

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-13-173
	)	
BERNARD AKANA, Mayor of the	)	DECISION NO. 306
County of Hawaii,	)	
	)	FINDINGS OF FACT, CONCLU-
Petitioner.	)	SIONS OF LAW AND ORDER
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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On May 3, 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. 3457, 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 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. 3457, dated April 30, 1990;
2. Letter, dated June 6, 1989, from David Luke, Jr., 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 Civil Engineer VI (Exhibit B);
4. Class specifications for Civil Engineer VI (Exhibit C); and
5. Table of Organization for the Hawaii County Department of Water Supply (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 with the revised Class Specifications, Position No. 3457, Civil Engineer VI, is located in the Department of Water Supply, County of Hawaii, and the incumbent serves as the principal assistant to the Chief Engineer in directing and coordinating the activities of the Engineering Division of the Department of Water Supply. The responsibilities of the position include the following:

Directs and coordinates functions necessitated by program requirements of the Safe Drinking Water Act; plans, determines, and directs manpower and equipment needs to expedite completion of major projects and other work undertaken by the division; plans, directs and coordinates administrative and technical activities of the division; advises and assists in the investigation and resolution of administrative problems; advises subordinate engineers, inspectors, surveyors, consultants, and other agencies on the interpretation and application of policies and regulations; reviews Engineering Division activities and evaluates efficiency of operations; recommends and authorizes changes to plans and specifications during project construction; recommends contract payments for projects; formulates and executes divisional work policies, procedures, rules, and regulations; directs and collaborates in the preparation of divisional operating and capital improvement budgets; approves requisitions for supplies, applications for sick and vacation leaves, and requests for overtime and standby payments; directs special studies and research on new procedures, materials, and equipment; directs compilation of information in preparation of administrative and technical studies; directs divisional in-service training and safety programs; coordinates activities



with operations and fiscal divisions as necessary; directs long-range planning and research studies; participates in conferences to coordinate activities and programs with officials of other governmental agencies; represents the department before governmental agencies, civic organizations and schools to explain purposes, objectives, and programs of the department; and reviews and approves development plans for availability of water (Exhibit B).

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. 3457 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 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. 3457, the Board concludes that the incumbent in the position is responsible for serving as the principal assistant in directing the activities of a major and complex engineering division. Further, the subject position handles high level managerial duties which include a variety of administrative functions relating to personnel management, budget administration, management, and public relations. Additionally, the subject position acts on behalf of the Engineering Division Head in 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. Consequently, under the 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

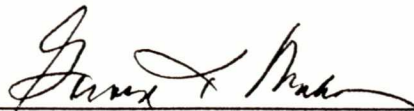
Position No. 3457, Civil Engineer VI, is excluded from bargaining unit 13.

DATED: Honolulu, Hawaii, June 29, 1990.

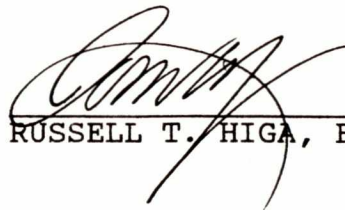
HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

BERNARD AKANA, Mayor of the County of Hawaii  
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER



GERALD K. MACHIDA, Board Member



RUSSELL T. HIGA, Board Member

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