

STATE OF HAWAII

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of )  
 )  
HAWAII FIRE FIGHTERS ASSOCIATION, )  
IAFF, LOCAL 1463, AFL-CIO )  
 )  
Petitioner, )  
 )  
and )  
 )  
CITY AND COUNTY OF HONOLULU )  
COUNTY OF HAWAII )  
COUNTY OF MAUI )  
COUNTY OF KAUAI )  
 )  
Employers. )  
\_\_\_\_\_ )

Case No. R-11-3  
Decision No. 8

CERTIFICATION OF EXCLUSIVE BARGAINING REPRESENTATIVE AND ORDER  
TO NEGOTIATE

A representation proceeding having been conducted pursuant to a Direction of Election in the above entitled matter by the Public Employment Relations Board in accordance with the Hawaii Public Employment Relations Act and the Rules of Procedure of the Board, and it appearing that an exclusive bargaining representative has been selected; pursuant to the authority vested in the Board by the Hawaii Public Employment Relations Act, IT IS HEREBY CERTIFIED that the HAWAII FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 1463, AFL-CIO has been designated and selected by a majority of the firemen, supervisory and non-supervisory employees, of the above-named public employers, in the optional appropriate bargaining unit described herein, as their exclusive bargaining representative for the purpose of bargaining collectively on questions of wages, hours, and other terms and conditions of employment.

UNIT:

Included: All SUPERVISORY employees, including Fire Captains, Fire Lieutenants, Fire Prevention Inspectors II, Fire Division Commanders, Fire Alarm Shift Supervisors and the Superintendent, Fire Prevention Bureau Chief and Assistant Chief.

All NON-SUPERVISORY employees, including Fire Fighters, Search and Rescue Squadmen, Fire Equipment (Apparatus) Operators I and II, Fire Alarm Operators, Fire Prevention Inspectors I, Fire Safety Education Specialists I and II, Fire Boat Engineers, Fire Boat and Helicopter Pilots.

Excluded: Administrative and Service Bureau Captain, Service Officer, Fire Suppression Operations Commander, Chief, Deputy Chiefs, Hawaii Battalion Chiefs, Fire Division Commander #F-149, and all others.

Further, IT IS ORDERED that the above-named public employers shall bargain collectively with the Hawaii Fire Fighters Association, IAFF, Local 1463, AFL-CIO and enter into a written agreement with such employee organization with respect to wages, hours, and other terms and conditions of employment which are subject to negotiations under the Act.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

By Mack H. Hamada

Mack H. Hamada, Chairman

Carl J. Guntert

Carl J. Guntert, Board Member

John E. Milligan

John E. Milligan, Board Member

Dated: February 4, 1972

Honolulu, Hawaii



FINDINGS OF FACT

Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO, hereinafter referred to as Petitioner, is an employee organization within the meaning of Chapter 89, Hawaii Revised Statutes.

Hawaii Government Employees' Association, Local 152, HGEA/AFSCME, is an employee organization within the meaning of Chapter 89, supra.

The City and County of Honolulu, the County of Kauai, the County of Maui and the County of Hawaii are Public Employers within the meaning of Chapter 89, supra.

The Hawaii Fire Fighters Association and the Hawaii Government Employees' Association, respectively, petitioned the Board on January 4 and January 5, 1971, for an optional appropriate bargaining unit of all firemen throughout the State. The Hawaii Government Employees' Association withdrew its petition on September 15, 1971, without objections from the Public Employers.

Petitioner requested an optional appropriate bargaining unit of all employees in the respective Fire Departments of the Public Employers in the following classes:

Fire Fighter, Fire Fighter-Fire Apparatus Operator, Fire Apparatus Operator, Senior Fire Apparatus Operator, Fire Search and Rescue Squadman, Fire Equipment Operator I, Fire Equipment Operator II, Fire Lieutenant, Fire Captain, Battalion Chief, Fire Division Commander, Fire Alarm operator, Fire Alarm Shift Supervisor, Fire Alarm Superintendent, Assistant Fire Prevention Inspector, Fire Prevention Inspector I, Fire Prevention Inspector II, Fire Prevention Assistant Bureau Chief, Fire Prevention Bureau Chief, Fire Safety Education Specialist I, Fire Safety Education Specialist II, Fire Safety and Training Bureau Chief, Fire Boat Engineer, Fire Boat Pilot, Helicopter Pilot and Fire Fighting Plans and training Officer.

