

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)

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

Petitioner,)

and)

GEORGE R. ARIYOSHI, Governor)
of the State of Hawaii,)

Employer,)

and)

ELSIE OSHITA, et als.,)

Intervenors.)

Case Nos. RA-03-11
RA-04-12
RA-13-13

Decision No. 95

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER

These three consolidated cases were filed on January 21, 1974, by the Petitioner Hawaii Government Employees' Association (hereafter HGEA).

The original petitions sought the inclusion in Units 3, 4, or 13 of more than 850 presently excluded positions.

After these petitions were filed, the Board received a stipulation dated February 14, 1974, between the HGEA and the public employer asking that these matters be postponed while they met and conferred on them. Board Ex. 4. Accordingly, on February 19, 1974, the Board issued an order continuing the hearing. Board Ex. 5.

More than two years later on June 16, 1976, Donald Botelho, Director of the Department of Personnel Services and the representative of the public employer, submitted a stipulation as to the designation of bargaining Units 3, 4

and 13 respecting State employees he had entered into with the HGEA. Exhibit 6.

On October 21, 1976, the HGEA filed amended petitions for clarification of Units 3, 4, and 13 to reflect the agreement concerning inclusions of presently excluded positions in Units 3, 4, and 13.

The Board set the matter for a hearing on October 27, 1976.

Protracted hearings were held on whether individuals occupying affected positions and the Public Employees Management Association of Hawaii (hereafter PEMAH), an organization made up largely of excluded employees, could intervene in this case. As a result of these hearings, 39 individuals were permitted to intervene but PEMAH was denied intervenor status. Board Order 100, January 26, 1977, and Orders 116, 127, and 132.

The dimension of Units 3, 4, and 13 were determined by stipulation. The stipulations were approved by this Board without a hearing so that representation elections could be conducted without delay as unit determination hearings would have delayed the elections. Thus, the Board said in its Decision 40 (December 28, 1973):

We have decided that the two positions which are the subject of these cases should be excluded from collective bargaining units on the basis of evidence presented and the legal conclusions we drew based upon such evidence. This Board, however, is concerned about the vast number of exclusions from certain units which took place during the early phases of implementing collective bargaining in the public sector. The large number of exclusions resulted from stipulations made with an eye toward early elections under our new law. The time has certainly come for a reevaluation of those early exclusions by both the unions and the public employers and, in its turn, this Board. No employee

who should be enjoying the benefits of being a member of an appropriate bargaining unit should be denied that privilege. This Board urges the employers and unions to meet, reason together, and make every good faith effort to narrow the list of exclusions wherever warranted. The early determination of units is not wholly lamentable; it did result in most public employees receiving benefits under negotiated contracts much sooner than would have been possible if initial unit determinations had been severely scrutinized in lengthy contested hearings. However, a reassessment of the intitial [sic] exclusions is in order and the entire Board encourages the concerned parties to commence at this time this reassessment.

The instant case was subjected to both an informal investigation, with all parties present and represented by counsel, and to a formal hearing pursuant to Section 91-9, Hawaii Revised Statutes (hereafter HRS). By stipulation of the parties, the testimony given during the investigation was made a part of the record of the hearing and was deemed to have been given under oath.

At the completion of the hearing, all parties filed briefs. The Intervenors' brief was filed late and it violated the terms of Order 100. However, the Board, in its discretion, did not grant the HGEA's motion to reject the Intervenors' brief. Order 199 (July 19, 1978).

Based upon the entire record herein, the following findings of fact, conclusions of law, and orders are made.

FINDINGS OF FACT

Governor George R. Ariyoshi, is the Governor of the State of Hawaii and is a public employer of Units 3, 4, and 13 as described in Section 89-6(a), HRS. His representative in dealing with the HGEA was Donald Botelho, Director of the Department of Personnel Services, State of Hawaii.

The HGEA is the exclusive representative of collective bargaining Units 3, 4, and 13.

The intervenors herein and the State positions they occupy are: Norma Kiyabu (3545), Jane F. Miyazono (3553), Mitsugi Nakatsuka (17472), Satoru Hironaga (13701), Mitsuyoshi Hiraoka (14442), Donald W. C. Won (15314), Richard Kasperski (15777), Albert Fu (17824), Sheena Ing (17858), Gail Onishi (17859), Craig M. Hirayama (17860), Loretta Chun (17863), Joan Johnson (23160), Jack A. Piper (26818), Florence Maeda (4312), Linda Tanaka (8911), Diane Rook (10407), Elsie Oshita (15361), Mieko Tojio (19380), Marjorie Ho (21947), Jerry Walker (2413), Elizabeth Naumu (2984), George H. Tokuyama (2989), Clement E. Nelson (3047) Herbert S. Kimata (3880), Masaru Matsumura (20295), Wayne Caldeira (23546), Kenneth S. Foley (26646), Ronald T. Sasaki (5305), Robert Murashige (E11334), Ned Glenn (22221), Albert A. C. Mark (24728), Helen Maruyama (425), Rose Nitahara (764), Mary K. Kanno (773), Beverly Hirai (5873), Hisao Tachi (7469), Harriet K. Yamamoto (8040), Edith N. Yashiki (8823), Matsue Miyamoto (10016), Fumie Ouchi (13479), Betty S. Kadooka (14055).

Including the above positions, there are a total of 101 positions stipulated to be included in Unit 3, 16 to be included in Unit 4, and 96 stipulated for inclusion in Unit 13 or a combined total of 213.

Additionally, the public employer and the HGEA have deferred consideration of approximately 192 positions.

As to each of the positions which the HGEA petitioned to have included in collective bargaining Unit 3, 4, or 13, the Board makes the following findings of fact. The findings will be organized according to units and the department or major offices involved.

9

UNIT 3

OFFICE OF THE GOVERNOR

The following seven positions are secretarial or stenographic positions which serve heads of offices which are attached for administrative purposes to the Office of the Governor.

The subject positions do not function in a managerial capacity. Also, there was no evidence that any of them acted in a confidential capacity concerning matters affecting employee-employer relations. The subject positions are:

1. 762E Secretary, Hawaii Office of Economic Opportunity
2. 5633E Clerk-Stenographer III, Committee on Employment of the Handicapped
3. 5950E Secretary II, Office of Environmental Quality Control
4. 7397E Secretary to Public Defender
5. 15033 Clerk-Stenographer III, Commission on Manpower/Full Employment
6. 19248 Secretary II, State Law Enforcement Planning Agency
7. 19450 Legal Stenographer II, Office of the Consumer Protector

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Position 11706E, Clerk-Typist II, is a CETA position, the duties of which include typing, filing and other clerical tasks in the department's personnel office.

The incumbent does most of the typing in that office. All of the other employees in the office are personnel clerks and are excluded. She may type grievance materials. (Tr. 33:143)

DEPARTMENT OF BUDGET AND FINANCE

Position 11126E, Clerk-Typist I, is located in the personnel office of the Department of Budget and Finance. This position, like Position 11706E, is a floater position providing general clerical work in support of personnel clerks and technicians in the departmental personnel office. The incumbent is a subordinate of the department's administrative services officer with whom departmental grievances would be filed. Her supervisor testified that he has been asked by his department's representative on the employer's negotiating team how much money had been budgeted for collective bargaining. This information is a matter of public record. (Tr. 36:11) He also has been asked to provide said representative with estimates of the costs of employee safety requirements, meals, and uniforms. (Tr. 36:11) He did not know whether the purpose of the request was to obtain the data to give to the union or whether it was confidential. (Tr. 36:12) He could give no other examples of data relating to collective bargaining he had been asked to provide. (Tr. 36:13) No evidence was given of Position 11126E being involved in any of these activities.

DEPARTMENT OF DEFENSE

Positions 5681 and 9550 are Personnel Clerk IV positions in the Department of Defense. They handle records on military personnel only, not State employees.

DEPARTMENT OF EDUCATION

Position 3619, Personnel Clerk V, Certification & Development Section. The incumbent, under the supervision of a Personnel Technician VI, reviews transcripts and educational records of teachers to determine their classification.

The supervisor of the position is included in a bargaining unit.

Position 5084, Clerk-Stenographer II, Kauai District Office and

Position 10410, Personnel Clerk IV

Position 10411, Personnel Clerk III

Position 12176, Personnel Clerk V

Position 14790, Personnel Clerk IV

Position 15325, Personnel Clerk IV

Position 15435, Personnel Clerk V

Position 15437, Personnel Clerk III

Position 15439, Personnel Clerk IV

Position 15440, Personnel Clerk IV

Position 15663, Personnel Clerk III

Position 19097, Personnel Clerk III

The above 12 positions are all filled by personnel clerks in the several district offices of the Department of Education. The Department of Education maintains a central personnel office which plays a significant role in overseeing the operation of the district offices. The duties of the subject positions involve processing routine personnel transactions. (37 Tr. 21) Their supervisors, who are personnel staff specialists, would do, when grievances arise, investigative work and sit in on hearings conducted by district superintendents or their deputies. The personnel staff specialists also would be asked to draft written materials for the district superintendents. The subject clerical positions would be expected to type, and perhaps distribute, and mail these materials. (37 Tr. 21) If the staff specialists were asked to comment on union proposals or recommend a

management position, and if such reaction or recommendation were in writing, a personnel clerk would type it. (37 Tr. 21)

Position 8911, Secretary II, Personnel Management Certification and Development Branch, is the secretary to Charles Kitaoka, administrator of that branch in the Department of Education (hereafter DOE). She also performs secretarial work for Donald Nugent, who recruits teachers. (32 Tr. 43) Mr. Nugent interviews and evaluates applicants for teaching positions and makes the initial recommendation to hire teachers. In her work for Mr. Nugent, the incumbent of position 8911 has access to the personnel records of applicants for positions. (32 Tr. 44) Mr. Kitaoka sits on committees which screen candidates for hiring and recommends selections to the appointing authority. (32 Tr. 44-45) The committees fill out rating forms which are at some time made available to the union. (32 Tr. 47) Included personnel sit on these committees. (32 Tr. 55) No evidence was received as to the nature of the material in the files marked "Confidential" or the proofread material seen by the incumbent. It is possible, given this proofreading practice, that on an infrequent basis she may be exposed to material related to negotiations but at this point this is a matter of speculation. The incumbent has access to personnel records which are stamped "Confidential" and which are intended only for internal use. A number of secretaries in the DOE's personnel office, on a voluntary basis, proofread each other's typing. (32 Tr. 60)

Position 10407, Secretary II, is occupied by Diane Rook, secretary to Gerald Sada, Administrator of the Classified Personnel Section of the DOE's Office of Personnel Services Administration. This section is responsible for

personnel administration for civil service employees of the DOE who are in collective bargaining units 1, 2, 3, 4, 9, 10, and 13. (32 Tr. 14) Including part-time employees, temporary employees and casual employees, the branch is responsible for about 6,000 employees. There are 13 employees in the branch. Once several years ago, Mr. Sada was asked to respond to a Unit 1 contract proposal. He responded in writing and Mrs. Rook typed his response. It is not clear from the testimony whether it was a union or an employer proposal. (32 Tr. 19, 32) Mrs. Rook has access to the personnel files of employees being classified. (32 Tr. 21) The branch recommends position allocation, and classification; the Department of Personnel Services determines whether to take final action. (32 Tr. 23) Mr. Sada was not involved in detailed strike planning involving the teacher's strike. As an excluded employee during the 1973 teachers' strike, he was sent to Kauai "to keep operations going." During the threatened Unit 1 strike, Mr. Sada was involved in developing some sort of timetable. He can't recall who the others involved were. (32 Tr. 26) A copy of the strike plan was given to Mrs. Rook to file. (32 Tr. 26) Mr. Sada testified that if Mrs. Rook were included in Unit 3, it would not affect the performance of his duties. (32 Tr. 33) The review of contract proposals now is the function of the DOE's Personnel and Industrial Relations Branch, not Mr. Sada's branch. (32 Tr. 34) Mrs. Rook has typed DOE interpretations of existing collective bargaining agreements which are marked "Confidential." (32 Tr. 37) Mr. Sada was able to give only one example of his role with respect to policy formation. He said that in areas not presently covered by DOE regulation, there are certain

departmental policies in effect about which he might "make the staff study . . . and make a recommendation whether to change it or to revise it." (32 Tr. 41)

Position 15361, Personnel Clerk V, is occupied by Elsie Oshita (32 Tr. 9), a personnel clerk in the Certification Office of the Personnel Management, Certification and Development Branch. Her supervisor is James Nohara, who is the administrator in charge of such things as various leaves of absences including sabbaticals and leaves for professional improvement and is himself included in a collective bargaining unit. (32 Tr. 8, 51, 54, 62)

