

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.: RA-12-160
)	RA-12-161
HANNIBAL TAVARES, Mayor of)	RA-12-162
the County of Maui; DANTE)	
CARPENTER, Mayor of the)	DECISION NO. 296
County of Hawaii; and FRANK F.)	
FASI, Mayor of the City and)	FINDINGS OF FACT, CONCLU-
County of Honolulu,)	SIONS OF LAW AND ORDER
)	
Petitioners,)	
)	
and)	
)	
STATE OF HAWAII ORGANIZATION)	
OF POLICE OFFICERS,)	
)	
Intervenor.)	
)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On October 18, 1988, HANNIBAL TAVARES, Mayor of the County of Maui, DANTE CARPENTER, Mayor of the County of Hawaii and FRANK F. FASI, Mayor of the City and County of Honolulu [hereinafter referred collectively to as Petitioners or Employers] filed Petitions for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board [hereinafter referred to as Board].

The Petitioners assert that the duties and responsibilities of certain Police Captains, EM-02, warrant their exclusion from bargaining unit 12 and coverage under Section 89-6(c), Hawaii Revised Statutes [hereinafter referred to as

HRS], as top-level management and administrative positions and as individuals concerned with confidential matters affecting employee-employer relations. Specifically, TAVARES seeks to exclude six positions, CARPENTER seeks to exclude eight positions, and FASI seeks to exclude six positions. The petitions do not indicate whether the STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS [hereinafter referred to as SHOPO], exclusive representative for bargaining unit 12, concurs with these proposed exclusions.

In Case No. RA-12-160, Petitioner TAVARES submitted the following documents with the petition:

1. Affidavit of Manabu Kimura, Director of Personnel Services, County of Maui, regarding Position Nos. PD-0004, PD-0012, PD-0069, PD-0081, PD-0132 and PD-0175, dated August 30, 1988;
2. Position descriptions for Police Captain (Exhibits A-1, A-2, A-3, A-4, A-5 and A-6, respectively);
3. Class specifications for Police Captain (Exhibit B); and
4. Table of Organization and Functional Charts for the Department of Police, County of Maui (Exhibit C).

In Case No. RA-12-161, Petitioner CARPENTER submitted the following documents with the petition:

1. Affidavit of David K. Luke, Jr., Director of Personnel Services, County of Hawaii, regarding Position Nos. 0994, 1005, 1006, 1013, 1021, 1031, 1482 and 1821, dated September 7, 1988;

2. Position descriptions for Police Captain (Exhibits A-1, A-2, A-3, A-4, A-5, A-6, A-7 and A-8, respectively);

3. Class specifications for Police Captain (Exhibit B); and

4. Organization Chart for the Hawaii County Police Department (Exhibit C).

In Case No. RA-12-162, Petitioner FASI submitted the following documents with the petition:

1. Affidavit of Loretta K. Fukuda, Director of Personnel Services, City and County of Honolulu, regarding Position Nos. P-0130, P-0452, P-1225, P-1242, P-1487 and P-1505, dated October 17, 1988;

2. Position descriptions for Metropolitan Police Captain (Exhibits A-1, A-2, A-3, A-4, A-5 and A-6, respectively);

3. Class specifications for Metropolitan Police Captain (Exhibit B); and

4. Functional and Organizational Charts for the Honolulu Police Department, City and County of Honolulu (Exhibit C).

As the petitions, however, involved substantially the same issues, the Board found that consolidation of the proceedings would be conducive to the proper dispatch of business and the ends of justice and would not unduly delay the proceedings. Hence, pursuant to Administrative Rules

Section 12-42-8(g)(13), these petitions and the proceedings thereon were consolidated for disposition.

On November 2, 1988, SHOPO filed with the Board a Petition for Intervention in these consolidated cases. The petition was granted by the Board in Order No. 717, dated November 16, 1988.