Petitioner requested the exclusion of the following classes of employees in the respective Fire Departments of the Public Employers:

Fire Chief, Deputy Fire Chief, Departmental Staff Executive Assistant, Fire Suppression Operations Commander and all office clerical employees, professional employees, confidential employees and part-time or temporary employees.

All above-named parties in interest stipulated that the following positions of the respective Fire Departments of the Public Employers should be excluded from the bargaining unit:

Fire Chief, Fire Deputy Chief, Fire Division Commander, Fire Battalion Chief, Fire Administrative Services Officer, Fire Suppression Operations Commander and Fire Fiscal and Personnel Officer.

It was also stipulated that Fire Captain Lionel Muller of the City and County of Honolulu and Fire Equipment Operator Edward T. Kozuki and Chief Mechanic Hiromu Matsunami of the County of Hawaii should be excluded from the bargaining unit.

The parties further stipulated that the following positions are supervisory:

Fire Prevention Bureau Chief, Fire Alarm Superintendent, Fire Safety and Training Bureau Chief and Fire Division Commander.

The parties further stipulated that the following positions are non-supervisory:

Fire Fighter, Fire Search and Rescue Squadman, Fire Apparatus Operator, Fire Equipment Operator I, Fire Equipment Operator II, Fire Alarm Operator, Fire Prevention Inspector I, Fire Prevention Inspector II, Fire Safety Education Specialist I, Fire Safety Education Specialist II, Fire Boat Engineer, Fire Boat Pilot and Helicopter Pilot.

The County of Hawaii and Petitioner stipulated that persons in positions of Fire Captain and Fire Lieutenant, including Fire Prevention Inspector II, are supervisory.

The City and County of Honolulu alleges that persons in positions of (1) Captain and Lieutenant in Fire Suppression, (2) Fire Alarm Bureau Shift Supervisor and (3) Fire Prevention Inspector II are not supervisors.

The Counties of Kauai and Maui stipulated that persons in positions of Fire Captain and Fire Lieutenant are within the statutory definition of supervisory employees pursuant to Section 89-2(18), Hawaii Revised Statutes, but in view of the nature of their work, which is spent as part of a crew a major portion of the time, Captain and Lieutenant are not supervisors.

The issues in the instant case are (1) the supervisory or non-supervisory status of Captain and Lieutenant in Fire Suppression, Fire Alarm Bureau Shift Supervisor and Fire Prevention Inspector II of the City and County of Honolulu and (2) whether or not Fire Captain and Fire

Lieutenant of the Counties of Kauai and Maui spend a major portion of their time as part of a crew.

With respect to Captain in Fire Suppression in the City and County of Honolulu, he is commander of his fire station and, therefore, has complete charge of the station. He has the responsibility for the maintenance of the building and the apparatus under his command. He assigns the employees on his shift to duties of maintaining the building and apparatus. He is not required to perform such duties of maintaining the building and apparatus, although he may do so.

The Captain is also in charge of first response fire fighting. In an initial fire response he controls the operation of a fire as first officer on the scene. Upon the arrival of a senior officer, he then returns to his company so that he may supervise the work of members of his company and may operate the equipment. The Captain is at all times in complete command of his company.

It is the Captain's obligation to see that the Rules and Regulations of the Fire Department are obeyed by the men on his shift at the fire station. He administers the training programs to those employees under his command. Although six training programs are regularly scheduled by the Department, the Captain can schedule additional drills and conduct further training as he deems necessary. He also conducts pre-planning inspection and must see that they are carried out.

There are numerous rules and regulations pertaining to the maintenance and conduct of firemen and also many training manuals. The record shows that ninety percent of the duties of Fire Fighters are spelled out in the various manuals and rules and regulations. The training manuals are canned manuals but in order that the Captain may effectively train his men in current and modern fire fighting methods, he must do independent research.

