

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-03-211
)	
HAWAII GOVERNMENT EMPLOYEES)	DECISION NO. 386
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	FINDINGS OF FACT, CON-
)	CLUSIONS OF LAW AND ORDER
Petitioner.)	
)	
In the Matter of)	CASE NO. RA-03-212
)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	
)	
Petitioner.)	
)	
In the Matter of)	CASE NO. RA-03-213
)	
HAWAII GOVERNMENT EMPLOYEES)	
ASSOCIATION, AFSCME, LOCAL 152,)	
AFL-CIO,)	
)	
Petitioner.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

In Case No. RA-03-211, on February 7, 1997, the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152 (Petitioner or HGEA) by Russell K. Okata, Executive Director, filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). In its petition, the Petitioner requested the inclusion of Position No. CK-112, Council Committee Aide, SR-19, BU-03 (Excluded). The Petitioner contends that a classification review of Position No. CK-112 revealed that the position no longer performs duties and responsibilities of a

confidential nature to justify exclusion from Chapter 89, Hawaii Revised Statutes (HRS) pursuant to Section 89-6(c), HRS.

Also on the same date, in Case Nos. RA-03-212 and RA-03-213, Petitioner filed similar Petitions for Clarification or Amendment of Appropriate Bargaining Unit with the Board requesting the inclusion of Position Nos. CK-138 and CK-184, Council Committee Aides, SR-19, BU-03 (Excluded), respectively.

On February 13, 1997, in Order No. 1412, the Board consolidated Case Nos. RA-03-211, RA-03-212 and RA-03-213 for disposition as the cases involved the same parties and issues. Additionally, in its order, the Board set a deadline of February 25, 1997 for those parties interested in intervening in these proceedings to file petitions for intervention with the Board. However, no petitions for intervention were filed with the Board.

The Petitioner submitted the following documents in support of the petition in Case No. RA-03-211:

1. Affidavit of Okata dated February 5, 1997 regarding Position No. CK-112;
2. Position Description for Council Committee Aide, Position No. CK-112 (HGEA Exhibit A);
3. Class Specifications for Council Committee Aide (HGEA Exhibit B); and
4. Table of Organization for the Office of the City Clerk, City and County of Honolulu (HGEA Exhibit C).

The Petitioner submitted the following documents in support of the petition in Case No. RA-03-212:

1. Affidavit of Okata dated February 5, 1997 regarding Position No. CK-138;

2. Position Description for Council Committee Aide, Position No. CK-138 (HGEA Exhibit A);

3. Class Specifications for Council Committee Aide, (HGEA Exhibit B); and

4. Table of Organization for the Office of the City Clerk, City and County of Honolulu (HGEA Exhibit C).

The Petitioner submitted the following documents in support of the petition in Case No. RA-03-213:

1. Affidavit of Okata dated February 5, 1997 regarding Position No. CK-184;

2. Position Description for Council Committee Aide, Position No. CK-184 (HGEA Exhibit A);

3. Class Specifications for Council Committee Aide (HGEA Exhibit B); and

4. Table of Organization for the Office of the City Clerk, City and County of Honolulu (HGEA Exhibit C).

Thereafter, on April 2, 1997, the HGEA filed an Affidavit of Adele T. Fujita with the Board. Fujita's affidavit indicates that there is no longer any need for confidentiality for any civil service employees assigned to Council committee meetings since the Council meetings are open to the public under the "sunshine law." In addition Fujita states that there is a specific notation from the department of personnel on each of the official position descriptions for Position Nos. CK-112, CK-138 and CK-184 which

indicates that the employer acknowledges that the positions should be included in the bargaining unit.

Based upon the documents submitted in support of the petitions, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

The HGEA is the certified exclusive representative of the employees of Unit 03, pursuant to Section 89-2, HRS.

