

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
Russell T. Higa, Board Member
Sandra H. Ebesu, Board Member

In the Matter of
COUNTY OF HAWAII

Petitioner.

Case No. RA-11-198

Decision No. 354

Findings of Fact, Conclusions
of Law and Order

UNIT FOR BARGAINING--EXCLUSIONS--MANAGERIAL EMPLOYEES, TOP-LEVEL

Exclusion of position number 3829, Battalion Chief, is warranted where the position commands and directs the activities of two major specialized divisions: Training and Research Division and the Aeromedical Unit. In addition, the position performs employee-management relations duties.

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, County of Hawaii (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 the exclusion of Position No. 3829, Battalion Chief, EM-03, 11-Excluded. The Employer contends that a classification review of Position No. 3829 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. 3829;
2. Letter dated February 4, 1994 from Ben to Francis Kennedy, Business Manager, Hawaii Fire Fighters Association (HFFA), requesting concurrence with the proposed exclusion of Position No. 3829, Battalion Chief (Exhibit A);
3. Position Description for 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. 3829 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. 3829, the position will be located in the West Hawaii District Headquarters of the Hawaii County Fire Department and will be under the general supervision of the Assistant Fire Chiefs' office. The position will be responsible for the following duties in the approximate percentages of work time:

1. Manages and directs all activities of the Training and Research Division by establishing policies and procedures for the West Hawaii Headquarters. Supervises the activities of the Aeromedical Unit. Executes employee-management relations program and policies for employees under his direction. Investigates complaints and grievances and takes appropriate actions as needed. Prepares and

justifies division's annual operating budget. Prepares periodic and department reports. Develops and maintains emergency operational procedures and safety policies for the West Hawaii District Headquarters. Serves as West Hawaii Division liaison officer for all Civil Defense programs. Assumes responsibility for the West Hawaii Division Safety Program. Conducts quarterly safety committee meetings. Attends staff meetings. (25%);

2. Ensures standardized instruction for all personnel of the West Hawaii Headquarters Division. Coordinates in-service training programs. Coordinates pre-planning activities in the West Hawaii District. (60%);
3. Researches and evaluates new firefighting equipment and techniques. Evaluates and updates Hawaii Fire Department's air service safety policies and standards. Develops specifications for firefighting/rescue, aeromedical apparatus and equipment. Researches and recommends improvements in safety equipment. Maintains an accident/injury record and investigates those incidents. Researches and develops solutions to fire management in the wildland/urban interface. Initiates programs to motivate large landowners to become more actively involved in addressing wildland/urban interface issues. (10%); and
4. Conducts inspections of division stations. Responds to and establishes command posts at major fires, search and rescue operations and hazardous substance responses in the West Hawaii District. Coordinates and deploys support agencies. Acts as staff coordinator for the Wildland Fire Program 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 related 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. 3829, the Board finds that the position commands and directs the activities of two major specialized divisions, Training and Research Division and the Aeromedical Unit. In addition, the position performs employee-management relations duties including the investigation of complaints and grievances. The position is also responsible for the Safety program at the West Hawaii District Headquarters and coordinates the in-service training programs for its personnel.

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(c), 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. 3829, the Board finds that the position commands, directs and coordinates the activities of a major specialized firefighting/search and rescue division in a geographically separated location. The subject position will exercise broad authority and judgment in developing the employer's policies and directing employees, determining methods, means, and personnel by which the Employer's operations are to be carried out. Additionally, the Board finds that the West Hawaii District Headquarters for the County of Hawaii is an ongoing, major program and that the subject position will be at or near 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. 3829, Battalion Chief, is a top-level managerial position and should be excluded from collective bargaining.

Order

Position No. 3829 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
Russell T. Higa, Board Member
Sandra H. Ebesu, Board Member

In the Matter of
JOSEPH FRANCIS GONSALVES,
Complainant,
and
HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,
Exclusive Representative.

Case No. PD-13-03

Decision No. 355

Findings of Fact, Conclusions
of Law and Order

DUES EQUIVALENT--REVIEW OF DUES REFUND--MONIES SPENT BY
INTERNATIONAL UNION FOR ORGANIZING ACTIVITIES

The Board concludes that the HGEA properly charged GONSALVES for expenditures by the International Union for organizing activities.

DUES EQUIVALENT--REVIEW OF DUES REFUND--IN GENERAL--TIMELINESS