

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASES NO.: RA-04-96a
)	RA-13-96b
HANNIBAL M. TAVARES, Mayor of)	
the County of Maui,)	DECISION NO. 221
)	
Petitioner.)	FINDINGS OF FACT, CON-
)	CLUSIONS OF LAW AND ORDER
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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On April 14, 1986, HANNIBAL M. TAVARES Mayor of the County of Maui [hereinafter referred to as Petitioner or Employer] filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board [hereinafter referred to as Board]. In its petition, Employer requested the amendment of the bargaining unit designation of Position No. LC-0003, Liquor Control Officer IV, from inclusion in bargaining unit 4 (Supervisory employees in white collar positions) to exclusion from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses). The amendment is premised upon a review of the position's duties and responsibilities, and the proposed reclassification of the position to Chief Liquor Control Officer.

Petitioner submitted the following documents with the petition:

1. Letter, dated May 21, 1985 from James M. Izumi, Director of Personnel Services, County of Maui, to Russell Okata, Executive Director, Hawaii Government Employees Association

[hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed bargaining unit amendment; and

2. Class specifications for the Chief Liquor Control Officer, County of Maui.

On June 10, 1986, Employer amended its petition and submitted the following documents:

1. Affidavit of Manabu Kimura, Director of Personnel Services, County of Maui, regarding Position No. LC-0003, dated June 6, 1986; and

2. Position Description for the Liquor Control Officer IV (Exhibit A).

Based on the affidavit of Manabu Kimura and all documents submitted in support of the petition, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioner is the public employer, as defined in Subsection 89-2(9), Hawaii Revised Statutes [hereinafter referred to as HRS], of employees of the County of Maui, which includes employees in bargaining units 4 and 13.

The HGEA is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of employees in bargaining units 4 and 13.

The HGEA concurs with Petitioner's proposed bargaining unit amendment of the subject position from inclusion in bargaining unit 4 to exclusion from bargaining unit 13, and is deemed to have waived the right to a hearing thereon.

Position No. LC-0003 is presently classified as a Liquor Control Officer IV and located in the Department of Liquor Control, County of Maui. As the deputy director position was abolished in 1981, Position No. LC-0003 now serves as assistant to the director of Liquor Control and head of the Licensing and Enforcement Division. Accordingly, the position is involved in managerial and administrative work, which is reflective of the class entitled, Chief Liquor Control Officer. Hence, the position is proposed for reclassification.

As assistant to the Director, the position performs the following duties:

1. Initiates studies and recommends revisions of existing liquor laws, rules, regulations and policies;
2. Formulates short and long range plans and goals;
3. Directs staff in preparing for Liquor Commission hearings; and
4. May testify before legislative committees and the County Council.

As head of the Licensing and Enforcement Division, the position performs the following duties:

1. Plans, directs and coordinates all inspectional and investigative functions and activities relative to the enforcement of liquor laws, rules and regulations, which involve:
 - a. Establishing internal operating procedures for the execution of the enforcement and licensing functions; and

b. Coordinating liquor law activities with other regulatory or law enforcement agencies;

2. Directs in-service training of staff; and

3. Recommends selection, promotion and discipline of employees. Petitioner's Exhibit A.

Based on these duties and responsibilities, the position has been proposed for reclassification and transfer from inclusion in bargaining unit 4 to exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

Petitioner has first requested the transfer of Position No. LC-0003 from inclusion in bargaining unit 4 to bargaining unit 13, as the position now serves as a division head and an assistant to the director.

Subsection 89-6(a), HRS, establishes 13 public employee bargaining units and provides, in part:

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

* * *

(4) Supervisory employees in white collar positions;

* * *

(13) Professional and scientific employees, other than registered professional nurses, . . .

The Board noted in Decision No. 14, Hawaii Government Employees' Association, 1 HPERB 103 (1972), that the following employees are to be included in bargaining unit 13:

All professional and scientific employees employed by the State of Hawaii, City and County of Honolulu, and the Counties of Hawaii, Maui, and Kauai, except those determined not to be eligible to vote.

Id. at 104.

Subsection 89-2(17), HRS, sets forth the definition of "professional employee" and reads as follows:

"Professional employee" includes (A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes;. . .

After a complete review of the duties and responsibilities of Position No. LC-0003, the Board concludes that the position serves as assistant to the Director, Department of Liquor Control, and heads the Licensing and Enforcement Division. Further, the position is engaged in predominantly intellectual work which is varied in character, requiring the consistent exercise of discretion and judgment. The Board is also convinced

that the position's duties and responsibilities cannot be standardized in relation to a given period of time, and requires knowledge of an advanced type customarily acquired through study in an institution of higher learning. Accordingly, the Board concludes that the duties and responsibilities of Position No. LC-0003 reflect those of a "professional employee." Thus, the position would appropriately be placed in bargaining unit 13 if included in collective bargaining.

However, Subsection 89-6(c), HRS, specifies which employees are to be excluded from any appropriate bargaining unit and coverage under Chapter 89 and provides in part:

No. . .top-level managerial and administrative personnel. . .shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

In interpreting the exclusionary language of Subsection 89-6(c), HRS, 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].

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 ongoing 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 within 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.

After a complete review of the duties and responsibilities of Position No. LC-0003, the Board concludes that the position, as assistant to the Director, is near the top of an ongoing complex agency and helps formulate policy for that agency. Further, as head of the Licensing and Enforcement Division, the position directs the work of a major program with considerable discretion to determine the means, methods and personnel to carry out the program's policies. Thus, the Board

concludes that the position is a top-level managerial and administrative position which should be, under the provisions of Subsection 89-6(c), HRS, and previous Board decisions excluded from bargaining unit 13 and coverage under Chapter 89, HRS.


ORDER

The bargaining unit designation of Position No. LC-0003, Chief Liquor Control Officer, is amended from inclusion in bargaining unit 4 to exclusion from bargaining unit 13.

The effective date of the transfer shall not be earlier than the date of this decision.

DATED: Honolulu, Hawaii, July 14, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES R. CARRAS, Board Member

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