

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of
COUNTY OF HAWAII,
Petitioner.

CASE NO. RA-11-228
DECISION NO. 467
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

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On May 18, 2007, the COUNTY OF HAWAII (“County” or “Employer”) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). In its petition, the County alleges that the duties and responsibilities of new Position No. OO-04683, Battalion Chief, EM-03, warrants exclusion from collective bargaining as a top-level managerial position in the Hawaii Fire Department. The position will direct and administer the Special Operations Bureau consisting of three specialized programs, i.e., Search and Rescue, Hazardous Materials Response, and Ocean Safety. The position will also oversee the personnel matters for the bureau, formulate and implement program policies and procedures, identify and develop goals and objectives, establish and evaluate performance measures, and participate in the preparation and justification of the bureau’s budget and the development of departmental goals and objectives. Michael R. Ben, County Director of Human Resources and Petitioner’s representative, states in an affidavit attached to the petition, that the Hawaii Fire Fighters Association, Local 1463, IAFF (“HFFA”), concurs with the exclusion of the position from bargaining unit 11.

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

FINDINGS OF FACT

1. The COUNTY OF HAWAII is the public employer, as defined in Hawaii Revised Statutes (“HRS”) § 89-2, of the employees of the County of Hawaii.
2. The HFFA is the exclusive representative, as defined in HRS § 89-2, of employees in bargaining unit 11.

3. According to the respective position description for Position No. OO-04683, Battalion Chief, EM-03, the position is responsible for the program development, management, direction, and oversight with respect to three specialized fields or missions of the Hawaii Fire Department, i.e., Search and Rescue, Hazardous Materials Response and Ocean Safety. This Special Operations Battalion Chief is the program manager of the Special Operations Bureau and tasked with research and development, development of policies and procedures, identification of specific program goals, objectives, and performance measures and will participate in the development of program budgets and financial plans for the respective areas. The position reports directly to the Assistant Fire Chief of the Emergency Operations Division.

The position performs the following duties in the approximate percentages of time:

- a. Administration and Management: 50% Promotes and supports the goals, vision, mission, core values and strategic focuses of the Hawaii Fire Department. Provides program management, direction, and oversight of the three specialized mission functions of the department, i.e., Search and Rescue, Hazardous Materials Response, and Ocean Safety. Participates in the development of program budgets and financial plans inclusive of identifying and developing program goals, objectives, and performance measures. Develops policy and procedure recommendations for the specialized function programs, including operational and administrative matters. Participates in the development of Memorandums of Agreement or Memorandums of Understanding relevant to the special function programs and maintains the annual review. Institutes disciplinary action when appropriate.
- b. Training 25% Coordinates and directs the development of training and certification standards relevant to the special function program areas. Conducts and performs regular inspections of the specialized units to assure service readiness and compliance with standards, rules, and regulations including, equipment inventory and maintenance, training records, personnel training, and certification requirements. Coordinates and directs the development of training standards and curriculum for the respective special function programs.
- c. Alarms and Emergencies 20% Responds to major fires, rescues, hazardous materials incidents, and large scale ocean safety events and supports the implementation of the Incident Command System through the assumption of either a command role or one of the command or general staff positions as assigned by the Battalion Commander.

Participates in the development of tactics and strategies to mitigate complex incidents and direct implementation when in the role of the Incident Commander or Operations Chief.

- d. Miscellaneous 5% Participates in the research and development and execution of grant and alternative funding programs. Keeps abreast of current developments in Emergency Management with a focus on the special function programs. and performs other related duties.

Exhibit B.

4. By letter dated April 25, 2007, Deputy Director of Human Resources Ronald K. Takahashi notified HFFA President Robert H. Lee ("Lee") of the proposed exclusion of the Battalion Chief from bargaining unit 11 as the position will direct and administer the new Special Operations Bureau comprised of the Search and Rescue, Hazardous Materials Response, and Ocean Safety programs. On April 20, 2007, Lee concurred with the proposed exclusion of the Battalion Chief.

Exhibit A.