Position 19380, Personnel Clerk V, is occupied by Mieko Tojiyo, who is a personnel clerk in the DOE's employee benefits section specializing in workmen's compensation matters. (32 Tr. 72) Her immediate supervisors are in bargaining units. (32 Tr. 72)

Position 21947, Secretary II, is occupied by Marjorie Ho, who is the secretary of Ben Verhusen, Administrator, Classification and Compensation, Personnel and Industrial Relations Branch. (32 Tr. 5, 10) Mr. Verhusen administers classification and compensation for educational officers and a few teachers. (32 Tr. 78-79) It is his responsibility to evaluate and classify positions, according to rules and regulations. He also analyzes positions to determine position ratings, salaries, minimum qualifications. Also, his office conducts studies of comparable salaries for educational officers across the United States. (32 Tr. 79) A staff specialist in his office, Dan Lu Wong, who specializes in compensation and is a subordinate of Mr. Verhusen, serves as a member

of the subcommittee for negotiation to the negotiating team and often serves as recorder for the subcommittee. (32 Tr. 79-80) Mrs. Ho provides secretarial services to Mr. Wong. (32 Tr. 80)

Position E11464, Clerk Typist II, is a CETA position in the Classified Personnel Section of the Personnel Management, Certification and Development Branch of the DOE's Office of Personnel Services. The incumbent does routine clerical work such as typing. (37 Tr. 27-28)

Position 13863, Personnel Clerk V, is a personnel clerk position located in the Employee Benefit Section of the Personnel and Industrial Relations Branch. The incumbent chiefly handles the processing of applications for health fund enrollment. Her supervisor is an included employee. (32 Tr. 26-27)

Position 14378, Personnel Clerk IV, is supervised by an included employee. (32 Tr. 26)

Position 15441, Stenographer II, is located in the Information Office of the Superintendent of Education. The incumbent answers the telephone for the Information Office and refers callers to proper persons. (32 Tr. 28) The position serves as a stenographer to a staff specialist who works on public relations activities for the DOE such as putting out press releases, compiling the department's annual report, and issuing public notices of DOE events. The position also serves a director who performs similar tasks to those of the staff specialist and also is in charge of the DOE's lithographic function. (37 Tr. 29, 32) The Information Office is on the same floor as the Superintendent's Office, but is about 100 feet away from it. (37 Tr. 30) Additionally, the position

serves as a backup to Position 17560, a clerk reporter position responsible for recording and taking minutes of Board of Education (hereafter BOE) meetings. She substitutes for 17560 "during . . . absence or in a pinch." Position 17560 is an SR-14; the subject position is an SR-8. (37 Tr. 32)

Position 17560, Secretary III, discussed above in part, has as its primary duty recording, taking and preparing minutes of BOE meetings, and typing up agenda for BOE meetings. (37 Tr. 30)

Position 19132, Personnel Clerk III, assists Position 13863, supra, with Health Fund enrollments and also does clerical work in connection with retirement and employee incentive and awards programs in the DOE. The position reports to an included employee. (37 Tr. 27)

Position 19240, Secretary II, provides secretarial services to the administrator of the Employee Benefits Section, James Nohara, an included employee. (37 Tr. 27)

DEPARTMENT OF HEALTH

Position 2984, Secretary IV, serves as a secretary to the chief of the Health Education Office, a 13 or 14-person staff office in the Department of Health (hereafter DOH) concerned with educating the public about good health practices and the services of the DOH available to the public. (17 Tr. 27-28; 28 Tr. 62-64) The head of the Health Education Office reports to the head of the DOH and is responsible for the budgeting for her office and for handling, at the first step, grievances arising within her office. (28 Tr. 68)

Position 2994, Secretary IV, is in the DOH Research and Statistics Office. (34 Tr. 18) The incumbent is the secretary to the chief of that office. The incumbent gathers

data for the chief in connection with his handling of grievances which might arise in his office. (34 Tr. 21) There are approximately 16 persons in this office. (34 Tr. 73) Informal grievances would be handled by immediate supervisors, but the chief, Dr. Birch, would handle step one grievances. (34 Tr. 73)

Position 7264, Clerk-Stenographer III, Mental Health Division, Hawaii State Hospital, functions as a secretary to the assistant hospital administrator of Hawaii State Hospital. (34 Tr. 24-25) She works in the same office as an excluded secretary who services the hospital administrator. (34 Tr. 25) The incumbent's superior who is the assistant administrator of Hawaii State Hospital, handles, on behalf of the administrator, personnel matters, including grievances at step one for the staff at the Hospital. (34 Tr. 64-65) On one occasion the incumbent, Mrs. Tada, typed up a study concerning what should be done with the hospital laundry. DOH officials considered this confidential. (34 Tr. 71) The laundry report was given to the Union after DOH officials had reviewed it. (34 Tr. 75) She has also typed up an evaluation of an employee's performance. (34 Tr. 71)

Positions 18397, 18535, 18536, 21099, and 22840 are personnel clerks at hospitals. (39 Tr. 93-94) They perform routine clerical work in connection with such personnel activities as preparing or keeping records of employees' leaves, vacations and workmen's compensation matters. (39 Tr. 93, 95)

Position 20064, Secretary III, at Kula Sanitarium is the secretary to the assistant hospital administrator and the medical administrator for Kula Sanitarium. In the view of the DOH spokesman on this position during the hearings,

neither supervisor functions at a level which would warrant the exclusion of the secretary. (39 Tr. 94)

Position 25603, Clerk-Stenographer III, maintains fiscal records and does typing for the fiscal officer of the County-State hospital division. The material she works with in large part does not relate to personnel matters. (39 Tr. 95-97)

DEPARTMENT OF HAWAIIAN HOME LANDS

Position 9580, Secretary IV, serves as the secretary to the Hawaiian Homes Commission. She prepares the agenda for and minutes of Commission meetings. Generally, the Director of the Department makes personnel decisions and reports them to the Commission. The Commission has authority to review the Director's decisions. (38 Tr. 4) The incumbent of Position 9580 is not involved in employment matters under the supervision of the Director. She would have access to personnel files and grievance materials. (38 Tr. 6) The Commission has not, during the present administration, ever discussed collective bargaining negotiations or grievances. (38 Tr. 10) When the Director handles personnel matters, to the extent secretarial services are required, they are provided by another position, the private secretary assigned to the Director. (38 Tr. 12)

THE JUDICIARY

Position 15, Registrar of the Land Court VI, acts as the chief clerk of the Land Court and the Tax Court. He supervises three people and is supervised by the Judge of the Land Court. His functions in regard to personnel matters are those of a first-line supervisor. (38 Tr. 14-18)

Positions 4698, 4700, 4702, 4704, 4808, 4830, 4849, 4899, 5758, 8880, 11402, 12139, 14899, 14901, 14902, 14904,

and 14906 carry the titles Circuit Court Clerk or Administrative Assistant. The two titles have exactly the same duties. (38 Tr. 18) They are clerks to judges. They work both in the judges' chambers and in the courtrooms, take minutes of hearings, file documents, keep court calendars and perform clerical tasks for the judges. Personnel administration for the Judiciary is centralized in administrative personnel working under the Chief Justice and is not a significant function of circuit court judges. (38 Tr. 18-32)

THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Position 66, Secretary III, is filled by the secretary to the chief of research for the Department of Labor and Industrial Relations. Additionally, she supervises a clerical pool. The chief of research plans, carries out, and maintains the department's research and statistical program. He does not have a role in negotiations under Chapter 89, HRS. (39 Tr. 36) He is involved in the chain of grievance resolution and if he ever denied a grievance, such denial would be in writing and his secretary would type it. (37 Tr. 37) The chief of research is a staff office head and is an excluded employee. His secretary would not have any information about grievances that was not supplied to her by a supervisor. (39 Tr. 38)

Position 8043, Secretary II, is the secretary to the department's fiscal officer. The fiscal officer is the financial advisor to the director of the department. He is responsible for the fiscal activities, including the budget, of the department and also for administrative services. The fiscal officer may provide data concerning the cost involved in collective bargaining agreements which have already

been negotiated to the Department of Budget and Finance.
This data is not confidential. (39 Tr. 32-35)

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Position 16060, Secretary IV, is the secretary to the Science and Technology Officer who heads the Center for Science Policy and Technology Assessment in the Department of Planning and Economic Development. There is absolutely no evidence that the position or the position it services is concerned with matters affecting employee-employer relations.

DEPARTMENT OF REGULATORY AGENCIES

Position 22873, Secretary II, is filled by Sandra Yonesaki, secretary in the Cable Television Division of the Department of Regulatory Agencies. The division is comprised of four persons. (39 Tr. 3-4) The head of the division probably would get involved in the settlement of the grievances of the other three employees in the division; he has no role in negotiations. (39 Tr. 4-5)

DEPARTMENT OF SOCIAL SERVICES AND HOUSING

Position 5073, Legal Stenographer I, in the Administrative Services Office of the Department of Social Services and Housing has mixed duties. The incumbent serves as a secretary to the departmental administrative services officer. Additionally, she provides clerical services to two deputy attorneys general. The administrative services officer, an excluded employee, is responsible for fiscal management, the departmental budget, and overseeing the provision of other office support services for the department, such as accounting, auditing, inventory management, purchasing, document copying, and clerical services. (39 Tr. 58-59) He would be the first step in processing his subordinates' grievances. He attends division head meetings. (39 Tr. 60-61)

Position 5949, Secretary II, services the Hawaii Paroling Authority. Her immediate supervisor is the Parole and Pardon Administrator. (39 Tr. 64) The incumbent also is serving as secretary to the Board of Paroles and Pardons. The agency, because of a change in the law, is involved in a reorganization. The chairman of the board or the administrator would handle grievances of employees of the agency. (39 Tr. 69) The incumbent of Position 5949 would have access to written materials pertaining to grievances handled by the chairman or the administrator. (39 Tr. 70)

DEPARTMENT OF TAXATION

Position 1465, Secretary IV, is in the Property Technical Office of the Department of Taxation. The incumbent is the secretary to an excluded employee who advises the director of the department and others on the subject of real property programs. Said supervisor is involved in resolving grievances at the first formal step. Position 1465 would type any of his written responses to grievances. (37 Tr. 11-12)

Position 1562, Secretary III, serves as the secretary to an excluded employee, the head of the Administrative Services and Accounting office of the Department of Taxation. Said excluded employee prepares the department's budget and serves as its fiscal officer. He would handle the grievances of his subordinates at the first formal step and the incumbent of Position 1562 would type any of his written responses to grievances. (37 Tr. 13-14)

UNIVERSITY OF HAWAII

Positions 425, 745, 773, 790, 5873, 7469, 8040, 8823, 9070, 10016, 10110, 10867, 10938, 12959, 13479, 13686,

14055, 14869, and 24247 are all filled by secretaries to deans of colleges or directors of programs at the University of Hawaii. Deans have been held to be chief administrative officers of major divisions under Chapter 89, HRS. Decision 21.

However, because of the system of University governance, the confidentiality of personnel data worked with by secretaries to deans and directors is somewhat different than that dealt with by other secretaries to chiefs of major programs outside of the University.

For example, material on promotions and tenure matters available to the secretaries cannot be considered confidential inasmuch as it is shared, after the deans make their determinations, with committees on promotion and tenure which are made up of included faculty members. (16 Tr. 69)

In the area of grievances, for many of the bargaining units, deans and directors are involved only as supervisors at the informal level, the first formal level being at the chancellor's level above the dean.

