnel from Honolulu do not feel they could provide services in the event of a strike because they are not

familiar with the office environment, the district's taxpayers or the neighbor island operations. Tr., Vol. 1, p. 21.

The Assessors and Collectors also make effective recommendations at the first or informal step in the grievance procedures, along with other personnel matters, such as job performance ratings, scheduling and hours of work. Tr., Vol. 1, pp. 22, 25. Situations have arisen where the Collectors and Assessors as included employees have found themselves being appointed as union stewards, in which position they have represented their subordinates in complaints against their own decisions. Tr., Vol. 1, pp. 87-89.

Tax collection is the State's main revenue source. If there are no tax collections during a strike, revenues would be lost and required outlays of State money, such as unemployment payments, might be adversely affected. If collections stop for even a day or two, the State credit and financial position could be jeopardized. Tr., Vol. 1, p. 112.

The State elicited testimony from the subject Collectors and Assessors regarding their alleged role in policy formulation. Statewide policies are discussed at quarterly meetings with the neighbor island District Tax Assessors and District Tax Collectors. In addition to direct input at these meetings, they have telephone discussions with the Division about district problems. Tr., Vol. 1, p. 32. The Tax Director ultimately approves all statewide policy, but recommendations for changes in policy are made by the Tax Compliance Administrator and Coordinator,

using input and recommendations from these meetings and discussions with the neighbor island administrators. Tr., Vol. 1, pp. 33-34. Hawaii District Tax Assessor Yabe testified that he is also asked to give written comments on department and division policies and annually he is asked by the department to submit his recommendations for new tax legislation. Tr., Vol. 1, p. 81.

As an example of the role of the Assessors and Collectors in the formulation of departmental policy, the State elicited testimony regarding their role in the State's computerized tax system. The department's overall policy was initially to input documents into the computerized system as quickly as possible with minimum proofreading. It soon became evident that the policy created severe operational problems. When tax documents were inputted quickly with minimum proofreading, the data input into the computer was often incorrect. As a result, the neighbor island districts recommended that documents be subject to increased proofreading before being put into the computer. Tr., Vol. 1, p. 31.

Another cited example of the Collectors and Assessors' role in policy formulation is their determining operational priorities for the district. The example elicited by the State regards department policy to promote self-assessment by taxpayers. In order to accomplish this goal, the districts must establish policy in the form of program priorities. For example, they could give priority to increased taxpayer information services to help the taxpayer file accurate returns. Or the district could give priority to auditing to force the taxpayer

to file correct returns and pay his taxes. Tr., Vol. 1, pp. 35, 38. The extent to which such information is disseminated or audits conducted depends on the District Tax Assessor's analysis of his staff's capability and the nature of the taxpayers within the district. Tr., Vol. 1, p. 38.

They also decide when to place a lien or levy on a taxpayer's property, or when to pressure a taxpayer to conform to a payment plan. They decide when to waive penalties and interest in about 95 percent of the cases. Tr., Vol. 1, p. 43. District policies are basically left to the districts within the broad framework of division policy. Tr., Vol. 1, pp. 38-40.

Hawaii District Tax Assessor Yabe testified that with the abolition of the District Tax Administrator's position, the District Tax Assessor now has the authority and responsibility for the assessment and audit program in the district. Tr., Vol. 1, pp. 93-94. Hawaii District Tax Collector Serrao testified that prior to the reorganization and abolishment of the District Tax Administrator position, the implementation of tax collection policy had to be cleared by the District Tax Administrator. Now, that responsibility is with the District Tax Collector. Tr., Vol. 2, pp. 151-152.

In addition, both the District Tax Assessors and Collectors represent their department. For example, the District Tax Assessors appear before the Board of Tax Review where they represent the director and present the State's case. Tr., Vol. 1, p. 50.

CONCLUSIONS OF LAW

Under Section 89-6(c), HRS, certain employees are to be excluded from collective bargaining units for a variety of reasons. Two of these reasons are because they are either top-level administrative and managerial, or confidential personnel. Section 89-6(c), HRS, reads in pertinent part:

§89-6. Appropriate bargaining units.

