

STATE OF HAWAII
HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
BOARD OF REGENTS, University)	CASE NO.: RA-08-50
of Hawaii,)	
)	DECISION NO.: 154
Petitioner,)	
)	
and)	
)	
HAWAII GOVERNMENT EMPLOYEES')	
ASSOCIATION, LOCAL 152,)	
AFSCME, AFL-CIO,)	
)	
Exclusive)	
Representative.))	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

On October 23, 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 entitled UH Administrative and Fiscal Support Specialist at the University of Hawaii at Manoa (hereafter UHM) be excluded from collective bargaining as it is a position concerned with confidential matters 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 newly created position of UH Administrative and Fiscal Support Specialist is classified as an Administrative, Professional, and Technical (hereafter APT) position and if included in collective bargaining 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 (hereafter HGEA) is the certified exclusive representative of employees of Unit 8.

The HGEA concurs with the BOR's proposed exclusion of the subject position and is deemed to have waived the right to a hearing thereon.

According to the evidence submitted in support of the petition, the subject position will be placed in the Classification and Pay Section of the Personnel Office and will be responsible for: 1) performing classification and pay analysis for APT as well as civil service positions; 2) recommending to the personnel officers in the section the appropriate classification series and level for these positions prior to taking final action; and 3) assisting in the preparation and presentation of management's position in classification and pay appeals hearings.

CONCLUSIONS OF LAW

Subsection 89-6(c), HRS, specifies which employees are to be excluded from any appropriate bargaining unit and coverage under Chapter 89 and provides in part:

No . . . individual concerned with confidential matters affecting employee-employer relations . . . shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.

In its interpretation of the legislative intent of the above cited section, the Board, in Decision 95 stated:

Giving the subject statutory phrase its plain and ordinary meaning, the Board believes that the Legislature intended to exclude from coverage of Chapter 89, HRS, those individuals who, in the regular course of their employment, are concerned with matters "not intended for the eyes or ears of the rank and file or their negotiating representative" affecting employee-employer relations. We are of the opinion that the confidential matters must directly produce an effect upon or influence or alter employee-employer relations. 2 HPERB No. 95 at 146.

In defining what constituted confidential matters affecting employee-employer relations, the Board noted:

As to the question of the secret-ness of the data, it should be noted that under our law supervisors may be included in units. Hence, confidential employees must know matters pertaining to employee-employer relations which are not made known to included supervisors. Included supervisors may have authority to exercise independent judgment respecting hiring, transfers, suspensions, layoffs, recalls, promotions, discharges, assignments, rewards, discipline, grievance adjustments and still be includable. Thus, the material with which employees must be concerned in order to be considered confidential employees under Chapter 89, HRS, must be different than that which is known by supervisors concerning such aforementioned personnel matters. . .

The Board is of the opinion that the term employee-employer relations includes collective bargaining (contract negotiations, application and administration) and all matters affecting employee-employer relations which are made non-negotiable by Subsection 89-9(d), HRS, but upon which the employer is required by Subsection

89-9(c), HRS, to consult with the unions. 2 HPERB No. 95 at 147.

As summarized in Decision 95, the following criteria must be met to designate an employee as confidential for exclusion pursuant to Subsection 89-6(c), HRS:

1. Working in the regular course of one's employment with matters
2. which are not intended for the eyes and ears of the rank and file and the unions
3. and which matters are capable of producing an affect or influence upon or change in employee-employer relations
4. such work normally being performed as a subordinate to an individual who is a managerial employee who formulates and effectuates management policy in the field of employment relations. 2 HPERB No. 95 at 147.

After a complete review of the duties and responsibilities to be performed by the position of UH Administrative and Fiscal Support Specialist, the Board concludes that said position meets the foregoing criteria. On a regular basis the subject position would be exposed to confidential information impacting upon classification and pay transactions, including documents relating to classification and pay analysis; various position descriptions; requests for the filling of Civil Service positions; and documents prepared for the presentation of management's position in classification and pay appeals. Thus, the position is concerned with confidential matters affecting employee-employer relations and should be, under the provisions of Subsection 89-6(c), HRS, and Decision 95, excluded from Unit 8 and coverage under Chapter 89, HRS.

ORDER

The newly created position of UH Administrative
and Fiscal Support Specialist, UHM, is excluded from Unit 8.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairman


JAMES K. CLARK, Board Member

Dated: November 5, 1981

Honolulu, Hawaii