For Units 7 and 8, the deans and directors are the first formal respondent in the grievance process. (16 Tr. 70)

Deans are privy to management's interpretation of existing collective bargaining agreements. (18 Tr. 40)
The deans are kept informed of the status of negotiations for Unit 7; they are a backup sounding board and their views on issues are solicited. (25 Tr. 4-5)

Position 26665, Secretary III, is the secretary to the Dean of the College of Agriculture, University of Hawaii at Hilo. The dean prepares the budget for that

college, makes tenure and promotion recommendations, and handles the first step of the grievance procedure for employees in said college. The college consists of 9-1/4 faculty positions, intermittent lecturers, and the subject secretarial position. The dean has been asked to comment upon items being negotiated upon in collective bargaining. (35 Tr. 23-24)

Position 26910, Secretary III, is occupied by the secretary to the Acting Dean of Faculty, West Oahu College. Said Dean works with the chancellor of the college, its staff, and included faculty members in developing curriculum for the college. He believes he, as the Chancellor's deputy, would handle grievances at the first formal step. During negotiations, he has given advice to the Chancellor. (35 Tr. 3-10)

Position 26912, Secretary III, is intended to function as the secretary to the Dean of Students, West Oahu College. At the time of the hearing, Position 26912 had not been filled. The Dean of Students position was vacant also. (35 Tr. 11)

Position 764, Personnel Clerk IV, serves as a personnel clerk in the University of Hawaii library system. The position reports directly to the UH Librarian. The University's centralized personnel office retains substantial oversight over and control of the position. This is especially true with regard to personnel actions affecting civil servants. With regard to Board of Regent appointees (Units 7 and 8 personnel), many personnel actions originate at the program level. For example, when a position becomes vacant, the program level initiates the advertising and screens the candidates and recommends hiring. (25 Tr. 30-31) There was no evidence that the University Librarian was concerned with matters affecting

employee-employer relations in any respect that was different from that of a college dean.

Position 12072, Secretary, is already included in a bargaining unit and was erroneously made a part of this case. (25 Tr. 49)

Position 18959, Secretary IV, provides general secretarial services in the Office of Academic Affairs to the State Director for Vocational Education. There was no evidence that the director was engaged in matters affecting employee-employer relations or that the incumbent of Position 18959 does more in the personnel field than maintain personnel folders, prepare leave forms, and determine when increments or negotiated increases are due. (25 Tr. 29-30; Employer's Ex. 8, Item IX-m)

Position 21236, Secretary IV, is a secretarial position in the office of the Chancellor of Community Colleges, University of Hawaii. (25 Tr. 41) The incumbent of the position serves as the secretary to the director of special programs and administrative services. At the time of the hearing, the director, Walter Chun, was on the management team for collective bargaining. He also has been designated by the Chancellor of Community Colleges to serve as the step two grievance officer and works closely with UH Director of Administration Harold Masumoto on personnel matters. (25 Tr. 44-46)

Position 21993, Personnel Clerk V, is occupied by a personnel clerk at Leeward Community College who reports to an administrative position with responsibilities for both fiscal and personnel matters at the college. Said administrative position is included in a bargaining unit. (25 Tr. 32)

Position 24811, Personnel Clerk IV, Honolulu Community College, also reports to an included administrative officer position. (25 Tr. 33)

UNIT 4

DEPARTMENT OF EDUCATION

Position 4312, Personnel Technician VI, is occupied by Florence Maeda. The position is concerned with the evaluation of employees records to determine whether they are qualified for certification, pay reclassification, and to teach certain subjects. (32 Tr. 61) Her supervisor is James Nohara who is an included employee. (32 Tr. 62)

DEPARTMENT OF HEALTH

Positions 2986 (Office Manager IV, Maui District Office), 3047 (Office Manager IV, Hawaii District Office), and 3880 (Office Manager IV, Kauai District Office) are held by office managers in Neighbor Island District Health offices. Each office manager works under the general direction of a district health officer, a medical administrative position. (28 Tr. 39-40) Each of the office managers functions as the top non-medical position in his district office. (28 Tr. 41) Each is responsible for fiscal record keeping, purchasing, budget preparation and expenditure control, inventory, and personnel services. (28 Tr. 40) On the island of Hawaii, there are 130 employees in the district health office. There are 100 on Maui and 80 in the Kauai office. (28 Tr. 41) The subject three positions function as the personnel officers for their respective offices and meet with the unions concerning grievances and receive and process informal and formal grievances as a representative of management. (28 Tr. 41) Generally,

the medical administrators (who are physicians) rely on the office managers to take care of non-medical administrative matters in the district offices. (28 Tr. 42) The medical administrators are at the same level as division chiefs in the Department of Health. (28 Tr. 43) With respect to employee-employer relations, the district health offices are subject to the direction and control of the labor relations specialist in the department's central personnel office which is located in Honolulu. (28 Tr. 49)

Position 21085, Office Manager III, is occupied by the office manager at Maluhia Hospital, County/State Hospital Division, who performs work similar to that performed by the district health officers, but is not in a geographically isolated location. (Employer's Ex. 8, WCVIII) Also, control and direction over the position by the Personnel Management Specialist in the County/State Hospital Division are stronger than that of the Honolulu based labor relations specialist over the Neighbor Island district health office managers. The County/State Personnel Management Specialist has moved his office to Maluhia Hospital and he, rather than the office manager, advises the hospital administrator on a regular basis on collective bargaining matters such as contract interpretation. (39 Tr. 97)

THE JUDICIARY

Positions 4806 (Chief Circuit Court Clerk V), 4825 (Chief Circuit Court Clerk VI), 4844 (Chief Circuit Court Clerk VI), 14535 (Chief District Court Clerk V), 14536 (Chief District Court Clerk V), 14545 (Chief District Court Clerk IV), 14551 (Chief District Court Clerk IV), and 14546 (Chief District Court Clerk IV), are occupied by chief circuit court

clerks and district court clerks. They are first-line supervisors of staffs which range in size from 10 to 30 employees. In grievances, they would act as staff at the informal level. Formal grievances would be handled by the administrator of the courts in Honolulu and by individual judges designated by the Chief Justice as administrative judges on the Neighbor Islands. (38 Tr. 33-34)

DEPARTMENT OF TRANSPORTATION

Positions 1058 (Office Manager III), 6590 (Office Manager IV), and 25944 (Office Manager II), report to branch managers within divisions of the DOT. Position 1058 has never been involved with maintaining personnel records but rather primarily is concerned with financial and property management. The other two positions do keep personnel records and do initiate certain personnel activities, both positions are strongly controlled by the central personnel office of the Department of Transportation. (Employer's Ex. 8, WCVIII)

UNIT 13

OFFICE OF THE GOVERNOR

Position 4476E, Corrections Specialist, Position E4480, Juvenile Delinquency & Community Involvement Specialist, and Position E4499, Planning Specialist, are located in the State Law Enforcement and Juvenile Delinquency Planning Agency (SLEPA) which is attached to the Office of the Governor. SLEPA is headed by an advisory board and a director and his deputy. The director and his deputy are excluded from collective bargaining units.

These positions work as experts in planning in their respective areas of specialty, working primarily with other agencies involved in establishing a statewide criminal justice

system, disseminate information on available programs and funding and assist agencies in developing project applications in order to receive grants. (Employer's Exhibit 8, II, a, b, c)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Positions 3545 and 3553, Claims Pre-Audit Supervisors, are located in the Pre-Audit Branch of the Accounting Division of the Department of Accounting and General Services. (Employer's Exhibit 8, VI, b, c) Position 3545 pre-audits the payroll for State employees. Position 3553 pre-audits vouchers for items other than payroll. Both positions have access to all accounting records in the division and in the State's Computer Center. (33 Tr. 68) In a strike threat situation, Position 3545 was involved in determining the ability of the payroll system to make payments to striking State employees at different hypothetical points of a strike. Under inquiry was the question on the extent to which payroll deductions could be continued on an up-to-date basis for striking employees. (33 Tr. 69) When the head of the Accounting Division was asked by State negotiators whether certain employee fringe benefits would be feasible, the incumbent of Position 3545 provided the information. (33 Tr. 72)

DEPARTMENT OF BUDGET AND FINANCE

Positions 12307 and 15122, Data Processing Systems Analysts V, and 15311, Computer Programmer IV, are located in the Finance and Protective Services group of the Applications Systems Development Services Branch, Electronic Data Processing (EDP) Division, Department of Budget and Finance. The incumbents of these positions work on projects for the Judiciary, Tax Department, Department of Regulatory Agencies, and the Departments of Labor and Industrial Relations and Transportation. They do not

work on materials relating to employee-employer relations or collective bargaining. (36 Tr. 89)

Positions 14296, Data Processing System Analyst V, 15303 and 15306, Computer Programmers IV, 15773, Computer Programmer III, and 26817, Data Processing Systems Analyst IV, program computer systems for the departments of Labor and Industrial Relations, Agriculture, Planning and Economic Development, the Legislative Reference Bureau, and the Legislative Auditor. They do not work on materials relating to employee-employer relations. (36 Tr. 75)

Position 12947, Computer Programmer IV, is responsible for the establishment and maintenance of a data-based system which at this time does not include data on the personnel system. It may be used in the future to develop information regarding bargaining units. (36 Tr. 32-35)

Positions 13702 and 23172, Data Processing Systems Analysts VI, do not handle material dealing with collective bargaining. (36 Tr. 67)

Position 13703, Computer Programmer IV, and 17855, Data Processing Systems Analyst V, work in the Planning and Evaluation Section of the EDP Division. They are primarily responsible for the long term development plan for the State's electronic data processing and the acquisition of equipment. (36 Tr. 20-21)

Position 13704, Computer Programmer IV, 15124, Data Processing Systems Analyst, and 15312, Computer Programmer IV, in the Computer Systems Section, are designed to "maintain software packages" and to serve as consultants to applications programmers. They have access, as does everyone in the computer operations sections, to reports which may be generated

relating to collective bargaining but have no direct connection with data relating to collective bargaining. (36 Tr. 52-58)

Position 14293, Data Processing Systems Analyst VII, does not work with collective bargaining data. (36 Tr. 67) The position has been vacant for about five years. (36 Tr. 71)

Positions 14294, 14786, and 18586, Data Processing System Analysts V, in their present functions have no responsibility for providing information concerning confidential employee-employer relations. (36 Tr. 81-84)

Positions 14442, Data Processing Systems Analyst VI, 15314, 17863 and 26818, Computer Programmers IV, are in the Finance Protective Services Section of the Application Systems Development Services Branch of the Division of Electronic Data Processing. Position 14442 is the section chief. (30 Tr. 13) These positions do not receive requests for information relating to collective bargaining. (30 Tr. 34, 89)

Grievances in the Section and Branch are handled only at the informal stage. (Id. 46-47, 115)

After a system is in operation, this Section does not operate the system. That is done by the Computer Operations Branch, which turns the information over to the user. (30 Tr. 51-52, 134) The Section does not get involved with the Department of Personnel Services or Office of Collective Bargaining. (30 Tr. 34-35, 74)

Positions 17824, 17858, and 17860, Computer Programmers IV, are in the Government-wide Support Services Section of the Application Systems Development Services Branch. This Section services most of the staff agencies in the State, several departments, and the Office of Collective Bargaining. (31 Tr. 31, 71)

Eight positions in this Section which have responsibility for confidential reports on a regular basis are now excluded. The subject three positions do not have confidential assignments as a regular matter, but may be assigned to assist others when work loads are heavy. Position 17824, a new position at the time of the hearing herein, had had no assignment to work on collective bargaining reports. (31 Tr. 10-11) Position 17860 has worked with the statewide accounting system, the health fund system, and once on a collective bargaining request from the Office of Collective Bargaining. (31 Tr. 11, 73) Position 17858 is assigned primarily to the statewide accounting system. (31 Tr. 73) The incumbent of the position worked on a position inventory system for projections for collective bargaining cost information. (31 Tr. 11)

Collective bargaining projects are usually for cost projections. (31 Tr. 4)

On collective bargaining requests, the Branch generates the information requested from the computers and turns it over to the negotiating team. (30 Tr. 153)

The head of the Government-wide group indicated that there are plans to provide a more comprehensive collective bargaining reporting system. He believed inclusion of the subject position would hamper the operations of this group. (31 Tr. 14)

Position 14444, Data Processing Systems Analyst IV, is located in the systems study unit which is a part of the technical studies and control section of a planning and technical service office. The role of that unit and the position is to develop procedures by which data processing operations will be conducted. (17 Tr. 48) There was no evidence that

the position formulated policy or was concerned with employee-employer relations.

Position 14446, Computer Center Supervisor I, is in the Computer Operation Services Branch of the Electronic Data Processing Division. Position 14446 is the head of the Operations Section of this branch and is responsible for the day-to-day operations of the State's Computer Center. (36 Tr. 45) The incumbent of position is not concerned with, or aware of the nature of, requests from the State negotiating committee for collective bargaining information. (36 Tr. 46, 49-50) While he would not review or examine data stored therein, he would be responsible for the security of data stored in the Computer Center. This data would be in readable form. (36 Tr. 46-47)

Positions 14784, Computer Programmer IV, 18587, Data Processing Systems Analyst IV, 23161, Data Processing Systems Analyst V, and 26816, Data Processing Systems Analyst IV, are in the systems standards unit which develops standards for computer operations and systems. None of these technical positions is concerned with employee-employer relations. (36 Tr. 29)

Positions 14785, 15774 and 23168, while listed in the petitions were not the subject of any testimony nor were their position descriptions put in evidence.

