

STATE OF HAWAII

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of)	CASE NOS.: RA-03-68
)	RA-08-68
BOARD OF REGENTS, University)	
of Hawaii,)	DECISION NO. 183
)	
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 the transfer
of excluded Position No. 3896, Personnel Technician VII,
from Unit 3 (Nonsupervisory employees in white collar
positions) to Unit 8 (Personnel of the University of Hawaii
and the community college system, other than faculty). The
transfer is premised upon the reclassification of the
position to University of Hawaii [hereinafter referred to as
UH] Personnel Officer II and the similarity of the duties
and responsibilities of the position to those of various
existing positions within the Administrative, Professional
and Technical Personnel [hereinafter referred to as APT]
classification plan.

The BOR submitted along with the petition the
following documents:

1. Affidavit of Harold S. Masumoto regarding
Position No. 3896, dated October 3, 1983;

2. APT Position Description for the UH Personnel Officer II (Exhibit A);

3. Class specifications for the UH Personnel Officer II from UH's APT Compensation Plan (Exhibit B); and

4. Letter, dated September 30, 1983, from Harold S. Masumoto to Russell Okata, Hawaii Government Employees' Association [hereinafter referred to as HGEA], informing the HGEA of the proposed bargaining unit transfer of excluded Position No. 3896 (Exhibit C).

Based on the affidavit of Harold S. Masumoto, Vice President for Administration, 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

Governor George R. Ariyoshi is the public employer, as defined in Subsection 89-1(9), Hawaii Revised Statutes [hereinafter referred to as HRS], of employees of the State, which includes employees in Unit 3.

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 Units 3 and 8.

The HGEA has been informed of the BOR's proposed transfer of the subject excluded position from Unit 3 to Unit 8. Petitioner's Exhibit C.

Position No. 3896 is currently classified as a Personnel Technician VII within the civil service system and performs advanced administrative and technical work in

the systemwide personnel program. The position serves as head of the Board of Regents Employment [hereinafter referred to as BORE] Section, University Personnel Office, which is responsible for the final technical review of regulatory, procedural and policy aspects of all personnel actions. Accordingly, the UH Personnel Officer II reports to the Acting Director of Personnel, an excluded top-level managerial position. Petitioner's Exhibits A and B.

The duties and responsibilities of the UH Personnel Officer II include:

1. Directing the activities of the BORE Section which is responsible for the full range of personnel transactions affecting all BOR personnel, such as new appointments, reappointments, salary adjustments, leaves, separations, temporary appointments, promotions/reallocations, stipends, casual/overload employment, application of different conditions of employment and salary schedules;

2. Providing advisory services in the interpretation and application of personnel policies, procedures and practices;

3. Monitoring appointments and employment status of non-United States faculty and staff personnel for conformance to Immigration and Naturalization Service rules and regulations; and

4. Being delegated signature authority by the Personnel Director to respond to all requests for information concerning faculty and staff in conformance with legal information disclosure provisions and requirements and BOR and University policies. Petitioner's Exhibit A.

Based on these duties and responsibilities, Position No. 3896 is proposed for reclassification within the University's APT Compensation Plan as UH Personnel Officer II. Petitioner's Exhibit B.

CONCLUSIONS OF LAW

The BOR has requested the transfer of Position No. 3896 from Unit 3 to Unit 8, as the position's duties and responsibilities are more appropriately encompassed in the APT Classification plan. Further, as the position continues to perform confidential work involving employee-employer relations the BOR requests that it continue to be excluded from the appropriate 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 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 technical responsibilities within the UH system. Thus, as the position is proposed for reclassification with the University's APT classification plan 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.

However, Subsection 89-6(c), HRS, specifies which positions are to be excluded from an appropriate bargaining unit and are not entitled to coverage under Chapter 89, HRS. The subsection 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, discipline, assignments, rewards, 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. [Emphasis in original.]

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 UH Personnel Officer II, the Board concludes that said position directs the activities of the BORE Section and clearly works in the regular course of employment with personnel matters pertaining to new appointments, reappointments, salary adjustments, leaves, separations, temporary appointments, promotions/reallocations, stipends, casual/overload employment, application of different conditions of employment and salary schedules. Such duties include providing advisory services to UH administrators in the interpretation and application of personnel policies and practices. This clearly encompasses matters not intended for the rank-and-file and impact upon employee-employer relations. Further, the UH Personnel Officer II reports to the Acting Director of Personnel, an excluded top-level managerial position. 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 8 and coverage under Chapter 89, HRS.


ORDER


The position of UH Personnel Officer II is
excluded from Unit 8.

DATED: Honolulu, Hawaii, January 24, 1984.

HAWAII PUBLIC EMPLOYMENT RELATIONS BOARD


MACK H. HAMADA, Chairperson


JAMES K. CLARK, Board Member


JAMES R. CARRAS, Board Member

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