

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-122
)	
HANNIBAL TAVARES, Mayor of the)	DECISION NO. 232
County of Maui,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

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].

The County of Maui asserts that Position HC-0009, Assistant Housing Administrator, will be required to assist and/or formulate and effectuate management policies and procedures, is a full assistant to the division head 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-0009, dated October 14, 1986;

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

3. Class specifications for the Assistant 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 No. HC-0009 is located in the Housing Division, Department of Human Concerns, County of Maui, and is the assistant division head of the Housing Division and, as such, assumes the duties and responsibilities of the coordinator in his/her absence. The Assistant Housing Coordinator is also responsible for planning and supervising the work in several program areas. The position's duties include the following:

a. Serves as the program coordinator for the Section 8 (Existing) Housing Assistance Payments Program, and supervises all aspects of the program, including recommending changes in

program policies and procedures, preparing program evaluations, preparing applications for funding, preparing reports, conducting surveys, and planning, assigning and reviewing the work of program personnel (15% of time);

b. Oversees the sales activities of the Housing Division, including the establishment and maintenance of waiting lists, the notification of prospective buyers, the securing of mortgage financing for the buyers; the assembling, execution and processing of all sales documents, the packaging of mortgage loan applications under the Farmers Home Administration's Section 502 Housing Program, and the enforcement of project covenants (15%);

c. Supervises the planning development and administration of the Housing Rehabilitation Loan Program and Rental Rehabilitation Program (15%);

d. Serves as the Housing Division's specialist for the U. S. Department of Housing and Urban Development's Community Development Block Grant Program, and is responsible to ensure compliance with all applicable laws and regulations (15%);

e. Assumes the duties and responsibilities of the Housing Coordinator during his/her absence or incapacitation (10%);

f. Oversees the fiscal management of housing projects and programs (10%);

g. Administers the County's buy-back option in County and private housing developments (5%);

h. Oversees the counseling of prospective buyers of County housing units on the various types of mortgage loan programs (5%);

i. Assists in conducting public hearings and meetings, and attends public hearings and meetings as a representative of the Housing Division (5%); and

j. Prepares correspondence relating to the activities of the Housing Division (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-0009 from bargaining unit 13 on the basis that 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 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 Assistant Housing Coordinator, the Board concludes


that since the position is responsible for serving as a full assistant to the division head and will be required to assist and/or formulate and effectuate management policies and procedures in the conduct of the operations of the division, the position is near the top of an ongoing 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, as the position has been previously excluded from bargaining unit 13 and coverage under Chapter 89, HRS, pursuant to Subsection 89-6(c), HRS, it is the conclusion of the Board that the continuation of the exclusion is warranted.

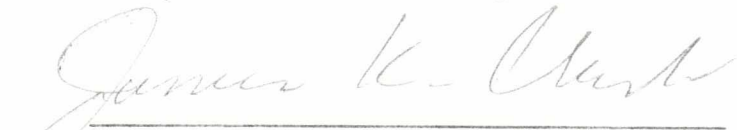
ORDER

Position No. HC-0009, Assistant Housing Coordinator, 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-13-122
DECISION NO. 232
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER



JAMES R. CARRAS, Board Member

Copies sent to:

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