

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	
)	
BOARD OF REGENTS, University)	CASE NO. RA-08-55
of Hawaii,)	
)	DECISION NO. 159
Petitioner.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On April 2, 1982, the BOARD OF REGENTS (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 Director of Personnel Transactions at the University of Hawaii at Manoa (hereafter UHM) be excluded from Unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty) as the position is a top-level managerial position and also a position concerned with confidential matters affecting employee-employer relations as specified in subsection 89-6(c), Hawaii Revised Statutes (hereafter HRS).

Based on the affidavit of Harold S. Masumoto, Vice President for Administration, University of Hawaii (hereafter UH), 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

As defined in subsection 89-2(9), HRS, the BOR is the public employer of employees of the UH, which includes employees in Unit 8.

The Hawaii Government Employees' Association (hereafter HGEA) is the certified exclusive representative of employees in Unit 8.

The HGEA concurs with the BOR's proposed exclusion of the subject position from Unit 8 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit C.

The subject position will be located in the Office of the Vice Chancellor for Academic Affairs and will assist the Vice Chancellor in the review, approval and processing of personnel actions affecting the faculty of the UHM. Petitioner's Exhibit B.

The position's duties and responsibilities include: (1) interpreting and implementing personnel policies and regulations and collective bargaining contract provisions; (2) reviewing and approving the classification of new positions, initial appointments, certain types of leaves of absences and other personnel actions for the UHM staff; (3) serving as the UHM's representative in collective bargaining negotiations; and (4) serving as the Chancellor's designated hearings officer in faculty grievances. Petitioner's Exhibits A and B.

Based on these duties and responsibilities, the position was classified as an Administrative/Managerial position. Petitioner's Exhibit A.

CONCLUSIONS OF LAW

As the instant case involves a newly established position, the Board must first determine the appropriate bargaining unit and thereafter determine if the position should be excluded from the bargaining unit.

Subsection 89-6(a), HRS, establishes the 13 public employee bargaining units and provides in part:

(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

* * *

(8) Personnel of the University of Hawaii and the community college system, other than faculty; . . .

In its attempt to more specifically determine the composition of Unit 8, the Board noted in Decision No. 25, Hawaii Federation of College Teachers, 1 HPERB 289 (1973):

The personnel employed by the University range over a broad spectrum of occupational groupings and includes some hybrids. There are a number of personnel in the University System who do not appropriately fall within the faculty or civil service groupings. Some of the personnel who are not within the faculty or civil service systems are classified as Administrative, Professional and Technical Personnel (hereafter APT).

APT's generally perform professional level duties which may be unique to the University environment. . . . Id. at 298.

The Board thereafter determined that the following employees are to be included in Unit 8:

All administrative, technical and professional employees who are employed half time or more, except those determined to be excluded. Id. at 290.

After reviewing the evidence submitted by the BOR, the Board concludes that the duties of the subject position

reflect administrative and professional responsibilities within the UH system. Thus, as the position was classified as an Administrative/Managerial Position and no evidence was submitted which would indicate that the position should be classified in a faculty or civil service grouping, the position would appropriately be placed in Unit 8 if included in collective bargaining.

Subsection 89-6(c), HRS, specifies which positions are excluded from any appropriate bargaining unit and not entitled to coverage under Chapter 89, HRS, and provides in part:

No. . .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.

In interpreting the exclusionary language of subsection 89-6(c), HRS, the Board, in various decisions, established criteria which must be met in order to justify an exclusion. In determining whether an individual occupies a top-level managerial or administrative position, the Board in Decision No. 75, Hawaii Nurses Association, 1 HPERB 660 (1977), stated, in pertinent part:

This Board believes that the proper test of whether an individual occupies a top-level managerial and administrative position includes measuring the duties of the position 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. Id. at 666.
[footnotes omitted.]

In Decision 95, Hawaii Government Employees' Association, Local 152, 2 HPERB 105 (1978), the Board supplemented this criteria by stating:

The Board will also designate positions as top-level managers or administrators if the incumbents assist directly in the preparation for and conduct of negotiations or have a major role in the administration of agreements or in personnel administration or meet and confer with union representatives as required by Section 89-9(c) provided that such role is not a routine or clerical nature and requires the exercise of independent judgment. Id. 145.

In that decision, the Board also established guidelines to define what constituted confidential matters affecting employee-employer relations so as to exclude an individual from collective bargaining. The Board stated:

. . . [T]he 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. Id. at 146.

The Board further 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. Id. at 147. [Emphasis in original.]

After a complete review of the duties and responsibilities to be performed by the position of Director of Personnel Transactions, the Board further concludes that:

(1) as the position participates in the formulation of policies regarding collective bargaining negotiations and has a major role in the administration of the collective bargaining agreements and in personnel administration, it is a top-level administrative position; and

(2) as the position is exposed on a regular basis to confidential information impacting upon collective bargaining contract negotiations and personnel transactions, it is a position concerned with confidential matters affecting employee-employer relations.

Thus, the subject position should be, under the provisions of subsection 89-6(c), HRS, and previous Board decisions, excluded from Unit 8 and coverage under Chapter 89, HRS.

ORDER

The newly created position of Director of Personnel Transactions, UHM, is excluded from Unit 8.

Dated: Honolulu, Hawaii, May 21, 1982.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member

Copies sent to:

Harold S. Masumoto, UH
Joyce Najita, IRC
State Archives