Position 15123, Data Processing Systems Analyst IV, does no work concerned with collective bargaining. The position performs training in the EDP division. (36 Tr. 19)

Position 15309, Data Processing Systems Analyst V, is responsible for the maintenance of the library which houses all computer program listings and periodicals. The position is not concerned with work affecting employee-employer relations. (36 Tr. 42)

Position 15318, Data Processing Systems Analyst VII, is a vacant position.

DEPARTMENT OF HEALTH

Position 2096, Psychiatrist III, serves as the clinical director of Hawaii State Hospital. The incumbent occupies the top medical position at the hospital and is responsible for the clinical aspects of patient care, research and professional training. (34 Tr. 36) Grievances formally go to another position, the hospital administrator. The clinical director would be involved in grievance resolution only in consultation with the hospital administrator. (34 Tr. 47-50)

Position 2102, Business Manager V, Central Administrative Services, Mental Health Division, is responsible for fiscal affairs, patients' business matters, expenditure controls, and for personnel matters at the Hawaii State Hospital. (34 Tr. 39, 51) With respect to personnel matters, he assists the Public Health Administrative Officer of the Mental Health Division in handling personnel problems. (34 Tr. 52-53) He also may provide staff assistance in the processing of grievances such as gathering data and sitting in on meetings between management's representatives and the unions. (34 Tr. 53-55) The position has been involved in meetings with other excluded employees concerning the question of how to handle illegal strike situations. (34 Tr. 60-63)

Position 2413, Business Manager V, is in charge of the business services section, Waimano Training School and Hospital. (28 Tr. 8-11) The incumbent serves as principal advisor to the division Chief at Waimano. The incumbent manages business affairs at Waimano including such things as fiscal records, handling personnel matters, patients' business

matters, controlling allocation of appropriate funds, directing budget activities and services related to the PPBS budgetary process and evaluation. (28 Tr. 12) The incumbent gives advice on whether the programs at Waimano are being run effectively and efficiently. (28 Tr. 11-12) He has eight subordinates: Accountant IV, Account Clerk IV, Clerk-Steno III, two Account Clerks II's, one Clerk III, one Medical Records Technician V, and one Account Clerk---another Account Clerk IV. (28 Tr. 13) His immediate supervisor is the Mental Retardation Administrator, a physician, who functions as the Division Chief of Waimano. Reorganization made him directly responsible to the division chief. (28 Tr. 19) The division is responsible for programs throughout the State. (28 Tr. 23) There are about 600 authorized positions in the division and 527 patients. He does personnel work for the division head. (28 Tr. 21) The position developed the strike plan concerning a possible Unit 1 strike. The incumbent handles informal and formal grievances for the division chief. (28 Tr. 30)

Position 2989, Research Statistician VII, serves in a staff capacity to the head of the Office of Research and Statistics in the Department of Health. The office is concerned with compiling, analyzing and publishing health and vital statistics and advising the Director of Health and various program managers as to health needs, trends and projections. (Employer's Ex. 8, VI-j) The incumbent serves as the assistant chief of the office and prepares its budget documents. He represents the Chief in handling grievances which arise in the office, which has a staff of 42 employees. (29 Tr. 45-47) The incumbent attends office chiefs' meetings

only in the absence of the Chief. (29 Tr. 47) The position formally has not been delegated any supervisory authority in its office although it does assist in daily supervision. (Employer's Ex. 8, VI-j)

Positions 14292, 17856, Computer Programmers IV, 23169, Data Processing Systems Analyst V, were formally assigned to the Data Processing Division of the Department of Budget and Finance. There they were excluded from collective bargaining. They were transferred to the Department of Health approximately two years ago. All three positions are assigned to the Health Information Systems Office, a new staff office of the Department of Health. At the time of the hearing, the duties of the positions had not been finally determined. Accordingly, there was no evidence as to the actual duties and functions of the three positions. (34 Tr. 27)

Position 15527, Program Evaluation Analyst, advises and assists in the carrying out of three programs: the County/State Hospitals Division, the Children's Health Services Division, and Health Planning and Developing Agency. The position is responsible, under the general direction of its supervisor, for handling all aspects of planning programs and budgeting for these programs. (28 Tr. 95-97)

Position 18528, Business Manager V, is occupied by the business manager of Leahi Hospital in the County/State Hospitals System. (39 Tr. 83) The position is primarily involved in purchasing supplies for the hospital. It is not involved with fiscal or personnel matters. (39 Tr. 84)

Positions 19847 and 19995, Accountants V, are located at hospitals. (39 Tr. 84) The positions are involved primarily with providing support to the hospital

administrator. They do not get involved in personnel matters except to provide information to the systems administrator with regard to filling of positions, the availability of staff, and information which may be requested for departmental meetings in connection with collective bargaining. The kind of information the incumbents of the positions would provide would concern such things as overtime benefits and other fringe benefit information. The positions were involved in strike planning to the extent that they assisted in looking into costs which might be involved in contracting out work in the event of a strike. (39 Tr. 84-86)

Position 20295, Accountant V, is physically located at the Hilo Hospital which is part of the County/State Hospital Systems. (29a Tr. 29) The incumbent of the position works under the administrator for the Hilo Hospital who is also the hospitals systems administrator for the Big Island. (29a Tr. 30-31) The incumbent does the fiscal and budget staff work for the Hilo system. There are five hospitals in the system on the Big Island. (29a Tr. 32) The incumbent of position 20295 is primarily concerned with fiscal matters at Hilo Hospital. However, he does serve as a consultant for the systems administrator in regard to the budget and fiscal review matters which affect all of the hospitals on the Big Island. (29 Tr. 33) The incumbent has responsibility for pay administration and consults with the hospital services administrator on the interpretation or application of the collective bargaining agreement with respect to salary matters.

Positions 20743 and 20909, Accountants IV, are located at Samuel Mahelona Hospital and Kauai Veterans

Memorial Hospital on the island of Kauai. Both hospitals are part of the County/State Hospital Systems. Those incumbents of these positions give fiscal advice concerning the impact of possible increases in wages as a result of collective bargaining. They provide information to the systems administrator on the filling of positions, the availability of staff, and other data which may be requested in connection with collective bargaining by officials in the DOH. (39 Tr. 85-88)

Position 22341, Management Analyst V, is with the County/State Hospital Division. (39 Tr. 90) The incumbent of the position does management analysis on the basis of requests received from the division chief. His work may involve such matters as hospital rate planning, budgeting and some fiscal matters. He also is involved with looking at organization such as the number of positions required in a hospital. The personnel management specialist for the County/State Hospital Systems works closely with the position and the incumbent of Position 22341 is made aware of what the personnel management specialist is doing in negotiations. (39 Tr. 91)

Position 23126, Program Evaluation Analyst V, is a vacant position. (28 Tr. 93)

Position 23546, Fiscal Officer VI, together with Positions 22566 and 22341, meets with Mr. Rikio Tanji, the head of the County/State Hospital Systems, on a daily basis and discusses with them various matters affecting the hospitals. Position 23546 would be involved in meetings at which personnel policies are discussed. (29a Tr. 8) The personnel management specialist for the County/State Hospital Systems works closely with the incumbent of Position 23546. The personnel management specialist is involved in collective bargaining negotiations

and usually discusses cost factors which come up during negotiations with the fiscal officer to see what the impact might be and how it would relate to funding that is already established. The personnel management specialist consults with the fiscal officer on a regular basis during negotiations. (29a Tr. 5-10) There are 13 hospitals in the system. (29a Tr. 6)

Position 26646, Management Analyst IV, is part of the planning evaluation staff in the Program Support Services Office, Mental Health Division, DOH. (29 Tr. 3) The main responsibility of the position is to provide technical assistance and guidance to the management of the Mental Health Division. The incumbent is responsible for establishing an information system and for determining whether the organization is operating efficiently. Also, the incumbent makes some input into the budgeting process. (29 Tr. 4) The incumbent of the position wrote the policy and procedures manual for the Mental Health Division. The incumbent has been used as a consultant in problem solving on the neighbor islands as well as on Oahu. (29 Tr. 7-8)

THE JUDICIARY

Position 4746, Social Worker VI, is located in the First Circuit Court in Honolulu. (38 Tr. 53) All personnel matters, including grievances, are processed through the judge who is the head of the Criminal Division in Honolulu. The Social Worker VI in this instance would merely be the first informal step in that procedure as it affects employees in that work group. (38 Tr. 54)

Position 4765, Social Worker VI, is located in the Family Court. As originally structured, the Family Court's

organization called for this position to play a very important role in the overall administration of the Children and Youth Services Office of the Family Court. There has since been a reorganization and the executive officer of the Family Court, an excluded position, is now in charge of the entire administrative operation in the Family Court. The subject position no longer has any role with respect to personnel matters apart from serving as the first informal step in the grievance procedure. (38 Tr. 54)

Position 15276, Accountant V, is an accountant in the administrative office of the courts. The position was originally excluded on the belief that it would be providing the administrative director of the courts with information relating to collective bargaining matters. However, subsequently the court system has been provided with a budget analyst position and the Judiciary has asked that the exclusion be transferred from the accountant to the budget analyst position. (38 Tr. 53)

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Position 23175, Management Analyst IV, is a vacant position. (39 Tr. 29)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Position 26435, Planner V, is located in the Planning Office of the department. The position is responsible for coordinating the department's budget and CIP plans. The incumbent reports directly to the deputy department head. He also appears before the Legislature and testifies on the department's programs. The position does not provide data relative to collective bargaining and is not recognized by the department as establishing departmental policies. (37 Tr. 4)

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Position 11296, Program Budget Analyst VI, is located in the Capital Improvement Branch of the Department of Planning and Economic Development. The position is involved in reviewing the department's request for the allotment of CIP funds. There is no evidence that the position is involved in matters affecting employee-employer relations or that it establishes departmental policy. (24 Tr. 61)

Position E12827, Tourism Program Specialist, is an exempt position which was established to be in charge of the Department of Planning and Economic Development's tourism program. (24 Tr. 44) The incumbent of the position is responsible for planning, organizing, coordinating, supervising, and budgeting for the Office of Tourism. (24 Tr. 45) The position prepares legislative measures such as bills and resolutions for the Legislature and testifies for the department on legislation pertaining to the tourism program. He also administers the State's contract with the Hawaii Visitors Bureau. This contract runs in the neighborhood of \$2.2 million per annum. He is involved in the administration and formulation of this contract and the resolution of any disputes which may arise under it. The incumbent passes on budget requests made by the HVB and has the authority to purchase services and the supplies and equipment for his program. (24 Tr. 47)

Position 12888, Accountant V, is located in the fiscal unit of the Department of Planning and Economic Development. The incumbent is the department's alternate PPB coordinator for its budget. He keeps track of the department's expenditure balances, projected expenditure trends and the amount of monies that are available from federal

funds and other non-general fund sources. He also is responsible for letting department officials know whether the department is facing any particular fiscal problems. There would be no conflict of interest in the view of the department's spokesman if this position were included in a collective bargaining unit. (24 Tr. 89-109)

DEPARTMENT OF REGULATORY AGENCIES

Position 2623, Accountant IV, is responsible for fiscal management within the Department of Regulatory Agencies. Kinds of responsibilities performed by the incumbent include paying bills and maintaining systems and procedures for a fiscal staff of six persons. The incumbent is also responsible for preparation of the department's budget and for receiving revenues. (39 Tr. 9-10)

DEPARTMENT OF SOCIAL SERVICES AND HOUSING

Position 6268E was not the subject of any testimony and there is no evidence as to what the duties and responsibilities of this position are. There was testimony during the hearing that the position has been converted to Civil Service Position No. 25649 and that no determination has been made initially by the employer as to whether it believes the position should be included or excluded. The new position is at a branch administrative level and accordingly is probably among the deferred positions. (39 Tr. 74)

Position 7113E, Program Aid, Hawaii Housing Authority, has been converted to Position No. 25655, Civil Service position, now titled Homeowner Counseling Specialist and is scheduled for inclusion. (39 Tr. 74) The duties of the position are primarily to counsel prospective homeowners on the problems involved in becoming a homeowner. (39 Tr. 75)

Position 8774, Engineer VI, acts as a staff officer to the executive director in advising him on planning and engineering matters for the Hawaii Housing Authority. His involvement in employment relations includes being consulted at the second step in terms of collective bargaining grievances for Unit 13 and Unit 10. He handles all first step grievance hearings. At the second step, he counsels the executive director. (39 Tr. 76)

