

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-03-183
)	
LORRAINE R. INOUE, Mayor,)	DECISION NO. 316
County of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On April 5, 1991, LORRAINE R. INOUE, Mayor, County of Hawaii (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 the exclusion of Position No. 3613, Personnel Clerk I, from bargaining unit 3 (Non-supervisory employees in white collar positions). The Employer contends that the incumbent of the position is an individual concerned with confidential matters affecting employee-employer relations and should be excluded from bargaining pursuant to Subsection 89-6(c), Hawaii Revised Statutes (HRS).

The Employer submitted the following documents with the petition:

1. Affidavit of David K. Luke, Jr., Director of Personnel, County of Hawaii, regarding Position No. 3316 (sic), dated April 3, 1991;

2. Letter, dated October 15, 1990, from David K. Luke, Jr. to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of Position No. 3613 from bargaining unit 3 (Ex. A);

3. Position Description for Personnel Clerk I (Ex. B);

4. Class Specifications for Personnel Clerk I (Ex. C); and

5. Table of Organization for the Department of Civil Service, County of Hawaii (Ex. D).

Based upon the affidavit of David K. Luke, Jr. and the documents submitted in support of the petition, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

LORRAINE R. INOUE is the public employer, as defined in Section 89-2, HRS, of the employees of the County of Hawaii, which include employees in bargaining unit 3.

The HGEA is the certified exclusive representative of the employees in bargaining unit 3.

The HGEA concurs with the Employer's proposed exclusion of Position No. 3613 from bargaining unit 3 and is deemed to have waived the right to a hearing thereon (Ex. A).

According to the Position Description, the incumbent works in the Recruitment and Examination Division, Department of Civil Service, and performs the following duties in the approximate percentages of worktime:

1. Recruitment - Issues application forms and explains recruitment and examination process and proper procedure for filing applications; receives and verifies civil service applications; compiles applicant data survey forms and forwards them to the County of Hawaii Affirmative Action Officer; prepares and types recruitment advertisement requisitions; prepares and distributes recruitment announcements to all departments, agencies and individuals; maintains recruitment files for the Division (50%);
2. Examination - Types training and experience evaluations; monitors examinations, as needed; assists the Personnel Assistant with examinations (15%); and
3. Miscellaneous - Answers telephone calls, types letters, memoranda, reports, etc.; and performs other clerical tasks (35%). (Ex. B).

According to the specifications for the Personnel Clerk I class, positions in this class generally perform personnel clerical work encompassing one or more functional areas of the personnel program, requiring the interpretation

and application of pertinent civil service laws and regulations, prepares and processes various personnel transaction documents and performs other related duties as required.

(Ex. C).

DISCUSSION

Section 89-6, 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;

* * *

Upon a review of the duties and responsibilities of Position No. 3613, the Board concludes that the subject position performs clerical duties which are characteristic to the Unit 3 non-supervisory white collar employee.

Section 89-6, HRS, however, 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 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 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.

Id. at 145-147.

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 considered includable. Thus, the material with which employee 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. (Cite omitted.)

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, but 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 Section 89-6, 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 the unions
3. and which matters are capable of producing an effect 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 regulations.

Id. at 147.

After a review of the duties and responsibilities of Position No. 3613, the Board concludes that the position regularly works with matters of a confidential nature which are matters capable of producing an effect on or influencing employee-employer relations. The position is located in the central personnel agency, and is responsible for clerical

support in civil service recruitment and examination matters and may perform miscellaneous typing of matters which may affect employee-employer relations. As such, the subject position is involved with matters which are not intended for the eyes and ears of the rank and file and unions.

CONCLUSIONS OF LAW


Position No. 3613 is an individual concerned with confidential matters affecting employee-employer relations and should be, pursuant to Section 89-6, HRS, excluded from bargaining unit 3 and coverage under Chapter 89, HRS.

ORDER


Position No. 3613, Personnel Clerk I is excluded from bargaining unit 3.

DATED: Honolulu, Hawaii, May 31, 1991.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

LORRAINE R. INOUE, Mayor, County of Hawaii; CASE NO. RA-03-183
DECISION NO. 316
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Copies sent to:

David K. Luke, Jr.
Joyce Najita, IRC
Robert Hasegawa, CLEAR
State Archives
Publications Distribution Center
University of Hawaii Library
Richardson School of Law Library
Library of Congress