(c) No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his first deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, part time employee working less than twenty hours per week, temporary employee of three months duration or less, employee of the executive office of the governor, household employee at Washington Place, the State, employee of the executive office of the lieutenant governor, inmate, kokua, patient, ward or student of a state institution, student help, any commissioned and enlisted personnel of the Hawaii national guard, or staff of the legislative branch of the city and county of Honolulu and counties of Hawaii, Maui and Kauai except employees of the clerks' offices of said city and county and counties, shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

Under Section 89-6(d), HRS, this Board has the authority to review the bargaining unit status of affected positions. Section 89-6(d), HRS, reads:

§89-6 Appropriate bargaining units.

(d) Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after

a hearing upon due notice, make a final determination on the applicability of this section to specific positions and employees.

In HGEA and Ariyoshi, 2 HPERB 105 (1978) [Decision 95], the Board discussed the criteria for exclusion on the basis of top-level managerial or administrative status. The Board stated:

In Decision 75, this Board described the following test to be used to determine whether an individual occupies a top-level managerial or administrative position:

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 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.

Consideration also will be given to the extent to which placement of an individual in a collective bargaining unit would create a strong possibility of a conflict of interest arising.

Respecting the problem of conflict of interest, the subjectivity of the individual employee is not significant. What would be significant would be true incompatibility between the functions of the individual's position and inclusion in a unit. Both employers and exclusive representatives are entitled to representatives, on the one hand, and constituents, on the other, who are not by unit determination placed on both sides of the issues in collective bargaining.

Whether a particular position satisfies these criteria is a question

of fact to be determined on a case by case basis by this Board. (Footnotes omitted)

To the above criteria, the Board considers it necessary to add the following refinements and amplifications.

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.

As stated in Decision 75, exclusions based on managerial attributes are not restricted to positions which work in the field of labor relations.

In Decision 95, the Board also discussed the term "policy," and the word "formulate," as employed in the term "to formulate policy." The Board stated:

Because policy formulation is an important factor in the determination of managerial status, the meaning to be given to the term "policy" is important and warrants discussion.

The New York PERB, in a leading case of that Board, has defined the term "policy" which this Board adopts. The New York PERB stated in State of New York, 5 PERB 3001 (1972) at page 3005:

We will first discuss the "policy" criterion and later the other three criteria. It would appear desirable to first consider the term "policy." Policy is defined in a general sense as "a definite course or method of action selected from among alternatives and in the light of given conditions to guide and determine present and future decisions." In government, policy would thus be the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.

The term "formulate" as used in the frame of reference of "managerial" would appear to include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. It would not appear to include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal. (Footnotes omitted)

* * *

The Board will rely and be governed by what the position actually does, not what an out-of-date position description says.

It is assumed that all persons in State government, except for elected officials, judges and certain other officers not here relevant, have supervision and that their decision technically take the form of recommendations subject to approval by higher authority. It is the function of a position, not its place on the organizational chart upon which top-level manager or administrator is based. "It is not whether a person definitely establishes policy but rather the individual's regular participation in the policy-making process which determines

managerial status. Absolute discretion or authority to act is not a prerequisite to finding that an individual formulates policy. What matters is the fact of participation at a fundamental level in the decisionmaking process, not the participant's batting average in having his views prevail. State of New York, supra.

The Board will also designate positions as top-level managers or administrators if the incumbents assist directly in the preparation for and conduct of negotiations or have a major role in the administration of agreements or in personnel administration or meet and confer with union representatives as required by Section 89-9(c) provided that such role is not a routine or clerical nature and requires the exercise of independent judgment. 2 HPERB, 143-144.

The State argues that through the reorganization of the tax department, the subject positions have been assigned a top-level managerial and confidential role and perform duties and responsibilities characteristic of the statutory criteria. The State argues that together with the Compliance Division Chief, they constitute the Tax Director's entire top-level management team, insofar as neighbor island operations are concerned.

