

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-13-202
	)	
COUNTY OF HAWAII,	)	DECISION NO. 358
	)	
	)	FINDINGS OF FACT,
Petitioner.	)	CONCLUSIONS 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 requests the exclusion of Position No. 3190 from bargaining unit 13. The position was reclassified from Personnel Assistant, SR-17 to Personnel Management Specialist II, SR-22, 13-Excl. The Employer contends that a classification review of the Department of Water Supply's Personnel Management Specialist II, Position No. 3190 revealed that the position deals with confidential matters and is therefore appropriate for exclusion pursuant to Subsection 89-6(c), 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. 3190;
2. Letter dated May 9, 1994, from Ben to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA),

requesting concurrence with the proposed exclusion of Position No. 3190, Personnel Management Specialist II (Attachment A);

3. Position Description for Personnel Management Specialist II (Attachment B);

4. Class Specifications for Personnel Management Specialist II (Attachment C); and

5. Table of Organization for the County of Hawaii Department of Water Supply (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 13.

The HGEA is the certified exclusive representative of the employees of Unit 13.

The HGEA concurs with the Employer's proposed exclusion of Position No. 3190 from Unit 13 and is deemed to have waived the right to a hearing thereon (Attachment A).

According to the position description for Position No. 3190, the position serves as the staff specialist interpreting, advising, and recommending action, to administrative, supervisory, and other departmental personnel, on all matters related to the collective bargaining law and contracts; County, State, and Federal laws, rules, regulations, and procedures; departmental policies and procedures; and the employee training and development program.

The position will be responsible for the following duties in the approximate percentages of work time:

- (1) Advises administrative, supervisory and other departmental personnel on the requirements of the collective bargaining law and contracts, civil service laws, rules, regulations and procedures in the areas of recruitment, placement, transfer, promotion, examination, classification and other related personnel matters and recommends the action to be taken (30%);
- (2) Advises and makes recommendations to administrative, supervisory and other departmental personnel in the filling of vacancies within the department. Processes, follows-up and reviews all personnel forms; prepares vacancy announcements and screens applications; prepares interview data such as background checks and questions; coordinates interview panels; schedules physicals; develops and conducts basic orientation program for all new hires (20%);
- (3) Advises departmental employees on matters relating to compensation, fringe benefits, union contract items, collective bargaining law and contracts, civil service laws, rules, regulations and procedures. Informs all employees of current and new civil service rules and regulations; counsels employees as needed (15%);



- (4) Recommends establishment of and changes to various departmental personnel policies and procedures. Revises and updates the Department's personnel procedures manual as changes occur in collective bargaining law and contracts or civil service laws, rules, regulations and procedures. Participates in the preparation of the Personnel Office's operating budget. Justifies requests for equipment or other deviations from previous budgets (6%);
- (5) Researches and prepares letters, reports, forms, position descriptions and other matters relating to personnel. Prepares and updates departmental personnel information and files, charts, tables and other reports as required. Assists and advises division heads in preparing and finalizing position descriptions (5%);
- (6) Reviews and develops policies and procedures for training and recommends courses or programs to meet the needs of management and employees. Assists division heads and supervisors in identifying and fulfilling their training needs as well as those of their employees. Plans, organizes, develops, coordinates and executes general training programs as well as special and technical training to augment and upgrade employees' skills and knowledge. Evaluates training courses and programs to ensure that they are meeting the objectives of

the training. Coordinates the Department's training needs and efforts with other departments and agencies and specifically with the Department of Civil Service. Performs related duties as required (5%);

- (7) Reviews and investigates all new accidents and workers' compensation claims. Works with the County's Claim Adjuster in determining compensability of cases. Submits report to the Department of Water Supply with findings. Advises administrative staff and, as requested, informs employees on workers compensation laws and procedures. Prepares reports as needed (5%);
- (8) Serves as representative to the Department's Safety Committee. Researches and provides technical advice to the Safety Committee as needed. Conducts safety inspections as needed. Performs other related duties as required (5%);
- (9) Assigns and reviews the work of personnel assigned to the position. Instructs and reviews the work of district clerks relating to personnel matters. Counsels as required (5%);
- (10) Represents the Department at County-wide safety meetings. Reports to the Department of Water Supply. Reviews and updates department and County-wide forms and procedures. Incorporates any County-wide procedures and policies (2%); and

(11) Administers the Hawaii Island United Way (HIUW) campaign, the Blood Bank Livesavers' Club, and other duties, as assigned, for the Department (2%).

According to the duties summary of the class specifications for the Personnel Management Specialist II, the Personnel Management Specialist II performs the full range and variety of technical assignments pertinent to one or more of the major functional areas of personnel management; and performs other related duties as required (Attachment C).

Also, according to the class specifications, the Personnel Management Specialist II differs from the Personnel Management Specialist I and the Personnel Management Specialist III in that the Personnel Management Specialist II independently performs the full range and variety of technical assignments pertinent to one or more of the functional areas of personnel management; whereas the Personnel Management Specialist I independently performs technical assignments of moderate difficulty in one or more of the functional areas of personnel management; and whereas the Personnel Management Specialist III performs as senior worker or staff specialist in one or more of the functional areas of personnel management and regularly carries out the most difficult and complex assignments (Attachment C).

Upon a review of the duties and responsibilities of Position 3190, the Board finds that the subject position serves as staff specialist providing advice and recommendations to administrative, supervisory, and other departmental employees on



all areas of personnel management, including confidential matters that affect 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:

\* \* \*

(13) Professional and scientific employees, other than registered professional nurses;. . .

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, 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 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. (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 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 review of the duties and responsibilities of Position No. 3190, the Board finds that the position serves as the personnel specialist to the Department of Water Supply, County of Hawaii. The position provides advice and recommends action on all matters related to the collective bargaining law and contracts; county, state, and federal laws, rules, regulations, and procedures; departmental policies and procedures; and the employee training and development program to administrative, supervisory, and other departmental personnel. Additionally, the Personnel Management Specialist II will be required to provide advice and recommendations on confidential matters that affect 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 Unit 13, 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. 3190, Personnel Management Specialist II is a confidential position and should be excluded from collective bargaining.


ORDER

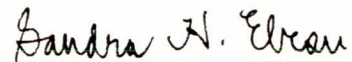
Position No. 3190 is hereby excluded from collective bargaining unit 13 and the coverage of Chapter 89, HRS.

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  
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Publications Distribution Center  
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