

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-184
)	
LORRAINE R. INOUE, Mayor,)	DECISION NO. 318
County of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On July 23, 1991, LORRAINE R. INOUE, Mayor, 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. H0026, Assistant Housing Administrator, 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 K. Luke, Jr., Director of Personnel, County of Hawaii, regarding Position No. H0026, dated July 18, 1991;
2. Letter, dated March 19, 1991, from David K. 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 Assistant Housing Administrator (Exhibit B);

4. Class specifications for Assistant Housing Administrator (Exhibit C);

5. Proposed Table of Organization for the Hawaii County Office of Housing and Community Development (OHCD) (Exhibit D).

Based on the affidavit of David K. 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. H0026, Assistant Housing Administrator, is located in the OHCD, County of Hawaii, and the incumbent serves as the

principal assistant to the Housing Administrator in the operation of the County's Housing and Community Development Program. The responsibilities of the position include a wide range of administrative duties with the approximate percentages of work time allocated as follows:

1. Assists in the planning, development and implementation of the County's Housing and Community Development program (10%);
2. Assists in the supervision of the Existing Housing Division, the Development Division and the Community Development Division, and coordinates the implementation of program and project activities within and among the Divisions (25%);
3. Supervises the Administration Division which includes developing and implementing office, personnel and budget procedures, monitoring and coordinating agency expenditures, including equipment purchases, and the allocation of office space and ongoing maintenance programs; supervises the development, implementation and maintenance of electronic data processing systems and other office automation programs (30%);
4. Coordinates submittals from the OHCD to the Hawaii County Housing Agency (HCHA) as well as coordinates the meeting agenda, minutes and other related activities associated with HCHA meetings (10%);

5. Keeps abreast of changes to County, State and Federal rules and regulations affecting housing assistance, community development and other agency programs; coordinates activities with other governmental agencies and community groups (5%);
6. Assists the Administrator with long range planning and staffing of the agency to implement the policies and programs assigned to the agency (5%);
7. Assists with planning and staffing of the agency to implement policies and programs (5%);
8. Speaks to community groups and organizations, provides technical assistance and prepares correspondence (5%); and
9. Performs Administrator's duties when the person is on leave (5%) (Exhibit B).

Based on these duties and responsibilities, the position is proposed for exclusion from bargaining unit 13.

DISCUSSION

Petitioner has requested the exclusion of Position No. H0026 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 a 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. H0026, 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 housing and community development program. 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 Housing Administrator in his absence. Finally, in assisting to direct the work of the program, the position exercises considerable discretion to determine the means, methods, and personnel to carry out the agency's policies.

CONCLUSIONS OF LAW

The Board concludes that the subject position is a top-level managerial and administrative position. Consequently, under the provisions of Section 89-6, HRS, and previous Board

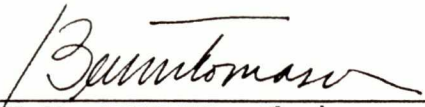
decisions, the position should be excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

ORDER

Position No. H0026, Assistant Housing Administrator,
is excluded from bargaining unit 13.

DATED: Honolulu, Hawaii, August 15, 1991.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

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