

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-13-210
	)	
COUNTY OF HAWAII,	)	DECISION NO. 376
	)	
Petitioner.	)	FINDINGS OF FACT, CONCLU-
	)	SIONS OF LAW AND ORDER

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On April 9, 1996, 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 Employer proposed to reclassify Position Nos. 2692 and 3248, Planner VI, SR-26, included, to Planning Program Manager, EM-05, excluded. The Employer also proposed to continue the exclusion of Position Nos. 2079 and 2529, Chief Planner, EM-07, which were reclassified as Planning Program Manager, EM-05. The Employer contends that each of the four positions will function as top-level managerial and administrative positions directing one of the four major divisions proposed in the Planning Department's reorganization, i.e., Ministerial, West Hawaii Office, Long Range Planning and Planning. The County requests therefore, that the positions be excluded from bargaining unit 13 and coverage under Chapter 89, Hawaii Revised Statutes (HRS) pursuant to Section 89-6(c), HRS.

The County submitted the following documents with the petition:

1. Affidavit of Michael R. Ben (Ben), Director of Personnel, Department of Civil Service, County of Hawaii, regarding Position Nos. 2692, 3248, 2079 and 2529, dated April 8, 1996;

2. Letter, dated March 19, 1996, from Ben to Russell Okata, Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of Position Nos. 2692 and 3248, previously classified as Planner VI, SR-26, 13-Incl, to Planning Program Manager, EM-05, 13-Excl and with the proposed exclusion of Position Nos. 2079 and 2529, which were reclassified from Chief Planner, EM-07, 13-Excl to Planning Program Manager, EM-05, 1-Excl (Exhibit A);

3. Position description for Planning Program Manager, Position No. 2692 (Exhibit B1);

4. Position description for Planning Program Manager, Position No. 3248 (Exhibit B2);

5. Position description for Planning Program Manager, Position No. 2079 (Exhibit B3);

6. Position description for Planning Program Manager, Position No. 2529 (Exhibit B4);

7. Class specifications for Planning Program Manager (Exhibit C); and

8. Organization charts of the County of Hawaii Planning Department (Exhibit D).

Based upon the affidavit of 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 the employees of the County of Hawaii Planning Department, which includes employees in bargaining unit 13.

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

The HGEA concurs with the County's proposed reclassification of Position Nos. 2692, 3248, 2079 and 2529 to Planning Program Manager as well as their exclusion from collective bargaining. The HGEA is also deemed to have waived the right to a hearing thereon (Exhibit A).

The Employer asserts that the duties and responsibilities of Position Nos. 2692 and 3248, Planner VI, SR-26, included, warrant their reclassification to Planning Program Manager, EM-05, excluded status, as these positions will function in a top-level administrative and managerial capacity directing two major divisions in the Planning Department; i.e., West Hawaii Office and Ministerial, respectively. The Employer also asserts that the duties and responsibilities of Position Nos. 2079 and 2529, reclassified from Chief Planner, EM-07, to Planning Program Manager, EM-05, warrant their continued exclusion as these positions will continue to serve as top-level administrative and managerial positions, directing two major divisions in the Planning Department; i.e., Long Range Planning and Planning, respectively. Each of the subject positions will perform the following duties in the approximate percentages of work time:



- (1) Establishes work plans, programs and priorities for the division; directs, delimits and set deadlines for assignments; reviews work assigned and checks for accuracy and adherence to instructions given; instructs, guides and informs subordinates relative to work assignments; practices good personnel relationships and effectively resolves personnel problems encountered; evaluates performance of subordinates, carries out leave schedules and workloads of the division; meets completion dates; keeps the Planning Director or Deputy Director informed on the status of work programs in the incumbent's area of responsibility; coordinates work with the other divisions of the department; prepares and justifies the division's operating budget and maintenance thereof (20%);
- (2) Supervises and assumes responsibility for the divisions planning activities, which may include the department's primary permit coordination role and planning projects which may be assigned to the section; provides the department's primary coordination role requirements including, but not limited to, review, processing and enforcing all permits as required by the Hawaii Revised Statutes, the Hawaii County Code and adherence to the Hawaii County General Plan Goals and Objectives and Community Development Plans (20%);

- (3) Reviews, prepares and recommends, as the case may be, items such as draft ordinances, which may come before the Commissions, Boards, the County Council and the State Legislature; discusses and apprises the Planning Director of issues and problems; advises them of the historical backgrounds and similar situations and outcome; provides investigations, studies and comments for a comprehensive evaluation of the situation. Such reports may involve items as applications for rezoning, variances, conditional use permits and State Land Use designation requests in which pertinent data such as economic and social conditions and trends, relationship and the interrelationship between land use, public facilities and traffic patterns are based on immediate and future projected needs (25%);
- (4) Develops and coordinates the initiation of programs/ordinances and amendments thereto to fulfill objectives of the General Plan and other statutory mandates; reviews and coordinates the review of new ordinances/statutes, etc. and/or amendments thereto within the division and as assigned by the Planning Director (20%);
- (5) Meets with affected community groups, property owners, realtors, architects, engineers, developers, state agencies, federal agencies and

other interested persons or groups to accomplish planning objectives and programs; keeps in close contact with other departments of Hawaii County to coordinate activities affecting several agencies of the County; reviews work-in-progress studies for completion by consultants and reviews same for adequacy and completeness (5%);

(6) Services the counter in signing permits and providing information to the public, as may be needed (5%); and

(7) Performs other duties as may be required (5%).

According to the class specifications for the Planning Program Manager, the position directs and coordinates the activities of a division in the Planning Department. In addition, the class is distinguished by its responsibility to plan, direct and coordinate programs and activities for one of the major divisions in the Planning Department.

#### 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 that top-level managerial and administrative personnel are to be excluded from an appropriate bargaining unit and coverage under Chapter 89, HRS. 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, 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 Nos. 2692, 3248, 2079 and 2529, the Board finds that the positions will function in a top-level administrative and managerial capacity directing four major divisions in the Planning Department. As such, the positions will direct the work of a major program and will have considerable discretion to assist in and formulate and effectuate management policies.

The Board concludes that the subject positions are top-level managerial and administrative positions. Consequently, under the provisions of Section 89-6, HRS, and previous Board decisions, the positions 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 Nos. 2692, 3248, 2079 and 2529, Planning Program Managers, are top-level managerial positions and should be excluded from collective bargaining.



ORDER

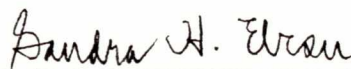
Position Nos. 2692, 3248, 2079 and 2529 are hereby excluded from bargaining unit 13 and the coverage of Chapter 89, HRS.

DATED: Honolulu, Hawaii, April 29, 1996.

HAWAII LABOR RELATIONS BOARD



RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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