The State thus argues that these positions should be excluded because they are near the top of the Department of Taxation administration. They report to the Chief of the Compliance Division, one of only two division chiefs reporting to the Director of Taxation. They are also, as district managers, at the top of their respective district tax programs. State's Brief, p. 27.

The State asserts that the Compliance Division and district tax offices are complex agencies with major program responsibilities as those terms are employed in Decision 95.

In support of this assertion, the State notes that the Tax Compliance Division handles all field audits, office audits, assessments, collections, and the enforcement of all tax laws on a statewide basis. State's Brief, p. 27. The State further notes that the Assessors are responsible for field and audit programs applicable to major segments of the population, from over 25,000 taxpayers on Kauai to 51,000 taxpayers on Hawaii. They administer income, withholding, general excise and other taxes. Receipts range from 46 million dollars to over 85 million dollars. The number of assessments performed range from 1,800 to 3,500, with revenues up to 1.8 million dollars. And the State notes that Collectors are responsible for collecting current and delinquent taxes, including those from non-filers. Collections range from 46 million dollars to 85 million dollars, with up to 4,500 delinquent accounts referred for collection and 4 million dollars in delinquencies collected. Collectors are also responsible for waivers of penalties and interests, the filing of liens, and representing the Director in court in contested cases. State's Brief, p. 28. Thus, the State argues that the scope, breadth and impact of both the audit and assessment programs and the collection programs clearly indicate that these are major complex programs. State's Brief, p. 29.

The State further argues that as a result of the reorganizations, the Collectors and Assessors now have a substantial role in policy formulation. They participate in the formulation of statewide policies through quarterly meetings with the division chief, at which they are expected to recommend new policies

or amendments to existing policies. The State argues that their recommendations on statewide policies and input on the impact of policies on neighbor island operations are given substantial weight. They further implement these statewide policies within their assigned districts. They are also responsible for formulating and effectuating specific policies appropriate to their assessment of the specific needs and concerns of their program areas in their districts. State's Brief, p. 29.

The State further argues that these positions have substantial discretion in determining the methods, means and personnel by which their programs are to be conducted. Thus, the State notes that the Assessors and Collectors are expected to develop annual program plans, including specialized programs to meet district needs in their respective areas. They are expected to develop and justify their budget requests, including the cost of personnel accordingly. They control expenditures, have authority and responsibility for analyzing workload and administrative priorities and making decisions, which necessarily impinge on district personnel accordingly. They are concerned with administrative management decisions such as staffing satellite offices and determining vacation and work hour policies for their programs. State's Brief, p. 30. The State argues that such duties should be performed without the possibility of conflict of interest. State's Brief, p. 31.

The State further argues that exclusion is necessitated by the fact that the subject positions operate in a management capacity and represent management in a geographically separate

location, i.e., the neighbor island. Thus, the State argues that the positions operate in a managerial and administrative capacity, noting that they are responsible for policy formulation and implementation, budget formulation and execution, program planning and implementation and personnel management for their respective programs. State's Brief, p. 32. The State further notes that they represent the director and the department in their districts, making rulings, negotiating compromises, testifying in court, handling complaints and coordinating matters for the department with other agencies such as the IRS and county departments. State's Brief, p. 32.

This role will be critical in the event of a strike, the State argues. At least minimal assessment and collection functions must proceed in order to avoid a negative impact on the flow of receipts into the State treasury, potential inability to pay legitimate claims, and potential damage to the State's credit and financial standing. Personnel from Honolulu could manage district operations for only a few days, due to their unfamiliarity with operational details on each of the islands, the State argues. Honolulu personnel would not be aware of specific deadlines to be met, which liens to file, which audits to pursue or which cases involve limitation periods due to expire. State's Brief, pp. 32-33. The State argues that if these positions are retained in the bargaining unit, they would face a conflict of interest, torn between their duties as managers to maintain these critical operations and their union affiliation. State's Brief, p. 33.

