

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-11-142
	)	
DANTE CARPENTER, Mayor of	)	DECISION NO. 276
the 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 August 28, 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. PW-134, Fire Auxiliary Services Officer, and PW-3028, Training Officer, be excluded from bargaining unit 11 (Fire Fighters) as the positions are top-level managerial positions as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS]. The change in bargaining unit status is premised upon the reclassification of the subject positions from Fire Captains to Battalion Chiefs.

Petitioner submitted the following documents with the petition:

1. Affidavit of Harry Boranian, then Director of Personnel Services, County of Hawaii, regarding Position Nos. PW-134, and PW-3028, dated August 20, 1987;

2. Letter dated May 12, 1987, from Harry Boranian to Francis Kennedy, Jr., Business Manager, Hawaii Fire Fighters Association [hereinafter referred to as HFFA], requesting concurrence with the proposed exclusion of the subject positions (Exhibit A);

3. Position descriptions for Fire Captain (Fire Auxiliary Services Officer) and Fire Captain (Training Officer), (Exhibits B and B-1, respectively);

4. Class specifications for Battalion Chief (Exhibit C);

5. Table of Organization for the Hawaii County Fire Department (Exhibit D); and

6. Position descriptions, resubmitted March 18, 1988, for Fire Captain (Fire Auxiliary Services Officer) and Fire Captain (Training Officer) (Exhibits E and E-1, respectively).

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 Section 89-2, HRS, of the employees of the County of Hawaii, which includes employees in bargaining unit 11.

The HFFA is the certified exclusive representative, as defined in Section 89-2, HRS, of the employees in bargaining unit 11. The HFFA concurs with the exclusion of the subject positions and is deemed to have waived the right to a hearing thereon.

Position No. PW-134, Battalion Chief (Fire Auxiliary Services Officer) is located in the Communications/Service Bureau, Hawaii Fire Department, County of Hawaii, and is responsible for the following duties which encompass the approximate percentages of work time:

1. ADMINISTRATION (40%)

- a. Directs, coordinates, and executes the activities of the Communication and Maintenance Bureau; reviews budgetary and personnel requests from all fire suppression divisions and bureaus; ensures that expenditures conform to established goals, policies, and fiscal constraints; plans and administers Department's operating and capital improvement budgets; appears before other governmental agencies regarding justification of departmental program activities; identifies, analyzes, and recommends courses of appropriate remedial action for operational problem areas; plans, prepares, and executes contract agreement proposals for equipment lease rental agreements, purchases of equipment, and other contractual services; serves as Department's custodian of records; and coordinates with Corporation Counsel for release of reports, contract agreements, and other related legal matters.



- b. Administers employee-management relations policies and programs for employees under his direction; reviews and takes action on complaints and grievances from employees under his supervision; directs and coordinates upkeep of all departmental forms and makes amendments as needed; assumes the duties of the administrators of the Training Division and Emergency Medical Services Section during periods of their absence.
- c. Directs, coordinates, and maintains the receipt, issuance, storage, transfer, and record-keeping of all departmental equipment, materials, and supplies.
- d. Assumes responsibility for the State's National Fire Incident Reporting System.
- e. Coordinates County-wide fire hydrant maintenance.

2. COMMUNICATION BUREAU (35%)

- a. Coordinates and directs efforts with other public safety agencies such as Civil Defense, Police, governmental agencies, and private contractors, in planning a program in cases of disaster.
- b. Reviews and mitigates complaints and grievances of subordinates.
- c. Develops and directs a training program for all personnel, and supervises dispatch personnel.

- d. Develops and implements operational procedures for the use of all equipment in the Bureau.
- e. Ensures that a street map location program is updated on a continuous basis.

3. MAINTENANCE BUREAU (25%)

- a. Coordinates and directs the activities of Departmental personnel and personnel from related agencies (radio technicians, mechanics, Public Works personnel, etc.) to ensure that the Department's equipment, vehicles, and facilities are properly maintained by prioritizing and planning all activities concerned therewith.
- b. Ensures that all purchased fire apparatus and related equipment conform to the specifications of the American Insurance Association's standards.
- c. Coordinates and executes changes and movement of fire fighting apparatus and vehicles.
- d. Coordinates disposal program of aged or unfit equipment.

