

STATE OF HAWAII  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	
	)	
BOARD OF REGENTS, University	)	Case No. <u>RA-08-44</u>
of Hawaii,	)	
	)	
Petitioner,	)	Decision No. <u>149</u>
	)	
and	)	
	)	
HAWAII GOVERNMENT EMPLOYEES'	)	
ASSOCIATION, LOCAL 152,	)	
AFSCME, AFL-CIO,	)	
	)	
Exclusive	)	
Representative	)	
of Unit 8.	)	
_____	)	

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

On March 9, 1981, 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 newly created position of Employment Administrator 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, Vice President for Administration of the University of Hawaii, 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 Employment Administrator is classified as an administrative/managerial position and if included in collective bargaining would be placed in Unit 8.

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

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

The HGEA concurs with the BOR's proposed exclusion of the Employment Administrator position and waives the right to a hearing thereon.

The excluded position of Associate Director of Personnel is being abolished and the duties of said position will be absorbed by the Director of Personnel and the newly created Employment Administrator position.

The Employment Administrative position is responsible for administering the BOR employment and fringe benefits and welfare programs and for providing collective bargaining backup for BOR units. The work performed is described by the BOR as administrative/managerial and confidential. Specific duties include interpreting and applying union contract provisions to specific cases; providing advice and assistance to systemwide and campus administrators; preparing reports on personnel transaction problems and solutions; and developing procedures to implement policies.

The subject position will supervise a large staff of clerical and technical personnel and is responsible to the Director of Personnel.

#### 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 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 143.

After a complete review of the duties and responsibilities assigned to the position of Employment Administrator, 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 8 and coverage under Chapter 89, HRS.



ORDER

The position of Employment Administrator is excluded  
from Unit 8.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

  
Mack H. Hamada, Chairman

  
James K. Clark, Board Member

  
John E. Milligan, Board Member

Dated: April 2, 1981

Honolulu, Hawaii