

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

|                   |   |                           |
|-------------------|---|---------------------------|
| In the Matter of  | ) | CASE NO. RA-03-201        |
|                   | ) |                           |
| COUNTY OF HAWAII, | ) | DECISION NO. 357          |
|                   | ) |                           |
|                   | ) | FINDINGS OF FACT, CONCLU- |
| Petitioner.       | ) | SIONS OF LAW AND ORDER    |
| _____             | ) |                           |

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On May 20, 1994, the COUNTY OF HAWAII, by Michael R. Ben (Ben), Director of Personnel, Department of Civil Service, (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 No. 3097, Secretary, SR-16. The Employer contends that a classification review of Position No. 3097 revealed that the position's duties warrant an exclusion as the position functions in an administrative and confidential capacity pursuant to Subsection 89-6(a), Hawaii Revised Statutes (HRS).

The Employer submitted the following documents in support of the petition:

1. Affidavit of Ben dated May 19, 1994 regarding Position No. 3097;
2. Letter dated May 10, 1994 from Ben to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of Position No. 3097 Secretary, SR-16 (Attachment A);

3. Position Description for Secretary (Attachment B);
  4. Class specifications for Secretary (Attachment C);
- and
5. Table of Organization for the Hawaii County Police Department (Attachment 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

The COUNTY OF HAWAII is the public employer, as defined in Section 89-2, HRS, of the employees of the County of Hawaii, which include employees in Unit 03.

The HGEA is the certified exclusive representative of the employees in Unit 03.

The HGEA concurs with the Employer's proposed exclusion of Position No. 3097 from Unit 03 and is deemed to have waived the right to a hearing thereon (Attachment A).

According to the position description for Position No. 3097, the position reports directly to the Assistant Chief of Police of the Investigative Bureau or, in his absence, to the Assistant Chief of Police of the Field Operations Bureau, two of the major bureaus of the Hawaii County Police Department, and is responsible for the following duties in the approximate percentages of time:

- (1) Furnishes secretarial services to the Assistant Chiefs of the Investigative and Field Operations Bureaus. Composes and types letters and memos into

final form for signature by the Chief of Police. Screens and redrafts letters submitted by division Captains into final form for signature by the Chief of Police (50%);

- (2) Screens certain County reports for proper format and completion. Responsible for final review of numerous interdepartmental reports for approval of the Assistant Chiefs and for routing of these to the respective divisions, sections and district stations. Handles confidential reports and information regarding criminal investigations, internal investigations, and employee evaluations of all Operations personnel. Participates in the selection of clerical personnel for new positions or promotion as required (20%);
- (3) Records in shorthand and transcribes notes of grievance hearings, monthly commanders' meetings, and other meetings as required by the Assistant Chiefs. Takes and transcribes dictation from or as directed by the Assistant Chiefs. Types grievance hearing decisions into final form for signature by the Assistant Chief. Takes minutes of the prosecutor/police meetings and conferences and intergovernmental meetings as assigned (20%); and
- (4) Manages appointment calendar for Assistant Chiefs and notifies them of conflicts with Chief and Deputy Chief. Coordinates with Chief's secretary

on matters of personal tragedy to members of Operations personnel. Serves as counselor to clerical personnel assigned to the Operations Bureau, provides training and guidance to Operations clerical personnel and other personnel as required. Performs other related duties (10%).

According to the class specifications for the Secretary, the incumbent of the position provides secretarial services to the head of a major division or office, or to a top-echelon executive at the County policy-making level; and performs other duties as required (Attachment C).

Also, according to the class specifications, the instant Secretary class differs from the Clerk-Stenographer classes and the Private Secretary in that the Secretary provides secretarial services to the head of a major division or office having intense control and managerial functions by reason of the size, scope and complexity of operations, characterized by the existence of several subordinate major sections and supervisory echelons, or to a top-echelon executive at the County policy-making level; whereas the Clerk-Stenographer classes perform clerical and stenographic work in support of an office function and may incidentally perform various secretarial tasks; and whereas the Private Secretary provides secretarial services to a department head (Attachment C).

Upon a review of the duties and responsibilities of Position No. 3097, the Board finds that the subject position serves as secretary to the Assistant Chiefs of the Investigative and the Field Operations Bureaus and assists the Chiefs in all administrative matters, and reviews, screens, prepares, and

processes correspondence and reports including confidential materials relating to criminal and internal investigations, grievance hearings and decisions, employee evaluations, and other similar matters affecting employee-employer relations.

#### 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:

\* \* \*

(03) Nonsupervisory employees in white collar positions; . . .

Section 89-6(c), 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(c), 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 confidential 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 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 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. (Citation 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 regulations.

Id. at 147.

After a review of the duties and responsibilities of Position No. 3097, the Board finds that the position serves as secretary to the Assistant Chiefs of the Investigative and the Field Operations Bureaus. The subject position will assist the Chiefs in all administrative matters, and will review, screen, prepare, and process correspondence and reports relating to criminal and internal investigations, grievance hearings and decisions, employee evaluations, and other similar matters affecting employee-employer relations.

As such, the Board concludes that the subject position is a confidential position. Consequently, under the provisions of Section 89-6, HRS, and previous Board decisions, the position should be excluded from bargaining unit 03 and coverage under Chapter 89, HRS.

#### CONCLUSIONS OF LAW

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

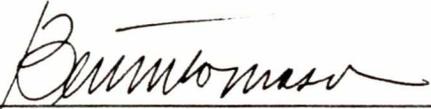
Position No. 3097, Secretary to the Assistant Chiefs of the Investigative and the Field Operations Bureau, is a confidential position and should be excluded from collective bargaining.

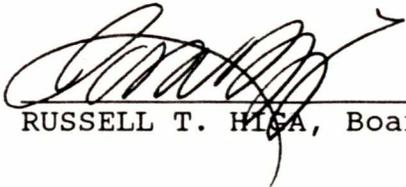
ORDER

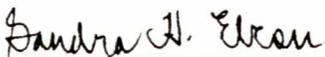
Position No. 3097 is hereby excluded from collective bargaining unit 03 and the coverage of Chapter 89, HRS.

Dated: Honolulu, Hawaii, July 28, 1994.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
RUSSELL T. HIGA, Board Member

  
SANDRA H. EBESU, Board Member

Copies sent to:

Michael R. Ben  
Russell K. Okata, HGEA  
Joyce Najita, IRC  
William Puette, CLEAR  
State Archives  
Publications Distribution Center  
University of Hawaii Library  
Richardson School of Law Library  
Library of Congress