

STATE OF HAWAII
HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NO. RA-07-67
)	
BOARD OF REGENTS, University)	DECISION NO. 178
of Hawaii,)	
)	
Petitioner.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On October 3, 1983, the BOARD OF REGENTS [herein-
after 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 that the
position entitled Assistant Library Specialist at the
University of Hawaii at Manoa [hereinafter referred to as
UHM] be excluded from Unit 7 (Faculty of the University of
Hawaii and the community college system) as it is a position
concerned with confidential matters as specified in Subsec-
tion 89-6(c), Hawaii Revised Statutes [hereinafter referred
to as HRS].

The BOR submitted along with the petition the
following documents:

1. Affidavit of Harold S. Masumoto regarding
Position No. 84208, dated October 3, 1983;
2. Position description for the Assistant Library
Specialist position (Exhibit A);
3. Class specifications for the Assistant Library
Specialist position from UHM's Classification and Compensa-
tion Schedule (Exhibit B); and

4. Letter, dated September 13, 1983, from Harold S. Masumoto to J. N. Musto, University of Hawaii Professional Assembly [hereinafter referred to as UHPA], requesting the UHPA's concurrence with the proposed exclusion of Position No. 84208 (Exhibit C).

Based on the affidavit of Harold S. Masumoto, Vice President for Administration, University of Hawaii [hereinafter referred to as UH], and all documents submitted in support of the petition, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

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

The UHPA is the certified exclusive representative of employees in Unit 7.

The UHPA concurs with the BOR's proposed exclusion of Position No. 84208 from Unit 7 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit C.

The position assists the University Librarian, an excluded executive position at the UHM, in professional library administrative work involving the management of personnel activities for the Library Services Program. Petitioner's Exhibit A.

The general duties and responsibilities of the Assistant Library Specialist include:

1. Assisting in the management of personnel activities including recruitment, interviewing, placement,

salary recommendation, contract administration, counseling, training and removal procedures;

2. Coordinating the development of library program priorities;

3. Preparing budget requests and justifications;

4. Performing library program planning research;

5. Preparing reports; and

6. Evaluating library policies and programs.

The position's personnel-related duties include:

1. Recruiting BOR library employees;

2. Administering and interpreting applicable collective bargaining agreements and working with personnel officials to resolve potential and actual grievances;

3. Administering promotion, tenure, contract renewal and merit award procedures for library faculty;

4. Coordinating and administratively implementing reorganization proposals; and

5. Responding to UH requests for sensitive personnel information regarding the Library faculty.

Petitioner's Exhibit A.

Based on these duties and responsibilities, the position was classified within the UHM's Executive/Managerial Classification and Compensation Plan. Petitioner's Exhibit B.

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 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 its interpretation of the legislative intent of the above cited section, the Board, in Decision No. 95, Hawaii Government Employees' Association, 2 HPERB 105 (1978), 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.

Id. 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.

Id. at 147.

As summarized in Decision No. 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.

Id. at 147.

After a complete review of the duties and responsibilities of the Assistant Library Specialist, the Board concludes that said position clearly works in the regular course of employment with personnel matters pertaining to contract administration, reorganization and sensitive personnel information. Further, the position assists the University Librarian, an excluded executive position, with the formulation and implementation of management's personnel

policies. Such duties encompass matters not intended for the rank-and-file and impact upon employee-employer relations. 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 No. 95, excluded from Unit 7 and coverage under Chapter 89, HRS.

ORDER

The position of Assistant Library Specialist, UHM, is excluded from Unit 7.

DATED: Honolulu, Hawaii, November 16, 1983.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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