Position 12809, Social Worker VI, is located in the Personnel Office of the Department of Social Services and Housing. The incumbent's primary duties are to coordinate and conduct training for public welfare divisions. (39 Tr. 46) Many of the training programs are not designed by the incumbent but rather are those which are available to public employees generally and which are designed by the Department of Personnel Services or other training sources. (39 Tr. 48, 57)

Positions 15304, 15305, 17854, 17861, 18588, Computer Programmers IV, 26957, Computer Programmer IV, and 24688, Management Analyst IV, serve in a staff capacity servicing the public welfare division and vocational rehabilitation division of the Department of Social Services and Housing. The kind of data they work with relates primarily to information about clients of the department. They are not concerned with matters affecting employee-employer relations. (39 Tr. 40-41)

Position 23660, Program Evaluation Analyst IV, is a vacant position. (39 Tr. 82)

Positions 23903 and 26321, Management Analysts IV, are responsible for reviewing manpower requests to fill jobs

as they become vacant. They are presently doing a study on supervisor-worker ratios. (39 Tr. 43) They are considered by the department to be first-line supervisors. While they would know about reorganization plans, they would not know all of the details of these plans. (39 Tr. 45-46)

DEPARTMENT OF TAXATION

Position 1548, Auditor VII, is located in the field audit branch of the Property Assessment Division, Department of Taxation. (37 Tr. 6) The incumbent of the position has no duties with respect to contract negotiations. Additionally, he is not involved in the grievance processing procedures under any of the collective bargaining contracts. (37 Tr. 6-7)

DEPARTMENT OF TRANSPORTATION

Position 5305 is responsible for the inspection and field engineering of all highway contract projects under construction to assure that they conform to the approved plans and inspects specifications on the island of Oahu. (26 Tr. 10)

Position 6316, Fiscal Officer VI, is located in the air transportation facilities division of the Department of Transportation. The responsibilities of the incumbent of the position include overseeing the financial operations of the division such as preparation of its budget, preparation of expenditure plans, inventory controls, audits of concessionaires and lessees, as well as internal audits, and making long-range projections of income and expenditures and assisting in the establishment of landing fees and rates or charges to make the operating requirements of the division. The department is a self-sustaining one in that it operates out of revenues which it generates from its functions. (34 Tr. 11-13)

Position 10176, Fiscal Officer VI, is located in the Harbors Division of the Department of Transportation and

has duties for Harbors which are substantially similar to those of Position 6316 for airports. (34 Tr. 7)

Position 10756, Civil Engineer VI, is the engineer who heads the highway maintenance section. His duties and responsibilities are similar to those of Position 5305. The primary responsibility of the position is to maintain and repair the roadways, traffic control devices and attended landscaping and other objects along State highways. The position also recommends budgetary needs and personnel actions and programs necessary to maintain the highways on the island of Oahu. (26 Tr. 123-124)

Position E11334, Management Analyst III, is in the administrative services office of the Highways Division. (26 Tr. 73) This is a CETA position which has been assigned to act as a management analyst making studies and organizational reviews within the division. (26 Tr. 76-77) The incumbent of the position has worked on a strike plan and does keep some employee personnel records. (26 Tr. 81) He plays a role in reviewing reorganization proposals for the reorganization of the division. The unions would see such reorganization plans only after all of the principals involved had reached agreement as to how they would proceed. It is possible that he may handle first-step grievances; however, the testimony on this point was ambiguous. He has been involved in working in strike response plans but it appears that most of his work amounted to collating materials for his supervisor. The reorganization plans which he works on come from units which wish to reorganize themselves. It does not appear the position initiates reorganization plan requests. (26 Tr. 82-86)

Position 22221, Management Analyst IV, works on reorganization plans in their embryonic form. (26 Tr. 138) The incumbent of the position does not initiate reorganization plans; they are assigned to him. He has authored a procedures manual and while the only original matter in it was the outcome of management analysis performed by him, such original material was not a major part of the manual. Most of the other material came from departmental policies. (26 Tr. 149)

Position 26832, Analyst IV, is a vacant position. (26 Tr. 126)

Position 24728, Program Budget Analyst IV, works on budget matters. While the testimony about the functions of this position was ambiguous, it would appear that the primary responsibility of the position is to work on the operating and maintenance budget and to help monitor the implementation of this budget. (27 Tr. 4-24)

ADDITIONAL FINDINGS OF FACT

Salary ranges are irrelevant to the determination of whether a position is a confidential one. A very low level clerk could be performing confidential work. (14 Tr. 44-45) Salary ranges, however, are relevant to the determination of top level managerial employees (14 Tr. 45) although sometimes high pay reflects technical or scientific expertise rather than managerial status. (14 Tr. 45)

In arriving at the stipulations between the HGEA and the public employer, the parties made no stipulation as to facts about what the employees do. They originally stipulated to the inclusion of 235 currently excluded positions and the exclusion

of 960 positions. (14 Tr. 82) They also agreed, because of their disagreement over certain positions, that they would defer consideration of 191 currently excluded positions and 126 currently included positions. (11 T. 66-105, 14 Tr. 82)

Their stipulations merely state that the lists of positions set forth therein constitute the exclusions to which they agree. In his letter of transmittal of the stipulations, Donald Botelho, Director of Personnel Services, State of Hawaii, says, in relevant part: "The stipulations enclosed for the Board's review and approval reflect these agreements and provide for the exclusion of various positions." (Emphasis added)

The notice of the prehearing and hearing herein stated, in part:

The hearing is based upon petitions filed by the HGEA to have included in Units 3, 4, or 13, as the case may be, several hundred positions in the employment of the State of Hawaii which presently are excluded from collective bargaining units. Subsequent to the filing of said petitions, the HGEA and the State of Hawaii entered into stipulations which would have the effect, if approved by the Board, of superseding prior exclusions. (Emphasis added) (Board Ex. 8)

Said notice appeared in the Honolulu Star-Bulletin and the Honolulu Advertiser and Sunday Star-Bulletin and Advertiser on October 6 and 13, 1976. Board Ex. 8.

The HGEA put organization charts, position descriptions and class specifications for most of the positions it sought to have included into evidence and was content to rest its case at that point. Petitioner's Exhibits 1, 2, 3, 4, 5, 6. (11 Tr. 75-113) Later, the HGEA withdrew the statement that it had rested.

The employer, on the other hand, did not rely on position descriptions or class specifications in its determination of who should be included. (14 Tr. 85) It relied heavily on

information it obtained from the operating departments. (14 Tr. 85)

Thus, although the parties were able to arrive at a stipulation as to inclusions, they obviously are not in agreement as to the criteria or factual basis to be considered to determine inclusions and exclusions. (14 Tr. 78; 16 Tr. 13)

Unit 8 consists of personnel of the University of Hawaii and the community college system other than faculty. Section 89-6(a)(8), HRS.

The collective bargaining agreement for Unit 8 for the period February 1, 1973, to June 30, 1976, permits an employee to examine his own personnel file except for letters of recommendation solicited in connection with his employment. He must be given a copy of any material if it is to be used in connection with a grievance or personnel hearing. No derogatory material may be placed in the employee's file unless he is given an opportunity to see it. Article XIV, p. 8, Petitioner's Exhibit 10.

Under said contract, the first step in the formal grievance procedure is the dean in the case of the University of Hawaii at Manoa, the provost in the case of the Hilo College or the Community Colleges or such directors as may be designated by the Chancellors or Vice Presidents with respect to other administrative or program units. Article XVI, p. 10, Petitioner's Exhibit 10.

Unit 7 consists of faculty of the University of Hawaii and the community college system. Section 89-6(a)(7), HRS.

The collective bargaining agreement for Unit 7 for the period July, 1977 to June, 1979 permits an employee to

examine his personnel file except for letter of recommendation solicited in connection with his initial employment and subsequent statements of reference marked "Confidential." Upon his request, the University must furnish him a copy of any material in his official personnel file intended for use in connection with a grievance involving him. Article XI, p. 30, Intervenors' Exhibit 28.

Under the Unit 7 contract, the first step of the formal grievance procedure is the school or college dean or provost or such directors as may be designated by the chancellors or vice presidents with respect to other administrative or program units. Article XII, pp. 31-32, Intervenors' Exhibit 28.

CONCLUSIONS OF LAW

Preliminarily a number of procedural issues raised by the HGEA will be discussed.

The HGEA objects to the procedure followed by this Board in a number of respects.

It claims that the procedure was faulty because of failure to comply with the provisions of Section 91-9(b)(4), HRS.

In relevant part, Section 91-9 states:

Contested cases; notice; hearing; records.
(a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

* * *

(4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof;

provided, that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished. (Emphasis added)

The HGEA complains that the Board failed to give it "an explicit statement of the issues involved and the facts alleged by the agency in support thereof;" (Emphasis added)

Obviously, the language of Section 91-9(b)(4) has no application to a case, such as the instant one, in which the agency is not the charging or prosecuting party. The Board possessed no facts it could have alleged. All of the facts in this case was in the possession of the parties.

The HGEA also claims that the Board had no authority to conduct prior to its formal hearing the proceeding herein which it referred to as an investigation.

This case involved the application of Section 89-6, HRS, to specific employees and positions. Section 89-5(b)(1) confers authority upon the Board to conduct investigations in such cases:

(b) In addition to the powers and functions provided in other sections of this chapter, the board shall:

(1) Establish procedures for, investigate, and resolve, any dispute concerning the designation of an appropriate bargaining unit and the application of section 89-6 to specific employees and positions. (Emphasis added)

Additionally, the HGEA complains that the Board improperly departed from its established policy in adjudicating petitions under Section 89-6, HRS. What the HGEA means is that in the past the Board has approved extensive lists of exclusions and inclusions signed by all parties to

representation proceedings without a considered review of the exclusions or inclusions. This practice, merely because it was followed several times, has not risen to the dignity of Board policy. It was an expediency fostered by the Board to get collective bargaining underway. The parties to those early proceedings, including the HGEA, were aware of this fact.

Decision 40 of this Board, which was issued on December 28, 1973,^{*} describes the start-up process which makes it clear that the Board did not intend its hasty approval of the early unit determinations to be translated into permanent procedural policy:

We have decided that the two positions which are the subject of these cases should be excluded from collective bargaining units on the basis of evidence presented and the legal conclusions we drew based upon such evidence. This Board, however, is concerned about the vast number of exclusions from certain units which took place during the early phases of implementing collective bargaining in the public sector. The large number of exclusions resulted from stipulations made with an eye toward early elections under our new law. The time has certainly come for a reevaluation of those early exclusions by both the unions and the public employers and, in its turn, this Board. No employee who should be enjoying the benefits of being a member of an appropriate bargaining unit should be denied that privilege. This Board urges the employers and unions to meet, reason together, and make every good faith effort to narrow the list of exclusions wherever warranted. The early determination of units is not wholly lamentable; it did result in most public employees receiving benefits under negotiated contracts much sooner than would have been possible if initial unit determinations had been severely scrutinized in lengthy contested hearings. However, a reassessment of the initial [sic] exclusions is in order and the entire Board encourages the concerned parties to commence at this time this reassessment.

*The HGEA was a party to Cases No. RA-03-8 and RA-13-9 in which said decision was rendered.

There is no policy of rubber-stamping stipulations upon which the HGEA could have or did rely. The Board is now doing what it should have done--making a reasoned application of Section 89-6, HRS, to positions and employees about which it has relevant facts.

The HGEA complains also that if the Board examines all of the positions in the instant case, which are slated for inclusion, it is being inconsistent because it is not examining all other positions which are slated for exclusion. The HGEA fails to appreciate that the cases before this Board are based upon the amended petitions it filed. There are no petitions before the Board at this time to exclude any positions. The parties may have stipulated to additional exclusions, but that is an irrelevancy in the pending case. (It is the employer's responsibility to submit appropriate petitions for the exclusions it agreed to.)

The HGEA also contends, in effect, that its stipulations, except where incumbents of affected positions have intervened, have ousted this Board of jurisdiction because the stipulations arguably removed controversy between the parties which it evidently considers to be jurisdictional under Section 89-6(d):

(c) No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his first deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, part time employee working less than twenty hours per week, temporary employee of three months duration or less; ~~employee of the executive office of the governor, household employee at Washington Place, employee of the executive office of the mayor, staff of the~~

legislative branch of the State, employee of the executive office of the lieutenant governor, inmate, kokua, patient, ward or student of a state institution, student help, any commissioned and enlisted personnel of the Hawaii national guard, or staff of the legislative branch of the city and county of Honolulu and counties of Hawaii, Maui and Kauai except employees of the clerks' offices of said city and county and counties, shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

(d) Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific positions and employees. (Emphasis added)

The phrase controversy means ordinarily: "1: a discussion marked esp. by expression of opposing views: DISPUTE...."

