

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. RA-04-108
)	
HANNIBAL TAVARES, Mayor of)	DECISION NO. 272
the County of Maui,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On June 10, 1986, 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 [hereinafter referred to as Board]. In its petition, Petitioner requested that Position No. PW-0103, Superintendent of Highways, be excluded from bargaining unit 4 [Supervisory employees in white collar positions]. This exclusion is premised upon the rede-scription of the position's duties and responsibilities, and the proposed reclassification of the position to Chief of Field Operations and Maintenance, whose duties and responsibilities are commensurate with that of a top-level manager.

The Petitioner submitted the following documents with the petition:

1. Affidavit of Manabu Kimura, Director of Personnel Services, County of Maui, regarding Position No. PW-0103, dated June 6, 1986;

2. Position description for the Superintendent of Highways (Exhibit A);

3. Class specifications for the Chief of Field Operations and Maintenance (Exhibit B); and

4. Table of Organization for the Office of the Superintendent, Highways Division, Department of Public Works, County of Maui (Exhibit C).

Based on the affidavit of Manabu Kimura and the 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, Hawaii Revised Statutes [hereinafter referred to as HRS], of employees of the County of Maui, which includes employees in bargaining unit 4.

The Hawaii Government Employees Association [hereinafter referred to as HGEA], is the certified exclusive representative, as defined in Section 89-2, HRS, of the employees in bargaining unit 4.

Position No. PW-0103 was previously entitled Superintendent of Highways. The position has been redescribed and proposed for reclassification as Chief of Field Operations and Maintenance. This position works under the general direction of the Director and Deputy Director of Public Works, and supervises all activities of the Highways Division. The position is responsible for, and performs the following duties in the approximate percentages of work time:

1. Plans, organizes, and directs all activities assigned to the Highways Division, which include, but are not limited to the following:

- Maintenance of all Maui County roads and streets;
- Collection and disposal of household refuse;
- Collection and disposal of septic waste from cess-pools;
- Removal of abandoned vehicles from County roadways;
- Purchase and repair of all County vehicles and equipment except those of the Police and Water Supply Departments;
- Coordinating the preparation of Division's operating and capital improvement budgets;
- Representing the Department in court proceedings concerning the Highways Division;
- Determining the administrative procedures by which information is disseminated through the Division;
- Reviewing all contracts involving the Division;
- Overseeing the maintenance of County cemeteries; and
- Coordinating all reports required by the Director of Public Works (85%).

2. Provide support services to various County agencies (5%).

3. Act for the Director or Deputy Director at meetings or hearings relating to highway functions in their absence (5%).

4. Perform all other related duties (5%).

Based on these duties and responsibilities, Position No. PW-0103 is proposed for exclusion from bargaining unit 4.

CONCLUSIONS OF LAW

The Petitioner has requested the exclusion of Position No. PW-0103 from bargaining unit 4 as the position is a top-level managerial or administrative 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 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 judgement 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 Chief of Field Operations and Maintenance, the Board concludes that the position is responsible for planning, organizing and directing all activities of the Highways Division. Additionally, the position reports to the Director or Deputy Director of Public Works, and is at the top of an ongoing major program. The position also formulates policy for that program. Further, in directing the work of the program, the position exercises considerable discretion and independent judgment to determine the means, methods, and personnel to carry out the program policy. Accordingly, the Board concludes that the position is a top-level managerial and administrative position.

Thus, the position should be, under the provisions of Section 89-6, HRS, and previous Board decisions, excluded from bargaining unit 4 and coverage under Chapter 89, HRS.

ORDER


Position No. PW-0103, Chief of Field Operations and Maintenance is excluded from bargaining unit 4.

DATED: Honolulu, Hawaii, May 18, 1988.

HAWAII LABOR RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES R. CARRAS, Chairperson


GERALD K. MACHIDA, Board Member

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