

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-03-193
)	
COUNTY OF HAWAII,)	DECISION NO. 343
)	
Petitioner.)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On June 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). In its petition, the County requested that Position No. 2113, SR-20, Private Secretary to the Director of the Department of Liquor Control, be excluded from Unit 3. The County contends that the incumbent of the position is an individual concerned with confidential matters affecting employee-employer relations and should be excluded from bargaining pursuant to Subsection 89-6(c), Hawaii Revised Statutes (HRS).

The County submitted the following documents with the petition:

1. Affidavit of Michael R. Ben, Director of Personnel, Department of Civil Service, County of Hawaii, regarding Position No. 2113, dated June 22, 1993;
2. Letter dated June 8, 1993, from Michael R. Ben to Russell Okata, Executive Director of the Hawaii Government

Employees Association (HGEA), requesting concurrence with the proposed exclusion of Position No. 2113 (Exhibit A);

3. Position description for Private Secretary to the Director of the Department of Liquor Control (Exhibit B);

4. Class specifications for Private Secretary (Exhibit C);

5. Table of Organization, Department of Liquor Control, County of Hawaii (Exhibit D);

6. Amended Affidavit of Michael R. Ben, Director of Personnel, County of Hawaii, regarding Position No. 2113, dated July 26, 1993; and

7. Amended position description for Private Secretary to the Director of the Department of Liquor Control (Amended Exhibit B).

Based on the amended affidavit of Michael R. 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, HRS, of employees of the County of Hawaii including employees in bargaining unit 3.

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

The HGEA concurs with the County's proposed exclusion of Position No. 2113 from bargaining unit 3 and is deemed to have waived the right to a hearing thereon. Exhibit A.

According to the amended Position Description, the incumbent is the personal secretary and assistant to the Director of the Department of Liquor Control, and performs the following duties in the approximate percentage of worktime:

- (1) Arranges meetings and conferences involving the director; composes and maintains correspondence for the director concerning fiscal, purchasing, personnel and other matters requiring the director's signature. Assists the director in all administrative matters; maintains office schedules and monitors adherence to legal requirements; acts as liaison between the director and employees and governmental agencies; reviews, processes and maintains files on correspondence and reports relating to job performance, disciplinary actions, malfeasance, and other confidential matters affecting employee-employer relations. Compiles and prepares data for budgetary and other purposes (63%);
- (2) Assists the director in preparing files and meeting agendas for liquor license applications and adjudication board files including all communications and pertinent data. Responsible for follow-up of all official actions; assembles materials for public hearings (12%);
- (3) Supervises the preparation and distribution of forms and records involving civil service, payroll, vacation, sick leave, and maintains all fiscal and

personnel files. Advises personnel on matters concerning civil service laws, rules, regulations, and contractual agreements. Participates in staff meetings and provides personnel and fiscal information (10%);

- (4) Assists in the preparation of complaints for the Liquor Control Adjudication Board; refers complaints to Prosecuting Attorney's Office; ensures proper service on licensees; prepares subpoenas for service and is responsible for the witness programs. Assists in the preparation of findings of fact, conclusions of law and decisions and orders for service on licensees (8%);
- (5) Plans, assigns, reviews, and coordinates the work of clerical personnel engaged in work activities relating to the office (5%); and
- (6) Performs other related tasks as assigned (2%).

According to the specifications for the Private Secretary class, positions in this class serve as a personal secretary to a department head; organize and coordinate clerical and routine administrative matters for the executive; and perform other related duties as required. 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:

* * *

(3) Nonsupervisory employees in white collar positions;

* * *

Upon a review of the duties and responsibilities of Position No. 2113, the Board concludes that the subject position performs clerical duties which are characteristic of Unit 3, Nonsupervisory employees in white collar positions.

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, 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 146-147.

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 supervi-
sors may be included in units. Hence, confi-
dential 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, trans-
fers, suspensions, layoffs, recalls, promo-
tions, 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 collec-
tive bargaining (contract negotiations, appli-
cation 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 relations.

Id. at 147.

After a review of the duties and responsibilities of Position No. 2113 the Board concludes that the incumbent of the position is the personal secretary and assistant to the Director of the Department. Thus, the position regularly works with personnel matters of a confidential nature which are matters capable of producing an effect on or influencing employee-employer relations. The position is responsible for administrative services including budget preparation, clerical support and personnel matters. As such, the subject position is involved with matters which are not intended for the eyes and ears of rank and file employees and the unions.

CONCLUSIONS OF LAW

The Board has jurisdiction over this matter pursuant to Section 89-6, HRS.

Position No. 2113, Private Secretary, should be excluded from collective bargaining because it is a confidential employee.

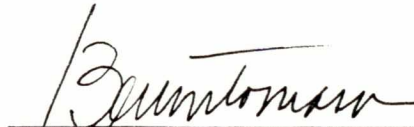
ORDER

Position No. 2113, Private Secretary, is hereby excluded from bargaining unit 3.

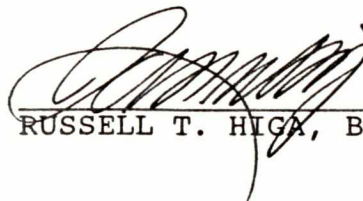
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DATED: Honolulu, Hawaii, September 30, 1993.

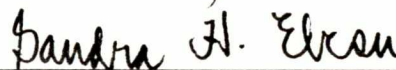
HAWAII LABOR RELATIONS BOARD



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