

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO RA-11-163
)	
HANNIBAL TAVARES, Mayor of)	DECISION NO. 292
the County of Maui,)	
)	FINDINGS OF FACT, CONCLU-
Petitioner.)	SIONS OF LAW AND ORDER
_____)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On November 2, 1988, 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, Employer requested that Position Nos. FD-0144 and FD-0145, Fire Battalion Chief, respectively, be excluded from bargaining unit 11 (Firefighters) as the positions are top-level managerial positions as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS]. The subject positions are newly created positions.

Petitioner submitted the following documents with the petition:

1. Affidavit of Manabu Kimura, Director of Personnel Services, County of Maui, regarding Position Nos. FD-0144 and FD-0145, dated October 31, 1988;

2. Letter, dated September 13, 1988, from Manabu Kimura 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 Battalion Chief (Exhibits B-1 and B-2, respectively);

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

5. Table of Organization for the Department of Fire Control, County of Maui (Exhibit D).

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 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 (Exhibit A).

Position Nos. FD-0144 and FD-0145, Fire Battalion Chief, are located in the Department of Fire Control, County of Maui. Each is responsible for the following duties:

Plans, directs, and coordinates firefighting and search and rescue operations; reviews and evaluates manpower

and equipment assignment and redeploys to maximize efficiency and utilization; evaluates performance of firefighting force and determines manpower training needs and equipment deficiencies; reviews reports of company commanders to insure compliance with policies and procedures; assists in planning and administering the activities and functions and programs of the Administration; assists with formulation of the operational CIP budgets; provides managerial assistance to the Fire Chief and/or Deputy Fire Chief; makes operational studies and makes recommendations relating to organizational structure, functional assignments, personnel and equipment requirements, departmental procedures, etc.; reviews and investigates complaints and grievances and takes appropriate action for their resolution; prepares reports; and conducts other related duties as may be necessary.

According to the applicable class specifications, the subject positions command a division comprised of several companies of firefighting personnel on an assigned shift or plan and direct the activities of a major specialized division.

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. FD-0144 and FD-0145 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 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 Position Nos. FD-0144 and FD-0145, the Board concludes that the positions are responsible for assisting the Fire Chief and Deputy Fire Chief in defining objectives, and establishing policies for the Maui County Fire Department. These responsibilities include assisting with the formulation of the operational and capital improvement project budgets. Additionally, these positions plan, direct, and coordinate the firefighting and search and rescue operations. Further, these positions review the reports of company commanders to insure compliance with the Employer's policies and procedures. These positions also handle sensitive personnel matters relating to departmental employee grievances. Further, in directing the work of the program, these positions also exercise 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. Consequently, 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.

DATED: Honolulu, Hawaii, January 6, 1989.

HAWAII LABOR RELATIONS BOARD


JAMES R. CARRAS, Board Member


GERALD K. MACHIDA, Board Member

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