

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
BOARD OF REGENTS, University)	Case No. <u>RA-08-41</u>
of Hawaii,)	
)	
Petitioner,)	Decision No. <u>126</u>
)	
and)	
)	
HAWAII GOVERNMENT EMPLOYEES')	
ASSOCIATION, LOCAL 152,)	
AFSCME, AFL-CIO,)	
)	
Exclusive)	
Representative,)	
Unit 8.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

On April 2, 1980, the University of Hawaii Board of Regents (hereafter BOR) filed with this Board a Petition for Clarification of Amendment of Appropriate Bargaining Unit. In its petition, the BOR requested that two newly created positions be excluded from collective bargaining since they are top-level managerial positions as specified in Subsection 89-6(c), Hawaii Revised Statutes (hereafter HRS).

Based on the evidence submitted in support of the petition, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

The two positions in question are: (1) Assistant Director, Institute of Astronomy, and (2) Director of Facilities Planning, Office of the Vice President for Administration. The positions being established are administrative positions which, if not excluded from collective bargaining, would be

classified as "Administrative, Professional and Technical" and would be appropriately placed in Unit 8.

The BOR is the public employer as defined in Subsection 89-2(9), HRS, of employees in Unit 8.

The Hawaii Government Employees' Association, Local 152, AFSCME, AFL-CIO (hereafter HGEA), is the certified exclusive representative of the employees in Unit 8.

The HGEA concurs with the BOR's proposed exclusion of the two subject positions from Unit 8 and has waived the right to a hearing thereon.

Detailed position descriptions and organizational charts were submitted to the Board by the BOR to demonstrate that the positions will function as top-level managerial.

The position of "Assistant Director" is being established as a result of a recently approved reorganization plan for the Institute of Astronomy. The reorganization plan provides for an Office of Research Support which oversees the research support services provided by the Administrative/Fiscal Office, the Mauna Kea Support Services, Engineering/Instrumentation, Haleakala Support Services and Special Services. The "Assistant Director" is responsible for the operation and management of these support services. The position's duties call for personnel actions, budget preparation, and conducting ad hoc studies on planning, organization and policy relative to the operation and management of research support at the Institute. The position is responsible for representing the Institute's needs with such University offices as Personnel, Contract and Grants, and Procurement and Budget as established by the "Assistant Director" in consultation with the Institute's Director.

The "Director of Facilities Planning" under the Office of the Vice President for Administration was recently

formally classified. The position is responsible for directing and coordinating the physical facilities planning, budgeting and construction programs of the University of Hawaii System. The specific duties of the position include relating long-range academic decisions to the need for physical facilities; directing long-range physical development plans for individual campuses or components of the University system; directing the development of the systemwide capital improvements program; and coordinating the planning and construction of physical facilities.

CONCLUSIONS OF LAW

This case calls for an application of Subsection 89-6(c), HRS, which provides as follows:

Sec. 89-6(c). No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his first deputy, first assistant, and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, . . . (Emphasis added)

Decision 75 of this Board established that in determining a top-level managerial position under Subsection 89-6(c), the duties of the position must be measured 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.

Consideration also will be given to the extent to which placement of an individual in a collective bargaining unit would create a strong possibility of a conflict of interest arising. (Footnotes omitted) 1 HPERB No. 75 at p. 666.

Subsequently, Decision 95 of this Board added the following amplification of the Decision 75 test by requiring that the position:

(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. Decision 95 at p. 55.

The Board is of the opinion that based on the evidence submitted by the Petitioner, the position descriptions of the "Assistant Director" of the Institute of Astronomy and of the "Director of Facilities Planning" meet the foregoing criteria for top-level managerial positions and should be, under the provisions of Subsection 89-6(c), excluded from any appropriate bargaining unit and coverage under Chapter 89.

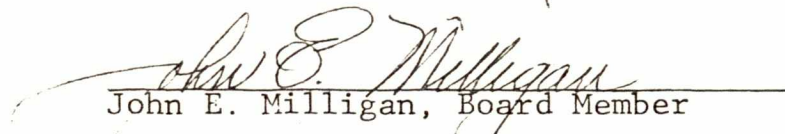
ORDER

The positions of "Assistant Director" of the Institute of Astronomy and "Director of Facilities Planning" under the Office of the Vice President for Administration are excluded from Unit 8.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: May 5, 1980

Honolulu, Hawaii