5. According to the class specifications, the Battalion Chief class commands a battalion of fire fighting, search and rescue, emergency medical services, and hazardous materials personnel on an assigned shift; or plans and administers the County-wide activities of a specialized bureau of the fire department, and performs other related duties as required.

Exhibit C.

6. According to the Position Organization Charts for the Hawaii Fire Department, the position is at the head of the Special Operations Bureau in the Emergency Operations Division and assigned to the Districts of South Hilo, and North and South Kona. The position reports to the Assistant Fire Chief and oversees the hazardous materials response, search and rescue and ocean functions and personnel at the respective fire stations.

Exhibit D.

7. The Board finds that Position No. OO-04683, Battalion Chief, EM-03, as Special Operations Battalion Chief, will exercise considerable discretion in directing fire fighting activities relating to hazardous materials, search and rescue, and ocean safety operations. The position will also develop and implement the division's programs; formulate short and long range plans and

goals; and oversee the administrative functions of the division, including fiscal and coincident personnel matters.

CONCLUSIONS OF LAW

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

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

* * *

- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
3. In interpreting the exclusionary language of HRS § 89-6, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In determining whether an individual occupies a top-level managerial or administrative position, the Board, in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated, in pertinent part:

This board believes that the proper test of whether an individual occupies a top-level managerial and administrative position includes measuring the duties of the position against the following criteria:

1. The level at and extent to which the individual exercises authority and judgment to direct employees, determine methods, means and personnel, by which the employer's operations are to be carried out; or
2. The extent to which the individual determines, formulates, and effectuates his employer's policies.

Id., at 666 [footnotes omitted].

4. In Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), the Board supplemented this criteria by stating:

In order to be determined to be a top level management or administrative position, a position must:

(1) be at or near the top of an on-going complex agency or program; or

(2) direct the work of a major program or an agency or a major subdivision thereof with considerable discretion to determine the means, methods, and personnel by which the agency or program policy is to be carried out; or

(3) operate in a management capacity in a geographically separated location, such as a Neighbor Island, and be responsible for representing management in dealing with a significant number of employees.

Id., at 143.

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

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

We will first discuss the “policy” criterion and later the other three criteria. It would appear desirable to first consider the term “policy.” Policy is defined in a general sense as “a definite course or method of action selected from among alternatives and in the light of given conditions to guide and determine present and future decisions.” In government, policy would thus be the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.

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

* * *

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

Id., at 144-45.

5. In Decision No. 292, Hannibal Tavares, IV HLRB 637 (1989), the Board previously held that the exclusion of two Fire Battalion Chiefs from bargaining unit 11 was warranted as the positions were near the top of an ongoing complex agency and assisted the Fire Chief and the Deputy Fire Chief in defining objectives, and establishing policies for the Maui Fire Department. Further, in directing the work of the program these positions exercise considerable discretion to determine the means, methods, and personnel to

carry out the agency policy. See also, Decision No. 455, County of Hawaii, VI HLRB 418 (2005).

6. Based upon a review of the duties and responsibilities of Position No. OO-04683, Battalion Chief, EM-03, the Board concludes similarly that the position is at or near the top of an ongoing complex agency and will manage three specialized fields of the Hawaii Fire Department, i.e., Search and Rescue, Hazardous Materials Response, and Ocean Safety. Thus, the position will exercise considerable discretion in developing and implementing the department's programs and policies by directing fire fighting activities relating to the three specialized fields and assisting in the formulation of the department's budget and short and long range plans and goals with regard to those subject areas. In addition, the position oversees the administrative functions of the Special Operations Bureau, including fiscal and personnel matters. As such, the position will have significant authority and latitude for individual initiative and independent judgment in the overall administration and operations management of the Bureau. Based on the position's respective duties and responsibilities, the Board concludes that each position is a top-level managerial position and should be excluded from bargaining unit 11 and coverage under HRS Chapter 89.

ORDER

Position No. OO-04683, Battalion Chief, EM-03, is hereby excluded from collective bargaining unit 11, and the coverage of HRS Chapter 89 as a top-level managerial employee.

DATED: Honolulu, Hawaii, June 7, 2007.

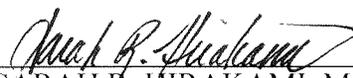
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