

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of ) CASE NO. RA-04-189  
 )  
LORRAINE R. INOUE, Mayor, ) DECISION NO. 326  
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 March 27, 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 an amendment to the bargaining unit status of Position No. 2445, Council Services Supervisor, from exclusion to inclusion in bargaining unit 4 (Supervisory employees in white collar positions). The Employer contends that a classification review of Position No. 2445, revealed that the position's duties do not warrant an exclusion and that the position should be included in bargaining unit 4 pursuant to Subsection 89-6(a), Hawaii Revised Statutes (HRS).

The Employer submitted the following documents with the petition:

1. Letter, dated February 26, 1992, from David K. Luke, Jr., to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the

proposed inclusion of Position No. 2445 in bargaining unit 4 (Exhibit A);

2. Position Description for Council Services Supervisor (Exhibit B);

3. Class specifications for Council Services Supervisor (Exhibit C); and

4. Table of Organization for the Office of the Hawaii County Council (Exhibit D).

Based upon 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 4.

The HGEA is the certified exclusive representative of the employees in bargaining unit 4.

The HGEA concurs with the Employer's proposed inclusion of Position No. 2445 in bargaining unit 4 and is deemed to have waived the right to a hearing thereon (Exhibit A).

According to the position description for Position No. 2445, the incumbent is responsible for overseeing, coordinating, and managing the activities of the Council Services Division by:

1. Ensuring that secretarial and clerical assistance is provided at all Committee meetings, public hearings and executive sessions;

2. Evaluating the effectiveness of Committee Services Operations and developing immediate and long-range methods and procedures to improve the division;
3. Reviewing policies, directives and legislation which affect operations and developing necessary procedures and adjustments to effectuate required changes in operations;
4. Delegating assignments to subordinates to ensure the equitable distribution and timely completion of work;
5. Coordinating the scheduling of all meetings involving the Committees with Committee Chairs, Clerk and Council Chair and making necessary arrangements for the use of facilities and equipment needed for meetings not held in the Councilroom;
6. Coordinating the workflow of subordinates in the recording, indexing, filing, notification and publication of documents acted on by the Committees;
7. Supervising the preparation of Committee agendas and minutes;
8. Providing for the maintenance and safekeeping of all Committee minutes, agendas and reports;
9. Delegating subordinates in providing secretarial and clerical assistance to the County Clerk and Deputy Clerk; and
10. Supervising and assigning work schedules of subordinates in the following areas:

- (a) receiving data (communications, petitions, bills for ordinances, resolutions, etc.) referred to the Committees and Council for action;
- (b) preparing synoptic agendas to ensure the smooth conduct of Committee business at all sessions;
- (c) arranging for the availability of meeting facilities, physical set up and equipment for all meetings and hearings;
- (d) typing, reproducing and distributing Committee reports to the Council for adoption;
- (e) mailing notices of Committee meetings and actions to those requesting same, posting and publishing same in compliance with state statutory and County Charter requirements;
- (f) recording all Committee proceedings and transcribing and typing the same into official committee minutes;
- (g) disseminating actions of the Committees to the proper governmental agency or affected party through correspondence, by telephone or in person;
- (h) routing Committee reports approved by the Council to insure proper receipt by affected departments or individuals;



(i) composing and preparing replies to routine communications for signature by the Committee Chairs; and

(j) logging the attendance of Council members at Council/Committee meetings (Exhibit B).

According to the class specifications for the Council Services Supervisor, the incumbent of the position is responsible for supervising and coordinating the clerical, secretarial, records management and support services for the County Council and its Committees. (Exhibit 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:

\* \* \*

(4) Supervisory employees in white collar positions;

\* \* \*

Upon a review of the duties and responsibilities of Position No. 2445, the Board concludes that the subject position performs a variety of coordinating and supervisory tasks within the Office of the Hawaii County Council which are characteristic of the unit 4 supervisory 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, [or] 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, as it relates to top-level and administrative personnel, 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 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.

Furthermore, in interpreting the legislative intent of Section 89-6, HRS, as it relates to the exclusion of individuals concerned with confidential matters affecting employer-employee relations, 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 146-147.

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 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(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 affect or influence upon or change in employee-employer relations effectuates management policy in the field of employment relations.

Id. at 147.

After a review of the duties and responsibilities of Position No. 2445, the Board concludes that the incumbent of the position is responsible for supervising and coordinating the clerical, secretarial, records management and support services for the Hawaii County Council and various Council Committees. However,



the Board agrees with the parties that in directing the work of the Council Services Division, the position does not possess or exercise the degree of discretion to determine the means, methods, and personnel to carry out the agency policy; nor does the position regularly work with matters of a confidential and sensitive nature, capable of producing an effect on or influencing employee-employer relations.

CONCLUSIONS OF LAW


The duties and responsibilities of Position No. 2445 fail to meet the statutory requirements for exclusion under Section 89-6(c), HRS.

ORDER

Position No. 2445 shall be included in bargaining unit 4.

Dated: Honolulu, Hawaii, May 22, 1992.

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  
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