

Dec.

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

COUNTY OF HAWAII,

Petitioner,

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Exclusive
Representative.

CASE NO. RA-03-221

DECISION NO. 458

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

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On November 28, 2005, the COUNTY OF HAWAII ("COUNTY") filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit ("Petition") with the Hawaii Labor Relations Board ("Board"). The COUNTY sought to exclude new Position No. OO-04490, Personnel Assistant I, from bargaining unit ("Unit") 03, white collar non-supervisory, because the position is located in the Director's Office, Department of Civil Service and performs work that deals with confidential matters in its capacity to support the various human resource management program areas.

Thereafter, on August 23, 2006, COUNTY Representative Michael R. Ben ("Ben"), Director of Personnel filed an Affidavit stating that subsequent to the submission of the Petition, the COUNTY reorganized the Department to reflect that the Deputy Director of Personnel, instead of the Secretary-Reporter, supervises the Personnel Assistant I. The COUNTY submitted an Amended Position Description in Exhibit B-1 and an Amended Organization Chart in Exhibit D-1. Exhibit A-1 attached to Ben's affidavit, indicates that the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO ("HGEA"), concurs with the exclusion of the position from bargaining unit 03.

Based upon a review of the petition and the record in this case, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The COUNTY OF HAWAII is a public employer, as defined in Hawaii Revised Statutes ("HRS") § 89-2, of employees, including the employees included in and excluded from Unit 03.

2. The HGEA is the exclusive representative, as defined in HRS § 89-2, of employees in Unit 03.
3. According to the position description, as amended, for Personnel Assistant I, Position No. OO-04490, the position will perform a variety of assignments in support of the County's various human resources management programs in the areas of personnel and organizational development, classification, labor relations, and fair employment practices. The position is supervised by the Deputy Director of Personnel and will perform the following duties in the approximate percentages of time:
 - a. Research, obtain and compile data for use by management personnel, including data necessary for budget preparation, annual reports, negotiations, etc. Assist in the development of Equal Employment Opportunity Plans and the delivery of equal opportunity programs. Assist in the review and processing of simple to moderately difficult position redescrptions and position reallocation requests; assist in periodic maintenance reviews of class specifications and position redescrptions. (40%)
 - b. Plan and coordinate special events, such as the "Employee of the Year" awards program, the "Pre-Retirement Planning" seminar, and the annual "Clerical Seminar." Coordinate registration/sign-ups for these and various other training, seminars, or workshops sponsored by the department. (35%)
 - c. Set up and maintain control files and other records for the department's division heads and for the director and deputy director. Assist in drafting correspondence and reports, and prepare training materials. Assist in the review and processing of documents and entering data into the FRESH system. Assist in the administration of various programs, such as the Drug and Alcohol Testing, Leave Sharing, and Flexible Spending Programs. (20%)
 - d. Perform other duties as assigned. (5%)

Exhibit B-1.

4. According to the class specifications, the position performs a variety of simple to moderately difficult sub-professional personnel assignments in support of a departmental personnel program or in support of one or more functional areas in the central personnel agency; advises on personnel policies and

procedures; processes and reviews personnel transactions, maintains personnel records and files, and performs other duties as required.

Exhibit C.

5. By letter dated July 19, 2006, Deputy Director of Personnel Ronald K. Takahashi notified HGEA Executive Director Russell Okata of the proposed exclusion of the Personnel Assistant I from Unit 03 as the position was located in the Department of Civil Service and would perform a variety of sub-professional human resources assignments in support of the County's human resources management program in the areas of personnel and organization development, classification labor relations and fair employment practices. In addition, the change in the position's supervisor to the Deputy Director of Personnel would facilitate the assignment of tasks related to labor relations and negotiations. On July 24, 2006, Randy Perreira concurred with the proposed exclusion.

Exhibit A-1.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject petition pursuant to HRS § 89-6.
2. HRS § 89-6(f) provides, in part, as follows:

The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

* * *

- (5) Individual concerned with confidential matters affecting employee-employer relations;
3. In interpreting the exclusionary language of HRS § 89-6, 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 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. In almost all conceivable cases, such an employee, if he is not himself a policy maker in the field of employee-employer relations, will be a subordinate of a managerial individual who formulates policy which directly influences or affects changes in employee-employer relations or who meets other criteria of a top-level manager.

Id. at 146-47.

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. [Emphasis in original.]

Id. at 147.

As summarized in Decision No. 95, the following criteria must be met to designate an employee as confidential for exclusion pursuant to Subsection 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 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 relations.

Id. at 147.

6. The Personnel Assistant I, Position No. OO-044990 works in the Department of Civil Service, and will perform a variety of assignments in support of the human resource management programs in the area of personnel and organization development, classification, labor relations and fair employment practices, including research, review and compilation of data for use in negotiations. As such, these are matters capable of producing an effect or influence in employee-employer relations and are of a confidential nature, not intended for the eyes and ears of the union as a subordinate to the Deputy Director of Personnel who formulates and effectuates management policy in the field of employment relations. Based on the position's duties and responsibilities, the Board concludes that the position is a confidential position and should be excluded from bargaining unit 03 and coverage under HRS Chapter 89.

ORDER

Position No. OO-04490, Personnel Assistant I, is hereby excluded from collective bargaining unit 03, and the coverage of HRS Chapter 89 as a confidential employee.

COUNTY OF HAWAII and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,
LOCAL 152, AFL-CIO
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DATED: Honolulu, Hawaii September 5, 2006.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

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