

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-13-128
	)	
DANTE CARPENTER, Mayor of the	)	DECISION NO. 241
County of Hawaii,	)	
	)	FINDINGS OF FACT, CONCLU-
Petitioner.	)	SIONS OF LAW AND ORDER
	)	

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On January 15, 1987, DANTE CARPENTER, Mayor of the County of Hawaii [hereinafter referred to as Petitioner] 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 Hawaii asserts that Position No. M0007, Transit Operations Administrator. As head of the Mass Transportation Agency, he would be required 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 Harry Boranian, Director of Personnel, County of Hawaii, regarding Position No. M0007 dated January 14, 1987;

2. Position description for the Transit Operations Manager (Exhibit B);

3. Class specifications for the Transit Operations Administrator (Exhibit C); and

4. Organizational chart for the Mass Transportation Agency, County of Hawaii (Exhibit D).

Based on the affidavit of Harry Boranian 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 Hawaii 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. M0007 serves as the head of the Mass Transportation Agency, which is located in the Mayor's office, County of Hawaii. More specifically, the position performs the following duties in the approximate percentages of work time:

1. Develop and administer the transit operating and capital budgets, systems routes, schedules, and fares, program research, promotion and marketing, Federal/State grants, short and long range planning, County/State/Federal laws, regulations, and other related requirements (30%);

2. Manage, direct, and supervise transit office staff operations. Responsibilities and duties include but are not limited to:

- a. Prepare and monitor the yearly operating budget.
- b. Implement Federal/State grants.
- c. Collect and compile transit data to monitor routes and program effectiveness and efficiency.
- d. Program research seeking transit alternatives and improved practices and standards.
- e. Develop and improve promotion and marketing efforts to increase ridership and generate additional revenues.
- f. Ensure coordination with other transportation providers of the private and public sectors.
- g. Provide complete and accurate information of the routes, schedules, and services to the general public (30%).

3. Manage, direct, and supervise transit field operations. Responsibilities and duties include but are not limited to:

- a. Plan, direct, and coordinate equipment maintenance scheduling, driver vehicle assignments, mechanic's work scheduling and assignments.
- b. Purchase and maintain bus parts inventory and supplies.
- c. Maintain State motor carrier safety requirements and County safety programs.

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:

d. Develop and maintain a preventive bus maintenance program.

e. Investigate, analyze, and execute solutions for transit problems and public complaints.

f. Review and coordinate new equipment purchases.

g. Monitor and review contractor's performance.

h. Develop and monitor service and operational standards and procedures.

i. Monitor bus fare collections along with other revenues and ensure its safe deposit (25%).

4. Administer and assist in the development of transit policies, goals, and objectives (10%).

5. Perform other related duties (5%).

The supervisory responsibilities of the position include assignment, direction, and review of work. In this way the position establishes the priority of work, personnel scheduling, and work assignments. The position also recommends hiring, training, discipline, and the removal of personnel.  
Exhibit 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. M0007 from bargaining unit 13 on the basis that the position is a division head.



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 Transit Operations 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 agency and will serve as agency head, the position is at the top of an on-going 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, the Board concludes that the position shall be excluded from bargaining unit 13 and coverage under Chapter 89, HRS, pursuant to Subsection 89-6(c), HRS.


#### ORDER

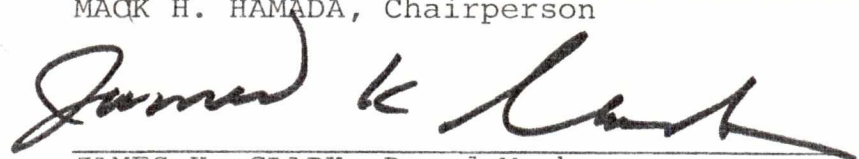
Position No. M0007, Transit Operations Administrator is excluded from bargaining unit 13.

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

DATED: Honolulu, Hawaii, February 17, 1987.

HAWAII LABOR RELATIONS BOARD

  
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JAMES K. CLARK, Board Member

  
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