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STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-164
)	
BERNARD AKANA, Mayor of the)	DECISION NO. 295
County of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
_____)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On February 13, 1989, BERNARD AKANA, 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. 2287, Civil Engineer VI, be excluded from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses) as the position is a top-level managerial position as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS].

Petitioner submitted the following documents with the petition:

1. Affidavit of David Luke, Jr., Director of Personnel Services, County of Hawaii, regarding Position No. 2287, dated February 9, 1989;
2. Letter, dated November 29, 1989, from David Luke, Jr., to Russell Okata, Executive Director, Hawaii Government

Employees Association [hereinafter referred to as HGEA], requesting concurrence with the proposed exclusion of the subject position (Exhibit A);

3. Position description for Civil Engineer VI (Exhibit B);

4. Class specifications for Civil Engineer VI (Exhibit C); and

5. Table of Organization for the Department of Public Works, Waste Management Division, County of Hawaii (Exhibit D).

On April 7, 1989, Petitioner filed amended class specifications for Civil Engineer VI which the Board has identified as Exhibit E.

Based on the affidavit of David 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, HRS, of the employees of the County of Hawaii, which includes employees in bargaining unit 13.

The HGEA is the certified exclusive representative, as defined in Section 89-2, HRS, of the employees in bargaining unit 13. The HGEA concurs with the exclusion of the subject position and is deemed to have waived the right to a hearing thereon (Exhibit A).

In accordance with the revised Class Specifications, Position No. 2287, Civil Engineer VI, is located in the Department of Public Works, Solid Waste Division, County of Hawaii, and is responsible for administering and directing activities of a major and complex engineering program. The following are the subject position's duties and responsibilities in the approximate percentages of work time:

1. Serves as the County's Public Works representative regarding solid waste affairs (5%);
2. Plans, organizes, assigns, coordinates, and reviews the operations of the Solid Waste Division, including repair, maintenance, construction, and acquisition of new and existing transfer stations, landfills and other related facilities (40%);
3. Formulates and administers the division's policies, procedures, rules and regulations (5%);
4. Interprets and administers applicable ordinances, statutes, policies, rules and regulations of the County, State, Public Works Department and administration (5%);
5. Coordinates divisional functions within the department and administration, in addition with other agencies, divisions, and departments within other counties and State government (5%);
6. Reviews and approves changes to construction plans and specifications (5%);

7. Reviews and studies new materials, equipment, and methods of utilizing personnel to improve safety and make operations more efficient (5%);
8. Prepares technical engineering reports and contracts (5%);
9. Directs maintenance of records to establish status reports of divisional activities for dissemination to superiors and the general public (5%);
10. Investigates and resolves complaints to maintain an effective relationship with the public, other governmental officials, etc. (5%);
11. Coordinates and processes employee matters such as performance evaluations, grievances, hirings, reallocations, etc. (5%); and
12. Plans divisional budget and capital improvement projects as well as monitors and adjusts divisional expenditures (10%).

Based on these duties and responsibilities, the position is proposed for exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position No. 2287 from bargaining unit 13 as the position is a top-level managerial position.

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 . . . top-level managerial and administrative personnel . . . shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

In interpreting the exclusionary language of Section 89-6, HRS, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In determining whether an individual occupies a top-level managerial or administrative position, the Board, in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated in pertinent part:

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 the 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.

Id. at 666 [footnotes omitted].

In Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), the Board supplemented this criteria by stating:

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 ongoing 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.

Id. at 143.

After a complete review of the duties and responsibilities of Position No. 2287, the Board concludes that the position is responsible for planning, organizing, assigning, and reviewing the operations of the Solid Waste Division. Additionally, the position is responsible for formulating, monitoring, and adjusting the operational and capital improvement project budgets. Further, the subject position handles sensitive personnel matters relating to departmental employee grievances, performance evaluations, hiring of personnel, and personnel position reallocations. Finally, in directing the work of a major program, the position exercises considerable discretion to determine the means, methods, and personnel to carry out the agency policy.

As such, the Board concludes that the subject position is a top-level managerial position. Consequently, the position should be under provisions of Subsection 89-6(c), HRS,

and previous Board decisions, excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

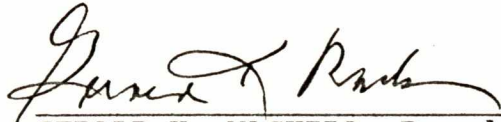
ORDER

Position No. 2287, Civil Engineer VI, is excluded from bargaining unit 13.

DATED: Honolulu, Hawaii, May 24, 1989.

HAWAII LABOR RELATIONS BOARD


JAMES R. CARRAS, Board Member


GERALD K. MACHIDA, Board Member

Copies sent to:

David Luke, Jr.
Joyce Najita, IRC
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