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STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-03-158
	)	
DANTE CARPENTER, Mayor of the	)	DECISION NO. 283
County of Hawaii,	)	
	)	FINDINGS OF FACT, CONCLU-
Petitioner.	)	SIONS OF LAW AND ORDER
_____	)	

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On August 8, 1988, DANTE CARPENTER, Mayor of the County of Hawaii [hereinafter referred to as Petitioner or Employer], filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board [hereinafter referred to as Board]. In its petition, Employer requested that Position No. 3363, Secretary-Reporter, be excluded from bargaining unit 3 [Nonsupervisory white collar employees]. This exclusion is premised upon the Employer's description of the position as an individual concerned with confidential matters affecting employee-employer relations.

Petitioner submitted the following documents with the petition:

1. Affidavit of David K. Luke, Jr., Director of Personnel, County of Hawaii, regarding Position No. 3363, dated August 1, 1988;
2. Letter, dated July 21, 1988, from David K. Luke, Jr., to Russell Okata, Executive Director, Hawaii Government

Employees Association [hereinafter referred to as HGEA], regarding Position No. 3363 (Exhibit A);

3. Position description for Secretary-Reporter (Exhibit B);

4. Class specifications for Secretary-Reporter (Exhibit C); and

5. Organization chart for the Department of Civil Service, County of Hawaii (Exhibit D).

Based on the affidavit of David K. Luke, Jr., 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 Hawaii, which includes employees in bargaining unit 3.

The HGEA is the exclusive representative, as defined in Section 89-2, HRS, of employees in bargaining unit 3. The HGEA concurs with the proposed exclusion of Position No. 3363 and is deemed to have waived the right to a hearing thereon (Exhibit A).

Position No. 3363 has been allocated to a class entitled Secretary-Reporter and is located in the Department of Civil Service, County of Hawaii. Position No. 3363 is required to provide secretarial services to the director and deputy director of the Department of Civil Service, in addition to the Civil Service Commission. More specifically, the position

performs the following duties in the approximate percentages of work time:

1. Services to the Director:

Receive and route calls as appropriate; maintain appointment calendars for the director and deputy director; maintain files for the director; provide pertinent correspondence and information regarding items requiring the director's attention; provide general administrative support to insure that all matters which must be acted on by the director are met in a timely manner; process correspondence and maintain files on confidential matters affecting employee-employer relations; take and transcribe dictation from the director for correspondence; take and transcribe minutes of meetings and conferences; and draft routine letters, statements and memoranda as directed (50%).

2. Services to the Commission:

Receive correspondence, appeals, and other related material sent to the Civil Service Commission; prepare agenda and informational folders for commissioners and staff as directed by the Civil Service Commission Chairperson; contact and coordinate among Civil Service Commission Chairperson and the commissioners regarding meeting agenda, hearing sites, travel, and other matters related to commission meetings; insure that agenda is published pursuant to legal requirements; arrange verbatim recordings of meetings and take and transcribe minutes; prepare appeal and public hearing procedures for Chairperson; prepare subpoenas as required; provide administrative support on matters considered by the commission to insure appropriate disposition; and provide secretarial services (20%).

3. General office duties:

Supervise and participate in the maintenance of fiscal accounts for the department, which include preparation of requisitions, confirmation of purchase orders, petty cash vouchers, and processing of bills for payment; compile fiscal data and assist in the preparation of the budget; verify and process time and attendance forms for departmental employees; prepare and process all personnel forms for departmental employees as required; supervise and participate in the maintenance of the department's inventory control records; file departmental

correspondence; supervise clerical/secretarial services to other departmental staff members as required; and prepare various monthly reports such as monthly personnel reports, equipment damage reports, and safety reports (30%).

Based on these duties and responsibilities, Position No. 3363 has been allocated to a new class entitled Secretary-Reporter, and is proposed for exclusion from bargaining unit 3.

#### 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; . . .

Based on the clerical duties and responsibilities of Position No. 3363, it would be appropriately placed in bargaining unit 3 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. 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.

Id. at 146-47.

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 Position No. 3363, the Board concludes that the position, as the personal secretary to the Director and Deputy Director of Civil Service, clearly works in the regular course of employment with personnel matters which are highly confidential and sensitive. The subject position provides secretarial and clerical

assistance to the department head and deputy who serve on the Employer's negotiating team. Inevitably, this position will have access to proposals of the Employer and Commission decisions before they are given to the union. It is also clear that the position is directly subordinate to top-level managers who have substantial policy-making roles in employment relations. 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 the provisions of Subsection 89-6(c), HRS, and Decision No. 95, excluded from bargaining unit 3 and coverage under Chapter 89, HRS.

ORDER

Position No. 3363, entitled Secretary-Reporter, is excluded from bargaining unit 3.

DATED: Honolulu, Hawaii, September 27, 1988.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES R. CARRAS, Board Member

  
GERALD K. MACHIDA, Board Member

DANTE CARPENTER, Mayor of the County of Hawaii  
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