It is clear in this case, notwithstanding their "stipulations," that the employer and the HGEA do not agree as to what the employees in question do, do not agree as to what criteria should be considered to determine exclusions or inclusions, and have agreed to put off determination as to branch chiefs and others to see what the Board's ruling is in this case. These fundamental and unresolved disagreements certainly constitutes controversy. The case came to this Board on the petitions of the HGEA. The stipulations entered thereafter are a part of this case and subject to the control of the Board.

Moreover, the stipulations are as to who should be included or excluded, the ultimate questions of law at issue in this case, and as such are not binding upon this Board:

e. Questions of Law

It is generally held that it is not competent for the litigants to stipulate as to what the law is so as to bind the court, and

that such stipulations will be disregarded; and this rule has found frequent application.

While litigants have the undoubted right to stipulate as to the facts, as discussed infra subdivision f (9) of this section, it is very generally held that it is not competent for them to stipulate as to what the law is so as to bind the court, and that such stipulations will be disregarded. Decisions of questions of law must rest on the judgment of the court, uninfluenced by stipulations of the parties or counsel. Easily understood applications of the rule are shown in decisions which hold inoperative stipulations as to the existence of a law; as to its validity or invalidity; as to what was the intent of a lawmaking body; as to the construction and operation of a constitutional provision, statute, administrative regulation, or permit; as to the power of a public officer; as to the legal conclusion from a given state of facts; as to the construction of the unambiguous terms of a contract or the legal effect of a contract; as to the sufficiency of a petition or of evidence to prove a given fact; as to the construction to be given a will; as to lack of notice of a matter as to which the parties have constructive notice from an official record; and various other stipulations of a similar nature. A stipulation which has the effect of violating, abrogating, or waiving the provisions of a mandatory statute is invalid. (83 C.J.S. Stipulations §10; footnotes omitted)

Moreover, to accept the HGEA's construction of the term controversy as being dependent upon whether there is an intervenor as to a certain position leads to absurdities and so must be rejected.

Intervention is a voluntary act. If an incumbent subordinate whose position is stipulated to be included by the parties intervenes but his supervisor whose position also is on the list of proposed inclusions chooses not to intervene, then under the HGEA's reading of Section 89-6(d), a controversy would exist as to the subordinate's position but not as to the supervisor's and thus the Board would have jurisdiction to hold a hearing on the subordinate's position but not on his supervisor's.

The HGEA fails also to appreciate that if persons occupy identical positions and some of them intervene but others do not, the Board's jurisdiction, under its argument, would be limited to consideration of the intervenors' positions only.

Inclusions and exclusions were not intended to be arrived at in such a haphazard manner or sewn in a crazy quilt pattern. Consistency in treatment of employees in like circumstances is essential in employment relations. Inclusions and exclusions must, as far as possible, be free from arbitrariness and inconsistency.

The Legislature intended the Board, subject to judicial review, to be the arbiter of unit determinations. The Board must apply Section 89-6 generally and that the function of the word controversy in Section 89-6(d) triggers the Board's contested case hearing procedures. However, it is not a jurisdictional limitation on the Board's responsibility for unit determinations.

The law is silent where such responsibility lies in the absence of controversy as the HGEA interprets the word controversy. Had the Legislature intended the determination of so fundamental a matter to be left to the parties, it would have so stated. It is far more reasonable to conclude that such responsibility is vested with the Board for uniformity and consistency. Because the Board clearly is empowered to resolve controversies or disputes in unit determinations, it is only sensible for it to occupy the field of unit determination (especially when the law does not empower anyone else to do so); it should not resolve controversies in a vacuum.

In any event, in this case there is controversy and the Board for all of the reasons given above has authority to review every position.

Before proceeding to the merits of these cases, it would be appropriate for the Board to express its view on the fact that the employer of the positions involved has, by signing the stipulations and through its spokespersons in this case, indicated its opinion that the subject positions are appropriate for inclusion. No presumption is created in favor of an employer's judgment. At no point has this Board ever doubted the employer's integrity, good faith or expertise in its field. The Board gives weight, but not conclusive weight, to the views of the employer. Also, after the stipulations, Decision 75 of this Board was issued. It reversed, in part, a holding in Decision 18b upon which some reliance probably was placed during the stipulation process.

In unit determination, the Board will apply the statutory criteria in Subsection 89-6(c), HRS, to all of the evidence presented by the parties. All uncertainties will be resolved in favor of Chapter 89 coverage. The employer's opinion as to the designation of employees as top level managers or administrators or confidential is entitled to serious consideration. Nevertheless, "this Board's determination is not limited simply to a review of the opinion of the employer and of the reasons supporting such opinion.... It is the function of the parties to apply; it is the responsibility of the Board to determine." State of New York, 5 PERB 3001 (1972).

Before taking up the merits of this case, it is necessary to consider certain previously issued advisory documents of this agency because they are relevant in unit determination and must be brought into harmony with this Decision.

On May 23, 1973, Chairman Hamada addressed a memorandum to employer and union representatives which stated, in part:

"All changes in unit composition must be brought to the attention of and receive the approval of this Board in order to be valid."

On August 28, 1973, the Chairman wrote a letter modifying the May 23, 1973 memorandum. Said letter stated:

The Hawaii Public Employment Relations Board letter of May 23, 1973, is hereby amended in the following categories: (1) newly established positions; (2) transferring a position from one bargaining unit into another bargaining unit; and, (3) excluding a position from a designated bargaining unit.

- (1) Newly Established Positions. The requirement of a stipulation for inclusion and exclusion of a newly established position from a bargaining unit is hereby rescinded. If it is the employer's opinion that the newly established position should be included in a given bargaining unit, it shall do so unilaterally. However, the employer shall notify the union in writing that he has included the newly established position in a given bargaining unit. A written report of such inclusion shall be furnished to the union, as appropriate, on a weekly basis. The employer shall notify the appropriate fiscal officer of its action.

If the employer decides to exclude the newly established position from a given bargaining unit, the employer shall forthwith notify the appropriate union of its decision but no later than the date of hire. The appropriate union shall forthwith agree or object to the exclusion. If the union objects, the employer shall forthwith petition the Board for a unit clarification decision. The employer shall have the burden of proving that the new position ought to be excluded. The new position shall be considered excluded for 30 days. The Board suggests that the parties act promptly in newly established position exclusions so that the Board may render its decision within 30 days after the date of hiring.

- (a) Transfers. If the employer decides to transfer a position from one bargaining unit into another bargaining unit; i.e., from white collar non-supervisory to blue

collar non-supervisory bargaining unit, the employer shall notify the appropriate union of its decision prior to the transfer. If the union does not object to the transfer, the position may be transferred without any written report to the Board. The employer shall notify the appropriate fiscal officer of its union.

If the union objects to the transfer, the employer shall forthwith petition the Board for a unit clarification decision. The position shall remain in the original bargaining unit until the Board has rendered its decision.

- (3) Exclusion from an established bargaining unit. If the employer decides to exclude or remove a position from an established bargaining unit, the employer shall forthwith notify the appropriate union but no later than 24 hours after its decision to exclude the position. If the union does not object, the employer shall exclude the position without any notice to the Board. The employer shall notify the appropriate fiscal officer of its action.

If the union objects, the employer shall forthwith submit a petition for a unit clarification decision by the Board. The position shall remain in the bargaining unit until the Board renders its unit clarification decision.

The August 28, 1973 letter is hereby rescinded in its entirety. Henceforth, all changes in unit composition must be brought to the attention of and receive the approval of this Board before they may become effective. While stipulations may be used, in appropriate cases, they will be rejected unless accompanied by sworn affidavits setting forth sufficient facts as to the work performed by the occupants of the positions involved to enable the Board to rule on the desired unit change.

We turn now to the merits of the instant case. They call for the application, to the positions petitioned for, of the following language of Subsection 89-6(c), HRS:

(c) No elected or appointed official, member of any board or commission, representative of a public employer, including

the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his first deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, ... shall be included in any appropriate bargaining unit or entitled to coverage under this chapter. (Emphasis added)

In Decision 75, this Board described the following test to be used to determine whether an individual occupies a top-level managerial or administrative position:

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.

Consideration also will be given to the extent to which placement of an individual in a collective bargaining unit would create a strong possibility of a conflict of interest arising.

Respecting the problem of conflict of interest, the subjectivity of the individual employee is not significant. What would be significant would be true incompatibility between the functions of the individual's position and inclusion in a unit. ... Both employers and exclusive representatives are entitled to representatives, on the one hand, and constituents, on the other, who are not by unit determination placed on both sides of the issues in collective bargaining.

Whether a particular position satisfies these criteria is a question of fact to be determined on a case by case basis by this Board. (Footnotes omitted)

To the above criteria, the Board considers it necessary to add the following refinements and amplifications.

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 major program and formulate or determine policy for that 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.

As stated in Decision 75, exclusions based on managerial attributes are not restricted to positions which work in the field of labor relations.

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 page 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 "formulate" 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)

In the case at hand, several positions in the health department possessed de facto head of agency responsibilities, in that, the actual agency head was a physician who had delegated substantial portion of the administrative responsibilities to such positions. It may be that such positions are not correctly classified. Classification is not within the expertise or jurisdiction of this Board. However, if the position, in fact, is performing on a regular basis, duties which would support its exclusion, that is a matter for this Board. The Board will rely and be governed by what the position actually does, not what an out-of-date position description says.

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.

The Board will also designate positions as top-level managers or administrators if the incumbents assist directly in the preparation for and conduct of negotiations or have a major role in the administration of agreements or in personnel administration or meet and confer with union representatives as required by Section 89-9(c) provided that such role is not a routine or clerical nature and requires the exercise of independent judgment.

In this case, a majority of the Board has determined that four positions in the Department of Health and one position in the Department of Planning and Economic Development are top-level managerial employees and should continue to be excluded as such:

Position 2096E is excluded because the incumbent is the clinical director of Hawaii State Hospital. As such, he is the top medical position at this major facility.

Position 2413, the business manager at Waimano Home is a top management person and functions as the deputy to the division chief, The Mental Retardation Administrator, a physician, who has delegated most administrative, nonclinical

matters, including personnel matters, to Position 2413. The division is responsible for a statewide program, with 600 authorized positions.

Positions 22341 and 23546 are excluded because they function as part of a management team which runs the County/State Hospital System.

Position E12827, Tourism Program Specialist, is excludable as the top position in State government responsible for the Department of Planning and Economic Development's tourism program. The position formulates policy for the State government in one of Hawaii's major industries.

The positions of office managers in the Neighbor Island District Health Offices are also considered to be top-level managerial as well as confidential employees. Their positions are discussed under the portion of this decision devoted to confidential employees.

The Board finds that no other positions in this case are top-level managerial or administrative positions. The Board does, however, find that 18 positions are excludable as being occupied by individuals concerned with confidential matters affecting employee-employer relations.

In this Board's Decision 18b, we said:

Further research shows that the National Labor Relations Board uses the term "confidential employee" to embrace those individuals who assist and act in a confidential capacity to persons exercising managerial functions in the field of labor relations. While we generally agree with the definition used by the National Labor Relations Board, we find the criteria used by the New York Public Employment Relations Board more appropriate for our purposes as it relates specifically to confidential employees in the public sector. In its decision, In the Matter of State of New York and New York State Employees Council 50, Case Nos. C-0002, et al. (1969),

the New York Public Employment Relations Board, in part, stated:

"In submitting to the parties, . . . a list of exclusions from this unit, we proposed certain exclusions on the grounds of confidentiality. The criteria utilized by this Board in such exclusions were to exclude those staff position intimately related to public employment labor relations, such as the budget function and personnel function of each agency, and in addition, those individual positions who would come within this second criteria cannot be identified [sic] by job title or job specification. . . ."

We, therefore, adopt the definition and rationale of the New York Public Employment Relations Board in our determination of which employees are involved in confidential matters affecting employee-employer relations.

Under further consideration of the language of Subsection 89-6(c), HRS, we believe that the adoption of the former New York test was unwarranted because, as we said in Decision 75:

Even in the absence of the Textron reversal, this Board would have felt compelled to reexamine its ruling in Decision 18(b) for the simple reason that in said decision too much reliance was placed upon case law from other jurisdictions interpreting other statutes while too little emphasis was placed upon the words of our own statute.

