

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NOS.:	S-03-28a
)		S-04-28b
JOHN WAIHEE, III, Governor,)		S-13-28c
State of Hawaii,)		
)	DECISION NO.	351
Petitioner,)		
)	FINDINGS OF FACT, CONCLUSIONS	
and)	OF LAW, AND ORDER	
)		
HAWAII GOVERNMENT EMPLOYEES)		
ASSOCIATION, AFSCME, LOCAL 152,)		
AFL-CIO,)		
)		
Exclusive)		
Representative.)		
_____)		

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On March 15, 1994, JOHN WAIHEE, III, Governor, State of Hawaii (Employer), filed a petition with the Hawaii Labor Relations Board (Board) to conduct an investigation pursuant to the authority conferred by Section 89-12, Hawaii Revised Statutes (HRS) to determine whether a strike by State employees in collective bargaining units 03 (nonsupervisory employees in white collar positions), 04 (supervisory employees in white collar positions) and 13 (professional and scientific employees, other than registered professional nurses), would present an imminent or present danger to the health and safety of the public and to set requirements that must be complied with to avoid or remove such danger.

The Board conducted an investigation of the petition on April 8, 11, 12, 13, and 14. All parties were represented and

participated in the investigation. Based upon the entire record and the credible evidence developed during its investigation, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

Petitioner WAIHEE is the Governor of the State of Hawaii and a public employer within the meaning of Section 89-2, HRS.

The HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA) is the certified exclusive representative of the employees in bargaining units 03, 04, and 13, composed of nonsupervisory employees in white collar positions, supervisory employees in white collar positions and professional and scientific employees, other than registered professional nurses, respectively.

The collective bargaining agreements for the foregoing bargaining units expired on June 30, 1993. On December 6, 1993, the HGEA, by its Executive Director Russell K. Okata, filed a Notice of Impasse and Request for Board Assistance with the Board pursuant to Section 89-11, HRS. The HGEA alleged that the public employers, composed of the Governor and the Mayors of the respective counties and the HGEA had negotiated in good faith but had failed to reach agreement for bargaining units 03, 04 and 13. The Board conducted an investigation pursuant to Administrative Rules Section 12-42-62, and found that an impasse existed in the negotiations and appointed Federal Mediator Frank Schoepel to assist the parties on December 10, 1993.

On December 22, 1993, the HGEA and the public employers filed an Agreement to Extend Time for the Mediation Period. The

parties agreed to extend mediation to January 5, 1994. On January 5, 1994, the Federal Mediator notified the Board that mediation efforts in the impasse had failed to resolve all issues and the parties were prepared to proceed to fact-finding in accordance with Section 89-11, HRS. The Board appointed a Fact-finding Panel on January 10, 1994 to inquire into the causes and circumstances of the impasse.

On January 20, 1994, the Chair of the Panel notified the Board that the Panel required an extension of five calendar days to file its report and the parties agreed to such extension. The Board extended the fact-finding period to January 25, 1994. The Fact Finders Report and Recommendation was filed with the Board on January 25, 1994. On February 1, 1994, in accordance with Section 89-11, HRS, HGEA Units 03 and 04 and the public employers rejected the Fact-finding Panel's recommendations. HGEA Unit 13 accepted the recommendation. None of the parties agreed to refer the matter to arbitration. The Fact-finders Report became public on February 2, 1994 and the sixty-day cooling off period began on February 3, 1994.

The Employer filed the instant petition on March 15, 1994. The Board issued a notice of investigation on the petition on March 16, 1994 and met with the parties on March 18, 1994. The Employer filed an Amended Petition on March 21, 1994. On March 28, 1994, the HGEA filed motions to stay the proceedings on the grounds that the Board and the HGEA should not be required to respond in piecemeal fashion to separate petitions and any hearing should be held after all petitions are received by the Board.