The Captain has complete control of all personnel at his fire station. He is required to enforce discipline of the employees he commands. He can effectively recommend transfer of a Fire Fighter out of his command. He can grant a Fire Fighter relief before his regular

release time. He can permit Fire Fighters on his shift, as well as Fire Fighters of different shifts, to exchange "J" days.

The Captain annually evaluates the work performance of his men. He can effectively recommend promotion. If he should give a Fire Fighter a poor performance rating, the Fire Fighter will not receive his annual incremental raise. The Captain also evaluates probationary Fire Fighters. If the evaluation is a poor performance rating, the probationary Fire Fighter may not get permanent status. There is no evidence in the record that the evaluations of the Captain has not been accepted by the Fire Chief.

The record further discloses that Captain represents management at the fire station. The Rules and Regulations of the Fire Department defines commanding officers as Captain and Lieutenant. In the interest of the Public Employer, the Captain effectuates the policies of the Fire Department. He must have knowledge of the principles and practice of a supervisor. The City and County of Honolulu Civil Service Department conducts training programs for Captains to become supervisors.

With respect to Lieutenant in Fire Suppression in the City and County of Honolulu, he is classified like the Captain as a commanding officer under the Rules and Regulations Governing the Fire Department, Revised. The record indicates that the Lieutenant acts as Captain 75 percent of his time on duty and the remaining 25 percent of his time as Fire Equipment Operator II.

The record is uncontroverted that when the Lieutenant acts in the capacity of Captain, all the authority and duties of a Captain inures to the Lieutenant. He is in complete charge of the fire station and has the responsibility for the maintenance of the building and the apparatus. He is in charge of first response fire fighting. In the initial fire response, he controls the operation of a fire as first officer on the scene. He returns to his company to supervise the work of members of his company and may operate equipment when a senior officer arrives. The Lieutenant, in the Captain's absence, is at all times in complete command of his company.

While acting as Captain, the Lieutenant can grant Fire Fighters privileges such as exchange of shifts, relief before change of platoons, change of "J" days and short absences from quarters. He can effectively discipline his men. He can effectively adjust their grievances. He can effectively recommend merit awards. He is often consulted by the Captain in rating the performance of the men under his command. If the Captain is on extended leave, the Lieutenant evaluates the work performance of his men.

With respect to Fire Alarm Bureau Shift Supervisor, he directs and assigns work to employees under his command. He regularly evaluates the work performance of men under his command. He can effectively recommend transfer of personnel on his shift to another shift. There is no evidence in the record that such direction, assignment, or evaluation performed by the Fire Alarm Shift Supervisor has not been accepted by the Fire Chief.

The Fire Alarm Bureau Shift Supervisor relieves the Fire Alarm Superintendent during his absence and acts in the capacity of Fire Alarm Superintendent. In view of the evidence in the record, it is obvious that all fires are not the same and when an unusual fire situation occurs, which is not covered by the departmental manual, the Fire Alarm Superintendent, or the Fire Alarm Shift Supervisor in his absence, is required to use his independent judgment to handle the situation.

With respect to Fire Prevention Inspector II, he directs and assigns work to Fire Prevention Inspectors I. He can deny a request for annual leave whenever, in his judgment, there is a shortage of personnel. He can permit his men not to report back to the office at regular quitting time. He can grant overtime and approve requests for gas mileage.

The Fire Prevention Inspector II makes annual evaluation of men under his command. He can effectively recommend promotion. He can effectively recommend suspension and when the employee is disciplined, he can effectively recommend leniency. There is no evidence in the record that any of the authority and duties exercised by the Fire Prevention Inspector II -- direct and assign employees, deny annual leave



requests, permit employees not to report back to the office, grant overtime and gas mileage, or evaluate employees, including recommendation for promotion -- has been denied by the Fire Chief.

The City and County of Honolulu offered no evidence that Fire Suppression Captain, Fire Suppression Lieutenant and Fire Prevention Inspector II spend a major portion of their time as part of a crew. Deputy Fire Chief Aiu testified that he did not know whether a Captain spent more than 50 percent of his time at the fire station doing the same thing as a Fire Fighter. The evidence is conflicting whether Fire Alarm Shift Supervisor spends a major portion of his time doing the same thing as rank and file employees.