Position No. PW-3028, Battalion Chief (Training Officer) is located in the Training Division, Hawaii Fire Department, County of Hawaii, and is responsible for the following duties which encompass the approximate percentages of work time:

1. ADMINISTRATION (10%)

- a. Manages and directs all activities of the Training and Research Division.

- b. Supervises the Volunteer Training Coordinator and Fire Apparatus Trainer.
- c. Executes employee-management relations programs and policies for employees under his direction.
- d. Reviews complaints and grievances for infractions of any prescribed rule, regulation, policy or procedure, and takes appropriate courses of action as needed.
- e. Initiates development of standard emergency operations procedures, and safety policies for the Fire Department.
- f. Prepares departmental reports as needed.
- g. Prepares Division's annual operating budget.
- h. Reviews and recommends quarterly expenditure schedules, and ensures that expenditures of program activities are prescribed in the operating budget.
- i. Serves as departmental liaison officer for all Civil Defense programs.
- j. Assumes responsibility for the Department's safety program. Conducts quarterly Safety Committee Meetings. Researches and recommends improvements in safety equipment. Maintains a comprehensive personal injury accident record. Investigates all accidents and injuries.

2. TRAINING (75%)

- a. Ensures island-wide standardization of instruction for all members of the fire fighting division. This training program encompasses fire fighting techniques, search and rescue programs, safe operational usage of fire fighting equipment, driver training, and Civil Defense programs.
- b. Coordinates in-service training programs which encompass various topics such as fire suppression, hose evolutions, rescue techniques, salvage techniques, ventilation, operational use of ladders, life- saving and first aid techniques, physical fitness, radiology, hydraulics, lifesaving, PUC licensing, etc.

3. RESEARCH AND DEVELOPMENT (10%)

- a. Researches and evaluates new fire fighting equipment and techniques, with an eye towards improving operations.
- b. Develops specifications for fire fighting apparatus/ equipment.

4. OTHER DUTIES (5%)

- a. Responds to greater alarms, unusual fires, and other emergencies to evaluate fire fighting and rescue techniques.



- b. Assumes the duties of the Auxiliary Services Officer during periods of his absence.
- c. Performs other duties as required.

Petitioner's Exhibits B and B-1.

Based on these duties and responsibilities, the positions are proposed for exclusion from bargaining unit 11.

#### CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position Nos. PW-134 and PW-3028 from bargaining unit 11 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 Subsection 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 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 Battalion Chief, Fire Auxiliary Services Officer, the Board concludes that the position is responsible for directing the activities of the Communication and Maintenance Bureau, which includes supervising the dispatch center, and implementing an overall fire station and equipment maintenance program for the department. Additionally, the position directs the work of a

major program within the Hawaii Fire Department and reports directly to the Deputy Fire Chief and the Fire Chief. Further, the position defines objectives, and establishes policies and procedures for that agency. Additionally, in directing the work of the programs, the position exercises considerable discretion to determine the means, methods, and personnel to carry out the agency policy.

In addition, after a complete review of the duties and responsibilities of the Battalion Chief, Training Officer, the Board concludes that the position is responsible for overseeing the training of new fire fighters, as well as providing in-service training for departmental personnel. Additionally, this position directs the work of a major program of the Hawaii Fire Department and reports directly to the Deputy Fire Chief and the Fire Chief. This position also defines objectives, and establishes policies and procedure for that agency. Finally, in directing the work of the program, this position also exercises considerable discretion to determine the means, methods, and personnel to carry out the agency policy.

As such, the Board concludes that both positions are top-level managerial positions. Subsequently, the positions should be under provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from bargaining unit 11 and coverage under Chapter 89, HRS.

ORDER

Position Nos. PW-134, Battalion Chief, Fire Auxiliary Services Officer, and PW-3028, Battalion Chief, Training Officer, are excluded from bargaining unit 11.

DATED: Honolulu, Hawaii, June 21, 1988.

HAWAII LABOR RELATIONS BOARD

  
MACK H. HAMADA, Chairperson

  
JAMES R. CARRAS, Board Member

  
GERALD K. MACHIDA, Board Member

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