

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-03-192
)	
COUNTY OF HAWAII,)	DECISION NO. 339
)	
Petitioner.)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On May 5, 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. 3746, Police Commission Clerk, SR-14, from bargaining unit 3. The Employer submits that the position should be excluded from collective bargaining because the incumbent works with complaints and investigative reports against the Police Department or its members which involve confidential matters relating to grievances and other management dealings in labor relations.

The County submitted the following documents with the petition:

1. Affidavit of Michael R. Ben (Ben), Director of Personnel Services, County of Hawaii, regarding Position No. 3746, dated May 3, 1993;

2. Letter, dated February 22, 1993, from Ben to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of

Position No. 3746, classified as Police Commission Clerk, SR-14, 03-Excl (Exhibit A);

3. Position description for Police Commission Clerk (Exhibit B);

4. Class specifications for Police Commission Clerk (Exhibit C); and

5. Functional chart of the of Hawaii County Police Department (Exhibit D).

Based upon 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.

The HGEA is the certified exclusive representative of employees in bargaining unit 3.

The HGEA concurs with the County's proposed exclusion of Position No. 3746 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 Position No. 3746, Police Commission Clerk, SR-14, warrant its exclusion from collective bargaining as the position provides clerical and administrative support services to the Police Commission. The position's duties include the receiving and processing of complaints and investigative reports against the

Police Department or its members. The subject position performs the following duties in the approximate percentages of work time:

1. Receives complaints against the Police Department or its members. Directs complaints to an investigator for proper classification of complaint. Electronically records, takes dictation, transcribes, and types statements from complainants, police officers, and witnesses. Notarizes sworn complaints. Initiates and maintains complaint logs, reports, and correspondence for the Commission. Routes and/or refers complainants to the Police Department for investigation if within their jurisdiction. Makes follow-ups to secure completion dates on correspondence and reports (35%).
2. Independently composes, edits and/or types correspondence and reports for the Police Commission. Edits, types, and compiles completed investigation reports for investigators' signatures in preparation for distribution to commissioners. Obtains information and prepares routine reports originating from the Commission. Receives and distributes incoming correspondence, memoranda, and directives for the members. Receives inquiries via telephone or in person, provides information and/or makes appropriate referrals. Types straight copy work and all other pertinent requirements. Arranges for interviews and appointments. Assists in the preparation

of case files for review and presentation before the Commission (35%).

3. Electronically records or takes dictation, transcribes, distributes and indexes minutes of the Police Commission's executive sessions, regular meetings and any other meetings or hearings conducted by the Police Commission or any Police Commission. Prepares, distributes and posts agenda of the Commission's regular meetings. Provides summaries of activities, reports, or other data pertaining to official commission business as requested or directed. Arranges and maintains a calendar of appointments, meetings, field trips, conferences, and makes all necessary arrangements for such travel (20%).
4. May supervise and delegate work assignments to temporary and/or summer hire clerical personnel. Testifies in court to verify correctness of statements presented as evidence, when subpoenaed. Performs other related duties as required (10%).

According to the class specifications for the position of Police Commission Clerk, this class performs a variety of complex clerical and administrative support services for the Police Commission; receives and records complaints against the Police Department or its members and directs complainants to an investigator; records/takes and transcribes minutes of meetings, conferences and hearings; 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:

* * *

- (3) Nonsupervisory employees in white collar positions;

Upon a review of the duties and responsibilities of Position No. 3746, the Board concludes that the subject position performs white collar duties which are characteristic of employees in Bargaining Unit 3.

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, as it relates to top-level and administrative personnel, 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 employer-employee 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 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 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 regulations.

Id. at 147.

After a thorough review of the duties and responsibilities of Position No. 3746, the Board concludes that the position regularly works with matters of a confidential and sensitive nature, capable of producing an effect on or influencing employee-employer relations. The position is subject to the daily general supervision of the Investigator of the Police Commission and exercises considerable discretion in the accomplishment of its duties due to the highly confidential nature of the work. The position is exposed to information which may lead to adverse or disciplinary action against police officers. As such the subject position is involved with matters which are not intended for the eyes and ears of the rank and file and the unions. Thus, the position should be, under provisions of Section 89-6, HRS, excluded from bargaining unit 3 and the coverage of Chapter 89, HRS.

CONCLUSIONS OF LAW

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

Position No. 3746 is an individual concerned with confidential matters affecting employee-employer relations and

should be, pursuant to Section 89-6, HRS, excluded from bargaining unit 3 and the coverage of Chapter 89, HRS.

ORDER

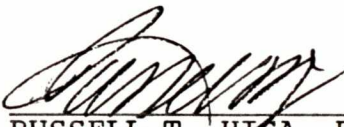
Position No. 3746, Police Commission Clerk, is excluded from collective bargaining unit 3 and coverage of Chapter 89, HRS.

DATED: Honolulu, Hawaii, June 14, 1993.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


GERALD K. MACHIDA, Board Member


RUSSELL T. HIGA, Board Member

Copies sent to:

Michael R. Ben
Joyce Najita, IRC
Robert Hasegawa, CLEAR
Publications Distribution Center
State Archives
University of Hawaii Library
Richardson School of Law Library
Library of Congress