

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-200
)	
COUNTY OF HAWAII,)	DECISION NO. 360
)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Petitioner.)	AND ORDER
)	

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

On May 13, 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 an amendment of the bargaining unit status of Position No. 3830, Administrative Officer, EM-01, from included to excluded status.

Thereafter on August 16, 1994, the Petitioner filed an amended position description to replace Exhibit B of Ben's affidavit with Exhibit B-1.

In its petition as amended, the Employer contends that a classification review of Position No. 3830 revealed that the position's duties warrant an exclusion pursuant to Subsection 89-6(a), Hawaii Revised Statutes (HRS), as the position will serve as a top-level manager and administrative assistant to the Prosecuting Attorney and the First Deputy Prosecuting Attorney. The Employer contends that the position performs a wide range of

administrative duties to ensure the efficient and effective operation of the Office of the Prosecuting Attorney.

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

1. Affidavit of Ben dated May 10, 1994 regarding Position No. 3830;
2. Amended Affidavit of Ben dated August 12, 1994 regarding Position No. 3830;
3. Letter dated April 8, 1994 from Ben to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of Position No. 3830, Administrative Officer, EM-01 (Attachment A);
4. Amended Position Description for Administrative Officer (Attachment B-1);
5. Class Specifications for Administrative Officer (Attachment C); and
6. Table of Organization for the Office of the Prosecuting Attorney, County of Hawaii (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, who are included in Unit 13.

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

The HGEA concurs with the Employer's proposed exclusion of Position No. 3830 from Unit 13 and is deemed to have waived the right to a hearing thereon (Attachment A).

According to the amended position description for Position No. 3830, the position serves as the administrative assistant to the Prosecuting Attorney and the First Deputy Prosecuting Attorney. In this capacity the position collaborates with the Prosecuting Attorney and/or First Deputy Prosecuting Attorney on administrative matters, including program planning, implementation and evaluation; budget and long-range planning; personnel management; organization and internal management improvements; records management; and the development of policies, directives and operating procedures to ensure the efficient operation of the Office of the Prosecuting Attorney and the accomplishment of the goals and objectives of the Prosecuting Attorney and is responsible for the following duties in the approximate percentages of time:

- (1) Recommends, develops and implements administrative policies, directives and procedures governing the department's operations to include but not be limited to compliance with federal mandates (15%);
- (2) Collaborates with the Prosecuting Attorney on program planning, implementation and evaluation; recommends program improvements; and directs the preparation and compilation of management reports for the review and/or action of the Prosecuting

Attorney and First Deputy Prosecuting Attorney
(15%);

(3) Collaborates with the Prosecuting Attorney on matters relating to the department's budget and the development of its long-range plans; prepares CIP budgets, RFPs, budgetary estimates, financial statements and related reports; reviews and coordinates the needs of the various units of the agency; and directs and plans for building, equipment and inventory needs and the maintenance of same (20%);

(4) Collaborates with the Prosecuting Attorney on personnel management and internal organization; handles all labor-relations matters; directs and supervises staff in matters related to the budget and personnel for the County, State and Federal programs including grants-in-aid requirements mandating monthly, quarterly, semi-annual and/or yearly reports; monitors compliance of organizations contracted by the Prosecuting Attorney and paid with State and Federal monies; and supervises the work of the office automation and information management staff including intra-office, inter-departmental and inter-governmental projects which may require coordination of analytical data input and retrieval (20%);

- (5) Serves as the Prosecuting Attorney's Office liaison with other departments, governmental agencies and community organizations; personally resolves complaints regarding services, procedures or policies of the office and/or refers them to the appropriate unit or outside agency; reviews all incoming and outgoing correspondence and directs correspondence and communications to appropriate personnel for action; and prepares and edits administrative letters, messages, memoranda, policies, testimonies and press releases (15%);
- (6) Keeps abreast and collaborates with the Prosecuting Attorney on legislative matters relating to fiscal, personnel, facilities' needs for the office, criminal laws, procedures and the criminal justice system and prepares testimony accordingly (5%);
- (7) Plans and coordinates office staff meetings and training needs including the planning, coordination and logistic preparation of the semi-annual two-day training session for the entire staff (5%);
- (8) Plans and coordinates crime prevention educational programs with community organizations and schools using forfeiture monies and coordinates the department's participation with DARE and McGruff activities (2%); and
- (9) Other related duties as assigned (3%).

According to the class specifications for the Administrative Officer, the position serves the head of a department in a staff capacity with full and continuing responsibility for providing a variety of administrative services essential to the direction and operation of the department and with some delegated authority to act for the department head in administrative matters; and performs other related duties as required (Attachment C).

Also, according to the class specifications, the Administrative Officer class is distinguished by its responsibility for managing fiscal, personnel and other administrative services for a major department on a full and continuing basis Attachment 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:

* * *

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

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 . . . 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 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 management or administrative position, a position must:

(1) be at or near the top of an on-going, 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.

Upon a thorough review of the duties and responsibilities of Position No. 3830, the Board finds that the position serves as staff specialist and administrative assistant to the Prosecuting Attorney and the First Deputy Prosecuting Attorney performing a wide range of administrative duties to ensure the efficient and effective operation of the Office of the Prosecuting Attorney.

The Board further finds that the subject position exercises independent judgment and participates meaningfully in policy formulation and implementation and therefore is a top-level managerial and administrative position. Consequently, under the provisions of Section 89-6, HRS, and previous Board decisions, the position should be excluded from Unit 13 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. 3830, Administrative Officer to the Prosecuting Attorney and the First Deputy Prosecuting Attorney, is a top-level managerial and administrative position and should be excluded from collective bargaining.

ORDER

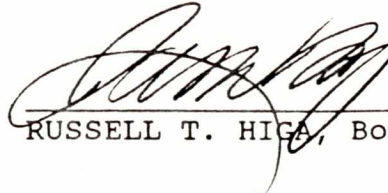
Position No. 3830 is hereby excluded from collective bargaining unit 13 and coverage of Chapter 89, HRS.

DATED: Honolulu, Hawaii, October 26, 1994.

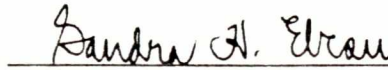
HAWAII LABOR RELATIONS BOARD



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