

Dec

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
BOARD OF REGENTS, University)	Case No. <u>RA-07-47</u>
of Hawaii,)	
)	
Petitioner,)	Decision No. <u>152</u>
)	
and)	
)	
UNIVERSITY OF HAWAII)	
PROFESSIONAL ASSEMBLY,)	
)	
Exclusive)	
Representative)	
of Unit 7.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

On August 25, 1981, the Board of Regents of the University of Hawaii (hereafter BOR) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Public Employment Relations Board (hereafter Board). In its petition, the BOR requested that the newly created position of Vice Chancellor at the University of Hawaii at Hilo (hereafter UHH) be excluded from collective bargaining since it is a top-level managerial position as specified in Subsection 89-6(c), Hawaii Revised Statutes (hereafter HRS).

Based on the affidavit of the University of Hawaii's Vice President for Administration, 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 Vice Chancellor is classified as an administrative position and if included in collective bargaining would be appropriately placed in Unit 7.

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

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 is deemed to have waived the right to a hearing thereon.

The position description submitted to the Board by the BOR states that the subject position assists the Chancellor in the overall planning, organization and control of the academic and administrative programs of the UHH.

More specifically, the subject position serves as a full assistant to the Chancellor in the development and planning of institutional and academic programs; budgeting and resource allocation; supervision of staff development programs; supervision of federal grant program administration, such as Title III SDIP; monitoring personnel actions; and participating in personnel policy development and negotiations.

CONCLUSIONS OF LAW

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

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 top-level management or administrative 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.

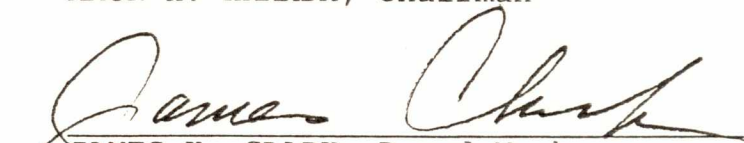
After a complete review of the duties and responsibilities performed by the position of Vice Chancellor, UHH, the Board concludes that said position meets the foregoing criteria for a top-level managerial position in that it is classified near the top of an on-going agency and participates in the formulation and implementation of academic and personnel policies. Thus, the position 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 Vice Chancellor, UHH, is excluded from Unit 7.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairman


JAMES K. CLARK, Board Member

Dated: September 17, 1981

Honolulu, Hawaii