

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
BOARD OF EDUCATION, State)	Case No. RA-06-49
of Hawaii,)	
)	Decision No. 155
Petitioner,)	
)	FINDINGS OF FACT,
and)	CONCLUSIONS OF LAW,
)	AND ORDER
HAWAII GOVERNMENT EMPLOYEES')	
ASSOCIATION, LOCAL 152,)	
AFSCME, AFL-CIO,)	
)	
Exclusive)	
Representative)	
of Unit 6)	
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

On October 20, 1981, the Board of Education (hereafter BOE) filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Public Employment Relations Board (hereafter Board). In its petition, the BOE requested that six positions currently included in Unit 6 (Educational officers and other personnel of the department of education under the same salary schedule) be excluded from collective bargaining as these positions are assigned duties and responsibilities concerned with confidential matters as specified in Subsection 89-6(c), Hawaii Revised Statutes (hereafter HRS).

Based on the affidavit of Eugene H. Yamamoto, Assistant Superintendent, Office of Personnel Services, Department of Education (hereafter DOE), 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 BOE is the public employer as defined in Subsection 89-2(9), HRS, of employees in Unit 6.

The Hawaii Government Employees' Association (hereafter HGEA) is the certified exclusive representative of employees in Unit 6.

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

Based on the evidence submitted, the Board finds as the duties of the subject positions:

1. Position No. 69700, Management Audit and Civil Rights Director (Thomas Yamashita, incumbent). This position serves as chief of the Management Audit and Civil Rights Branch which is located in the Office of the Superintendent. Under the direction of the Superintendent and the Deputy Superintendent, the position plans, organizes and directs a management audit program in the DOE to improve its operating efficiency and a civil rights (nondiscrimination) technical assistance and coordination program in the DOE to achieve full compliance with all applicable federal and state nondiscrimination laws, rules, regulations and policies.

The position formulates management policy within its area of responsibility and advises management officials on problems, cost reduction opportunities and the need for audits to analyze problems and effect improvements. The position further serves as the DOE's Equal Employment Opportunity (EEO) and Equal Educational Opportunity Officer who coordinates fact-gathering and analysis of EEO obligations. As the director of the DOE's management audit program, the

position develops proposals which are not made available to rank and file employees.

Consequently, the position has responsibility for the formulation and implementation of management policies and, on a regular basis, is presented with confidential matters which impact upon employee-employer relations.

2. Position No. 69981, Personnel Specialist III (James Nohara, incumbent). This position serves as the chief of the Personnel Certification and Development Section, Personnel Management Certification and Development Branch, Office of Personnel Services. As such, this position is responsible for administering the certification and reclassification programs for teachers, teacher development programs, State Approval of Teacher Education programs and the teacher evaluation program.

As the position is responsible for the formulation of management policies with regard to employee evaluation, teacher classification and the establishment of certification requirements, it is exposed to matters which are not intended for the eyes and ears of the rank and file and which impact upon employee-employer relations.

3. Position No. 60078, Personnel Specialist II (Mary Tanouye, incumbent). This position is located in the Personnel Certification and Development Section, Personnel Management Certification and Development Branch, Office of Personnel Services. This position assists Position No. 69981, Personnel Specialist III, above, in planning and coordinating a program of staff development and professional growth for all DOE teachers and a program of teacher evaluation. As such, the position participates in the formulation and implementation of management policies with

regard to matters not intended for the eyes and ears of the rank and file and which affect employee-employer relations.

4. Position No. 60044, Personnel Specialist II (Donald Nugent, incumbent). This position is located in the Certificated Personnel Management Section, Personnel Management, Certification and Development Branch, Office of Personnel Services. The position administers personnel services for certificated employees of DOE in the program areas of recruitment, assignment and transfer, permanent teacher exchange, equal employment opportunity, probationary teacher lay-off, early return from leave and position approval in conformance with accepted management practices. In addition, the position provides technical advice and assistance to top management and line supervisors by interpreting applicable state and federal laws and provides staff and consultant services to top management by developing and recommending policies and procedures relating to personnel management. As such, the position is concerned with confidential matters which directly affect employee-employer relations.