The County of Kauai stipulated that Captain and Lieutenant are supervisory employees, but contended that they should be considered non-supervisory since a major portion of their time is spent as part of a crew. However, the County of Kauai did not offer any evidence in support of its contention that due to the nature of a Captain's or Lieutenant's work, a major portion of their working time is spent as part of a crew or team with non-supervisory employees.

The County of Maui offered evidence that because of the nature of work of Captain and Lieutenant, they are non-supervisory employees. The thrust of the County of Maui's evidence is that Captain and Lieutenant spend a major or "greater" portion of their time as part of a crew. However, the record clearly discloses that the evidence proffered by the County of Maui to show that Captain and Lieutenant spend a greater part of their working time as part of a crew is just an estimate, which is not derived from thorough study.

## CONCLUSIONS OF LAW

In determining the supervisory status of a public employee the Board is compelled to adhere to the statutory definition of a supervisor. Section 89-2(18), supra, states:

"'Supervisory employee' means any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

In our review of the definition of "supervisor", our research shows that it has been subject to innumerable litigation in the courts. The courts, in making determinations of "supervisory status", generally adhere to the following:

"... the gradations of authority 'responsibly to direct' the work of others from that of general manager or other top executive to 'straw boss' are so infinite and subtle that of necessity a large measure of informed discretion is involved in the exercise by the Board of its primary function to determine those who are as a practical matter fall within the statutory definition of a 'supervisor'." NLRB v. Swift & Company, 292 F2d 561, 48 LRRM 2695 (Ca 1, 1961).

Swift & Company, supra, was quoted with approval by the United States Supreme Court in Marine Engineers Beneficial Association v. Interlake Steamship Company, 370 U.S. 173, 82 S. Ct. 1237, 50 LRRM 2347 (1962).

Also the court in NLRB v. Edward G. Budd Mfg. Company, 169 F2d 571, 22 LRRM 2414 (CA 6, 1958), held that an employee, to have a supervisory status, need not exercise all of its enumerated powers to be classified as a supervisor. The court stated:

"In addition to adding something to the statute which is plainly not present, it ignores the use of the word 'or' in the phrase 'or discipline other employees' which immediately follows the enumeration of the preceding qualifications. If Congress had intended the words to be construed in the conjunctive it could easily have used the word 'and' and reached that result. Its failure to do so, together with the use of the word 'or' leads us to construe the statute in the disjunctive."

In addition to the statutory definition of a supervisor pursuant to Section 89-2(18), supra, we must consider in our determination of the supervisory status of an employee Section 89-6(a), Hawaii Revised Statutes, which, inter alia, states:

"In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of the work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall also be considered."

A statute should be construed, if practicable, so that its component parts are consistent and reasonable. Every word used is presumed to have meaning and purpose, and should be given full effect if so doing does not violate the obvious intent of the Legislature. Inconsistent phrases are to be harmonized, if possible, so as to reach the Legislative intent. When we follow these guidelines, it is obvious that we must construe both Sections 89-2(18) and 89-6(a), supra, to give meaning and purpose to both Sections to arrive at the Legislative intent of who are supervisory employees in the public service.

The phrase "major portion" has a clear and definite meaning and we, in interpreting Section 89-6(a), supra, must give this phrase the ordinary meaning, which is defined to be, greater or larger. We are of the opinion that the Legislature intended the clause "major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employee," as found in Section 89-6(a), supra, to mean that the supervisory employee must spend a greater or larger portion of his time in a nonsupervisory capacity with non-supervisory employees in order to harmonize Sections 89-2(18) and 89-6(a), Hawaii Revised Statutes.

It is our opinion that the Legislature in its wisdom directed the Board not to be misguided by class titles in its determination of the supervisory status of an employee. Also, it is our opinion that the Legislature mandated the Board to direct the parties to produce evidence regarding the nature of an employee's work to determine whether he is or is not a supervisor. Such evidence shall include whether a major, greater or larger portion of the working time of a supervisory

employee is spent as part of a crew with non-supervisory employees in a non-supervisory capacity.

