

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-13-121
	)	
HANNIBAL TAVARES, Mayor of the	)	DECISION NO. 231
County of Maui,	)	
	)	FINDINGS OF FACT, CONCLU-
Petitioner.	)	SIONS OF LAW AND ORDER
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FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On October 16, 1986, HANNIBAL TAVARES, Mayor of the County of Maui, 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, the County of Maui asserts that Position No. HC-0008, Housing Administrator, will be required as division head to formulate and effectuate management policies and procedures and thus should be excluded from bargaining unit 13 on the basis that it is a top-level managerial and administrative employee within the meaning of 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. HC-0008, dated October 14, 1986;

2. Position description for the Housing Administrator (Exhibit A);

3. Class specifications for the Housing Administrator (Exhibit B); and

4. Table of Organization for the Housing Division, Department of Human Concerns, 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 HC-0008 is located in the Housing Division, Department of Human Concerns, County of Maui. The Housing Administrator is the head of the Housing Division and has overall responsibility for planning, developing and administering the County's housing program. The position's duties include the following:

a. Directs all aspects of the County's housing programs which are designed to provide affordable housing for low, moderate and gap-group income families (15% of time);

b. Plans and develops a suitable housing program for the County, and regularly reviews and evaluates program policies and procedures (10%);

c. Analyzes local housing needs, including current market trends, values and land economics, cost of financing, cost of construction, and directs the formulation of programs to address such needs (10%);

d. Studies and analyzes proposed and existing federal, State and local laws and regulations, to determine their impact on the housing activities of the County (10%);

e. Directs the County's housing development activities (10%);

f. Evaluates federal, State and private housing programs to determine the benefits of such programs, and when appropriate, directs the preparation of applications to secure commitments (5%);

g. Evaluates program and projects proposals for feasibility, desirability, and compliance with applicable federal, State, and local laws and regulations (5%);

h. Oversees the management of County-owned rental housing projects (5%);

i. Establishes and maintains an effective relationship with other governmental agencies, community organizations, private interest groups and individuals, to effectively implement the county's housing programs (5%);

j. Obtains appraisals and negotiates terms for the acquisition of real property which are needed for the development of housing projects (5%);

k. Arranges interim and/or permanent financing for county housing projects, and also arranges and negotiates suitable mortgage financing for buyers of county housing units (5%);

l. Determines consultant services that are required, directs the preparation of specifications and scope of services, and negotiates terms for such contracts (5%);

m. Conducts meetings and public hearings for programs and projects administered by the Housing Division (5%); and

n. Serves as the County's liaison and representative on housing matters and, as such, offers testimony at the State legislature, conferences, public hearings and meetings (5%).  
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 HC-0008 from bargaining unit 13 on the basis that as the position is a division head.

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 the top-level managerial or administrative position, the Board in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1970), 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 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 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 with considerable discussion 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.

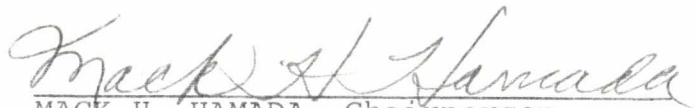
After a complete review of the duties and responsibilities of the Housing Administrator position, the Board concludes that since the position will be required to formulate and effectuate management policies and procedures in the conduct of the operations of the division and will serve as division head, the position is near the top of an ongoing complex agency and defines objectives, and 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, as the position has been previously excluded from bargaining unit 13 and coverage under Chapter 89, HRS, pursuant to Subsection 89-6(c), HRS, and previous Board decisions, the Board concludes that continuation of the exclusion is warranted.

ORDER

Position No. HC-0008, Housing Administrator, is excluded from bargaining unit 13.

DATED: Honolulu, Hawaii, December 2, 1986.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES K. CLARK, Board Member

HANNIBAL TAVARES, Mayor of the County of Maui  
CASE NO. RA-13-121  
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JAMES R. CARRAS, Board Member

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