

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

COUNTY OF HAWAII,

Petitioner.

CASE NO. RA-13-235

DECISION NO. 477

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

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On April 21, 2009, 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 Position No. OO-04176, Workers' Compensation Claims Specialist III, SR-22, from bargaining unit (Unit) 13,¹ because the position allegedly deals with confidential matters affecting employee-employer relations. The position is located in the Department of Human Resources, Health and Safety Division, Workers' Compensation Branch and functions as journey level staff specialist responsible for the management of assigned workers' compensation cases and assists lower level specialist with more difficult cases. The position provides advice to the departments regarding the management of claims; conducts investigations to determine compensability of claims; represents the County of Hawaii at the administrative hearings; works with attorneys on awards, settlements, and subrogation cases, and participates in confidential investigations and decisions that affect employee-employer relations. Michael R. Ben (Ben), Director of Human Resources and Petitioner's representative, states in an affidavit attached to the petition, that the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (HGEA) does not concur with the exclusion of the position from collective bargaining.

¹Hawaii Revised Statutes (HRS) § 89-6(a) for the appropriate bargaining units and provides, in part, as follows:

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

* * *

(13) Professional and scientific employees, who cannot be included in any of the other bargaining units.

On April 22, 2009, the Board issued a Notice of Receipt of Petition for Clarification or Amendment of Appropriate Bargaining Unit; Notice of Deadline for Filing Petitions for Intervention (Notice). The Notice set May 5, 2009 as the deadline for interested persons to file a Petition for Intervention with the Board.

The Board did not receive any Petition for Intervention in this matter.²

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 is a public employer, as defined in 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 Workers' Compensation Specialist III, Position No. OO-04176, the position serves as the staff specialist in workers' compensation matters and prepares workers' compensation cases for administrative hearings. The position examines the cases to determine appropriate benefits, awards and settlements. The position will perform the duties in the approximate percentages of time:
 - a. Independently performs the full range of claims evaluations, including the most difficult and complex cases and provides management advisory services to line departments. Explain workers' compensation statutes to department and agency heads and assists in managing their workers' compensation claims. Participates in investigations that may affect employee/employer relations. 18%.
 - b. Evaluates workers' compensation cases to determine accuracy and relevancy of the information to the file. Prepares and presents workers'

²By letter dated May 5, 2009 which was received by the Board on May 6, 2009, HGEA Hawaii Division Chief Sharon T. Morris (Morris) provided a copy of the class specifications for the Workers Compensation Claims Specialist which the HGEA was allegedly provided in 1988 and indicated that the workers compensation claims specialists have been included in collective bargaining since 1988. As the HGEA has not formally intervened in this proceeding, however, the Board does not give weight to Morris' letter.

compensation cases to the Director of Labor and Industrial Relations or a representative at administrative hearings. 17%.

- c. Reviews, approves/denies treatment plans and monitors treatment to assure its compliance with the Hawaii Workers' Compensation Medical Fee Schedule. 15%.
- d. Arranges for injured employees to be medically, psychiatrically and/or emotionally evaluated as necessary, after consulting with medical authorities. Determines if injured employee has stabilized sufficiently for a compensation award to be established. 13%.
- e. Reviews, approves/denies provider bills to assure its compliance with the Hawaii's Workers' Compensation Medical Fee Schedule. 10%.
- f. Reviews and refers all possible third party subrogation cases to the Corporation Counsel's Office for legal action. Determines which cases are to be finalized, extended, investigated and/or referred. Determines cases to be sent to administrative hearings and assists the Corporation Counsel's Office at Appellate Board meetings. 7%.
- g. After contacting the pertinent individuals, evaluates cases to determine feasibility of possible settlement. Initiates initial settlement discussions and drafts tentative settlement terms for review and approval by the Corporation Counsel's Office. 5%.
- h. Evaluates and screens cases to be referred to a vocational rehabilitation agency. Selects and contracts vocational rehabilitation agency to refer each feasible case and keeps in close contact with the specific vocational rehabilitation counsel to monitor the progress of the case. 5%.
- i. Supervise and train workers' compensation staff. Manage daily work requirements of the staff including allocation of time and materials including equipment needs. 5%.
- k. Keeps abreast of current changes regarding workers' compensation laws, medical fee schedules and return to work programs. 3%.
- l. Upkeeps computer related programs. 2%.