Our law requires as a basis for exclusion in the category of confidential employees that individuals be concerned with confidential matters affecting employee-employer relations.

Webster's Seventh New Collegiate Dictionary indicates that one is concerned with a matter when one has influence on it, is involved in it, or it is the business of one.

Affecting means: 1. to produce an affect upon,
2. to produce a material influence upon or alteration in.

Confidential, of course, means private, secret.

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. 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 change in employee-employer relations or who meets other criteria of a top-level manager.

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. See Section 89-2(18) for the Chapter's definition of the term supervisor.

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.

The criteria are, to recapitulate:

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.

The Board has examined myriad decisions of other labor agencies on the issue of confidential employees and finds that the decisions of the National Labor Relations Board as to who are confidential employees more persuasive. The New York test adopted in Decision 18(b) is, to the extent it may be inconsistent with the criteria developed in this Decision, replaced by the criteria in this Decision.

Applying the above criteria, the Board will not hold the following kinds of work to be confidential or the people who perform it, without more, confidential employees:

1. Merely having access to personnel records.

See, Calif. Inspection Rating Bureau, 215 NLRB No. 145, 88

LRRM 1015 (1974); Beatrice Foods Co., 224 NLRB No. 191, 92 LRRM 1402 (1976).

2. Sporadically substituting for a confidential employee. Victor Industries Corp., 215 NLRB No. 7, 87 LRRM 1536 (1974); Meramec Mining Co., 134 NLRB No. 167, 49 LRRM 1386 (1961); Swift & Co., 129 NLRB No. 171, 47 LRRM 1195 (1961); Borden's Dairy Delivery Co., 118 NLRB No. 10, 40 LRRM 1125 (1957).

3. Having access to raw financial data which might eventually be used in a more composite form to determine the employer's offerings in negotiations. Hotel Employers Association of San Francisco, 159 NLRB 143, 62 LRRM 1215 (1966).

4. Determining the cost to the employer of the union's demands when such merely is a matter of computation. Carling Brewing Company, Inc., 131 NLRB No. 64, 48 LRRM 1068 (1961).

5. Serving as a secretary or clerical assistant to an individual who is asked to give his opinions and recommendations on issues presented by union demands and grievances by an exchange of memoranda and group discussion when such activities are advisory only. Eastern Corp., 116 NLRB No. 44, 38 LRRM 1249 (1956).

6. Serving as a secretary or clerical assistant to persons who participate in employee-employer relations matters only to the extent that they accumulate factual data. Ethyl Corp., 118 NLRB No. 185, 40 LRRM 1376 (1957).

7. Serving as secretaries or clerical assistants who type grievance responses or who possess information available to or ultimately made available to union representatives. Chrysler Corp., 173 NLRB No. 160, 69 LRRM 1553 (1968); Weyerhaeuser Co., 173 NLRB No. 177, 69 LRRM 1553 (1968).

8. Serving as a secretary to an individual who handles grievances, formally as well as informally, if such individual merely applies the provisions of existing contracts to pending grievances since such action does not amount to the formulation of policy affecting employee-employer relations. Weyerhaeuser Co., 173 NLRB No. 177, 69 LRRM 1553 (1968).

9. Receiving instruction as to the meaning and employer's interpretation of new collective bargaining contracts. Chrysler Corp., 173 NLRB No. 160, 69 LRRM 1506 (1968).

On the other hand, the Board deems the following types of work to require that the persons performing them be regarded as confidential employees:

1. Providing secretarial or clerical or other assistance in a confidential capacity to members of the employer's negotiating team. See Siemens Corp., 224 NLRB No. 216, 92 LRRM 1455 (1976).

2. Typing or having access to proposals or counter-proposals of the employer before they are given to the union. See Siemens, supra.

3. Providing secretarial, clerical or other assistance in a confidential capacity to any excluded top-level managerial employee who is the equivalent of a division head or higher unless facts adduced make it unlikely that such top-level manager has a substantial policy making role in employee-employer relations. In instances where geographic remoteness is a factor, serving as an assistant to a manager excluded on the basis of being top level may suffice even though the excluded manager is lower than the division head level.

A review of the detailed findings of fact herein reveals that the positions listed in the Order of Inclusion

do not satisfy the criteria for exclusion. Many of the positions work with material which the facts show has no direct affect upon employee-employer relations. Most do not work on a regular basis for individuals who formulate management policy in the field of employee-employer relations. Others such as the clerical positions at the University, including Deans' secretaries, work for individuals whose role in collective negotiations is advisory only and whose role in grievance resolution falls within the Weyerhauser doctrine. Also, the doctrine of collegiality disembowels confidentiality and secretness. Included Units 7 and 8 people are heavily involved in many personnel decisions.

The Board, because it has not heard any evidence on the responsibilities of branch chiefs in the field of employee-employer relations, reserves judgment on them and their secretaries and other close assistants.

Based upon the foregoing discussion, a majority of the Board has determined that the following positions should be excluded as confidential:

The Unit 3 positions to be excluded are Position 21947 in the Department of Education, Position 7264 in the Department of Health, Position 5073 in the Department of Social Services and Housing, and Positions 21236 and 26910 at the University of Hawaii.

The Unit 4 positions to be excluded are Positions 2986, 3047 and 3880 in the Department of Health.

Positions 14446, 17824, 17858, 17859 and 17860 in the Department of Budget and Finance and Position 8774 in the Department of Social Services and Housing are the Unit 13 positions to be excluded on the grounds of confidentiality.

Position 21947 services an individual who is on a negotiations subcommittee and who has acted as the recorder for that subcommittee.

Position 7264 is the secretary to the assistant hospital administrator of Hawaii State Hospital who, on behalf of the hospital administrator, handles all personnel matters at the hospital.

Position 5073 acts as the secretary to a departmental administrative services officer who appears to function at the level of division heads.

Position 21236 at the University of Hawaii functions as the secretary to an individual who is on management's collective bargaining team and is closely involved in top-level collective bargaining work at the University.

Position 26910 is at West Oahu College, which is barely organized. Because of the tentative nature of the evidence adduced on what this position and the acting dean she services do, it is deemed appropriate at this time to continue this position as an excluded one until more accurate information about the duties and responsibilities is available. The employer and union are to reevaluate this position after a reasonable period of time and petition this Board for change of determination if such is warranted.

Positions 2986, 3047 and 3880 in the Department of Health are office managers of district health offices on the islands of Hawaii, Maui, and Kauai. They are the top non-medical positions in the district offices and as such have a major role in running such offices which, in effect, are like mini-departments of health with sizeable staffs and complex missions. The district health offices' office

managers are the personnel officers in the district offices and represent management in dealing with the unions. Although we here find them to be confidential employees, they also qualify under the criteria set forth above as top-level managerial employees because of their geographic location and responsibilities.

Position 14446 is responsible for the day-to-day operations of the State's Computer Center and has access to all material which goes through the Center including collective bargaining material. He is responsible for the security of all data stored in the Center. The Board finds that the incumbent of this position would be placed in a conflict of interest if he were included in a unit and deems him to be a confidential employee.

Positions 17824, 17858, and 17860 are in the Government-wide Support Services Section of the Application Systems Development Services Branch. The Section services, among others, the State's Office of Collective Bargaining, which is headed by the Chief Negotiator for the State of Hawaii. While past work on collective bargaining by the Section may have been sporadic, the Section does have plans to provide a more comprehensive collective bargaining service. The Board finds that the inclusion of the subject positions would impede the development and implementation of this plan.

Position 8774 is a staff officer in the Department of Social Services and Housing. The incumbent handles first step grievances for management and is consulted by the director as to the handling of grievances at the second step.

Inclusion of such an employee would place him in a conflict of interest.

There will be no change of status for the following seven positions because either no evidence was put on concerning them or so little was put on as to make it impossible to make an informed determination:

Position 14785 Computer Programmer IV, Budget and Finance
Position 15774 Computer Programmer III, Budget and Finance
Position 23168 Data Processing Syst. Analyst VI, Budget and Finance
Position 15527 Program Evaluation Analyst V, Department of Health
Position 14292 Computer Programmer IV, Department of Health
Position 17856 Computer Programmer IV, Department of Health
Position 23169 Systems Analyst V, Department of Health

With respect to vacant positions, it will be the policy of this Board not to make a determination which will result in a change of status. "When a vacant position is filled, the assigned job duties might or might not be as specified in the job description. [In determining an employee's status], this Board must consider what the actual responsibilities of an actual employee in the job are, and not what they might be." City of Binghamton, 10 New York PERB 3038 (1977). Accordingly, the present status of the following positions will not change:

Position 26912 Secretary III, University of Hawaii
Position 14293 Data Processing Syst. Analyst VII, Budget and Finance
Position 15318 Data Processing Syst. Analyst VII, Budget and Finance
Position 23126 Program Evaluation Analyst V, Department of Health
Position 23175 Management Analyst IV, Department of Labor and Industrial Relations

- Position 23660 Program Evaluation Analyst V, Department of Social Services and Housing
- Position 26832 Management Analyst IV, Department of Transportation

Based upon the foregoing findings and conclusions, the Board makes the following orders:

ORDER OF CONTINUED EXCLUSION

The following positions shall continue to be excluded from bargaining units:

Department of Budget and Finance

- Position 14446 Computer Center Supervisor I
- Position 17824 Computer Programmer IV
- Position 17858 Computer Programmer IV
- Position 17860 Computer Programmer IV
- Position 14785 Computer Programmer IV - no evidence
- Position 15774 Computer Programmer III - no evidence
- Position 23168 Data Processing Syst. Analyst VI - no evidence
- Position 14293 Data Processing Syst. Analyst VII - vacant
- Position 15318 Data Processing Syst. Analyst VII - vacant

Department of Education

- Position 21947 Secretary II

Department of Health

- Position 2096E Psychiatrist III
- Position 2413 Business Manager V, Waimano Training School and Hospital
- Position 22341 Management Analyst V
- Position 23546 Fiscal Officer VI
- Position 2986 Office Manager IV, Maui
- Position 3047 Office Manager IV, Hawaii

Position 3880 Office Manager IV, Kauai
Position 7264 Clerk-Stenographer III
Position 23126 Program Evaluation Analyst V - vacant
Position 14292 Computer Programmer IV - no evidence
Position 17856 Computer Programmer IV - no evidence
Position 23169 Data Processing Syst. Analyst V - no evidence

Department of Labor and Industrial Relations

Position 23175 Management Analyst IV - vacant

Department of Planning and Economic Development

Position E12827 Tourism Program Specialist

Department of Social Services and Housing

Position 8774 Engineer VI

Position 5073 Legal Stenographer I

Position 23660 Program Evaluation Analyst IV - vacant

Department of Transportation

Position 26832 Analyst IV - vacant

University of Hawaii

Position 21236 Secretary IV

Position 26910 Secretary III

Position 26912 Secretary III - vacant

ORDER OF INCLUSION

The following positions are included, as of the first working day following the first pay day after the issuance of this Decision, in the indicated units:

UNIT 3

<u>Position No.</u>	<u>Class Title</u>
A. <u>Governor's Office</u>	
1. 762E	Secretary
2. 5633E	Clerk-Stenographer III
3. 5950E	Secretary II

4.	7397E	Secretary to Public Defender
5.	15033	Clerk-Stenographer III
6.	19248	Secretary III
7.	19450	Legal Stenographer II

B. Accounting and General Services

1.	11706E	Clerk-Typist II
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C. Budget and Finance

1.	11126E	Clerk-Typist I
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D. Defense

1.	5681	Personnel Clerk IV
2.	9550	Personnel Clerk IV

E. Education

1.	3619	Personnel Clerk V
2.	5084	Secretary II
3.	8911	Secretary II
4.	10407	Secretary II
5.	10410	Personnel Clerk IV
6.	10411	Personnel Clerk III
7.	E11464	Clerk-Typist II
8.	12176	Personnel Clerk V
9.	13863	Personnel Clerk V
10.	14378	Personnel Clerk IV
11.	14790	Personnel Clerk IV
12.	15325	Personnel Clerk IV
13.	15361	Personnel Clerk V
14.	15435	Personnel Clerk V
15.	15437	Personnel Clerk III
16.	15439	Personnel Clerk IV
17.	15440	Personnel Clerk V
18.	15441	Stenographer II
19.	15663	Personnel Clerk III
20.	17560	Secretary III
21.	19097	Personnel Clerk III
22.	19132	Personnel Clerk III
23.	19240	Secretary II
24.	19380	Personnel Clerk V

