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STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-12-191
	)	
COUNTY OF HAWAII,	)	DECISION NO. 332
	)	
Petitioner.	)	FINDINGS OF FACT, CONCLU-
_____	)	SIONS OF LAW AND ORDER

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On February 24, 1993, the COUNTY OF HAWAII (County or Employer) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). The Employer requests the exclusion of Position No. 1007, which was reclassified to Police Captain, EM-03. The Employer submits that the position should be excluded from collective bargaining because the incumbent serves as a top-level managerial and administrative employee by commanding the North Kohala district of the Hawaii County Police Department's Field Operations Bureau. The incumbent will also be required to assist and/or formulate and effectuate management policies and procedures in the field of employee/employer relations.

The County submitted the following documents with the petition:

1. Affidavit of Michael R. Ben (Ben), Director of Personnel, County of Hawaii, regarding Position No. 1007, dated February 23, 1993;

2. Letter, dated February 8, 1993, from Ben to Gordon Chun, Business Manager, State of Hawaii Organization of Police

2. Letter, dated February 8, 1993, from Ben to Gordon Chun, Business Manager, State of Hawaii Organization of Police Officers (SHOPO), requesting concurrence with the proposed exclusion of Position No. 1007, previously classified as a Police Lieutenant, PO-13, 12 Incl to Police Captain, EM-3, 12 Excl (Exhibit A);

3. Position description for Police Captain (Exhibit B);

4. Class specifications for Police Captain (Exhibit C);

and

5. Organizational chart of the County of Hawaii Police Department and organizational chart of the Field Operations Bureau Area II - North Kohala (Exhibit D).

Based on the affidavit of Ben 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

The County of Hawaii is the public employer, as defined in Section 89-2, Hawaii Revised Statutes (HRS), of the employees of the Hawaii County Police Department.

SHOPO is the certified exclusive representative of employees in bargaining unit 12.

SHOPO concurs with the County's proposed exclusion of Position No. 1007 from collective bargaining and is deemed to have waived the right to a hearing thereon (Exhibit A).

The Employer asserts that the duties and responsibilities of Police Captain differ from that of Police Lieutenant in that the

an assigned watch. This position functions under the supervision of a Police Major and acts as Commander of the district. The incumbent of the position is responsible for planning, directing, and coordinating the functions and activities of patrol operations. The position exercises considerable discretion in commanding a major organizational component of the Field Operations Bureau. The subject position performs the following duties in the approximate percentages of work time:

1. Plans, organizes, staffs, and coordinates, through a management team of subordinate supervisors, the various functions and services of the section; exercises substantial judgment and discretion to utilize the section's personnel and financial resources. Recommends and participates in formulating, developing, and implementing new or revised policies, procedures, and programs. Determines the program needs of the section, including research, planning, budgeting, and development and coordination of administrative, operational and management projects; monitors the effectiveness of projects and directs corrective actions (50%).
2. Attends departmental staff and command meetings to discuss management concerns such as shifts in policy stances, operational and staffing changes, proposes administrative control measures, reorganizations and other department-wide matters. Acts as a liaison



and meets with officials of other lay and law enforcement agencies to represent the Police Chief's position. Keeps abreast of new developments, technology, and techniques regarding scientific investigations and makes recommendations for follow-up or adoption; may deliver expert testimony in court proceedings. Reviews and evaluates performance of subordinates, investigates complaints, and takes disciplinary actions to correct deficiencies; hears and resolves grievances at the first step. Oversees the work of subordinate supervisors to assure that necessary supervision, training and inspection are being carried out (30%).

3. Formulates and effectuates management policy in employee-employer relations by applying and administering collective bargaining provisions affecting uniformed and civilian employees. During strikes, performs tasks on behalf of management in this or another department; i.e., receives emergency telephone calls and provides information to the public; gathers and communicates strike-related data through administrative channels, and provides administrative support to those coping with the strike; and performs other essential work within the capabilities of the incumbent as assigned (20%).

According to the class specifications for the position of Police Captain, this class assists in commanding the work of a

major police division or element; performs a variety of administrative and supervisory duties; and performs other related duties as required.

#### 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:

\* \* \*

(12) Police Officers;

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 ongoing, 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.

Further, 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 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(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
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. 1007, the Board concludes that the incumbent of the position is responsible for commanding a major police division, the North Kohala unit of the Field Operations Bureau. The duties of the position indicate that it possesses the authority to formulate or determine policy or regularly has meaningful participation in the policy development process for the division. We conclude that the position is a top-level managerial and administrative position.

In addition, the incumbent also hears and resolves grievances filed at the first step of the grievance procedure. Through this responsibility and the supervision of the subordinate workforce the position regularly formulates and implements management policies affecting employer-employee relations. Further, in the event of a strike, the incumbent performs tasks on behalf of management and is exposed to matters which are not



intended for the eyes and ears of the rank and file and the unions. We conclude that the position regularly works with matters of a confidential and sensitive nature, capable of producing an effect on or influencing employee-employer relations. Thus, the position should be, under provisions of Section 89-6, HRS, excluded from bargaining unit 12 and coverage under Chapter 89, HRS.

#### CONCLUSIONS OF LAW

The Board has jurisdiction over the subject petition pursuant to Section 89-6, HRS.

The Board concludes that the position is a top-level managerial and administrative position which should be excluded from bargaining unit 12 and coverage under Chapter 89, HRS.

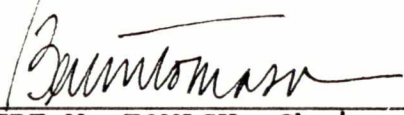
The Board concludes that the position deals with confidential matters and should be excluded from bargaining unit 12 and coverage under Chapter 89, HRS.

#### ORDER

Position No. 1007, Police Captain, is excluded from collective bargaining unit 12.

DATED: Honolulu, Hawaii, March 17, 1993.

HAWAII LABOR RELATIONS BOARD

  
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BERT M. TOMASU, Chairperson

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GERALD K. MACHIDA, Board Member



RUSSELL T. HIGA, Board Member

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