Public employees perform their functions and services through elected and appointed officials and employees hired by the public employers. In the broadest sense, any employee receiving compensation for services performed by him on behalf of a public employer can be said to be an employee of the public employer. Such interpretation would encompass the Governor, all the Mayors, the Department Heads, Division Heads, and surely they all work as part of a crew or team in carrying out their administrative, managerial and other functions. It would lead to an absurd situation where there would be no supervisory employees in the public sector if we do not interpret Section 89-6(a) to mean as time spent in a non-supervisory capacity.

We also look to the Rules and Regulations Governing the Fire Department, Revised, of the City and County of Honolulu and manuals outlining the duties and responsibilities of Captain and Lieutenant. The facts in the instant case attest to their authenticity and we cannot believe that they may have been written in response to the union's petition.

Section 130 of the Rules and Regulations states:

"Company Commanders are the only officers whose command is at all times under their immediate supervision and control. Consequently, their position is one of the utmost importance in the enforcement of discipline and the promotion and maintenance of efficiency. Therefore, they will consider it their indispensable duty to be constantly vigilant and, while setting an especially good example, require that their command measure up to the standard of departmental requirements."

Section 131 of the Rules and Regulations, supra, states:

"Company Commanders shall be in control of their respective companies while on duty and shall be responsible for putting into effect the policy, rules and regulations, practices and procedures of the Department."

The above cited sections of the Rules and Regulations Governing the Fire Department of the City and County of Honolulu and the Facts of the instant case enumerating the authority and duties, lead us to conclude that Captain and Lieutenant perform their duties in the interest of the Public Employer and which require the use of independent judgment.

There is no hard and fast rule that can be established at this time declaring that a given classification or job title should ipso facto be classified as supervisory. Rather, each case must be determined on its individual facts.

Under the facts of the instant case pertaining to the Fire Suppression Captain and Fire Suppression Lieutenant, we find that they represent the Public Employer at the Fire Station and that they direct and assign work to men under their command. We find that they can adjust the grievances of employees under them. We find that the Captain, and at times the Lieutenant, evaluate the employees under them. Such evaluation becomes part of the employee's personnel record and is a determinative factor in deciding whether the employee receives his annual wage increment. We find that they can effectively recommend promotion, transfer, reward and discipline. We further find that such aforementioned authority exercised by the Captain and the Lieutenant in the interest of the Public Employer is not merely routine or clerical in nature, but requires the use of independent judgment.

Under the facts of the instant case pertaining to Fire Alarm Shift Supervisor, we find that he directs and assigns work to men under his command. We find that he can effectively recommend transfer. We find that he evaluates his men and that such evaluation function creates a sharp conflict of interest between the Fire Alarm Shift Supervisor and the "rank and file" subject to his authority. We further find that such aforementioned authority exercised by the Fire Alarm shift Supervisor in the interest of the Public Employer is not merely routine and clerical in nature, but requires the use of independent judgment.

Under the circumstances of the instant case pertaining to Fire Prevention Inspector II, we find that he directs and assigns work to men under his command. We find that he can effectively recommend transfer, promotion, suspension and discipline, that he can deny annual leave and grant overtime to his men, and that he evaluates his men. We further find that such authority exercised by the Fire Prevention Inspector II in the interest of the Public Employer is not merely routine or clerical in nature, but requires the use of independent judgment.

In Basic Management Inc. and International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, Local 631, AFL, 20-RC-2148 (May 18, 1953), the NLRB determined under similar circumstances that Captains and Lieutenants were supervisors as follows:

"...As indicated above, Chief Zink has the power to effectively recommend hiring, firing and disciplinary action. The captain has the same powers as the chief in the chief's absence. Both the chief and the captain direct and control the use of the equipment, direct the manner in which the work is performed, and determine which men perform specific duties. The lieutenants have the power so to direct the use of equipment and the operations of the men in the absence of the chief and the captain. In view of their responsibility to direct the performance of the firemen, we find that the captain and lieutenants are supervisors within the meaning of Section 9(b) of the Act."

The City and County of Honolulu produced no evidence that either the Fire Suppression Captain, the Fire Suppression Lieutenant, or the Fire Prevention Inspector II spend a major, larger or greater portion of their time as part of a crew or team of Fire Fighters in a non-supervisory capacity. We are of the opinion that the Fire Alarm Shift Supervisor spends a major, greater or larger portion of his time as a supervisory employee.