In Decision 95, the Board also provided for exclusion of personnel from collective bargaining on the basis of being confidential employees. The Board, in Decision 95, put forth the following definition as to confidentiality:

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. In almost all conceivable cases, such an employee, if he is not himself a policy maker in the field of employee-employer relations, will be a subordinate of a managerial individual who formulates policy which directly influences or affects change in employee-employer relations or who meets other criteria of a top-level manager.

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, transfer, suspensions, 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. See Section 89-2(18) for the Chapter's definition of the terms "supervisor." 2 HPERB at 146-147.

The State argues that the Collectors and Assessors must also be excluded as confidential employees. The State argues that as managers of their respective programs, their role extends well beyond that envisioned as permissible for included supervisors. As managers they are concerned with program staffing through the budgetary process, with overall manpower deployment through their individualized district program plans and policies, with overall operational effectiveness, and promotion of the efficiency of their program. They are further concerned with accomplishing goals and objectives through their decisionmaking on such subjects as staffing, satellite offices, vacation policies, policies on hours of work and other related subjects. Such matters, the State argues, clearly have an impact on employee-employer relations and are an intrinsic component of their duties. As the responsible managers, they should be accorded the right to formulate these plans in confidence and free from a conflict-of-interest situation. As members of the division and department management teams, they are privy to the department's most carefully guarded plans and projects. Thus, their exclusion from collective bargaining is warranted on the basis of their confidential role in employee-employer relations. State's Brief, pp. 35-36.

The HGEA argues that exclusion is not warranted as the subject positions are supervisory positions and are not part of top-level management. The HGEA argues that the positions fit the definition of supervisory employees as set forth in Section 89-2(20), HRS, which reads as follows:

§89-2 Definitions.

- (20) "Supervisory employee" means any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct the, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The HGEA further notes in this regard that the DPS indicates a bargaining unit designation of 23 on the position classification form of each of the subject positions, which designation indicates supervisory status.

The HGEA argues that the former District Tax Administrator I positions were truly at the division chief level and were properly excluded in accordance with prior Board decisions and that the subject positions functioned as branch supervisors under the control and direction of the District Tax Administrator I positions. HGEA's Brief, pp. 8-9.

Under the prior organization, the HGEA argues, the Department of Taxation was a decentralized organization, characterized by each district having autonomy to run its own operation within statutory parameters and operational policies. Such policies were established by "headquarters staff" which consisted of the Director's office and the seven staff officers. The Director and staff officers were the policy formulators and the district officers were policy implementors. Thus, the subject positions

under the prior organization functioned as professional supervisory employees at the branch level under the direction of their respective division level district tax administrators. HGEA's Brief, pp. 9-10.

Upon reorganization, the Union argues, the creation of the Compliance Division represented the emergence of the state-wide divisional concept which encompasses the neighbor island districts. Upon the attendant creation of the Compliance Coordinator position, divisional policy formulation was consigned to the Tax Compliance Chief and the Tax Compliance Coordinator positions. HGEA's Brief, pp. 11-12. The Union thus notes that the exclusive terms of the major functions of the Compliance Coordinator were stated to be as follows:

Compliance Coordinator. The Compliance Coordinator will assist the Compliance Division Chief in coordinating and monitoring audit and enforcement activities within the division and district offices. It will provide assistance by developing manuals of procedures, prescribing methods of operation, providing training and rendering guidelines and recommendations. This position will formulate departmental policies on enforcement matters. It will participate in discussions with taxpayers to settle differences between the department and taxpayers. It will also assist in establishing and evaluating goals and objectives. Intervenor's Exhibit 3, Proposal to Reorganize the Department of Taxation, dated April 6, 1981, p. 5.

The Union further argues that upon reorganization and conformance of the neighbor island district offices to the state-wide divisional concept, the existing District Tax Administrator I positions on Kauai and Hawaii were "demoted" from Division

Chief to Branch Chief status. The Compliance Division was established at the top of the hierarchy with the Oahu and neighbor island district offices reporting to the Division Chief. This modifies the previous relationship wherein the neighbor island district offices reported directly to the Director of Taxation. This "demotion" was due to the reduction of the six District Administrator positions in view of the lesser scope of responsibility as the result of the transfer of real property functions to the several counties. HGEA's Brief, p. 13. Thus, the Union argues, the supervisory function embodied by the District Tax Administrator I was transferred to the Compliance Division Chief, not to the Collectors and Assessors. HGEA's Brief, pp. 13-14.