Also on that date, the HGEA filed motions to dismiss the petition without prejudice because a strike was unlikely to occur in the near future. In addition, the HGEA contended, inter alia, that the Board's rules were invalid and contrary to Chapter 91, HRS. No other proceedings in the case were scheduled and the cooling-off period ended on April 3, 1994.

On April 7, 1994, the HGEA, on behalf of Units 03 and 04 filed notices of intent to strike anytime after ten days from the filing of the notice with the Board. Also on that date, the Board orally notified and also issued a notice that the Board would conduct a hearing in this matter on April 8, 1994.

On April 8, 1994 the Employer filed memoranda in opposition to the HGEA's motions to stay the proceedings and HGEA's motions to dismiss the petition. With regard to the stay, the Employer argued that separate petitions had been filed based upon the different categories of job groupings focusing on the nature of the employees' services and not the departmental employer of the position. The Employer further contended that the manner of organization of the petition was similar to petitions filed with the Board in 1984. Thus, the Employer submitted that the HGEA's motions to stay the proceedings should be denied.

With regard to the motions to dismiss, the Employer stated that the rules promulgated by the Hawaii Public Employment Relations Board remain in force and effect pursuant to Act 251, Session Laws of Hawaii 1985, and were applicable to the instant petition. Moreover, the Employer argued that the Board's Administrative Rules Section 12-42-86 permits the Board to conduct

a preliminary investigation and to establish health and safety requirements with notice to the parties as to purpose, nature, time and place. During the preliminary investigation, the Board afforded interested parties reasonable opportunity to present all relevant and material facts pertinent to the inquiry. The Employer further argued that the Board's power to make essential worker determinations stemmed from Chapter 89, HRS, and not from Chapter 91, HRS, and in the event of a conflict in provisions, Chapter 89, HRS would supersede.

Based upon the written and oral arguments presented, the Board denied the HGEA's motion to stay the proceedings and the motion to dismiss the petition. With regard to the motion to dismiss, the Board notes that Article 8, Section 2, of the Hawaii Constitution provides that persons in public employment have the right to organize for the purpose of collective bargaining as provided by law. Chapter 89, HRS, is the law relating to collective bargaining in public employment and provides that Hawaii's public employees have a qualified right to strike. The law specifically sets forth the impasse mechanism, requires a sixty-day cooling off period, and a ten-day notice to strike by the union. Section 89-12, HRS, further provides that if a strike which may endanger the health or safety of the public is about to occur or is in progress, the public employer may petition the Board to conduct an investigation. If the Board finds that there is imminent or present danger to the health or safety of the public, the Board can establish requirements which must be complied with including the designation of essential positions and any other

requirement deemed necessary. It is unlawful for an essential employee to participate in a strike. If such employee violates or fails to comply with the requirements of the statute, the public employer may institute enforcement proceedings in the circuit courts.

The legislative history of the act indicates the intent behind the strike provisions in Chapter 89, HRS. According to the Senate Committee on Public Employment in Standing Committee Report No. 745-70, dated April 14, 1970:

(2) Strikes. Your Committee is aware of the near universal prohibition against strikes by public employees in various jurisdictions throughout the country, but experience has shown that such prohibitions are ineffective in preventing, and at times have been the cause of, strikes. In many instances, strike penalties have been modified or waived in order to bring striking employees back to work, oftentimes fostering disrespect and disregard of the law. Your Committee is of the opinion, that the right to strike should be granted, provided that certain requirements are complied with to protect the public from hasty strikes and to encourage the parties to utilize every available means to resolve the dispute. The procedures for the resolution of impasses, the proceedings to remedy prohibited practices and violations, of the agreement, a sixty-day cooling off period, and a ten-day notification of intent to strike are deemed by the Committee to be adequate requirements to protect the public.

The version of the legislation being considered at that time only provided for an impasse mechanism and cooling-off period but did not include any Board investigation. Thereafter, the House Committee on Finance deleted the right to strike by employees. The right to strike provision was reincorporated into the bill by the Conference Committee which indicated that the Committee included

the strike provisions with the additional safeguards against strikes which endanger public health and safety.

