

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-03-224

DECISION NO. 461

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

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On August 23, 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 sought to exclude new Position No. OO-04533, Clerk II, from bargaining unit ("Unit") 03, white collar non-supervisory, because the position is supervised by the Deputy Director of Personnel, Department of Civil Service and performs work that deals with confidential matters in its capacity to support the various human resource management program areas of classification, labor relations, and fair employment practices. 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 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 for Clerk II, Position No. OO-04533, the position will perform a variety of clerical work in support of all of the divisions, i.e., labor relations, recruitment, classification, training, 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. Types tabular, records, reports, surveys, and other documents from rough draft or copy where format and arrangements of data are not clearly indicated; checks and proofreads typewritten materials. Prepares forms, records, reports, surveys, and other documents and checks for accuracy, adequacy and conformance to established departmental or other legal requirements; evaluates documents and processes them. Composes and types routine correspondence and reports. Duplicates and files memoranda, circulars and other correspondence. Sets up and maintains files, revising systems as necessary. Files, distributes, and logs records, including Drug and Alcohol Testing (DAT), Flexible Spending Plan (FSP), Leave Sharing, and legislative matters. (75%).
 - b. Answers telephone calls, takes messages, and routes calls to appropriate staff. Provides general information on recruitment and applications upon request; receives applications and other related material; provides prompt and courteous service to establish good public relations. Answers simple inquiries and advises regarding civil service laws, rules and regulations. Performs other related duties. (25%).

Exhibit B.

4. According to the class specifications, the position performs a variety of clerical work in preparing, processing and filing forms, records and similar materials in accordance with general instruction and procedures. The class differs from a Clerk I as it performs a variety of tasks involving referral to a number of different sources, executes assignments with general instructions, accomplishes work with some use of discretion and selectiveness in deviating from established processes and procedures, and types materials where improvisation is required as to format and arrangement of data is required. By contrast, the Clerk I performs routine, repetitive tasks, in accordance with specific instructions or clearly defined procedures.

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 Clerk II from Unit 03 as the position was located in the Department of Civil Service, Office of the Director, and would perform a variety of clerical and administrative support duties for the COUNTY's human resource management programs for labor relations, recruitment, classification, training, and fair employment practices. Assignments include work relating to the survey, review and compiling of data, records, and files for use in grievances, arbitrations, and negotiations. On July 24, 2006, Randy Perreira concurred with the proposed exclusion.

Exhibit A.

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.

4. The Clerk II, Position No. OO-04533 works in the Department of Civil Service, Office of the Director and will perform a variety of clerical assignments in support of the human resource management programs in the area of labor relations, recruitment, classification, training, and fair employment practices. The position will be assigned work relating to survey, review, and compiling of data, records and files for use in grievances, arbitrations, and 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-04533, Clerk II, is hereby excluded from collective bargaining unit 03, and the coverage of HRS Chapter 89 as a confidential employee.


DATED: Honolulu, Hawaii September 5, 2006.

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair

COUNTY OF HAWAII and HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,
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EMORY J. SPRINGER, Member


SARAH R. HIRAKAMI, Member

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