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:


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 declara-
tion 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 posi-
tion 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 cover-
age under Chapter 89 and provides in part:

No . . . top-level managerial and adminis-
trative personnel . . . shall be included
in any appropriate bargaining unit or
entitled to coverage under this Chapter.

In interpreting the exclusionary language of Subsec-
tion 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
For the position to be classified as a top-level management or administrative position, the duties and responsibilities of the position must include 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.


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

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