

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

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| In the Matter of |) | CASE NO. RA-11-197 |
| |) | |
| COUNTY OF HAWAII, |) | DECISION NO. 353 |
| |) | |
| Petitioner. |) | FINDINGS OF FACT, CONCLU- |
| |) | SIONS OF LAW AND ORDER |
| |) | |

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On February 18, 1994, the COUNTY OF HAWAII, by Michael R. Ben (Ben), Director of Personnel, Department of Civil Service, (Employer), filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). In its petition, the Employer requested an amendment of the bargaining unit status of Position No. 2598, from Fire Captain, SR-24, 11-Included, to Battalion Chief, EM-03, 11-Excluded. The Employer contends that a classification review of Position No. 2598, revealed that the position functions in a top-level managerial or administrative capacity and is therefore appropriate for exclusion pursuant to Subsection 89-6(c), Hawaii Revised Statutes (HRS).

The Employer submitted the following documents in support of the petition:

1. Affidavit of Ben dated February 16, 1994 regarding Position No. 2598;
2. Letter dated February 4, 1994 from Ben to Francis Kennedy, Business Manager, Hawaii Fire Fighters Association (HFFA), requesting concurrence with the proposed transfer of Position

No. 2598 from Fire Captain, included, to Battalion Chief, excluded (Exhibit A);

3. Position Description for Position No. 2598, Battalion Chief (Exhibit B);

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

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

Based upon the documents submitted in support of the petition, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

The COUNTY OF HAWAII is the public employer, as defined in Section 89-2, HRS, of the employees of the County of Hawaii, which include employees in bargaining unit 11.

The HFFA is the certified exclusive representative of the employees in bargaining unit 11.

The HFFA concurs with the Employer's proposed exclusion of Position No. 2598 from bargaining unit 11 and is deemed to have waived the right to a hearing thereon (Ex. A).

According to the position description for Position No. 2598, the incumbent works at the Central Fire Station and is responsible for the Volunteer Training Bureau of the Hawaii County Fire Department. The incumbent reports directly to the Fire Chief and Deputy Fire Chief and is responsible for the following duties in the approximate percentages of time:

- (1) Develops and implements policies and procedures relative to the Volunteer Training Division. Supervises the Fire Equipment Operator and the Volunteer Fire Companies' Fire Chiefs. Prepares the annual operating budget and insures compliance with all department rules and regulations. Keeps Administration updated on division activities. Appears before community groups to assist in organizing volunteer fire companies. Develops and implements operational procedures and training programs for the use of all equipment/apparatus assigned to all volunteer companies. Attends staff meetings and participates in the evaluation/modification to improve operating efficiency (25%); and
- (2) Ensures standardization of instruction for all volunteer fire fighters and coordinates in-service training programs (60%); and
- (3) Researches, evaluates, and modifies new fire fighting equipment and techniques. Evaluates safety policies and standards. Maintains an accident/injury record and investigates those incidents. Researches improvements in safety equipment. Develops specifications for fighting/rescue apparatus and equipment (10%); and
- (4) Conducts inspections of volunteer stations. Responds to major alarms, unusual fires and other

emergencies to evaluate fire fighting and rescue techniques of volunteer fire fighters. Relieves/assumes command post commander during major wildland fires, large structural fires, local disasters and major hazardous substance incidents, and performs other duties as required (5%).

According to the duties summary of the class specifications for the Battalion Chief, a Battalion Chief commands a division comprised of several companies of firefighting and search and rescue personnel on an assigned shift; plans, directs and coordinates the activities of the several companies in firefighting and other emergency operations; or plans and administers activities of a major specialized division; and performs other duties as required (Ex. C).

Also, according to the class specifications, the Battalion Chief class is distinguished from the Fire Captain class in that a Battalion Chief commands a division comprised of several companies of firefighting and search and rescue personnel on an assigned shift or plans and administers activities of a division whose operations involved two or more specialized department-wide functions; whereas the Fire Captain commands a fire or rescue company on a regularly assigned shift or supervises activities of a specialized program such as fire prevention and emergency medical services (Ex. C).

Upon a review of the duties and responsibilities of Position No. 2598, the Board finds that the subject position manages the Volunteer Training Bureau within the Hawaii County Fire

Department. The Bureau consists of thirteen (13) volunteer companies and two hundred (200) volunteer fire fighters. It is a major and integral program for the Hawaii Fire Department. The Board further finds that the position develops and implements policies and procedures relative to the Bureau. Finally, the position develops and directs the training program for volunteers and ensures standardized training for the volunteers.

DISCUSSION

Section 89-6, HRS, establishes 13 public employee bargaining units and provides in part:

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

* * *

(11) Firefighters; . . .

Section 89-6(c), HRS, however, 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 its interpretation of the legislative intent of the above-cited section, as it relates to top-level managerial and administrative personnel, the Board in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated:

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 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 review of the duties and responsibilities of Position No. 2598, the Board finds that the position commands, directs and coordinates the activities of the Volunteer Training

Bureau, a firefighting/search and rescue division. The subject position exercises broad authority and judgment in directing the program and determines the methods, means, and personnel by which the Employer's operations are carried out. Additionally, the Board finds that the Volunteer Training Division for the County of Hawaii is an ongoing, major program and that the subject position is at the top of the program from an organizational standpoint.

As such, the Board concludes that the subject position is a top-level managerial position. Consequently, under the provisions of Section 89-6, HRS, and previous Board decisions, the position should be excluded from bargaining unit 11 and coverage under Chapter 89, HRS.

CONCLUSIONS OF LAW

The Board has jurisdiction over the subject petition pursuant to Section 89-6, HRS.


Position No. 2598, Battalion Chief is a top-level managerial position and should be excluded from collective bargaining.

ORDER

Position No. 2598 is hereby excluded from collective bargaining unit 11 and the coverage of Chapter 89, HRS.

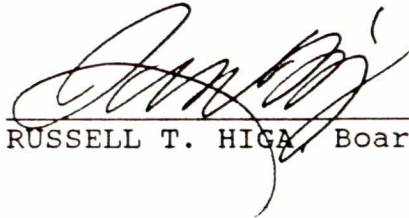
Dated: Honolulu, Hawaii, May 19, 1994.

HAWAII LABOR RELATIONS BOARD

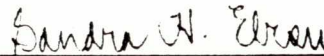


BERT M. TOMASU, Chairperson

COUNTY OF HAWAII; CASE NO. RA-11-197
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RUSSELL T. HIGA, Board Member



SANDRA H. EBESU, Board Member

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