

Dec.

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-12-143
	)	
DANTE CARPENTER, Mayor of the	)	DECISION NO. 257
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 October 23, 1987, DANTE CARPENTER, Mayor of the County of Hawaii [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 Nos. HC-3337, Police Major (Commander, East Hawaii Criminal Investigation Division), and HC-3338, Police Major (Commander, Kona District Operations Bureau), be excluded from bargaining unit 12 (Police officers) as the positions are top-level managerial positions 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 Harry Boranian, Director of Personnel Services, County of Hawaii, regarding Position Nos. HC-3337 and HC-3338, dated October 21, 1987;

2. Letter, dated October 2, 1987, from Harry Boranian, Director of Personnel, to Gordon Chun, Business Manager, State of Hawaii Organization of Police Officers [hereinafter referred to as SHOPO], requesting the SHOPO's concurrence with the proposed bargaining unit amendment (Exhibit A);

3. Position Descriptions for Police Major (Commander, East Hawaii Criminal Investigation Division), and Police Major (Commander, Kona District Operations Bureau) (Exhibits B and B-1);

4. Class specifications for Police Major (Exhibit C); and

5. Tables of Organization for the East Hawaii Criminal Investigation Division, and Kona District Operations Bureau, Hawaii County Police Department (Exhibits D and D-1).

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, HRS, of the employees of the County of Hawaii, which includes employees in bargaining unit 12.

SHOPO is the certified exclusive representative, as defined in Subsection 89-2, HRS, of the employees in bargaining unit 12.

SHOPO concurs with the Petitioner's proposed exclusion of the subject positions from bargaining unit 12, and is deemed

to have waived the right to a hearing therein. Petitioner's Exhibit A.

Position Nos. HC-3337 and HC-3338, plan, direct, and coordinate police operations for a "major and complex" division or district. Position No. HC-3337, Police Major, is located in the East Hawaii Criminal Investigation Division, Hawaii Police Department, County of Hawaii. Position No. HC-3338, Police Major, is located in the Kona District Operations Bureau, Hawaii Police Department, County of Hawaii. Each position is responsible for the following duties which encompass the approximate percentages of work time:

1. Commands a major police district or division by planning, directing, and coordinating through subordinate supervisors, the development and implementation of district programs and activities; (60%)
2. Plans and assigns work schedules of personnel to assure adequate coverage to effectively combat crime trends, and enforce traffic laws/ordinances and conducts periodic inspections of subordinates; (25%)
3. Evaluates performances of subordinates and maintains discipline; and evaluates operations implementing changes as necessary; (10%) and
4. Attends committee and other meetings as requested; prepares reports of district activities; makes estimates of budgetary requirements; and executes



other related duties as required. (5%) Petitioner's Exhibits B and B-1.

Based on these duties and responsibilities, the positions are proposed for exclusion from bargaining unit 12.

#### CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position Nos. HC-3337 and HC-3338 from bargaining unit 12 as the positions are top-level managerial positions.

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 Section 89-6, 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 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 Police Major (Commander, East Hawaii Criminal Investigation Division), and Police Major (Commander, Kona District Operations Bureau), the Board concludes that both positions are responsible for a major and complex division or district, and are near the top of an on-going agency, in defining objectives, and establishing policies and procedures for that agency. Further, in directing the work of the programs, both positions exercise considerable discretion to determine the means, methods, and


personnel to carry out the agency policy. Accordingly, the Board concludes that the positions are top-level managerial positions. Thus, positions should be, under provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from bargaining unit 12 and coverage under Chapter 89, HRS.

ORDER

Position Nos. HC-3337, Police Major (Commander, East Hawaii Criminal Investigation Division), and HC-3338, Police Major (Commander, Kona District Operations Bureau), are excluded from bargaining unit 12.

DATED: Honolulu, Hawaii, January 19, 1988.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES R. CARRAS, Board Member

  
GERALD K. MACHIDA, Board Member

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