5. Position No. 67803, Personnel Specialist II (vacant). This position is located in the Certificated Personnel Management Section, Personnel Management, Certification and Development Branch, Office of Personnel Services. This position functions in a staff capacity and independently and regularly performs the most difficult and complex technical, administrative and professional services for the following personnel program areas: (1) leave administration, (2) salary administration, (3) personnel records administration, (4) personnel transaction administration, (5) personnel contract administration, (6) position

accounting and monitoring, and (7) teacher recruitment and placement. As such, the position is presented on a regular basis with confidential matters which directly affect employee-employer relations.

6. Position No. 69977, Personnel Specialist II (Eugene Shizuru, incumbent). This position is located in the Classified Personnel Management Section, Personnel Management, Certification and Development Branch, Office of Personnel Services. This position provides administrative and technical supervision over the Recruitment and Employment and the Records and Transactions units of the Classified Personnel Management Section. The section administers the position classification and compensation for classified positions in the DOE. The position further advises top managers and departmental management staff on classified personnel matters and develops departmental procedures and guidelines to expedite personnel actions. Thus, the position is regularly concerned with confidential matters which directly affect employee-employer relations.

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, HRS, 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 secretness 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 performed by the six subject positions, the Board concludes that the six positions meet the foregoing criteria as positions concerned with confidential matters affecting employee-employer relations for the following reasons:

1. Position No. 69700, Management Audit and Civil Rights Director, on a regular basis, is exposed to confidential matters including management policy matters relating to the organization and management of the DOE and its resources; and the investigation and analysis of discrimination complaints.

2. Position No. 69981, Personnel Specialist III, on a regular basis, is exposed to confidential matters in the determination of qualifications, classification and certification requirements of teachers; the determination of standards for work; and the determination of the method, means and personnel by which the employer's operations are to be conducted.

3. Position No. 60078, Personnel Specialist II, on a regular basis, assists Position No. 69981, above, and thus, is exposed to the same confidential information as specified above.

4. Position No. 60044, Personnel Specialist II, on a regular basis, is exposed to confidential matters including management policies which implement collective

bargaining unit contracts; the nature and content of examinations; hiring, assignment and retention of employees; and the determination of methods, means and personnel by which the employer's operations are to be conducted.

5. Position No. 67803, Personnel Specialist II, on a regular basis, is exposed to confidential matters including management's interpretation of the collective bargaining contracts; the determination of qualifications; the determination of standards of work; the nature and content of examinations; and the determination of the methods, means and personnel by which the employer's operations are to be conducted.

6. Position No. 69977, Personnel Specialist II, on a regular basis, is exposed to confidential matters including the recruitment and referral of prospective employees; the determination of qualifications; the content of examinations; and the determination of the methods, means and personnel by which the employer's operations are to be conducted.

Thus, the six positions are regularly concerned with confidential matters, not intended for the eyes and ears of the rank and file and the unions, directly affecting employee-employer relations and should be under the provisions of Subsection 89-6(c), HRS, and Decision 95, excluded from Unit 6 and coverage under Chapter 89, HRS.

ORDER

The following positions are excluded from Unit 6:

Position No. 69700, Management Audit and Civil
Rights Director

Position No. 69981, Personnel Specialist III

Position No. 60078, Personnel Specialist II

Position No. 60044, Personnel Specialist II

Position No. 67803, Personnel Specialist II

Position No. 69977, Personnel Specialist II

The mechanics of the exclusion shall be worked out among the parties to this case, provided that the effective date shall not be earlier than the date of this decision.

DATED: Honolulu, Hawaii, December 11, 1981.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairman


JAMES K. CLARK, Board Member

Copies sent to:

Board of Education, Chairman
Superintendent, Dept. of Education
Hawaii Government Employees' Assn.
Joyce Najita, IRC