A prehearing conference was held on November 17, 1988. At the prehearing conference, SHOPO, by and through its General Counsel, Russell T. Higa, represented that SHOPO does not object to the Petitioners' proposed exclusions.

Petitioners have since amended their initial request for the exclusion of the subject positions from bargaining unit 12. Petitioners now seek the exclusion of the positions alleging that they are top-level managerial and administrative positions. On May 25, 1989, revised position descriptions for the affected positions were filed with the Board. These documents have been designated as Exhibits D-1 through D-6, respectively, for the County of Maui; Exhibits D-1 through D-8, respectively, for the County of Hawaii; and Exhibits D-1 through D-6, respectively, for the City and County of Honolulu.

Based on the affidavits of Manabu Kimura, David K. Luke, Jr. and Loretta K. Fukuda and all documents submitted in support of the petitions, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioners are the public employers, as defined in Subsection 89-2, HRS, of the employees of the respective counties of Maui, Hawaii, and the City and County of Honolulu, 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 does not object to Petitioners' proposed exclusion of the subject positions from bargaining unit 12, and is deemed to have waived the right to a hearing thereon.

In Case No. RA-12-160, Position No. PD-0004 acts as an assistant to the Support Services Bureau Commander by planning, directing, and coordinating the functions and activities of the Technical Services Division. The division includes the Records and Identification Section, Radio Shop and Motor Pool. Position Nos. PD-0175, PD-0069 and PD-0081 act as assistants to the Uniformed Service Bureau Commander by planning, directing and coordinating the functions and activities of various patrol districts. Position No. PD-0175 commands Wailuku Patrol District I; Position No. PD-0069 commands Lahaina Patrol District IV and Position No. PD-0081 commands Molokai District V. Position PD-0012, acts as an assistant to the Investigative Service Bureau Commander by planning, directing and coordinating the functions and activities of

the Criminal Investigation Division. This division conducts specialized and detailed investigation of all criminal and non-criminal matters referred. Position No. PD-0132 acts as an assistant to the Investigative Service Bureau Commander by planning, directing and coordinating the functions and activities of the Special Crimes Division. This division is composed of the Vice Section and the Task Force Section.

Each position is responsible for the following duties:

1. Plans, organizes, staffs, directs, and coordinates the various functions and activities of [the respective] Division by effectively utilizing and managing allocated personnel and financial resources as applicable to various circumstances and conditions.
2. Develops, implements, and enforces policies, procedures and programs that contribute positively towards the [respective] Division's specific as well as the Department's goals and objectives.
3. Ascertains and analyzes the Division's current and future personnel, equipment, and technical support needs, and recommends or initiates action to address those needs in the most efficient and cost effective manner.
4. Participates effectively in staff and command meetings by keeping superiors and subordinates informed and by providing constructive input in discussing relative personnel, operational and administrative concerns (including matters that infringe upon employee-employer relations).
5. Represents the Department and Administration in relations with other government and law enforcement agencies, community and advocacy groups, and the media which includes articulating the Department's position on a variety of difficult and sensitive subjects and issues.

6. Keeps abreast of new developments, technology and techniques in the [respective] area, researches those that may be appropriate, and makes recommendations for improving technical support services; may deliver expert testimony in court proceedings regarding the validity of evidence, records, technical information and administrative procedures.
7. Assures competent and expedient criminal investigations by reviewing and evaluating the performance of subordinates; if necessary initiates disciplinary and remedial actions for effective, competent, and productive results; includes participation in administrative decisions, first step grievance proceedings, and Disciplinary Review Board meetings.
8. Formulates and effectuates management policy in employee-employer relations by applying and administering collective bargaining provisions affecting uniformed and civilian employees and for other matters which are non-negotiable.
9. In the event of labor disruptions, performs duties as deemed necessary by the Administration to maintain essential Police and emergency related public services which may include functions related to administrative support.
10. Prepares timely and accurate reports on behalf of the Division including those related to payroll and personnel, managerial, budgeting, and operational; those requiring research and analysis are written clearly and concisely to express its contents.