Subsection 89-12(c), HRS, was added by the Conference Committee to permit the public employer to petition the Board to make an investigation where a strike occurring or about to occur endangers the public health or safety. If the Board finds an imminent or present danger to the health and safety of the public exists, the Board shall set requirements that must be complied with to avoid or remove any such danger. Thus the legislative history of Chapter 89 indicates that the legislators seriously considered whether Hawaii's public employees should have the right to strike and enacted such provisions only after determining that the public health or safety would be ensured in the event of a strike. The right to strike in Chapter 89, HRS, is a conditional right and can only be exercised after the public's health and safety are considered and any potential danger removed.

The Board is charged with conducting an investigation of the public employer's petition and designating essential positions. Because of the time constraints involved, the Board's Administrative Rules provide that the notice of the preliminary investigation shall contain the purpose, nature, time and place of the investigation and in extraordinary circumstances, the Board may notify the parties orally. The hearing procedures also provide that the hearing shall be held not later than three days after service of the notice of hearing. See Administrative Rules § 12-42-87. The Board's rules also provide that interested parties have a reasonable opportunity to present all relevant and material facts

pertinent to the inquiry. Thus, the investigation on this petition was conducted in accordance with the applicable procedural rules of the Board and consonant with the purpose for the Board's investigatory function under Chapter 89, HRS.

On April 11, 1994, the HGEA filed a notice of intent to strike on behalf of Unit 13. In addition, the notices of HGEA's intent to strike have not been rescinded or revoked.

The respective collective bargaining agreements for Units 03, 04 and 13 which expired on June 30, 1993 have been extended on a month-to-month basis. The final extension of the agreements expires on April 15, 1994.

The Employer presented the Board with a substantial record to support the allegations that certain positions must be staffed during the threatened strike because the withdrawal of services would present an imminent or present danger to the public health or safety. The Board finds that the Employer has established that the withholding of services performed by certain Units 03, 04 and 13 employees during a strike will create an imminent or present danger to the health and safety of the public.

DEPARTMENT OF THE ATTORNEY GENERAL

Hawaii Criminal Justice Data Center

The Hawaii Criminal Justice Data Center (HCJDC) is responsible for the collection, storage, dissemination, and analysis of all pertinent criminal justice data from all criminal justice agencies pursuant to Chapter 846, HRS (Hawaii Criminal Justice Data Center; Civil Identification). The HCJDC provides criminal history information to various criminal justice agencies

in the State of Hawaii for investigative and prosecutorial purposes, pre-sentence investigations, and employment background checks.

The Employer has petitioned the Board to designate two Unit 03 and two Unit 13 employees as essential to maintain HCJDC's computer information systems; manage and operate the statewide Automated Fingerprint Identification System (AFIS) and provide expertise in latent and tenprint fingerprint identification; assist users in accessing HCJDC's criminal record system; and ensure the continued operation of HCJDC's Criminal History Record Checks Sub-Unit.

The Board finds that cessation of HCJDC services by these employees would present an imminent and present danger to the health and safety of the public. Accordingly, the Board has established staffing requirements to avoid this danger.

Involuntary Hospitalization (Civil Commitments)

The Department of the Attorney General is responsible for, inter alia, the processing of involuntary hospitalization (civil commitments) within a timely manner pursuant to Chapter 334, Part IV, HRS (Admission to Psychiatric Facility). The Employer has requested the Board to designate one Unit 03 member as essential for the office's continued operation because failure to timely meet a deadline may result in the release of a person who may meet the statutory criteria for involuntary hospitalization.

The Board finds that the withdrawal of services by the Unit 03 member may present an imminent or present danger to the

health and safety of the public. Accordingly, the Board's order reflects this finding.

