

Dec.

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-03-182
	)	
LORRAINE R. INOUE, Mayor,	)	DECISION NO. 317
County of Hawaii,	)	
	)	FINDINGS OF FACT, CONCLU-
Petitioner,	)	SIONS OF LAW AND ORDER
	)	
and	)	
	)	
HAWAII GOVERNMENT EMPLOYEES	)	
ASSOCIATION, AFSCME LOCAL 152,	)	
AFL-CIO,	)	
	)	
Intervenor.	)	

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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. 3555, Clerk-Typist (TAN), from bargaining unit 3 (Nonsupervisory employees in white collar positions). The Employer contends that the position is 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. 3555, dated April 3, 1991;

2. Letter, dated October 15, 1990, from David K. Luke, Jr., to Russell Okata, Executive Director, HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME LOCAL 152 (HGEA), requesting concurrence with the proposed exclusion of Position No. 3555 from bargaining unit 3 (Ex. A.);

3. Position Description for Clerk-Typist (TAN) (Ex. B);

4. Class Specifications for Clerk-Typist (Ex. C); and

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

On April 15, 1991, the Board issued a Notice of Receipt of Petition for Clarification or Amendment of Appropriate Bargaining Unit; Notice of Deadline for Filing Petitions for Intervention which set a deadline of April 30, 1991 by which to file an appropriate Petition for Intervention. On April 30, 1991, the City and County of Honolulu filed a Response to Notice to Intervene reserving its right to file an appropriate petition in the event it determined that it had an interest in the subject matter. Also, on April 30, 1991, the HGEA filed a Petition for Intervention in this case. On May 23, 1991, the Board issued an Order Granting Petition for Intervention recognizing that the HGEA had alleged a sufficient interest to participate in the proceedings.

Although HGEA did not initially concur with the exclusion of the subject position (Ex. A), the Employer submitted a supplemental exhibit on May 30, 1991 which indicates that the HGEA now concurs with the exclusion (Ex. E). The exhibit was accompanied by a letter, dated May 1, 1991, which indicates the concurrence of HGEA (Ex. E-1). In addition, a revised Table of Organization, dated May 1, 1991, was included (Ex. E-2).

Based on 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. 3555 from bargaining unit 3 and is deemed to have waived the right to a hearing thereon (Ex. E).

According to the Position Description, the position works in the Administrative Services Division, Department of Civil Service, and performs the following duties in the approximate percentage of worktime:

1. Types letters, memoranda, reports, forms,  
and other materials into final form including



correspondence regarding labor-management; searches through a variety of files and records and summarizes information, and prepares periodic and special reports; composes routine correspondence and letters of acknowledgments; sets up and maintains files (80%);

2. Answers telephone calls, takes messages and routes calls to appropriate staff person; provides counter service and gives general information to departmental officials, employees and the public regarding civil service laws, rules, regulations, policies and procedures (20%).

(Ex. B).

According to the Second Request to Exclude New Position (Ex. E-1), attached to the Affidavit filed on May 30, 1991, the position functions as part of a unit composed of the Secretary-Reporter and Senior Clerk-Stenographer. The unit services the Civil Service Commission, Salary Commission, Personnel Director, Deputy Director and three division heads. According to the justification for proposed exclusion, it is difficult to separate the confidential matters from others in the situation. Depending on the workload, the Secretary-Reporter may assign confidential matters to the Clerk-Typist. Because of this, the Clerk-Typist can regularly expect assignments of a confidential nature, especially from the Director, Deputy Director and Labor Relations Specialist in collective

bargaining matters, grievances and other management dealings in labor relations.

#### 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. 3555, the Board concludes that the subject position performs clerical duties which are characteristic of the Unit 3 nonsupervisory 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 employees 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(d), 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 relations.

Id. at 147.

After a review of the duties and responsibilities of Position No. 3555, the Board concludes that the position, located in the Department of Civil Service, County of Hawaii, performs general clerical duties and regularly works with matters of a confidential nature which are matters capable of producing an effect on or influencing 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

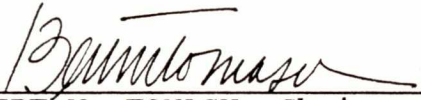
Position No. 3555 is a position concerned with confidential matters affecting employee-employer relations and should be, pursuant to Section 89-6, HRS, excluded from bargaining unit 3 and coverage under Chapter 89, HRS.

ORDER

Position No. 3555, Clerk-Typist, is excluded from bargaining unit 3.

DATED: Honolulu, Hawaii, June 18, 1991.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
GERALD K. MACHIDA, Board Member

  
RUSSELL T. HIGA, Board Member

Copies sent to:

David K. Luke, Jr.  
Nora A. Nomura, HGEA  
Jonathan Chun, Deputy Corporation Counsel  
Robert Hasegawa, CLEAR  
State Archives  
Publications Distribution Center  
University of Hawaii Library  
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