

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. RA-13-171
	)	
BERNARD AKANA, Mayor of the	)	DECISION NO. 301
County of Hawaii,	)	
	)	FINDINGS OF FACT, CONCLU-
Petitioner.	)	SIONS OF LAW AND ORDER
_____	)	

FINDING OF FACT,  
CONCLUSIONS OF LAW AND ORDER

On March 29, 1990, BERNARD AKANA, Mayor of the County of Hawaii (Petitioner or 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 that Position No. 1947, Civil Defense Plans and Operations Officer, reclassified to Assistant Civil Defense Administrator, be excluded from bargaining unit 13 (Professional and scientific employees, other than registered professional nurses) as the position is a top-level managerial position as specified in Subsection 89-6, Hawaii Revised Statutes (HRS).

Petitioner submitted the following documents with the petition:

1. Affidavit of David Luke, Jr., Director of Personnel Services, County of Hawaii, regarding Position No. 1947, dated March 27, 1990;

2. Letter, dated January 29, 1987, from then Director of Personnel, Harry Boranian, to Russell Okata,

Executive Director, Hawaii Government Employees Association (HGEA), requesting concurrence with the proposed exclusion of the subject position (Exhibit A);

3. Position description for Assistant Civil Defense Administrator (Exhibit B);

4. Class specifications for Assistant Civil Defense Administrator (Exhibit C); and

5. Table of Organization for the Hawaii County Civil Defense Agency (Exhibit D).

Based on the affidavit of David Luke, Jr., 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 Hawaii, which includes employees in bargaining unit 13.

The HGEA is the certified exclusive representative, as defined in Section 89-2, HRS, of the employees in bargaining unit 13. The HGEA concurs with the exclusion of the subject position and is deemed to have waived the right to a hearing thereon (Exhibit A).

According to the revised Class Specifications, Position No. 1947, Assistant Civil Defense Administrator, is located in the Hawaii County Civil Defense Agency and the incumbent serves as an assistant to the agency head. The responsibilities

of the position include planning, administering, directing, and coordinating a county-wide comprehensive civil defense program. The responsibilities of the position include a wide range of administrative duties in the approximate percentages of work time as follows:

1. Assists the Civil Defense Administrator in administering, supervising, and coordinating the County's civil defense and disaster relief programs; serves as administrator in his absence; and alternates with the administrator in directing and coordinating civil defense operations when disaster occurs (50%);
2. Assists the Civil Defense Administrator in formulating, developing, and updating civil defense operational plans to ensure the safety of the county and its population against nuclear, natural, and man-caused disasters; and plans, conducts, and critiques exercises involving training programs for the agency, volunteers, county emergency service personnel, representatives of other governmental agencies, and private organizations (25%);
3. Serves as fiscal officer; prepares annual county and federal budgets, supervises accounting, expenditures, and reporting of the same; coordinates



the submission of project requests upon declaration of a disaster by the State or federal government; and supervises and coordinates the reporting, auditing, and reimbursement for such projects (25%).

Based on these duties and responsibilities, the position is proposed for exclusion from bargaining unit 13.

#### CONCLUSIONS OF LAW

Petitioner has requested the exclusion of Position No. 1947 from bargaining unit 13 as the position is a top-level managerial position.

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 66 (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 Position No. 1947, the Board concludes that the

position is near the top of an ongoing agency and is responsible for assisting in the formulation of agency policy. Further, the subject position handles high level managerial duties which include planning, organizing, budgeting, monitoring, evaluating, and supervising a wide array of civil defense activities. Additionally, the subject position also assumes the duties of the Civil Defense Administrator during any absence. Finally, in assisting in the direction of the work of the program, the position exercises considerable discretion to determine the means, methods, and personnel to carry out the agency policy.


As such, the Board concludes that the subject position is a top-level managerial position. Consequently, under the provisions of Subsection 89-6, HRS, and previous Board decisions, the position should be excluded from bargaining unit 13 and coverage under Chapter 89, HRS.


ORDER

Position No. 1947, Assistant Civil Defense Administrator, is excluded from bargaining unit 13.

DATED: Honolulu, Hawaii, June 6, 1990.

HAWAII LABOR RELATIONS BOARD

  
BERT M. TOMASU, Chairperson

  
GERALD K. MACHIDA, Board Member

In the Matter of BERNARD AKANA, Mayor of the County of Hawaii  
CASE NO. RA-13-171  
DECISION NO. 301  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER



---

RUSSELL T. HIGA, Board Member

Copies sent to:

David Luke, Jr.  
Robert Hasegawa, CLEAR  
Publications Distribution Center  
State Archives  
University of Hawaii Library  
Richardson School of Law  
Joyce Najita, IRC  
Library of Congress