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STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NOS.: RA-03-152a
	)	RA-04-152b
HANNIBAL M. TAVARES, Mayor of	)	
the County of Maui,	)	DECISION NO. 274
	)	
Petitioner.	)	FINDINGS OF FACT, CONCLU-
	)	SIONS OF LAW AND ORDER

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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 the transfer of Position No. PS-0004, Personnel Technician II, from bargaining unit 3 (Nonsupervisory employees in white collar positions) to bargaining unit 4 (Supervisory employees in white collar positions). Additionally, Petitioner requested that Position No. PS-0004 be excluded from bargaining unit 4. The bargaining unit amendment and exclusion are premised upon the redescription of the position's duties and responsibilities and reclassification to Administrative Service and Records Supervisor.

Petitioner submitted the following documents with the petition:

1. Affidavit of Manabu Kimura, Director of Personnel Services, County of Maui, regarding Position No. PS-0004, dated January 25, 1988;

2. Position description for Personnel Technician II (Exhibit A);
3. Class specifications for the new class, Administrative Service and Records Supervisor (Exhibit B);
4. Table of Organization for the Department of Personnel Services, County of Maui (Exhibit C); and
5. Letter, dated September 16, 1988, from Manabu Kimura to Russell K. Okata, Executive Director, Hawaii Government Employees Association [hereinafter referred to as HGEA], requesting concurrence with the proposed exclusion from bargaining unit 4 (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 4.

The HGEA is the exclusive bargaining representative for employees in bargaining unit 4. The HGEA concurs with the proposed exclusion of Position No. PS-0004 from Unit 4, and is deemed to have waived the right to a hearing on the subject petition (Petitioner's Exhibit D).

Position No. PS-0004, Personnel Technician II, is located in the Office of the Director, Department of Personnel

Services, County of Maui, and is responsible for the following duties:

1. Supervise and participate in the performance of personnel transactions by presenting numerous alternate courses of action involving all areas of personnel management specializations;
2. Search and compile data from a variety of source documents/files, and prepare reports which require comprehensive knowledge of applicable guidelines, precedent cases, and policy statements;
3. Serve as an expert source of information on regulatory and procedural matters relating to grievances, classification and compensation appeals, repricing, bargaining unit exclusions and inclusions, etc.;
4. Coordinate and assign work according to priority to support staff;
5. Supervise and participate in the maintenance of all files and records;
6. Assist program specialist in preparation of a variety of staff reports;
7. Review office procedures and make recommendations for improvements;
8. Develop work performance standards and evaluate job performances of subordinates;
9. Identify and implement work according to priority;



10. Make recommendations to the Director regarding personnel matters;
11. Ensure accuracy and completion of personnel files, reports and records;
12. Initiate correspondence for Director's signature and check pending matters for completion deadlines;
13. Attend meetings on personnel matters with various departments and serve as a resource person on operating procedures;
14. Establish guidelines and procedures for staff support; and
15. Perform other duties as required.

Petitioner's Exhibit A.

Based on these duties and responsibilities, Position No. PS-0004 has been reclassified to a new class entitled Administrative Service and Records Supervisor and proposed for exclusion from bargaining unit 4.

#### 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:

\* \* \*

- (3) Nonsupervisory employees in white collar positions;
- (4) Supervisory employees in white collar positions; . . .

After a complete review of the duties and responsibilities of Position No. PS-0004, the Board concludes that the position is responsible for supervising the clerical support staff of the Technical Support Services Section, Department of Personnel Services, County of Maui. Further, the position's duties and responsibilities are supervisory, white collar in nature. As such, Position No. PS-0004 in bargaining unit 4 is consistent with Subsection 89-6(a), HRS.

Subsection 89-6(c), HRS, however, also 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 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, 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 the Administrative Service and Records Supervisor, the Board concludes that Position No. PS-0004 clearly works in the regular course of employment with confidential personnel matters pertaining to personnel management, administration, and records maintenance. Furthermore, the position is involved with assisting program specialist in the preparation of a variety of staff reports relating to personnel administration, research, and analysis. These studies encompass matters not intended for the eyes and ears of the rank and file, and may impact upon employee-employer relations. Thus, the position is clearly concerned with confidential matters affecting employee-employer relations and should be, under the provision of Section 89-6, HRS, and Decision No. 95, excluded from Unit 4 and coverage under Chapter 89, HRS.

#### ORDER

Position No. PS-0004, entitled Administrative Service and Records Supervisor, is excluded from bargaining unit 4.

HANNIBAL M. TAVARES, Mayor of the County of Maui  
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DATED: Honolulu, Hawaii, May 24, 1988.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES R. CARRAS, Board Member

  
GERALD K. MACHIDA, Board Member

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