

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-13-130
)	
HANNIBAL TAVARES, Mayor,)	DECISION NO. 245
County of Maui,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 11, 1987, HANNIBAL 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 [hereinfter referred to as Board]. In its petition, Employer requested that Position No. HC-0013, previously entitled Manpower/Safety Program Administrator, EM-03, and recently reallocated to Manpower/Safety & Training Specialist, EM-01, be excluded from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses) as it is professional in nature and a top-level managerial or administrative position 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. HC-0013, dated February 26, 1987;

2. Position description for the Manpower/Safety Program Administrator, Position No. HC-0013, (Exhibit A);
3. Class specifications for the Manpower/Safety & Training Specialist (Exhibit B); and
4. Organization Chart, Manpower/Safety Division, Department of Human Concerns, County of Maui (Exhibit C).

On March 13, 1987, Petitioner supplemented its petition and submitted a letter, dated March 10, 1987, from Manabu Kimura to Russell K. Okata, Executive Director, Hawaii Government Employees Association [hereinafter referred to as HGEA], informing the HGEA of the continued exclusion of Position No. HC-0013.

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 Section 89-2, HRS, of the employees of the County of Maui, which includes employees in bargaining unit 13.

The HGEA is the certified exclusive representative, as defined in Section 89-2, HRS, of the employees in bargaining unit 13.

The HGEA concurs with the Petitioner's continued exclusion of Position No. HC-0013 from bargaining unit 13 and is deemed to have waived the right to a hearing thereon.

Position No. HC-0013 is located in the Manpower/Safety Division, Department of Human Concerns, County of Maui and serves as division head.

The position, previously entitled Manpower/Safety Program Administrator, was recently reallocated to a new class, Manpower/Safety & Training Specialist, EM-01. The position is responsible for, and performs the following duties:

1. Plans, organizes and coordinates a variety of complex county-wide safety and accident prevention programs;
2. Participates in the planning, development and guidance of the overall safety program;
3. Develops and implements special safety training programs for use by operating departments and agencies;
4. Arranges and conducts safety meetings and training classes;
5. Prepares safety reports, accident analyses and recommendations;
6. Conducts special studies and industrial accident trends and other safety matters;
7. Conducts scheduled inspections of shops, buildings, jobsites, etc., to discover and correct unsafe conditions of practices to insure compliance with accepted safety policies and regulations and to recommend mechanical or structural devices to improve or correct unsafe conditions;
8. Investigates industrial accidents, injuries, workers' compensation cases, etc., and prepares comprehensive reports on these incidents; and

9. Coordinates the County's participation in the various Public Service Employment Programs. Exhibits A and B.

The subject position is responsible for coordinating the County's Manpower, Safety and Training Programs. The work involves execution of a county-wide safety and accident prevention program and supervision and participation in a variety of training services to County employees and coordination of the County's participation in various Public Service Employment Programs. Exhibit B.

The minimum training and experience requirements for the position are:

1. Graduation from an accredited college or university with major work in business administration, public administration, psychology, education or a related field, and three (3) years of experience in interviewing, counseling, teaching, curriculum development, or industrial safety or accident prevention and

2. Any equivalent combination of training and experience. Exhibit B.

Based on these duties and responsibilities, Position No. HC-0013 is proposed for exclusion from bargaining unit 13.

CONCLUSIONS OF LAW

Petitioner has requested the continued exclusion of Position No. HC-0013 from bargaining unit 13 as the position is a top-level managerial or administrative position and is professional in nature.

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:

* * *

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

"Professional employee" is defined in Section 89-2,

HRS, as:

(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; or (B) any employees, who (i) has completed the courses of specialized intellectual instruction and study described in clause (A) (iv), and (ii) is performing related work under the supervision of a professional employee as defined in (A).

After reviewing the evidence submitted by the Petitioner with regard to the minimum education and training requirements, in addition to the duties and responsibilities of the subject position, the Board concludes that the position would be appropriately placed in bargaining unit 13 if included in collective bargaining. The position clearly, engages in work which is

predominantly intellectual and varied, involving the consistent exercise and judgment, of a character that the result accomplished is not standardized in relation to a given period of time, and which requires knowledge of an advanced type in a field of learning acquired by a prolonged course of specialized instruction in an institution of higher learning. Hence, the position is professional, in character.

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

No . . . top-level managerial and administrative position . . . 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 appropriate 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 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 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 Manpower/Safety & Training Specialist, EM-01, Position No. HC-0013, the Board concludes that as division head of the Manpower/Safety Division, Department of Human Concerns, County of Maui, the position directs the work of a major program with considerable discretion to determine the means, methods, and personnel by which the program policy is to be carried out. Accordingly, the Board concludes that the position is a top-level managerial and administrative position. Thus, the position

should be, under the provisions of Subsection 89-6, HRS, and previous Board decisions excluded from bargaining unit 13 and coverage under Chapter 89, HRS.

ORDER

Position No. HC-0013, Manpower/Safety & Training Specialist, County of Maui, is excluded from bargaining unit 13.

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

DATED: Honolulu, Hawaii, May 13, 1987.

HAWAII LABOR RELATIONS BOARD



MACK H. HAMADA, Chairperson



JAMES K. CLARK, Board Member



JAMES R. CARRAS, Board Member

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