

slc.

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NO. RA-07-66
)	
BOARD OF REGENTS, University)	DECISION NO. 180
of Hawaii,)	
)	
Petitioner.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On September 28, 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 that four positions, each reclassified as County Administrator, Hawaii Institute of Tropical Agriculture and Human Resources [hereinafter referred to as HITAHR], be excluded from Unit 7 (Faculty of the University of Hawaii and the community college system) as the positions are top-level managerial positions as specified in Subsection 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 Nos. 82936, 84144, 82057 and 83056, dated September 27, 1983;
2. Executive--Administrative/Managerial Position Description for the County Administrator (Exhibit A);

3. Class specifications for the County Administrator, HITAHR, from the University's Executive/Managerial Classification and Compensation Plan (Exhibit B); and

4. Letter, dated August 23, 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 Nos. 82936, 84144, 82057 and 83056 (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 Nos. 82936, 84144, 82057 and 83056 from Unit 7 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit C.

There has been a reorganization of the College of Tropical Agriculture and Human Resources [hereinafter referred to as CTAHR], University of Hawaii at Manoa [hereinafter referred to as UHM], resulting in each county's program being headed by a County Administrator under the HITAHR. The four positions affected by the reorganization are presently included in Unit 7 and are:

Position No. 82936, Horticulturist, Superintendent and County Chairman, Hawaii;

Position No. 84144, County Extension Agent, Superintendent and County Chairman, Maui;

Position No. 82057, County Extension Agent, Oahu; and

Position No. 83056, County Extension Agent, Superintendent and County Chairman, Kauai.

These positions will be reclassified as County Administrators and will assume responsibilities for and coordinate all HITAHR research and extension activities in each county. Petitioner's Exhibits A and C.

The duties and responsibilities of the County Administrators include:

1. Directing, implementing and evaluating HITAHR programs and activities carried out in a county, more specifically:

(a) Developing objectives, priorities and plans for research and extension programs based upon the needs of the county.

(b) Participating in the development of state-wide plans for the development of industries and resources to assure coordination between county and state programs.

(c) Reviewing and recommending funding for annual plans of work and projects prepared by faculty members.

(d) Exercising academic and professional leadership in planning and carrying out program activities, and independent judgment in handling

a variety of problems, involving a diverse population of clientele groups;

2. Representing the University and the College in the county and representing county interests in dealing with other units in the College;

3. Directing the operation of the experiment stations in the County;

4. Performing, on a reduced basis, the duties in a faculty capacity as county agent, area specialist or researcher; and

5. Performing administrative functions in accordance with federal, University and College policies and procedures. Petitioner's Exhibit A.

According to the County Administrator class specifications, the positions are also responsible for fiscal, personnel and other administrative aspects in directing the operations of multiple branch stations and supervising a large staff of academic, administrative, professional and technical personnel. Petitioner's Exhibit B.

Based on these duties and responsibilities, the Position Nos. 82936, 84144, 82057 and 83056 are proposed for reclassification within the University's Executive/Managerial Classification and Compensation Plan. Petitioner's Exhibit B.

CONCLUSIONS OF LAW

As the instant case involves four newly classified positions, the Board must first determine their appropriate bargaining unit and thereafter determine whether the positions should be excluded from the bargaining unit.

Subsection 89-6(a), HRS, establishes 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;
. . .

The Board determined the composition of Unit 7 in Decision No. 21, Hawaii Federation of College Teachers, 1 HPERB 202 (1972):

All Instructional, Research, and Specialist personnel, County Extension Agents and Home Economists, Assistants to the Deans of Social Work, Director and others whose position titles are included on Exhibit A attached herewith and those employed half-time or more, except those determined not to be eligible.

Notwithstanding the proposed reclassification, the subject positions retain their duties of a faculty nature performing as county agent, area specialist or researcher. As agents, the positions carry out extension education projects and provide consultative services. As researchers, the positions conduct disciplinary and commodity-related research. As area specialists, the positions develop educational programs and conduct agent training. While the duties are performed on a reduced basis, they justify the positions' appropriate placement within Unit 7.

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 . . . 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 four County Administrator positions, the Board concludes that said positions each manage, with considerable discretion and independent judgment, a major organizational unit within HITAHR. Accordingly, the positions are responsible for developing objectives, priorities and plans for research and extension programs, coordinating county programs with various segments of the communities and exercising academic and professional leadership. Moreover, the positions for the most part operate in a management capacity in geographically separated locations with respect to a large number of employees. Thus, the positions are top-level managerial and administrative positions which should be, under the provisions of Subsection 89-6(c), HRS, and previous Board decisions, excluded from Unit 7 and coverage under Chapter 89, HRS.

ORDER

The four County Administrator positions are excluded from Unit 7.

DATED: Honolulu, Hawaii, November 16, 1983.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson

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JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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