STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of COUNTY OF HAWAII, Petitioner, and HAWAII FIRE FIGHTERS ASSOCIATION, LOCAL 1463, IAFF, Exclusive Representative.	)	CASE NO. RA-11-219 DECISION NO. 455 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 23, 2005, the COUNTY OF HAWAII (County or Employer) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Labor Relations Board (Board). In its petition, the County alleges that the duties and responsibilities of new Position Nos. OO-04480 and OO-04481, Battalion Chief, EM-03, warrant their exclusion from collective bargaining as top-level managerial positions as the positions will command and direct all fire fighting, emergency medical services (EMS), hazardous materials (HazMat), search and rescue, and other related emergency and non-emergency operations of a battalion of companies within a major geographic area of the County on an assigned shift. The positions will also oversee the personnel matters for the battalion and participate in the preparation of the division's budget and the development of departmental goals and objectives. Michael R. Ben, County Director of Personnel and Petitioner's representative, states in an affidavit attached to the petition, that the HAWAII FIRE FIGHTERS ASSOCIATION, LOCAL 1463, IAFF (IAFF), concurs with the exclusion of the positions from bargaining unit 11.

Based upon a review of the petition, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The COUNTY OF HAWAII is the public employer, as defined in Hawaii Revised Statutes (HRS) § 89-2, of the employees of the County, including the employees in bargaining unit 11.

2. The HFFA is the exclusive representative, as defined in HRS § 89-2, of employees in bargaining unit 11.

3. According to the respective position descriptions for Position Nos. OO-04480 and OO-04481, Battalion Chief, EM-03, each position commands and directs all fire fighting, EMS, HazMat, search and rescue and other related emergency and non-emergency operations of a battalion of companies within a major geographic area of the County on an assigned shift. Each position works a 56-hour work week and supervises first level officers assigned to the battalion. Each Battalion Chief reports directly to the Assistant Fire Chief of the Emergency Operations Division. Persons assigned to this position are responsible for emergency programs and response within the Emergency Operations Division. Work in this position requires a considerable amount of managerial skills, teamwork, effective decision making and an advanced knowledge of fire fighting.

   Each position performs the following duties in the approximate percentages of time:

   a. ADMINISTRATION 60% Promotes and supports the goals, vision, mission, core values and strategic focuses of the Hawaii County Fire Department (HFCD). Manages a battalion of companies of the Fire Department. Assists in preparation and justification of the battalion's budget. Manages the personnel requirements of the battalion by recommending transfers and selection for vacancies as well as the maintaining daily manpower requirements. Insures readiness of all fire suppression, EMS, HazMat and rescue personnel under his command. Coordinates and conducts post incident analyses. Reviews reports submitted through the Chain of Command. Reviews proper implementation and use of the Record Management System. Organizes preplanning activities, fire safety and prevention inspection schedules. Conducts regular inspections of stations to assess needs and insure operating readiness. Conducts personnel inspections to insure compliance to personal grooming and uniform standards. Attends cabinet meetings. Develops departmental goals and objectives as a member of the senior management team. May chair or participate in promotional review boards. Enforces all policies and rules of the HCFD and the County of Hawaii and institutes disciplinary action when appropriate.

   b. ALARMS AND EMERGENCIES 30% Responds to and takes command at major fires, search and rescue missions, HazMat incidents and EMS calls. Institutes the Incident Command System. Evaluates

the nature and extent of the emergency. Selects proper strategies and deployment of personnel and equipment. Determines for additional support and mutual aid assistance from other companies, utilities or other agencies. Assesses the nature and cause of fires and estimate losses.

c. TRAINING 5% Conducts and evaluates multi-company drills and provides training for relief officers.

d. OTHER RELATED DUTIES 5% Participates in the development and execution of grant and alternative funding programs. Keeps abreast of current developments in Emergency Management and performs other related duties.

Exhibits B(1) and B(2).

4. By letter dated August 5, 2005, Deputy Director of Personnel Rodney T. Kaido notified HFFA Business Manager Guy T. Tajiri (Tajiri) of the proposed exclusions of the Battalion Chiefs from bargaining unit 11 as the positions will command and direct all fire fighting, emergency medical services and non-emergency operations of a battalion of companies within a major geographical area of the County on an assigned shift. On August 9, 2005, Tajiri concurred with the proposed exclusions.

Exhibit A.

5. According to the class specifications, the Battalion Chief class commands a battalion of fire fighting, search and rescue, EMS, and HazMat personnel on an assigned shift; or plans and administers the County-wide activities of a specialized bureau of the fire department, and performs other related duties as required.