In addition to the foregoing, Position No. PD-0004 directs the repairs and maintenance of the Wailuku Police Station by coordinating the services of other County Departments and private contractors to maintain the facility's functioning condition; Position No. PD-0081 directs, coordinates, and supervises the Animal Shelter services on the Island of Molokai and Position No. PD-0132 oversees the applications for federal and state grants.

In Case No. RA-12-161, Position Nos. 0994, 1005, 1006, 1021, 1031 and 1482 command various divisions of the Country Operations Bureau. Specifically, Position No. 0994 commands the North Hilo Division; Position No. 1005 commands the South Kohala Division; Position No. 1006 commands the North Kohala Division; Position No. 1021 commands the Ka'u Division; Position No. 1031 commands the Puna Division and Position No. 1482 commands the Hamakua Division. Position No. 1013 commands the Patrol Division of the Kona District and Position No. 1821 commands the Patrol Division of the Hilo Operations Bureau. In the respective divisions, each position is responsible for the following duties:

1. Plans, organizes, staffs and coordinates, through a management team of subordinate supervisors, the various functions and services of the section; applies substantial judgment and discretion in managing and utilizing the section's personnel and financial resources to meet and adjust to changing circumstances and conditions.
2. Effectively recommends, and participates in formulating, developing and implementing new or revised policies, procedures and programs for furtherance of the section's goals and objectives.
3. Programs needs for the section, including research, planning and budgeting, and development and coordination of projects to address and resolve administrative, operational and management problems; monitors the effectiveness of these processes and takes/directs corrective actions in the event of inadequacies.
4. Attends departmental staff and command meetings to discuss and become aware of management

concerns such as shifts in policy stances, operational and staffing changes, proposed administrative control measures, reorganizations and other matters of department-wide interest, including matters that impinge upon employee-employer relations.

5. Acts as a liaison and meets with officials of other lay and law enforcement agencies, with community and advocacy groups, legislative committees, and the media to represent, support and articulate the department's Police Chief's position on a variety of difficult and sensitive subjects and issues.
6. Keeps abreast of new developments, technology and techniques regarding scientific investigations and makes recommendations for follow-up or adoption; may deliver expert testimony in court proceedings regarding scientific investigation processes and procedures.
7. Reviews and evaluates performance of subordinates, investigates complaints, and takes disciplinary actions to correct deficiencies, including suspensions when necessary; hears and resolves grievances at the first step. Oversees the work of subordinate supervisors to assure that necessary supervision, training and inspection are being carried out.
8. Formulates and effectuates management policy in employee-employer relations by applying and administering collective bargaining provisions affecting uniformed and civilian employees and for other matters which are non-negotiable.
9. During strikes, performs tasks in behalf of management in this or another department; i.e., manning telephone to receive emergency (health and safety) calls and to provide information to the public; gathering and communicating strike-related data through administrative channels, and providing administrative support to those coping with the strike; and performing other essential work within the capabilities of the incumbent as assigned.

In Case No. RA-12-162, Position No. P-0130 acts as commander of the Scientific Investigation Section, a major

organizational component of the Investigative Bureau, and plans, directs and coordinates the functions and activities of the section; reports directly to the Assistant Chief of the Investigative Bureau and may assume the latter's duties upon request. Position Nos. P-0452, P-1225 and P-1242 assist the commander of a major and complex police patrol district in planning, directing and coordinating the district's administrative and operational functions and activities and assume the duties of the district commander in the latter's absence or upon request. Position Nos. P-1487 and P-1505 act as assistants to the division commander and plan, direct and coordinate the functions and activities of a major investigative segment of the Criminal Investigation Division and assume the duties of the division commander in the latter's absence or upon request.