Therefore, we conclude that Captain and Lieutenant in Fire Suppression, Fire Alarm Shift Supervisor and Fire Prevention Inspector II of the City and County of Honolulu are supervisors within the meaning of Chapter 89, Hawaii Revised Statutes.

The County of Kauai stipulated that its Captain and Lieutenant are supervisory within the meaning of Chapter 89-2(18), Hawaii Revised Statutes. It further contends that its supervisors spend a greater portion of their time as part of a crew and should, therefore, be considered non-supervisory. However, the County of Kauai produced no evidence and submitted no brief to substantiate its position that Captain and Lieutenant spend a major, larger or greater portion of their time as part of a crew or team of Fire Fighters in a non-supervisory capacity. Therefore, we have no alternative but to conclude that the County of Kauai has either waived or abandoned its position. We summarily find that Captain and Lieutenant of the Fire Department of the County of Kauai are supervisors within the meaning of Chapter 89, Hawaii Revised Statutes.

The County of Maui stipulated that its Captain and Lieutenant are supervisors within the meaning of Section 89-2(18), Hawaii Revised Statutes. However, its position is that since Captain and Lieutenant spend a major, greater or larger portion of their time in a non-supervisory capacity, they are not supervisors. In support thereof, the County of Maui produced evidence indicating the Captain and Lieutenant spend 46 percent of their working time as supervisors and 54 percent of their time in a non-supervisory capacity. However, the record unmistakably shows that such evidence is based on very rough estimates and not the result of a thorough study. Furthermore, the record discloses that the inaccuracy of these figures was admitted in testimony. It is our opinion that we cannot give any weight nor credence to the evidence submitted by the County of Maui.

Under these circumstances, we find that the County of Maui has failed to produce relevant convincing evidence that its Captain and Lieutenant spend a major portion of their working time as part of a crew or team of Fire Fighters in a non-supervisory capacity. Therefore, we conclude that Captain and Lieutenant of the Fire Department of the County of Maui are supervisors within the meaning of Chapter 89, Hawaii Revised Statutes.

In view of the petitioner and the County of Hawaii's stipulation and our aforementioned discussion, we concluded that the Captain, Lieutenant and Fire Prevention Inspector II of the Fire Department of the County of Hawaii are supervisory employees within the meaning of Chapter 89, Hawaii Revised Statutes.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

By *Mack H. Hamada*  
Mack H. Hamada, Chairman

By *John E. Milligan*  
John E. Milligan, Board Member

Dated: January 3, 1972

Honolulu, Hawaii

DISSENTING OPINION

I dissent from my colleagues' majority decision that Captains and Lieutenants are supervisory employees.

The testimony and exhibits clearly show that while Captains and Lieutenants have important and high-rank sounding titles, they are supervisors at the working foreman and/or leadman level. Thus, they should be designated as non-supervisory employees as this Board did in the representation cases involving blue collar employees. In those cases, working foremen were designated as non-supervisory employees.

I feel my colleagues are strictly adhering to the definition of a supervisory employee pursuant to Section 89-2(18), Hawaii Revised Statutes, and have not given sufficient consideration to the intent of the provision in Section 89-6(a), Hawaii Revised Statutes, which states:

"...In differentiating supervisory from non-supervisory employees, class titles alone shall not be the basis for determination, but in addition, the nature of work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with non-supervisory employees, shall also be considered."  
(Emphasis added.)

I believe such strict adherence to the definition of Section 89-2(18) alone in determining who are supervisors is not consistent with the intent and purposes of the Hawaii Collective Bargaining Law. Both sections of the law--Sections 89-2(18) and 89-6(a)--must be considered together in determining whether an employee is supervisory or not.