F. Health

1.	2984	Secretary IV
2.	2994	Secretary IV
3.	18397	Personnel Clerk IV
4.	18535	Personnel Clerk V
5.	18536	Personnel Clerk IV
6.	20064	Secretary III
7.	21099	Personnel Clerk IV
8.	22840	Personnel Clerk IV
9.	25603	Clerk-Stenographer III

G. Hawaiian Home Lands

1. 9580 Secretary IV

H. Judiciary

1. 15 Registrar of the Land Court VI
2. 4698 Circuit Court Clerk I
3. 4700 Circuit Court Clerk I
4. 4702 Circuit Court Clerk I
5. 4704 Circuit Court Clerk I
6. 4808 Administrative Assistant (Jud) I
7. 4830 Administrative Assistant (Jud) I
8. 4849 Administrative Assistant (Jud) I
9. 4899 Circuit Court Clerk I
10. 5758 Circuit Court Clerk I
11. 8880 Circuit Court Clerk I
12. 11402 Administrative Assistant (Jud) I
13. 12139 Circuit Court Clerk I
14. 14899 Circuit Court Clerk I
15. 14901 Circuit Court Clerk I
16. 14902 Circuit Court Clerk I
17. 14904 Circuit Court Clerk I
18. 14906 Circuit Court Clerk I

I. Labor and Industrial Relations

1. 66 Secretary III
2. 8043 Secretary II

J. Planning and Economic Development

1. 16060 Secretary IV

K. Regulatory Agencies

1. 22873 Secretary II

L. Social Services and Housing

1. 5949 Secretary II

M. Taxation

1. 1465 Secretary IV
2. 1562 Secretary III

N. University of Hawaii

1. 425 Secretary IV
2. 745 Secretary IV
3. 764 Personnel Clerk IV
4. 773 Secretary IV
5. 790 Secretary IV

6.	5873	Secretary V
7.	7469	Secretary IV
8.	8040	Secretary IV
9.	8823	Secretary IV
10.	9070	Secretary IV
11.	10016	Secretary IV
12.	10110	Secretary IV
13.	10867	Secretary IV
14.	10938	Secretary V
15.	12959	Secretary IV
16.	13479	Secretary IV
17.	13686	Secretary V
18.	14055	Secretary IV
19.	14869	Secretary III
20.	18959	Secretary IV
21.	21993	Personnel Clerk V
22.	24247	Secretary IV
23.	24811	Personnel Clerk IV
24.	26665	Secretary III

UNIT 4

	<u>Position No.</u>	<u>Class Title</u>
A.	<u>Education</u>	
	1. 4312	Personnel Technician VI
B.	<u>Health</u>	
	1. 21085	Office Manager III
C.	<u>Judiciary</u>	
	1. 4806	Chief Circuit Court Clerk V
	2. 4825	Chief Circuit Court Clerk VI
	3. 4844	Chief Circuit Court Clerk VI
	4. 14535	Chief District Court Clerk V
	5. 14536	Chief District Court Clerk V
	6. 14545	Chief District Court Clerk IV
	7. 14546	Chief District Court Clerk IV
	8. 14551	Chief District Court Clerk IV
D.	<u>Transportation</u>	
	1. 1058	Office Manager III
	2. 6590	Office Manager IV
	3. 25944	Office Manager II

UNIT 13

<u>Position No.</u>	<u>Class Title</u>
<u>A. Governor's Office</u>	
1. 4476E	Corrections Specialist
2. 4480E	Juv. Del. & Comm. Invlmt. Spclt.
3. 4499E	Police Planning Spclt.
<u>B. Accounting and General Services</u>	
1. 3545	Claims Pre-Audit Supervisor
2. 3553	Claims Pre-Audit Supervisor
<u>C. Budget and Finance</u>	
1. 12307	Data Processing Syst. Analyst V
2. 12947	Computer Programmer IV
3. 13702	Data Processing Syst. Analyst VI
4. 13703	Computer Programmer IV
5. 13704	Computer Programmer IV
6. 14294	Data Processing Syst. Analyst V
7. 14296	Data Processing Syst. Analyst V
8. 14442	Data Processing Syst. Analyst VI
9. 14444	Data Processing Syst. Analyst IV
10. 14784	Computer Programmer IV
11. 14786	Data Processing Syst. Analyst V
12. 15122	Data Processing Syst. Analyst V
13. 15123	Data Processing Syst. Analyst IV
14. 15124	Data Processing Syst. Analyst V
15. 15303	Computer Programmer IV
16. 15306	Computer Programmer IV
17. 15309	Data Processing Syst. Analyst V
18. 15311	Computer Programmer IV
19. 15312	Computer Programmer IV
20. 15314	Computer Programmer IV
21. 15773	Computer Programmer III
22. 17855	Data Processing Syst. Analyst V
23. 17863	Computer Programmer IV
24. 18586	Data Processing Syst. Analyst V
25. 18587	Data Processing Syst. Analyst IV
26. 23161	Data Processing Syst. Analyst V
27. 23172	Data Processing Syst. Analyst VI
28. 26816	Data Processing Syst. Analyst IV
29. 26817	Data Processing Syst. Analyst IV
30. 26818	Computer Programmer III
<u>D. Health</u>	
1. 2102	Business Manager V
2. 2989	Research Statistician VII
3. 15527	Program Evaluation Analyst V
4. 18528	Business Manager V
5. 19847	Accountant V
6. 19995	Accountant V
7. 20295	Accountant V

8. 20743 Accountant IV
9. 20909 Accountant IV
10. 26646 Management Analyst IV

E. Judiciary

1. 4746 Social Worker VI
2. 4765 Social Worker VI
3. 15276 Accountant V

F. Land and Natural Resources

1. 26435 Planner V

G. Planning and Economic Development

1. 11296 Program Budget Analyst VI
2. 12888 Accountant V

H. Regulatory Agencies

1. 2623 Accountant IV

I. Social Services and Housing

1. 12809 Social Worker VI
2. 15304 Computer Programmer IV
3. 15305 Computer Programmer IV
4. 17854 Computer Programmer IV
5. 17861 Computer Programmer IV
6. 18588 Computer Programmer IV
7. 23903 Management Analyst IV
8. 24688 Data Processing Syst. Analyst V
9. 26321 Management Analyst IV
10. 26957 Computer Programmer IV

J. Taxation

1. 11548 Auditor VII

K. Transportation

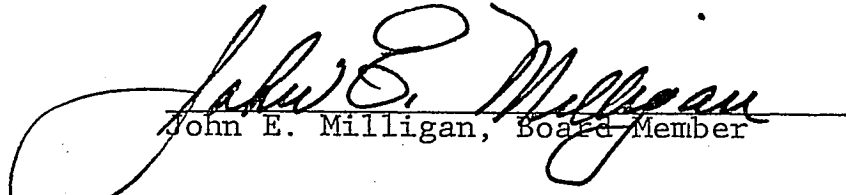
1. 5305 Engineer (Civil) VI
2. 6316 Fiscal Officer VI
3. 10176 Fiscal Officer VI
4. 10756 Engineer (Civil) VI

5. E11334
6. 22221
7. 24728

Management Analyst III
Management Analyst IV
Program Budget Analyst IV

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


John E. Milligan, Board Member

Dated: November 16, 1978

Honolulu, Hawaii

OPINION OF MEMBER JAMES K. CLARK
CONCURRING IN PART, DISSENTING IN PART

I concur with and adopt the above Findings of Facts. I also agree with the criteria set forth in the Conclusions of Law. I concur also with the exclusion of Position 2413, Business Manager V, at Waimano Training School and Hospital, because the occupant of that position is a de facto administrator of a major division. Also, I agree with the exclusion of Position 21236, Secretary IV, at the University of Hawaii, because the incumbent's supervisor is directly involved in negotiations and other confidential collective bargaining work.

However, I see no basis for the remainder of the exclusions.*

A good many positions have been excluded on very ambiguous or unconvincing or extremely weak evidence and the criteria for exclusions have been stretched unreasonably.

For example, there is simply no evidence to support the exclusion of Position 21236, a secretarial position at West Oahu College. The job is filled and an incumbent is functioning in it; she clearly is not doing confidential work at this time. Speculation as to possible future needs is an improper ground upon which to deprive a person of collective bargaining rights. The secretary works for a dean. No other deans' secretaries in this case have been excluded. Since the secretary is not functioning in a confidential capacity at this

*I am inclined to agree, also, with not changing the status of positions which are vacant or for which no evidence was received. However, I believe it might be more in keeping with the intent of the law to presume that positions are includable until proven to be otherwise. I share the opinion that, "[a]ll uncertainties should be resolved in favor of coverage." State of New York, 5 N.Y. PERB 3001 (1972).

time, she should be included. See, Beatrice Foods Co., 224 NLRB No. 191, 92 LRRM 1402 (1976).

Other employees who, according to the evidence, are not now regularly performing confidential work who have been excluded because they might possibly perform such work in the future are Positions 17824, 17858 and 17860, Computer Programmers in the Governmentwide Services Section, Department of Budget and Finance. Their exclusion is justified solely on possible future changes in the kind of work they do.

Position 14446, the Computer Center Supervisor, merely has access to whatever is in the Computer Center. There was not a shred of evidence that he worked in a confidential capacity for anyone who formulated management policy respecting employment relations. Also, there is no evidence that anything stored in the Center is not already known by or available to the unions.

Position 21947 in the Department of Education is not exposed to confidential material on a regular basis.

The office managers of the Neighbor Island District Health Offices (Positions 2986, 3047 and 3880) work under the tight supervision of the central personnel office of the Department of Health. Their involvement with confidential matters is remote. They are conduits between management and the unions, not confidential employees.

Position 8774 in the Department of Social Services and Housing, based on the evidence adduced herein, does no more than any first-line supervisor would do respecting the adjustment of employees' grievances. He makes the step one response and consults with his boss as to what the step two response should be. Supervisors are empowered to do this

sort of thing. Nothing in the evidence makes Position 8774 anything more or less than a supervisor.

Position 5073 in Social Services and Housing is a secretary to a staff officer. There is no evidence that this staff officer has any responsibility for personnel matters. He attends division head meetings; this fact has been seized upon to rule that he functions like a division head and, accordingly, that his secretary should be excluded.

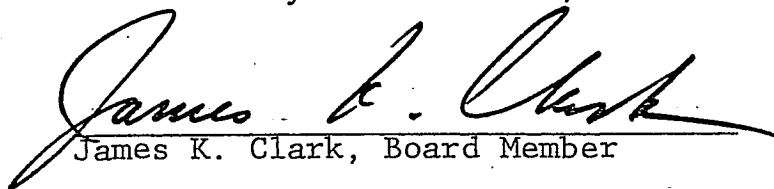
My colleagues have excluded Position 23546, a fiscal officer in the County/State hospital system, despite the absence of evidence that the incumbent has anything to do with direct policy formulation or confidential matters. The exclusion is based on the fact that the incumbent is in close daily contact with Rikio Tanji. There is no evidence at all in this case as to what Mr. Tanji does. Nothing in the record warrants the exclusion of someone who merely meets with someone else who happens to be excluded. Even if the person in Position 23546 advised Mr. Tanji as to collective bargaining (assuming Mr. Tanji has anything to do with collective bargaining), people who serve only in an advisory capacity respecting collective bargaining are not excludable.

Position 7264, Clerk-Stenographer III, at Hawaii State Hospital, works for a supervisor who handles step one grievances. Under the criteria approved by this Board, this fact would not be enough to warrant exclusion. Also, the only evidence as to any "confidential" work performed by the incumbent concerned a study on the handling of the hospital's laundry. This study was given to the affected union. She types employee evaluations. Employee evaluations are required to be given to employees.

Position 2096, Psychiatrist, is the clinical director of Hawaii State Hospital. There is no evidence in the record as to policies he fashions or whether he has the authority to fashion policy. My colleagues have excluded him solely on the basis of his being the top medical person at the hospital without knowing what he does in fact.

In my view, the exclusions of all positions other than Positions 2413 and 21236 are unwarranted by the record in this case. They are arbitrary and contrary to the language, intent and policy of Chapter 89, HRS.

I agree with the inclusion of all of the positions listed in the Order of Inclusion because such inclusions are compelled by the record herein and by Section 89-6, HRS.


James K. Clark, Board Member

Dated: November 16, 1978

Honolulu, Hawaii