Each position is responsible for the following duties:

1. Plans, organizes, staffs, directs and coordinates, through a management team of subordinate supervisors, the various functions and activities of the investigative areas assigned; applies substantial judgment and discretion in managing and utilizing allocated personnel and financial resources to meet and adjust to changing circumstances and conditions.
2. Effectively recommends, and participates in formulating, developing and implementing new or revised policies, procedures and programs for furtherance of the organization's goals and objectives.
3. Programs needs for the organizational segment, including research, planning and budgeting, and development and coordination of projects to address and resolve administrative, operational and management problems; monitors the effectiveness of these processes and takes/directs corrective actions in the event of inadequacies.

4. Attends departmental staff and command meetings to discuss and become aware of management concerns such as shifts in policy stances, operational and staffing changes, proposed administrative control measures, reorganizations and other matters of department-wide interest, including matters that impinge upon employee-employer relations.
5. Acts as liaison and meets with officials of other lay and law enforcement agencies, with community and advocacy groups, legislative committees and the media to represent, support and articulate the department's/Police Chief's position on a variety of difficult and sensitive subjects and issues.
6. Keeps abreast of new developments, technology and techniques regarding criminal investigations and makes recommendations for follow up or adoption, may deliver expert testimony in court proceedings regarding criminal investigation methods and procedures.
7. Reviews and evaluates performance of subordinates, investigates complaints, and takes disciplinary actions to correct deficiencies, including suspensions when necessary; hears and resolves grievances at the first step. Oversees the work of subordinate supervisors to assure that necessary supervision, training and inspection are being carried out.
8. Formulates and effectuates management policy in employee-employer relations by applying and administering collective bargaining provisions affecting uniformed and civilian employees and for other matters which are non-negotiable.
9. During strikes, performs tasks in behalf of management in this or another department; i.e., manning telephone to receive emergency (health and safety) calls and to provide information to the public; gathering and communicating strike-related data through administrative channels, and providing administrative support to those coping with the strike; and performing other essential work within the capabilities of the incumbent as assigned.

Position Nos. P-0452, P-1225 and P-1242 also are responsible for the following additional duties:

1. Initiates studies requiring research and conclusions which affect the district's function, and which may require further study by others before implementation or denial; recommends course of action to be taken.
2. Directs, reviews and monitors the administration of special activities assigned to the district, e.g., Crime Reduction Unit, and insures that detail supervisors maintain required levels of administrative and operational efficiency.
3. Reviews and prepares and analyzes reports of district activities and programs, and prepares long-range plans and strategies for accomplishing department goals, including Gantt charts.

Based on these duties and responsibilities, all of the positions in these consolidated cases are proposed for exclusion from bargaining unit 12.

CONCLUSIONS OF LAW

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(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 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 subject Police Captains, EM-02, the Board concludes that the positions herein direct or assist in directing the work of complex and major programs, and in this regard, the subject positions exercise considerable discretion to determine the means, methods, and personnel by which the agency or program policy is to be carried out. Accordingly, the Board concludes that the positions are top-level managerial and administrative positions. Thus, the subject 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

In Case No. RA-12-160, the following positions are excluded from bargaining unit 12: Position Nos. PD-0004, PD-0012, PD-0069, PD-0081, PD-0132 and PD-0175.

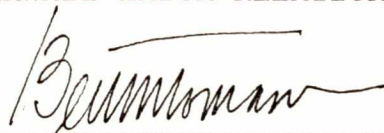
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HANNIBAL TAVARES, Mayor of the County of Maui; DANTE CARPENTER,
Mayor of the County of Hawaii; and FRANK F. FASI, Mayor of
the City and County of Honolulu, Petitioners and STATE OF
HAWAII ORGANIZATION OF POLICE OFFICERS, Intervenor; CASE NOS.:
RA-12-160, RA-12-161, RA-12-162
DECISION NO. 296
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATED: Honolulu, Hawaii, June 30, 1989.

HAWAII LABOR RELATIONS BOARD


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JAMES R. CARRAS, Board Member


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