According to the position description for Position Nos. CK-112, CK-138 and CK-184, the positions serve as Chief Clerk to a Standing Committee of the City Council and provide administrative staff support to the Committee Chair, and coordinate and direct all activities preparatory and incidental to the overall functions of the Committee. (HGEA Exhibit A)

According to the Addendum to the position description for Position No. CK-112, Committee Services Technician for the City Clerk's Office, the position performs the following assignment in conjunction with an actual strike situation:

During strikes, performs tasks on behalf of management in this or another department, such as in manning telephones to receive emergency (health or safety) calls and provide information to the public, in gathering and communicating strike-related data through administrative channels, and in providing required administrative support to those who are coping with the strike, and performs essential work within the capability of the incumbent, as assigned. (HGEA Exhibit A)

According to the duties summary of the class specifications for the Council Committee Aide, the position serves as principal assistant to the chairperson of a standing committee

of the City Council and plans and coordinates all administrative and technical activities essential to the overall functions of the committee; develops agendas, researches and compiles pertinent data, prepares committee reports, and otherwise follows through on matters to facilitate committee actions; and performs other duties as required. (Exhibit C)

Also, according to the class specifications, the Council Committee Aide is distinguished by its responsibility for providing and coordinating the administrative and technical support essential to the overall functions of a Council standing committee. (HGEA Exhibit B)

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:

* * *

(3) Nonsupervisory employees in white collar positions;

Section 89-6(c), HRS, however, specifies that individuals concerned with confidential matters affecting employee-employer relations are to be excluded from any appropriate bargaining unit and coverage under Chapter 89. In interpreting the exclusionary language of Section 89-6(c), HRS, as it relates to confidential employees, 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 145-147.

In defining what constituted confidential matters affecting employee-employer relations, the Board noted:

As to the question of the 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. (Cite 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 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.

The Petitioner contends that Chapter 92, HRS, and the subsequent State of Hawaii Attorney General Opinion 86-5 gave the public free and open access to all City Council Committee meetings. The Petitioner also contends that the "sunshine law" removed the need for confidentiality for any civil service employee position assigned to City Council Committee meetings, specifically Council Committee Aides, Position Nos. CK-112, CK-138 and CK-184. The Petitioner contends that the positions are no longer required to handle confidential materials inasmuch as Council Committee meetings are open to the public under Chapter 92, HRS.

After a review of the duties and responsibilities of Position Nos. CK-112, CK-138 and CK-184, the Board finds that the positions serve as Chief Clerks to Standing Committees of the City

Council and provide administrative staff support to the Committee Chair, and coordinate and direct all activities preparatory and incidental to the overall functions of the Committee. However, because of the sunshine law, the Committee meetings are now open to the public at large and effectively eliminate the confidentiality of subjects discussed at those meetings. As such, the positions cannot now be considered confidential.

The Board further finds that although the addendum to the position descriptions for Position Nos. CK-112, CK-138 and CK-184, have assignments for strikes, which includes the gathering and communication of strike-related data, bargaining unit 03 can no longer engage in legal strikes.¹ Thus, the positions' duties relative to strikes no longer present a conflict for Unit 03 members which would require exclusion from the bargaining unit.

As such, the Board concludes that the subject positions are no longer concerned with confidential matters. Consequently,

¹Section 89-11(d), HRS, states:

If a dispute between a public employer and the exclusive representative of appropriate bargaining unit . . . (3) nonsupervisory employees in white collar positions . . . exists over the terms of an initial or renewed agreement more than ninety working days after written notification by either party to initiate negotiations, either party may give written notice to the board that an impasse exists and the board shall assist in the voluntary resolution of the impasse by appointing a mediator within three days after the date of impasse. If the dispute continues to exist fifteen working days after the date of impasse, the dispute shall be submitted to arbitration proceedings as provided herein.

under the provisions of Section 89-6, HRS, and previous Board decisions, the positions should be included in Unit 03 and covered by Chapter 89, HRS.

CONCLUSIONS OF LAW

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

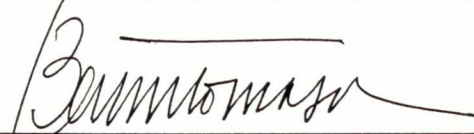
Position Nos. CK-112, CK-138 and CK-184, Council Committee Aides, are no longer concerned with confidential matters and therefore should be included in Unit 03.

ORDER

Position Nos. CK-112, CK-138 and CK-184 are hereby included in Unit 03 and covered by Chapter 89, HRS.

DATED: Honolulu, Hawaii, April 23, 1997.

HAWAII LABOR RELATIONS BOARD


BERT M. TOMASU, Chairperson


RUSSELL T. HIGA, Board Member


CHESTER C. KUNITAKE, Board Member

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