

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-112
)	
HANNIBAL M. TAVARES, Mayor of)	DECISION NO. 225
the County of Maui,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On September 9, 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 that Position No. PW-0459, Superintendent of Wastewater Treatment Plants, be excluded from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses) as the position is a top-level managerial position as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS].

Petitioner submitted the following documents with the petition:

1. Affidavit of Manabu Kimura, Director of Personnel Services, County of Maui, regarding Position No. PW-0459, dated September 5, 1986;

2. Position description for the Wastewater Treatment Plant Superintendent (Exhibit A);

3. Class specifications for the Superintendent of Wastewater Treatment Plants (Exhibit B); and

4. Table of organization for the Treatment Plant Section, Waste Management Division, Department of Public Works, County of Maui (Exhibit C).

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), HRS, of the employees of the County of Maui, which includes employees in bargaining unit 13.

The Hawaii Government Employees Association is the certified exclusive representative, as defined in Subsection 89-2(12), HRS, of the employees in bargaining unit 13.

Position No. PW-0459 is located in the Treatment Plant Section, Waste Management Division, Department of Public Works, County of Maui, and is responsible for the following duties which encompass approximately 90% of the work time:

1. Plans, directs, and coordinates the operation and maintenance of all wastewater treatment facilities and associated collection systems within the County of Maui:

- a. By establishing appropriate policies and procedures;
- b. By developing plans and procedures to meet water quality standards;

- c. By implementing or recommending new or improved work practices;
- d. By approving plans and specifications for improvements and/or new construction to facilities or collection systems;
- e. By analyzing data to oversee the preparation of operational and budgetary reports;
- f. By directing training and safety programs;
- g. By approving expenditures; and
- h. By recommending equipment purchases to the division head.

Petitioner's Exhibits A and B.

Based on these duties and responsibilities, the position is proposed for exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position No. PW-0459 from bargaining unit 13 as the position is a top-level managerial position.

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 the 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 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.

Id. at 143.

After a complete review of the duties and responsibilities of the Superintendent of Wastewater Treatment Plants, the Board concludes that since the position is responsible for planning and directing the operation, installation, maintenance and repair of all wastewater treatment facilities in the County of Maui, the position is near the top of an on-going complex agency and defines objectives, establishes policies and procedures for that agency. Further, in directing the work of the program, the position exercises considerable discretion to determine the means, methods, and personnel to carry out the agency policy. Accordingly, the Board concludes that the position is a top-level managerial position. Thus, the position 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

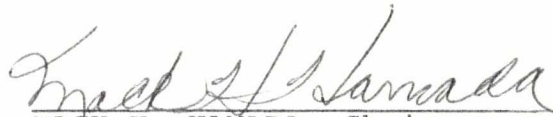
Position No. PW-0459, Superintendent of Wastewater Treatment Plants, is excluded from bargaining unit 13.


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

HANNIBAL M. TAVARES, Mayor of the County of Maui, Petitioner
CASE NO. RA-13-112
DECISION NO. 225
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATED: Honolulu, Hawaii, October 24, 1986.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

Copies sent to:

Manabu Kimura
Joyce Najita, IRC
Publications Distribution Center
State Archives
Robert Hasegawa, CLEAR
University of Hawaii Library
Library of Congress