Child Protective Services

The Department of the Attorney General, through its Social Services Division, is responsible for the processing, monitoring, and adjudication of petitions for child abuse and neglect. Pursuant to Chapter 587, HRS (Child Protective Act), timelines must be met in order to safeguard, treat, and provide service and permanent plans for children who have been harmed or threatened with harm.

The Employer has petitioned the Board to declare six Unit 03 and three Unit 13 positions in the Child Protective Services (CPS) unit as essential to ensure the prompt and proper preparation and processing of petitions and other court documents and pleadings.

The Board finds that interruption of CPS operations may present an imminent or present danger to the health and safety of the public. Therefore, the Board has established staffing requirements to allow CPS to adequately maintain its operations.

DEPARTMENT OF BUDGET AND FINANCE

Office of the Public Defender

The Office of the Public Defender is charged with providing legal counsel for indigent criminal defendants pursuant to Chapter 802, HRS (Counsel and Other Services for Indigent Criminal Defendants). As the right to counsel and right to a speedy trial are guaranteed under Article VI of the United States Constitution and Article I, Section 14 of the Hawaii Constitution,

failure to provide effective assistance to indigent defendants may result in criminal charges being dismissed and criminally accused persons being released.

The Employer has petitioned the Board to declare nineteen Unit 03, one Unit 04, and eight Unit 13 employees as essential to sustain the operations of the Office of the Public Defender.

The Board finds that the interruption of services by Units 03 and 13 members may present an imminent or present danger to the health and safety of the public. Therefore, the Board has established staffing requirements to avoid this danger.

DEPARTMENT OF HUMAN SERVICES

Office of Youth Services/Hawaii Youth Correctional Facilities

The Department of Human Services, through the Office of Youth Services, is responsible for operating and maintaining the Hawaii Youth Correctional Facilities (HYCF). In accordance with Chapter 352, HRS (Hawaii Youth Correctional Facilities), HYCF provide for the care, custody, control, and rehabilitation of youths adjudicated by the courts.

The Employer has petitioned the Board to declare two Unit 13 positions as essential to maintain a safe, orderly, and secure environment for HYCF wards; and maintain supervision over program development and parolees and furloughees in the community.

The Board finds that cessation of services by these Unit 13 employees may present an imminent or present danger to the health and safety of the public. Accordingly, the Board's order reflects this finding.

DEPARTMENT OF DEFENSE

Civil Defense Division

The Department of Defense of the State of Hawaii, maintains the Hawaii National Guard, pursuant to Chapter 121, HRS, and the State Civil Defense program, pursuant to Section 26-21, HRS.

The Board finds that the Civil Defense Division (CDD) is responsible for preparing comprehensive plans and programs for the civil defense of this State; institutes training and public information programs, assumes direct operations control over local disasters and major emergencies; and directs and controls air raid drills and other tests and exercises. The program operates to warn the public of natural and man-made disasters and to maintain a statewide communications system in the event of such disaster.

CDD employees in Units 03, 04 and 13 carry out the State's Civil Defense responsibilities and federal commitments on a day-to-day basis and staff the Emergency Operating Center (EOC) in Birkhimer Tunnel, Diamond Head on a twenty-four (24) hour basis during a disaster. Daily monitoring of all aspects of the Civil Defense Program is essential to assure a constant state of readiness and a level of preparedness for all systems to respond appropriately in the event of a disaster. Inventories of supplies and materials must be maintained. Equipment and communication systems must be checked and in proper working condition. The Board finds that the interruption of these activities by a work stoppage of employees who perform these tasks would present an imminent and

present danger to the safety and health of the public in the event of a disaster.

The Employer requested a total of twenty-nine (29) CDD employees ranging from Planners to Clerk Stenographer II's. The Employer also orally amended its petition to reflect that the complement of employees was required Monday through Friday, 7:45 a.m. - 4:30 p.m., and on-call the remainder of the time. The Board finds that the complete withdrawal of CDD services by these employees would present an imminent and present danger to the health and safety of the public. In addition, the Board finds that the record supports the additional time requirements as requested by the Employer in some cases. Accordingly, the Board's staffing requirements reflect its findings.

