

STATE OF HAWAII
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
BOARD OF REGENTS, University)	Case No. <u>RA-07-43</u>
of Hawaii,)	
)	
Petitioner,)	Decision No. <u>137</u>
)	
and)	
)	
UNIVERSITY OF HAWAII)	
PROFESSIONAL ASSEMBLY,)	
)	
Exclusive)	
Representative)	
of Unit 7.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

On September 24, 1980, the Board of Regents of the University of Hawaii (hereafter BOR) filed with this Board a Petition for Clarification or Amendment of Appropriate Bargaining Unit. In its petition, the BOR requested that the position of Director of Financial Aids at the University of Hawaii at Manoa (hereafter UHM) be excluded from collective bargaining under the provisions of Subsection 89-6(c), Hawaii Revised Statutes (hereafter HRS).

Based on the affidavit of Harold S. Masumoto and 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 position of Director of Financial Aids, UHM, is currently included in bargaining unit 7 and is occupied by Annabelle C. Fong.

The BOR is the public employer of employees in Unit 7 as defined in Subsection 89-2(9), HRS.

The University of Hawaii Professional Assembly (hereafter UHPA) is the certified exclusive representative of employees of Unit 7.

The UHPA concurs with the BOR's proposed exclusion of the subject position and waives the right to a hearing thereon.

The detailed position description submitted to the Board by the BOR revealed that the Director of Financial Aids, UHM, performs administrative and policy-making functions in the planning, coordination and direction of the total student financial aid program at the University of Hawaii at Manoa. The Director is responsible for the supervision of a staff of professional and clerical personnel, and the administration of approximately ten million dollars of student aid annually. The Director also acts as UHM's official representative on matters dealing with student financial aid programs.

CONCLUSIONS OF LAW

Subsection 89-6(c), HRS, provides:

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, . . . shall be included in any appropriate bargaining unit or entitled to coverage under this chapter. (Emphasis added)

To determine what constituted a top-level managerial position under Subsection 89-6(c), HRS, the Board established, in Decision 75, that 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 666.

Subsequently, Decision 95 amplified the Decision 75 criteria by requiring that a 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. 2 HPERB No. 95 at 143.

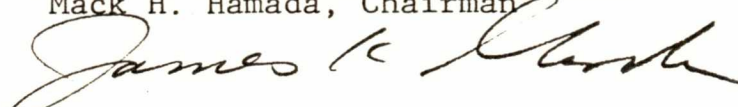
After a complete review of the duties and responsibilities performed by the position of Director of Financial Aids, UHM, the Board concludes that said position meets the foregoing criteria for a top-level managerial position and should be, under the provisions of Subsection 89-6(c), HRS, excluded from Unit 7 and coverage under Chapter 89, HRS.

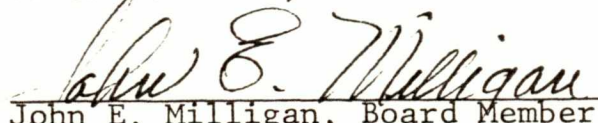
ORDER

The position of Director of Financial Aids, UHM, is excluded from Unit 7.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


Mack H. Hamada, Chairman


James K. Clark, Board Member


John E. Milligan, Board Member

Dated: October 7, 1980

Honolulu, Hawaii