

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-209
)	
COUNTY OF HAWAII,)	DECISION NO. 375
)	
Petitioner.)	FINDINGS OF FACT, CONCLU-
)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 27, 1996, the COUNTY OF HAWAII, by Michael R. Ben (Ben), Director of Personnel, Department of Civil Service, County of Hawaii (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 transfer of Position No. 2695 from Water Recreation and Safety Supervisor, SR-24, included, to Aquatic Program Administrator, EM-03, excluded. The Employer contends that a classification review of Position No. 2695 revealed that the position will function as a top-level managerial and administrative position and will direct the County's Aquatic Division, which is a major program in the Department of Parks and Recreation, and will provide aquatic recreational activities and lifeguarding services at County pools and selected County and State beaches.

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

1. Affidavit of Ben, dated March 22, 1996, regarding Position No. 2695;

2. Letter, dated March 14, 1996, from Ben to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed transfer and exclusion of Position No. 2695, from Water Recreation and Safety Supervisor, SR-24, 13-Incl to Aquatic Program Administrator, EM-03, 13 Excl (Exhibit A);

3. Position Description for Aquatic Administrator (Exhibit B);

4. Class Specifications for Aquatic Program Administrator (Exhibit C); and

5. Table of Organization, Charts VII, VIIA and VIIB, for the County of Hawaii, Aquatics Section of the Department of Parks and Recreation (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 bargaining unit 13.

The HGEA is the certified exclusive representative of the employees of bargaining unit 13.

The HGEA concurs with the Employer's proposed exclusion of Position No. 2695 from bargaining unit 13 and is deemed to have waived the right to a hearing thereon (Exhibit A).

According to the position description for Position No. 2695, the position will be under the general direction of the

Parks and Recreation Director and will have overall county-wide responsibility for the operation of County swimming pools and water safety services at selected County and State beach parks. The position will be responsible for the following duties in the approximate percentages of work time:

- (1) Reviews, analyzes and develops operational policies and procedures, rules and regulations; conducts public hearings, gives input into the development and review of legislation/ordinances related to the division. Continually studies and evaluates the communities' needs in the areas of water safety/water recreation and develops strategies of actions to meet those needs. Prepares reports outlining the Water Safety Division activities. Establishes division goals and objectives and implements them (20%);
- (2) Directs, initiates and implements the programs and supervises the work of Aquatic Division staff. Prepares standards, assigns work to be done by the Division, evaluates work done, prepares performance evaluations, reviews all performance evaluations, reviews timesheets, overtime requests, extra hours, leave requests, chemical orders for pools and oversees day-to-day operations of pool and beach services (20%);
- (3) Prepares the annual division budget for the County and State programs administered by the Aquatic

Division; maintains fiscal responsibility for the budget through the year; administers and controls expenditures throughout the year (15%);

- (4) Reviews and evaluates rescue techniques, the administration of first aid and other skills related to beach/pool lifeguard services. Takes appropriate actions to correct deficiencies through training and refresher courses and new equipment, if applicable. Oversees the development of an in-service training program for personnel and performs evaluation tests for skill competency at all levels. Keeps abreast of local, State and Federal laws, rules and regulations and incorporates changes where applicable to the Water Safety Division operations. Plans, develops and administers a staff in-service training program dealing with all areas of water safety, emergency care, swimming pool mechanical/chemical operations and equipment operations. Attends in-service training programs including but not limited to courses in all aspects of water safety, personnel management and government liaisons. Acts as the principal resource on water safety matters. Represents the department on committees related to water safety matters and with other governmental officials, private individuals, civic and community organizations (15%);

- (5) Conducts regular, periodic on-site inspections of facilities to check conditions; schedules needed repairs and improvements; develops and executes a preventive maintenance program for equipment and facilities. Consults with technical personnel concerning matters such as design and capabilities of equipment and supplies and makes recommendations for purchase. Advises on renovation projects and new construction of County swimming pool complexes and selected beach park facilities (10%);
- (6) Reviews Civil Service examination/certification/performance tests as needed. Interviews employees and recommends for hiring, placement, promotion or transfer. Advises and recommends on personnel matters such as disciplinary measures, projections for staffing needs and insures required staffing of pools and beaches. Prepares justifications/specifications for new positions, equipment and supplies and approves all division purchases (10%);
- (7) Coordinates with Aquatic staff and other agencies to develop an effective communication system to warn the public of unsafe beach and ocean conditions, high waves, strong currents, tsunami and hurricane warnings (5%); and
- (8) Performs other related duties (5%).

According to the duties summary of the class specifications for the Aquatic Program Administrator, the Aquatic

Program Administrator plans, administers and directs the County's aquatic recreational and safety programs for the County's beaches and pools including the management, operation and maintenance of the aquatic recreational facilities, grounds and equipment; serves as the principal resource and consultant on matters relating to water safety in general and performs other duties as required. (Exhibit C).

Also, according to the class specifications, the Aquatic Program Administrator is distinguished by his or her responsibility for directing and administering the aquatic recreational and safety programs for the County of Hawaii and serving as the principal resource and consultant on water safety matters. (Exhibit C).

Upon a review of the duties and responsibilities of Position No. 2695, the Board finds that the subject position will direct and supervise the division's program. As such, the position will function as a top-level management and administrative position in formulating policy for and directing the Aquatics Division. The division is a major program for the Department of Parks and Recreation and for the County of Hawaii and will provide aquatic recreational and safety activities and lifeguarding services at County pools and selected County and State beaches.

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 pertinent 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.

After a review of the duties and responsibilities of Position No. 2695, the Board finds that the position will function in a top-level administrative and managerial capacity directing the Aquatic Division, a major program for Hawaii County's Department of Parks and Recreation and will formulate and effectuate management policies and procedures in the subject area.

As such, the Board concludes that the subject position is a top-level 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. 2695, Aquatic Program Administrator is a top-level managerial position and should be excluded from collective bargaining.

ORDER

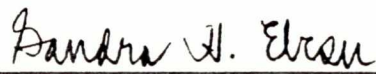
Position No. 2695 is hereby excluded from collective bargaining unit 13 and the coverage of Chapter 89, HRS.

DATED: Honolulu, Hawaii, April 22, 1996.

HAWAII LABOR RELATIONS BOARD



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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