

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-187
)	
LORRAINE R. INOUE, Mayor,)	DECISION NO. 324
County of Hawaii,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
_____)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On February 14, 1992, 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 Nos. 2079 and 2529, Chief Planner, from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses). The Employer contends that the positions are top-level managerial 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 Nos. 2079 and 2529, dated February 12, 1992;
2. Letter, dated December 11, 1991, from David K. Luke, Jr. to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the

proposed exclusion of Position Nos. 2079 and 2529 from bargaining unit 13 (Exhibit A);

3. Position Description for Chief Planner-Planning Division (Exhibit B);

4. Position Description for Chief Planner-Land Use Controls Division (Exhibit C);

5. Class specifications for Chief Planner (Exhibit D);
and

6. Table of Organization for the Planning Department, County of Hawaii (Exhibit E).

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 13.

The HGEA is the certified exclusive representative of the employees in bargaining unit 13.

The HGEA concurs with the Employer's proposed exclusion of Position Nos. 2079 and 2529 from bargaining unit 13 and is deemed to have waived the right to a hearing thereon (Exhibit A).

According to the position description for Position No. 2079, the incumbent heads the Planning Division of the Planning Department and is responsible for the overall coordination and

administration of activities/programs of the division, and performs the following duties in the approximate percentages of worktime:

1. Directs, delimits and sets deadlines on assignments to Section Chiefs; reviews work assigned for adherence to instructions given; practices personnel relations and resolves personnel problems encountered; evaluates the performance of Section Chiefs and carries out leave and administrative policies of the department; schedules workload of the division and meets completion dates; informs Director/Deputy on status of work program in the incumbent's area of responsibility; coordinates work within the division and with other divisions of the department; assists in the development of the division's operating budget and the maintenance thereof (25%);
2. Provides general administrative control over all processing of change of zone, variance, State Land Use Boundary Amendment, Special Permit, and other requests requiring Planning Commission and/or Board of Appeals action, and reviews applications with the Director and/or his Deputy (10%);
3. Coordinates primary staff functions, including the development of short-, middle-, and long-range planning functions, as well as integrating the

specific functions of Capital Improvement Projects (CIP) and rezoning with the General Plan and community development/functional planning processes (10%);

4. Provides general administrative control over, and reviews as may be necessary, Section Chief's recommendations/reports relative to applications requiring approval of other Boards or Commissions (5%);
5. Coordinates and reviews planning processes involving different levels of government such as the State Plan and Tourism Plan, as well as Federal programs like Coastal Zone Management, HUD, and EDA (15%);
6. Develops and initiates programs/ordinances and amendments which are necessary to fulfill the objectives of the General Plan and other statutory mandates (10%);
7. Meets with affected community groups, property owners, realtors, architects, engineers, developers, governmental agencies and other interested persons or groups in administering work affecting this division; keeps in close communication with other agencies involved in resolving problems and coordinating work programs within divisions (10%);

8. Performs other duties as may be required by the Director or his Deputy (15%). (Exhibit B).

According to the position description for Position No. 2529, the incumbent heads the Land Use Controls Division of the Planning Department and is responsible for the overall coordination and administration of activities/programs of the division, and performs the following duties in the approximate percentages of worktime:

1. Directs, delimits and sets deadlines on assignments to Section Chiefs; reviews work assigned for adherence to instructions given; practices personnel relations and resolves personnel problems encountered; evaluates the performance of Section Chiefs and carries out leave and administrative policies of the department; schedules workload of the division and meets completion dates; informs Director/Deputy on status of work program in the incumbent's area of responsibility; coordinates work within the division and with other divisions of the department; assists in the development of the division's operating budget and the maintenance thereof (30%);
2. Provides general administrative control over, and reviews and processes applications for buildings, subdivisions, or grading; reviews critical areas with Director and/or his Deputy (10%);

3. Coordinates primary permit requirements with other agencies, including permits required by the Planning Commission, and ensures that permit information is properly and accurately discharged by subordinates (15%);
4. Develops and coordinates the initiation of necessary programs, ordinances and amendments thereto to fulfill the objectives of the General Plan and other statutory mandates with Planning Division Chiefs; coordinates the review of new ordinances, statutes, etc., and/or amendments thereto, within the division and with other divisions (10%);
5. Meets with affected community groups, property owners, realtors, architects, engineers, developers, governmental agencies and other interested persons or groups in administering work affecting this division; keeps in close communication with other agencies involved in resolving problems and coordinating work programs within divisions (10%);
6. Coordinates the division's review of all programs/activities developed and/or being considered by the other divisions, such as urban design plan (10%);
7. Coordinates the Zoning and Subdivision Code Enforcement and Inspection program, and oversees the

activities of Zoning Inspectors and take appropriate action where violations occurs (5%);

8. Performs other duties as required by the Director or his Deputy (10%). (Exhibit C).

According to the class specifications for the Chief Planner, the incumbent of the position administers and coordinates the overall divisional activities of a comprehensive program in County planning, including general planning and land use activities; and performs other related duties as required. (Exhibit D).

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:

* * *

(13) Professional and scientific employees, other than registered professional nurses.

Upon a review of the duties and responsibilities of Position Nos. 2079 and 2529, the Board concludes that the subject positions perform community planning duties which are characteristic to the Unit 13 professional 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 . . . 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 its interpretation of the legislative intent of the above cited section, the Board in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated:

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 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 managerial 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 a 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 review of the duties and responsibilities of Position Nos. 2079 and 2529, the Board concludes that the incumbents in both positions are responsible for administering and directing major county-wide programs. Position No. 2079 heads the Planning Division, and Position No. 2529 heads the Land Use Control Division, located in the Planning Department, County of Hawaii. Both positions handle high level managerial duties which include a variety of administrative functions relating to personnel management, budget administration, management, and public relations. Finally, in directing the work of the their respective programs, both positions exercise considerable discretion to determine the means, methods, and personnel to carry out the agency policy.

CONCLUSIONS OF LAW

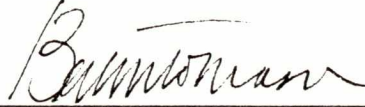
Position Nos. 2079 and 2529 are top-level, administrative positions and should be, pursuant to Section 89-6, HRS, excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

ORDER

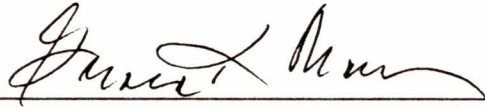
Position Nos. 2079 and 2529, Chief Planner, are excluded from bargaining unit 13.

Dated: Honolulu, Hawaii, March 10, 1992.


HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



GERALD K. MACHIDA, Board Member



RUSSELL T. HIGA, Board Member

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