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STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-151
)	
HANNIBAL M. TAVARES, Mayor of)	DECISION NO. 273
the County of Maui,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
_____)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On February 10, 1988, HANNIBAL M. TAVARES, Mayor of the County of Maui [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. PS-0015, Manpower Program Specialist, be excluded from bargaining unit 13 [Professional and scientific employees, other than registered professional nurses]. This exclusion is premised upon the redescription of the position's duties and responsibilities, and the proposed reclassification of the position to Workers' Compensation/Safety Specialist I.

Petitioner submitted the following documents with the petition:

1. Affidavit of Manabu Kimura, Director of Personnel Services, County of Maui, regarding Position No. PS-0015, dated January 25, 1988;

2. Position description for the Manpower Program Specialist (Exhibit A);

3. Class specifications for the Workers' Compensation/Safety Specialist I (Exhibit B);

4. Table of Organization for the Department of Personnel Services, County of Maui (Exhibit C); and

5. Letter, dated November 3, 1987, from Manabu Kimura to Russell K. Okata, Executive Director of the Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting concurrence with the proposed exclusion of the subject position (Exhibit D).

Based on the affidavit of Manabu Kimura 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 Section 89-2, Hawaii Revised Statutes [hereinafter referred to as HRS], of employees of the County of Maui, which includes employees in bargaining unit 13.

The HGEA is the exclusive representative, as defined in Section 89-2, HRS, of employees in bargaining unit 13. The HGEA concurs with the proposed exclusion of Position No. PS-0015 and is deemed to have waived the right to a hearing thereon (Exhibit D).

Position No. PS-0015 has been reclassified to a new class entitled Workers' Compensation/Safety Specialist I, and is located in the Department of Personnel Services, County of Maui. Position No. PS-0015 is required to assist in the implementation

of industrial safety and accident prevention programs. Additionally, the position reviews and processes workers' compensation claims against the County of Maui. More specifically, the position performs the following duties:

Prepare for safety education and training courses; conduct safety classes for County departments as assigned; assist in preparation of statistical reports; maintain records of industrial accidents and injuries; inspect work projects, operations, apparel, and equipment, to detect and rectify safety hazards; refer cases of non-compliance to superior; determine causative factors of workers' compensation claims through accident reports, victims, witnesses, and supervisors, and render recommendations; assist in the development and maintenance of a rehabilitation, retention, and placement program; process industrial injury cases pursuant to workers' compensation laws, and applicable provisions of the collective bargaining agreements; determine if injury is compensable pursuant to laws, and render recommendations; monitor cases and check progress of claimants for return to work; disseminate information to claimants and assist them in filing claims; maintain records and logs; prepare reports pertinent to workers' compensation activities; and perform other duties as required.

According to the class specifications, the minimum training and experience qualification requirements for the subject position include:

- (1) Graduation from an accredited college or university with major work in personnel and industrial relations, business administration, public administration or a related field, and one year of experience in workers' compensation, industrial safety and accident prevention activities or
- (2) any equivalent combination of training and experience.

Based on these duties and responsibilities, Position No. PS-0015 has been reclassified to a new class entitled Workers' Compensation/Safety Specialist I, and proposed for exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

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.

The Board noted in Decision No. 14, Hawaii Government Employees' Association, 1 HPERB 103 (1972), that the following employees are to be included in bargaining unit 13:

All professional and scientific employees employed by the State of Hawaii, City

and County of Honolulu, and the Counties of Hawaii, Maui, and Kauai, except those determined not eligible to vote.

Id. at 104.

Section 89-2, HRS, sets forth the definition of "professional employee" and reads as follows:

"Professional employee" includes
(A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; . . .

After a complete review of the duties and responsibilities of Position No. PS-0015, the Board concludes that the position processes, reviews, analyzes, and renders decisions on workers' compensation cases affecting the County of Maui. As such, the position is engaged in predominantly intellectual work which is varied in character, requiring the consistent exercise of discretion and judgment. The Board is also convinced that the position's duties and responsibilities cannot be standardized in relation to a given period of time, and requires knowledge of an advanced type customarily acquired through study in an institution of higher learning. Accordingly, the Board concludes that the duties and responsibilities of Position No. PS-0015 reflect

those of a "professional employee." Thus, the position would appropriately be placed in bargaining unit 13 if included in a collective bargaining unit.

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 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, suspensions, layoffs, recalls, promotions, discharges, assignments, rewards, discipline, grievance adjustments, and still be includable. Thus, the material with which 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, 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 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.

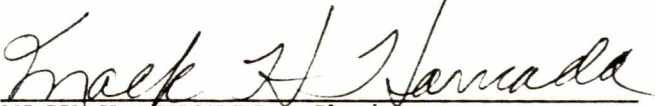
After a complete review of the duties and responsibilities of Position No. PS-0015, the Board concludes that the position clearly works in the regular course of employment with personnel matters which are highly confidential and sensitive pertaining to workers' compensation claims against the County of Maui. Such duties are capable of producing an effect on employee-employer relations which include reviewing, processing, evaluating, monitoring, analyzing, and recommending dispensation of workers' compensation claims. Further, the position is under the general supervision of an excluded position. Thus, we conclude that the subject position is concerned with confidential matters which are not intended for the eyes and ears of the rank and file and unions, and should be under provisions of Subsection 89-6(c), HRS, and Decision 95, excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

ORDER

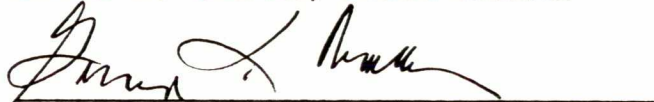
Position No. PS-0015, entitled Workers' Compensation/Safety Specialist I, is excluded from bargaining unit 13.

DATED: Honolulu, Hawaii, May 24, 1988.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES R. CARRAS, Board Member


GERALD K. MACHIDA, Board Member

HANNIBAL M. TAVARES, Mayor of the County of Maui
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