

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-13-166
	)	
BERNARD AKANA, Mayor of	)	DECISION NO. 297
the County of Hawaii,	)	
	)	FINDINGS OF FACT, CON-
	)	CLUSIONS OF LAW AND ORDER
Petitioner.	)	
_____	)	

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On May 24, 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, the Employer requested that Position No. 3296, Elderly Program Specialist, reclassified to Elderly Activities Operations Assistant Director, 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. 3296, dated May 15, 1989;

2. Letter, dated March 14, 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 Elderly Activities Operations Assistant Director, (Exhibit B);

4. Class specifications for Elderly Activities Operations Assistant Director, (Exhibit C); and

5. Tables of Organization for the Elderly Activities Division, Retired Senior Volunteer Program, Recreation Division, Coordinated Services Division, Nutrition Program, Nutrition Program (South Hilo), and Senior Community Service Employment Program (Exhibit D).

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 to the revised Position Description, Position No. 3296, Elderly Activities Operations Assistant Director, is located in the Elderly Activities Division, Department of Parks and Recreation, County of Hawaii, and is responsible for serving as an assistant to the division head. These responsibilities include assisting in the administration, direction, and coordination of the county-wide comprehensive and diversified program for the elderly. The following are the subject position's duties and responsibilities in the approximate percentages of work time:

1. Assists the Elderly Activities Division Director in the day-to-day operations of the division. This includes planning, organizing, budgeting, monitoring, evaluating, and supervising various programs such as the Retired Senior Volunteer Program, Senior Employment Program, Recreation Centers, Senior Citizen Centers, Nutrition Program, and the Coordinated Services Program. Additionally, is responsible for the development of division-wide programs for driver training, health, safety, first aid, and senior centers facilities improvements (40%);
2. Manages the Coordinated Services Program, including its computer system, as well as



formulates criterion for access to computer files. Additionally, is responsible for training and supervising staff as well as conducting or participating in meetings, workshops, and conferences (40%);

3. Develops administrative policies and procedures for staff, and as well as serves as liaison for intra and inter departmental communications. Additionally, is responsible for establishing program controls and performance standards, and conducting field audits to ensure compliance. Further, serves as an ombudsman by investigating complaints made by or on behalf of residents of long-term care facilities. Finally, arranges support services as appropriate and necessary to assist clients in locating or reaching service providers (10%);
4. Conducts needs assessment surveys regarding elderly services, and compiles statistical and qualitative data into reports which are used for dissemination to governmental agencies for funding purposes, and the general public. Additionally, implements an informational program regarding the availability of services and benefits through the staff and media (8%); and

5. Performs other duties as required (2%).

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. 3296, 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 Subsection 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 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.

Id. at 143.

After a complete review of the duties and responsibilities of Position No. 3296, the Board concludes that the position is responsible for assisting in administering, directing, and coordinating a major county-wide program. Further, the subject position handles high level managerial duties which include planning, organizing, budgeting,



monitoring, evaluating, and supervising a wide array of elderly support service programs. Additionally, the subject position also assumes the duties of the Elderly Activities Operations Director during his absence. Finally, in directing the work of the 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. Subsequently, 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

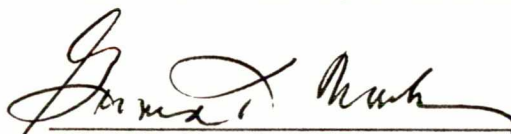
Position No. 3296, Elderly Activities Operations Assistant Director, is excluded from bargaining unit 13.

DATED: Honolulu, Hawaii, June 30, 1989.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson

  
JAMES R. CARRAS, Board Member

GERALD K. MACHIDA, Board Member

BERNARD AKANA, Mayor of the County of Hawaii, Petitioner; CASE  
NO. RA-13-166  
DECISION NO. 297  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Copies sent to:

David Luke, Jr.  
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