The Department of Defense (DOD) also maintains facilities which contain weapons, ammunition, armories and the EOC. The DOD provides security services at these locations to prevent the theft and vandalism of the equipment and supplies and the possible destruction of equipment which could hamper disaster response and civil defense operations. The Board finds that these services must continue to prevent endangering the public health or safety.

The DOD Engineering Office provides essential repair and maintenance services at the EOC. The Employer requested that the General Maintenance and Services Supervisor I be placed on Standby status in order to be available to coordinate and direct employees responsible for the maintenance and repair of the DOD's facilities, specifically the State Civil Defense headquarters at Birkhimer and its utility system. The Employer stressed that the incumbent in

the position possesses the degree of familiarity with the Birkhimer facility to make his position essential to be staffed in the event of a work stoppage by Unit 04 employees.

DEPARTMENT OF LAND AND NATURAL RESOURCES

The Department of Land and Natural Resources operates and maintains the State's parks, beaches, forests, and watersheds on the islands of Oahu, Hawaii, Kauai, Maui, Molokai and Lanai. The department's Division of Conservation and Resources Enforcement is responsible for enforcing the State's conservation and resources laws and regulations. The Conservation and Enforcement Resources Officers enforce Title 12, HRS, investigate, respond to searches and rescues, and enforce the laws relating to firearms, ammunition and dangerous weapons. The officers are vested with police powers and the various county police department dispatchers have, in the past, called and notified the division about illegal activities occurring upon State lands and waters.

The Employer requested a total of sixty-five (65) positions to be staffed by employees in Units 03, 04, and 13. After reviewing the evidence in the record, the Board finds that the withdrawal of these services by employees in Units 03, 04 and 13 would present an immediate and present danger to the health and safety of the public. The Board's order reflects this finding. The Board has, however, modified the number of employees deemed essential and has changed the work status of the Investigator IV requested.

CONCLUSIONS OF LAW

The Board has jurisdiction of the subject petition pursuant to Subsection 89-12(c), HRS.

Based upon the record, the Board concludes that a strike by employees in Units 03, 04, and 13 employees is about to occur, and that the withholding of services during said strike which are the subject of these findings will create an imminent or present danger to the health and safety of the public.

Performance of the services found to be essential herein to remove such danger must be done by Units 03, 04 and 13 incumbents of the job titles or positions listed in the orders.

In the Staffing Orders which follow, the Board has set forth the maximum number of positions which the Employer may fill as essential positions to perform the tasks which the Board finds necessary to avoid or remove danger to public health or safety during a strike by Units 03, 04 and 13. If, evaluation determines more essential positions are required than were granted then the Employer is expected to inform the Board immediately. The mandate of Subsection 89-12(c), HRS, is to protect the public health and safety from danger in the event of strikes. It is impossible to predict the exact number of people who may be required to work during a strike to cover events which may occur in the future.

ORDERS

Based upon the foregoing findings of fact and conclusions of law, the Hawaii Labor Relations Board hereby orders that the following positions be filled in the event of any strike or job

action by Unit 03, 04, and 13 employees in accordance with the schedule provided.

