

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	)	CASE NO. RA-08-64
	)	
BOARD OF REGENTS, University	)	DECISION NO. 182
of Hawaii,	)	
	)	
Petitioner.	)	
_____	)	

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

On September 15, 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 Position No. 80089, University of Hawaii [hereinafter referred to as UH] Director of Procurement and Property Management, and Position No. 80088, UH Assistant Director of Procurement and Property Management, be excluded from Unit 8 (Personnel of the University of Hawaii and the community college system, other than faculty) as each position is a top-level managerial position as specified in Subsection 89-6(c), Hawaii Revised Statutes [hereinafter referred to as HRS].

Since the petition indicated that the union did not concur with the proposed exclusion of Position Nos. 80089 and 80088 from Unit 8, the Board issued a Notice of Receipt of Petition for Clarification or Amendment of Appropriate Bargaining Unit, a Notice of Deadline for Filing Petitions for Intervention and a Notice of Prehearing Conference on September 29, 1983.

At the prehearing conference held on October 12, 1983, Harold S. Masumoto, Vice President for Administration, UH, indicated that the union concurred with the exclusion of the Director's position but the BOR would withdraw the UH Assistant Director of Procurement and Property Management position from the petition.

On November 2, 1983, the BOR filed an Amended Petition requesting the exclusion of the UH Director of Procurement and Property Management position from Unit 8.

The BOR submitted along with the petition the following documents:

1. Affidavit of Harold S. Masumoto regarding Position No. 80089, dated October 13, 1983;
2. Executive--Administrative/Managerial Position Description for the Director of Procurement and Property Management (Exhibit A);
3. Class specifications for the Director of Procurement and Property Management from University's Executive and Administrative/Managerial Classification Plan (Exhibit B); and
4. Letter, dated October 13, 1983, from Harold S. Masumoto to Russell Okata, Hawaii Government Employees' Association [hereinafter referred to as HGEA], requesting the HGEA's concurrence with the proposed exclusion of Position No. 80089 from the bargaining unit (Exhibit C).

Based on the affidavit of Harold S. Masumoto, Vice President for Administration, UH, and all documents submitted in support of the position, 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 8.

The HGEA is the certified exclusive representative of employees in Unit 8.

The HGEA concurs with the BOR's proposed exclusion of Position No. 80089 from Unit 8 and is deemed to have waived the right to a hearing thereon. Petitioner's Exhibit C.

The position is the chief procurement and property management officer for the UH and serves as the principal advisor to the UH administration in these functional areas. Further, the position plans, organizes and directs the systemwide operations and services of the Office of Procurement and Property Management, including the formulation of its policies and procedures. Petitioner's Exhibit B.

The duties and responsibilities of the Director of Procurement and Property Management include:

1. Determining, formulating and effectuating procurement and property policy, procedure and operational objectives;
2. Directing and reviewing University-wide purchasing;
3. Executing contracts and agreements, and resolving contract disputes;
4. Maintaining optimal vendor relations;
5. Managing real and personal property assets;
6. Assessing potential liabilities and



recommending or taking appropriate actions to minimize or eliminate risks to the University;

7. Supervising a staff of administrative, technical and clerical personnel; and

8. Complying with extramural requirements on flow-down provisions of grantor documents and providing timely reports to the grantor. The position possesses a wide degree of discretion and exercises independent judgment in the performance of these duties. Petitioner's Exhibits A and B.

Based on these duties and responsibilities, the position's reclassification within the University's Executive and Administrative/Managerial Classification Plan is proposed. Petitioner's Exhibit B.

#### CONCLUSIONS OF LAW

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:

\* \* \*

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

In its attempt to specifically determine the composition of Unit 8, the Board noted in Decision 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 (hereinafter 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 BOR has classified the subject position within the APT system, the position would appropriately be placed in Unit 8 if included in collective bargaining.

However, 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. . .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 judgement 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 Director of Procurement and Property



Management, the Board concludes that said position directs the work of the Office of Procurement and Property Management, including the formulation of policies and procedures, and is at the top of a program which is considered major in terms of importance to the UH. Accordingly, the position, on a regular basis, exercises considerable discretion and independent judgement in determining the methods, means and personnel to carry out fiscal policy. Thus, the Board concludes that the position is a top-level managerial and administrative position which 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.

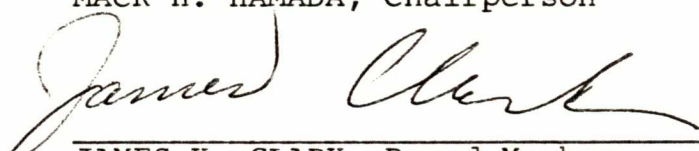
ORDER

The Director of Procurement and Property Management, UH, is excluded from Unit 8.

DATED: Honolulu, Hawaii, December 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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