The intent of the legislature is quite clear as to where the line should be drawn between supervisory and non-supervisory employees. It is apparent that the legislature intended to follow the long-standing policy of the National Labor Relations Board, since it used a definition of supervisory employees that is nearly identical to the definition of supervisors contained in the National Labor Relations Act. In the application of that Act supervisors at the working foreman and leadman level are included in the collective bargaining unit with rank-and-file workers. I contend that if the legislature had intended otherwise, it



could easily have so indicated. On the contrary, Hawaii Legislature went further and included the above-cited provision of the Act, Section 89-6(a), to clarify the question of where the supervisory exclusion line is to be drawn; i.e., that working foremen level employees are non-supervisory employees for the purpose of rank-and-file unit eligibility.

In the instant case, all of the time of Captains and Lieutenants is spent as part of a crew or team--they live, eat, work, and fight fires together, always as a team. Together they make up the crew on each piece of fire fighting equipment. No other workforce has a closer knit crew or team relationship than the members of a fire engine or ladder company in a fire department. I believe that such a close community of interest which exists among Captains, Lieutenants, and non-supervisory employees should not be overlooked in differentiating supervisors from those who are not supervisors. Therefore, I agree with the positions of the City and County of Honolulu and the Counties of Maui and Kauai that since a major portion of the time of Captains and Lieutenants is spent as a part of a crew or team with non-supervisory employees, they should be considered non-supervisory employees in conformity with Section 89-6(a) of the Act.

I find merit in the contention of the City and County of Honolulu that nearly all of the supervisory duties and responsibilities of a Captain or a Lieutenant are routine or clerical in nature. In my judgment, Captains and Lieutenants are assignors and overseers of work rather than of personnel; their supervisory duties are not sufficiently important and distinct to justify denying them their right under the Act to bargain collectively with their teammates, through representatives of their own choosing. The testimony and exhibits reveal that practically every move initiated or action taken by a Captain or a Lieutenant is predetermined; it is spelled out in detail in the Operations Manual or Rules Manual or in directives from superior officers. The Captains and Lieutenants have no authority to deviate from them. Their main functions are to lead the team or crew and to see

that they do their exercises, including fire drills, and are prepared to fight a fire, in much the same manner as a corporal or sergeant in the army leads his squad or company. The Captain has some paper work to take care of, but most of it, if not all, is routine filling out of forms and reports, attendance records, equipment usage reports, etc. He receives instructions and work specifications from superiors and transmits them to the crew.

I find the following definitions of leadman in the Dictionary of Occupational Titles (Vol. 1, 1965, 3rd. Ed.) published by the U. S. Department of Labor, and guidelines for working foreman to be a fairly accurate description of the duties and responsibilities of a Captain and a Lieutenant:

"LEADMAN (any ind.) group leader; leader. A term applied to a worker who takes the lead and gives directions to workers in his group while performing same duties as workers. Receives instructions and work specifications from supervisor and transmits them to workers. Motivates workers to meet production standards, and helps workers or supervisors to solve work problems. Regularly performs all tasks of workers in group. May assign and explain tasks to workers. May inspect machines, equipment, incoming materials, and completed work. May record information such as time and production data. Is not responsible for final decisions regarding quality and quantity of work produced or for personnel actions, such as releases, transfers, up-grading, or disciplinary measures. Supervisory functions are secondary to the production duties he performs."

I direct attention to the Hawaii State "Guideline for Evaluation of Blue Collar Supervisory Classes Instruction," page 23, which reads as follows:

"Evaluation Criteria - Working Foreman

1. Summary of Concept:

Supervises and participates in the activities of a work unit.

2. Characteristic Duties and Responsibilities:

Has immediate accountability and responsibility for the work of subordinate non-supervisory employee(s); participates in the work for a substantial portion of the time; sets work place to assure satisfactory work progress; provides technical assistance to subordinates; maintains and prepares reports of job activities; estimates job requirements; provides on-the-job techniques; may recommend personnel action on leave requests, promotions, performance evaluation, etc.


3. Controls Over Work:

Under general supervision, is accountable for assigned projects or work activities in a single occupation or closely related occupations, and the daily work of assigned subordinate (s). Work is assigned through oral written instructions on a daily or project basis, subject to spot check and review by a foreman."

To further illustrate the low level of supervisory authority of Captains and Lieutenants, which I construe to be no more than that of a working foreman or leadman, I call your attention to some of their duties and responsibilities which are spelled out in the City and County Manual of Operations, Honolulu Fire Department. (See Attachment A.)