STAFFING ORDERS

<u>BU & CLASS TITLE</u>	<u>NO. REQUIRED</u>	<u>WHEN REQUIRED</u>
<u>STATE OF HAWAII</u>		
<u>DEPARTMENT OF THE ATTORNEY GENERAL</u>		
<u>Hawaii Criminal Justice Data Center</u>		
13 Data Processing Systems Analyst IV	1	M-F: 7:45am-4:30pm
13 Criminal ID Supervisor	1	M-F: 7:45am-4:30pm
03 TP System Monitor	1	M-F: 7:45am-4:30pm
03 Clerk Typist III	1	M-F: 7:45am-4:30pm
<u>Office of the Attorney General</u>		
03 Legal Stenographer (Mental health/civ. commitments)	1	M-F: 7:45am-4:30pm
03 Legal Stenographer (Child Protective Services)	5	M-F: 7:45am-4:30pm
03 Clerk Typist II (Child Protective Services)	1	M-F: 7:45am-4:30pm
03 Legal Assistant III (Child Protective Services)	3	M-F: 7:45am-4:30pm

DEPARTMENT OF BUDGET AND FINANCE

Office of the Public Defender

03	Fiscal Clerk	1	M-F: 7:45am-4:30pm
23	Sup. Public Defender Investigator	1	M-F: 7:45am-4:30pm
13	Public Defender Investigator	7	M-F: 7:45am-4:30pm
03	Legal Stenographer I	9	M-F: 7:45am-4:30pm
03	Legal Stenographer, PD App.	1	M-F: 7:45am-4:30pm
03	Clerk Typist III	2	M-F: 7:45am-4:30pm
03	Legal Stenographer II	1	M-F: 7:45am-4:30pm
03	PD Typist	1	M-F: 7:45am-4:30pm
03	Clerk Stenographer III	1	M-F: 7:45am-4:30pm
03	Clerk III	3	M-F: 7:45am-4:30pm

DEPARTMENT OF DEFENSE

Civil Defense Division

13	CD Telecommunications Officer	1	M-F: 7:45am-4:30pm and on-call
13	CD Planner	4	M-F: 7:45am-4:30pm and on-call
13	Population Protection Planner	1	On-call
13	CD Training Officer	1	On-call
13	CD Exercise Training Officer	1	On-call
13	Info. Specialist III	1	On-call
13	Asst. CD Telecommunication Officer	1	M-F: 7:45am-4:30pm and on-call
13	Survivable Crisis Mgmt. Engineer	1	M-F: 7:45am-4:30pm and on-call
03	Clerk Stenographer II	2	M-F: 7:45am-4:30pm and on-call

03	Clerk Stenographer II	2	On-call
03	Radio Technician II	1	M-F: 7:45am-4:30pm and on-call
03	Radio Technician I	2	M-F: 7:45am-4:30pm and on-call
03	Radio Technician I	2	On-call
13	Data Proc. Sys. Analyst	2	M-F: 7:45am-4:30pm and on-call
13	Accountant III	1	M-F: 7:45am-4:30pm and on-call
03	Bldg. Const. Inspector	2	M-F: 7:45am-4:30pm and on-call
13	CD Planner	4	M-F: 7:45am-4:30pm and on-call

Engineering Office

04	Gen. Maint. & Svc. Sprvsr. I	1	Standby
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Hawaii Army National Guard

03	Security Officer I	4	M-F: 4:00pm-8:00am, Sat-Sun.: 24hrs/day
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DEPARTMENT OF HUMAN SERVICES

Office of Youth Services/Hawaii Youth Correctional Facilities

Secure Confinement for Juveniles

13	Corr. Supervisor I	1	M-F: 7:45am-4:30pm and on-call
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After Care Services

13	Social Worker V	1	M-F: 7:45am-4:30pm and on-call
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DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Conservation and Resources Enforcement
(Law Enforcement)

04	Conservation and Resources Enforcement Officer V	4	Regular hours 3 shifts 24hrs/day, 7 days/wk and on-call
03	Conservation and Resources Enforcement Officer IV	12	Regular hours 3 shifts 24hrs/day, 7 days/wk and on-call
03	Conservation and Resources Enforcement Officer III [five are deleted from Oahu]	43	Regular hours 3 shifts 24hrs/day, 7 days/wk and on-call
13	Investigator IV	1	On-call

GENERAL ORDERS

The Board further orders the following in the event of a strike by Units 03, 04 and 13 employees:

1. The class or position titles identified in the foregoing portion of the order are designated as essential positions.

2. The Employer may designate any or all incumbents in the essential positions as essential employees. Each incumbent in an essential position, regardless of designation as an essential employee, shall notify the Employer of his or her current residence and mailing addresses and telephone number prior to the onset of a strike by Units 03, 04, and 13 employees. The Employer shall inform incumbents in essential positions that they may be designated as essential employees and that they are required to supply this information.

