

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-13-222

DECISION NO. 459

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

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On August 13, 2006, 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 seeks to exclude new Position No. OO-04607, Property Manager, EM-03, from bargaining unit 13 because the position will serve as the division head for the new Property Management Division in the Department of Finance, and will formulate and implement the policies, guidelines, procedures, and objectives of the County's property management program; and oversee the administrative functions, including fiscal and personnel matters, for the division. Michael R. Ben, County Director of Personnel and Petitioner's representative ("Ben"), states in an affidavit attached to the petition, that the HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO ("HGEA") concurs with the exclusion of the position from collective bargaining.

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 13.
2. The HGEA is the exclusive representative, as defined in HRS § 89-2, of employees in Unit 13.

3. According to the position description for the Property Manager, the position plans, coordinates and directs the program involving the management, control, acquisition and disposition of County-owned real property and personal property; serves as the Finance Department's liaison to the Public Access, Open Space and Natural Resources Preservation Commission; manages the personnel of the division and performs other related duties. The position will perform the following duties in the approximate percentage of worktime:
- a. Administers the functions of a real property acquisition, management and disposition program and a personal property accounting and disposal program for the County, involving supervision of subordinate staff. 15%.
 - b. Develops program goals and objectives for the administration of a property management program. Responsible for developing operational standards, procedures and policies for the efficient, effective operation of a county-wide property management program, in compliance with applicable laws and regulations. Recommends revisions to laws, ordinances, and rules, as necessary. 15%.
 - c. Acts as department liaison and principal resource person to the Public Access, Open Space and Resources Preservation Commission. Chairs the County Land Management Committee, with responsibility for scheduling, providing agendas and minutes. 15%.
 - d. Administers the personal property management and disposal program. Develops policies and procedures pertaining to the disposal of County-owned surplus lands and buildings. Directs the organization, conduct, collection and deposit of realizations of the sale of surplus lands and buildings at public auction or through negotiation. 15%.
 - e. Works with Corporation Counsel and others on matters relating to the real property management program, and serves as resource to the Director of Finance, Mayor and County Council. Attends meetings and makes presentations as required. 10%.
 - f. Negotiates with outside parties for the purchase or lease of private property for use by the County. Participates in the drafting of contracts for acquisition transactions. Coordinates the selection of negotiation with consultants for appraisals,

environmental assessments, survey work and other professional services. Prepares contracts for services. 10%.

- g. Plans, develops, establishes and administers through subordinates policies and procedures for the collection of inventory data and the submission of annual reports for audits and as prescribed by law. Oversees the maintenance of records and files. 10%
- h. Oversees the preparation of the division budget and controls expenditures of appropriations. Manages contracted services. 5%.
- i. Performs other related duties. 5%.

Exhibit B.

- 4. According to the class specifications, the Property Manager, EM-03, plans, coordinates, and directs the management, control, acquisition, and disposition of County-owned real and personal property; chairs the County Land Management Committee; serves as advisor and technical resource for County officials, employees, and commissions on property management matters; and performs other related duties. The class is distinguished by its responsibility to plan and direct the County's program involving the management, acquisition, and disposition of County-owned real and personal property; and serves as advisor and technical resource for County officials, employees and commissions on property management matters.

Exhibit C.

- 5. By letter dated July 19, 2005, Deputy Director of Personnel Ronald K. Takahashi notified HGEA Executive Director Russell Okata of the proposed exclusion of the Property Manager from bargaining unit 13 as the position will serve as the division head for the new Property Management Division in the Department of Finance. The position will be responsible for the development and implementation of the property management program involving the control, acquisition, and disposition of County-owned real and personal property. On July 24, 2005, HGEA Deputy Director Randy Perreira indicated his concurrence with the proposed exclusion.

Exhibit A.

6. The Board finds that new Position No. OO-04607, Property Manager, EM-03, is the division head for the new Property Management Division, Department of Finance, and will formulate and implement the policies, guidelines, procedures, and objectives of the County's property management program; and will oversee the administrative functions, including fiscal and personnel matters for the division. The position will exercise considerable discretion in developing and implementing the division's programs; formulating short and long range plans and goals; and overseeing the administrative, including fiscal and personnel, functions of the division.

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:

* * *

- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
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 determining whether an individual occupies a top-level managerial or administrative position, the Board, in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated, in pertinent part:

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].

4. 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 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.

Because policy formulation is an important factor in the determination of managerial status, the meaning to be given to the term *policy* is important and warrants discussion.

The New York PERB, in a leading case of that Board, has defined the term *policy* which this Board adopts. The New York PERB stated in State of New York, 5 PERB 3001 (1972) at p. 3005:

We will first discuss the "policy" criterion and later the other three criteria. It would appear desirable to first consider the term "policy." Policy is defined in a general sense as "a definite course or method of action selected from among alternatives and in the light of given conditions to guide and determine present and future

decisions.” In government, policy would thus be the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.

The term “formulation” as used in the frame of reference of “managerial” would appear to include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. It would not appear to include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal. [Footnotes omitted.]

* * *

It is assumed that all persons in State government, except for elected officials, judges and certain other officers not here relevant, have supervision and that their decisions technically take the form of recommendations subject to approval by higher authority. It is the function of a position, not its place on the organizational chart upon which top-level manager or administrator is based. “It is not whether a person definitely establishes policy but rather the individual’s regular participation in the policy-making process which determines managerial status. Absolute discretion or authority to act is not a prerequisite to finding that an individual formulates policy. What matters is the fact of participation at a fundamental level in the decision making process, not the participant’s batting average in having his views prevail.” State of New York, supra.

Id., at 144-45.

5. The Property Manager, EM-03, is the head of the new Property Management Division in the Department of Finance and directs the work of the program with considerable discretion to determine the means, methods, and personnel by which the agency or program policy is to be carried out. The position has significant authority, latitude for individual initiative and independent judgment in the overall administration and operations management of the division. Based on the position's duties and responsibilities, the Board concludes that the position is a top-level managerial position and should be excluded from bargaining unit 13 and coverage of HRS Chapter 89.

ORDER


Position No. OO-04607, Property Manager, EM-03, is hereby excluded from collective bargaining unit 13 and the coverage of HRS Chapter 89 as a top-level managerial employee.

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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