Thus, the Union argues, that the audit and enforcement branches under the current reorganization merely continue to function as branch level programs just as they previously functioned under the division level District Tax Administrator I position. The new functions of these branches are restricted to their respective fields and do not reflect the overall authority for a district operation that the District Tax Administrator I positions possessed. HGEA's Brief, pp. 14-15.

The Union notes that the Employer, as the moving party, has the burden of proving by a preponderance of the evidence that an amendment in bargaining unit designations is appropriate. The Union argues that the Employer has failed to meet the criteria for exclusion as delineated in Decision 95. HGEA's Brief, p. 15.

The Union takes the position that the subject positions are not at or near the top of the agency in question, i.e., the

Department of Taxation. The HGEA argues that the Department of Taxation is a horizontal, as opposed to a vertical, organization in terms of its structure and functions. A horizontal structure is characterized by a limited number of levels of authority within an agency, a limited amount of divisional programs, an overall department staffing under 300 positions, and a centralization of functional authority. Thus, the HGEA notes that the department is structured with the director's office at the top, four staff offices, two major divisions and nine branches. The overall departmental staffing is about 280 positions and functional authority is focused at the division and director levels of the organization. In contrast, the HGEA argues, either the Department of Health or Transportation are prime examples of vertical organizations. As the tax department possesses essentially a horizontal structure, the HGEA asserts that the subject positions are closer to the bottom of the divisional and departmental structures. Top-level managerial and administrative status are vested in the Compliance Division office. HGEA's Brief, pp. 15-16.

The HGEA further argues that the subject positions do not formulate or determine policies. The policy formulation and determination responsibility is vested at the Compliance Division and Director levels. Thus, the HGEA notes Chiogioji's testimony that ultimate approval for policy comes from the director with the Compliance Division Chief and himself having input. HGEA's Brief, pp. 16-17.

What the Employer construes as policy formulation, the HGEA characterizes as the development of operational procedures and guidelines. Policies which guide the operational activities of the subject positions programs on their respective islands and which must be in accordance with divisional or departmental policies should be considered operational procedures and guidelines. The development and recommendation of these procedures and guidelines are inherent in the duties and responsibilities of professional supervisory employees who have branch level programs. HGEA's Brief, p. 18.

That the subject positions participate in regularly scheduled quarterly and annual meetings does not indicate participation in the policy making process, the HGEA argues. Rather, the purpose of these meetings is to provide input on the impact of proposed divisional or departmental policies on their operations. HGEA's Brief, p. 19.

Thus, the HGEA argues that Maruyama and Chiogioji are the policy implementors of divisional and departmental policies while the subject employees have the role of providing input preparatory to final decisions. HGEA's Brief, pp. 19-20.

The HGEA further denies that the Assessors and Collectors head major programs and that exclusion on the basis of being a top-level managerial or administrative position directing the work of a major program or agency or major subdivision thereof with considerable discretion to determine the means, methods and personnel by which the agency or program is to be carried out is

not warranted. The HGEA notes that the District Tax Administrator I positions which headed each district met this test. The Collectors and Assessors, however, operate their respective programs autonomously. Therefore, their scope of responsibility is limited to their own program and neither position has overall responsibility for the tax programs of the particular neighbor island districts. HGEA's Brief, pp. 20-21.

The HGEA grants that the subject positions have discretion to carry out their duties. However, the HGEA notes that supervisory employees, as defined in Section 89-2, HRS, also have discretion to perform their duties. Thus, the HGEA argues, the level of discretion necessary to find that a given position is managerial is of a very significant level, higher than that indicated in regard to the subject positions. The "considerable discretion" refers to the scope of authority normally borne at the division level. HGEA's Brief, pp. 21-22.