3. The Employer shall designate employees to fill essential positions. Each Employer shall give notice to an essential employee in accordance with Subsection 89-12(c)(2), HRS. It is the duty and responsibility of the essential employee to contact the Employer for his or her work assignment. This duty continues throughout the duration of any strike.

4. Essential employees required to be on-call shall keep the respective Employer apprised of his or her location during the on-call period to facilitate notification to report to work when the need arises. If no specific on-call period is stated, the position shall be deemed to be on-call 24 hours per day, and 7 days per week.

"On-call," as provided for in these orders, does not require compensation by the Employer nor does it require that the employee respond to any work requests made by the Employer.

5. Essential employees required to be on standby duty shall respond to requests for work when notified by the Employer. These employees must be available and shall provide the necessary telephone numbers and locations where they can be reached when needed. If no specific standby period is stated, the position shall be deemed to be on standby 24 hours per day, and 7 days per week.

"Standby," as directed by these orders, requires that the Employer compensate all such designated employees at the rate of 25% of the individual employee's current salary. The employee on standby shall respond to requests made by the Employer to work and shall provide the Employer with the necessary telephone numbers and

the location where he or she can be contacted should the need arise.

6. The Employer may determine whether the failure or refusal of an incumbent to report to or perform the functions, duties, and responsibilities of positions designated as essential is premised on good cause. The Employer may presume that any such failure or refusal is not for good cause, unless the incumbent designated as an essential employee provides the Employer with a signed statement of the reasons and circumstances for such failure or refusal. In the event that such failure or refusal is based upon a medical disability, a signed statement by a physician licensed to practice in the State of Hawaii must be submitted upon such forms to be provided by the Employer.

7. If an essential employee does not report to work as directed and there are additional incumbents to fill an essential position, the Employer shall designate another incumbent to perform such work. The Employer may notify such employee by whatever means practicable, including by telephone contact, to ensure the delivery of essential services.

If the Employer is unable to fill the essential position with an incumbent, the Employer may assign other employees who are capable of satisfactorily performing the functions, duties, and responsibilities of the essential position, and shall notify the Board accordingly.

8. The HGEA shall be responsible for taking all necessary steps to ensure that essential services required by this

order are performed without interruption, slowdown, sick-out or other forms of interference.

9. Work sites, buildings, or facilities may be picketed, but persons on the picket lines shall permit anyone to cross the picket lines without interference. Picketers shall not harass or impede anyone from ingress or egress to the buildings.

10. To minimize confusion in communications between the parties, the Employer and the HGEA shall each designate one overall coordinator to be contacted. The coordinator shall be responsible for maintaining essential services and implementing any order issued by the Board at the close of this proceeding or during a strike. Prior to the onset of any strike, each party shall notify the other and this Board, in writing, of the coordinator with his or her current address and business and residence telephone numbers at least 24 hours before the onset of a strike.

This order may be amended by the Board. Any questions of interpretation of this order shall be brought to the immediate attention of the Board.

DATED: Honolulu, Hawaii, April 16, 1994.

HAWAII LABOR RELATIONS BOARD



BERT M. TOMASU, Chairperson



RUSSELL T. HIGA, Board Member

JOHN WAIHEE, III, Governor, State of Hawaii and HAWAII GOVERNMENT
EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO; CASE NOS.
S-03-28a, S-04-28b, S-13-28c
DECISION NO. 351
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER



SANDRA H. EBESU, Board Member

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