Based on the aforementioned considerations and the evidence in the record, I cannot agree with my colleagues, decision that Fire Department Captains and Lieutenants are supervisors. I find the differentiation of supervisory and non-supervisory employees as submitted by the City and County of Honolulu and the Counties of Maui and Kauai, rather than that of Petitioner, to be appropriate in accordance with the intent of Section 89-2(18) and 89-6(a), Hawaii Revised Statutes, which are not ambiguous. Therefore, I conclude that Captain, Lieutenant, Fire Alarm Bureau Shift Supervisor and Fire Prevention Inspector II positions are not supervisors and should, therefore, be considered as non-supervisory employees for the purposes of determining the non-supervisory Firemen's collective bargaining unit.

By

  
Carl J. Guntert, Board Member

Dated: January 3, 1972

Honolulu, Hawaii

ATTACHMENT A

Article I. House Duty

Sec. 3. Sponges and Chamois:

Company Commanders are responsible for the care and safekeeping of sponges and chamois which are used for cleaning purposes in quarters. This equipment will be kept available for members of both platoons. It will be issued each time it is to be used and must be returned to the Company Commander when use is complete.

Sec. 7. Proper Relief:

Company Commanders on duty shall not allow any member of his company to go off duty until properly relieved by an oncoming member, or until the anticipated number of members of the oncoming platoon have arrived, or until other arrangements have been made with the approval of the Assistant Chief. (Emphasis added.)

Sec. 15. Training:

Company Commanders shall train their companies in accordance with company training schedules prepared by Plans and Training Bureau.

Sec. 38. Requisitions:

Assistant Chiefs shall check communications and requisitions for supplies and equipment requested by Company Commanders and approve or disapprove them. They shall also submit a report certifying that they have inspected the house supply locker and that the janitor supplies requested are essential in the maintenance of department efficiency for a one-month period.

Sec. 49.

Members shall cooperate with one another in keeping the beds properly dressed. This will normally apply every day, except that in any station where linen is furnished by a commercial linen service, the Assistant Chief will designate one day weekly on which beds need not be dressed from 6:30 a.m. until immediately after the delivery of fresh linen.

Sec. 54.

Company Commanders shall arrange floor watch of members in their company below the rank of Lieutenant. When the Lieutenant is relieving the Fire Equipment Operator Grade 2, Company Commanders will utilize the Lieutenant for watch duty. Such duties shall be equalized as nearly as possible.

Article III

Sec. 44.

Company Commanders and members of a Company shall work together as a unit whenever possible and avoid separation from each other unless otherwise ordered.

DIRECTION OF ELECTION

IT IS HEREBY ORDERED that an election, by secret ballot, shall be conducted among the supervisory and non-supervisory employees in the above-described employee group.

Eligible to vote are those employees who were employed during the payroll period ending December 15, 1971, including employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also including employees serving in the military service of the United States or on leave for service in National Guard units and who appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election.

IT IS FURTHER ORDERED that the Public Employers shall prepare an eligibility list in alphabetical order, containing eligible voters' names in accordance with the above description and voting places, and submit copies of such list forthwith to the Hawaii Public Employment Relations Board.

IT IS FURTHER ORDERED that the election shall be conducted on the premises of the Public Employer at such time and date as shall be determined by the Board after consultation with the parties.

IT SHALL BE FURTHER ORDERED that at least seven days prior to said election the Public Employers shall cause to be posted at locations in or about the establishment ordinarily used by the Public Employers for written communications to the above mentioned employees, Notices of Election and sample ballots, which shall be furnished by the Board.

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IT IS FURTHER ORDERED that the eligible employees shall vote whether or not they desire to have an optional appropriate bargaining unit, whether supervisory and non-supervisory employees shall be included in the same bargaining unit and whether or not they desire to be represented for collective bargaining purposes by the Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO or no representation.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

By *Mack H. Hamada*  
Mack H. Hamada, Chairman

By *Carl J. Guntert*  
Carl J. Guntert, Board Member

By *John E. Milligan*  
John E. Milligan, Board Member

Dated: January 3, 1972

Honolulu, Hawaii