

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-170
)	
BERNARD AKANA, Mayor of)	DECISION NO. 302
the County of Hawaii,)	
)	FINDINGS OF FACT, CON-
)	CLUSIONS OF LAW AND ORDER
Petitioner.)	
_____)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 29, 1990, BERNARD AKANA, Mayor of the County of Hawaii (Petitioner or Employer), filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). In its petition, the Employer requested that Position No. 264, Accountant IV, reclassified to Administrative Officer, 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 Section 89-6, Hawaii Revised Statutes (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. 264, dated March 9, 1990;

2. Letter, dated January 29, 1987, from Harry Boranian, former Director of Personnel, to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of the subject position (Exhibit A);

3. Position description for Administrative Officer (Exhibit B);

4. Class specifications for Administrative Officer (Exhibit C); and

5. Table of Organization for the Hawaii County Department of Public Works (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).

According to the revised Class Specifications, Position No. 264, Administrative Assistant, is located in the

Department of Public Works, County of Hawaii, and the incumbent serves as an assistant to the Chief Engineer. The responsibilities of the position include a wide range of administrative duties in the approximate percentages of work time as follows:

1. Identifies, analyzes, recommends, and pursues authorized solutions to the problems and needs of management; advises management on regulatory and procedural requirements regarding administrative matters; participates in departmental planning activities; assigns and supervises the work of accounting, personnel, and clerical subordinates; recommends, assists, and conducts studies regarding the development and revision of departmental fiscal and personnel policies and procedures; and represents the department on collective bargaining matters (40%);
2. Supervises, plans, and implements a coordinated business operation for the department; administers the departmental contracts regarding funding and payment; advises, directs, and coordinates accounting procedures affecting various units; reviews, approves, and monitors expenditures to ensure the department is within budgetary limits; supervises and participates in the preparation of financial statements, reports, budget estimates,

and statistical reports, which are also inclusive of special revenues and capital improvements projects; allocates funds to various programs as requested; and conducts internal reviews to insure that accounting and support procedures are properly implemented (35%);

3. Coordinates with other county, State, and federal agencies and participates in public relations, information, and education programs for the department (15%); and
4. Provides or obtains personnel management services in resolving problems relating to recruitment, selection, classification, pay, training, employee management relations, promotions, transfers, retirement and related activities; and reviews and recommends requests regarding personnel management activities (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. 264 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 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. 264, the Board concludes that the position is at or near the top of a complex agency and is responsible for administering and directing a major county-wide program. Further, the subject position handles high level managerial duties which include a variety of administrative services relating to personnel management, budget administration, management, and public relations. Additionally, the subject position also has limited delegated authority to act on behalf of the Chief Engineer. Finally, in assisting 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. Consequently, under provisions of Section 89-6, HRS, and previous Board decisions, the position should be excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

ORDER

Position No. 264, Administrative Officer, is excluded from bargaining unit 13.

DATED: Honolulu, Hawaii, June 8, 1990.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

Copies sent to:
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