Exhibit C.

6. According to the Position Organization Charts for the HCFD, the positions are in Battalion 1 of the Emergency Operations Division and assigned to the Districts of South Hilo, Puna, Hamakua and North Kohala and Ka`u. The positions report to the Assistant Fire Chief and oversee 12 fire stations.

Exhibit D.

7. The Board finds that Position Nos. OO-04480 and OO-04481, Battalion Chief, EM-03, as commanders of a battalion of companies within a major

geographic area of the County on an assigned shift, will exercise considerable discretion in directing all fire fighting, emergency medical services, HazMat, search and rescue, and other related emergency and non-emergency operations of the battalion. The positions also develop and implement the division's programs; formulate short and long range plans and goals; and oversee the administrative functions of the division, including fiscal and personnel matters.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject petition pursuant to HRS § 89-6.

2. HRS § 89-6(f) provides, in part, as follows:

> The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:
>
> * * *
>
> (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
>
> * * *
>
> (5) Individual concerned with confidential matters affecting employee-employer relations; . . . .

3. In interpreting the exclusionary language of HRS § 89-6, 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 660 (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 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].

4. 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 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.

Because policy formulation is an important factor in the determination of managerial status, the meaning to be given to the term *policy* is important and warrants discussion.

The New York PERB, in a leading case of that Board, has defined the term *policy* which this Board adopts. The New York PERB stated in State of New York, 5 PERB 3001 (1972) at p. 3005:

> We will first discuss the "policy" criterion and later the other three criteria. It would appear desirable to

first consider the term "policy." Policy is defined in a general sense as "a definite course or method of action selected from among alternatives and in the light of given conditions to guide and determine present and future decisions." In government, policy would thus be the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.

The term "formulation" as used in the frame of reference of "managerial" would appear to include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such a proposal into effect. It would not appear to include a person who simply drafts language for the statement of policy without meaningful participation in the decisional process, nor would it include one who simply engaged in research or the collection of data necessary for the development of a policy proposal. [Footnotes omitted.]

* * *

It is assumed that all persons in State government, except for elected officials, judges and certain other officers not here relevant, have supervision and that their decisions technically take the form of recommendations subject to approval by higher authority. It is the function of a position, not its place on the organizational chart upon which top-level manager or administrator is based. "It is not whether a person definitely establishes policy but rather the individual's regular participation in the policy-making process which determines managerial status. Absolute discretion or authority to act is not a prerequisite to finding that an individual formulates policy. What matters is the fact of participation at a fundamental level in the decision making process, not the participant's batting average in having his views prevail." State of New York, supra.

Id., at 144-45.

6. In Decision No. 292, Hannibal Tavares, IV HLRB 637 (1989), the Board previously held that the exclusion of two Fire Battalion Chiefs from bargaining unit 11 was warranted as the positions were near the top of an ongoing complex agency and assisted the Fire Chief and the Deputy Fire Chief in defining objectives, and establishing policies for the Maui Fire Department. Further, in directing the work of the program these positions exercise considerable discretion to determine the means, methods, and personnel to carry out the agency policy.

7. Based upon a review of the duties and responsibilities of Position Nos. OO-04480 and OO-04481, Battalion Chief, EM-03, the Board concludes similarly that the positions are at or near the top of an ongoing complex agency and command a battalion of companies within a major geographic area of Hawaii County on an assigned shift. Thus, the positions will exercise considerable discretion in developing and implementing the department's programs and policies by directing all fire fighting, emergency medical services, HazMat, search and rescue, and other related emergency and non-emergency operations of the battalion and assist in the formulation of the department's budget and short and long range plans and goals. In addition, the positions oversee the administrative functions of the division, including fiscal and personnel matters. As such, the positions have significant authority and latitude for individual initiative and independent judgment in the overall administration and operations management of the battalion. Based on the positions' respective duties and responsibilities, the Board concludes that each position is a top-level managerial position and should be excluded from bargaining unit 11 and coverage under HRS Chapter 89.

ORDER

Position Nos. OO-04480 and OO-04481, Battalion Chief EM-03, are hereby excluded from collective bargaining unit 11, and the coverage of HRS Chapter 89 as a top-level managerial employee.

DATED: Honolulu, Hawaii, September 30, 2005.

HAWAII LABOR RELATIONS BOARD

BRIAN K. NAKAMURA, Chair

COUNTY OF HAWAII AND HAWAII FIRE FIGHTERS ASSOCIATION, LOCAL 1463, IAFF
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EMORY J. SPRINGER, Member

KATHLEEN RACUYA-MARKRICH, Member

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