Attachment B.

4. According to the Position Description, the immediate supervisor of the position at issue is Position No. 4194, Human Resources Manager II, EM-03.

Id. and Attachment D.

5. According to the class specifications, the position serves as staff specialist in workers' compensation matters; prepares workers' compensation cases for administrative hearings; examines workers' compensation cases to determine appropriate benefits, awards, and settlements, and performs other related duties as required. The classes are distinguished by their responsibility for examining workers' compensation claims for determination of appropriate benefits and awards and for preparing cases for administrative hearings and provides staff assistance to the Corporation Counsel in difficult cases involving settlements, opposing attorneys, and third party subrogations.

Attachment C.

5. By letter dated December 22, 2008, Deputy Director of Human Resources Ronald K. Takahashi (Takahashi) notified HGEA Executive Director Randy Perreira of the proposed exclusion of the Workers Compensation Claims Specialist III, SR-22 and requesting whether the HGEA agreed or disagreed with the exclusion.

Attachment A.

6. By letter dated January 20, 2009, HGEA Hawaii Division Chief Morris wrote to Takahashi indicating that the position had always been included in the bargaining unit and the duties and responsibilities of the incumbent have not changed. Thus, the incumbent may prefer to remain in the bargaining unit with the rights and benefits of the collective bargaining unit. Thus, the HGEA requested the Employer's consideration to continue the inclusion of the position or alternatively to proceed with excluding the position upon the vacancy of the position.

Attachment A-1.

6. Based on the record before the Board, the Board finds that the position is supervised by a Human Resources Manager and regularly works with information of a confidential nature as a staff specialist providing advice to the employing departments relating to the management of workers' compensation claims, conducting investigations to determine the compensability of claims, representing the COUNTY at administrative hearings, participating in

confidential investigations and decisions, and working with attorneys on awards, settlements, and subrogation cases.

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.

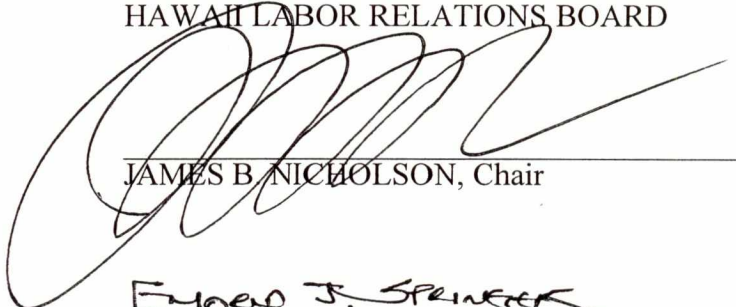
4. The Workers' Compensation Claims Specialist III, Position No. OO-04176 works in the Department of Human Resources, Health and Safety Division, Workers' Compensation Branch and is a staff specialist providing advice to departments relating to claims management; conducting investigations to determine the compensability of claims; representing the COUNTY at the administrative hearings; participating in confidential investigations and decisions, and working with counsel on awards, settlements, and subrogation cases. As such the position will regularly work with matters of a confidential nature, not intended for the eyes and ears of the rank and file or union, which are capable of producing an affect or influence upon employee-employer relations, as a subordinate to the Human Resources Manager. 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 13 and coverage of HRS Chapter 89.

ORDER

Position No. OO-04176, Workers' Compensation Claims Specialist III, SR-22, is hereby excluded from collective bargaining unit 13, and the coverage of HRS Chapter 89 as a confidential employee.

DATED: Honolulu, Hawaii _____ May 26, 2009 _____.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

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