The HGEA further denies that the subject positions are excludable on the basis of being top-level managerial or administrative positions operating in a management capacity in a geographically separated location such as a neighbor island. The HGEA argues that the State failed to establish that the subject positions operate in a management capacity. This characteristic was not established in the testimony of either Maruyama or Kenneth Y. Nishihara, departmental personnel officer for the Department of Taxation. HGEA's Brief, p. 22. The subject positions are merely two autonomous branch level supervisors with no control over each other's program. The HGEA notes that Diana Kaapu, Chief of the

Classification Branch, Department of Personnel Services, could not recall a directly parallel situation where two branch level positions on a neighbor island which reported to a division chief were granted excluded status. Tr., Vol. 1, p. 74; HGEA's Brief, p. 23.

The HGEA further denies that the subject positions are responsible for representing management in dealing with a significant number of employees. The number of employees under the supervision of each of the subject positions is hardly significant, the HGEA argues. HGEA's Brief, pp. 23-24. Thus, the HGEA notes that the number of employees supervised for each of the subject positions are as follows:

Maui Assessor:	9
Maui Collector:	10
Hawaii Collector:	16
Hawaii Assessor:	16
Kauai Assessor:	6
Kauai Collector:	5

HGEA's Brief, p. 24.

The HGEA argues that the subject positions have an absence of a variety of subordinate supervisors on Kauai and Maui. The only exception is the Hawaii District Office where the Collector and Assessor each have two subordinate working supervisors under them. HGEA's Brief, p. 24. That the subject positions supervise staff composed mainly of Unit 3 workers and a few professionals indicate the nature, size, scope and complexity of the programs. HGEA's Brief, p. 24. Thus, the Union

argues, the subject positions function in a limited capacity in representing management in dealings with a limited number of employees. HGEA's Brief, p. 25.

If exclusion is granted, the HGEA argues, a buffer will be removed between the management and the workers. This buffer consists of branch level professional supervisory employees whose charge is to carry out the directions of management and provide guidance and supervision to the workers. To exclude the subject positions would seriously disrupt the balance which exists at this time and would establish a negative precedent for the Employer to seek the exclusion of all professional supervisory employees from Unit 13. This would run contrary to the intent of Chapter 89, HRS.

Exclusion would disqualify more employees from a strike, the HGEA argues. This also would be contrary to the intent of "collective bargaining" as contained in Section 89-2, HRS. Finally, exclusion would deprive the incumbents of their rights as employees as provided in Section 89-3, HRS.

Applying the criteria for exclusion on the basis of top-level managerial or administrative status contained in Decisions 75 and 95 to the evidence adduced herein, the Board concludes that the subject positions should retain their status as included members in bargaining unit 13.

In the Board's view, when the District Tax Administrator positions were abolished, the functions of that position were split. Some of these functions were passed up to the Compliance Chief and the Compliance Coordinator, and some went down to the

Assessors and Collectors. In this parceling out of functions, the Assessors and Collectors became responsible for personnel, budget, scheduling and other operational functions. Functions having to do with policy concerns, in the view of the Board, were reallocated to the Compliance Chief and the Compliance Coordinator. Functions passed to the Assessors and Collectors comport with the functions vested in supervisory employees as that term is defined in Section 89-2, HRS.

The State attempted to characterize the situation as one where the Assessors and Collectors each in their own right assumed the duties and responsibilities of the abolished District Tax Administrator positions. The Board disagrees with that characterization. As set forth above, the Board views the situation as one where the District Tax Administrator functions were split between the Compliance Chief and Compliance Coordinator on the one hand and between the Assessors and Collectors on the other. Such functions of the District Tax Administrator as were assumed by the Assessors and Collectors were reduced. Thus, the fact that the Assessors and Collectors did assume District Tax Administrator functions does not prompt this Board to conclude that exclusion is warranted on the basis that Collectors and Assessors assumed the duties of a former position that had excluded status. Functions and responsibilities of the Assessors and Collectors are much more limited than the functions and responsibilities of the District Tax Administrator positions. Assessors and Collectors each have no responsibility in the other's domain, in contrast to the District Tax Administrator

who oversaw functions of both collection and assessment. Further, the transfer of the real property taxation function to the counties further reduced the scope of functions assumed by the Assessors and Collectors which was formerly the responsibility of the District Tax Administrators.

