

Dec.

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	CASE NO. RA-07-65
	)	
BOARD OF REGENTS, University	)	DECISION NO. 177
of Hawaii,	)	
	)	
Petitioner.	)	
_____	)	

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On September 20, 1983, the BOARD OF REGENTS [hereinafter referred to as BOR] filed a Petition for Clarification or Amendment of Appropriate Bargaining Unit with the Hawaii Public Employment Relations Board [hereinafter referred to as Board]. In its petition, the BOR requested existing Position No. 82292, Associate Astronomer, a faculty position in the Institute for Astronomy at the University of Hawaii at Manoa, be excluded from collective bargaining unit 7 (Faculty of the University of Hawaii and the community college system) as the position is a top-level managerial position as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS]. Until unit determination by the Board, the reclassification of the existing position to Division Chief and Manager, Infrared Telescope Facility, Institute of Astronomy is pending.

Together with its petition, the BOR submitted the following documents:

1. Affidavit of Harold S. Masumoto, dated September 19, 1983;
2. Executive--Administrative/Managerial Position Description for Manager, Infrared Telescope Facility and Chief, IRTF Division, Institute of Astronomy (Exhibit A);

3. Class specifications from the University of Hawaii at Manoa's Executive/Managerial Classification and Compensation Plan (Exhibit B); and

4. Letter from Harold S. Masumoto to Dr. J. N. Musto, University of Hawaii Professional Assembly [hereinafter referred to as UHPA], dated July 15, 1983, requesting the union's concurrence with the proposed exclusion (Exhibit C).

Based upon all documents submitted in support of said petition, the Board makes the following findings of fact, conclusions of law and order.

#### FINDINGS OF FACT

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

The UHPA is the certified exclusive representative of employees in Unit 7 as defined in Subsection 89-6(7), HRS.

The UHPA has concurred with the BOR's proposed exclusion of the position from collective bargaining and is deemed to have waived its right to a hearing thereon. Petitioner's Exhibit C.

Position No. 82292 is currently located in the Institute for Astronomy, Office of Research Support.

The position's duties and responsibilities include:

1. Supervising scientific staff hired under the Infrared Telescope Facility's annual operating contract;

2. Ensuring that visiting scientists are adequately supported at the facility within available resources under the contract;

3. Preparing reports and presentations at the request of NASA;

4. Evaluating all proposals and plans for auxiliary instruments for the IRTF and IRTF modifications; and

5. Conducting programs of scientific research.

In addition, the position directs the research support activities and scientific research programs of the IRTF, a major division of the Institute for Astronomy.

Exhibit B. The position also determines resource allocations, responds to and negotiates with NASA, and develops operating budget proposals and long-range program plans in consultation with the Institute for Astronomy Director.

Exhibits B and C.

#### CONCLUSIONS OF LAW

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:

\* \* \*

(7) Faculty of the University of Hawaii and the community college system;  
. . .

After reviewing the evidence submitted by the BOR, the Board concludes that the duties of the subject position reflect the position's proper placement in bargaining unit 7.



However, Subsection 89-6(c), HRS, specifies those positions which are to be excluded from the appropriate bargaining unit and are not entitled to coverage under Chapter 89, HRS. The subsection provides in part:

No. . .top-level managerial and administrative personnel. . .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 No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), the Board supplemented this criteria by stating:

In order to be determined to be a top-level management or administrative position, a position must:

(1) be at or near the top of an ongoing 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.

Id. at 143.

After a complete review of the duties and responsibilities of the proposed Division Chief and Manager, Infrared Telescope Facility position, the Board concludes that the position directs the work of the IRTF and is at or near the top of a program which is considered major in terms of importance to the University of Hawaii. The position directs the work of the program with considerable discretion to determine the means, method and personnel to carry out the program policy. Accordingly, the Board concludes that it is a top-level managerial and administrative position. Thus, the position should be, under the provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from bargaining unit 7 and coverage under Chapter 89, HRS.

#### ORDER

The position of Division Chief and Manager, Infrared Telescope Facility is excluded from Unit 7.

DATED: Honolulu, Hawaii, November 16, 1983.

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MACK H. HAMADA, Chairperson

  
JAMES K. CLARK, Board Member

  
JAMES R. CARRAS, Board Member

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