The Board concludes that the subject positions do not qualify for top-level management or administrative exclusion on the basis of any of the three criteria set forth in Decision 95.

(1) The positions are not at or near the top of an ongoing complex agency or major program and do not formulate or determine policy for that agency or program. The testimony adduced does not convince the Board that each of the subject positions head a complex or major program. The assessment and collection functions are, within the framework of State government, crucial and necessary functions. However, they cannot be characterized as complex or as major, in the sense of having a complex organizational structure and a large number of employee positions. Nor does the Board find that the subject positions have significant input in the policy formulation process. As cited by the Board in Decision 95, the New York PERB in State of New York, 5 PERB 3001 (1972), at p. 3005, stated that persons who participate with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect is a person with policy formulation responsibility. The Board would note that the critical word in that definition as applied to the instant case is the word "essential." Testimony herein indicates that the subject positions do,

in fact, have input into the policy making process. The Board finds that the input, however, is more in the nature of providing the raw data on policy matters, and reportage on the efficacy of ongoing policy operation. The "essential process" of policy formulation is, in the Board's view, vested in the Compliance Chief and Compliance Coordinator.

2. As stated, supra, the Board finds that the programs headed by the Collectors and Assessors are not major programs or a major subdivision of a major program. The functions of the collection and assessment programs are well-defined by statute and regulation, subject to description in concrete terms, and implemented through the execution of concrete tasks. Discretion such as the Assessors and Collectors do have is in the area of operational procedures such as would make execution of their functions efficient but do not involve discretion in the area of policy formulation.

3. The fact that the Assessors and Collectors operate on neighbor islands would, under Decision 95, argue that the positions warrant exclusion on the basis of being top-level managerial or administrative positions. However, the subject positions do not fulfill the other criteria as stated in Decision 95 that neighbor island positions must satisfy to warrant this exclusion. That is, the Board finds that the subject positions operate in a supervisory as opposed to managerial capacity, and that the subject positions do not represent a "significant number of employees." The number of employees supervised by the subject

positions range from a high of 16 supervised by the Hawaii Collector and the Hawaii Assessor down to a low of 5 supervised by the Kauai Collector. The Board finds that this range of employees supervised does not qualify the subject positions for exclusion on the basis of dealing with a "significant number of employees" on a neighbor island.

The Board is mindful that inclusion of the subject employees creates potential management difficulties in possible strike situations. The State argues that inclusion makes management planning for strike contingencies difficult and that management personnel would be unable to run the neighbor island collection and assessment functions in the event that the subject positions went out on strike. The Board, however, is unpersuaded that such contingencies warrant exclusion, for two reasons.

1. The State failed to substantiate what "strike planning" entails and the subject positions' part therein.

2. The necessity for keeping the collection and assessment functions in operation during a strike situation, and management's ability to run those functions are most appropriately considered in a hearing to determine whether any given positions are essential, within the meaning of Section 89-2(10) and 89-2(11), HRS, and are not appropriate for a hearing on bargaining unit determination. Thus, while the Board herein determines that the subject positions are to be included in bargaining unit 13, a determination whether the subject positions must continue to work in a strike situation would await a hearing

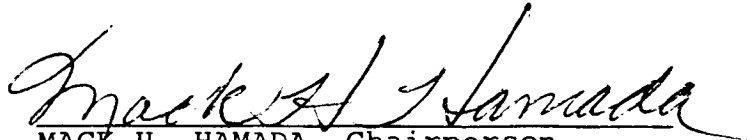
on the issue subject to management's request that the positions be declared essential.

ORDER

For the reasons set forth herein, the Petition for Clarification or Amendment of Bargaining Unit is denied.

DATED: Honolulu, Hawaii, October 15, 1987.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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